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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00AB/LSC/2009/0642

Premises Ropeworks, 205,206, and 310 and 315
1 Arboretum place Barking, Essex

Applicant: Barking Central Management Company Limited

Respondents: Mr Martin Phillip Kelly (Flat 205)
Mr Paul Martin Kelly (flat 206)
Mr and Mrs Markey (flat 310)
Mr McKeown and Mr J S Cunningham (flat 315)

Date of hearing: 19 January 2010 and 20 January(inspection and
Determination)

Tribunal: Ms M Daley LLB (Hons)
Mrs Flynn MA MRICS
Mr E Goss

Date of decision: 15 March 2010

1. Background

- (a) The property, is The property ,Ropeworks, is split between two blocks of flats Cutmor and Schrier
- (b) The Applicant is the freehold owner of the property.

2. On the 7th October 2009 the applicant applied to the tribunal for a determination of reasonableness and payability of service charges for 2007, 2008, 2009.

On 4th November 2009, directions were given by the Tribunal and the following issue was identified as follows:- The reasonableness and payability of service charges for the year ending 2008, and the budget estimate for the years ending March 2009 and March 2010.

The Law

Section 18(1) of the Landlord and Tenant Act 1985 (“the Act”) provides that, for the purposes of the relevant parts of the 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, improvements 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.

Section 19(1) provides that 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.

Section 19(2) of the Act provides that, 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 (1) of the Act provides that that 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 payable.

[Section 27A(3) of the Act provides that an application may 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.]

3. The Inspection

The Tribunal inspected the property on 20 January 2010. No flat was inspected individually.

The property, Ropeworks, is situated in the heart of Barking Town Centre in a roughly West-East alignment. It comprises 264 one and two-bedroom flats split between Cutmore and Shreier. It is on six floors over a double height commercial area.. The building is of reinforced concrete with external cladding. It has double-glazed UPVC windows and staggered balconies to each flat. The northern elevation is supported by a colonade of V-shaped

columns which also help provide a covered walkway giving access to the building at ground floor level, where the concierge office is situated. The ground floor provides lift and staircase access to the upper floors and has ancillary areas at the rear. In addition there is vehicular access at the rear for emergency and service purposes. there is no parking available for residents within the development.

The upper floors have flats arranged on either side of linear corridors and the layout forms three sides of a rectangle. It was noted that the communal areas had fireproofed ceilings and automatic fire doors.

There is a communal, split-level garden area, with partial decking ,situated within the three sides of the rectangle and over the commercial area on the lower floors. This is overlooked by those flats on the inner sides of the rectangle.

4. The Hearing

5. At the hearing the Applicant was represented by Ms Wisdom from the leaseholder legal services and Ms Thomas of Barking Central Management Company Ltd managing agents for the Applicant. None of the Respondents were present or represented.

The amount outstanding for each leaseholder was as follows:-

Mr M P Kelly (flat 205) as at 1 October 2009 £ 3338.80

Mr P M Kelly(flat 206) „ „ „ „ „ „ „ „ £3406.39

Mr P & Mrs L Markey (flat 310) £3324.31

Mr McKeown & Mr Cunningham(flat 315) £2445.56 the sum of £1041.54has been received from the leaseholders of flat 315 on 17 September 2008 as a payment towards the service charges.

The Tribunal asked to be provided with copies of the relevant demands for this period.

6. The Tribunal noted that all of the Respondents were absent, the Tribunal were informed that they all originated from Ireland and were 'buy to let investors'. One of the investors Mr Paul Kelly had written to the Tribunal and asked that the hearing should be transferred to Manchester to enable

him to instruct a solicitor, however no information had been provided by him or from the other leaseholders concerning their objections to the service charges. At the pre-trial review the application was refused. Given this the Tribunal stated that as there was no representations or detailed objections to the charges it would consider all of the heads of charges, and would ask the Applicant to provide information to support the reasonableness and payability of each of those of charges.

7. Ms Wisdom stated that all of the Respondents held leases, which had identical terms. The Tribunal were referred to schedule 6 & 7 clause 10 b of the lease which provided for the computation of the charges, the service charge items payable under the lease, including the payment of managing agents and professionals including solicitors.
8. The actual accounts for each year were sent out in September, the first set of accounts, were sent out in 2008 and the items were as follows:-
Accountancy in the sum of £1,645.01, the fee for this was based on a percentage of the service charge expenditure.
Cleaning: This was £ 15,221.07; Ms Wisdom stated that this had jumped in cost because the building had become fully occupied in December 2008. The Tribunal was informed that the cleaner came three days a week and worked from 9am to 5pm. The Applicant referred to a cleaning contract, the cleaning involved cleaning in and around the common parts of the building. The windows were cleaned on a quarterly basis.
9. The Tribunal asked whether there were any complaints received about the standard of cleaning. Ms Thomas confirmed that no complaints had been received from any of the Respondents, and she was unaware of any complaints from anyone else about the standard of cleaning at the premises.
10. The next item on the service charge account was for a communal water supply in the sum of £195.81 (page 229). Ms Wisdom explained that this was to pay for the water supply that serves the sink in the concierge area and also the disabled toilets which were located on the ground floor. The leaseholders all had their own supply of water, which was separately paid for direct to the water board, the leaseholders only contributed to the communal supply.

11. The leaseholders also contributed to the company secretary's cost in the sum of £1126.03, Ms Wisdom explained that the building was managed by a management company made up of leaseholders, and that the company had a company secretary, in order to facilitate this and encourage leaseholder participation. The company secretary's expenses were contributed to by the leaseholders as a service charge. The Tribunal asked for information about the provisions of the lease, which enabled this item to be charged as a service charge, the Applicants relied upon Clause 10(b) of the lease. Ms Wisdom stated that the Applicant had no other income, and as a result this was the only way of paying for this expense, the amount was calculated on a per unit basis.

The Concierge service and concierge admin

12. The Tribunal were informed that two people provided this service, the hours were 7 am to 3pm and 11 am to 7pm. The overlap of cover meant that whilst one of the porters was involved in emptying the bin area there was still cover at the front desk. The Tribunal were referred to pages 346 and 347 of the bundle. Ms Thomas informed the Tribunal that many of the owners were absentee leaseholders, who had brought the property as an investment. The Property had been advertised on the basis that there would be intensive concierge services provide.
13. The next item was Concierge admin, in the sum of £978.19. The Tribunal noted that the largest element of this was for BT telephone and broadband services. Ms Thomas provided justification for this by stating that this enabled the porter/concierge to contact the leaseholders by email and also enabled them to reprogramme the fob for door entry by using the computer.
14. The Tribunal queried the amount of the telephone bills for this period, which were for £350 and £253, Ms Thomas accepted that some of the usage was higher than it should be and that £60.00 had been credited back. She had spoken with the concierge staff and advised them that they would have to account for all calls made as a result, Ms Thomas was not expecting such a large bill in the future. The admin cost also included photocopying and health and safety checks, which needed to be

- undertaken on an annual basis to the kettle, microwave and fridge used by the concierge during the course of their employment.
15. Health and Safety –The Applicant’s representative informed the Tribunal that a report had been prepared by JM Health and Safety limited, this was essentially a risk assessment survey the cost of which was £740.25 including VAT. This report had been commissioned before Ms Thomas became the property manager, the invoice was at page 263 of the bundle and this was for a fire safety report. The Tribunal was informed that annual reports were needed in relation to the kettle, microwave and fridge in the concierge office/rest room. It was not clear from the invoice whether this reported related to electrical testing.
 16. Insurance- The cost of this for the period was £16050.39, details of the insurance cover were provided at pages 264,265, and 266 -274 of the bundle.
 17. There was a separate insurance policy for the lift, which was a page 285 of the bundle. There was an item in the budget for the internal telephone this was for the telephone that supported the lift.
 18. The management fee – this was payable for the service provided by Barking Central Management Company Ltd the fee had started off at £180 plus vat, and had risen to £127 per unit, the management fee was not taken into account for the 95 unoccupied units. The Tribunal noted that no management agreement was included in the bundle, the Tribunal asked Ms Wisdom to provide a copy of this.
 19. Ms Thomas provided the following information concerning the management of the premises; she explained that she had taken over as property manager for the Barking development in April 2009. The Ropewalk development was in two phases that included 3 other blocks. Ms Thomas estimated that her total management time amounted to about 1 morning a week plus her weekly visits which involved walking around the site, she stated that on average she had to deal with a problem involving matters such as vandalism approximately every six to seven weeks. Ms Thomas considered that this might be due to the large volume of the flats that were let.

20. The Refuse management- this involved the porters that provided the concierge service, this involved cleaning the second floor bin stall and taking refuse downstairs. The Council then collected the refuse three times a week.
21. Building Repair- This was in the sum of £2753.87 and the details were at pages 208-213 of the bundle. The Tribunal queried whether some of the expense was not within the defects liability period for the building as it was a new development. Ms Wisdom pointed out that although the heading was for building repair, it actually included the cost of rolling annual contracts for the alarm system with Clymac fire alarms, who carried out 4 inspections a year. The total cost for this service was £987.
22. In her statement Ms Thomas set out that there was an item in the budget for depreciation of fixed assets. This was for the abseil points which had an estimated 5 year life span before they would require replacement. The rate of depreciation set for this item against the sinking fund was 20% a year.
23. The Tribunal noted that a small amount of the repair bill was for repairs for the photocopier, Ms Wisdom agreed that this item ought not to be under the repairs heading. However, she considered that the expense was justifiable as the photocopier was used for tenancy/leaseholder issues, such as photocopying the welcome packs and general letters for occupants concerning noise and rubbish/dumping.
24. The last head of expenditure for this year was of website development, Ms Wisdom sought to justify this item on the grounds that there were a significant number of investor leaseholders, and the website was for their benefit to enable communication. The cost of setting this up was in Ms Wisdom's submission recoverable under clause 10 (a) of the Lease. Ms Wisdom also noted that this item had not been objected to by the leaseholders.

The service charge account for 2009

25. In her witness statement Ms Thomas stated that her colleague Tracey Smith, who had been the property manager at the time, had prepared the

- budget for this period. This was done in consultation with the client and was also based on the actual service charges.
26. The CCTV actual figure was in the sum of £4688.25, the details for this were as set out for the 2009 service charge year, as it was an annual contract. The Tribunal were informed that there are 9 cameras and a close circuit television. The cost of the CCTV was £2868.18 and the entry door was £1820.08.
 27. The next head was for the communal electricity supply, the actual service charge for this amount was £47158.28 against a budget of £6200. The Tribunal noted that this was based on the actual readings. The Tribunal wanted further information on why this figure was so high, and what the initial reading had been on completion and hand over of the building, and the Applicant was asked to provide this information within 14 days. The Tribunal also queried what was included within the electricity. The Tribunal were informed that there were no external lights, at the building, the communal electricity was for the common parts and for two lifts, door entry and CCTV, fire alarm systems and emergency back up system all of which used the communal electricity.
 28. There was also charges for late payment and reconnection charge £139.75. The managing agents were exploring the possibility of changing service provider and were considering EDF or British Gas.
 29. The Applicant had provided details of what was included in the concierge service, the actual cost for the concierge service in 2009 was £78442.67, this included cover over the new- year period, As the building was located near the centre of the town it was decided that there was a need to include two extra days for safety. The budgeted cost for the concierge telephone was £500, however the actual cost was £2236.06, of this amount, £1535.04 had been incurred during this period. The Tribunal repeated its observations concerning the telephone bill.
 30. The Applicant stated that the insurance cover for this year was provided by Brevant insurance; to ensure that they were receiving value for money, this was reviewed yearly by the Applicant's broker. The Service charge item also included provision for 2010 as the insurance was spread over a period, which straddled two service charge years.

31. The Tribunal noted that the cost of the cleaning for this period had risen to £24,996. Ms Thomas stated that it included sums incurred last year where the invoices had been presented within the 2009 final year (£2083, was incurred during the previous year) and the cost of cleaning had risen with the occupancy of the building.
32. Repairs and building maintenance, this was in the sum of £4204.04, inspection of the invoices revealed that this was for a number of minor repairs throughout the building for example repairs of holes, replacement of handles etc. Ms Thomas stated that the majority of the building was occupied by tenants of 'buy to let investors', who were not necessarily as careful in their use of the building, there was also a small degree of vandalism.
33. The Company secretary fees- these were fees that had been paid to a company to provide company secretarial services, this was for a fixed fee in the sum of £1000 plus vat of £380.
34. There were also expenses for the maintenance of the smoke management (fire extraction) £5604.02 and the water pump and tank repairs in the sum of £1850.62.
35. The Tribunal noted the service charge expenses for the lift contract (£3600), lift repairs in the sum of £245.12, engineers insurance, the total expenditure in the period was £654.66, (for the cost paid within the year) however the insurance started in the middle of the service charge year, that had been incurred in the previous financial year included in the total.
36. There was a sum of £75.61 for website maintenance, this sum was reduced from previous years and reflected the fact that the Applicant had decided to discontinue the website.
37. The Tribunal was also asked to determine the reasonableness and payability of the estimated service charges for 2010. The provision for 2010 included the same estimated headings as for 2009 however the budget item for the electricity had decreased to £12000. The Tribunal queried whether this was a realistic budget estimate, given the actual for the year ending March 2009. Ms Wisdom accepted that it was high however it had included both 2008 and 2009, and the Applicant stated that the change in provider was also expected to result in a savings.

38. There was also a new item for Home serve emergency call out, the Tribunal were informed by Ms Thomas that this service was for emergency repairs in the communal parts, and provided an out of hours response. The cost of this service was £8979. Ms Wisdom considered that this expense was reasonable considering the large number of buy to let investors who wanted to ensure that their flat was habitable at all time.
39. The other variation was an increase in the reserve fund in the sum of £10000 all the other costs were in line with the budgeted amount for 2010.
40. The Tribunal noted that other than the issues raised by the Tribunal, no objections to the charges had been received from the Respondents, and no reason had been given for non- payment.

The tribunal's decision on each matter in dispute

The cost of Audit/Accountancy

41. The tribunal on considering all of the documentary evidence, and the evidence of Ms Thomas and Ms Wisdom. has determined as follows- the Tribunal find that the cost of the accountancy in the sum of £1645.01 for 2008 and £1782.50 for 2009 is reasonable. The Tribunal note however that the implications of a percentage based fee, is that as the amount spent on the building increases the fees will rise. The Tribunal consider that whilst this may be appropriate for the early years of the building, it could result in a significant increase which may be less appropriate in future years.

Cleaning and communal water bill

42. The Tribunal having had the opportunity to inspect the premises, and from their knowledge and experience of other cleaning contracts, are satisfied that the cleaning is carried out to an appropriate standard and accordingly considers the cost of cleaning in the sum of £15221.07 for 2008 and in the sums of £24,996 for 2009 and the budget estimate in the sum of £26,500 is reasonable and payable.
43. The Tribunal are also satisfied that the cost for the communal water supply is reasonable and payable for 2008, 2009 and the estimate for 2010.

CCTV and Door entry system

44. The Tribunal noted that the initial cost of the CCTV and door entry was not paid in 2008 as there had been no invoice, the sum incurred in 2009 was £4688.26, the budget estimate for 2010 was in the sum of £5000. The Tribunal find, on the evidence before it and the evidence gathered from inspecting the building that the sum claimed is reasonable and payable.

The Concierge and Refuse Management

45. The Tribunal noted that the concierge wages and the refuse management were expressed in the budget as two separate items although the refuse management tasks were carried out by the porters who provided concierge services, this means that in order to properly consider whether these charges are reasonable, the two charges must be considered together as had been done by the Applicant in the service charge statement

	2008	2009	2010
<i>Refuse Management</i>	<i>(15000)</i>	<i>(£15000)</i>	<i>£15000</i>
<i>Concierge services</i>	<i>£66034.80</i>	<i>£78,442.67</i>	<i>70000</i>

46. The Tribunal noted that it was the Applicant's intention to have these two items as separate items in the estimate for 2010. The Tribunal considered that the overall cost was higher than would normally be expected in a building this size. However the Concierge service cover was higher than what would, normally be expected, with double cover being provided for part of the day. The Tribunal noted that this was the service that the leaseholders had been led to expect when purchasing the building. Given this it was reasonable for the Respondents to be required to pay for this service.

47. No explanation was given as to why the cost of this service in 2009, was not in line with the previous years, given this the Tribunal find that the sum of £8000 which represents the unexplained increase is not reasonable or payable for this period.

Concierge Admin

48. The Tribunal had an opportunity to consider the telephone bills and the Tribunal considered that there were more calls and a higher average cost per call than would normally be expected from usage associated with concierge duties. The Tribunal note that Ms Thomas accepted that there had been some abuse. The Tribunal find that the cost cannot be considered reasonable, as there was acknowledged over use possibly for private purposes rather than in connection with the building. The Tribunal also note that the health and safety budget included a sum for checking of electrical equipment used by the concierge. This sum ought in the opinion of the Tribunal to have come from the cost budgeted for concierge admin. The Tribunal find that the cost of this service should be capped at £500 for 2008 and £600 for 2009 and 2010.

49. The Tribunal considered the evidence presented, and the fact that there were no detailed objections or any queries, as a result there were many items were the Tribunal needed to ask whether the expense was out of the norm with what it has experienced before in buildings of a similar age and size, given this the Tribunal find the service charges for 2008, 2009 and the budget estimate for 2010 for the items listed below are reasonable and payable.-:

- Lift maintenance and repairs
- Lift Engineering insurance
- Man safe anchor points
- Smoke Management and Fire Alarm system
- TV aerials
- Depreciation of fixed assets
- The Reserve fund items

Insurance

50. The Tribunal had been provided with copies of the policy documentation and had been able to inspect them in some detail. The Tribunal find that the sums claimed for property owners insurance is reasonable and payable in the sum of £16,050.39 and £19,261.37 and the budget estimate in the sum of £21,500 for 2010 is reasonable and payable.

The Company Secretary fees

51. The Tribunal are aware that for many modern developments there is an intention for the freehold to be held by a limited company set up for the purpose of owning the freehold of the building. It was noted at the hearing that Ms Wisdom sought to justify this expense by reference to clause 10 (b) of the lease. She stated that there was no other income which could be used for the purpose. It was also the intention of the Applicant to use the services of a company that specialised in providing company secretary services, to ensure the legality of the way in which the company was managed.

52. The Tribunal was not informed whether every leaseholder was a member of the company, and whether there was broad support for what had occurred regarding these expenses. The Tribunal consider that the expenses of the company are separate, and that members of the company should bear the company secretariat expenses, or carry out the functions themselves. Given this the Tribunal do not consider these expenses to be reasonable or payable from the service charges.

The Management fee and website development

53. The management fee had remained constant throughout the period 2008, 2009 and the same fee was proposed for 2010 of £52030,00, which equated to £127 per unit. The Tribunal noted the details given about the tasks involved in managing the building, and also the list of duties supplied after the hearing and the management agreement. The Tribunal were also impressed with Ms Thomas' knowledge of the building, and on our inspection, the building appeared to be well managed.

54. The Tribunal therefore find the sum claimed for management to be reasonable and payable. However the Tribunal determined that the expenses for web design development were not reasonable and payable we make no criticism of the Applicant for choosing a modern medium for communication with the leaseholders, however we consider this to be a duplication of matters that were the responsibility of the management agent. Given this we consider that the amount claimed for website development is not reasonable and payable.

55. The Tribunal also consider that the premium payment for Homeserve is not reasonable and payable. The function of carrying out repairs and making provision for them to be done on a timely basis, is the responsibility of the Applicant, and the Tribunal do not consider that it is reasonable for the leaseholders to pay extra for these services.

Building repairs

56. The Tribunal were initially concerned that some of the repairs for 2008 might well have been within the defects liability period, and therefore not chargeable to the leaseholders. However, having inspected some of the invoices produced, the Tribunal are satisfied that the sums charged in 2008 in the sum of £2753.87 and £4204.04 and the budget estimate in the sum of £6000 is reasonable and payable.

Electricity

57. The Tribunal noted that in 2008 the budget for electricity was £6000. We were not informed about the stage in the development of the site that the current electricity meter was provided, and what the reading was on completion and subsequent occupation of the building. In 2008 a budget was prepared and assumptions were used which led to a figure for this heading of £6000. The Tribunal note that the first bills are based on estimates; it is therefore difficult to know what the actual usage was prior to the first bill from EDF. The Tribunal noted that once readings were taken the actual for 2009 was £47,158.28. The Tribunal have considered the actual bills provided and it is not possible to establish whether the sum demanded properly represents the leaseholders' liability. The Tribunal queried the figures given and stated at the hearing that this was out of kilter with the Tribunal's knowledge and experience. Given this, we are not satisfied on a balance of probabilities that the full cost of £47,158.28 for 2009 was reasonable incurred and in taking broad approach the Tribunal have determined that the cost of electricity for 2009 ought to be reduced by a factor of 10%..in the region of £42,000

58. The Tribunal having made the findings set out above, have determined that the Applicant within 28 days shall recalculate the charges, taking into account the Tribunal's findings and shall provide updated demands to the Respondents.

CHAIRMAN.....Miss M Daley

ed:.....

DATE..... 15 March 2010

Chairman.....