

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

Southern Rent Assessment Panel & Leasehold Valuation Tribunal

**Reference No:** CHI/OOMS/NSI/2002/006/01

Reasons for the decision of a Leasehold Valuation Tribunal, re

**Premises:** 112 WYNDHAM COURT  
COMMERCIAL ROAD  
SOUTHAMPTON, HAMPSHIRE

**Applicant:** SOUTHAMPTON CITY COUNCIL

**Respondent:** MISS J E LAMBERT

**Date of Hearing:** 19th February 2003  
  
Consideration in private  
11th April 2003

**Date of Decision:** 23rd May 2003

**Members of the Tribunal:** Mr D M Nesbit JP FRICS FCI Arb (Chairman)  
Mr M R Horton FRICS  
Mrs C Newman JP

Southern Rent Assessment Panel  
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(Telephone No: 0845 1002617/01243-779394)

**RE: FLAT 112, WYNDHAM COURT, COMMERCIAL ROAD,  
SOUTHAMPTON, HAMPSHIRE**

**Introduction**

1. This is an application by Southampton City Council ("the Applicants"), for the determination of the reasonableness of service charges incurred and the standard of works carried out, for the years 1996 to 2002, in accordance with Section 19 (2A), Landlord & Tenant Act 1985.
2. Miss J E Lambert ('The Respondent'), is the lessee of Flat 112, Wyndham Court.
3. The Applicants submitted detailed documentation, in support of their application. Those documents were copied and provided to the Respondent.

**Inspection**

4. By arrangement, the Tribunal inspected the building, prior to the Hearing on 19th February 2003. Despite notification, the Tribunal were unable to gain access to Flat 112. The Tribunal noted the general location of the building, its construction and size, the common parts and amenities provided for occupiers and the overall state of repair. The Tribunal was shown by the Warden, areas within the building provided for the shared use of occupiers.

**The Property**

5. Wyndham Court ('The Building') is a very substantial local authority development, constructed circa 1970 in a central location adjacent to the principal Southampton railway station, and within walking distance of the city centre.
6. The development comprises various ground floor retail shops/commercial units with upper floors comprising 184 residential flats. The flats are of varying sizes and there are separate entrances, staircases and lifts to the various sections of the building, which has been constructed in the form of a square with an open central amenity area. There is a basement car park. We were informed that Wyndham Court was now a 'listed' building.

**The Lease**

7. We were provided with a copy of the lease for the flat, which is in a standard form for the residential flats. The term was 125 years from 1st January 1981, subject to an annual ground rent of £10 per annum.
8. The proportion of service charge payable is one equal 184th part of the costs, expenses, outgoings and other matters covenanted to be paid in accordance with the terms of the lease.
9. The flat is defined as Maisonette 112, Wyndham Court, together with a store/shed, together with the right in common with others to use the parking area. The flat owner is entitled to the usual easements and rights as set out in the Schedules to the lease.

10. 'The Building' is defined as a block of 184 flats known as Wyndham Court, to include car parking areas, drying areas, refuse areas, roads, footways, garden and grounds.
11. The lessees covenants (Clause 4) require
  - (i) that the lessee will at all times keep the flat and all party walls etc in good and tenantable repair and condition and
  - (ii) to contribute and pay the relevant share of service charges payable by the lessee as defined of the reasonable costs incurred by the Council or its agents in the repair, maintenance, insurance, management and provision of services.
12. The relevant service charge provisions within Clause 4 state -
  - (a) The relevant share for each item of service charge will normally be the proportion specified (1/184th part) which at the Council's absolute discretion may be interpreted to mean
    - (i) the actual cost incurred by the Council in providing the appropriate service specifically for the flat and the building
    - (ii) an equal proportion of the costs incurred by the Council in providing the appropriate service to the larger area within the building.
  - (b) The contribution for each year shall be estimated by the Council before the beginning of the year commencing 1st April and the lessee shall pay the estimated contribution by 12 equal instalments on the 7th day of each month.
  - (c) As soon as reasonably may be after the actual amount of the said costs, expenses etc for each year ended 31st March has been ascertained, the lessee shall forthwith pay the balance due to the Council or be credited with any amount overpaid.
  - (f) The Council agrees with the lessee to supply within six months of the year end 31st March a summary of the costs, expenses etc for that year.
13. The Council covenants with the lessee -
  - 5(ii) that the Council will at all times during the term insure and keep insured the building against loss or damage by fire or such other risk as the Council shall from time to time think fit in some insurance office of repute or bear such risk or proportion of the total risk as the Council sees fit from its own funds.

OR

The Council will effect insurance for the full insurance value of the flat through the Municipal Mutual Insurance Company by way of an individual or special policy for the flat.

5(iv) That subject to such lawful contribution and payment as provided, the Council will keep in reasonable repair, decorate and renew

- (a) the common structure and exterior of the building and, in particular, the main walls, foundations and window frames, roof gutters and rain water and external pipes of the building
- (b) gas and water pipes, drains and electric cables
- (c) the main entrance, passages and common parts
- (d) the passenger lift AND will make good any defect affecting the structure of the building.

14. The Schedules set out the requirements as to occupation and use of the flat (First Schedule), the rights for the lessee in respect of access and the common parts (Second Schedule), the exceptions and reservations to the Council (Third Schedule).

15. The Fourth Schedule (guidance of items currently included in the assessment of service charges), refers to 16 items of expenditure, and specifically refers to routine repairs and maintenance (Item A1), lighting staircases and corridors (Item B2), Wardens (Item C3), cleaning services (Item C4), roof (Item G8), major repairs (Item J11), Insurance (Item K12) and Administration Charge (Item L13).

#### The Statutory Requirements

16. Section 19, Landlord & Tenant Act 1985 as amended, states -

- (1) Relevant costs shall be taken into account in determining the amount of service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, or
  - (b) where they are incurred on the provision of service or the carrying out of works, only if the services or works are of a reasonable standard.

and the amount shall be limited accordingly.

(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a Leasehold Valuation Tribunal for a determination -

- (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
- (b) whether services or works for which costs were incurred are of a reasonable standard, or
- (c) whether an amount payable before costs are incurred is reasonable.

17. Section 20, Limitation of service charges: estimates of consultation, applies.

18. Section 26, Exception: Tenants of certain public authorities

- (1) Sections 18-25 (limitation of service charges and requests for information about costs) do not apply to a service charge payable by a tenant of -

a local authority,  
unless the tenancy is a long tenancy, in which case Sections 18-24 apply, but Section 25 does not.

- (2) The following are long tenancies for the purposes of Sub-Section (1) -

- (a) a tenancy granted for a term certain exceeding 21 years whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture ...

### **The Hearing**

19. Mr Andrew Forrest, solicitor, Southampton City Council Local Services, appeared for the Council. Miss J Lambert, the Respondent, was not present or represented. At the outset Mr Forrest explained that the matter was before the Tribunal in order to establish that unpaid service charges and other monies due from the lessee, Miss Lambert, were properly and reasonably incurred and works were to a reasonable standard, in order that further proceedings could be taken against the Respondent. Mr Forrest confirmed that there had been only limited responses from Miss Lambert throughout the periods in question, whereby despite promises to pay, she had failed to do so. Mr Forrest was not aware of any specific admission or acceptance of liabilities by Miss Lambert.

20. Referring to the extensive papers that had been submitted by the City Council (and copied to Miss Lambert), Mr Forrest confirmed that on 1st May 1996 the flat had been transferred to Jacqueline Elizabeth Lambert from the original lessee, Mr David Anthony Cornhill. He confirmed that at February 2003 outstanding service charges totalled £2,157.19, and unpaid contributions towards major works totalled a further £3,528.50.
21. Wyndham Court comprised 184 residential flats, of which 85 had been sold on similar long leases and 99 remained as Council tenants. Some documents had an historic typographical error referring to 187 flats. The correct total was 184 flats, on which appropriate calculations for service charges were made.
22. The City Council, through the Housing Management Department and Building Design Service, had undertaken a period of discussion with lessees, and formal consultation with the Residents' Association for a major works contract involving the replacement of windows at Wyndham Court costing £1.164m.
23. The papers provided to the Tribunal included detailed documentation as to the contract, estimates received, and the calculation for the amounts recoverable from lessees. The formal consultation period following the Notice issued in accordance with Section 20, Landlord & Tenant Act 1985, expired on 22nd January 1996.
24. Specifically, the papers included a notification to all lessees dated 15th March 1996 that the City Council proposed to vary the costs calculations. Whereas the lease terms proposed that the costs of the window replacement scheme would be divided between the number of flats on an equal share basis, there was clearly an unfairness in that flats varied from bedsitter accommodation to large three bedroom flats. On the basis of good management, the City Council Building Design Service, having taken legal advice, proposed revised contributions based on the individual number of replacement windows (and balcony doors where appropriate), together with an equal contribution towards the cost of windows in communal areas and scaffolding. In consequence, there was a small reduction in cost calculations.
25. Mr Forrest confirmed that the window replacement contract had been completed and payments made by the City Council. There was no VAT payable on the building works, but there was a VAT element payable on the Council's administration charge. So far as Miss Lambert was concerned, there had only been two payments for the major works costs in August and September 1999, despite her making offers and representations to pay. Mr Forrest confirmed that there had been objections to the original scheme, but the objections were withdrawn when changes were made, to charge by the number of windows. The original windows were 30 years old. There had been no formal objection from the original lessee.
26. Mr Forrest responded to various questions raised by the Tribunal in relation to elements within the service charges, as included in the financial statement provided, and points specifically to the major works contract. Some information was not available to Mr Forrest, and it was agreed that additional information would be provided.

27. Mr Forrest confirmed that Miss Lambert had failed to co-operate with the City Council, there had been no response to the Tribunal, no inspection had been possible prior to the Hearing, and Miss Lambert was not in attendance or represented. Subject to additional information he would provide, Mr Forrest maintained that the service charges and major works cost calculations were appropriate and reasonable within the lease terms, and should be so confirmed by the Tribunal.
28. At the conclusion of the Hearing, the Tribunal raised specific questions of Southampton City Council with a Direction that a response be made within 14 days. That information was provided to the Tribunal by communication dated 4th March 2003. The Tribunal sent a copy to Miss Lambert at the flat for her information requesting that any response be received within a further 14 days. No response or replies were received.
29. Subsequently, the Tribunal sitting in private at Southampton on 31st March 2003, reviewed the case papers, their inspection and Hearing notes, and the additional information provided by Mr Forrest with his replies dated 4th March.

#### **Consideration**

30. The application relates to a determination of reasonableness of service charges for costs incurred, and the standard of works for the years 1996 to 2002. From the financial statements produced by the Council as at February 2003, the amount of service charges outstanding were £2,157.19 and in respect of the major works costs the amount outstanding was £3,528.50. We noted that only limited payments had been made by the Respondent at irregular intervals. In respect of the major works costs, only two payments totalling £70 had been made since August 1999.
31. When considering service charge disputes, it is relevant to consider the Service Charge Residential Code approved by the Secretary of State in accordance with Section 87, Leasehold Reform, Housing and Urban Development Act 1993. The Code applies to property where a service charge which varies according to expenditure is payable, but not however where a landlord is a public sector authority, as in this case. The City Council is required to observe the terms of the lease and other statutory requirements which we have set out in these Reasons. It has specifically followed the requirements as to notification and consultation with lessees as required by Section 20, Landlord & Tenant Act 1985, relating to the major works contract.
32. We have carefully reviewed the evidence in relation to the window replacement contract. We noted the additional information provided by the City Council, that the window contract was completed in August 1996, and that the work was supervised by an on site Clerk of Works and the Site Manager for the window suppliers. In consequence, they were following the Council's specification. The consultation process had involved the Wyndham Court Tenants Association, though we noted the Association was now no longer in existence.

33. We received no notification of any formal objection to the window contract. The case papers included copies of correspondence to lessees, including the Respondent. On the basis of our detailed review of the matter and our external inspection, we have seen no evidence that the contract has been incorrectly undertaken, that the costs were excessive, that the replacement windows are defective or inadequate in any way, or specifically in relation to Flat 112 there are any matters arising which give rise to doubt as to the satisfactory completion of the works. Accordingly, we determine that the amounts payable by the Respondent for Flat 112, Wyndham Court, in respect of the major works contract are reasonable and have been reasonably incurred.
34. We considered matters relating to the day to day administration, management and maintenance of the building, for which variable service charges are payable. We noted that the financial year for the building is 1st April to 31st March next. The case papers include statements by the City Council for the calculation and recovery of service charges for the various annual periods. The format of the statements we found difficult to follow, and included amounts attributable to various elements of cost headings. There were no explanations whereby individual leaseholders would be able to have a better understanding as to costs, and none of the statements were subject to an audit certificate of confirmation.
35. We specifically enquired whether the residents or the Residents' Association asked for invoices or confirmation of charges, and we were informed they had not. The Residents' Association was in existence at the time of consultation for the windows contract, and had been involved. We also asked what internal audits were undertaken to ensure that the figures provided for the service charges were correct. We were informed that the Southampton City Council carried out internal audits at regular intervals, which included checking service charges.
36. In a major building the size of Wyndham Court with 184 flats, there are 99 which remain subject to Council tenancies. The obligation to fund all costs for Wyndham Court remains with the City Council, who have the obvious responsibility to finance and pay all expenses relating to the building. That obligation is doubtless complicated where payments are outstanding for any period from any of the 85 leaseholders.
37. Nevertheless, all leaseholders are entitled to information and to be kept informed. In working towards our determination as to 'reasonableness', we acknowledge that we were unable to question all elements of costs that make up the annual service charges, and over a period of six years.
38. We were informed that service charges are estimated for the forthcoming financial year, and amounts are recovered from lessees on a monthly basis. Within six months of the previous year end a final account is submitted, which would detail any under or overpayment for the individual flat. From information subsequently provided at our request, it is clear there are systems in place that record amounts due and payments received, with subsequent balances and for each month. It is clearly important that accurate accounting information is maintained, whereby specific information as to the status of any flat is available and can be provided to lessees.



39. We considered the relevant costs included within the service charge demands. These included ....

Item A - **ROUTINE REPAIRS AND MAINTENANCE**

Details as to the total costs of routine repairs to the exterior and communal areas were provided, but in total figures. Other expenditure included communal electrical repairs, lift maintenance, fire and security maintenance. We were not provided with individual invoices, but we do not feel that such extensive investigation or audit was required.

Item C - **WARDENS/CLEANING SERVICES**

These costs relate to the employment of a resident warden and general cleaning to the communal areas and common parts.

Item D - **BULK REFUSE**

This item related to regular collection of refuse from the building.

Item E - **GROUNDS MAINTENANCE**

Item F - **LIFT - INSURANCE AND OPERATING COSTS**

These costs included all block lighting charges. The lifts were the original and are included in the current year's refurbishment programme. The lifts maintenance was carried out by a specialist company.

Item G - **LANDLORDS' CONTROLLED HEATING**

Item H - **ADMINISTRATION CHARGE**

The lease provides that the Council be entitled to add the sum of 15% to any of these costs for administration.

Item I - **VAT**

The lease provides that VAT payable in respect of any relevant costs, and specifically in respect of the administration charge, is properly recoverable.

Item J - **INSURANCE**

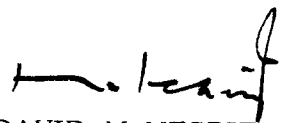
The City Council confirmed that the flats and maisonettes were included in an appropriate insurance policy on a "replacement build" value.

40. As we have noted, the ground floor of the development comprises retail shops and business premises. The City Council confirmed that whilst the rents for the commercial units included an element for repairs, the commercial units did not use and were not charged for any of the services applicable to the residential flats and maisonettes. Accordingly, all of the service charge costs are recoverable only from the 184 residential units.

41. In a large development such as Wyndham Court, and with various areas of common parts and several lifts, expenditure will be substantial. Further, having regard to the age of the building and its construction, there will be significant periodic costs arising from major works for repairs or renewals. The window contract was such an example. We did not feel that it was appropriate for us to require individual invoices for each cost element to be provided. Such examination would be more appropriate for audit purposes, which are undertaken internally by the City Council. Nevertheless, at the conclusion of the Hearing we did raise numerous specific questions, to which we have referred throughout these Reasons, and we have fully considered the responses.
42. In particular, we felt that in the absence of the Respondent, and with no information as to why service charges had been unpaid or withheld, and specifically, as we were informed that proceedings would arise from our determination, that detail should be provided as per these Reasons, and to confirm the full consideration that has been given to the matter.
43. We have concluded that following our consideration of the application, the case papers, the lease and the terms, the evidence provided at the Hearing and subsequently, and from our review of the statutory requirements, we are of the opinion that all of the service charge costs are reasonable and have been reasonably incurred.

#### **Determination**

44. On the basis of the information before us and what we saw, and our collective knowledge and experience of these matters, we confirm there is nothing before us to suggest that any of the service charges, the subject of this application, were unreasonable. We therefore confirm that the service charges included in the service charge statements, and the annual service charge accounts, for the years ended 31st March 1996 to 31st March 2002 are reasonable.
45. We further determine that the work for the building window contract has been undertaken to a reasonable standard, and that the service charge proportion in respect of Flat 112, Wyndham Court, is reasonable and is confirmed.



DAVID M NESBIT  
Chairman