

**LEASEHOLD VALUATION TRIBUNAL FOR  
EASTERN RENT ASSESSMENT PANEL  
File Ref No: CAM/00ME/LIS/2005/0002**

**Leasehold Valuation Tribunal:     Decision**

**Landlord and Tenant Act 1985**

**The Tribunal Members were:**

Mrs H Bowers BSc (Econ) MSc MRICS  
Mrs S Redmond BSc (Econ) MRICS  
Mr J J Sims LLM

**The Premises:**

Glynwood House, Bridge Avenue, Maidenhead, Berkshire, SL6 1RS.

**The Applicants:**

Mr N Ouedraogo  
Mr & Mrs S Richards  
Miss E V Da Costa Lino

**Respondent:**

Glynwood House Limited

**Date of Inspection and Hearing:**   Monday 11<sup>th</sup> July 2005

**Attendance**

Representing the Applicants:

Mr Ouedraogo  
Mr Kemp  
Miss Da Costa Lino

Representing the Respondents:

Mr N M Conie BSc FRICS (Hunt and Nash)

**1.     Introduction**

1.1     The Tribunal was dealing with an application dated 22<sup>nd</sup> March 2005 for a determination of the reasonableness and/or liability to pay service charges under Section 27A Landlord and Tenant Act 1985, for the service charge years 2003, 2004 and 2005. Further there was an application under section 20c to limit costs incurred.

**2.     The Law**

- 2.1     Section 27A Landlord and Tenant Act 1985 provides that  
“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.”

### **3. Inspection**

3.1 Shortly prior to the hearing the Tribunal had the opportunity to carry out an inspection of the exterior and internal common parts of the subject property.

3.2 The subject property is a purpose built block of flats with retail units on the ground floor. The property is of brick and concrete panel construction and is three storeys high. There are eight shop units on the ground floor and sixteen flats situated on the first and second floor levels. There are four entranceways, each serving four flats. There is a small forecourt area to the front of the building. There is a side access road and a rear courtyard with access to a separate block of garages.

3.3 In the front forecourts, just in front of each of the entrances to the flats, there are four areas of block paving. We identified two areas that have been repaired and the extent of the repairs appears to have been the replacement of eight paving slabs and some tarmac work to the edges.

3.4 The internal common parts are fairly basic, with uncovered concrete stairs and exposed brick walls. There are some windows to the front elevation and one particularly tall window at the first/second floor level in each stairwell. There are timer switches in each stairwell. It was noted that there was some rubbish in these common parts and that at the time of our inspection, they were not particularly clean. Each internal stairwell is accessed from the ground floor via an unlocked door.

### **4 The Leases**

4.1 We were provided with a copy of the lease for Flat 2 Glynwood House that was dated 19<sup>th</sup> July 1981 and a copy of the head lease for “the flats and the garages” of Glynwood House dated 3<sup>rd</sup> August 1976.

4.2 The head lease provides that the lessee of “the flats and the garages” will pay 4238/10713 of “the aggregate of the expenses and outgoings incurred by the Lessor in the repair and maintenance and renewal and insurance of the building and the other heads of expenditure as the same are set out in the Fifth Schedule...”. The Fifth Schedule sets out the definition of the “expenses and outgoings and other heads of expenditure of the Lessor of which the Lessee is to pay a proportionate part by way of service charge.”

4.3 Reference is made in the Fifth Schedule to Clause 5(4) of the Head lease. This clause describes the Building in the following manner:

“The Lessor will maintain and keep in good and substantial repair and condition including renewal and replacement whenever such shall be necessary:

- (i) the main structure of the building (including the shops on the Ground Floor) and the foundations and the roofs thereof with their gutters and rain water pipes and the joist beams or other structures upon which the floors in the building are attached and all boundary walls and fences for which the Lessor may be responsible

- (ii) all such gas and water pipes drains and electric cables and wires in under and upon the building which do not exclusively serve the demised premises
- (iii) the yard at the rear of the building
- (iv) the footpath at the front of the building
- (v) the footpath and access way leading to the yard at the rear of the building”.

4.4 We understand that the leases for each of the sixteen flats are in a similar format to the Lease of Flat 2 that was provided to us. The apportionment for the service charge is 261/4238 for an individual flat and 271/4238 for a flat with a garage. There is provision in the lease for the lessees to pay 261/4238 or 271/4238 of the expenditure incurred in the Fifth schedule of the head lease. Additionally the lessees shall pay 261/4238 or 271/4238 of “the aggregate of the expenses and outgoings incurred by the Lessor in the repair maintenance and renewal of the entrance halls staircases passages and landings within the Residential Unit and of the Garages....”.

## **5 Hearing**

5.1 Mr Ouedraogo and Miss Da Costa Lino, two of the Applicants attended the hearing as well as Mr Kemp. Mr Conie, attending the hearing on the behalf of the Respondents, indicated that he was quite happy for Mr Kemp to speak on the behalf of the Applicants.

5.2 In providing a background, Mr Conie explained that since 2003 there had been a new approach to the apportionment of the service charges for the whole building. The flats and the shops had previously had differing service charge years and as the shop owners had purchased the freehold interest, there had been some logic in adopting a single service charge year that ran from 1<sup>st</sup> January to 31<sup>st</sup> December. Additionally, it was considered that it was more efficient to charge a simpler apportionment on all the relevant service charge costs. Mr Conie acknowledged that there had been an error in the calculation of Mr Ouedraogo’s service charge, but this had been rectified and the proportion that Mr Ouedraogo should have paid was 261/10713 and that flats with a garage should pay 271/10713. The arrangements of the head lease and the sub-leases have made the collection of the service charge difficult and Mr Conie has attempted a practical approach within the framework of the leases and the requirements of the freeholders.

5.3 Mr Kemp had expressed that in the past the Managing Agents had direct access to the invoices and were able to manage the building more efficiently and question the reasonableness of any charge. In the current situation Hunt and Nash are just sent copies of invoices in order to prepare the accounts. The landlord had not undertaken a full legal review of all the leases to fully understand the rights and obligations. Mr Kemp was concerned regarding Hunt and Nash’s interpretation of the service charge clauses and felt that one must rely on what has been agreed in the leases rather than to try and find an alternative method of charging, even if this had its own advantages.

5.4 In respect of each item of expenditure these are considered separately for each year.

**2003**

**Insurance      £7,535.**

No comments were made by Mr Conie. Mr Ouedraogo and Mr Kemp indicated that they were not in dispute with the amount of the premium. However, they were unhappy about the apportionment of the cost and that it was not in accordance with the provisions of the lease for the flats and the head lease.

**Accounts      £1,081.52**

Mr Conie explained that these invoices and the cheques amounting to £1,081.52 were incurred in connection with the formation of two of the landlord's company, namely Glynwood House Ltd and Glynwood House Residential Ltd and associated share certificates. Mr Conie expressed the view that the interpretation of the service charge clause would determine whether this is payable. Mr Kemp and Mr Ouedraogo expressed the view that this sum was irrecoverable by the landlord as the expenditure was in relation to the landlord company and not in relation to the service charge accounts.

**Management Charges      £1,430.08**

This sum is based upon 7.5% of the amounts that the managing agents have collected. Mr Kemp indicated that the figure of 7.5% was not unreasonable, but that adjustment of the figure may be needed to reflect the sums that should have been collected.

**Drain Repairs      £475**

Mr Conie explained that there were three restaurants in the parade of shops and their activities had resulted in an urgent need to have work carried out to the drains. The invoice indicated that the work involved the digging out of the existing drains, replace with new plastic pipes and fittings and to re-concrete over the area. Mr Kemp questioned whether the residential units should be paying a contribution towards a problem that was as a consequence of the activities of the retail units. It was also argued that the managing agents should have been aware of the potential problem.

**General Cleaning      £675.80**

One element of this amount was £90, which reflected window cleaning for three months, namely £30 each month. It was confirmed that this sum was purely for the windows within the residential stairwells and did not include the shop windows. Additionally there were three invoices for £178.60 to reflect the internal cleaning of the stairwells and a single one off payment of £50 for the cleaning of the car park. Mr Ouedraogo and Miss Da Costa Lino stated that they were unhappy with the quality of the cleaning. On some occasions it had been noted that it had only taken two minutes to do one stairwell from top to bottom. The cleaning contract had changed in March 2005; it was the opinion of the Applicants that there had been no improvement in the quality of the cleaning.

**Electricity      £56.37.**

There is no dispute on this item.

**Pavement Repairs    £1,509.87.**

Mr Conie explained that the repair had been urgent and that he was obliged to rely on one of his regular contractors to visit the site and carry out emergency works. The contractor that had carried out the work was a reputable company and he had had many dealings with the company. The original invoice was for £1744.88, but Mr Conie had managed to reduce this to £1,509.87 Mr Kemp considered that the sum was excessive and the amount equated to £188 per paving slab.

**2004**

**Insurance    £5,600**

The amount was not in dispute. When asked why the premium was lower for this year in comparison to the previous year, Mr Conie explained that the previous premium was for a period in excess of a year.

**Accounts    £1,111**

The same comments were made on this item as for the previous year.

**Management Charges    £1,263.76**

The same comments for 2003 apply for this amount claimed in 2004.

**Cleaning    £1,548.28**

There were similar comments as to the previous year. There was rubbish left in the entrance hall ways of the flats. There seemed some duplication of the invoices and Mr Conie was uncertain as to the actual figures.

**Electricity    £204.81**

This sum is derived from a SEB bill for £63.81 and a bill of £141 from Mullet Electrical. The invoice from Mullet Electrical is in respect of an emergency call out to carry out works to the time delay switch to one of the stairwells. The amount is not disputed by the applicants.

**Bank Charges    £24.14**

Mr Conie is relying upon the interpretation of the head lease as a basis to recover this expenditure via the service charge. Mr Kemp stated that this is an element that had not been previously recovered.

**2005**

There were no further comments in respect of 2005. In general the figures were not disputed other than the principles of the apportionment and whether the sum of £1200 for Accounts could be recoverable under the service charge provisions. It was estimated that a new entry phone system could be installed at a cost of £2500. There was a sinking fund item of £4000.

**Section 20c**

We were asked to consider a section 20c application, namely that any costs that the Respondent has incurred in respect of bringing this matter to the tribunal should not be recovered from the Applicants in future service charges. Mr Conie stated that he was not sure if there were any provisions in the service charge clauses that allowed the landlord to recover these costs.

## **Costs**

Mr Ouedraogo made a request at the hearing for compensation for his costs arising from bringing this matter to us. Mr Ouedraogo had incurred £250 in respect of the hearing fee. It was acknowledged by Mr Conie that he had not been given the opportunity to consider all the leases and therefore have a considered opinion regarding the structure of the service charge recovery. There had been no meeting between Mr Conie and Mr Ouedraogo where the above issues could have been addressed. Mr Conie had explained that there had been no details from Mr Ouedraogo's solicitors as to the details of the particular items in dispute.

## **6. Determination**

6.1 One of the first aspects to determine is the proportion of the service charge that is to be recovered from each lessee. We appreciate that Mr Conie is trying to ease the management of the building in his method of calculating the service charge as either 261/10713 or 271/10713. However, we do not consider that Mr Conie's approach is correct. We agree with the view of Mr Kemp and Mr Ouedraogo that the head and sub leases need to be read together. Although it is complex, there is a workable method to calculate the service charges to be recovered.

6.2 Therefore we determine that in respect of items under of the expenditure incurred in the Fifth schedule of the head lease, the apportionment for the service charge is 4238/10713 for the total of the residential units and then 261/4238 for an individual flat and 271/4238 for a flat with a garage of those figures. Additionally, the lessees pay 261/4238 or 271/4238 of the expenses and outgoings in the repair maintenance and renewal of the entrance halls staircases passages and landings within the residential areas and of the garages.

## **2003**

### **Insurance**

There is no dispute as to the amount of the premium, only the apportionment. We consider that the first step that needs to be taken is the apportionment set out in the head lease, namely that the amount due from the residential element of the building is 4238/10713. This produces a sum of £2,980.80, which then needs to be apportioned between the lessees of the flats.

### **Accounts**

There is no provision in the Fifth Schedule of either the lease or the head lease that allows for costs associated with the formation of a company to be recoverable by the service charge. Therefore we have disallowed this sum.

### **Management Charge**

It was accepted by the Applicants that the management fee of 7.5% based on the sum collected was reasonable. For the year ending 31<sup>st</sup> December 2003, the 7.5% is applied to £16,227.96, which is the stated amount collected (estimated service charge of £15,689 plus rental receipts). However, whilst it is reasonable to charge the management fee on this basis, the estimated accounts provide for a sum of £1000 for account charges, which we do not consider is recoverable under the terms of the lease.

Accordingly we have reduced the amount by £1000, to £15,227.98. Therefore, the management charge for the whole building will be £1,341.96 inclusive of VAT; the element relating to the residential part of the building is based on 4238/10713 and is £530.87.

#### **Drain Repairs**

The cost of carrying out the drain repairs that were described in the invoice do not seem to be unreasonable. We are satisfied that the drains are included in the definition of the premises as detailed in Clause 5(4) and covered by the Fifth Schedule of the head lease. Accordingly we find that the sum of £187.91, being 4238/10713 of £475, is recoverable from the residential lessees.

#### **General Cleaning**

We considered that the sum of £90 for the cleaning of the windows within the residential element of the building and for the six month period was reasonable. Turning to the question of the general cleaning, the area to be cleaned is very small and would not take too much time, given the current internal finishes to these areas. In our opinion, we consider that the amount of time needed to clean the areas would not exceed one hour each week. We recognise that it is difficult to employ consistent and reputable cleaners and we have allowed a figure of approximately £20 per hour to reflect these problems. Accordingly the monthly sum allowed for cleaning is £80. As there was only cleaning for three months, we determine that the sum for general cleaning is £240 plus VAT of £42, providing a total of £372 to include the element for window cleaning. There was a one off payment of £50 for the cleaning of the car park. The car park comes within the definition of the premises under the head lease. We had no real evidence as to the quality of the cleaning, but we are willing to allow this one off sum. However, given the apportionments in the leases, the amount to be payable by the residential units is £19.78.

#### **Electricity**

Not in dispute.

#### **Pavement Repairs**

Although we acknowledge that the work had to be carried out quickly, we are concerned about the high cost. There were eight slabs that had been replaced and we consider that the cost of these would be in the region of £20 per slab. There was a very small amount of tarmac and we have allowed £50 for this, and the labour cost would be in the region of £200. This equates to £410 plus VAT at 17.5% would be £481.75 and we have allowed a sum of £500 for this work. The amount payable on the Residential lessees is £197.80.

#### **2003 Summary**

##### **Service Charges recoverable from the Residential Element of the Building**

|                    | £        |
|--------------------|----------|
| Insurance          | 2,980.80 |
| Accounts           | 0        |
| Management Charges | 530.87   |
| Drain Repairs      | 187.91   |
| General Cleaning   | 391.78   |
| Electricity        | 56.37    |

|                  |               |
|------------------|---------------|
| Pavement Repairs | <u>197.80</u> |
|                  | 4,345.53      |

The apportionment to be paid for an individual flat is 261/4238, namely £267.62. The apportionment for the flats with a garage is 271/4238 and is £277.88.

## **2004**

### **Insurance**

The premium of £5,600 was accepted to be reasonable by the Applicants. However, there needs to be an apportionment as described by both leases. The figure that is attributable to the residential element of the building is £2,215.33.

### **Accounts**

As with the previous year, we consider that there are no provisions in the lease for these items to be recovered.

### **Management Charges**

The 7.5% management charge is accepted by the Applicants. However, as we determined for 2003, the charge should be upon the revised sum of £13,340.53 (Estimated Service Charge of £12,250 plus rental receipts, this assumes that the rental receipts are the same as in 2003). The management fee inclusive of VAT is £1175.63; this leaves a figure of £465.07 due from the residential element.

### **Cleaning**

Adopting the figures for 2003, we have determined that a sum of £180 would be a reasonable figure for the window cleaning. The general cleaning of the stairwells is to be calculated at £20 per week, providing an annual sum of £1040, the sum of £12.50 for bulbs is accepted as reasonable, and this provides a total figure including VAT of £1236.69.

### **Electricity**

Item not in dispute.

### **Bank Charges**

There are no provisions in the service charge clause for the recovery of this item of expenditure and therefore we have not allowed for this sum.

## **2004 Summary**

### **Service Charges recoverable from the Residential Element of the Building**

|                    | <b>£</b> |
|--------------------|----------|
| Insurance          | 2,215.33 |
| Accounts           | 0        |
| Management Charges | 465.07   |
| General Cleaning   | 1,414.50 |
| Electricity        | 204.81   |
| Bank Charges       | <u>0</u> |
|                    | 4,299.71 |

The apportionment to be paid for an individual flat is 261/4238, namely £264.80. The apportionment for the flats with a garage is 271/4238 and is £274.95.



## 2005

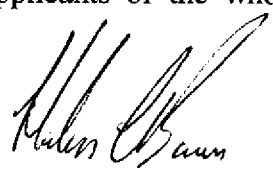
The Estimated Service Charge for 2005 should be adjusted to remove the sum of £1200, the amount due for Accounts, as this sum is not recoverable under the service charge. The sum of £2,500 allocated for an entry phone system appeared to be reasonable. However, the Estimated Service Charge shows £6,500 for the installation of the entry phone system. Since there are no provisions for any sinking funds in the lease it appears that the sum of £4000 would be irrecoverable in advance. Accordingly the management fee would need to be amended and be based upon the revised sum collected.

### Section 20c

In respect of the section 20c order, there would appear to be no provisions in the lease for such costs to be recovered as service charges. Additionally, if the landlord had taken a prudent attitude to ensure that there was a full understanding of all the leases and the application of the service charge clauses, then this dispute may not have arisen. In these circumstances, the Tribunal considers that it would not be just and equitable for the Respondent to include any costs of these proceedings in any future service charges payable by the Applicants and so orders.

### Costs

Section 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 states "a tribunal may require any party to a proceeding to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings." We consider that the landlord had not taken all the necessary steps to ensure that there was a full understanding of the leases in respect of the apportionment of the service charges. If the landlord had made a thorough investigation then it is highly possible that most of the aspects that we have considered would have been resolved between the parties. Accordingly we determine that the Respondents should reimburse the Applicants of the whole of the £250 fee paid in respect of these proceedings.

  
Chairman  
Helen C Bowers

Date 11/8/05.