



9013

**HM COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Apartment 44, The Hub, Stone Street, Oldbury, West Midlands, B69 4JT

**Applicant** : Mrs Narinder Kaur

**Respondent** : The Hub (Oldbury Ringway) Management Company Limited

**Case number** : BIR/00CS/LIS/2012/0094

**Date of Application** : 11th September 2012

**Type of Application** : (1) Application for the Leasehold Valuation Tribunal ('LVT') to determine the liability to pay and reasonableness of service charges under s.27A of the Landlord & Tenant Act 1985 and

(2) whether the Respondent's costs in connection with the proceedings should be included in future service charges under Section 20C of the Landlord & Tenant Act 1985.

**The Tribunal** : I.D. Humphries B.Sc.(Est.Man.) FRICS (chair)  
P.J. Hawksworth (Lawyer)

**Date of Decision** : 16th April 2013

---

**DECISION**

---

- 1 The Tribunal reduces the Applicant's contribution to service charges for gardening and window cleaning for the accounting years ending 31st December 2009 / 2010 / 2011 but confirms the contributions for the other parts of the service charge for these years.
- 2 The Tribunal declines to determine service charges for years ending 31st December 2012 - 2018 but the Applicant will be at liberty to apply for these years when final accounts are available.
- 3 The Tribunal declines the Applicant's request to grant an Order under section 20C of the Landlord & Tenant Act 1985.
- 4 The Tribunal declines the Respondent's request to grant an Order under Schedule 12(10) of the Commonhold & Leasehold Reform Act 2002.

## REASONS

### Introduction

- 5 This is an application for the Tribunal to determine the reasonableness and liability of service charges under s.27A of the Landlord & Tenant Act 1985 and an application to determine whether the Respondent's costs of dealing with the case could form part of future service charges under s.20C.
- 6 At the Hearing, the Respondent made a counter-application for the Tribunal to make a determination under Schedule 12(10) of the Leasehold Reform Housing & Urban Development Act 2002.

### Background

- 7 The Applicant, Mrs Kaur, bought a leasehold interest in a flat at a new development in Oldbury in 2007. It was originally known and referred to in the lease as 'Plot 1' but subsequently assigned a postal address of 'Apartment 44, The Hub, Stone Street Oldbury, B69 4JT'. The development comprises 51 apartments in two and three storey blocks with brick elevations and flat roofs, built around a central car park accessed via automatic gates from Stone Street. There are lawns around the blocks, shrub borders and communal bin areas. Some of the flats are accessed via shared halls and stairs but Apartment 44 has its own front door accessed directly from the car park.
- 8 The development was originally managed by the builders, Barteak Developments but when the management later transferred to Peverel OM Property Management the costs increased and Mrs Kaur became increasingly disillusioned by the quality and cost of service provided. Eventually, in September 2012, she applied to the Leasehold Valuation Tribunal ('LVT') for a determination of the reasonableness of the charges.

### The Relevant Law

- 9 The tenants' liability to pay service charges is governed by the tenancy agreement, statute and common law principles.

### 10 Contractual Liability

The Applicant holds a 125 year lease from 1st January 2006. The lessee was originally known as Narinder Kaur Chughtai but now known as Mrs Narinder Kaur. The lessee is required to pay a service charge under clause 2.2 which is described in detail in Schedule 7. It covers all the usual items expected to be included in a scheme of this type such as repair and decoration of common parts, gardening, lighting, provision of waste disposal facilities and management etc.

The lessee's contribution is defined by clause 1.1.23 at 2.18%.

### 11 Statutory Liability

In respect of the statutory provisions, section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.

Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.

Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

12 Common Law Liability

There is an over-riding requirement that the cost has to be fair and reasonable.

**Facts Found**

- 13 The Tribunal inspected the development on 16th April 2013. Mrs Kaur represented herself. Mr Rankohi (Legal Consultant) and Mr Oakley (Estate Manager) of Peverel Property Management represented the Respondent.

**Submissions**

- 14 Both parties supplied written submissions and counter-submissions and gave oral evidence at a Hearing in the Tribunal office in Birmingham on 16th April 2013. The essence of their respective cases is summarised below.

**Applicant**

- 15 Mrs Kaur's application questioned several points:

- 1 the percentage of service charge (2.18%) charged to Apartment 44;
- 2 why the charge included heating and lighting of common parts for which she received no benefit;
- 3 why the charge included a reserve fund;
- 4 why the charge included a sum for cleaning common parts;
- 5 why the charge included a sum for maintenance and repair of common parts;
- 6 why the management company insisted on advance payments;
- 7 the level of external lighting to the car park and grounds;
- 8 the increase in service charges since Peverel took over from Barteak Developments;
- 9 the standard of gardening (photographs were submitted in evidence showing overgrown shrubs)
- 10 why abandoned vehicles had not been removed;
- 11 why a broken door to a garden store had not been replaced;
- 12 why Peverel had not repaid £17.00 of over-paid service charge directly to Mrs Kaur;
- 13 the standard of window cleaning;
- 14 the standard of management.

**Respondent**

- 16 Mr Rankohi replied on behalf of the Respondent responded as follows:

- 1-7 all these costs are reserved as the service charge items in Schedule 7 of the lease, signed by Mrs Kaur.
- 8 that the costs were fair and reasonable for the work carried out;
- 9 the Respondent's counter submission contained a Witness Statement by the previous Manager Mr Smith that the bushes had been deliberately allowed to grow to make them stronger. They had since been pruned but he accepted that they had previously been allowed to grow unchecked.
- 10 that stickers had been put on abandoned vehicles asking the owners to remove them but that they were prevented from towing them away by legislation, specifically s.54 of the Protection of Freedoms Act 2012;

- 11 it was accepted that the door was broken and he said that repairs had been ordered;  
 12 that the £17.00 had been credited to the lessee's account in accordance with the lease;  
 13 that the windows had been cleaned in accordance with the maintenance contract;  
 14 that Peverel's management fee was in line with the market.

**Decision**

17 The Tribunal carefully considered all the points made by the parties and find as follows:

18 Item

1-7 The Tribunal opened the Hearing by explaining that we were unable to vary the terms of the lease under this application which was brought under s.27A of the Landlord & Tenant Act 1985 and that the lease was a contract freely entered into by the landlord and tenant. We were unable to vary the 2.18% agreed share of the service charge and although the Tribunal had jurisdiction to alter terms, it could only do so by request under the appropriate Act and substantial further evidence would be needed, over and above that available to us in this case. Furthermore, if one lessee's share were altered it would have a follow-on effect on all the other lessees who may object to having their charges increased to compensate for reductions elsewhere. In respect of the items included in the charge, we agree with the Respondent that all the items are reserved as service charge items by Schedule 7 to the lease.

8 The Applicant had not suggested that any particular services could have been provided at lower cost or brought evidence of lower quotes from alternative contractors to show that the Respondent had been charged an unreasonable amount;

9 Mrs Kaur's photographs clearly showed that some of the bushes had been allowed to grow unchecked and we do not accept Mr Smith's explanation for the lack of maintenance. However, we noted that they had been well maintained at the date of our inspection and find the following figures to be reasonable for the years 2009-11.

Year Ending	£ Sum per Account	£ Determination
31.12.09	122.27	90.00
31.12.10	126.72	90.00
31.12.11	130.63	100.00

10 This was a management issue, not a cost issue in the service charge.

11 This was a management issue, not a cost issue in the service charge. Repairs had been ordered according to the Respondent, but until work has been carried out and there is a record of payment this is not something we can determine, i.e. no expenditure has been 'incurred',

12 This was a management issue, not a cost issue in the service charge. The lease allows the Respondent to credit leaseholders' service charge accounts.

13 We prefer the evidence of Mrs Kaur since she had been in residence at the development since construction and had been aware of the general frequency of the window cleaner's visits and standard of workmanship carried out. She said the cleaning was intermittent and that until recently the contractor had not used ladders to clean the upper floor windows. Accordingly we determine the following figures as fair and reasonable for the relevant years:

Year Ending	£ Sum per Account	£ Determination
31.12.09	93.26	80.00
31.12.10	47.64	40.00
31.12.11	63.27	40.00

- 14 The Applicant submitted no evidence to show that the managing agent's fees were excessive or out of line with the market norm. From our own general knowledge and experience (but no special or secret knowledge) we regard the fees as fair and reasonable at the amounts charged.

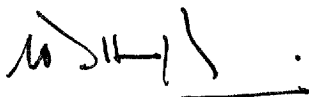
The year ending 31st December 2009 is the earliest year for which we were provided with records although the application asked us to determine the charges for the year ending 31st December 2008. The accounts for 2012 had not been finalised by the date of Hearing and we decline to determine charges for that or any subsequent year at this stage although the parties are at liberty to make further applications to the Tribunal in future when the accounts are available.

**Section 20C Determination**

- 19 The Applicant has won some points and lost others and accordingly the Tribunal are unwilling to grant a s.20C Order to prevent the Respondent including the costs incurred by this application in future service charge accounts.

**Schedule 12(10) Determination**

- 20 Equally, as neither party has won conclusively and we found no evidence to substantiate the Respondent's claim that the Applicant had acted 'frivolously, vexatiously, abusively, disruptively or otherwise unreasonably', we refuse the request to make an Order under Sch.12(10) of the Commonhold & Leasehold Reform Act 2002.



I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Date **23 MAY 2013**