

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number	CHI/00HB/2010/0057 and CHI/00JHB/2010/0058
Property	Flats 37 and 46 Westgate, Caledonian Road, Bristol BS1 6JR.
Applicant	The Point (Bristol) Management Company Ltd.
Respondent	In respect of Apartment 37 Mrs S Trivedi (0057). In respect of Apartment 46 Mr S R Tracy (0058).
Type of Application	For the determination of reasonableness and liability to pay service charges under Section 27A Landlord and Tenant Act 1985 (The Act).
Tribunal:	Mr R T Brown FRICS (Chairman) Mr P Smith FRICS

DECISION

1. The Tribunal determine that service charge is payable under the leases of the subject properties and that the amounts payable are identified in the table below.

	Total £	Flat 37 %	Payable £	Flat 46 %	Payable £
2009					
Estate - Part A	166,107.93	0.72	1,195.98	1.14	1,893.63
Buildings - Part B	96,546.41	0.87	839.96	1.38	1,332.34
2010					
Estate - Part A	164,867.94	0.72	1,187.05	1.14	1,879.50
Buildings – Part B	109,396.16	0.87	951.75	1.38	1,509.67
Total			4174.74		6,615.14

REASONS FOR DECISION

Applications

2. The Applications are made by Mr Alan Brewer a director of The Point (Bristol) Management Company Ltd and seek a determination as to the reasonableness and payability of service charges for the years ending 31st March 2009 and 2010.

Law

3. The relevant law is set out in **Appendix 1** attached.

Leases

4. The Tribunal were provided with the lease of Flat 46 dated 4th October 2004.
5. The Tribunal are advised that both leases are in a similar format requiring the lessee of Flat 37 to pay 0.72% of Part A expenses and 0.87% of Part B expenses and the lessee of Flat 46 to pay 1.14% of Part A expenses and 1.38% of Part B expenses which are described in the Fifth Schedule.
6. The Third Schedule (clause 2) requires each lessee to pay the relevant proportions of service charge and in the manner provided under clause 2 of the Sixth Schedule in advance on the usual quarter days.
7. The Fifth Schedule details the company's management duties and is divided into 2 parts: Part A (the estate charge) and Part B (the building charge)

Property and the Tribunal's Inspection

8. The Tribunal inspected the property on 24th August 2010 in the presence of Mr Alan Brewer a director of the Applicant management company.
9. The property, located on the quayside close to the centre of Bristol, comprises a modern development (circa 2002) of 105 apartments, 9 houses and 1 office with some underground car parking.
10. The Tribunal were shown the extent of the estate and the common parts relevant to the dispute. In particular they noted:
 - The estate and common parts were well managed and generally clean and tidy.
 - Major works being undertaken to roofs and common external areas following a dispute with the developer.

Hearing and Further Directions

11. A hearing was not requested and accordingly the cases will be considered by the Tribunal in private on the papers submitted.
12. Directions Order No 2 was issued following the inspection requesting production of amongst other matters the accounts for the years in dispute.

Applicant's Case

13. The Applicant seeks a determination from the Tribunal that the service charges detailed in the accounts for the years ending 24th March 2009 and 2010 are both reasonable in amount for the standard of service provided and payable in accordance with the lease.

14. The Respondent in case 0057 Mrs S Trevidi has not paid service charge and has apparently abandoned the property.
15. The Respondent in case 0058 Mr S Tracey has not paid service charge and similarly appears to have abandoned the property.
16. Following Directions Order No 2 the Applicant provided as requested service charge accounts for the years ending 24th March 2009 and 2010.

Respondents Cases

17. Neither Respondent has made any submissions.

Tribunal's Deliberations

General comment on evidence of the parties

18. The Tribunal considered the written evidence of all parties.
19. In making its decision the Tribunal considered the importance of the decision in *Schilling v Canary Riverside Developments PTD Ltd* (LRX/26/2005, LRX/31/2005 and LRX/47/2005) his Honour Judge Rich stated at paragraph 15:

'If a landlord is seeking a declaration that a service is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable'.
20. After considering the terms of both leases (particularly the Third Schedule paragraph 2 and the Fifth Schedule in its entirety) the Tribunal determined that service charges were payable.
21. The Tribunal then went on to consider whether or not the expenditure in the accounts presented was reasonable for the service provided.
22. The Tribunal makes a finding of fact on the evidence presented and their inspection that the estate and buildings appear to be well managed.
23. In general the Tribunal found the level of expenditure to be in line with what they would expect for a development of this nature.
24. However the Tribunal find that, without explanation (as requested but not received in direction No of Directions Order No 2), the professional fees incurred in 2010 at £28,604.51 are excessive and consider that the amount charged in the previous year (2009) is appropriate and accordingly reduce this sum to £1634.08.

25. The Tribunal then considered the additional charges of £100.00 per property made directly to each lessee in respect of the administration costs in respect of this application. The Tribunal finds that there is no individual covenant in the lease requiring these sums to be paid as administration charges. However after considering clause 20 of Part A to the Fifth Schedule to the lease the Tribunal finds and determines that these charges may properly be recovered by the company as service charges. Accordingly the sum of £200.00 is added to the estate expenditure under the heading professional fees.
26. In summary the amount of the professional fees for the year 2010 is in the first instance reduced from £28,604.51 to £1634.08 to which the sum of £200.00 is added making a total of £1834.08.
27. In making their determination above no allowance has been made to credit the Respondents with any share of any interest received by the Applicant company.
28. The Tribunal makes no determination in respect of the interest claimed as this falls outside their jurisdiction under section 27A of the Act.

Signed
Robert Brown
Chairman

Dated 30th November 2010

Appendix 1 – The relevant law

Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”

- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.
- (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19 Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and if it would, as to-

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable