

Southern Leasehold Valuation Tribunal

In the matter of section 27 (A) of the Landlord and Tenant Act 1985 as amended.

Tribunal A J Mellery-Pratt FRICS (chairman)
 D Agnew LLB. LLM.

Re:- Flats 1-5, 26 Hamilton Road, Boscombe, Bournemouth.

Applicants New Era Investments Ltd

Respondents Mr. J B Hutchinson and Ms K Lincoln
 Ms E J Woods
 Ms J Thomas
 Mrs. Skilleter
 Mr. M Z De Kment

1.0. General

- 1.1. This matter relates to an application to the tribunal by New Era Investments Ltd under section 27 (A) of the Landlord and Tenant Act 1985 ('the Act'), in respect of the five flats at 26 Hamilton Road, Bournemouth, to determine the liability of the respondents for service charges for the financial years ending 25th March 2006, 25th March 2007 and 25th March 2008.
- 1.2. On the 31st October 2007 the tribunal issued directions to the parties and as a result a full statement with supporting documents was received from the applicant and subsequently statements with supporting documents were received from Ms Thomas and Mrs. Skilleter.
- 1.3. No representations were received from any of the other respondents.

2.0. Inspection

- 2.1. At 10 am on the 11th January 2008, the tribunal inspected the exterior of the property and the interior common parts. The tribunal was accompanied by Mr. Boon of Eyre and Johnson and Mr. Beamish from the DMA surveyors, both representing the applicant, Ms Thomas from flat 3, accompanied by her parents, and Mrs. Skilleter from flat 4.
- 2.2. Externally the tribunal noted that the rear of the site was overgrown with bushes and that the car parking was now some distance from the rear boundary although the lease plan shows car parking up against the rear boundary. The tribunal's attention was also drawn to the unevenness of the land to the rear of the building. This was laid to concrete but there were significant changes in levels across the area.

- 2.3. On the front elevation deterioration to the paint finish was noted on one of the gable boards.
- 2.4. Internally, the tribunal were shown the electric cupboard in the ground floor hall with some bare and some taped wires showing. Communal lighting was worked from pushbutton switches although it was confirmed that all lighting was run off the electricity supply for various flats. Emergency lights were noted but the managing agent confirmed that no inspections had been carried out and it was doubtful if they were operational.
- 2.5. Generally the carpeting and decorative finishes internally were in reasonably good order.

3.0. Hearing

- 3.1. At 11 am on the same morning a hearing was held at Bournemouth town hall at which Mr. Boon of Eyre and Johnson and Mr. Beamish of DMA surveyors represented the freeholder applicant. Mrs. Skilleter of flat 4 was in attendance with her husband representing her. Miss Thomas of flat 3 was also in attendance assisted by her parents. Mr. McAllister FRICS from the tribunal office was also in attendance as an observer.
- 3.2. Prior to the commencement of the hearing, the chairman confirmed with Mr. Boon, that although the applicant had not received the statement of case and supporting papers from Ms Thomas until shortly before the hearing, he was happy for the matter to proceed.
- 3.3. With regard to the sample lease which had been submitted by the applicants, the chairman thanked Mrs. Skilleter for providing a much better copy that was clearly legible and, to overcome her concerns about the validity of the lease submitted by the applicant, explained that with every letting there is always a lease and a counterpart lease, with the lease being held by the tenant and a counterpart by the landlord. In this instance it was clear that the applicants had submitted a copy of the counterpart lease which was why it differed marginally from the lease held by Mrs. Skilleter. Mrs. Skilleter accepted the situation.
- 3.4. The chairman explained to Miss Thomas that although much of her statement of case provided useful background to the management of the building, many of her comments regarding the budgets provided by the managing agents for the first two years that the tribunal was considering, had been overtaken by the accounts that had been submitted by the landlords. He therefore requested that the comments she would make to the tribunal should be limited to her objections to the items included in those accounts rather than all the items shown in the superseded budgets.

3.5. The applicant's case

- 3.5.1. Mr. Boon explained that there were three accounting periods covered by the application, period 1 being from the 30th September 2005 to the 25th March 2006 and that there was a set of accounts for this period. Period 2 covered the 12 months from the 25th March 2006 to the 25th March 2007. Again accounts had been provided for this period. Period 3 covered the current financial year from the 25th March 2007 to the 25th March 2008 and for this period a budget had been produced.
- 3.5.2. For period 1, this was only a six-month period and not, as shown on the accounts, for the full 12 months, although this point was later queried by the tribunal as the insurance covered the full financial year. Mr. Boon confirmed that the insurance had been billed to the tenants by his firm in March 2005 whilst the service charge had been billed by DMA surveyors for the latter half of the year since they had only been appointed on 1st October 2005.
- 3.5.3. The accountancy work was carried out by a firm of bookkeepers who passed the papers to a chartered accountant for certification. The fee was payable to the bookkeepers and Mr. Boon presumed that they dealt with the chartered accountant themselves. There was no extra fee account.
- 3.5.4. The management fee was based upon £150 plus VAT per flat per annum and only half a year's charge had been applied. Mr. Boon drew the panel's attention to the list of services provided by the managing agents, which had been sent to all tenants by the new managing agents at the time of their appointment. He asked the tribunal to note that some of the services may not be apparent to tenants who only see the physical work at the property. Mr. Boon did note that there was a small discrepancy in the dates shown on the service charge demands as opposed to the accounts but believed that this was not a material difference.
- 3.5.5. The accounts for period 2 showed income totaling £3375 although he noted that on the income side, the income of £500 was perhaps incorrectly titled as 'insurance' whereas this should have been 'reserve funds'. However the total did tally with the budget that had been sent to all tenants.
- 3.5.6. For this period Mr. Boon pointed out that the accounting costs had increased and explained that this was because the bookkeepers were now VAT registered and in fact their basic fee had increased only marginally.
- 3.5.7. With regard to the insurance credit charge, Mr. Boon was aware that a previous tribunal had found that interest was not chargeable by the landlord and he therefore advised the tribunal that the amount shown in the accounts for this item was withdrawn by the applicant.
- 3.5.8. Mr. Boon explained that the insurance was dealt with under a block policy and that the landlord was represented by Newby Associates who were FSA registered and that they represented a number of similar landlords. Whenever a new

property was added to the policy the premium was based upon the percentage that the sum insured bore to the total sum insured. He further explained that the insurers had changed the way that they were operating and that the applicants had been advised that the policy schedule could either show the total premium payable for the whole block policy or completely exclude any mention of the premium. The applicants had decided that the overall premium was of no relevance to individual tenants and therefore had opted for the premium to be left off the policy schedule. It was Newby Associates who provided summaries of the individual premiums to Eyre and Johnson who then distributed the demands to the individual tenants or the managing agents where appropriate. It was not normal for the insurer to provide individual receipts but as the lease in this instance required the landlord to provide a receipt if requested, a letter had been obtained from the insurers confirming receipt of the premiums for a three-year period.

- 3.5.9. As a result of correspondence from Mrs. Skilleter, Mr. Boon had written to her on the 18th August 2006 and had enclosed a copy of the policy together with the schedule for that year and the letter from the insurers confirming receipt of premiums.
- 3.5.10. Mr. Boon noted that the management fee in this period was still based upon £150 plus VAT per annum per flat.
- 3.5.11. Period 3 covers the current financial year and service charge demands were based upon a budget which had been issued to all tenants early in 2007 showing a payment per flat of £1000. Mr. Beamish went through the expenditure items in the budget and he accepted that following the inspection earlier that morning, he was clearer with regard to the electricity although it had still been included in the budget as, having received no accounts, the applicant was still uncertain whether demands might appear.
- 3.5.12. Maintenance had been included at £1000 and Mr. Beamish was aware that there was an excess under the insurance policy of £500 in respect of water damage claims and indeed a claim had recently been submitted which was likely to use out the majority of this excess. He therefore felt that the figure was reasonable. Indeed later in the hearing after the lunch adjournment, Mr. Beamish was able to advise that the repair costs already incurred since 25th March 2007 were:-

Replacement lock	£129.27
Roof repairs and gutter cleaning	£280.00
Leak repairs	£480.00

- 3.5.13. The safety and fire risk assessments were due to be carried out on the 17th or 18th of January by a firm called Tetra. Mr. Beamish felt certain that one of their requirements would be for the installation of emergency lighting. He felt that the sum included in the budgets was reasonable for the work of assessment that was to be carried out.

- 3.5.14. A surveyor had attended at the site to carry out an asbestos survey although there was some disagreement between the parties as to whether he had been turned away or not. The survey had not been carried out but it was essential that this work be done and Mr. Beamish felt that the budgeted figure was reasonable.
- 3.5.15. The budgeted insurance figure had allowed for an increase of 7 % but later Mr. Beamish was able to show that the actual premium was £20 less than the budgeted figure which he felt was reasonable.
- 3.5.16. The reassessment of the building reinstatement value was something that should be done every five years or so, to ensure that the index linked sum assured had kept in line with actual increases in building costs. It had also been requested by Mrs. Skilleter in earlier correspondence. Mr. Beamish explained that his firm did not have the expertise to carry out this reassessment and the job would be given to a firm of building surveyors. He felt that the figure was reasonable.
- 3.5.17. The management fees had been increased for this financial year to £155 plus VAT per flat per annum and Mr. Beamish advised the tribunal that he felt that this increase was reasonable.
- 3.5.18. Mr. Beamish was able to advise the tribunal that on the day of the tribunal hearing, the reserve account for the block had £601.61 and the current account stood at £272.46.
- 3.5.19. To conclude, Mr. Boon advised that he was hoping to establish the principle of payment in advance, based upon a reasonable budget together with a contribution to the reserves.
- 3.6.0. Under questioning, Mr. Boon confirmed:-

The registered office for the landlords was at the offices of Eyre and Johnson as were a number of other companies.

Eyre and Johnson provide legal services to the landlord. Mr. Boon has no personal interest in the landlord although a director of Eyre and Johnson is also a director of the landlord.

The managing agents prepared the budget in accordance with the terms of the lease.

The brokers arranged the insurance policy.

Ground rent demands had to be issued on behalf of the landlord as a recent change in legislation provided that ground rent was not payable until a demand had been issued.

The cost of the insurance was within the normal band for properties of this type.

The applicant is happy to send to the defendants, the name of the firm dealing with the asbestos inspection but it was not reasonable to provide the lessees with all the details regarding their method statements, indemnity insurance, etc.

The accountancy fee is a fair figure for the work involved.

The assessment of the current building reinstatement cost was being passed to a Mr. Philip Sealey, a chartered building surveyor.

The insurance policy is a very comprehensive policy to ensure that there are no gaps in the cover. Not aware of the insurance commission arrangements.

3.7. The respondents' case

3.7.1 Mr. Skilleter and Ms Thomas made a number of statements about their concerns with the manner in which the property was being managed and both respondents were of the opinion that all the items of expenditure included in the accounts for periods 1 and 2 were excessive, particularly the management fees for which the managing agents had done very little. Mr. Skilleter also questioned the validity of the hearing as the application form had not been signed or dated.

3.7.2. Although no alternative insurance quotations had been obtained by the respondents, they both felt that the cost of the insurance was far too high.

3.7.3. In looking at the budget for period 3, their comments were as follows:-

Communal electricity	should be deleted
Repairs	far too high. Experience shows that little work is ever carried out.
Electrical test report	the electricity board had confirmed that there had been no supply since 1994 and that the wires were disconnected. Not necessary.
Fire safety/risk assessment	far too expensive
Asbestos survey	too expensive
Buildings insurance	far too high, but did not have alternative quotes
Management fees	not unreasonable if any work was done
Accounting fees	too high
Reserve fund	what has happened to earlier reserves.

3.7.4. In answer to the tribunal, Ms Thomas felt that a reasonable budget would be £200 per flat per annum plus the cost of insurance. Mr. Skilleter felt that a total of £4000 (£800 per flat) would be reasonable.

3.7.5. In response to a question from the tribunal, Mr. Skilleter confirmed that he had received the insurance policy document although he was concerned that there

should be additional paperwork setting out all the details for the individual property, over and above the information supplied within the insurance schedule.

3.8. Application under section 20(C) of the Act

- 3.8.1. Mr. Boon requested that the tribunal should not grant an order under section 20 C, as he felt that the landlords had been perfectly entitled to bring this case to establish the liability to pay service charges.
- 3.8.2. The respondents requested that the tribunal grant an order in respect of their application as they felt that the landlords had been completely unreasonable in their approach to the management of the building.
- 3.9. The other matter that had been raised during the hearing related to be reserves of the block which had been shown in the accounts to March 2001, to stand at £2340.37. The respondents confirmed that no accounts had been received for the period between March 2001 and March 2005. Despite this, it appears that the reserves of the building have been taken by the landlord in the intervening years
- 3.10. The tribunal explained that it was not able to consider these matters as the application that was being dealt with concerned only the 3 periods which had been discussed. The questions raised by the respondents may have to be taken up with the landlord.

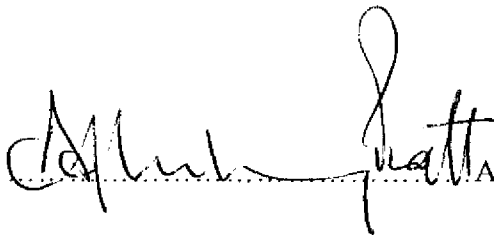
4.0. Findings and reasons

- 4.1. Having heard at length from the parties and having studied the papers submitted, the tribunal makes the following findings:-
 - 4.1.1. The tribunal considered the validity of the application and found that, although the form had not been signed or dated, the accompanying letter was so signed and dated, and therefore considered the application valid.
 - 4.1.2. Using the tribunal's own knowledge and experience, the level of premium payable for the buildings insurance, is reasonable.
 - 4.1.3. The level of the management fee is reasonable. However, the tribunal found that in period 1, from 1st October 2005 to 25th March 2006, the newly appointed managing agents did not undertake the full management duties that might have been expected. In the circumstances, the tribunal considers that the figure for this item in the accounts should be reduced by half to £220.30.
 - 4.1.4. The charges made for accountancy work are reasonable.

- 4.1.5. With the exception of the insurance credit charge of £40.27, which shall be deleted, all the expenditure items within the accounts for period 2, from 26th March 2006 to 25th March 2007, are reasonable.
- 4.1.6. For period 3, from 26th March 2007 to 25th March 2008 and covered by a budget, the tribunal excludes the budgeted figure for communal electricity as this had been pointed out to the managing agents and accepted by them during 2006. All other figures within this budget are reasonable. The budget is therefore reduced to £4921.00 (four thousand, nine hundred and twenty one pounds)
- 4.1.7. In the light of the findings, set out above, the tribunal declines to make an order under section 20 (C) as it finds that it was reasonable for the applicants to progress their application.

5.0. Decision

- 5.1. For the period from the 26th of March 2005 to the 25th of March 2006 the management fee shall be reduced to £220.30.
- 5.2. For the period from the 26th of March 2006 to the 25th of March 2007 the insurance credit charge of £40.27 shall be deleted.
- 5.3. For the period from the 26th March 2007 to 25th March 2008, the budget shall be reduced to £4921.
- 5.4. No order shall be made under section 20(C) of the Act


A J Mellery-Pratt FRICS

24th January 2008