

# H M COURTS & TRIBUNALS SERVICE

## LEASEHOLD VALUATION TRIBUNAL

In the matter of an application under Section 27A of the Landlord & Tenant Act 1985  
(Service Charges)

Case No: CHI/24UB/LSC/2011/0145

Property: **1-6 Faringdon Court, Basingstoke, Hants RG24 9FE**

Between:

1. **Mr Duncan Walsh (Flat 6)**
  2. **Mr Robert Nicoll (Flat 5)**
  3. **Ms Margit Reka Szasz (Flat 4)**
  4. **Ms Hazel Hobday-Pepper (Flat 3)**
  5. **Mr Daniel Broda (Flat 2)**
  6. **Mr Kevin Ralph (Flat 1)**
- (the Applicant/Tenants)

and

**Pinnacle (Merton Rise) Management Company Ltd**  
(the Respondent/Management Co)

Members of the Tribunal: Mr MA Loveday BA(Hons) MCI Arb      Lawyer/Chairman  
Mr D Lintott FRICS      Valuer Member

Date of the Decision: 1 March 2012

## BACKGROUND

1. This is an application under Landlord and Tenant Act 1985 ("LTA 1985") s.27A for a determination of liability to pay service charges in relation to a block of flats at Faringdon Court, Basingstoke, Hants RG24 9FE. The applicants are the lessees of the six flats in the block. The respondent is the freehold owner.
2. By an application dated 6 October 2011, the applicants sought a determination in respect of their liability to pay service charges for the year ending 31 December 2010. The application named Mainstay Residential Ltd as respondent.
3. Directions were given on 2 November 2011. It appears that the Tribunal accepted that Mainstay was only the managing agent for the property and it had therefore been incorrectly named as respondent. The Directions substituted Pinnacle (Merton Rise) Management Company Ltd as respondent, since the management company is a "landlord" within the meaning of LTA 1985 s.18 and s.30.
4. The matter was listed for hearing on 10 February 2012 and the Tribunal inspected the property before the hearing. At the hearing itself, Mr Duncan Walsh (Flat 6) appeared for the applicants. The respondent was represented by Ms Sarah Hynes (Area Property manager) and Ms Kim Davies (Property Manager) of Mainstay.

## INSPECTION

5. The Tribunal inspected the property at approximately 10.00am on the day of the hearing. The property is located on the outskirts of Basingstoke within a large mixed residential development of houses, flats and flats above garages completed in 2009. Associated car parking is provided throughout the development. The block itself is on three floors with 6 flats. Construction is principally rendered or timber clad brickwork with double glazed windows under single pitched sloping roofs. Internally, there is communal lighting on each floor in the common parts activated by a PIR sensor. In addition there was a fire safety system comprising fire points, smoke sensors and alarms and a door entry system. Externally there were bollard lights and bulkhead lights to the carport. The Tribunal also inspected a similar block of flats at 27-39 Bunbury Way comprising 12 flats, which shared services with the six flats in question. It was noticeable that the communal lighting at 27-39 Bunbury Way was fully lit on each floor notwithstanding the time of day.

## THE STATUTORY PROVISIONS

6. The general jurisdiction of the Tribunal is under LTA 1985 s.27A:

**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.*

7. The provisions applicable to reasonableness are at s.19:

**19. Limitation of service charges: reasonableness**

*(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*

*(a) only to the extent that they are reasonably incurred, and*

*(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*

*(2) ...*

**THE LEASES**

8. The Tribunal was provided with a copy of the lease of Flat 6 dated 11 December 2009 and it was agreed this was in similar form to the remaining leases. Under the service charge provisions of the leases, the lessee of Flat 6 was liable to pay by way of service charges 7.7647% of "Apartment Expenses" and 1.5151% of "Estate Expenses" as defined in Parts I and II of Schedule 5 to the leases. The Apartment expenses related not only to the six flats in question, but also to the other (larger) block of flats at 27-39 Bunbury Way. The Tribunal was not provided with the equivalent percentage contributions payable by the lessees of any of the other five flats. During the course of the hearing, it was explained that for accounting purposes, the relevant costs comprising the "Apartment Expenses" for the 18 flats in the two blocks were described as "Apartment A Service Charges".
9. Mr Walsh accepted that the relevant costs were contractually recoverable under the terms of the leases.

**THE APPLICANTS' CASE**

10. Mr Walsh referred to audited service charge statements for the year ending 31 December 2010 dated 29 July 2011. The relevant costs in issue were set out under three headings. In each case he contended that the relevant costs were not reasonably incurred under LTA 1985 s.19.
11. Communal electricity (£4,800). Mr Walsh referred to a service charge budget produced by Mainstay for the period 27 February 2009-31 December 2009. Under the heading of "Apartment A Service Charge" this gave a budgeted figure of £350 for "Communal electricity" in the ten month period. This budget was provided to the lessees when they moved into the block in 2009. For 2010, Mainstay prepared an original budget for the full twelve month 2010 service charge year which showed a budget figure of £750 for "Communal electricity" in respect of the "Apartment A service charge". It later produced a revised budget which gave a figure of £350 for "Communal electricity". Mr Walsh stated that the lessees had not been provided with the former, but that they had received the latter in December 2009. The amount which appeared in the final service

charge accounts for 2010 was £4,800. In addition, the Estate Service Charge included an element of £464 for "Car park electricity".

12. In essence, Mr Walsh argued that the £4,800 relevant costs of communal electricity in 2010 were not reasonably incurred because the lights in the common parts of the block had been left on constantly throughout the year. He explained that the figure of £4,800 in the service charge accounts was supposed to reflect electricity consumed in the common parts of block alone and exclude electricity used for lighting the car park areas. The lessees had telephoned "many, many times" about the lights and left messages with Ms Nikita Boyle at Mainstay, but there had been no response. He referred to emails from Mr Broda and himself dated 4 June, 14 June, 9 July and 4 October 2010 as evidence that Mainstay did not generally respond to complaints or enquiries by the lessees. The 4 June email specifically referred to "the light on the corner by the car port is on 24/7 and disturbing flat 1 at night. Can we have it put on a sensor like all the other lights?" and "The bulb outside number 2 has blown. Has been out for approx 2 weeks, please can we get it replaced?". On 30 September 2011 there was an email from Mr Broda to Ms Davies that was headed "Outside Lights". This asked why "on Friday with clear blue skies and still glorious sunshine, please tell me why the outside lights are on, please see pic for evidence, so as Duncan has said, how is the this '£3000' bill going to be reduced to the predicted '£750' when lights are being on 24/7 still".
13. When asked what sum Mr Walsh contended would be reasonably incurred, he suggested a figure of £350 based on the original budget for 2010.
14. Day to day maintenance (£971). The 2009 part-year budgeted expenditure was £350, whilst the original 2010 budget and the revised 2010 budget gave figures of £190 and £270 under the section relating to the "Apartment A Service Charge". The actual relevant cost set out in the 2010 service charge accounts was £971.
15. Mr Walsh argued that the relevant costs of £971 were not reasonably incurred because "there was not much evidence of day to day maintenance". He referred to an email from Mr Broda to Ms Hynes dated 4 June 2010 which listed numerous minor problems, including a wasps nest, missing keys to a fire door, a broken handle in the bin store and a missing attendance record sheet. These had not been attended to. Mr Walsh contended that again one could double the estimated figure of £190 to produce a reasonable cost of £380 for the 2010 service charge year.
16. Fire system maintenance (£918). The 2009 part-year budget included expenditure of £130 for "smoke detector maintenance", whilst the two 2010 budgets gave figures of £180 and £360 for smoke detector maintenance under the section relating to the "Apartment A Service Charge". The 2010 service charge accounts referred to £918 for "fire system maintenance".
17. Mr Walsh argued that the relevant costs of £918 were not reasonably incurred because the respondents had never seen any maintenance of the fire system. A box for fire

safety certificates and fire risk assessments had only been placed under the stairs of the block in the past 2 weeks. The figure of £918 was again more than double the estimated figure in the budget and it was excessive. The Tribunal should allow only double the figure in the budget, namely £360.

#### **THE RESPONDENT'S CASE**

18. Communal electricity (£4,800). At the start of the respondent's case, Ms Davies sought permission to rely on a bundle of additional documents relating to the electricity costs. The Tribunal gave Mr Walsh some extra time to consider these documents before allowing the hearing to continue under reg 16(2)(b) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003. Ms Davies explained that a review of the invoices from the electricity supplier in 2010 had recently revealed that six invoices for electricity had been misallocated to the Apartment A service charges. These six invoices amounted to £1,116.60. Five of the invoices (amounting to £943.43) related to the cost of providing lighting to the bollards in the grounds of the block ought properly to have been allocated to the Estate Service Charge. The relevant costs of communal electricity under the Apartment A Service Charge should be £3,683.40, whilst the Estate Service Charge increased by an additional item of £1,116.60. It follows that the sum in issue fell to £3,683.40.
19. On the substantive issue, Ms Davies explained that there were 7 or 8 electricity meters on the Estate. The electricity consumed by the external bollards, bulkhead lights etc were all on a single meter, which was billed to the Estate Service Charge. Individual parts had separate meters for the lighting of common parts for the block. Ms Davies referred to some 70 pages of invoices and receipts from the electricity suppliers EDF Energy and Haven Power to support the costs incurred in the 2010 service charge year.
20. The electricity to the block had originally been supplied by EDF Energy under a fixed 12 month contract, but that contract expired part way through the service charge year. On expiry, prevailing energy rates were much higher than at the start of the year, and much higher than the rates which formed the basis of the budget estimates. The supplier was changed to Haven Power to achieve the most economic costs for electricity. Ms Davies then dealt in some detail with the figures which appeared in the various budgets. The part-year 2009 budget and the original 2010 budget were based on figures provided by the developer. The revised 2010 budget was based on the costs incurred for similar developments elsewhere. Ms Davies pointed to the notes to the revised budget which stated that the estimated cost of electricity "is ... based on average costs on similar developments." However, Ms Davies accepted that the actual costs exceeded the budgeted figures. She suggested that the 2010 electricity bills used by the suppliers were frequently based on "over inflated" estimated meter readings rather than actual meter readings. Ms Hynes accepted that a figure of £4,800 "strikes me as wrong". For future years, Mainstay had brought in utility consultants to help reduce the bills, and she was certain that electricity bills from 2011 would be lower.

21. As to defects with the communal lighting, Ms Davies accepted that there had been problems. She recalled a meeting with Mr Broda on site in 2010, where the issue of the lights being left on had been raised. She asked a contractor to look at the sensors. However, she did not recall being told that the lights were on 24/7. Ms Davies expressly accepted that this problem "was not expedited". When asked by the Tribunal, Ms Davies recalled that one of the PIR units on the second floor had failed soon after the block was handed over by the builders in 2009. However, the lighting had not been referred back to the contractor as a snagging item.
22. Day to day maintenance (£971). Ms Davies stated that the respondents had not produced any vouchers or receipts for the expenditure in 2010. However, she stated that the costs had arisen above budget due to ongoing electrical work and repairs needed to communal doors. This head of cost related to minor items of repair and maintenance such as thumb turn locks on the door of the communal areas (£230 plus VAT), pest control (£150 plus VAT), work to 'swap out' a time clock (£210 plus VAT) and the provision of keys, notice boards etc. Contractors were employed on an ad hoc basis, and the figure was not excessive for a block of this kind.
23. Fire system maintenance (£918). Again, Ms Davies did not produce any vouchers or receipts. The cost of fire maintenance contracts was benchmarked against suppliers who provided the relevant testing and assessment of the fire systems in place. In this case, the supplier was changed part-way through the financial year. Part of the unbudgeted increased costs related to an 'out of hours' call in November 2010 after someone had opened the automatic opening vent manually. This has incurred a charge of £261.31 + VAT.

#### **DETERMINATION**

24. Communal electricity (£4,800). The Tribunal makes two findings of fact in respect of the electrical system. Firstly, it finds that throughout 2010 all or most of the communal lights were faulty or incorrectly set so that they remained lit for all or most of the daytime. This finding is based on (i) the fact that on inspection in 2012, the lighting in 27-39 Bunbury Way on in the daytime (ii) the evidence that regular verbal complaints were made about the lighting in 2010 (iii) the documented complaints about other defects to the lighting systems in 2010, including the email of 4 June 2010 and (iv) the acceptance by Ms Hynes that complaints about the lighting were not expedited (v) the admission that the respondents had asked a contractor to look at a sensor in 2010. In the Tribunal's view the most likely explanation for the defects is a faulty sensor or PIR, but it is not strictly necessary to identify the fault. Secondly, on balance the Tribunal considers that the problem with the lighting had a significant effect on increasing the electricity consumed. This is because (i) there is no lift or other significant piece of electrically powered equipment that appears to use the common parts supply other than the lighting. Leaving lights on 24 hours will have a disproportionate effect on power consumption for what is effectively a supply which serves only communal lighting and a door entry system (ii) no proper explanation has been given by the respondent for the very high electricity bills for the common parts of two small blocks,

even when the total relevant costs are reduced to £3,683.40. All that has been said is that this figure is based on estimated meter readings rather than actual readings, with the inference that the respondent accepts that the bill is not a true reflection of the power actually used.

25. As a result of these two findings of fact, the Tribunal considers that the relevant costs of £3,683.40 for electricity in 2010 were not reasonably incurred under LTA 1985 s.19. Much of this cost was caused by a defective lighting system, and the respondents had notice of the defects or ought to have done on inspection.
26. Plainly, some of the cost of electricity was reasonably incurred. The Tribunal does not consider that it is appropriate simply to take a figure based on the original budget estimate of £350 suggested by Mr Walsh. This figure was simply derived from the 2009 budget set by the developer. However, the Tribunal attaches more weight to the exercise undertaken by Mainstay in 2010 when arriving at the revised 2010 budget figure of £750 which is supported by the note to the budget estimates referred to above. Mainstay at least had reference to the cost for other comparable estates when arriving at their budget figures in 2010. £750 is also a figure which in the Tribunal own experience is within the range of reasonable figures for the cost of supplying power to the communal parts of two small blocks without a lift.
27. Day to day maintenance (£971). There is a paucity of evidence about the day to day maintenance. On the one hand, no vouchers or receipts were produced. On the other, there is little real evidence that the work carried out was not to a reasonable standard under LTA 1985 s.19(1)(b). The mere fact that the actual costs exceeded the budget is not in itself a ground for finding that the costs were not reasonably incurred. There is some evidence of complaints about maintenance in the email referred to above, and it may well be that some of the maintenance was not carried out promptly. Against this, the inspection carried out by the Tribunal (albeit a year after the end of the relevant service charge year) does not suggest that the property has been poorly maintained as a whole. Furthermore, using its own experience, the Tribunal does not consider that expenditure of under £1,000 in a year for two blocks of this kind is obviously excessive compared to other similar properties.
28. Fire system maintenance (£918). There is again a paucity of evidence about the fire system maintenance. No copy of the maintenance contract or invoices has been provided. On the other hand, there is no dispute that the fire safety system was in place in 2010, that there was a contract to maintain it and that the respondent used a range of contractors rather than any sole supplier (we were told that the contractor was changed during the course of the year). The mere fact that the actual costs exceeded the budget is not in itself a ground for finding that the costs were not reasonably incurred. In this case, there is no evidence that anyone ever complained about the fire safety system and the evidence from the inspection did not reveal any historic problems with it. The one complaint is that a fire safety document box had only been installed in 2012, but it is difficult to see that this had anything other than a very

minimal impact on the reasonableness of the costs incurred. Using its own experience, the Tribunal does not consider that expenditure of under £1,000 in a year for two blocks of this kind is obviously excessive compared to other similar properties. The Tribunal therefore finds that the costs were reasonably incurred.

### **CONCLUSIONS**

29. For the reasons given above, the Tribunal determines that the following relevant costs were reasonably incurred in the service charge year ending 31 December 2010:
  - a. Communal electricity - £750.
  - b. Day to day maintenance - £971.
  - c. Fire system maintenance - £918.
  
30. The Tribunal has not been given the percentage contributions towards these relevant costs for which each of the lessees is liable under the terms of their leases. However, the amount of service charges payable by each of the respondents is limited accordingly.

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MA Loveday BA(Hons) MCI Arb  
Chairman  
1 March 2012