

Her Majesty's Courts and Tribunal Service
RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985
SECTION 20C

PROPERTY 4, The Brook Building, Deakins Mill Way,
Egerton, Bolton BL7 9YU

Applicants: Deakins Park Management Company Ltd

Respondent: Mrs K Slater

The Tribunal: Chairman: John R Rimmer BA, LLM
Valuer Member: W Tudor M Roberts FRICS

Date of Determination: 1st October 2012

Order: **The costs of the Applicants incurred in relation to the proceedings before the Tribunal may not be regarded as relevant costs to be taken into account in determining the amount of payable service charge costs.**

- 1 On 22nd May 2012 the Tribunal concluded a hearing in relation to the reasonableness or otherwise of the service charges relating to 4, The Brook Building , Egerton and shortly afterwards gave its written decision in relation thereto. The matter came before the Tribunal having come from the County Court in the course of proceedings to recover service charge costs from the Respondent.
- 2 The essence of the Tribunal's decision was that the Service charges were reasonable except for downward adjustments that the Tribunal considered appropriate in relation to management charges and various repair costs.
- 3 The Tribunal understands that those matters in the County Court have concluded but the Respondent has made an application under Section 20C that the costs of the applicant incurred in the course of the Tribunal should not form a part of relevant costs in determining the amount of charges payable in future years. Such charges are otherwise recoverable as they are within the description of service charges within the lease. The Applicant's solicitors have written to the Tribunal to indicate that as they have an order in respect of costs from the County Court they do not propose to seek to recover any costs in service charges.

- 4 Costs will clearly have been incurred by the Applicant in dealing appropriately with the issue of the reasonableness of service charges directed to the Tribunal and the Tribunal is given a very wide discretion as to whether or not to allow an application under Section 20C. The Section itself refers to the Tribunal as being able to "make such order as it considers just and equitable in the circumstances "(Section 20C(3)). There is no significant guidance from higher court as to what the Tribunal should or should not take into account in its deliberations.
- 5 The Tribunal has however taken into account the following considerations in reaching its decision:
- This is a tribunal environment where it is not necessarily the case that costs should follow the event (although that was the main outcome of the Tribunal's decision apart from those matters referred to in Paragraph 2, above).
 - It might be supposed that Section 20C was inserted in the Landlord and Tenant Act to re-enforce that view so as to prevent recovery "by the back door" if they were not recoverable in the Tribunal itself. This is possibly why the discretion in relation to Section 20C is as wide as it appears.
 - How far should the Tribunal be prepared to allow costs to be added to future service charges which impinge not only upon those leaseholders who were parties to the proceedings but also others who may have had little or interest in them or played little or no part them?
 - Section 20C allows for a party to make an application in relation to costs so as to seek an exercise of discretion in its favour and the possibility must at least exist that an applicant under Section 20C should not be discouraged by the prospect of further financial loss, either as a party to the original proceedings or, where the situation arises, as a party solely to be heard on an application under Section 20C.
 - Are the Applicants costs recoverable in some other way (as they are here where the Applicant has a judgement and order for costs in the County Court Proceedings)?
 - The Solicitors for the Applicant have indicated that they will not seek to recover costs in future service charges
- 6 The Tribunal has balanced those competing considerations and on this occasion has exercised its discretion that those costs should not be added to the service charges for future years and it is appropriate to make an order under Section 20C even where, effectively, this only reinforces the expressed intention of the Applicant.



J R RIMMER (CHAIRMAN)

18th October 2012