



DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

In respect of an applications by the Applicant under section 27A of the Landlord and Tenant Act 1985 ('the Act') for a determination as to whether service charges are payable and if so as to their reasonableness

Applicant: The Wrekin Housing Trust Limited

Respondent: Ivor Nico Thomas

Property: 24 Boulton Grange, Randlay, Telford TF3 2LA

Date of Application: 8th July 2011

Date of Hearing: 12th September 2012

Hearing Venue: Telford County Court

Representation:

Applicant: Mr Tony Watkin of counsel

Respondent: None

TRIBUNAL: Mr W J Martin (Chairman)
Mr S Berg F.R.I.C.S

Date of Determination: 08 OCT 2012

Preliminary

- 1 On 17th June 2011, District judge Chapman by General Form of Order ('the Order') dated 21st June 2011, ordered that Claim No OTF01350 ('the Claim') be stayed and that 'the matter be transferred to the Leasehold Valuation Tribunal'.
- 2 The Claim arises from service charges and ground rent allegedly unpaid by Ivor Nico Thomas ('the Respondent') to The Wrekin Housing Trust Limited ('the Applicant') for the years (1st April to 31st March in each case) 2005 – 2006, 2006 – 2007, 2007 – 2008, 2008 – 2009, 2009 – 2010 and 2011 – 2012. The Service Charges are in respect of 24 Boulton Grange, Randlay, Telford, TF3 2LA ('the Property') and the Respondent's liability in respect of them arises from a Lease dated 14th April 2003 and made between the Applicant (1) and the Respondent (2) ('the Lease'). The Tribunal has no jurisdiction in respect of the Ground Rent.
- 3 In accordance with its normal procedures following the transfer of a case involving service charges from the County Court, the Tribunal requested the Applicant to complete an Application form ('the Application') in respect of the service charges for the years in question. The Applicant submitted the Application to the Tribunal on 8th July 2011.
- 4 In accordance with Directions issued by the Tribunal dated 15th July 2011, the Respondent provided a bundle of evidence and a Scott Schedule. At the same time the Respondent asked that there be included within the Application the following outstanding service charges:
 - 2007/8 - £249.99 for painting works
 - 2010/11 - £179.93 for the digital aerial at the Block
- 5 The Respondent has submitted no evidence or submissions as directed by the Tribunal. On 31st October 2011, the Tribunal ordered that the Application proceeded to a Hearing without the Respondent submitting a case. However, it was made plain by the Tribunal that the Respondent was not thereby debarred from making oral representations at the Hearing.
- 6 The only written submissions of the Respondent are contained in his Defence filed at the Wrekin County Court on 26th April 2011.

The Service Charge Provisions of the Lease

- 7 Clause 1 of the Lease (Definitions and Interpretations) defines 'Service Charge' as:
 - (a) the Proportion of the Service Costs; and
 - (b) such reasonable flat rate charge as we determine is necessary to cover our direct and indirect costs incidental to the management of the Building and/or the provision of Services where there is no direct expenditure to levy our management charge
- 8 'Proportion' is defined in Clause 1 as:

'the proportion set out in the particulars, or such proportion as we may determine acting reasonably to be reasonable in the circumstances.'

'Proportion' is referred to in the Particulars, but is shown as 50%, clearly referring to the level of discount applied to the purchase price, the Lease being one granted pursuant to the Right to Buy provisions of the Housing Act 1985. Accordingly the proportion falls to be determined by the Applicant in accordance with the above provisions.

- 9 Paragraphs 1 and 2 of the Sixth Schedule to the Lease contain the operative words that oblige the Applicant to provide the services, and the list of permissible costs which may be incurred in the provision of the services.
- 10 Paragraph 3 of Schedule 6 to the Lease contains the provisions for the payment of the Service Charge. In short, they require the Applicant to provide an estimate of the service charge for the following year before 1st April in each year, and on 1st April to invoice the Respondent with the amount. There is a provision allowing the Respondent to pay by 10 monthly instalments. Within six months of the end of the Service Charge Year, the Applicant is to provide a Service Charge Statement setting out the actual costs, and providing for adjustments of Respondent's service charge account to deal with under or over provision in the Estimate.

Inspection

- 11 The Tribunal inspected the Property and the common parts surrounding it on 12th September 2012 in the presence of Ms Gojka, Housing Executive and Mr Watkins, counsel for the Applicant. The Respondent was not present, and apparently not in residence at the Property.
- 12 The Property comprises a two-bedroom maisonette on two floors. It is approached by its own front door. The Tribunal inspected the interior common parts of the other properties in Block 'D' (see paragraph 15 below), and the communal landscaping and garden areas serving the Property and the other units at Boulton Grange.

Submissions and Hearing

- 13 Following the Inspection, a Hearing was held at Telford County Court. This was attended by Mr Watkins, Ms Gojka and Ms Wadey (Finance Manager). The Respondent was neither present nor represented. The Tribunal is satisfied that the Respondent was aware of the date, time and location of the Hearing. The Applicant provided evidence of the service on the Respondent of the Hearing bundles it had provided in accordance with the Tribunal's Directions.
- 14 Although the Respondent had not made any effort to comply with the Tribunal's Directions, the Respondent had served a Defence Statement in the County Court proceedings. As the case has been transferred by the Order the Tribunal considers that it is obliged to consider the submissions made in the Defence Statement. The Respondent's main contentions are summarised as follows:

- a. The Respondent says that he has had great difficulty in finding out from the Applicant what he was paying for, and the percentage due from him.
- b. Most of the work carried out from June 2003 is in relation to a block of flats which the Respondent has no access to or any need to gain access to as his flat has a separate front door on to the street. He has no key or tag to gain entry to the communal areas in that block.
- c. The Respondent has no problems in contributing to his fair share of administration costs, insurances and commercial cleaning both outside and inside the block of 'D' flats.
- d. The Respondent does have problems and concerns in paying for services and repairs that do not involve his property, such as vandalism to commercial blocks to which he has no access, repairs and servicing to door entry systems to which he has no access, and work carried out that is not to Block D i.e. work not listed on a document given to him by the Applicant entitled 'Repairs carried out to Block D'. (Regrettably there is no copy of this document with the Tribunal's papers).
- e. There is a general comment that the majority of works are substandard and of poor workmanship as per photographs provided.

15 It became clear, following the Tribunal's inspection, at the Hearing, and in submissions made by the Applicant after the Hearing that the proportion of the service charges applicable to the Property is calculated as follows:

(a) The 'Building' is defined in the Particulars of the Lease as 1 - 56, Boulton Grange. However, in practice the Service Charge is calculated on the basis of more properties, including 57 - 64 Boulton Grange.

(b) The Applicant has divided the 64 units into 8 'Blocks' comprising differing numbers of units as under:

A	6
B	8
C	8
D	5
E	8
F	8
G	5
H	8
J	8

(c) The Property is in Block 'D'. Those costs directly relevant to Block 'D' are divided proportionately between the five units. Ms Wadey explained to the Tribunal that the Property has been allocated a percentage of 19.5707%. The precise origin of this percentage is not completely clear, but it transpired that not all of the leases of the other units in Block D are in precisely the same terms as the Lease. Others required calculations based on Rateable Value. The Property is larger than some of the other units and on an equal split would pay 20%. If the split were entirely based upon Rateable Values, the

Property would bear 21.95%. Accordingly, it was submitted that the 19.5707% allocated was reasonable.

(d) In respect of Grounds maintenance, the Applicant divides the total cost by 64 and then allocates each block with the proportion attributable to it based upon the number of units to obtain the Block Cost. In the case of Block 'D' this amounts to 5/64ths. The Block Cost is then multiplied by 19.5705% to determine the Respondent's charge.

(e) An exception to the above occurred in 2010/11. The Applicant incurred charges amounting to £4,000 in respect of works to trees at Boulton Grange and various other properties. The total cost was apportioned on an equal basis to any blocks in the various developments where trees were part of the programme of works. Each Block at Boulton Grange incurred a cost of £161.11, which was apportioned as to 19.5705% to the Respondent.

- 16 It also became clear during the Hearing, that prior to 1st April 2009, the Applicant had been administering the Service Charge on a different basis to that which is in operation now, and more importantly, in a manner not strictly in accordance with the provisions of the Lease. In short, the Applicant was not collecting an estimated amount at the beginning of each service charge year, but instead was invoicing on a monthly basis in respect of the service charge operations carried out during the previous month. This naturally raised the question as to whether the service charges during these years were payable. Recognising this difficulty, Mr Watkins undertook to the Tribunal that all claims in respect of the three years would be withdrawn in the County Court. The relevant amounts are as follows:

2005 – 2006:	£330.28
2006 – 2007:	£391.47
2007 – 2008:	<u>£276.13</u>
	£997.88

The amount of the Applicant's claim in the County Court is therefore reduced by £997.88. The Tribunal is not, therefore, required to make a determination in respect of these three years.

Determination

- 17 The Tribunal's jurisdiction, derived from section 27A of the Landlord and Tenant Act 1985 (which is set out in the Appendix to the Determination), involves a determination as to whether service charges are payable, and if so as to their reasonableness under section 19 of the Act. It is not for the Tribunal to determine the state of account between the Applicant and the Respondent; rather it is to determine whether the sums claimed by way of service charge are reasonable, before credit is given in respect of any payments actually made by the Respondent.
- 18 The first question the Tribunal considered was the apportionment of the services to the Property. In other words is the method adopted by the

Applicant to arrive at the percentage or proportion of the service charge items within a band of reasonableness, or is it outside of the range of reasonable apportionments, and therefore perverse. Although the method adopted displays certain idiosyncrasies, the Tribunal finds that, subject to paragraph 19 below, the proportion applied of 19.5705% to the Block D charges is within a range of reasonable decisions open to the Applicant in applying its powers under the Lease, and is not subject to adjustment by the Tribunal. Similarly, the Tribunal does not have any concerns as to the apportionment of grounds maintenance. The method adopted by the Applicant to apportion these costs is also within a band of reasonable methods.

- 19 However, the Tribunal does not consider it is reasonable that the Respondent is required to contribute towards any of the costs relating to the maintenance and the door entry system to the internal common parts in Block D. The Property is clearly self-contained, with its own front door giving on to the estate footpaths as stated in the Respondent's Defence Statement. There does not appear to the Tribunal to be any benefit for the Respondent arising from the cleaning and maintenance of the interior common parts, or in respect of the door entry maintenance. It would be equitable for the costs in respect of these items to be split between the (presumably) four properties that use them. However, as the Respondent has said in his Defence Statement that he has no objection to paying for the internal cleaning of Block D, the Tribunal does not make a determination that he should not be responsible for the cleaning.
- 20 Mr Watkins made the point at the Hearing that there are many instances where tenants are required to contribute towards items in respect of which they have little or no use, such as the payment by a ground floor tenant towards the maintenance of a lift in a multi storey block. The Tribunal accepts that this is so, but in the present case the Respondent has no key to obtain access to the interior common parts and no right under the Lease to use them. The Lease does grant to the Respondent (in Schedule 2) 'The right in common with us and all other persons authorised by us: to pass over the Common Parts for the purposes for which they were designed or intended;'. However, the Tribunal finds that the words 'for the purpose for which they were designed or intended' must mean the giving of access to the properties served by them, which does not include the Property.
- 21 The Tribunal's finding with regard to the costs associated with the interior common parts and the door entry system giving access to them, is that (with the exception of the communal cleaning) the decision by the Applicant to apportion the costs in such a way that the Respondent is required to pay towards them, is not a decision which is within a range of reasonable decisions, but is a perverse decision. Accordingly, the Tribunal determines that the Respondent is not liable in respect of any of these costs.
- 22 The Tribunal finds that all of the other service charge items are reasonable. The Respondent, in his Defence Statement, made reference to 'sub-standard and very poor quality workmanship' and enclosed a large number of photographs of Boulton Grange in support of this contention. However,

despite being given ample opportunity to make representations to the Tribunal, in accordance with the Directions of the Tribunal, the Respondent has not done so, and neither did he attend either the inspection or the Hearing. Accordingly, the Tribunal does not attach a great deal of weight to the Respondent's complaints. The Tribunal did note that there are some areas on the estate that require attention, but the charges actually made in respect of repairs and other items in the three years considered by the Tribunal are relatively modest, and there is no evidence that what has been spent has not been reasonably incurred. In addition, the Tribunal was satisfied, on the evidence put before it, that there were no items in the service charge accounts that did not relate to Block D.

23 The Tribunal, having applied its findings as above, determines that the Service Charges payable by the Respondent for the years 2008/9, 2009/10, 2010/11 and 2011/12 are the sums set out in the tables in paragraphs 24 – 27 below.

24 2008 – 2009

Service Description	Total Actual Spend for Block	Attributable unit	to	Tribunal's determination
Communal Cleaning	£218.11	£42.69		£42.69
Communal Cleaning Window	£35.87	£7.02		£7.02
Communal Lighting	£77.23	£11.76		Nil
Landscape Maintenance	£687.61	£131.22		£131.22
Repairs	£279.31	£54.66		£54.66
Door Entry Maintenance	£438.58	£85.83		Nil
Administration	£217.44	£54.36		£54.36
Building Insurance	£228.00	£57.00		£57.00
Total service charge for year				£346.95

25 2009 – 2010

Service Description	Total Actual Spend for Block	Attributable unit	to	Tribunal's determination
Communal Cleaning	£250.00	£48.93		£48.93
Communal Cleaning Window	£36.00	£7.05		£7.05
Communal Lighting	£157.00	£30.73		Nil
Landscape Maintenance	£384.00	£75.15		£75.15
Repairs	£324.33	£63.47		£63.47
Major Works	£941.75	£178.41		£178.41
Administration	£229.44	£57.36		£57.36
Building Insurance	£106.10	£29.32		£29.32
Total service charge for year				£459.69

26 2010 – 2011

Service Description	Total Actual Spend for Block	Attributable unit	to	Tribunal's determination
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Communal Cleaning	£228.12	£44.64	£44.64
Electricity	£158.16	£30.95	£30.95
Grounds Maintenance	£567.07	£110.98	£110.98
Window Cleaning	£36.84	£7.21	Nil
Buildings Insurance	£66.63	£18.41	£18.41
Management charge	£229.44	£57.36	£57.36
Repairs	£701.22	£137.23	£137.23
Total service charge for year			£399.57

27 2011 – 2012 (Estimated Charges)

Communal Services	Annual Estimated cost of Block	Amount you pay	Tribunal's determination
Communal Cleaning	£250	£48.96	£48.96
Repairs	£270	£52.80	£52.80
Electricity	£160	£31.20	Nil
Grounds Maintenance	£430	£84.00	£84.00
Window Cleaning	£40	£7.68	£7.68
Door Entry repairs/servicing	£260	£50.88	Nil
Other Leaseholder Services			
Buildings Insurance	£106.08	£29.28	£29.28
Management charge	£240.96	£60.24	£60.24
Total Annual Charge for the year (estimate)			£283.36

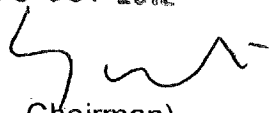
Remission to the Court

28 Having made its determinations as above, the matter is remitted back to the County Court. The determinations are summarised below:

- The Tribunal has no jurisdiction in respect of the amounts of the Ground Rent claimed
- The Tribunal has no jurisdiction to conduct an account between the parties
- No determination is made in respect of the years 2005/6, 2006/7 and 2007/8 in view of Mr Watkin's undertaking to withdraw these years from the Applicant's claim in the County Court
- The Respondent is **not liable** for any costs relating to the door entry system in Block D but **is liable** in respect of the communal cleaning
- The Respondent is liable in respect of the service charges determined in paragraphs 24 – 27 of this Determination.

29 In making its determinations, the Tribunal had regard to its inspection of the Property, the submissions of the parties, the relevant law and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.

Dated: 08 OCT 2012

Signed: 
(W. J Martin – Chairman)

Annex

LANDLORD AND TENANT ACT 1985

19 Limitation of service charges: reasonableness

- (a) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*
 - i. *only to the extent that they are reasonably incurred, and*
 - ii. *where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- (b) *and the amount payable shall be limited accordingly.*
- (c) *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.*

27A Liability to pay service charges: jurisdiction

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable*
- (2) *Subsection (1) applies whether or not any payment has been made*
- (3) *[not relevant to this application]*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*
 - (a) *has been agreed or admitted by the tenant*
 - (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party*
 - (c) *has been the subject of a determination by the court, or*
 - (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement*

(5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment*

(6) *[not relevant to this application]*

(7) *The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of the court in respect of the matter*