EASTERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Properties : Laurel Court, Armstrong Road, Thorpe St. Andrew, Norfolk, NR7 9LS
Four Limes, Wheathampstead, Herts., AL4 8JN
Dyson Court, 184 Lower High Street, Watford, Herts., WD17 2NU
Churchill Court, Beaconsfield Road, Aylesbury, Bucks., HP21 7RG
Acorn Drive, Wokingham, Berks., RG40 1EQ
Suffolk Place, Lime Kiln Quay Road, Woodbridge, Suffolk, IP12 2XB

Applicant : Home Group Ltd

Respondents : All of the leasholders of the flats at the Properties (as listed in the Application)

Case number : CAM/33UC/LSC/2006/0057

Date of Application: 30th October 2006

Type of Application: Section 27A Landlord and Tenant Act 1985 ("the Act")
Determination of liability to pay service charge

Tribunal Members: D S Brown FRICS MCIArb (Chair)
B M Edgington

Date of Decision : 24th January 2007

DECISION AND STATEMENT OF REASONS

Decision

1. The Tribunal determines that one half of the reasonable costs incurred by the Applicant in the installation of a fully networked computer system as described in its Statement of Case would be payable by the Respondents as part of the service charge.

2. **The Tribunal is not able to determine the amount which would be payable, which will be subject to the provisions of section 19 of the Act.**

3. **The Tribunal makes an Order under section 20C of the Act that none of the costs incurred by the Applicant in connection with these proceedings is to be taken into account in determining the amount of any service charge payable by the Respondents.**

The Application

4. The Applicant made an applied under section 27A of the Act, on 30th October 2006, for a determination of liability to pay service charges, specifying the year in question as 2007/8.

5. The service charge in issue is described as "Computer installation – £1,300 (per scheme)". The Applicant describes the intended scheme as installation of a fully networked IT system for the use of the resident manager, stating that the maximum cost would be £1,300 but may in certain circumstances be lower at around £1,000, including all of the necessary equipment and installation and networking charges.

6. The Applicant states by way of explanation that a networked system would enable resident managers at these retirement schemes to improve their customer service, improve efficiency and enable computerised payment of invoices and provide the managers with better financial information to help them to provide value for money for the leaseholders.

7. The Applicant indicated that it would be happy for the case to be dealt with on paper if the Tribunal thinks it is appropriate. It appeared to the Tribunal that this case is suitable for determination without a hearing and Directions to this effect were issued on 15th December 2006, giving notice to the parties that the application would be determined on 24th January 2007 but also stating that if any Respondent requires a hearing then a hearing would be arranged.

8. No party requested a hearing and this application has therefore been determined on the papers. The Applicant has provided a Statement of Case. Statements of response have been received from Elizabeth G. Taggart, Suffolk Place Residents Association, F.S.O'Connor, Laurel Court Residents Association, C.L. Hicks, T.J. and B.H. Smith, Mrs. C.B.M. Clark. The Tribunal has considered all of these representations. Representations from Marie Benham were received after the decision date and could not therefore be considered.

The Applicant's Case

9. The Applicant submitted a Statement of Case on 21st December 2006. It states that it regards the proposed IT installation as a legitimate expense to be paid for through the service charge and gives a breakdown of the costs. For Four Limes, Dyson, Churchill and Suffolk, the estimated costs amount to £1,072 and for Acorn Drive and Laurel Court £1,380.

10. For each scheme, the costs comprise BT Highway to ADSL conversion, router, rental cost of line and connection and new PC with flat screen. For Acorn Drive and Laurel Court, where the managers currently have no PC,

additional costs would be in respect of Microsoft Office licence, HP printer/copier/fax/scanner, 4-way surge electrical supply, mouse mat, USB lead and computer desk.

11. The Applicant says that the new networked system will enable managers to improve their customer service. In addition to producing letters and signs, the managers will be able to access standard documents and policy information in a more efficient way. It will enable computer processing of invoices and assist with budget control, providing better value for money for all leaseholders.

12. The Applicant refers to clauses in the leases which it considers justify the expense as a service charge item. The Tribunal has been provided with a sample lease from each scheme. The leases are not in identical format but there are basic similarities in the relevant clauses.

13. In each lease there is a covenant by the leaseholder to pay the service charge in accordance with the provisions of a Schedule that specifies the expenditure in respect of the Property which shall be included in the service charge. In some of the leases there is also a provision for the landlord to alter the services specified. The clauses referred to by the Applicant are: –

- Acorn Drive
  The Schedule Clause 2(b)
  The cost and expense of repair renewal rebuilding re-decoration and cleaning of the matters mentioned in Clause 5(1)(a) to (d) inclusive and reasonable provision for a reserve against expenditure on maintenance and repairs depreciation and without prejudice to the generality of the foregoing costs or anticipated costs of renewal replacement or major overhaul of the warden call system and plant the renewal or replacement of lifts heating apparatus ducts service pipes and wires within the Property (other than within the Demised Premises) and interest paid on any money borrowed by the Association to defray any such expense incurred and all such other items of future contingent capital expenditure as are not otherwise included in the Service Charge and the funds for which provision is made in this paragraph shall be at the sole discretion of the Association.

- Four Limes
  The Schedule Clause 2(b) – similar provision to the above.

  Clause 5(1)(e)
  The Association may at any time during the term add to diminish modify or alter any services provided by it if by reason of any change of circumstances the Association considers such to be desirable and in the interests of good management or for the general benefit of all occupiers within the Property.

- Churchill Court
  Fourth Schedule, Clause 8
  All other expenses (if any) incurred by the Landlord in and about the maintenance and proper and convenient management and running of the estate and the gardens and grounds thereof

  The Lease Clause 4(f)

The landlord may for the better management of the estate add to or vary any of the above services

- Laurel Court
  First Schedule, Clause 2(e)
  This is quoted by the Applicant but it refers to *the rates taxes and other outgoings (including insurance of risks other than the structure and contents) payable upon the premises not separately occupied by the Tenant* and is not therefore relevant to this application.

  Lease Clause 5(1)(e)
  Similar to Four Limes.

- Suffolk Place
  First Schedule, Clause2(c)
  To provide a sinking fund for depreciation and (without prejudice to the generality of the foregoing) the costs of renewal replacement or major overhaul of the lift and plant (including the heating and installation in the common parts of the property) the expenses incurred in rectifying or making good any inherent structural defects in the property the renewal or replacement of heating apparatus ducts service pipes and wires within the property and interest paid on any money borrowed by the Landlords to defray any such expense incurred and all such other items of future contingent capital expenditure as are not included in the periodical service charge referred to in this Schedule...

  Lease Clause 5(1)(e)
  Similar to Four Limes

- Dyson Court
  First Schedule, Clause 3(k)
  The cost of any additional services provided by the Landlords pursuant to the provisions of Clause 5(2) hereof

  Lease Clause 5(2)
  To provide a warden service in connection with the beneficial use and occupation of the Property and the flats therein contained ..... PROVIDED FURTHER THAT the landlords may at any time during the term add to diminish or modify or alter any of the services provided by them if by reason of any change of circumstances the Landlords consider such to be desirable and in the interests of good management or for the general benefit of all occupiers of flats within the property.

  Lease Clause 5(2)
  Similar to Four Limes 5(1)(e)

  (The words underlined are those specifically quoted by the Applicant where part only of a clause has been quoted)

14. The Applicant pointed out the post of warden had been renamed Resident Manager.

The Respondents' Case

15. The objections raised by Respondents are generally on the basis that

    - the IT system would not be of benefit to the residents
    - Home Group trades at a profit and the proposal will benefit them by providing costs savings

16. Ms. Taggart submitted very detailed submissions. They can be summarised as –

    -Home Group is seeking to pass on through the service charges a cost of its business *per se,* rather than a cost of providing a service to the tenants
    -The proposal is not a service properly within the category of service provided under the lease
    -It is not a reasonably incurred expense under s.19 of the Act
    -Home Group has failed to prove that it is a reasonably incurred expense for the purposes of a declaration under s.27A.

17. Ms. Taggart deals with the specific clauses in the Acorn Drive leases, which have been referred to by the Applicant –

18. With regard to Clause 2(b) of the Schedule, she considers that the words quoted by the Applicant have been taken out of context. The proposal is not "contingent expenditure". Read as a whole, the Clause is making provision for an additional or contingency sinking fund to meet potential (or contingent) capital costs. The words relied upon by the Applicant do not amount to a general sweeping up clause. They must be construed *contra proferentum.*

19. In relation to reasonableness, Ms. Taggart contends that the Applicant has failed to put forward any evidence to demonstrate that the proposed costs are reasonable nor has it demonstrated that the expenditure would be reasonably incurred, especially as managers have, thus far, managed without a computer system. She also takes issue with the Applicant's claim that there will be a resulting improvement in customer service.

20. Finally, she states that the equipment is likely to be used for a multitude of purposes, some of which may be related to Home Group's business and some which is personal use by estate managers and so it is unreasonable for residents to pay the full costs of capital equipment which will not be used solely for their benefit.

21. Ms. Taggart and one other objector have requested an order under section 20C of the Act.

The Law

22. An application in respect of payability of future service charges is governed by section 27A(3) of the Act, which provides –

    (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

23. The question of relevant costs to be included in a service charge is dealt with by section 19 -

> **S19 Limitation of service charges: reasonableness.**
> (1) 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.

The Tribunal's Findings and Decision

24. The Tribunal has firstly considered the definitions of those services which are included in the service charge in each lease. In three of the original leases, the landlord is a developer, Warden Housing Developments Limited is referred to as "the Association" and the tenant's covenant is to pay the service charge to the landlord. The Acorn Drive lease is similar except that the tenant covenants to pay the service charge to the Association. In the Dyson Court and Churchill Court leases the landlord is Warden Housing Developments Limited. The parties appear to accept that in all of the schemes the service charge is now payable to Home Group and the Tribunal has assumed that this is the case in respect of each scheme.

25. The Tribunal finds that Clause 5(1)(e) in the Acorn Drive lease and the similar provision in the other leases do not provide for the installation of an integrated IT system. In the Tribunal's view, this clause relates to the nature and extent of the services provided by the Applicant and it cannot be construed as providing for capital expenditure of this sort. In any event, with the exception of Churchill Court, the clause only applies where a change is made "by reason of any change of circumstances" and no evidence has been presented of any such change of circumstances.

26. The Schedules in the leases of Acorn Drive, Four Limes and Suffolk Place refer to "all such other items of future contingent capital expenditure as are not included in the periodical service charge". The Tribunal finds that this wording does not comprise a clear intention to allow for capital expenditure of the type proposed by the Applicant. These words must be read in the context of the clause as a whole and the word "contingent" would appear to link the phrase "future capital expenditure" to the types of expenditure set out in the preceding part of the clause. The Tribunal is not persuaded that this wording includes capital expenditure of the type proposed and accepts Ms. Leggat's submission that in the event of a lack of clarity, the lease should be construed *contra proferentum* and. In any event, in view of the Tribunal's findings below, it is not necessary to make a definitive interpretation of this provision.

27. There is no similar provision in the leases of Churchill Court or Laurel Court or Dyson Court.

28. The Churchill Court lease includes in the service charge "*all other expenses...in and about the maintenance and proper and convenient management and running of the estate...*". The expression "all other expenses" has a wide application. It does not exclude capital expenditure. The Tribunal concludes that the provision of equipment and systems which are reasonably required for the purpose of managing and running the estate is covered by this clause.

29. The Tribunal notes that in each lease there is provision for the service charge to include costs relating to the warden "*and all other costs in connection with the provision of the warden service*". This provision has not been relied on by the Applicant but the Tribunal has to consider this application in the context of the lease provisions as a whole and must therefore take it into account. The Tribunal finds that this provision does not exclude capital expenditure which is incurred to enable or facilitate the provision of the warden service and that the proposed expenditure falls within that category.

30. The Tribunal therefore finds that the provision of an integrated IT system is a capital expense of a type which is recoverable under the service charge provisions in each lease.

31. The question then to be addressed is whether or not the proposed expenditure will be reasonably incurred. In the Tribunal's experience, it is common practice these days, even in relatively small property management operations, to utilise the benefits of computers; indeed use of computers in this respect is almost universal. The Tribunal finds that it is not unreasonable for the Applicant to provide an efficient computerised management system at each scheme. Such provision is a proper part of an efficient warden service.

32. However, the Tribunal accepts the argument put forward by some of the Respondents that the benefits of the proposed system go beyond the provision of such a service for the benefit of the residents at each scheme. The integration of the system will be of significant benefit to the Respondent in its overall business. For the purpose of assessing the reasonableness of the proposed expenditure, the Tribunal must have regard to each scheme individually and considers that some of the benefits of an integrated system will accrue to the Applicant but not to the tenants at each individual scheme. The Tribunal concludes that it would not be reasonable for the whole cost of the proposed installation to be recovered through the service charge and that the Applicant should absorb a proportion of the cost as part of its normal business expenses; one half appears to the Tribunal to be a reasonable proportion. The Tribunal therefore determines that one half of the cost of the proposed IT installation, as described in the Applicant's Statement of Case, would be payable by the Respondents as part of the service charge.

33. As to the amount which would be payable, the Tribunal is not in a position to make a determination. The total cost of the installation will be in excess of £7,000. There is no evidence that the Applicant has put the contract out to tender or sought any competitive quotations and so no basis on which the Tribunal can assess whether or not this cost is reasonable. When the service charge in relation to this work is demanded, it will be subject to the s.19 requirements of "reasonably incurred" and "reasonable standard" and this

Tribunal's decision on this application does not preclude any tenant from challenging that service charge under the provisions of s.19 in the future.

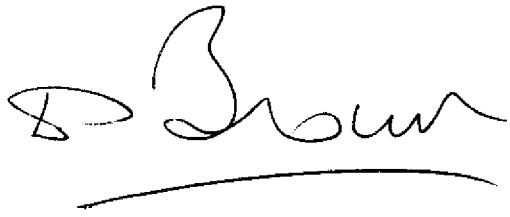
Section 20C Application

34. Section 20C provides that –

> **S20C "Limitation of service charges: costs of proceedings.**
> (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
> (2) The application shall be made—
> in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
> in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
> in the case of proceedings before the Lands Tribunal, to the tribunal;
> in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
> (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

35. There is no provision in any of the leases for recovery of expenses incurred in relation to proceedings. On the principle expressed in *Sella House v Mears* [1989] 21 H.L.R. 147, in the absence of clear and unambiguous terms relating to such expenses, the Tribunal determines that they would not be recoverable as part of the service charge.

36. If they were recoverable, the Tribunal notes that the Applicant does not intend to seek to recover it costs and considers that in the light of its decision regarding payability the objections of the Respondents were justified and that it is just and equitable to make an Order.

Signed:  **26th January 2007**

D S Brown FRICS MCIArb