

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

Case Number: CHI/43UG/LIS/2009/0003
Property: 6 Gallery Court, Vicarage Road, Egham Surrey T20 9GG
Applicant: Labyrinth Management Limited
Respondents: (1) Mr.N.Hunter
(2) Mr. and Mrs.A.M.Norris

Appearances

For the Applicant: Miss Helen Macrae MIRPM of Leasehold Legal Services
For the Respondents: The Respondents did not appear.
Date of Directions: 13th March 2009
Date of inspection: 4th June 2009
Date of Hearing: 4th June 2009
Date of Decision: 14th August 2009

Members of the Tribunal

C.H.Harrison Chairman
D.Lintott FRICS
Ms J.K.Morris

Background

1. On 5th January 2009, the Applicant applied to the tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 in respect of the first Respondent's liability to pay certain service charges under his lease of 6 Gallery Court, Vicarage Road, Egham, Surrey.
2. More specifically, the application requests the tribunal to determine that the service charges, in respect of the accounting periods 1st August to 31st July in the years 2005-06; 2006-07; 2007-08; and 2008- 09, *as reasonable and that the leaseholder/s have a liability to pay the charges*. The application named the first Respondent as respondent to the application and it is, therefore, in respect of his service charge liability that this determination is made.
3. The second Respondents applied to be joined as respondents to the application and, by Directions made on 13th March 2009, the tribunal did so join them, although the determination applies only to the first Respondent's service charge liability.

The first Respondent's lease

4. The lease, which is dated 6th July 2005 and made between (1) Kingsoak Homes Limited (the landlord) (2) the Applicant and (3) the first Respondent, requires the first Respondent to pay what the lease refers to as the Lessee's Proportion in respect of expenditure (which the lease refers to as Maintenance Expenses) incurred by or on behalf of the Applicant or the landlord in the provision of various services and other costs. The Lessee's Proportion is a service charge for the purposes of the 1985 Act (see paragraph 9 below).
5. The services and costs, for which the service charge is payable, are set out in the sixth schedule to the lease. It forms three parts. Part A covers 'Building Costs' which relate to services in respect of the building of which the premises demised by the lease form part, in this case, Gallery Court. Part B covers 'Estate Costs' which relate to services in respect of overall common parts, access ways, and communal parking areas and communal service installations. Part C covers various specified costs applicable the services specified in Parts A and/or B.
6. The Lessee's Proportion of the Maintenance Expenses is the aggregate of:
 - a) The Part A Proportion, being 16.67 % of the Part A Costs and the proportion of the Part C Costs which can properly be apportioned to the Part A matters; and
 - b) The Part B Proportion, being 2.5% of the Part B Costs and the proportion of the Part C Costs which can properly be apportioned to the Part B matters.
7. The seventh schedule sets out the mechanics for paying the service charge:
 - a) after dealing with the proportionate calculations as above and other matters, paragraph 5 provides for an annual service charge accounting period ending on 31st July and that

an account, certified by a qualified accountant, should be prepared as soon as practicable after each accounting year end and served on the tenant with a copy of the accountant's certificate; and

- b) the Respondent is obliged to pay the service charge to the Applicant:
 - i) under paragraph 6.1 of the schedule, by two payments in advance on 1st August and 1st February in every year of the term of the lease, each payment being one half of the Lessee's Proportion as estimated from time to time by the Applicant or its managing agents. These payments 'on account' are service charges for the purposes of the 1985 Act and are covered by section 19(2) of that Act as referred to in paragraph 11 below; and
 - ii) under paragraph 6.2 of the schedule, any balance which remains due, over and above the payments on account, is payable within 21 days after production of the certified statement referred to in paragraph (a) above. If the payments on account exceed the service charge which is ultimately due for the relevant year, the excess is either carried forward as a reserve or set off against future payments on account, in the reasonable discretion of the Applicant.

The law

8. Section 27(A)(1) of the 1985 Act provides, so far as is material to this case, that an application may be made to a leasehold valuation tribunal to determine whether a service charge is payable and, if it is, the amount which is payable and the persons by and to whom it is payable.
9. Section 18(1) of the 1985 Act defines a service charge as an amount payable by a tenant of a dwelling as part of or in addition to the rent ... which is payable ... for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies according to the relevant costs. Relevant costs are defined by section 18(2) as the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable). The expression 'landlord' is defined by section 30 of the 1985 Act as including a person who has the right to enforce payment of a service charge. Under the first Respondent's lease, the Applicant is such a person.
10. Section 19(1) of the 1985 Act provides that 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.
11. Section 19(2) of the 1985 Act provides that 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 or subsequent charges or otherwise.

12. Section 20B of the 1985 Act provides that, if any of the relevant costs were incurred more than 18 months before the demand for payment, the tenant is not liable for those costs unless, within the 18 month period, the landlord has notified the tenant that the costs have been incurred and that the tenant will be required to contribute to them.

INSPECTION

13. The Tribunal inspected the property during the morning of the hearing, in the presence of Sarah Bayliss for the Applicant. The Respondents did not attend.

14. The external boundaries of the property are clear from fencing and other boundary features. They correspond with the boundaries shown on the first Respondent's lease plan.

15. The open unbuilt on areas are set out to grassed areas, shrubs and hard standing used for circulation and car parking. The tribunal found the landscaped and parking areas to be in reasonable condition although some areas of grass were parched and weedy.

16. The tribunal observed the edge of one stretch of communal pedestrian pathway leading to Tower Court adjacent to the Vicarage Road frontage, some seven to eight metres in length, had subsided. As a result, the pathway was uneven and required repair.

17. The property as a whole comprises six purpose built blocks of flats constructed a few years ago and completed in 2005. Their external appearance appeared to be in good condition. The tribunal inspected the internal common parts of Tower Court and Gallery Court and found them to be in reasonable condition.

18. The buildings are:

Chancery Court	comprising 6 flats
Gallery Court	comprising 6 flats
Chapter Court	comprising 6 flats
Steeple Court	comprising 12 flats
Tower Court	<u>comprising 12 flats</u>
	42 flats
Tudor Court	<u>comprising 10 flats</u>
<i>Total</i>	<u>52 flats</u>

It was explained to the tribunal during the hearing that Tudor Court is the 'odd man out' because it is wholly sublet to a housing association and its flats do not contribute to the overall Building costs service charge budget. Nor, until recently, has Tudor Court contributed to the Estate costs service charge budget, a fact to which we refer in paragraph 56(c)

REPRESENTATIONS AND EVIDENCE

19. The first and second Respondents did not appear, and were not represented, at the hearing.

20. Nevertheless, the second Respondents wrote to the tribunal on 27th April 2009, drawing its attention to the following matters:

- a) their concerns about the internal plumbing in their flat. The tribunal notes that is not a service charge matter;
- b) the fact that they had complained to the Applicant in November 2007 about broken paving around the entrance to Tower Court;
- c) their complaints to Labyrinth Properties Limited in December 2008 about the collapsed paving around the entrance to Tower Court and their general concerns about the standard of internal decoration of Tower Court's common parts, including scuffing of walls, dusty sills and leaked oil on the floor;
- d) the poor condition of some areas of grass; and
- e) slow responses to their concerns by the Applicant.

21. The tribunal should add, for the sake of clarity, that in noting the area of collapsed pathway referred to in paragraph 16 above, it observed that the pathway adjoining the entrance to Tower Court had been repaired, unlike the subsided stretch mentioned in that paragraph.

22. Apart from those representations by the second Respondents, the Respondents did not adduce any evidence to the tribunal. The Applicant did not call on any witness of fact or expert opinion.

RELEVANT COSTS AND SERVICE CHARGE LIABILITY

The service charge year ended 31st July 2006

23. During the hearing, the tribunal considered a service charge report and statement produced by MFA Chartered Accountants on 18th August 2006 which had been included in the Applicant's bundle. However, the tribunal subsequently notified the parties in writing, on 8th July 2009, that it had observed the application made to the tribunal was accompanied by a different report and statement produced by Wheeler & Associates Limited, dated 4th November 2008. In response to the tribunal's enquiry, made to the Applicant and copied to the Respondents, the Applicant stated, on 14th July 2009, that it was the latter report and statement which has been relied on and utilised by the Applicant for service charge purposes and that the Applicant had dispensed with the services of the previous accountants. The Respondents were supplied with a copy of that statement on 16th July 2009 but did not respond and have made no observations to the tribunal.

24. The report produced by Wheeler & Associates on 4th November 2008 states *We have examined the attached service charge accounts of Vicarage Road for the period ended 31st July*

2006 as required by the lease terms and we hereby certify that the statement of service charge expenditure is, in our opinion, a fair summary within the meaning of The Landlord & Tenant Act 1985 and 1987. The Landlords relevant costs for that period is sufficiently supported by accounts receipts or other documents or explanations which have been produced to us by Labyrinth Properties Limited who took part as managing agents for the properties during the period.

25. The report annexes a schedule of overall Estate costs and, for each building except Tudor Court, separate schedules of Building costs.

26. The Estate costs are stated to be £3,648.43, being the aggregate of several categories of types of expenditure.

27. The Building costs for Gallery Court are stated to be £1,470.23 also being the aggregate of several categories of types of expenditure.

28. The tribunal has considered each type of expenditure relevant to both Estate and Building costs, evident on the face of the statements, and found each to be covered by the expenditure provisions of the sixth schedule to the first Respondent's lease. The tribunal notes that, in respect of some of the anticipated or budgeted categories of expenditure, there was no actual expenditure at all because this was the first accounting period since the development was taken over from the developer.

29. The tribunal did not receive any evidence that the specifically stated expenditure had been unreasonably incurred or that specific relevant works or services had not been provided to a reasonable standard. In the tribunal's opinion, the categorised amounts did not appear to be unreasonable.

30. There is a further matter which the tribunal has though it right to consider in the context that the service charge report and statement was produced in August 2008 which is more than 18 months after the dates when the items of expenditure covered by the relevant service charge accounting period were incurred. That brings into consideration whether section 20B of the 1985 Act applies – see paragraph 12 above. It as held in *Gilje v. Charlegrove Investments Limited* [2003] EWHC 1284 Ch.D that section 20B does not apply where service charges are payable on account of future expenditure and where the actual expenditure does not exceed the payments on account, with the result that there is no need for a subsequent demand. In this case, the Respondent was required to make two half-yearly payments on account of each of the Estate service charge and the Building service charge of £175 and £257.50 per payment respectively. The tribunal understands that this service charge accounting period was the first since the development was taken over from the developer and, accordingly, there were issues of uncertain time apportionment when the budgets were prepared. The tribunal has considered whether such payments were for reasonable amounts for the purposes of section 19(2), in the context that that question might be relevant to the position under section 20B as clarified by *Gilje v. Charlegrove Investments Limited*. That consideration included an appreciation of the

time apportionment issue mentioned above and of a statement of the 2005-2006 budget included in the service charge report of 4th November 2008.

31. The tribunal determines in respect of the service charge year ended 31st July 2006 that:

- a. **relevant costs, in respect of Estate costs, are £3,648.43;**
- b. **the first Respondent's service charge liability, at 2.5%, in respect of those relevant costs is £91.21;**
- c. **relevant costs, in respect of Building costs, are £1,470.23;**
- d. **the first Respondent's service charge liability, at 16.67%, in respect of those relevant costs is £245.08;**
- e. **accordingly, the first Respondent's aggregate service charge liability to the Applicant, pursuant to the audited service charge statement for the accounting period, is £336.29; and**
- f. **notwithstanding that the payments on account referred to in paragraph 30 above are significantly higher than the service charge determined as above, the half-yearly service charge payments on account of each of the Estate service charge and the Building costs service charge of £175 and £257.50 each respectively were (for the purposes of section 19(2) of the 1985 Act) reasonable amounts in the circumstances and were, consequently, due from the first Respondent to the Applicant when demanded.**

The service charge year ended 31st July 2007

32. The Applicant produced an independent accountants report by Wheeler & Associates Limited, dated 4th November 2008. The report states *We have examined the attached service charge accounts of Vicarage Road for the period ended 31st July 2007 as required by the lease terms and we hereby certify that the statement of service charge expenditure is, in our opinion, a fair summary within the meaning of The Landlord & Tenant Act 1985 and 1987. The Landlords relevant costs for that period is sufficiently supported by accounts receipts or other documents or explanations which have been produced to us by Labyrinth Properties Limited who took part as managing agents for the properties during the period.*

33. The report annexes a schedule of overall Estate costs and, for each building except Tudor Court, separate schedules of Building costs.

34. The Estate costs are stated to be £9,095.57, being the aggregate of several categories of types of expenditure.

35. The Building costs for Gallery Court are stated to be £1,866.33, also being the aggregate of several categories of types of expenditure.

36. The tribunal considered each type of expenditure relevant to both Estate and Building costs, evident on the face of the statements, and found each to be covered by the expenditure provisions of the sixth schedule to the first Respondent's lease.

37. The tribunal did not receive any evidence that the specifically stated expenditure had been unreasonably incurred or that specific relevant works or services had not been provided to a reasonable standard. In the tribunal's opinion, the categorised amounts did not appear to be unreasonable.

38. The tribunal determines in respect of the service charge year ended 31st July 2007 that:

- a) **relevant costs, in respect of Estate costs, are £9,095.57;**
- b) **the first Respondent's service charge liability in respect of those relevant costs is £227.39;**
- c) **relevant costs, in respect of Building costs, are £1,866.33; and**
- d) **the first Respondent's service charge liability in respect of those relevant costs is £311.11;**
- e) **accordingly, the first Respondent's aggregate service charge liability to the Applicant, pursuant to the audited service charge statement for the accounting period, is £538.50; and**
- f) **the half-yearly service charge payments demanded on account of each of the anticipated Estate costs and the anticipated Building costs of £172.50 and £215 each respectively were (for the purposes of section 19(2) of the 1985 Act) reasonable amounts in the circumstances and were, consequently, due from the first Respondent to the Applicant when demanded.**

The service charge year ended 31st July 2008

39. The Applicant produced a budget of anticipated expenditure for this accounting period. The budget for the Building costs is based on anticipated expenditure for all buildings (except Tudor Court) combined. Although the ultimate service charge certificate will need to report on actual relevant (Building) costs, per building, in accordance with the lease, the tribunal considers it is reasonable, for budgeting purposes, to approach anticipated expenditure for the buildings taken together.

40. Taking the buildings together in that way involves bringing into account all buildings except Tudor Court. That involves a total of 42 service charge contributing flats as per paragraph 18 above. Accordingly, for budgeting purposes, Miss Macrae confirmed that the Applicant's practice is to divide the overall budget by 42, as had been the practice in previous years. That, also, appears to the tribunal to be a reasonable approach.

41. The budgeted Building costs are stated to be £25,840, being the aggregate of several categories of types of expenditure.

42. The budgeted Estate costs are stated to be £11,376, also being the aggregate of several categories of types of expenditure.

43. The Applicant also produced its own internal property expenditure report for the period 1st August 2007 to 31st July 2008. This shows individual items of expenditure under various categories (supported for the most part by specific invoices) aggregating to:

- a) Estate costs for the year to date of £8,917; and
- b) overall Building costs of £19,502.08.

44. The tribunal considered each category of budgeted and actual expenditure relevant to both Estate and overall Building costs and found each to be covered by the expenditure provisions of the sixth schedule to the first Respondent's lease.

45. The tribunal did not receive any evidence that the specifically stated anticipated expenditure had been unreasonably budgeted or that the actual expenditure had been unreasonably incurred. In the tribunal's opinion, the categorised budgeted and actual amounts did not appear to be unreasonable.

46. As the certified statement required by paragraphs 5 and 6.2 of the seventh schedule to the lease has not yet been produced, the tribunal can make a determination only in respect of the service charge demanded on account under paragraph 6.1. That amount was £917, being the aggregate of two amounts of £118.5 each on account of the Estate cost and two amounts of £340 each on account of the overall Building cost. Upon enquiry from the tribunal, the Applicant stated that an administrative error had occurred on apportioning the Estate costs and overall Building costs budget between the contributing flats by, in each case, using the wrong divisor: 58/48ths in the case of the anticipated Estate costs and 42/38ths in the case of the anticipated overall Building costs. The tribunal agrees that administrative errors had occurred but, for the reason explained in paragraph 47 b. below, the error had no consequence in respect of the Estate costs budget.

47. The tribunal determines in respect of the service charge year ended 31st July 2008 that:

- a. the anticipated relevant costs, in respect of Estate costs, amounting to £11,376 are reasonably budgeted;**
- b. the half-yearly service charge payments demanded on account of the Estate costs of £118.50 were (for the purposes of section 19(2) of the 1985 Act) reasonable amounts in the circumstances and were, consequently, due from the first Respondent to the Applicant when demanded. The tribunal has arrived at that decision because the legal position under the lease was that the first Respondent's proportionate liability for the Estate costs was 2.5%. Consequently, it seems to the tribunal that, as a matter of law, any**

equal half-yearly amount demanded on account of the Estate budget not exceeding £142.20 could not be criticised as unreasonable. See also paragraph 56 c) below;

- c. the anticipated relevant costs, in respect of overall Building costs combined, amounting to £25,840 are reasonably budgeted;
- d. the half-yearly service charge payments demanded on account of the overall Building costs of £340 were not (for the purposes of section 19(2) of the 1985 Act) reasonable amounts because it was unreasonable to apportion the overall (reasonable) amount of £25,840 by less than the number of contributing flats. That number for the previous years and the subsequent year is 42. The tribunal is not aware of any reason justifying a departure for this accounting period and the tribunal notes the Applicant's admission of an error.
- e. accordingly, the first Respondent's service charge liability for the half-yearly service charge payments on account of Building costs pursuant to paragraph 6.1 of the seventh schedule is limited to £307.61 each, totalling £615.22, subject to future adjustment as may be required pursuant to section 19(2) of the 1985 Act, which adjustment will need to reflect that the first Respondent's Building costs proportion is one sixth of the costs incurred in respect of Gallery Court; and
- f. the costs identified in paragraph 43 above are relevant costs for the purposes of section 19(1) of the 1985 Act.

The service charge year commenced 1st August 2008 (year to date at 31st December 2008)

48. The Applicant also produced a budget of anticipated expenditure for this accounting period. What is stated in paragraphs 39 and 40 above applies equally to this budget.

49. The budgeted Building costs are stated to be £27,930, being the aggregate of several categories of types of expenditure.

50. The budgeted Estate costs are stated to be £10,920, also being the aggregate of several categories of types of expenditure.

51. The Applicant also produced its own internal property expenditure report for the period 1st August 2008 to 31st December 2008. This shows individual items of expenditure under various categories (supported for the most part by specific invoices) aggregating to:

- a) Estate costs for the year to date of £6,492.84; and
- b) overall Building costs of £14,344.64.

52. The tribunal considered each category of budgeted and actual expenditure relevant to both Estate and overall Building costs and found each to be covered by the expenditure provisions of the sixth schedule to the first Respondent's lease.

53. . The tribunal did not receive any evidence that the specifically stated anticipated expenditure had been unreasonably budgeted or that the actual expenditure had been unreasonably incurred. In the tribunal's opinion, the categorised budgeted and actual amounts did not appear to be unreasonable.

54. As the certified statement required by paragraphs 5 and 6.2 of the seventh schedule to the lease has not yet been produced, the tribunal can make a determination only in respect of the service charge payable on account under paragraph 6.1.

55. The tribunal determines in respect of the service charge year commenced 1st August 2008 that:

- a) the anticipated relevant costs, in respect of Estate costs, amounting to £10,920 are reasonably budgeted;**
- b) the first Respondent's service charge liability in respect of those relevant costs, pursuant to paragraph 6.1 of the seventh schedule to his lease is £210 (involving two half-yearly payments on account of £105 each) subject to future adjustment as may be required pursuant to section 19(2) of the 1985 Act;**
- c) the anticipated relevant costs, in respect of overall Building costs combined, amounting to £27,930 are reasonably budgeted;**
- d) the first Respondent's service charge liability in respect of those overall budgeted relevant costs is £665 (involving two half-yearly payments on account of £332.50 each) subject to future adjustment as may be required pursuant to section 19(2) of the 1985 Act, which adjustment will need to reflect that the first Respondent's Building costs proportion is one sixth of the costs incurred in respect of Gallery Court; and**
- e) the costs identified in paragraph 51 above are relevant costs for the purposes of section 19(1) of the 1985 Act.**

Generally

56. The tribunal adds:

- a). In considering whether there might be any circumstances pointing to a possible limitation of relevant costs pursuant to section 19(1) of the 1985 Act, in the absence of evidence from the first and second Respondents but having regard to the second Respondents' written representations to the tribunal, it requested production during the hearing of evidence of the scope of services under cleaning and gardening contracts. The Applicant produced during the hearing various estimates of cost taken for tendering

purposes and specifications of work including a 2005 gardening specification and a 2009 cleaning specification. Having considered them, the tribunal found that the specifications of work were satisfactorily tendered and procured.

b). The tribunal notes the second Respondents' concerns about the uneven footpath leading to Tower Court and running parallel to Vicarage Road. The tribunal noted the same defect on its site inspection. Whilst the defect may require to be remedied under a repairing obligation, that is not a service charge issue before the tribunal. The tribunal also notes the second Respondent's concern about the condition of some areas of grass, which the tribunal had also noted, see paragraphs 15 and 20(d). In the tribunal's opinion, whilst some areas of grass may require treatment and in the absence of further evidence, it is not possible to say that, overall, the landscaping services have been provided to less than a reasonable standard so as to justify a limitation of relevant costs under section 19(1) of the 1985 Act.

c). The tribunal understands from the Applicant that, in respect of the current or preceding service charge accounting period, the head tenant or the sub tenants of the 10 flats comprised in Tudor Court contribute to the Estate costs, without there being a corresponding increase in the Estate costs themselves. Miss Macrae told the tribunal that, consequently, the Applicant has used a divisor of 52 for apportioning anticipated Estate costs for the relevant period. Clause 7.14 of the first Respondent's lease requires the Applicant to adjust the tenants' service charge proportions if, at any time (including retrospectively), it should become necessary or equitable to do so and to notify the first Respondent accordingly. The tribunal asked Miss Macrae whether a clause 7.14 notice had been served on the first Respondent. The Applicant subsequently produced at the hearing a copy pro-forma letter dated 2nd November 2007 from the Applicant to each tenant enclosing service charge budgets and drawing attention to the fact that Tudor Court contributed to Estate costs. The tribunal considers that, as a matter of law, the letter of 2nd November 2007 failed to do what clause 7.14 requires because the letter did not specify any new specific proportion or any actual date from which the adjustment should operate, both of which are requirements of the clause. It may be that the letter takes effect in equity but matters of equity and the enforcement of clause 7.14 are not within the tribunal's jurisdiction. In the circumstances, this matter does not alter its determinations in respect of service charges payable in respect of anticipated Estate costs because, in the tribunal's opinion, all such payments demanded by the Applicant from the first Respondent are within reasonable bounds.

Dated 14th August 2009



C.H.Harrison Chairman