

**LEASEHOLD VALUATION TRIBUNAL FOR
EASTERN RENT ASSESSMENT PANEL**

File Ref No: CAM/38UE/LSC/2005/0041

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT
1985.**

The Premises: 1 Lombard Street, Abingdon, Oxon, OX14 5BJ.

The Applicant: Mr D Price

Respondents: John Barwick
Philip Barwick
Philips Court Management Ltd

Date of Application: 20th July 2005

Date of Hearing: Wednesday 9th November 2005

Attendance for the Respondents:

Mr J Cockle FRICS of Covenant Management, agents for
Philips Court Management Ltd

The Tribunal Members were:

Mrs H Bowers BSc (Econ) MSc MRICS
Mr J J Sims LL.M
Mr R V N Auger

Date of Tribunal's Decision:

16th November 2005

1. Introduction

- 1.1 The Tribunal was dealing with an application dated 20th July 2005 for a determination under Section 27A Landlord and Tenant Act 1985, for the service charge year 2005.

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 The Tribunal had the opportunity to carry out an inspection on 9th November 2005, just prior to the hearing. We were able to see the exterior of 1 Lombard Street and the courtyard area and some of the internal corridors of the Philips Court Development.
- 3.2 Philips Court, including 1 Lombard Street is a conversion of a range of buildings of varying dates. The conversion appears to have commenced in 2003 and the final stages were close to completion at the time of our inspection. Phase one of the development was to be ten flats, but only nine were completed at this stage. Phase two added five further flats, giving a total of fourteen flats in the development. 1 Lombard Street has a separate front door that is apart from the main courtyard. Further down Lombard Street is a security gate with an entry access phone that opens out onto a courtyard area. Access to eleven of the flats is from this courtyard area. There is a separate access point to two of the flats from the Market Place.
- 3.3 The courtyard comprises of a patio area with small areas of planting. There is access to a bin store and by the gate there is a bike storage area and post boxes for the individual flats. There are three communal entrance halls providing access for at least two flats for each communal area. There is lighting and fire equipment in these internal areas and lighting to the courtyard area.

4. The Lease

- 4.1 We were provided with a copy of the lease for 1 Lombard Street Abingdon. It was noted that the copy of the lease we were provided with was unsigned and had not been executed. At the hearing Mr Cockle confirmed that the lease

was essentially the same as the copy of the lease which had been made available to him.

5 Hearing

- 5.1 Mr Cockle of Covenant Management attended the hearing and represented Philips Court Management Limited. Mr Price did not attend the hearing and stated that his case had been presented in written representations that had been previously sent to the Tribunal and distributed to the Respondents.

Applicant's Case

- 5.2 Mr Price had indicated in his written representations that whilst thirteen flats in the development benefited fully from the use of the common parts, 1 Lombard Street did not require access to these areas. When Mr Price had originally acquired the premises he had a reduction of £200 from the service charges on the basis that the 1 Lombard Street was distinct from the rest of the development. The deduction had operated in 2004 but had not been carried over to 2005.

Respondent's Case

- 5.3 Mr Cockle explained that although he was not party to the initial sale of the flat, he understood that the £200 reduction was for the first year only. This was also stated to be so in a letter dated 12th September 2005 to the Tribunal from Mr John Barwick, one of the joint Lessors. There were no provisions for any further reduction in the lease. All the leaseholders were to make a contribution to the service charge and this was irrespective as to whether they directly benefited from the services that were provided. It was acknowledged that there would need to be a review of the service charge contributions in future years.

6. Decision

- 6.1 There was no question of the reasonableness of the cost of the actual services that were provided, for the Tribunal to consider. This matter related purely to the deduction of £200 from the service charges for the situation of 1 Lombard Street in relation to the whole development
- 6.2 In determining this case we need to be guided by the wording in the lease. We were not provided with any other document to indicate that we should deviate from the wording in the lease.
- 6.3 The lease defines the Lessee's Proportion to the service charge as 10%. It further provides a definition of "the Maintained Property" as being "...the entrance halls passages staircases landings and other parts of the building forming part of the Property which are used in common by the owners and occupiers of any two or more of the Flats including the Bin Store Area..."
- 6.4 Clause 4 of the lease provides for Philips Court Management Ltd, known as the Company to insure the buildings and to repair and keep in good order the Maintained Property. Clause 5 provides for the Lessee to contribute the

“Lessee’s proportion” to the “Maintenance Charges”, which are defined as the amount “expended by the Company in the performance and observance of its covenants and obligations” under the lease. One of these obligations – under Clause 4(vi) – is “to keep the halls stairs landings and passages the Communal Area and the Bin Store Area” maintained and lighted.

- 6.5 From these provisions in the lease it is clear that the Lessee is responsible for contributing to the Maintenance Charge for amongst other matters expenditure incurred in respect of the Maintained Property being any parts which are used by the occupiers of any two or more flats. There are no provisions to disallow contributions even if there is no direct benefit received by the Lessees. There are no provisions for a reduction to the contribution. Accordingly we have determined that the full contribution under the terms of the lease should be paid by the Applicant.

Chairman



Helen C Bowers

Date 16/11/05.