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Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 (as amended) – Section 27A and Section 20C**

**Case Reference: LON/00AL/LSC/2007/0207**

**Premises: 292 Nightingale Vale, London SE18 4EH**

**Applicant: Ms Susan Berrington**

**Represented by: Ms Berrington made representations on her own behalf**

**Respondents: The London Borough of Greenwich**

**Represented by: Ms A Bester, of the London Borough of Greenwich Legal Department**

**Leasehold Valuation Tribunal:**

**Miss A Seifert FCI Arb**
**Mrs A Flynn MA MRICS**
**Dr A M Fox BSc PhD MCIArb**

**Date of decision: 27th November 2007**

Ref: LON/00AL/LSC/2007/0207

THE LEASEHOLD VALUATON TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 (as amended), Sections 27A and 20C

Re: 292 Nightingale Vale, London SE18 4EH

## Decision of the Leasehold Valuation Tribunal

### Preliminary

1. Ms Susan Berrington, the lessee of 292 Nightingale Vale, London, SE18 4EH, ("the Flat") applied to the Tribunal by an application dated 7th June 2007, made pursuant to Section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act"), for a determination of her liability to pay service charges. The Respondent to this application, the London Borough of Greenwich ("the Council"), is the freeholder. Ms Berrington also made an application under section 20C of the Act in respect of the costs of the proceedings.

2. The service charges in issue are the estimated charges for April 2006 to 2007. Under Section 19(2) of the Act where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable.

### The Applicant and the Respondent

3. Ms Berrington is the lessee under a lease dated 30th January 1989 ("the lease"), made between the Mayor and Burgesses of the London Borough of Greenwich as landlord and Patrick John Fraine and Dawn Margaret Fraine as lessee. The term of the lease is 125 years from 30th January 1989 at the rent of a peppercorn payable in advance on the 1st day of April in every year of the term. The lessee's interest under the lease was transferred to Ms Berrington and she went into occupation of the Flat in December 2006.

### The Lease

4. The lease contained provisions for the payment of a service charge by the lessee to the landlord. The lease included the following definitions:

   "the Flat" means the premises demised by the lease [first and second floors of 292 Nightingale Vale SE18, as set out in the First Schedule to the lease and shown on Plan B attached to the lease] .

   "the Building" means the building of which the Flat forms part.

"the Estate" means the Building and the out-buildings gardens and grounds thereof (if any) and any other neighbouring building or land for the time being managed by or on behalf of the Council as a single administrative unit together with the Building.

"the Services" means such of the services listed in the Seventh Schedule to the lease.

The Sixth Schedule to the lease set out the component parts of the Service Charge and how the service charge attributable to the Flat is made up.

5. Clause 6 of the lease contains the lessee's covenants, including the following.

*6(c). To pay to the Council in advance on 1st April in every financial year (1st April to 31st March) a sum on account of the Service charge attributable to the Flat in that year demanded by the Council in accordance with the provisions of the Sixth Schedule hereto ...*

*6(d). To pay to the Council whenever demanded in accordance with the provisions of the Sixth Schedule hereto a sum equal to the excess of the Service Charge attributable to the Flat in any financial year over the sum so paid on account of the same as aforesaid such sum to be payable on demand.*

*6(e). If and whenever the Council shall make any improvement affecting the Flat or the Estate or any part thereof the lessee shall upon service of a written demand pay to the Council a fair proportion of the cost of the improvement based on a comparison of the rateable value of the Flat at the time with the rateable value of all other dwellings comprised in the Estate and affected by the improvement.*

6. Part I of the Sixth Schedule sets out the heads of costs comprising the Service Charge.

7. Part II of the Sixth Schedule sets out the elements comprising the Service Charge attributable to the Flat in any financial year, as follows:

*2. The Service Charge attributable to the Flat in any financial year shall be the aggregate of:-*

*(a) in relation to costs and expenses incurred in relation to the Building such proportion of the relevant Service Charge as the rateable value of the Flat on the 1st April of that year bears to the aggregate rateable value on that date of all the flats then comprised in the Building Provided That if in any year the Flat shall not for any reason whatever have a rateable value this paragraph shall take effect as if the words "floor area" were substituted for the words "rateable value" in both places where they occur*

*and*

*(b) in relation to costs and expenses incurred in relation to the Estate (as opposed to the Building) such proportion of the relevant Service Charge as the rateable value of the Flat on the 1st April of that year bears to the aggregate rateable value on that date of all the dwelling-houses then comprised in the Estate Provided That if in any year the Flat shall not for any reason whatever have a rateable value this paragraph shall take effect as if the words "floor area" were substituted for the words "rateable value" in both places where they occur*

*3. The Council shall annually serve on the Lessee before the first date for payment thereof a written demand for a sum representing the Council's estimate of the Service Charge attributable to the Flat in that financial year ...*

*4. At the end of each financial year:*

*(a) if the sum demanded under paragraph 3 hereof proves to be less than the Service Charge attributable to the Flat in that year the Council may serve a written demand on the Lessee for a sum equal to the deficiency*

*(b) if the sum demanded under paragraph 3 hereof proves to exceed the Service Charge attributable to the Flat in that year the Council shall credit the surplus against a future demand under the said paragraph.*

8. The Seventh Schedule to the lease lists the services provided by the Council under the lease. Part 1 of the Sixth Schedule and The Seventh Schedule are referred to in more detail later in this decision.

9. Notice was given that the lessee's interest under the lease had been transferred to Ms Berrington by a transfer dated 1st December 2006.

**The Application**

10. Ms Berrington's grounds for making the application were set out in the application form dated 7th June 2007. These can be summarised as follows: there was little or no maintenance of the internal spaces; the waste disposal area was filthy; the internal areas had not been cleaned since she moved into the premises on 1st December 2006; the concierge service was unhelpful and she had been told that they do not assist private tenants; they intervene when deliveries arrive and cause confusion; the condition of the external areas of the building are generally appalling; the service charges are not value for money; leaseholders should be given options in respect of levels of service from the concierge; overall the general maintenance and cleaning is neglected; there is litter, rubbish and graffiti; some works have been outstanding for nine years; contact with Greenwich Council achieves no result; the service charge for 2006 to 2007 was £300 more per annum than for Royal Arsenal, which is a flagship development in Woolwich; service charge

and council tax charges appear to overlap, for example road / rubbish clearance and appear to be charged twice.

**The Applicant's contentions**

11. Ms Berrington's contentions, as set out in her Statement of Case dated 9th July 2007, can be summarised as follows.

12. Ms Berrington set out her case under 4 main heads:

(a) Concierge Service.

- The concierge is based in other blocks on the estate, not in her block;
- She had contacted the concierge service who told her that she did not get concierge assistance because she is a leaseholder.
- In her conversations with the concierge she had to argue in order to get any service. This had prompted her to email the Council enquiring what was included in the concierge service. She had also requested a copy of the job description. The leaflet that she was sent several weeks later did not answer her questions and included a copy of a leaflet about Cleansweep, which a service available to all residents in Greenwich.
- She had a telephone conversation with Karen Cranfield, the Supervisor of Concierge Services. Ms Cranfield explained that the entrances of the blocks are monitored via CCTV. Ms Berrington lives on the ground floor with an external entrance which is not monitored. She had had an attempted break in.
- She only hears from the concierge service when she receives deliveries. The concierge gives entry to the block without any instructions to the delivery people. Her flat is on the ground floor externally and the first floor internally, so it is easier to receive deliveries through her ground floor entrance. She pre-empts the problem by giving instructions to the delivery people before they arrive. She considered that a proper concierge would understand the layout of the block and her requirements.
- In December 2006 sewage back-flushed into her toilet and bath from blocked drains. The concierge was not willing to assist until she referred to the annual sum she paid for the concierge service.
- She had attempted to get assistance in respect of the drainpipes and hoppers which had been damaged after storms in January 2007. The external drain was damaged and water was pouring down the wall creating damp in the Flat. After an argument the concierge service agreed to get the drainpipes and hoppers looked into urgently. She did not hear anything for several weeks and had to contact other departments of the Council.
- Documents provided by the Council stated that blocked drains are dealt with within 24 hours and that graffiti is removed by the concierge. This is not done.

- She had not received a breakdown of cost or expenditure. She questioned whether the leaseholders were bearing the costs of overtime and temporary staff.

(b) Internal maintenance and cleanliness of common parts, in particular the rubbish chute and graffiti on the walls.

- The common areas of the block are dirty, poorly maintained and smell of waste. The waste disposal area is particularly unhygienic. The doors are dirty as are the waste chutes, which have to be handled manually. The chute covers and surrounding areas are covered in waste and detritus. The area is dirty with household waste and food. It attracts flies.
- The waste disposal area has not been cleaned since she moved into the block on 1st December 2006.
- The common areas are covered in graffiti and have been vandalised.
- The floor is covered in paint marks, some quite large. This was left over from the Council's repairs to some of the flats and nothing has been done to clean them up.
- She is ashamed to bring visitors through the common areas and uses her private entrance.
- The communal areas of the block need refurbishment as a matter of urgency to bring them up to a basic standard.

(c) Failure to repair common parts including windows.

- Both internal doors on the ground floor of the block did not have glass in the window part and one did not close as it was hanging on one hinge. On Sunday 8th July she notices that this particular door had been replaced. However, the replacement door does not close. There are several damaged windows and one larger window has been covered in hard board.

(d) Management of the Building

- The block is not being managed properly, even to a basic standard of cleanliness, hygiene and maintenance.
- She had attempted to contact the Council about the problems with the downpipes and gutters after she had had no action following to her request for assistance from the concierge. She was put through to four separate departments of the Council and was told that it was not their responsibility, before being put though to maintenance, which did not have any record of the job.
- In order for the drains to be fixed she had to file a formal complaint with the Council. The pipes were fixed in June 2007, but not to a sufficient standard. She had been informed that the Council were not prepared to replace an electrical socket to her property, which was damaged.

13. Ms Berrington questioned the calculation of the charges and contended that the Council had not provided some of the services under the lease.

14. She said that her service charges are comparatively one of the most expensive in London. She referred to Royal Arsenal, a large flagship development in Woolwich. This was a high-end residential development with immaculate communal areas, a full concierge service, manicured spaces including ponds, fountains etc. The service charge was an average of £300 per annum less than charged by the Council at Nightingale Vale. Her block is about 25 years old and has not been refurbished or maintained. She also referred to graffiti and a litter problem relating to shops across the road, which she described as appearing run-down. She alleged that the leaseholders are charged for street cleaning as a concierge activity. Overall, Ms Berrington did not consider that the service charge was value for money.

15. Ms Berrington said she was not made aware of the level of service charges until four days before she was due to complete the sale.

16. Following the service of the Respondent's Reply referred to below, Ms Berrington served a detailed Response dated 26th August 2007, the substance of which she adopted and referred to at the hearing.

**The Respondent's Reply**

17. The Respondent's Reply was dated 24th July 2007 can be summarised as follows:

(a) Concierge service

- The service charge for the concierge is the cost of stall, service and maintenance of schemes for the benefit of the leaseholders of the block.
- The concierge service is a link between the Council and the leaseholders for reporting anti-social behaviour, domestic violence, noise complaints, monitoring CCTV, and answering door calls.
- They also manage day to day matters such as reporting faults to other departments within the Council.

(b) Internal maintenance and cleanliness of common parts

- The service charges for Cleaning and Environment include charges for caretaking series for the block, grounds maintenance services for the estate, and refuse storage. Individual charges are based on the ratio of the rateable value of the flat to that of the block and the estate.
- The caretaking charges have increased as a new and improved caretaking service called Cleansweep was introduced in Greenwich in 2003 involving capital costs for new equipment and additional staffing.

- The Council believes that the caretaking services are sound and the service charges are reasonable.

(c) Repairs

- The repairs to the block are being property logged and carried out by the Property Services Inspector.

(d) Management of the block

- Ms Berrington's claims of inadequate management were not accepted.

(d) The dispute related to service charges and not Council Tax.

(e) The Reply referred to various witness statements on behalf of the Council. This evidence is referred to in detail under the section on the hearing below.

(f) The Council has provided the services set out in the Seventh Schedule to the lease. Ms Berrington had not been billed for services that have not been provided. The Council then went on to provide deals of particular heads of services provided. It was submitted that the service charges levied by the Council were reasonable.

**The Hearing**

18. Ms Berrington attended the hearing. She was accompanied by Mr T Brown. She confirmed the contents of her statement of case and response to the reply, and gave additional oral evidence. The Council was represented by Ms A Bester of its legal department.

19. The service charge year under the lease runs from 1st April to the following 31st March. Ms Bester said that the service charges in dispute are estimated charges. The demands for actual charges for 2006/2007 had not been sent out, but were expected in the next few weeks. The estimated charges for each year were based on the actual costs for the previous year increased by a small percentage.

20. Ms Berrington said that she had paid the estimated charge for 2006/2007 because this was necessary when she purchased the Flat. However, she disputed the charges.

21. The total estimated service charge in respect of the Flat for 2006/2007 was £2,574. The total estimated service charge in respect of the Flat for 2007/2008 was £2,468. In respect of each year a detailed schedule was produced, which set out the heads of charge. These documents identified the block as 284 to 346 Nightingale Vale and the estate as the Woolwich Common estate. The rateable values of the Flat, block and estate were

stated as £265, £6,914 and £294,374 respectively. These figures were not challenged.

22. The schedules of estimated service charges set out the heads of charge. Ms Berrington challenged the following charges:

**2006/2007 schedule of estimated service charge:**

| Item challenged | Estate £ | Block £ | Contribution £ |
|---|---|---|---|
| Cleaning and environment | | | |
| Caretaking to block | 0 | 9,817 | 376 |
| Caretaking to the estate | 207,947 | 0 | 187 |
| Ground maintenance | 27,019 | 0 | 24 |
| Concierge | | | |
| Concierge | 515,777 | 0 | 1,098 |
| Repairs and maintenance | | | |
| Block repairs | 0 | 591 | 23 |
| Estate repairs | 1,874 | 0 | 2 |
| Management fee (based on 20% of the sub-total estimated cost in the schedule) | | | 429 |

**2007/2008 schedule of estimated charge:**

| Item challenged | Estate £ | Block £ | Contribution £ |
|---|---|---|---|
| Cleaning and environment | | | |
| Caretaking to block | 0 | 6,028 | 231 |
| Caretaking to estate | 176,962 | 0 | 0 |
| Ground maintenance | 45,607 | 0 | 41 |
| Concierge/CCTV | 533,483 | 0 | 1,136 |
| Repairs and maintenance | | | |
| Block repairs | 0 | 1,903 | 73 |
| Estate repairs | 3,485 | 0 | 3 |
| Management fee (based on 20% of the sub-total estimated cost in the schedule) | | | 411 |

Ms Berrington's case

23. Ms Berrington adopted and confirmed her Statement of Case and Response and gave additional oral evidence.

24. Ms Berrington provided a Compact Disc to demonstrate the condition of the block and illustrate the areas of complaint. This had been sent to the Council and Ms Bester did not object to its production in evdence. She said that she had made this in April 2007. She gave a commentary on the film by way of explanation. The Tribunal did not listen to the sound track, as it included complaints by another resident who was not a witness at the hearing and in respect of which no witness statement had been provided.

25. Photographs of the interior and exterior of the block were also produced. Ms Berrington said these demonstrated a number of her criticisms about the condition of the block including the neglected hopper, broken hinges, filthy walls with graffiti, hardwood over a window, dirty waste disposal chute, dirty tiles covered with detritus, sticky dirty floor, dirty staircase walls, scruffy and dirty communal areas. She said that the inside of the lift needed cleaning. In respect of thee external areas, she referred to litter and graffiti. Ms Berrington said that the conditions in the block had not altered since the photographs were taken last April. The Respondent also provided photographs, but Ms Berrington regarded these as highly selective.

26. Ms Berrington's evidence and submissions can be summarised as follows.

Concierge service

27. Ms Berrington submitted that the Concierge Service is not included the definition of "Services" in the Seventh Schedule.

28. She considered that the job description provided by the Council for the Concierge did not incorporate any of the social services that have been added by the Council, e.g. racial and homophobic services, which are claimed in the "Your Concierge Service" literature. The job description and the concierge duties conflicted. Homophobic services go beyond the duties of a Concierge.

29. Ms Berrington said that there were two offices for the concierge service, but neither was in her block. There is a direct dial line to the Concierge in the Flat. However the Concierge is not always there, notwithstanding the claim of a 24 hour service. The response of the concierge service when she contacted them about maintenance had not been satisfactory. She had contacted the Concierge about a noisy neighbour. The neighbour had been contacted and told to reduce the noise. They had persistently told her that they could not assist her because she is a private leaseholder. She had therefore contacted the Council directly.

30. Ms Berrington said that there were no CCTV cameras in her block apart from in the main entrance and there were none on her floor.

31. Ms Berrington said that Ms Cranfield of the Council had claimed that there are two Concierges to a block at any given time. However, Ms Berrington's experience was that on one occasion she was unable to get attention or

response from the Concierge because he was the only one on duty on 3rd December 2006. A log referred to in Ms Cranfield's statement was not provided.

32. She submitted that Ms Cranfield had not backed up her views of the Concierge Service by producing facts or statistics.

33. Ms Berrington said that would appreciate an efficient, value for money concierge service. She thought that, in principle, it is a good idea and for the benefit of the community. It was common knowledge that the area was insecure, particularly in the evening. However, this was a matter for the Local Authority and Police within the scope of the Council Tax.

34. Ms Berrington questioned the formula adopted by the Council for apportioning the Conceirge charge. She pointed out that the rateable value system has been abolished. The ratio of the rateable value of the Flat to that of the estate, when applied to the Concierge charge is roughly 50% of the charge made by the Council. A breakdown of the costs of the Concierge Service had not been provided.

35. She submitted that the Concierge provided no useful service to her.

Internal maintenance and cleaning of common parts (caretaking)

36. Ms Berrington challenged the evidence contained in the witness statement of Leo Fletcher, referred to below, in respect of the caretaking service provided. She contended that nothing was done and that the charge should be zero. Ms Berrington described the condition of the block in her statement of case.

37. In cross examination Ms Berrington said that since she moved into the block she had not seen any cleaning carried out. The floors were even dirtier than when she moved in and there was still graffiti on the walls.

38. Ms Berrington was not in occupation of the Flat before December 2006. She said that she is not at the Flat during the daytime. However, she goes into the communal areas of the block every other day. She did not see any evidence of cleaning. She referred to paragraph 10(e) of her Response, and corrected the figures stated. Ms Berrington questioned whether Council Tax should cover items charged to the service charge and noted that she had not been provided with a breakdown on costs for maintenance and cleaning.

Repairs

39. Ms Berrington referred to the numerous repairs job sheets produced by the Council. She said that these are largely indecipherable to a lay person. She pointed out that in her case the job sheets demonstrated that a maintenance requirement first reported in 19th January 2007 was not met until 4th July 2007. Even then, the guttering downpipe and hoppers were still not properly

repaired; weeds were left growing out of the side of the pipes and the bottom hopper still cracked, although the job sheet stated that it had been replaced. She had to fight to get the electric socket cover replaced and tested.

40. She said that the job sheets indicate that she is a home owner and that this discriminated against her.

Management fees

41. Ms Berrington submitted that the level of management fees was excessive. She referred to a decision of the Tribunal dated 17th April 2006 in respect of 232 Nightingale Vale (LON/00AL/LSC/2005/0312).

42. She submitted that the Council paid scant regard to her comments about the management of the block. She maintained that the state of the block and the surrounding areas evidenced mismanagement by the Council.

43. There were no regular inspections of the block. If there had been inspections then the Council had ignoring obvious signs of disrepair. She had spoken to 4 or 5 different departments at the Council before she was put through to the correct department. She still had to have an argument with the Council about the replacement of the socket. However, she accepted that there was some management. She considered that the charge for management should be 5% of the total estimated charge for other services, not 20% as claimed.

Ms Cranfield's witness statement

44. In respect of the Concierge Service issue, the Council provided a witness statement of Karen Cranfield dated 23rd July 2007. She did not attend the hearing.

45. Ms Cranfield has been employed by the Council as a Concierge Supervisor since January 1993. She is responsible for the provision and management of the concierge service, including the supervision of concierge staff and the development of the service.

46. Ms Cranfield gave the following details of the service. The Concierge Service provided to the block is a diverse service where staff are on hand 24 hours a day, 7 days a week, to handle a wide range of issues that arise in the block. There are four officers assigned to the Woolwich Common Estate and three to the Applicant's block at any given time. She set out the duties of the concierge officers as follows:
    - Monitoring of CCTV;
    - Answering door calls;
    - Dealing with incidents of anti-social behaviour;
    - Dealing with incidents of domestic violence;
    - Dealing with noise complaints;
    - Dealing with drug related incidents;

- Child protection issues;
- Racial and homophobic issues;
- Reporting faults;
- Logging information about matters to be dealt with;
- Assisting with emergencies.

47. Ms Cranfield commented that, due to the high level of anti-social behaviour on the estate, the demands on the service can be quite high.

48. She provided a copy of a brochure produced by the Council, "Your Concierge Service" and the Code of Practice for the concierge service. She confirmed that the contents are accurate and that all the services listed are provided to the block.

49. She considered that since the Concierge Service had been introduced to Woolwich Common, the area has become a desirable area to live in, as people feel that it is a safe environment. Before the Concierge Service was introduced there was a high level of vandalism to the blocks, including higher maintenance costs as a result of vandalism the lifts, use of the blocks for taking drugs and a high level of graffiti.

50. Ms Cranfield said that when it was decided to install the Concierge Service, consideration was given to how best to split up the blocks on the estate and control access routes within the blocks. This was done by a method of placing main and secondary doors on the blocks. This restricts access within the blocks if any person obtains unauthorised access. It was considered best to place the CCTV cameras to cover the main entrances and lobby areas.

Mr Fletcher's witness statement

51. In respect of the issue relating to the internal maintenance and cleanliness of the common parts, the Council provided the witness statement dated 20th July 2007of Mr Leo Fletcher, Woolwich Area Manager for the Environmental Services Department, Cleansweep. Mr Fletcher did not attend the hearing.

52. The block is cleaned and maintained by Cleansweep. Mr Fletcher had been responsible for managing the cleaning and caretaking services at the Block since April 1993. Ten caretakers covering 21 blocks maintain the Woolwich Common estate. The caretakers often work in pairs, due to a number of attacks on staff. He listed the caretaking duties carried out at the block as follows:

- Check the block every day (including Saturday and Sunday) for dumped refuse, wash out lift morning and afternoon, sweep daily if needed, check lights and report any repairs needed;
- Wash the stairs, lobbies, chute rooms and bin chamber at least once a week;

- The balconies are cleared when needed and deep cleaned once a year;
- The caretakers spend an average of about 11 hours per week cleaning and clearing this block.

53. He believed that the block is well maintained. However, there is a problem with anti-social behaviour such as dumping of household waste and bulk rubbish and graffiti.

54. The stairs and lobby areas were deep cleaned in October 2006. Estate inspections are carried out daily by the caretaking charge hand and weekly by the area supervisor.

Mr Saye's evidence

55. The Finance Manager of the Council's home Ownership Service, Mr Matthew Saye, attended and confirmed his witness statement dated 20th July 2007. He gave additional oral evidence.

56. Mr Saye's team is responsible for the construction of annual revenue service charges for the London Borough of Greenwich's long leaseholders. He explained the methodology used. Cost information is provided to his team either directly by service providers, via the Directorate's Finance Section or via Corporate Finance. The method for charging and apportioning the service charges is stated in the Sixth Schedule of the lease. In summary the method of constructing charges is that his department calculates the total cost for services provided to the block in which a flat is situated, which it then apportions on the relative rateable value of the flat to the rateable value of the whole block. Then similarly, it calculates the total cost for services provided to the estate upon which a flat is situated which it then apportions based on the relative rateable values of the flat to the rateable value of the whole estate.

57. The block is part of the Woolwich Common Estate. The block, numerous other blocks, various houses and surrounding external areas form a purpose built social housing scheme. There are 28 blocks on the estate plus freehold properties. The term 'estate' is that which is used in the lease to describe the external areas around the building and other buildings which form an administrative unit. Mr Saye said that the architecture and layout of the block is unconventional and this unavoidably makes the calculation of service charges more complicated. It is part of a large structure consisting of a number of heavily linked blocks.

58. The charges in dispute are estimated charges. The estimated charges are calculated using the last available actual costs plus an uplift for inflation. Mr Saye said that the 2006/2007 estimated charge was based on the 2004/2005 actual cost and the 2007/2008 estimated charge was based in the 2005/2006 actual cost.

59. Mr Saye said that the service charges had nothing to do with Council Tax. He explained that payments for services that the Council provide as landlord are from a separate fund from that relating to Council Tax.

60. In respect of caretaking, Mr Saye said that Cleansweep was established in 2002/2003 to provide cleaning and environmental services (caretaking). In order to arrive at the block and estate totals, an hourly rate for the provision of the caretaking service is calculated using the total costs of caretaking activities for the year divided by the total number of hours worked on caretaking duties for the year. The Cleansweep Area Managers then provide the amount of time that is spent working on each block and estate. This provides a total cost for the block or estate for the provision of this service. These costs can them be apportioned to the Flat in accordance with the lease.

61. Mr Saye said that a reasonable amount of time is spent on cleaning. The cleaning of the subject block took eleven hours a week.

62. In respect of grounds maintenance, Cleansweep provide a list of charges incurred, which relate to each ground maintenance site on the estate. The cost of all sites is then totalled giving a total estate cost. This is apportioned to the flat as above.

63. In respect of the Concierge Service and CCTV, Mr Saye said that there are a number of control rooms on the estate but there is one main control room. There are direct links to units in the scheme. The Concierge Service was available to both leaseholders and tenants.

64. The Concierge Service is part of the provision of a controlled entry system with staff present 24 hours a day.

65. The cost of providing the Concierge Service is no greater because for instance, acts of vandalism are monitored. It is merely an additional benefit provided. The provision of a controlled entry system reflected the need to increase the safety of residents.

66. The Concierge Scheme has its own cost centre and so the costs are specifically monitored for the Woolwich Common concierge expenditure. This total scheme cost is then taken and the rateable of all the properties connected to the scheme is used to apportion the charges. Not all the properties on the estate are connected to the concierge service.

67. Mr Saye explained the charges in respect of refuse storage and went on to explain the calculation of charges in respect of other services such as energy, including communal lighting, property insurance and mechanical servicing including plan and lift servicing, and how these costs are apportioned. The door entry cost is a per property servicing cost and so is not apportioned

68. For the repairs and maintenance heading of the service charge, the information is supplied by the repairs service. They send Mr Saye's department all the communal repairs that have been completed in the year. Those that apply to the block are apportioned using the block rateable value and those that apply to the estate are apportioned using the estate rateable value.

69. Mr Saye accepted that the block requires redecoration. The Council was embarking on a decent homes programme which was quite extensive and this estate will be part of this. It was more cost effective to redecorate when other works were carried out.

70. Mr Saye said the charge for management represents the costs of the Home Ownership Service associated with gathering service information, statutory consultation with leaseholders, the construction and calculation of service charges, managing service charge accounts, invoicing, the collection of service charge monies, providing information to leaseholders, dealing with leaseholder's queries, casework or disputes, plus the provision of various information to leaseholders via various mediums.

71. The Council's policy of charging 20% was adopted shortly after an LVT decision suggesting this was the maximum reasonable. He considered that actual figures for the years in question would work out at more than 20%. He could say this with certainty in respect of 2006/2007 because he had seen the actual figures and the actual costs of management were more like 30%.

72. Mr Saye confirmed that the Council would not seek to add the costs of the proceedings to Ms Berrington's service charge.

## Findings and decision

73. The Application related to estimated service charges for the service charge years 2006/2007 and 2007 and 2008. At the hearing Ms Berrington confirmed the items challenged and these are set out in paragraph 22 above.

74. Mr Saye explained that the estimated service charge is calculated in each service charge year based on the actual charges for the previous service charge year with uplift for inflation. The lease provides for a balancing at the end of the service charge year if the actual service charge costs are more or less than the estimated charges. The actual service charges for 2006/2007 had not been sent out to leaseholders at the date of the hearing. However, the actual service charge schedule for 2005/2006 was produced.

### Concierge Service

75. The estimated service charge claimed in for 2006/2007 was £1,098. The estimated service charge claimed for 2007/2008 was £1,136.

76. Ms Berrington submitted that the costs of the Concierge Service were not recoverable by the Council as they were not part of the Services under the Seventh Schedule to the lease.

77. Part I of the Sixth Schedule sets out the heads of costs comprising the Service Charge.

> *1. The Service Charge in any financial year (1st April to 31st March) shall be the aggregate of the following expenses to the Building or the Estate incurred or provided for by the Council in that year...*
> *(b )all costs of complying with the Council's covenant in clause 7(d) of this Lease including the costs of all fuel power machinery equipment and materials supplied or used in the provision of the Services.*

78. Clause 7(d) contains a covenant by the landlord to provide, so far as practicable, the Services at a reasonable level.

79. The Services to be provided by the Council to or in respect of the Flat are listed in the Seventh Schedule in the Seventh Schedule as follows.

> *1. The supply of the following facilities to or at the Flat:-*
> *(a) hot water*
> *(b) central heating*
> *(c) cleaning of windows*
> *2. The supply of the following facilities elsewhere in the Building or at the Estate:-*
> *(a) lift(s)*
> *(b) covered space available for pram storage*
> *(c) lighting cleaning and maintenance of all internal parts of the Building used in common with other occupants*
> *(d) lighting cleaning maintenance and repair of all recreation areas greens parking places drying areas and other external parts of the Estate used in common with other occupants including maintenance and repair of walls fences gates and doors adjoining and giving access to the same*
> *(e) lighting cleaning maintenance and repair of all private roads paths and ways comprised in the estate*
> *(f) laundries*
> *(g) controlled entry system*
> *(h) meeting rooms clubrooms lettings halls and community centre*
> *(i) refuse disposal and collection*
>
> *3. The employment of gardeners caretakers cleaners porters and any other person necessary for the continued supply of any of the said services*

80. The duties and functions provided by the Concierge Service were described in the evidence of Ms Cranfield. The Concierge Service had been introduced to address the problem of the high level of vandalism to the blocks, including

increased cost because of vandalism to the lifts, and other problems such as use of the blocks for taking drugs and graffiti.

81. The Concierge Service is a service provided to Ms Berrington's block. However, not all the properties on the estate are part of the Concierge Service scheme. Consideration had been given at the time as how best to split up the blocks on the estate and control access routes within the block, and where best to place CCTV cameras to cover the main entrances and lobby areas of the blocks.

82. The Concierge Service is intended to be a 24 hours a day, 7 days a week service. There are 4 officers assigned to the Woolwich Common Estate, and 3 to Ms Berrington's block at any time.

83. A brochure, "Your Concierge Service" and the Code of Practice for the concierge service provided details about the service.

84. Ms Cranfield also described the duties carried out by the Concierge Service officers. These included monitoring of the CCTV; answering door calls; reporting faults; logging information about matters to be dealt with; assisting with emergencies; dealing with anti-social behaviour, domestic violence and drug related incidents; child protection, racial discrimination and homophobic issues; dealing with noise complaints.

85. Mr Saye also gave evidence in respect of the Concierge Service and CCTV. There are a number of control rooms for this service on the estate, with one main control room. These have direct links to the units on the estate that are covered by the concierge scheme. The concierge service is available to both tenants and leaseholders. The monitoring of vandalism is an additional benefit to residents.

86. The Concierge Service scheme has its own costs centre. The total costs of the Woolwich Common concierge scheme are taken and the rateable value of all the properties connected to the scheme is used to apportion the charges to leaseholders. He confirmed that not all the properties on the estate are connected to the Concierge Service.

87. The Tribunal finds that the Concierge Service as described in the evidence of Ms Cranfield and Mr Saye, in principal falls within the list of Services in the Seventh Schedule to the lease. The Concierge Service provided falls within paragraph 2(g) of the Sixth Schedule, 'controlled entry system'. Aspects of the Concierge Service, for example reporting faults, also fall within paragraph 2(c) of the Sixth Schedule, 'lighting cleaning and maintenance of all internal parts of the Building used in common with other occupants'. Under paragraph 3 of that Schedule the costs of employment of any other persons necessary for the continued supply of any of the services set in the Sixth Schedule is recoverable, which would apply to Concierge Service personnel.

88. Ms Berrington was concerned that some of the aspects of the Concierge Service provided, such as racial and homophobic issues, were outside the services expected of a conventional Concierge. However, the Tribunal do not consider that the extent of the duties provided by the Concierge Service result in the Concierge Service falling outside the facilities listed in the Sixth Schedule.

89. The Tribunal accepts Mr Saye's evidence that the Concierge Service is provided to both leaseholders and tenants. The Tribunal also accepts Mr Saye's explanation of the apportionment of the Concierge Service costs between the units which are covered by the service. It is anticipated in the definition of 'The Estate' in the lease that it relates to buildings or land for the time being managed by or on behalf of the Council as a single administrative unit together with the block. For the purpose of the apportionment of the Concierge Service costs, the administrative unit includes properties provided with the Concierge Service. This provides an equitable apportionment of costs between those properties covered by the service.

90. Ms Berrington had received some benefit from the Concierge Service including intervention resulting in the reduction of noise from a neighbour. Ms Berrington was not satisfied many aspects of the services received and the availability of the Concierge Service as referred to in her evidence. However, the Tribunal does not consider that the estimated charge for the Concierge Service was unreasonable. The Tribunal considers that the delay in the repairs was related to the Councils' management of the block, rather than to the Concierge Service.

91. The Tribunal notes that the schedule of actual service charges for the year ending 31st March 2006 showed the charge in respect of the Flat for concierge/CCTV as £1,071.19.

92. The Tribunal finds that the estimated service charge for both 2006/2007 and 2007/2007 in respect of the Concierge Service are reasonable. The sums of £1,098 (2006/2007) and £1,136 (2007/2008) are due from Ms Berrington to the Council.

**Internal maintenance and cleaning of common parts / caretaking**

93. The estimated service charge claimed for 2006/2007 for cleaning and environment was £376 for caretaking to the block, £187 for caretaking to the estate and £24 for ground maintenance. The estimated service charge claimed for 2007/2008 for cleaning and environment was £231 for caretaking to the block, £159 for caretaking to the estate and £41 for ground maintenance.

94. Mr Saye explained that Cleansweep had been established in 2002/2003 to provide cleaning and environmental services. Cleansweep provides the caretaking service. Mr Saye described how the cost of the caretaking

services are worked out and apportioned to the leaseholders. The apportionment methodology for the caretaking service was not challenged by Ms Berrington. Mr Saye also described the manner in which the costs of the ground maintenance are calculated and the apportionment of those costs.

95. Ms Berrington was concerned that some of the charges might relate to services covered by Council Tax. The Tribunal accepts Mr Saye's explanation in respect of the separate funds relating to Council Tax and services to leaseholders.

96. It was not disputed that the caretaking services provided by the Council fall within the services listed in the Seventh Schedule to the lease. However, Ms Berrington considered that the services provided were not of a reasonable standard and that the costs were excessive. She considered that there should be no charge under this head.

97. In her statement of case and response which she adopted as part of her evidence, and in her additional oral evidence, she provided details of the disrepair and examples of lack of maintenance in her block, particularly but not restricted to the waste disposal area and rubbish chute and the surrounding area. Ms Berrington also illustrated her contentions in photographs which she provided and in the CD. She had not seen any cleaning carried out in the block since she moved in December 2006. However, she accepted that she was not at the Flat during the day, but said that she had gone into the communal areas of the block every other day.

98. Mr Fletcher and Mr Saye both gave evidence in respect of the caretaking service. Mr Fletcher provided details of the services provided by Cleansweep. This included checking the block every day for dumped refuse, washing out the lift morning and afternoon, sweeping daily if needed, checking the lights and reporting repairs, washing the stair, lobbies, chute rooms and bin chamber at least once a week, clearing balconies when needed, and deep cleaning once a year. He said that the caretakers spend an average of about 11 hours a week cleaning and clearing the block. The stairs and lobby areas were deep cleaned in October 2006. Estate inspections were carried out daily by the caretaking charge hand and weekly by the area supervisor. He provided photographs of the block which showed a better standard of cleaning than shown in the photographs provided by Ms Berrington. Mr Fletcher did not attend the hearing and therefore was not able to clarify his evidence. The Tribunal regarded his evidence as general evidence as to what services ought to be provided rather than evidence in respect of actual services performed in this block.

99. It was accepted by Mr Saye that the block required redecoration. This would be taken as part of the anticipated decent homes programme.

100. Having taken into account all of the evidence including the photographs and CD, the Tribunal finds that the caretaking service is very basic. The

description of the caretaking services as described by Mr Fletcher, is not consistent with that condition of the block as shown in the photographs produced by Ms Berrington and in the CD. The interior of the block appeared shabby and run down in places. The standard of cleanliness appeared unsatisfactory, especially by the rubbish chutes.

101. However, the charges in dispute are estimated charges only. These are relatively low and in the Tribunal's view are not unreasonable as estimated charges for the caretaking service.

102. The Tribunal notes that the Schedule of Actual Service Charges for the year ending 31st March 2006 showed that charges for cleaning and environment as £422.31.

103. Although the estimated charge for caretaking to the block for 2006/2007 (£376) as compared with the actual charge for that item in the schedule of actual charges for 2005/2006 (£217.96), the estimated charge for ground maintenance for 2006/2007 (£24) was lower than the actual charge for 2005/2006 (£38.73). No explanation was provided in respect of these fluctuations, but the Tribunal considers that even at its highest, the estimated charge was not unreasonable.

104. The Tribunal considers that the estimated charges for caretaking to the block, caretaking to the estate and ground maintenance for the service charge years 2006/2007 and 2007/2008 were reasonable. The Tribunal finds that the following sums are due from Ms Berrington to the Council.

2006/2007
£376 (caretaking to the block), £187 (caretaking to the estate) and £24 (ground maintenance).
2007/2008
£231 (caretaking to block), £159 (caretaking to estate) and £41 (ground maintenance).

For the avoidance of doubt under the heading cleaning and environment, the estimate charge £16 is also due for refuse storage in each of the above service charge years.

**Repairs and maintenance**

105. The estimated service charge for repairs and maintenance for 2006/2007 was £23 for block repairs and £2 for estate repairs. The estimated service charge for 2007/2008 was £73 for block repairs and £3 for estate repairs.

106. Ms Berrington considered that the job sheets produced by the Council were indecipherable. She had reported a maintenance requirement in January 2007 which had not been dealt with until July. The drainpipes contained weeds and the hopper was still broken

107. The Tribunal considers that Ms Berrington's difficulties in respect of repairs are connected to the issue of the management and that the estimate of service charge for repairs is not unreasonable.

108. The schedule of actual service charges for the year ending 31st March 2006 showed a charge for block repairs as £68.82 and for estate repairs as £2.96.

109. The Tribunal considers that the estimated charges for repairs and maintenance to the block and estate are reasonable in both of the service charge years in issue. The Tribunal finds that the sums of £25 (2006/2007) and £76 (2007/2008) are due from Ms Berrington to the Council for the estimated charges for repairs and maintenance

**Management fees**

110. The estimated service charges claimed for management fees were based on 20% of the estimated charges for the other heads of charge. This resulted in an estimated charge of £ £429 for 2006/2007 and £411 for 2007/2008.

111. Ms Berrington considered that the level of management fees claimed was excessive. There had been no regular inspections of the block. The condition of the block and the surrounding area evidenced the inadequacy of the management. She described the difficulties that she had encountered in respect of contacting the Council with regard to the drainpipe and gutter repairs. She had spoken to 4 or 5 different departments at the Council before she was put through to the correct department. She still had to have an argument with the Council about the replacement of the socket. She accepted that there was some management, and considered that the appropriate estimated charge in each of the years should be 5%.

112. Mr Saye said the charge for management represented the costs of the Home Ownership Service associated with the various management functions set out in his evidence. The charge of 20% was adopted shortly after the LVT decision. Neither he nor any other of the Council's witnesses properly addressed or explained the incidents pointing to unsatisfactory management referred to in Ms Berrington's evidence.

113. The Tribunal considers that given the evidence before it, the estimated charge for management, based on a percentage of 20%, is too high and is not reasonable. The Tribunal considers that a flat rate is a more appropriate approach as the amount of management services are not necessarily reflected in a percentage of other charges. The evidence of Ms Berrington raised questions about her experiences of the standard of management, and the evidence produced by the Council did not satisfactorily address these concerns. The Tribunal considers that a reasonable estimated charge for management for each of the service charge years in dispute is £200.

114. The sum of £200 is due from Ms Berrington to the Council in for the estimated service charge for each of the service charge years 2006/2007 and 2007/2008.

**The section 20C application**

115. In view of the assurance form Mr Saye that the Council will not seek to recover the costs incurred in connection with these proceedings from Ms Berrington, the Tribunal makes no order under section 20C.

CHAIRMAN: A Seifert

DATE: 27th November 2007

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCIArb
Mrs A Flynn MA MRICS
Dr A M Fox BSc PhD MCIArb