

2189

# LON/00BE/LSC/2006/0045

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
FOLLOWING AN APPLICATION FOR A DETERMINATION ON THE  
LIABILITY TO PAY SERVICE CHARGES

## 41-43 Great Guildford Street, London, SE1 0ES

Paper Hearing: 22 May 2006

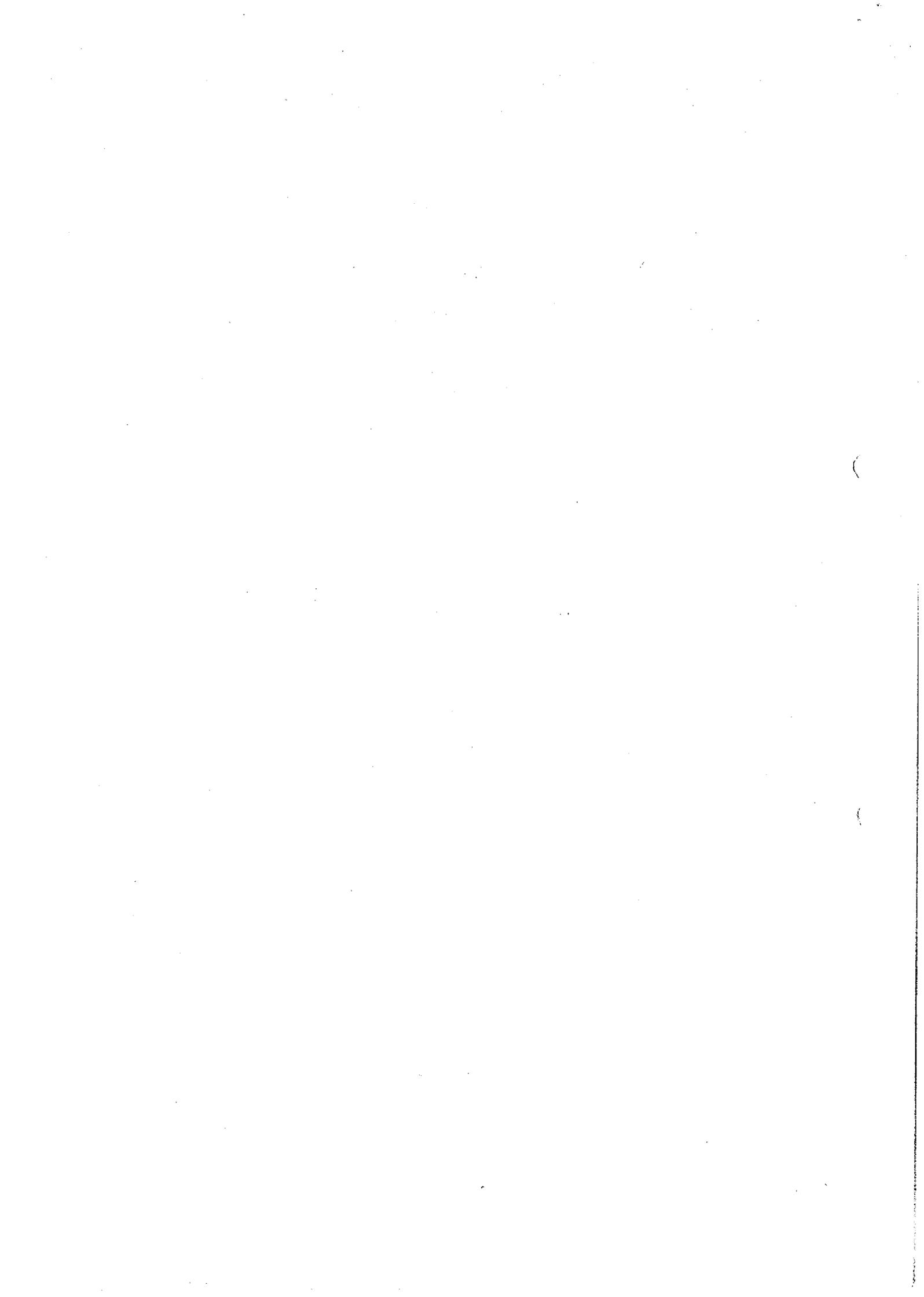
Applicant: Lessees of 41 – 43 Great Guildford Street

Landlord: Acorn Homes (Tower Bridge) Ltd

### Member of the Leasehold Valuation Tribunal:

Miss S J Dowell

BA (Hons)



IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF :

**THE LESSEES  
OF 41-43 GREAT GUILDFORD STREET,  
LONDON SE1 0ES**

**Applicants**

- and -

**ACORN HOMES (TOWER BRIDGE) LIMITED**

**Respondent**

#### **THE APPLICATION**

1. This is an application dated 9th February 2006 for a determination of liability for and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985.
2. A pre trial review was held on 21st March 2006 when it was ordered, by consent of the parties, that this application should be determined without an oral hearing (Regulation 13 Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 as amended).
3. The service charges in dispute are the Respondent's legal fees and managing agent's fees which arose in connection with a previous application to the Tribunal (LON/OOBE/LIS/2004/48). The decision in this case is dated 13th December 2004.
4. In those proceedings the Applicants made an application under section 20C of the Act in relation to the costs in connection with the proceedings i.e. the same costs as those which are the subject of this current application.
5. The previous Tribunal at paragraph 25 of their decision, concluded that the leases did not permit the Respondent to recover its legal costs. The Tribunal stated

*"It has been well settled that a clause permitting a lessor to recover its legal costs must be in clear and unambiguous terms. The provisions under consideration simply enable the Respondent to recover the costs of employing staff or organisations for the performance of duties or the provision of services, in general terms. The Tribunal considered that the provisions under consideration did not permit the recovery of the Respondent's legal costs: they were not identified with sufficient precision."*

The Respondent did not apply for permission to appeal against this decision.

6. Notwithstanding this unequivocal finding of the Tribunal the Respondent had demanded payment of their legal fees and the managing agent's fees as a service charge which had precipitated this second application to the Tribunal. The amount demanded totalled £5,781.49 (including VAT).
7. In the directions given at the pre trial review it was ordered that the Respondent should send a statement giving a breakdown of the legal costs and including "legal arguments as to statutory reasons why, in view of paragraph 25 of the decision of the Leasehold Valuation Tribunal dated 13th December 2004, the Respondent is entitled to place legal fees on the service charge account" on or before 7th April 2006 to the Tribunal and the Applicants. The Respondent's solicitors ignored this direction and eventually sent a statement in support of the Respondent's case by fax to the Tribunal dated 10th May 2006. By this time an order had been made by the Tribunal "the Tribunal stipulates that unless you comply with directions by 8th May 2006 you will be debarred from giving evidence at the hearing". The Applicants sent in their statement of case on 5th May 2006 notwithstanding that the Respondent had not fulfilled its obligations under the directions.
8. The Applicants then served an additional statement dated 18th May 2006.
9. The Applicants' main submission is that the Leasehold Valuation Tribunal has already ruled that the terms of the lease do not contain the necessary clear and unambiguous terms that would allow for the recovery of any of the landlord's legal costs. They have also set out in some detail why they consider the costs to be unreasonable if this Tribunal finds that they are payable.

## **DECISION**

10. The Respondent was ordered to file and serve a statement to include legal arguments as to statutory reasons why, in view of paragraph 25 of the decision of the Leasehold Valuation Tribunal dated 13th December 2004 the Respondent is entitled to place legal fees on the service charge account. This was due by 7th April 2006. As the directions were not complied with the Tribunal made a further direction that if the statement was not served by 8th May 2006 then the Respondent would be debarred from giving evidence at the hearing. The Respondent had not in any event put forward any reason in law why both parties should not be bound by the finding of the previous Tribunal that the leases do not allow for recovery of legal costs. In those circumstances the current application must succeed and the Respondent is not entitled to recover any of the legal fees and managing agent's fees incurred in previous proceedings (Ref. LON/OOBE/LIS/2004/48).

## **APPLICATION UNDER SECTION 20C OF THE ACT**

11. The Applicant has also made an application under section 20C of the Act in connection with these proceedings.

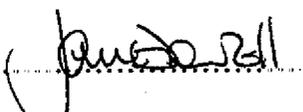
12. Section 20C – Limitation of service charges: costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made
  - (a) .....
  - (b) in the case of proceedings before a Leasehold Valuation Tribunal to the Tribunal before which the proceedings are taking place or if the application is made after the proceedings have concluded to a Leasehold Valuation Tribunal.
  - (c) .....
- (3) The Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

13. This Tribunal has no hesitation in making such an order. It would be wholly inequitable for the landlord to impose service charges for legal fees on the Applicants who have been forced to make this application because the Respondent has refused to comply with the decision of the previous Tribunal. In any event a previous Tribunal has ruled that the provisions of the lease do not permit recovery of the Respondent's legal costs.

**APPLICATION FOR REIMBURSEMENT OF FEES**

14. The Tribunal of its own motion makes an order that the Respondent should reimburse the Applicants' fee paid to issue these proceedings (Regulation 9 Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003).

  
.....  
Jane Dowell  
Chairman

Dated the 2 day of June 2006