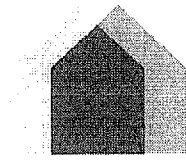


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Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00AE/LSC/2009/0188

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND
TENANT ACT 1985**

Property: 1 – 24 Airco Close, Colindale, London NW9 0NW

Applicants: Leo Ho and others

Respondent: Stadium Housing Association Limited

Date heard: 24 and 25 November 2009, with subsequent written representations

Appearances: K Neagle (Flat 21)
L Cauty (Flat 18)
Sean Greenam (Flat 3)
Leo Ho (Flat 12)

for the applicants

Michael Donnellan and Andrea Williams, solicitors,
Trowers & Hamlins LLP, solicitors
Victoria Boateng, senior leasehold management officer
Anthony Collins, leasehold management officer

for the respondent

Tribunal: Margaret Wilson
John Power MSc FRICS FCI Arb
David Wills ACIB

Date of the tribunal's decision: 1 March 2010

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") made by the leaseholders ("the tenants") of 23 flats in a modern development of 151 flats and houses which was completed in 2006. 121 of the units are let to periodic tenants of Stadium Housing Association Limited ("the landlord"), a registered social landlord, and 30 are held from the landlord on long shared ownership leases. Of these, 24 (Flats 1 – 24) are in Block B and six (Flats 59 – 64) are in Block F. The applicants are the leaseholders of all the flats in Block B with the exception of Flat 9. The purpose of the application is to determine the tenants' liability to pay service charges for the accounting years 2006/2007, 2007/2008 and 2008/2009 and the estimated service charges for the year 2009/2010, in each case from 1 April to 31 March.

2. By clause 3.2.a of their leases the tenants covenant to pay a service charge in accordance with clause 7. By clause 7.1.c the service charge means *such reasonable proportion of the Service Provision as the Landlord shall apportion* and, by clause 7.4 the *service provision* comprises the expenditure estimated by the landlord's surveyor as likely to be incurred in the accounting year on the matters specified in clause 7.5, together with a reserve towards future expenditure as defined in clause 7.4.b. The tenant's proportion of the estimated expenditure is by clause 7.2 to be paid when the rent is payable, namely, as provided in clause 2, by equal monthly instalments in advance. Clause 7.5 sets out the recoverable costs, which include the landlord's costs of complying with its covenants in clauses 5.2, 5.3 and 5.4. These costs are required by clause 7.6 to be certified by the landlord as soon as reasonably practicable after the end of each accounting year, and the certificate supplied to the tenant, who must then forthwith pay to the landlord any under-payment or be reimbursed any over-payment. The landlord's covenants in clause 5 are comprehensive and include the power to make improvements. They all relate to "the building" which is, in the tenants' case, Block B.

3. The tribunal inspected the block and the development in the morning of 24 November 2009 in the presence Leo Ho and Sean Greenam, two of the tenants, and of Victoria Boateng, the landlord's senior leasehold management officer, and Anthony Collins, its leasehold manager. The hearing occupied the afternoon and the whole of the following day. The tenants were represented by Ms K Neagle, the leaseholder of Flat 21, who also gave evidence, and Mr Ho, Mr Greenam and Mr Cauty attended and gave evidence. The landlord was represented on 24 November by Michael Donnellan, solicitor, of Trowers & Hamlins LLP, solicitors, and on 25 November by Andrea Williams, a solicitor with the same firm. Ms Boateng and Mr Collins gave evidence. Mr Donnellan's instructions did not enable him to give a clear explanation to us at the hearing of the way in which the landlord had apportioned the service charges to each leaseholder and, at our direction, further written submissions were made on that issue after the hearing, the landlord's dated 11 December and the tenants' dated 15 December.

4. The tenants also made written submissions dated 9 December 2009 on a number of issues which had not been explored at the hearing, and attached a number of additional documents. We had not directed such submissions and, although we read them to see if they ought to be admitted, we decided not to admit them because they raised matters which had not been raised before.

The statutory framework

5. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as "*an amount payable by the 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*". Relevant costs are defined by section 18(2) and (3). By section 19(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”. By section 19(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 of subsequent charges or otherwise”.*

The dispute

General

6. When the tenants made this application no audited accounts were available for the year 2008/2009, but shortly before the hearing they became available and we have therefore determined the tenants' liability to contribute to the actual costs for 2006/2007, 2007/2008 and 2008/2009 and their liability to contribute to the estimated charges for 2009/2010. The service charge accounts for the three years for which they are available relate to the 30 flats in both Blocks B and F and have not been sub-divided between the two leasehold blocks.

7. Some of the tenants' grievances have arisen from the fact that Airco Close is a newly built estate and it has not always been clear whether the responsibility for repairs and maintenance was rightly that of the landlord or of the contractors who built the estate. Other problems have arisen because the landlord did not in the early stages put adequate systems in place to calculate the service charges and to make plain to the tenants how it had done so, and, as Mr Donnellan agreed, made mistakes in the formulation and presentation of the service charges. It is to be hoped that some of the problems, which have given rise to very considerable acrimony and mistrust, were teething troubles which will not persist. We are confident that the landlord will in future

do its utmost to make sure that the actual costs, when known, and the way in which each of them is apportioned to the leaseholders, are very clearly presented in the certificate which the leases require to be supplied to the leaseholders as soon as is reasonably practicable after the year end. We are sure that clarity will do much to avoid the mistrust and misunderstandings which have been very evident in this case.

The issues

2006/2007

8. The only expenditure recorded in the accounts for the year (landlord's bundle at page 105) was £324.30 for sundries, £97.37 audit fee and £5100 for management. The audit fee was not disputed and the contribution to that cost payable by the leaseholders of Block B is £77.90.

9. Mr Donnellan for the landlord said that the cost for sundries was for eight notice boards of which only one was in Block B, and that the correct charge should have been £162.15 for that one notice board, of which each tenant was liable to pay an equal share. In the light of the concession this cost was agreed.

10. Mr Donnellan agreed that the figure for management was also incorrect because it had been wrongly based on £150 for each of 34 units rather than 30 or 24, and that the excess had been credited to the tenants.

11. The tenants said that £150 per flat would have been reasonable if the standard of management had been adequate but it had not: Ms Neagle said that it had been appalling. The tenants complained of the landlord's officers' failure to answer telephone calls and to respond to letters, of the errors which they alleged that it had made in relation to the calculation of service charges, and of its failure to monitor services and to ensure that the block and grounds were properly maintained. They said that the management was so bad that

they had had to complain to the Housing Ombudsman and to their Member of Parliament, which they had found both time-consuming and distressing. They also said that the flats were unoccupied until November or December 2006 and it was wholly unreasonable to charge the tenants for any period before they went into occupation. Mr Donnellan conceded that some discount was appropriate to reflect the fact that the tenants were not in occupation for part of the year. Ms Boateng said that she had not been involved with the management of the Estate prior to July 2009.

12. We accept, as Mr Donnellan accepted, that there have been significant failings in management, although some management was carried out, and we also accept that it was wrong in principle to charge a full year's management fee when the tenants were in occupation for only approximately five months. It is not practicable on the evidence to determine the amount payable by each tenant depending on the precise date on which his or her occupation began, and in any event these dates were not given to us. Doing the best we can, we determine that a reasonable fee for management in the year 2006/2007 would have been £50 per flat, or £1200 for Block B.

2007/2008

13. The accounts for the year are at page 108 of the landlord's bundle. Once again they have been prepared for the 30 flats in both Blocks B and F and not just for Block B as might have been clearer to the tenants and therefore preferable. Of the charges in the accounts, the landlord abandoned a claim to a contribution towards the scheme manager's salary and communal telephone, both of which Mr Donnellan conceded to have been included in error. After the landlord's explanation of the charges the tenants did not continue to dispute charges, in each case for 30 flats, of £1750.21 for insurance and £400.13 for grounds maintenance. They expressly said that they did not ask or wish for a determination in relation to water rates, and at the pre-trial review they had also said that water rates were not an issue which they wished to pursue at the hearing. In their further representations

dated 9 December 2009 they said that they had changed their minds and now wished the tribunal to deal with that issue, but in the circumstances we are satisfied that it would be inappropriate to deal with it, particularly because the issue they wished to raise appeared to be whether water should be individually metered, which was not within our jurisdiction. (The tribunal had indicated at the hearing that if water was provided by the landlord as a service its provision could fall within section 18(1) of the Act and the cost would be subject to the requirements of section 19 and to the tribunal's jurisdiction under section 27A, but the issue which the tenants sought to raise was a different one.) The issues for determination were the cost of cleaning, repairs and maintenance, sundries, security, electricity, audit fee and management.

Cleaning

14. £7156 was charged in the accounts for this service, equivalent to £5724.80 for Block B and to £238.53 for each flat. The landlord said that the actual cost for Block B was £6337.51 and the amount in the accounts was an under-charge. Cleaning has throughout been provided by Connaught Limited ("Connaught") which provides cleaning services for all the 93 estates owned by the landlord, and tendered for cleaning this estate when it was completed. The total cost of cleaning all the landlord's estates is apportioned by the landlord between the estates and then further apportioned to arrive at the cost payable by leaseholders. We have not been given a clear explanation of how the costs were attributed to Block B, and no invoices were provided to us. The contract provides for the block to be cleaned once a week.

15. The tenants said that the standard of cleaning was adequate until the summer of 2009, but that the cost was excessive for cleaning a block with one communal staircase, one lift, and open access decks. They said that only the price tendered by Connaught had been supplied and that there was no evidence of the actual cost, and that the information which the landlord had provided made it impossible for them to understand how the costs had been attributed to their block. They submitted that a charge of £175 per month, or

£2100 per annum, would have been reasonable. The landlord maintained that the cleaning had been of a reasonable quality and provided at a competitive cost.

16. We accept that once-weekly cleaning was adequate and we accept that the standard of cleaning was generally satisfactory during this period. We also accept that it was not unreasonable for the landlord to employ a public company such as Connaught to clean the block. However we have found it difficult to follow the landlord's calculations of the charges attributed to Block B and, having inspected the block, we have come to the firm conclusion that the cost of cleaning attributed to this block was wholly excessive. In our view, based on our general experience of similar cases to which we are entitled as an expert tribunal to have regard, a reasonable annual charge for cleaning Block B in 2007/2008 would have been £3500.

Repairs and maintenance

17. The charge in the 2007/2008 accounts was £108.35 for Blocks B and F. The landlord admitted that the only item within this cost which related to Block B was a charge of £82.25 made for inspecting the entryphone system following a complaint by a leaseholder and finding no fault; and the landlord accepted that this was the only sum to which the tenants were liable to contribute. The tenants submitted that the cost of the wasted call should have been paid by the leaseholder who made the unjustified complaint. In our view the landlord acted reasonably in responding to the complaint and we are not satisfied on the evidence that the cost should have been passed to the person who complained. We regard the reduced cost of £82.25 as reasonable.

Sundries

18. This charge was for two notice boards setting set out parking regulations which were installed in the common areas of the Estate at a cost of £465.60.

The landlord set off against the cost of the notice boards the fees of £142.50 paid for parking permits, and the balance was divided between the 151 units on the Estate, resulting in a charge of £2.14 per leaseholder. The tenants said that leaseholders had designated parking spaces and that this cost should be paid only by residents who benefited from the parking facilities and should not be borne by residents without a car. The landlord said that all residents had a right to park and that it was reasonable to divide the cost between all of them. We agree with the landlord on this issue. We are satisfied that the method of apportionment of this charge was not unreasonable and consider that the cost of managing the system suggested by the tenants would outweigh any advantages in the system proposed by the tenants and would not be justified. Accordingly the charge for this item payable by the leaseholders of Block B is £51.35, or £2.14 by each of them.

Security

19. The charge in the accounts for the 30 leasehold flats was £8706.91, equivalent to £6965.53 for Block B and to £290.23 for each flat. Security has throughout been provided by Elizabethan Security Limited. The tenants did not dispute that the provision of a security service was necessary but said that they considered its cost of the service to be excessive and the service ineffective, because it was not provided at times when it would have been most useful, such as late at night and at weekends, and that when there was a serious incident the guard just "stood and watched". They suggested that it would be more cost-effective for the landlord to train its own staff to provide security services and that a reasonable cost of the service would be about £25,000 for the year for the whole Estate. The landlord said that it had received no formal complaints about the adequacy of the service, which cost £43,000 per annum for the provision of one man who patrolled the Estate seven days a week from 3 pm to 11 pm. Ms Boateng said that the landlord was reviewing the way this service was provided.

20. The cost of this service appears to equate to about £15 per hour for a service which is agreed to be necessary. Clearly one man patrolling a fairly

large estate cannot prevent all crime and anti-social behaviour, and on balance we accept that the standard of the service and its cost was reasonable.

Electricity

21. The charge in the accounts for electricity to the common parts was £638.46, equivalent to £510.77 for Block B and £21.28 for each flat. The cost includes a proportion of the supply of electricity to the Estate for external lighting and a water pump.

22. The tenants said that it was likely that the cost included some electricity used by the contractor when it completed the development, and that electricity was wasted because some lights were unnecessarily left switched on during daylight hours. (At our inspection in good daylight we observed that some external lights were on.) The landlord said that it was a health and safety requirement that some lights in the communal staircase were left on at all times.

23. The actual costs of supplying electricity to the block are by no means clear from the evidence which the landlord provided, with many costs brought forward. We have therefore approached this issue on the basis of what we would consider to be reasonable for lighting the block together with a fair proportion of cost of electricity for communal use on the Estate, and we accept that it is fair to divide such Estate costs equally between the 151 units. On balance we are satisfied that the costs were in line with what we would expect and are reasonable at £510.77 for Block B.

Pest control

24. The cost of the service to the Estate was £1055.15, but the landlord conceded that only the cost of pest control measures in the common parts of

the Estate was recoverable, and this sum, which was £904.75, it divided between the 151 units on the Estate, which equates to £5.99 for each leaseholder, which we determine to be reasonable. (The amount of £1.61 per unit in the Scott Schedule entry prepared by the landlord is a miscalculation.) Thus the cost for Block B is £143.76.

Audit fee

25. This charge of £403.41, equivalent to £322.73 for Block B and £13.44 for each leasehold flat, was a proportion of the sum charged by KPMG for preparing the landlord's accounts for all its housing stock. The tenants said that the leases did not require an audit of the service charges, and that a proper audit had not been carried out because the accountants had neither read the lease nor checked all the invoices.

26. We are satisfied that the service charge accounts were in a form sufficient to comply with the requirements of the leases, which do not require a full audit, and that this cost was reasonable in amount.

Management

27. The charge in the accounts was £4500 for 30 flats, equivalent to £150 per unit. The tenants' case was, as with the previous year, that management was of a very poor standard.

28. We accept that the standard of management was unacceptable, with many mistakes and poor communication, although some management was carried out. Doing the best we can we conclude that a reasonable amount for management in the year 2007/2008 would have been £100 per unit, or £2400 for Block B.

2008/2009

29. The accounts for the year are at page 108a of the landlord's bundle. The costs included are for insurance, lifts, cleaning, repairs and maintenance, pest control, grounds maintenance, rubbish disposal, sundries, entryphones, security, electricity, water rates, audit fee and management. At the hearing the landlord withdrew the claim for the costs of rubbish disposal and the tenants did not dispute the cost of insurance, grounds maintenance and sundries and did not ask for a determination in respect of water rates (although they subsequently changed their minds – see paragraph 13 above). The disputes which required determination related to the costs for lifts, cleaning, repairs and maintenance, security, electricity, audit fee and management. In relation to all the costs the tenants complained that few invoices had been provided and they were not convinced that the charges were based on actual costs rather than estimates.

Lifts

30. The cost in the accounts for the 30 leasehold flats is £691.17, equivalent to £552.94 for Block B, in which there is one lift, and to £23.04 for each leaseholder. The landlord said that there were four lifts on the Estate and that the costs related to a lift maintenance contract and had been apportioned to Block B although it was not clear how the apportionment had been carried out. The tenants made no specific submissions but asked us to determine a reasonable amount for this item.

31. We accept that this charge was incurred and that it is reasonable.

Cleaning

32. The charge for the 30 flats in Blocks B and F was £7874.80 for cleaning carried out by Connaught, equivalent to £6299.84 for Block B and to £262.49

for each flat. The cost was based on a subdivision of Connaught's charges for cleaning all the landlord's properties. As with the previous year, the tenants said that it was impossible to determine how much of the cost was referable to cleaning Block B and that the cost was excessive. They said that the landlord had deliberately increased the frequency of the cleaning in the week prior to the tribunal's inspection, when there had been a "flurry of activity".

33. As with the charge in the previous year, we consider the charge to be wholly excessive for cleaning this block, although we are satisfied, on balance, that the standard of cleaning was on the whole adequate. We determine that a charge of £3500 which we determined as reasonable for cleaning Block B in 2007/2008 would also have been reasonable for this year, and for the same reasons.

Repairs and maintenance

34. The charge in the accounts for 30 flats was £5532.42. The costs comprised within this sum are in a spreadsheet at page 263 of the landlord's bundle and are supported by a number of repair orders at pages 264 – 283 of the landlord's bundle. These orders show that many of the repairs were not carried out in respect of Block B.

35. The tenants considered that the charges were excessive, considering that the Estate was newly built. They said that they would have expected most of the works to have been covered by the builder's guarantee, that in any event only repairs to Block B should have been included in their service charge, and that some of the repair orders related to works to individual flats which should not have formed part of any service charge. They said that Ms Roz Spencer, the landlord's Chief Executive, had said at a public meeting on 18 June 2009 that the landlord was in dispute with ROK, the building contractor, about defects on the Estate, and it was their firm belief that the cost of many of the repairs should have been met by the contractor. They referred particularly to

a works order (at page 267 of the landlord's bundle) to Drainflow Limited dated 22 May 2008 which refers to a "leak within the leaseholders' car park" which was remedied at a cost of £2744.21. The tenants said that the leak was likely to have come from the underground water supply pipework and ancillary pumping equipment and ought to have been the responsibility of the contractor.

36. The landlord's case was that the defects liability period had ended in late 2007 and Ms Boateng said that a letter dated 20 October 2009 from Sandra Thomas, a case worker, (exhibit AR 13 to the tenants' statement of 6 October 2009) which suggested that the contractor would be rectifying defects was "a mistake".

37. We asked the landlord's representatives for an explanation of the cost of £2744.21 payable to Drainflow. They were unable to provide us with any information at all, either as to the location of the problem, its cause, or the remedial works which were undertaken. In the absence of any explanation for this relatively recent work at a relatively high cost we are not satisfied that the cost was reasonably incurred and that the tenants should contribute to it. If that is unfair to the landlord it only has itself to blame for not providing the tenants and us with the relevant information.

38. Of the other repairs we are satisfied that the works for which this charge is recoverable should be restricted to works to the common parts of Block B and a fair proportion of the cost of any works to the common parts of the Estate. We have scrutinised all the charges. Those at pages 268 (£137.67), 270 (£120.44), 272 (£17.63), 273 (£197.08), 274 (£69.81), 276 (£54.63), 279 (£27.60), 280 (£82.25) and 282 (£133.40) relate to Block B and we accept that they are all properly the subject of a service charge. The total amount covered by the works orders on those pages is £840.50. In addition, the works order at page 281 relates to fire risk assessment carried out in respect of all the blocks on the Estate at a cost of £2875, and that cost is properly divisible by 151, resulting in a cost for the risk assessment of £456.95 attributable to Block B. The total repair costs attributable to Block B thus

aggregate to £1297.45, which we consider to have been reasonably incurred and properly the subject of a service charge.

Pest control

39. The cost in the accounts for Blocks B and F was £1288.31, based on 30/151 of total cost of £6484.50. This equates to £1030.56 for Block B and to £42.94 for each leaseholder. The tenants said the charge was excessive by comparison with that for the previous year. They appeared to suggest that since some of the mice were found in individual flats the cost should be attributed to the occupant of that flat. But in our view, mice being what they are, pest control should rightly be regarded as an Estate-wide problem and the costs of pest control were properly divided equally between all the occupants. The landlord conceded a different approach in the previous year, but our determination is that the charge was reasonably incurred and payable as a service charge.

Entryphones

40. A charge of £82.25 was made in this year, equivalent to £65.80 for Block B and £2.74 for each leasehold flat. The tenants said that the entryphone system should have been under guarantee. We accept the landlord's evidence that the cost was not covered by a guarantee and are satisfied that the cost was reasonably incurred.

Security

41. The charge in the accounts for the 30 leasehold flats was £8864.74, equivalent to £7092 for Block B and to £295.50 for each flat. On balance we accept that this charge was reasonably incurred for the same reasons as those we gave in relation to the charge for the previous year.

Electricity

42. The charge in the accounts for communal electricity was £2465 for the leasehold flats, equivalent to £1972 for Block B and £82.17 for each flat. As with 2007/2008 the figures are not at all clear, with many charges brought forward. We are satisfied that the sum in the accounts overstates the electricity which was or ought to have been consumed, probably because of incorrect apportionment and because many of the charges are estimated, and, doing the best we can, we determine that a reasonable charge would have been the same as for the previous year, namely £510.77 for Block B, or £21.28 for each leaseholder.

Audit fee

43. The charge in the accounts was £428, equivalent to £342.40 for Block B and £14.26 for each leaseholder. We consider that this is a reasonable charge, as in the previous year, and for the same reasons.

Management

44. The tenants said that the management was particularly poor in this year. They said that in April 2009 some of the tenants had received a letter from their mortgagees to say that the building was no longer insured, and that they had immediately contacted the landlord who did nothing until 18 June to reassure them that the building was in fact insured. The tenants said that some of them had also been very concerned to receive letters, apparently from a firm of debt collectors, which said that electricity bills had not been paid. They said that these incidents had caused them immense concern and typified the landlord's poor management. Mr Donnellan said that the building was insured throughout, that it appeared that the letter suggesting that the building was not insured was fraudulent and nothing to do with any failure on the part of the landlord, and that the problem with the electricity bill had arisen

because Monarch, which was employed by the landlord to administer the supply of electricity to its properties, had failed to pay a bill.

45. We accept the tenants' evidence that landlord was at fault in not dealing more speedily with the tenants' understandable concern about whether the building was insured, and that the delay reflected badly on the quality of management, and we accept the tenants' evidence that the standard of management continued to be poor. We consider that a reasonable fee for management would in the circumstances have been £100 for each flat. Accordingly the contribution for Block B is £2400.

Apportionment

46. The tenants were concerned because the service charge budgets prepared by the landlord suggested that the service charges for three bedroomed flats were less than those for two bedroomed flats. For example, the service charge budgets for 2008/2009 at pages 97, 98 and 99 of the landlord's bundle suggest at first reading that the tenant of a one bedroomed flat would be asked to pay £154.26 towards communal repairs and maintenance, whereas the tenant of a two bedroomed flat would be asked to pay £356.90 and the tenant of a three-bedroomed flat £151.30 for the same service.

47. Mr Donnellan said that the tenants' concern was based on a misunderstanding of the service charge budget. He said that his instructions were that the estate budget for 2008/2009 had been apportioned on the basis of the floor area of each unit as a proportion of the whole. He said he had been instructed that the combined floor area of the units on the Estate was 12,135 sq m, and that there were 36 one bedroomed flats, 61 two bedroomed flats, 20 three bedroomed houses and 16 four bedroomed houses. He said that his instructions were that the floor area of each of the one bedroomed flats was 52 sq m, the area of each of the two bedroomed flats was 71 sq m, the area of each of the three bedroomed flats was 102 sq m, the area of each

of the three bedroomed houses was 112 sq m, and the area of each of the four bedroomed houses was 116 sq m. He said that his instructions were that the combined floor area of the one bedroomed flats was approximately 15% of the whole floor area of all the units on the Estate, the combined floor area of the two bedroomed flats was approximately 36% of the whole, the combined floor area of the three bedroomed flats was approximately 15% of the whole, the combined floor area of the three bedroomed houses was approximately 18% of the of the whole, and the combined floor area of the four bedroomed houses was approximately 15% of the whole (a total of 99%). He said that this was intended to be reflected in the service charge budget in question, which set out the total advance contribution of all the leaseholders with a flat of a particular size. (On that basis, and if the figures in the budget were reflected in the service charge demands and the landlord's solicitors say they were, we calculate that the leaseholder of a one bedroomed flat would have been asked to pay, correct to two decimal places, 0.43% of the total Estate-wide costs, the leaseholder of a two bedroomed flat 0.59%, and the leaseholder of a three bedroomed flat 0.84%, which is not unreasonable.) The tenants did not accept that these figures were accurate and Mr Donnellan indicated that further information would be made available to the tribunal on the second day of hearing, but it was not.

48. In the landlord's further representations dated 11 December 2009, in the form of a letter from its solicitors, the landlord said that in future, with effect from the service charge year 2009/2010, it intended to apportion the costs equally between all the 151 units of accommodation, save in the case of items which related to a specific block, namely the costs of cleaning, grounds maintenance, electricity, and insurance, which would be based on the charges incurred in respect of specific blocks and the costs apportioned equally to each leaseholder.

49. We are satisfied that costs should be apportioned to the relevant building, which is Block B, when that can reasonably be done, but that where it cannot, equal apportionment between all the 151 units is a not unreasonable approach. The landlord agrees that the costs of cleaning, electricity and

insurance can be accurately attributed to Block B rather than divided on an estate-wide basis. The landlord also agrees that the costs of grounds maintenance can be attributed to Block B, but in our view the costs of grounds maintenance are more appropriately to be regarded as Estate costs and apportioned equally between all 151 units on the estate. The evidence suggests that the costs of cleaning, electricity to the block (but not to the common parts of the Estate), repairs and maintenance, lifts, entryphones, insurance, sundries and audit fee which are referable to Block B can be ascertained and should be borne by the leaseholders of that block; but that the costs of grounds maintenance, electricity to the common areas of the Estate, pest control, security and management should be regarded as Estate costs and divided equally between the 151 units on the Estate.

50. We have misgivings about whether it will be reasonable in the future to adopt a different approach and to divide the "block costs" equally between the leaseholders of each flat regardless of the size of the flat, although such a method has the virtue of simplicity. The question was not argued at the hearing because the landlord's suggestion had not then been made. Since, apparently, the "block costs" have been divided on the basis of floor areas in the past, it may well be that the tenants would wish to argue that the same method ought to be adopted in the future. We hope that this aspect can be agreed between the parties, but, if not, we will determine it and make directions for the material required for the determination. In view of the state of the evidence we have determined the reasonable costs but have not, at this stage, determined the liability of each leaseholder in Block B to contribute to the block costs. The costs which we have determined as reasonable are set out in an appendix to this decision.

2009/2010

51. The estimated costs for the year are set out in a budget at page 100 of the landlord's bundle. The estimates given all relate to Blocks B and F combined and (excluding water supply and sewerage charges) are £1837.72

for insurance, £1000 for lift service contracts, £1000 for repairs and maintenance, £26,226.60 for cleaning, £2617.92 for grounds maintenance, £189.41 for communal telephone, £65.53 for sundries, £670.38 for communal electricity, £9142.26 for security, £423.58 for audit fee, £220.11 for pest control, £2800 for scheme manager's costs, £4500 for management fee, and £1000 reserve fund. The notes to the budget include that the grounds maintenance charge has been apportioned between 151 units, that the scheme manager's costs are for the "31/2 days spent at Airco by Mike Oconor [sic]" and that all other elements of the service charge have been apportioned between 30 properties.

52. In our view the estimated charge for cleaning is wholly excessive and we consider that it should be no more than £3500 for Block B, and the cost of communal telephone and scheme manager should be excluded, as in previous years. The estimated charges which we determine to be reasonable for Block B (based on 24/30 of the costs estimated by the landlord) are:

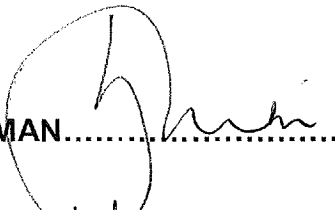
Insurance	£1469.78
Lifts	£800
Cleaning	£3500
Repairs	£800
Pest control	£180
Grounds maintenance	£2095
Sundries	£52
Security	£7314
Electricity	£536.30
Audit fee	£338.86
Management	£3600
Reserve	£800
Total	£21,485.94

Costs

53. Ms Williams conceded that the application and hearing had been justified and agreed that the landlord would reimburse to the tenants the fees which they had paid for the application and hearing, and that the landlord would not seek to place its costs in connection with the hearing on any service charge. We agree that these concessions were properly made in view of the mistakes which the landlord has made and the confusion which it has caused to the tenants and therefore order under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the landlord reimburse the application and hearing fees of £500 paid by the tenants and we make an order under section 20C of the Act that none of the landlord's costs should form the subject of any service charge.

CHAIRMAN.....

DATE:


1 March 2010

1 – 24 Airco Close

Appendix to decision

Costs determined by the tribunal to have been reasonably incurred in
the years 2006/2007, 2007/2008 and 2008/2009

	2006/2007	2007/2008	2008/2009
Insurance		£1400.17	£1289.58
Lifts		£552.94	£552.94
Cleaning		£3500	£3500
Repairs		£82.25	£1297.45
Entryphone			£65.80
Pest control		£143.76	£1030.56
Grounds maintenance		£320.10	£398.93
Sundries	£162.15	£51.35	£23.38
Security		£6965.53	£7091.79
Electricity		£510.77	£510.77
Audit fee	£77.90	£322.73	£342.40
Management	£1200	£2400	£2400
Total	£1440.05	£16,249.60	£18,503.60