RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**6 Roffey Park Apartments Colgate Horsham West Sussex RH12 4TD**
Applicants	:	**(1) David C Bowden FCA (2) Mrs. D C Bowden**
Respondents	:	**(1) Roffey Park Management (No.2) Ltd. (2) Peter Laurence Humphries – Flat 6 (3) Paul Bryon – Flat 12**
Case number	:	**CHI/43UF/LSC/2005/0052**
Date of Application	:	**21st May 2005**
Type of Application	:	**Application for a determination of liability to pay service charges (Section 27A Landlord and Tenant Act 1985 ("the 1985 Act"))**
Tribunal	:	**Mr. Bruce Edgington (Lawyer Chair) Mr. Roger Wilkey JP FRICS FICPD**

DECISION FOLLOWING A MEETING ON 10TH JANUARY 2006

Decision

1. As the total amount payable in service charges has been agreed and it is also agreed that the tenants should pay, this Tribunal has no jurisdiction to determine a dispute between tenants as to what each of them should pay.

Introduction

2. This is an application by Mr. and Mrs. Bowden for a determination of their liability to pay service charges relating to a former Manor House and grounds known as Roffey Park House which appears to have been split into apartments in or about 1997 and then let on long leases.

3. There have been 2 Directions Orders dated 26th May and 11th November 2005 which reduced the issues and confirmed that all parties wanted this matter dealt with in accordance with written representations rather than a hearing. In particular it was recorded that the freehold title to Roffey Park House was transferred to the 1st Respondent in or about September 2005. The other Respondents have been made parties at their request.

4. The Application referred to a dispute as to the apportionment of the service charges between the tenants and also some other apparent queries over particular service charges. At the pre-hearing review the parties confirmed that the only issue for the Tribunal to determine is the matter of apportionment of services charges between apartments and mews houses.

5. It has to be said that this Tribunal regrets the way in which this Application has been brought. A decision as to the current service charges may have been made which would not, of course, bind the parties in future years. However, the case really arises because the leases themselves leave a lot to be desired in the way they have been drawn and the more appropriate application would have been to vary the terms of the leases to ensure a properly defined division of service charges. This will be referred to in more detail later.

6. It seems to be acknowledged by all parties that since the leases were created, the liability for buildings insurance has been apportioned between the apartments and mews houses on the basis of floor area, but all other service charges have been split equally despite the fact that they vary considerably in size.

The Applicants' Case

7. The applicants say that they are perfectly happy with paying an equal part of the cost of maintaining the 'estate', but the cost of maintaining the building itself should be split according to floor area in the same way as the insurance premium because it makes sense and is fairer. They are supported by Mr. Laughton of Flat 8.

The Respondents' Case

8. The Respondents say that the split has always been equal and all tenants have previously accepted this. They also make the point that there are many things which could be described as being unfair. For example the cost of maintaining the exterior of the ground floor is far cheaper than upper floors because of the construction materials and lack of need for such things as scaffolding. They are supported by Mr. and Mrs. Harper (Flats 9 and 10), Mr. Howe (5 Mews House), Mr. Mellor and Ms. Demirtges (4 Mews House), Mr. and Mrs. Sitkowski (Flats 7 and 11), Mrs. Reichel (Flat 5), Dr. Birch (Flat 3), Mr. McLennan (Flat 2), Mrs. Waller (Flat 1).

9. In paragraph 7 of the November Directions Order it is said that the views of 12 out of 13 properties were known and that the 13th had abstained from expressing an opinion. It is now known that the 'missing' Flat is 8 and the Tribunal has seen the tenant's letter supporting the Applicants dated 20th March 2004.

The Leases

10. The Tribunal has seen a copy of the lease to Flat 6 without the 3 plans ("the lease") which is unfortunate because these would have given the Tribunal a better picture of the layout of the building. The lease is for a term of 125 years from 17th January 1997.

11. It would appear that there is no dispute that the total service charges and proposed charges either come within the relevant definitions in the lease or are being accepted by agreement. It is not known whether there is any question of the consultation requirements of Section 20 of the 1985 Act not having been complied with and accordingly no determination is made by this Tribunal on those issues.

12. The only provision in the lease which would therefore appear relevant to the issues between the parties is the definition in the 'Lease Particulars' section of the lease at its commencement. It is said that the service charge payable by

the tenant of Flat 6 is "**A fair and proper proportion (according to the nature of the expenditure) of the expenditure defined in Clause 7) as may be properly determined by the Landlord's surveyor**". The second closing parenthesis mark in this clause is not understood and would appear to be an error. It does not affect the meaning of the clause.

13. It seems to be generally accepted by the parties that no surveyor on behalf of the landlord has actually made any determination of such proportion.

The Law

14. For all applications made after 30th September 2003, a Leasehold Valuation Tribunal ("LVT") can determine, amongst other things, whether a service charge is payable and, if it is, the person by whom it is payable and the amount which is payable. It is agreed that all the subject charges are payable and that tenants, including the Applicants, are liable to pay those service charges. The only question is the amount the Applicants have to pay as compared with other tenants.

15. As there does not need to be a determination as to the total amount payable or that such amount is payable by the tenants, this LVT does not actually have jurisdiction to determine which proportion should be paid by one tenant as opposed to the proportion to be paid by another. Section 27A of the 1985 Act does **not** say that there is jurisdiction to determine the amount of service charges to be paid by tenants in dispute with each other where there is no dispute about the total service charges to be paid.

16. The reason for this is clear. An LVT is an expert Tribunal including, usually, as in this case, a Chartered Surveyor, established to determine, as the name implies, the value or amount of service charges in cases such as this, as opposed to disputes of law as to the interpretation of a lease term. Those are matters for a court. Most Statutes giving LVT's jurisdiction also provide for any disputes of law to be referred to a court.

17. However, as has previously been indicated, it is possible to apply to an LVT for a variation of the terms of a lease if that lease does not make satisfactory arrangements for payment of service charges. This lease just leaves the apportionment of service charges to a surveyor who has made no determination.

18. In these circumstances, and in order to assist the parties, this Tribunal will express an opinion as what it thinks the proper division of service charges should be. The purpose of this is to hopefully avoid further litigation. However, all parties should please note that because of the way the Application has been brought, this will be an opinion and not a determination. A subsequent LVT or court seized of the correct application may come to a different view.

The Inspection

19. The Tribunal inspected the Applicants' apartment, number 6, in the presence of Mrs. Bowden. Thereafter, and with the assistance of Mr. Peter Ballam from the managing agents, apartments 7, 10 and 11 were inspected.

20. Mr. Ballam informed the members of the Tribunal that the original house was built in the 1880's and the ballroom was added in about 1920. The entrance hall is large with panelled walls and gives the impression of being well maintained, welcoming and comfortable. The conversion appeared, on the face of it, and on the basis only of a brief superficial inspection, to have been well executed.

21. Flat 10 was the smallest apartment inspected. The others were 2 bedroomed apartments with one reception room, a bedroom with en suite facilities, kitchen, an additional bathroom and a second bedroom. In the Applicants' apartment the second bedroom was used as an additional reception room. The difference between these apartments lay in the sizes of the rooms although it must be said that even the smallest was reasonable in size.

22. It was clear that the maintenance of the building requires much more time and expense in some parts than others. The ground floor of the main part of the original house is stone whereas the first floor has exposed wooden beams painted black with white panels. On the mews houses, the ground floor is rendered and painted white whereas the first floor is tiled.

Opinion

23. It is this Tribunal's opinion that the service charges should be apportioned equally as they have been in the past.

Reasons

24. The Applicants' agree that the charges for the maintenance of the estate should be divided equally. However, a detailed consideration of the lease reveals that trying to differentiate between those charges and charges relating to the building only, may not be as easy as the Applicants would suggest. The definition of 'common facilities' in the 4th Schedule to the lease, for example, could apply to either.

25. Having 2 different ways of dividing service charges is fraught with dangers and the potential for conflict. The obvious complication in splitting any management charges is an excellent example.

26. With a building such as this, there is an almost infinite number of ways the service charges could be apportioned to reflect, for example, the overall floor size of the dwellings (as suggested by the Applicants), the amount of work needed to maintain the structure of each apartment or whether the apartment is on the first or ground floor because, in theory, the second floor apartments have the benefit of maintenance to the stair well which is not needed by the ground floor. As has been said, the first floor would need scaffolding whereas the ground floor wouldn't.

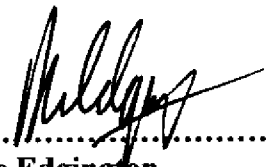
27. All the apartments are different and any of these methods could be considered by any particular tenant to be fair or unfair, depending on his or her point of view.

28. It is this Tribunal's view that all the apartments and mews houses benefit equally from having the building and its grounds kept in good condition. Therefore, the service charges should be split equally.

29 It should also be said that the fact that all the tenants before the Applicants arrived apparently agreed to an equal split is a relevant but not decisive element to this problem. Living harmoniously together is important in a development such as this which may mean one party or another accepting something which may, in his or her perception, appear unfair. It should also be said that in the view of this Tribunal the managing agents have behaved entirely appropriately in dealing with this matter.

Costs

30. The Applicants ask for an Order that the landlord's costs in respect of this Application should not form part of any future service charges (Section 20C of the 1985 Act). It is this Tribunal's view that this Application was misconceived and no such Order is therefore made.



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Bruce Edgington
Chair
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