RESIDENTIAL PROPERTY VALUATION SERVICE

LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985 (AS AMENDED), SECTIONS 20C and 27A

Case No:	CHI/40UF/LSC/06/85
Property:	Flat 2, Alcombe Hall, Bircham Road, Minehead, TA24 6BG
Applicant:	Mr M C Biles
Respondent:	Tyrell Investments Inc, rep Mrs Bebb, Underwoods Management Services Ltd
Members of Tribunal:	Ms S C Casey (Chairperson) Mr M J Ayres FRICS Mrs M Hodge BSc Hons MRICS
Date Decision Issued:	31st January 2007

The Tribunal was concerned with an application dated 16 July 2006, made by Michael Clive Biles, the Leaseholder of flat 2, Alcombe Hall, Bircham Road, Alcombe, Minehead, SOMERSET, TA24 6BG.

The application is for a determination of a liability to pay service charges pursuant to s27A Landlord and Tenant Act 1985, and, an application under s20c, of the Landlord and Tenant Act 1985 to limit the costs which can be recovered by the Landlord, those costs having been incurred in connection with the proceedings before the Leasehold Valuation Tribunal.

The property, known as, Alcombe Hall is a grade 2 listed building. It consists of 7 flats and a fish and chip shop.

The freeholder / Respondent, is Tyrell Investments Inc, c/o Ellis Jones Solicitors, 302 Charminster Road, Bournmouth, BH8 9RT. The managing agents for the Freeholder are, Underwoods Management Services Ltd, of Elizabeth House, Unit 13, Fordingbridge Business Park, Ashford Road, Fordingbridge, Hampshire, SP6 1BZ.

The service charges to be considered by the Tribunal are;

1.The insurance premiums for the years 2004/2005 and Dec 2005/Dec2006; and;

2. The postage costs for 2005/2006.

The Tribunal inspected the premises on 12 January 2007, in the presence of the Applicant and Representatives from Underwoods the Respondent's agents.

The premises comprised of 7 flats and a chip shop. During the course of the inspection it was noted that 6 of the flats shared communal parts. The chip shop and Flat 1 were separate from the other 6 flats although in the same block; they could not be accessed from the communal area. Flat 1 was adjacent to the chip shop and each had its own separate entrance from the road. Flat 3 was above the chip shop.

The hearing was held after the inspection on 12 January 2007. The Applicant Mr Biles attended. Mrs Bebb attended to represent the Respondent.

A preliminary issue was raised concerning the precise contributions each leaseholder was obliged to make for the service charges. The leases referred to are as follows; for flat 2, lease made 12th September 1996 between Roger Clarke and John Brassington (1) and Michael Clive Biles and Christine Jane Biles (2) (leases for flats 3,4,5,7 & 8, the Tribunal were advised are in the same terms); for flat 1 and the chip shop, the relevant lease of the 19 November 1997, made between Roger Clark and John Brassington (1) and Clem Ewald Thomas and Gwendoline Barbara Thomas (2). The contributions defined in the leases were

ambiguous, and on the face of it, unfair. The residential Leaseholders were required to pay towards a policy of insurance which covered the risks arising from the fish and chip shop together with the residential properties. Further, as a result of the combination of the terms of the Leases detailed, the Landlords were in fact entitled to recover a sum in excess of the actual premium paid by them for insurance. The Leaseholders of flats 2,3,4,5,7 and 8 are required to pay 1/6 of the insurance premium, where as, the lease holder of flat 1 and the chip shop is required to pay 1/7 of the insurance premium. This apportionment does not make sense. The Tribunal did advise the parties that they did not have jurisdiction to resolve these ambiguities.

For the period 31st December 2003 / to 30th December 2004 the total premium for the whole premises was £1394.78 arranged by the landlords through their agents Deacon Insurance. The total premium requested for the period 31st December 2004 to 30th December 2005 was £6347.52, arranged, once again, by the Landlords through Deacon.

The Respondents advised that the property had until December 2004 been insured under a residential block policy. In 2004 the fish and chip shop adjacent to flat 1 suffered a large fire which necessitated a claim on the insurance policy. Initially, the insurance company rejected the claim as they had not been made aware that there was a fish and chip shop contained within the building. The Landlords negotiated with the insurance brokers and having regard to the value to the insurance company of the portfolio as a whole the insurers agreed to honor the claim of approximately £23,000. In order to continue cover the insurers insisted the policy relating to Alcombe Hall would have to have a commercial schedule to reflect the fact that the property comprised of in part, a commercial premises of high risk. As a consequence of the increased cover and the large claim in 2004 the premium for the year 31st December 2004 to 30th December 2005 increased to £6347.52. The premium negotiated for the following year, 31st December 2005 to 30th December 2006 was £3539.82. The applicant submits that the premiums are too high.

For the period of 31st December 2004 to 30th December 2005 the Applicant had obtained an alternative insurance quote for the whole block to include a commercial element. The amount quoted by atom Insurance Brokers on their letter to the Applicant dated 3rd March 2005 was for the sum of £2934.75 with warranties attached relating to the chip shop business.

The Respondents argued that this policy quote from atom Insurance Brokers would not be suitable for the property and was not an appropriate comparable to the policy the Landlord had arranged.

The Tribunal heard evidence from both parties regarding the alternative insurance quotations. The Tribunal referred to the documentation supplied by both parties and invited both the Applicant and the Respondents to address them

specifically on the atom quote provided by the Applicant. The cover was for a property: "circa 1760, built of stone with slate roof, is grade 2 listed and occupied as 7 flats and a fish and chip shop." atom had also noted that the insurers had been informed of the claim for fire damage in 2004 at a cost of £20,000. The atom quote was subject to various standard warranties for the type of trade involved. As stated above, the Respondent argued this atom quote was not a "comparable quote" due to the condition that warranties would have to be complied with. The Respondent sought to argue that the Deacon policy had no restrictions or warranties concerning the fish and chip shop business.

For the period 31st December 2006 to 30th December 2007 the property had been insured through the Landlord via his brokers Deacon insurers. The Respondent informed the Tribunal that the premium for this year was £3373.00

The Applicant further argued that it was unreasonable for the Respondent to charge for postage as a separate item within the service charge. The Applicant argued that postage costs would be contained in the Respondent, "management fees" and could not reasonably or fairly be considered as a separate item.

The Respondent argued that the "postage", charges can quite correctly be identified and charged as a separate item distinct from "management fees". They considered postage to be an identifiable disbursement and "management fees", to be concerned with "staff time". Further, the Respondent claimed that new legislation over the last few years had necessitated increased postal communication with leaseholders. Further increases occurred by the higher than normal amount of correspondence that has been necessary in the management of Alcombe Hall.

The Applicant had made a final application to limit the Landlords ability to recover costs in connection with these proceedings through future service charges. The Respondents advised the Tribunal there was no intention seek to charge any costs in connection with these proceedings so there would be no attempt to recover any such costs through the service charge provisions.

Tribunals Decision

The Tribunal decided having;

1. Read all of the documents filed by both the Applicant and the Respondent in these proceedings.
2. Inspecting the property on 12th January 2007.
3. Hearing evidence from both the Applicant and the Respondent at the hearing.
4. Applying their own knowledge and experience in these matters as follows.

That the insurance premium demanded for the period 31st December 2004 to 30th December 2005 by the Landlord was unreasonable. The Tribunal decided that the atom Insurance Brokers quote of 3rd March 2005 for the same period provided by the Applicant for the sum of £2934.75 was a true comparable to the Landlords insurance policy through Deacon. The difference between the comparable quote from atom and the sum demanded by the Landlord, a difference of £3,412.77 was unreasonable. The Tribunal did not accredit any weight to the Respondent's submission that the Deacan quote did not contain any restriction / warranties for commercial use particularly having regard to the high risk trade being carried out at the property, namely the running of a fish and chip shop.

The insurance premium demanded by the Landlord for the period 31st December 2005 to 30th December 2006 was reasonable and could be recovered under the terms of the lease.

The proportion of the cost to be borne by each leaseholder under the terms of the two relevant leases detailed earlier could not be determined by this Tribunal and was outside its jurisdiction.

The postage disbursement could be recovered by the Respondent in addition to management fees as it was a separate and identifiable disbursement.

No order was made regarding the section 20c Application as the Respondent had stated that there was no intention to recover any such costs through the service charge.

Signed: Siobhan Casey

Dated: 31 January 2007