

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HP/LSC/2009/0036

Re: Flats 1, 2, 3, 4 & 6 Basing House, 7 Wilderton Road, Poole.

Applicant	Basing House Management Company Limited	
Respondents	Executors of Gary Hedley dec'd	
Date of Application	26th February 2009	
Date of Inspection	12th August 2009	
Date of Hearing	12th August 2009	
Venue	Royal Bath Hotel, Bournemouth	
Representing the parties	Mrs C A Verstage - Director for the Applicant The Respondents were neither present nor represented	
Also attending	Capt. M Butland-Beazley - Director	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves	Lawyer Chairman
	A Mellery-Pratt FRICS	Valuer Member
	K Lyons FRICS	Valuer Member
Date of Tribunal's Decision:	28 th August 2009	

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years to 25 March, 2008, 2009 and 2010 the following sums are reasonable sums for service charges payable in respect of the premises known as Basing House, 7 Wilderton Road, Poole and divisible between the 6 Flats in their proportions:

Year	Item	Claimed	Determined as reasonable
2007/08	Repairs and Maintenance	3088.41	3088.41
	Cleaning	1300.00	1300.00
	Gardening	1300.00	1100.00
	Electricity	135.42	135.42
	Insurance	1742.94	1742.94
	Management fee	1450.00	1450.00
	Accountancy fee	300.00	150.00
	Water	434.19	56.55
2007/08 totals		£9750.96	£9023.32
2008/09	Repairs and Maintenance	8462.75	6937.75
	Cleaning	1300.00	1300.00
	Gardening	1300.00	1100.00
	Tree surgery	564.00	0.00
	Electricity	100.13	100.13
	Insurance	1742.94	1742.94
	Management fee	1450.00	1450.00
	Accountancy fee	350.00	200.00
	Water	484.37	60.00
	Legal and professional	7872.32	466.32
	Loan interest	2283.00	0.00
	Print, post, stationery	217.00	0.00
	Bank charges	120.00	0.00
2008/09 totals		£26,246.51	£13,357.14

2009/10 budget	Repairs and Maintenance	6225.00	6225.00
	Cleaning	1300.00	1300.00
	Gardening	1300.00	1100.00
	Electricity	140.00	140.00
	Insurance	1942.00	1942.00
	Management fee	1450.00	1450.00
	Water	205.00	60.00
	Accountancy fee	310.00	200.00
	Sundry	35.00	35.00
	Bank charges	120.00	0.00
	Legal and professional fees	1500.00	250.00
2009/10 budget totals		£14,527 .00	£12,702 .00
	Major works	71,833.00	0.00

Reasons

Introduction

2. This application was made by the Applicant to the Tribunal under Section 27A of the Act to determine whether a service charge is payable and, if it is, by whom it is payable, to whom, the amount, the date at or by which it is payable and the manner in which it is payable. The issues to be determined remained only whether each item of service charge claimed was, in respect of sums paid, reasonably incurred and are of a reasonable sum and, for the final year, whether the budgeted sums were reasonable estimates of future expenditure.
3. The years in question under the application are the accounting years to 25th March 2008, 25th March 2009 and 25th March 2010. The first 2 years relate to the costs actually incurred by the Applicant. The final year relates to budget sums for service charges.
4. The application had been the subject of a number of applications by one or more of the executors constituting the Respondent. The last 2 of these applications were made as follows
 - a. On 31 July, 2009 by letter from Steele Raymond enclosing a copy of a witness statement made by Mr Andrews of that firm and dated 7 April, 2009 which had formed the basis of an earlier application for adjournment which had been considered by the Tribunal and refused. No further grounds were given so that application of 31st July was also refused.

- b. On 10 August, 2009 by a letter from Steele Raymond on the basis of ongoing High Court proceedings, lack of unanimity between the Respondent executors concerning this application, the possibility that Mrs Hedley (Verstage) might gain personal advantage from the proceedings contrary to her obligations as an executor and that it would be in the interests of justice for the application to be adjourned at least until after the Case Management Conference in September.
5. The Tribunal found that there were no significant new grounds now put forward beyond those which had been submitted earlier in the year when an adjournment had been refused; that as the Tribunal was entitled to consider not only evidence but also apply its own knowledge and experience to the issues in the application, it was unlikely that the interests of justice would not be served. Conversely that disposal of the application by determination at the earliest opportunity would be in the best interests of all the lessees and the fabric of the property. The Tribunal accordingly refused the application to adjourn.

Inspection

6. The Tribunal inspected the Property in the presence of the Mrs Verstage and Capt Beazley. In particular the Tribunal inspected the external common parts and demised gardens, the internal common parts including having access on to the roof. We also inspected damage resulting from water ingress in Flats 5 and 6.
7. The property appears to be in fair condition for its age and character. It is largely built of brick under pitched and Flat roofs. It comprises 6 Flats on 3 floors, with a common stairwell. Some repairs need to be carried out, for instance the flat roof needs re-felting, gutters and downpipes need repair, there is spalling to some stonework and some of the soffit needs replacement. The property is in need of decoration both internally and externally. The grounds are in reasonable condition.

Hearing & Representations

8. A hearing was held the same day, those attending being noted above.
9. In the application, the Applicant had applied for sums apportioned to each of the 5 Flats in question to be found to be reasonable in relation to the usual annual service charges and also proposed major works. We had a copy of the lease of Flat 6, which we understood to be in the same form as the leases for the other 5 Flats save as to apportionment of service charge. The lease shows that service charge contributions are payable in advance on 24th June and 25th December in each year while the accounting year ends on 25th March. This means that the sums claimed from lessees half yearly does not completely accord with the accounting years but we were satisfied that our determinations would not result in the lessees paying more than the apportionment sums in the application form. Accordingly we considered each of the individual heads of charge in the accounts prepared for the first 2 years and the budgeted account for 2009/10.
10. In general terms, the Applicant submitted that all the charges incurred for the last 2 years have been reasonably incurred and were as set out in the accounts for those 2 years in question. We considered all the supporting invoices. To the extent that some items were not vouched, they are noted below.

11. Particular matters arising on the Applicant's evidence on specific items were as follows:

- a. Repairs and maintenance. The total of £8462.75 for 2008/09 is made up partly of individual accounts from DW John of £1300, £1500 and £2475. The Applicant had not followed the consultation procedure under section 20 of the Landlord and Tenant Act 1985.
- b. Gardening -- 2007/08 and 2008/09. The gardening included the cutting of lawns included within demised premises. They considered that of the total of £1300 for each year under this heading, the value attributable to the mowing for the Flats was £60.
- c. Accountancy fees. Mrs Verstage herself collated invoices and analysed them on a spreadsheet so that the work done by the auditor related only to certification. She considered that for the auditor's work actually done, the sum of £150 would be appropriate in the first year and £200 in the 2nd and 3rd years. Mrs Verstage considered that the management company should be entitled to charge for its work in connection with the accounts preparation in addition to the management fee.
- d. Water. Some of the invoices produced related to individual Flats. For the year 2007/08 the Applicant accepted that the amount chargeable to service charge in respect of the reserved property was £56.55 and for 2008/09 it was £60.
- e. Legal and professional 2008/09. Mrs Verstage produced bills from Preston Redman payable by her. These largely related, she submitted, to the work done concerning the Tribunal proceedings and was therefore payable because it was a necessary stage towards collection of service charge to enable maintenance and repair to be done to the property. She could not identify a provision in the lease however which enabled the Applicant to recover those costs. There were also charges of £235 from Abbey Fire for preparation of a fire risk assessment in July 2008 and £175 for King Health and Safety for an Asbestos Survey (she produced both documents). There is also a sum payable to Dorset Badger and Wildlife of £56.50 to establish whether bats were in the roof. She had been advised to check bearing in mind the likely need to carry out extensive roofing work and the risk of disturbing bats and committing an offence.
- f. Loan interest 2008/09. This had been incurred by the Applicant to raise funds to carry out work to the property in the absence of payments of service charge. Documentary evidence was not produced and the Applicant was unable to identify a provision in the lease enabling recovery of this cost.
- g. Print, post, stationery 2008/09. These costs related to the administration and management functions of the Applicant. Mrs Verstage did not feel they should be included within the management fees. Documentary evidence was not produced.
- h. Bank charges 2008/09. These had likewise been incurred by the Applicant raising funds to carry out work in the absence of service charge payments but the Applicant was unable to identify a provision in the lease enabling recovery of this cost. No documentary evidence was produced.

- i. Budget sums 2009/10.
 - i. Repairs and maintenance. Verbal quotations had been received for emergency lighting of £600; camera survey of the drains at £75 per hour so a total of £225; new fuse box and wiring £750; tiling, gutters and roof repairs: based on past experience, but without obtaining a quotations, these were estimated at £400, £300 and £3000 respectively, a total of £3700; fire alarm is £950; an overall total of £6225.
 - ii. The other figures are based on past years but in the light of examination of the water invoices she revised the budget to £60, and accountancy fees to £200. The item for legal and professional fees again related to work in connection with the Tribunal application.
- j. Major works. The total of £71,833 is the total of the items set out in the management company's letter to the executors of 5th January 2009. This amount had been calculated for roofing works, exterior and internal decorating, garden landscaping and professional fees in connection with the work resulting in this total. The estimates had been obtained in 2008; no Section 20 procedure had been undertaken.

Consideration

12. The Tribunal took into account all the evidence given at the hearing, the documents to which it had been referred and its inspection.
13. Relevant terms of the Lease (partly summarised):
 - a. Clause 2: the lessee covenants with the freeholders to observe and perform the obligations set out in the 5th schedule.
 - b. 5th schedule paragraph (2): the lessee shall pay all existing and future rates taxes assessments and outgoing whether Parliamentary local or otherwise now or hereafter imposed or charged upon the premises or any part thereof or on the freeholders or any owner or occupier in respect thereof.
 - c. Clause 4: the managers covenant to observe and perform the obligations set out in the 6th schedule.
 - d. 6th Schedule:
 - i. (1) the managers shall pay all existing and future rates taxes assessments and outgoing now or hereafter imposed on or payable in respect of the reserved property
 - ii. (2) the managers shall insure
 - iii. (4) to maintain repair redecorate and renew main structure, pipes wires etc, staircase, paths and drives, boundary walls.
 - iv. (7) to keep proper books of account.

- v. (8) the accounts shall be prepared by the managers and audited by an impartial chartered or incorporated accountant who shall certify the total amount of the said costs charges and expenses (including the audit fee of the said accountant in respect of the period to which the account relates) and the proportionate amount due from the lessee to the managers
- e. Clause 5: the lessee covenants with the freeholder and the manager to enable managers to pay all costs charges and expenses which may be incurred by them in connection with the fulfilment by them of their obligations under clause 4 to pay the managers by equal half yearly payments in advance on 24th June and 25th December [two fifteenths or three fifteenths as applicable] of the amounts incurred by the managers in respect of all costs charges and expenses as aforesaid and their management fees ... and the managers shall be entitled to calculate the payment due hereunder by advance estimation.


14. Determination of specific items.

- a. Repairs and maintenance (other than major works). We considered that all the figures submitted for actual expenditure were reasonable and the budget also reasonable save in respect of the year 2008/09. In that year there are a number of accounts from DW John. The requirements of section 20 of the Landlord and Tenant Act 1985 are to the effect that if any works are to be carried out which would result in any tenant paying more than £250 contribution by way of service charge, the consultation provisions of that section must be complied with. We are told that at least one of the flats pays 3/15 of the total service charge so that if any work is done or to be done at a value of not less than £1250 ($£250 \times 15/3$) the provisions of this Section apply. If not complied with, the maximum recoverable for any such work is limited to £1250. There has been no such required consultation in respect of the accounts of DW John as follows: 10 July 2008: £1300; 10 September 2008: £1500 and 30 December 2008: £2475. By reason of non-consultation these are each reduced by the legislation to £1250 requiring a total deduction of £1525. Accordingly the Tribunal found that those accounts were limited to £1250 each and that that sum is reasonable for each.
- b. Gardening (all 3 years). On the evidence, the Tribunal found that some of the work related to grass cutting for lawns which were part of demised premises and were therefore not the responsibility of the freeholder/manager. The Tribunal did not accept that a deduction of £60 from the annual cost was adequate but that £200 each year should be deducted so that £1100 was reasonable for each year.
- c. Accountancy fees. A significant part of the accounting procedure is carried out by the management company and the Tribunal considered that the sums charged of £300 in 2007/08 and £350 in 2008/09 and the budgeted sum of £310 in 2009/10 were unreasonable. For the first year the Tribunal considered a reasonable sum to be £150 but that a reasonable sum for the 2nd year and also budgeted for the 3rd year would be £200 each.

- d. Water. On the basis of the accounts produced so far as they relate to supply for the reserved property, reasonable sums are £56.55 for 2007/08, £60 for 2008/09 and £60 budget for 2009/10.
 - e. Legal and professional.
 - i. The Tribunal did not accept that any fees incurred in connection with the Tribunal proceedings were recoverable as service charge under the terms of the lease and were therefore not reasonable.
 - ii. The fees incurred for surveys in 2008/09 were considered to be reasonable and also as the fire risk assessment and asbestos survey are legal requirements, those items come within the terms of paragraph 1 of the 6th schedule to the lease as effectively being imposed on the manager.
 - iii. Therefore in respect of 2008/09 the Tribunal considered that the 3 reports obtained referred to above were reasonably incurred and that their cost of £466.32 was reasonable.
 - iv. In respect of the budgeted sum of £1500 for 2009/10 the Tribunal considered that a sum of £250 only would be reasonable. The terms of the lease do not specifically provide for legal and professional fees and therefore in principle would not be recoverable, but the Tribunal felt that it was not impossible that they might be reasonably incurred, for instance, in ensuring, by valuation evidence, that the insurance cover was to the full replacement value. This must not be taken as any finding by the Tribunal that any legal and professional fees are recoverable under the lease save to the extent that in this instance we have found in paragraph 1 of the 6th schedule to cover specific items as mentioned above.
 - f. Loan interest and bank charges. There is no provision in the lease enabling recovery of any such charges and we therefore found them to be unreasonable.
 - g. Print, post, stationery. Such items are incidental to management and are covered by the management fee so we allowed no additional sum for them.
 - h. Management fees. These equate to £241.67 per Flat. For larger blocks of Flats a lesser sum would be reasonable but in our knowledge and experience this rate of charge would be reasonable for a block of only 6 Flats. We therefore found the management fees charged and budgeted for to be reasonable on the basis that it was an expected part of management functions and within the normal management fee to collate invoices and prepare information to pass to the auditor and also that incidental expenses such as print, post and stationery are included.
 - i. Other than as specifically referred to above, we found all other items for the 3 years in question to be reasonable.
15. Major works. The works proposed to the roof, decorating, landscaping and professional fees as set out in the management company's letter of 5 January, 2009 to the executors is all based on old estimates, they have not been carried out on the basis of any required

section 20 consultation and we are also not satisfied that the estimates have been made on the basis of a professional specification on which each estimate is based for consistency. For those reasons we cannot find that any of those charges are reasonable. In our view, the process towards carrying out major works would have to be commenced afresh.

16. We made our decisions accordingly.



M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor