

**LEASEHOLD VALUATION TRIBUNAL****LANDLORD AND TENANT ACT 1985, Section 27A as amended by the  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002****Application for determination of liability to pay service charges**

**Property:** The Works, 33 Withy Grove, Manchester, M4 2 BJ

**Applicants:** Mr Luis Stockton & Mr Jordan Stockton

**Respondent:** Mr Tonkin, Mr Whittaker, Mr D Taylor, Mr L Green & Mrs J Green, Mr Ali, Mrs D Gregory, Mr Talbot & Ms Willis, Mr Numan & Z Sheikh and Mr Khan

**Tribunal:** P J Mulvenna LLB DMA (Chairman)  
Mrs E Thornton-Firkin BSc MRICS  
Dr J Howell

**Date of Hearing:** 6 May 2010

**INTRODUCTION**

1. By an application dated 20 November 2009, the Applicants applied for a determination as to the payability and reasonableness of the service charges in respect of The Works, 33 Withy Grove, Manchester, M4 2BJ ('the Property').
2. The Property was constructed by or on behalf of Space Developments UK Limited ('Space') in or around 2005. Space entered into a lease with Dylan Harvey Limited ('DHL') on 16 November 2005 which granted a term of 999 years from 23 September 2005 in respect of the commercial premises. The same parties entered into separate leases ('the Leases') for each apartment which granted terms of 250 years from 23 September 2005. DHL entered into commercial arrangements, reasonably contemporaneously with the Leases, with the Respondents who acquired their interests as buy-to-let investments. The Respondents' interests were all acquired between 26 September and 26 October 2005.
3. The Applicants acquired the freehold interest in the Property from Space and have appointed Premier Estates Limited ('the Managers') to manage the Property.
4. The Respondents cumulatively own 21 apartments in the Property.

**THE PROPERTY**

5. The Property is a nine storey purpose built building situated on the edge of Manchester city centre on the site of the former Swan with Two Necks public house. The ground floor comprises three commercial units, currently used as a nightclub, a convenience store and a delicatessen. The other eight floors are residential with a total of 36 apartments.
6. Entry to the residential accommodation is through a door fronting Withy Grove into a ground floor communal area which accesses the lift and the refuse storage area, which is situated at, and accessed for collection from, the rear of the Property. There is no

communication at ground floor level between the commercial and the residential parts of the development, but the commercial occupiers have access through the front door to the refuse storage area.

### **THE INSPECTION**

7. On 6 May 2010, the Tribunal inspected the common areas of the residential accommodation and, with the consent of the occupier, one of the apartments in the Property. At the inspection, the Applicants were represented by Messrs B Jordan, P Ward and Mr S Fentom. The Respondents were represented by Messrs N Brittain, S Buxton and M Gholaseinge.

### **THE HEARING**

8. Directions were issued by Mr A Robertson, procedural chairman, on 10 December 2009.
9. The substantive hearing of the application was held at the Tribunal's offices, 5 New York Street, Manchester, on 6 May 2010. The Applicants were represented by Messrs B Jordan, P Ward and Mr S Fentom. The Respondents have not all replied to the application. Those who have, Mr D Taylor, Mrs D Gregory, Mr L Green and Mrs J Green were represented by Mrs J Green and Messrs N Brittain, S Buxton and M Gholaseinge. The Tribunal is satisfied that all parties were given reasonable and adequate notice of the time and place of the hearing. For the avoidance of doubt, this determination applies in respect of the service charges for all the apartments in the Property, irrespective of reply by any individual Respondent to the application or appearance or representation at the hearing.
10. The Tribunal heard oral evidence and submissions from Mr B Jordan on behalf of the Applicants and oral evidence from Mrs J Green and Mr S Buxton, together with oral submissions from Mr N Brittain, on behalf of the Respondents.
11. The Tribunal also had before them the written evidence and submissions of the Applicants and the Respondent.

### **THE EVIDENCE, SUBMISSIONS & ISSUES FOR DETERMINATION**

12. The Applicants have asked for a determination of the reasonableness of the service charges for the financial years 2005/06 to 2008/09 and the estimated service charge for the year 2009/10 which were shown in the application form as follows:

Year ended 30 September 2006	£
Management fees	7,038
Insurance	10,414
Cleaning	2,421
Repairs & maintenance	8,099
Window cleaning	1,721
Accountancy	411
Sundry expenses	9
Cyclical maintenance fund	3,300
Sinking fund	1,700
Bank interest	(48)
Bank charges	138
Total	35,203

Year ended 30 September 2007 £	
Electricity	5,000
Management fees	6,452
Insurance	5,090
Cleaning	4,463
Repairs & maintenance	11,155
Window cleaning	329
Accountancy	411
Cyclical maintenance fund	3,880
Sinking fund	2,000
Bank interest	(6)
Bank charges	205
Legal & professional fees	258
Health & safety	411
Total	39,848

Year ended 30 September 2008 £	
Management fees	7,389
Insurance	18,935
Water	100
Electricity	10,427
Lift repairs & maintenance	3,045
Repairs & maintenance	4,316
Window cleaning	510
Accountancy	431
Caretaking	5,346
Emergency cover	235
Refuse collection	7,018
Cyclical maintenance fund	3,880
Sinking fund	2,000
Legal & professional fees	300
Bank charges	92
Total	64,024

Year ended 30 September 2009 £	
Management fees	7,620
Buildings insurance	14,575
Engineering insurance	764
Refuse collection	5,553
Caretaking	3,675
Repairs & maintenance	5,550
Lift repairs & maintenance	4,298
Window cleaning	169
Accountancy	486
Water	100
Electricity	5,699
Cyclical maintenance fund	3,000
Sinking fund	2,000
Out of hours cover	235
Bank charges	759
Total	54,483

Year ending 30 September 2010 £	
Management fees	8,146
Buildings insurance	15,300
Engineering insurance	250
Refuse collection	5,700
Caretaking	7,280
Window cleaning	700
Repairs & maintenance	5,000
Lift repairs & maintenance	2,500
Accountancy	470
Water	100
Electricity	8,000
Cyclical maintenance fund	3,000
Sinking fund	2,000
Out of hours cover	235
Bank charges	160
Miscellaneous	1,500
Total	60,341

13. The Applicants provided evidence of the expenditure incurred to support the level of service charges made. They accepted that the Property was in an unsatisfactory condition but submitted that, because the Respondents had withheld payment of the service charges, some for all of, and others for some of, the years in question, they had discharged their responsibilities under the Lease to the best of their ability having regard to the absence of adequate funding. The approach adopted had been to address only those items which were of a critical health and safety nature.
14. The Respondents submitted that the condition of the Property was as a direct result of the Applicants' failure to address the causes of the vandalism which had resulted in the deterioration of the Property. In particular, it was submitted that action should

have been taken to strengthen security by replacing the front door as soon as it became apparent that acts of vandalism were taking place.

15. The Respondents accepted that some of the expenditure included in the service charges had been properly incurred and did not seek to challenge the reasonableness of the whole of the expenditure. Their challenge was in relation to those heads of expenditure which could have been avoided if timely action had been taken to replace the front door. They contended that the service charges should be reduced on the following bases:

(a) Avoidable expenditure in respect of maintenance

The following amounts included in particular invoices were submitted as being related to expenditure which would have been avoided had the front door been replaced when vandalism and its consequences first became apparent (some of the items were included in the accounts twice; this error was subsequently recognised and the accounts were adjusted accordingly. The duplicated invoices have not been included in the following lists).

(i) 2005/06

Kingston Maintenance (Manchester) Limited, 5 invoices totalling £813.64  
Peter Richards Group, 1 invoice for £105.75  
Premier Estates Limited, 1 Invoice for £235.00  
Total £1,154.39

(ii) 2006/07

C G Cleaning Limited, 2 invoices totalling £126.90  
Groundlevel Limited, 2 invoices totalling £197.41  
Kingston Maintenance (Manchester) Limited, 5 invoices totalling £328.83  
Kone Bolton Brady, 2 invoices totalling £976.43  
Total £1,629.57

(iii) 2007/08

Thordale Property Repairs, 1 invoice for £200.00  
Kone Bolton Brady, 1 invoice for £556.95  
Groundlevel Limited, 1 invoice for £123.38  
Serviceline Electronics, 3 invoices totalling £141.00  
Total £1,021.33

(iv) 2008/09

CITYM, 8 invoices totalling £1,346.96  
Groundlevel, 2 invoices totalling £197.41  
Kingston Maintenance (Manchester) Limited, 5 invoices totalling £328.83  
Kone Bolton Brady, 2 invoices totalling £976.43  
Total £1,629.57

(b) Cleaning

It was submitted that the charges for cleaning should be reduced to reflect the additional cleaning which it was considered had been required as a result of the avoidable vandalism.

(c) Management fees

It was submitted that the management fees should be reduced to reflect the failure of the Managers properly to discharge their duties by addressing the vandalism issues timeously and effectively.

**THE LEASES**

16. The apartments in the Property are held under the provisions, terms and conditions of the Leases. The Tribunal has read and interpreted the Leases as a whole but in reaching its conclusions and findings has had particular regard to the following matters or provisions contained in the Leases, none of which were the subject of dispute or argument by or on behalf of the parties:

- (a) Clause 1.13 defines 'The Service Charge' as 'the Service Charge Proportion of the Maintenance Expenses';
- (b) Clause 1.10 defines 'the Maintenance Expenses' as 'all costs and expenses incurred by the Lessor during a Financial Year in or incidental to providing all or any of the Services and the specific costs expenditure and other sums mentioned in paragraph 6 of the Sixth Schedule but excluding any expenditure in respect of any part of the Building for which the Lessee or any other lessee is wholly responsible and excluding any expenditure that the Lessor recovers or that is met under any policy of insurance maintained by the Lessor pursuant to its obligations under this Lease.'
- (c) Clause 6 sets out the Lessor's covenants in respect of the provision of services, as follows:

'The Lessor covenants with the Lessee at all times (subject to payment of the Service Charge by the Lessee as herein provided):

6.1 to take all reasonable steps to inspect maintain repair redecorate or otherwise treat and renew (as appropriate) and to keep in good and substantial repair and condition the Maintained Property

6.2 to keep the Communal Areas fit so far as is reasonably appropriate

6.3 to insure and keep insured the Building (other than the plate glass in the Commercial Unit) in the name of the Lessor against loss or damage by the Insured Risks in some insurance office of repute to the full reinstatement value including architects and surveyors fees and in such values as the Lessor acting reasonably shall think fit and if and when required (but not more frequently than once in every 12 months) supply to the Lessee a copy of the receipt for the last premium and a copy of the policy (or other evidence of the subsistence extent and condition of the cover) and in the event of the Building being damaged or destroyed by any of the Insured Risks as soon as reasonably practicable to payout the insurance monies received in repairing rebuilding or reinstating the same to keep the gardens and grounds of the Maintained Property generally in a neat and tidy condition and tending and renewing any lawns flower beds shrubs and trees forming part thereof as necessary and maintaining repairing and where necessary reinstating any boundary wall hedge or fence (if any) relating to the Maintained Property including any benches seats garden ornaments sheds structures or the like to keep the Accessways in good order and repair and clean and tidy

6.5 to provide such security for the Building as the Lessor considers reasonably necessary and appropriate'.

(d) Schedule 6 contains details of the method of calculation of the service charge and its recovery. The schedule lists in detail the services which might be provided. The Respondents have not challenged any of the expenditure on the basis that it was outside the scope of these details.

#### **THE DETERMINATION AND DECISION**

17. The Tribunal considered the evidence and submissions and relied on its own knowledge and expertise to determine what costs could properly and reasonably be recovered as part of the service charge.
18. The Property does not enjoy the most appropriate or ideal location for residential accommodation. Whilst it is adjacent to recently developed areas of Manchester city centre with access to the premier shopping and other facilities which might be expected to be found in a regional centre, the immediately surrounding area might be described as a hub of late night entertainment with many bars, night clubs and venues of a similar nature. The Property also abuts an area of general dilapidation in the Shudehill area of Manchester.
19. The location of the property makes it less desirable than many of the other apartment blocks, both new-build and converted, mixed use and solely residential, which have been developed in central Manchester in recent years and it is not surprising that the Property should become an early casualty in the recession which followed the economic downturn in the middle of the present decade and resulted in the supply of such accommodation exceeding demand.
20. The Tribunal considers that these circumstances had a material effect on the attractiveness of the Property to potential occupiers as a result of which rental income expectations had to be reduced and, perhaps, standards lowered in respect of the occupiers who might have been attracted. In the early days, it was hoped that young professionals might be attracted. It now appears that multi-occupation by students is more realistic. Be that as it may, it was still somewhat surprising that the Property's condition should deteriorate so rapidly.
21. The deterioration in the condition of the Property first became apparent in early 2006. The Managers wrote to the Respondents and the occupiers on 17 February 2006 to advise them of damage to the front door and action proposed to be taken. There followed a period of recurring problems with the front door and with vandalism.
22. The parties are agreed that a significant accelerator of the deterioration of the condition of the Property was vandalism. There is a difference between them as to the source of the vandalism. The Applicants, based on anecdotal evidence of drug dealing by some of the occupiers, believe that the vandalism was caused by those occupiers and/or their visitors, either directly by physical abuse of the Property or indirectly by permitting, or at least not discouraging, unauthorised entry by strangers. The Respondents, based on recurring problems with the front door, believe that the vandalism was caused by trespassers whose entry to the Property was aided by the lax security afforded by the ineffective front door.
23. There is no evidence to support either view. The vandalism could have been caused by the occupiers, their visitors or trespassers. Strangers could have gained access to the Property by 'tailgating' occupiers or their visitors or the occupiers of the commercial/retail units on the ground floor or their employees, or by a failure of those

lawfully present to exercise reasonable and diligent care to prevent or deter unauthorised access.

24. There is evidence that some of the occupiers (and/or their invitees) abused the Property: Manchester City Council complained about refuse being thrown from the apartments onto the roofs of nearby premises; refuse was routinely left in the communal areas; and the lifts were damaged. There is also evidence that trespassers were in the property: reports of homeless persons sleeping in the communal areas; use of the communal areas as lavatories; and general theft, particularly in relation to the occupiers' post boxes which are situated in the communal entrance area on the ground floor. In these circumstances, the likelihood is that the vandalism was caused by a combination of the sources suggested by the parties. There is no evidence to suggest that any one source was predominantly causative.
25. It is against this background of uncertainty as to cause and, therefore, as to effective remedy, that consideration has to be given to the reasonableness of any action taken, or the unreasonableness of any omission to take action, to address the problems caused by vandalism. As a first step, it is necessary to consider the responsibilities of the parties involved.
26. The Applicants are responsible for the management of the building. They employ the Managers with an ability closely to monitor the condition of the Property and to take appropriate action, in consultation with the Respondents, if necessary. They have covenanted 'to take all reasonable steps to inspect maintain repair redecorate or otherwise treat and renew (as appropriate)', 'to keep [the Property] in good and substantial repair and condition' and 'to provide such security for the Building as the Lessor considers reasonably necessary and appropriate.' There can be little doubt that the Applicants have fallen short in complying with their covenant, but they have been denied funds by the Respondents. It is understandable that they should have limited their activity to health and safety critical issues. Mr Buxton identified nine items of such a nature which he had previously identified and which had not been addressed by the time of the Tribunal's inspection. Whilst it is a matter of concern that some of the issues have not been addressed, the Tribunal does not consider that they are material in determining the reasonableness of the Applicants' actions. The overriding difficulty which they faced was a shortage of funds which meant that they had to be selective in the action which they took. The Applicants did, however, fail in their duty to take proper action to recover the arrears. The only action taken was a county court action against Mr Taylor and Mrs Gregory. It failed because the action was brought in the name of the Managers rather than the Applicants. The Applicants' failure to take appropriate action contributed to the shortage of funds.
27. The Respondents are responsible for ensuring that the apartments at the Property are occupied by tenants who are of good character and comply with any requirements for the benefit of the Property and all those with interests in the Property. The Tribunal was told that the Respondents employ letting agents to vet potential tenants. It is, however, the Respondents who have ultimate responsibility and must exercise appropriate control. The Respondents must also accept the risk associated with their investment. They could reasonably be expected to be aware of the comparative unattractiveness of the location of the Property and the attendant risk. The Respondents also had an obligation to pay the service charges. If they thought that elements were unreasonable, they should have challenged them properly rather than



withholding payment in full. It was reasonably foreseeable that doing so would hinder the Applicants' discharge of their responsibilities.

28. It would be idle to seek to apportion blame or fault to the parties. They are, to an extent victims of circumstances which are out of their control, having arisen from a recession which fundamentally changed the expectations for the Property. That change was not entirely unforeseeable, but the timing could not easily have been predicted. It is evident, however, that neither party fully discharged their responsibilities in relation to the Property. In these circumstances, the Tribunal has concluded that it would be unjust for the burden of any extra costs to fall to be met solely by the Applicants or the Respondents. There is no evidence that either should bear a greater share of that burden and it follows that it must be shared equally.
29. In assessing the burden, the Tribunal has adopted the approach advocated on behalf of the Respondents. In relation to the maintenance items, it is reasonably likely that, if appropriate action had been taken earlier (which, in the Tribunal's view, could only have occurred if the Applicants had fully considered all the options rather than basing their response only on anecdotal evidence and if they had the appropriate funds from the Respondents) some of the expenditure could have been avoided. It is not, by any means, clear that such would have been the case in respect of all the invoices challenged by the Respondents. In relation to the cleaning charges, it is possible that some additional costs were incurred as a result of vandalism. It is not, however, apparent what the incidence of any additional costs might have been. Moreover, the uncertainty as to the cause of the vandalism renders it impossible to estimate the extent of any additional charges. The Tribunal has determined that a fair way of addressing these issues is to accept the challenge to the maintenance items in their entirety and not to reduce the costs in respect of cleaning. The challenged maintenance items would be disallowed as to 50% of the invoice amounts to reflect the equal share of the burden. Any other approach would be an illusory attempt to apportion costs without evidential justification.
30. In respect of the management fees, the Tribunal finds that the Applicants failed in their duty to recover the arrears of service charge. This failure contributed significantly to the lack of funds and probably contributed to some of the Respondents following the example of the initial non-payers. The Tribunal has determined that the Applicants' failure in this respect merits a reduction in the management fees of 5% in the years between the failed county court action and the present application, that is, 2006/07, 2007/08 and 2008/09.
31. Applying these findings to the service charges demanded (as extracted from the summary of expenditure found in the Applicants' bundle), those charges should be amended as follows, rounded to the nearest pound:
  - (a) For the year ended 30 September 2006, the management fees should be reduced by £352 from £7,038 to £6,686 and the repairs & maintenance item should be reduced by £577 from £8,192 to £7,615 giving a revised total for the year of £34,275.
  - (b) For the year ended 30 September 2007, the management fees should be reduced by £323 from £6,452 to £6,129 and the repairs & maintenance item should be reduced by £815 from £11,156 to £10,341 giving a revised total for the year of £35,511.

- (c) For the year ended 30 September 2008, the management fees should be reduced by £369 from £7,389 to £7,020 and the repairs & maintenance item should be reduced by £510 from £4,316 to £3,806 giving a revised total for the year of £63,145.
- (d) For the year ended 30 September 2009, the management fees should be reduced by £381 from £7,620 to £7,239 and the repairs & maintenance item should be reduced by £815 from £5,550 to £4,635 giving a revised total for the year of £53,287.
- (e) The Tribunal can see no reason to disturb the service charge for the year ending 30 September 2010 as it appears to be based on bona fide estimates. It remains, therefore, at £60,341.

## COSTS

32. Neither party asked for an order for costs to be awarded against the other. The Tribunal did, however, consider the power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

‘(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.’

33. The Tribunal did not consider that any of these circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

34. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

‘(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).'

35. The Tribunal has reviewed all the evidence in this case and has determined that it would not be appropriate to make an order for reimbursement in the circumstances of this case.

36. No application was made by the Respondents under section 20C of the Landlord and Tenant Act 1985 that an order be made that the costs incurred, or to be incurred, by the Respondents in connection with the proceedings before the Tribunal should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has not, therefore, considered the position.

### ORDER

That the service charges for the following years be as indicated and that each Respondent be required to pay the service charges apportioned to his/her apartment(s) under the terms of the relevant Lease(s):

- (a) For the year ended 30 September 2006, £34,276.
- (b) For the year ended 30 September 2007, £35,511.
- (c) For the year ended 30 September 2008, £63,125.
- (d) For the year ended 30 September 2009, £53,287.
- (e) For the year ending 30 September 2010, £60,341.



Signed.....

P J Mulvenna

Chairman

17 May 2010