BIR/OOGF/LIS/2005/0005

In the matter of Mr R G Gregory ("the Applicant") and The Wrekin Housing Trust ("the Respondents") and in the matter of the Applicant's applications to the Leasehold Valuation Tribunal for a determination of liability to pay service charges under Section 27A of the Landlord & Tenant Act 1985 ("the Act") and an order under Section 20C of the Act in respect of:

7A Chapel Street, St George's Telford, Shropshire, TF2 9JA

Introduction

On 12th December 2005, the Applicant submitted an application to the Midland Leasehold Valuation Tribunal ("the Tribunal") for a determination of liability to pay service charges in respect of the subject property under Section 27A of the Act and an Application for an order under Section 20C of the Act .

The applications relate to the service charge years 2002-3, 2003-4 and 2004-5 (three years) and the areas of dispute are the reasonableness in the relevant years of the costs of the following matters:

- Landscape maintenance
- Administration charges
- Insurance
- Repairs

An inspection of the subject property and the development of which it forms part was carried out on 6th September 2006 in the presence of Mr Gregory.

7a Chapel Street comprises a modern, purpose built ground floor flat in one of two similar two storey blocks forming the Respondents' Chapel Street development, situated in a quiet residential cul de sac close to the centre of the village of St Georges.

The development is set back from the road behind a low brick wall with metal railings and it contains a total of twenty flats of mixed one and two bedroom design. To the rear of the flat blocks is a small area of amenity grounds and parking facilities for the use of the occupiers.

The flat is held by Mr Gregory on a lease for a term of one hundred and twenty five years from 1st April 1997 at an annual ground rent of £10, together with (by way of further rent) the appropriate proportion of the sum paid from time to time by the Respondents (as lessors) in effecting the insurance of the buildings on the development.

There is one other long leaseholder at the development; all of the other flats are held on short term residential tenancies.

Background

(A) The contractual framework set out in the Lease

For the purposes of the applications, the relevant sections of the lease under which the Applicant holds the subject flat are:

Clause 3 (1) (c) : by virtue of which the lessee (i.e. Mr Gregory) undertakes to:

"maintain uphold and keep the demised premises (other than the parts thereof comprised and referred to in paragraph (4) and (6) of Clause 5 hereof) all walls windows sewers drains pipes cables wires garden ground and footpaths and appurtenances thereto belonging in good and tenantable repair and condition".

This makes it clear that apart from those areas where the lessors (i.e. the Respondents) have a specific responsibility to look after certain parts of the buildings and development, it is the lessee who is responsible for keeping the property in good repair. Although invariably expressed in different words, this is a normal feature of long leases of flats.

Clause 4 (2): by virtue of which the lessee undertakes to:

"contribute and pay from time to time on demand a proportion of the cost towards the cost expenses outgoings and matters mentioned in the Fourth Schedule hereto"

This is the paragraph which requires the lessee to contribute his share of the service charge and management costs in respect of those matters which the lessor is made specifically responsible for under the Fourth Schedule. Those matters are more precisely defined in Clause 5, paragraphs (4) (5) and (6), as follows:

Clause 5 (4):

"That (subject to contribution and payment as hereinbefore provided) the Lessor will maintain and keep in good and substantial repair and condition

(i) the main structure of the building including the foundations and the roof thereof with its gutters and rain water pipes

(ii) all such gas water pipes drains and electric cables and wires in under and upon the estate as are enjoyed or used by the Tenant in common with the owners or lessees of the other flats

(iii) the main entrance passage landings staircases and forecourt of the building and the paths and roads on the estate enjoyed and used by the Tenant in common as hereinafter provided and the boundary walls and fences of the estate and will keep the landscaped areas (if any) serving the estate cultivated, and in good order"

Clause 5 (5):

"That (subject as aforesaid) the lessor will so far as practicable, keep clean and reasonably lighted the passages landing staircase and other parts of the said buildings so enjoyed or used by the Tenant in common as aforesaid to such standard as the Council considers fit

Clause 5 (6):

"That (subject as aforesaid) the lessor will so often as reasonably required decorate the exterior of the buildings on the estate in the manner in which the same is at the time of this demise decorated or as near thereto as circumstances permit"

In addition, **Clause 1:** deals, amongst other things, with, as already seen, the requirement for the lessee to pay

".... by way of further or additional rent from time to time a sum or proportionate sum or sums of money, which the Lessor may expend in effecting or maintaining the insurance of the buildings on the estate against loss or damage by fire and such are the risks (if any) as the Lessor thinks fit as hereinafter mentioned such last mentioned rent to be paid on demand without any deduction"

Clause 5 (2) contains the corresponding obligation on the Lessor to insure:

" That the Lessor will at all times during the said term (unless such insured shall be vitiated by any act or default of the Tenant or the owner lessee or occupier of any other flat comprised in the estate) insure and keep insured the buildings on the estate against loss or damage by fire, and such risks (if any) as the Lessor thinks fit in some insurance office of repute in the full value thereof together with architects' and surveyors' professional fees and whenever required produced to the Tenant at the offices of the Lessor upon seven days notice the policy or policies of such insurance and the receipt of the last premium for the same and will in the event of the said building being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the said buildings or any part thereof in respect of which such monies shall have become payable or have been received ***PROVIDED ALWAYS*** *that if the rebuilding or reinstatement of the building or any part thereof shall be frustrated all such insurance moneys relation to the building or part in respect of which the frustration occurs shall be apportioned by agreement between the Lessor and the Tenant or in default of such agreement determined by a single arbitrator in accordance with the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force"*

(B) The statutory framework set out in the Act:

In addition to the contractual relationship between the parties set out and defined in the lease, there are also statutory provisions to consider in the Act , which provides inter alia, under Section 19 (1) that:

"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."

Section 27A(1) of the Act then 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."

Hearing & Decisions:

(1) Application under Section 27A of the Act

At the hearing held later on 6th September, the Applicant appeared in person and the Respondents were represented by the following personnel:

Mr C Horton:	Company Secretary/Solicitor
Ms C Guy:	Legal Assistant
Mr G Pugh:	Finance Department
Mr S Thorpe:	Tenancy Services manager (Property)

The Tribunal considered the oral and written evidence of the parties as presented at the hearing and as outlined in the various written submissions and made the following determinations:

(i) Landscape maintenance:

In the submission of the Applicant, litter was not collected from the site and the grass was cut at irregular intervals, and even then, it was not undertaken in a satisfactory manner e.g. the cuttings were not removed, and the edges were not strimmed. In addition, there were weeds growing outside the front wall of the development (on the back of pavement line), and the manhole cover in the rear amenity area needed to be lowered and the ground around it seeded to present a more acceptable appearance. In summary, he was being charged for landscape maintenance, but felt that this was simply not being done properly.

In response, Mr Horton for the Respondents emphasised that the contract for the grounds maintenance covered the Respondents' entire housing stock and had been let on a strict specification, a copy of which had been supplied to the Tribunal. Mr Horton accepted that the specified standard was not necessarily of the highest order, but (a) the contractors were regularly monitored and were performing to the required standard, and (b) there was always a difficult balance to achieve in securing an acceptable specification but at a cost which was reasonable, and affordable. For instance, the current contract did not call for the grass cuttings to be removed from site as part of that "acceptable standard/acceptable cost" equation. If it did, then the costs would be greater and would obviously fall on Mr Gregory as well as the Trust in their appropriate proportions.

Mr Horton acknowledged that there had been errors in the calculation of the appropriate charges under this heading in each of the three years in question. In 2002-3 there had been an undercharge to Mr Gregory (which the Trust had waived); in 2003-4 there had been a miscalculation of the correct apportionment of the overall charge and the increase of £0.14p per month attributed to Mr Gregory related to the necessary adjustment to correct the position; in 2004-5 an historically incorrect apportionment had been identified, which had resulted in the charges to the Applicant being reduced from £6.24p per month to £4.68p per month (with an undertaking to return the overpayment).

So far as the weeds outside the front wall were concerned, these were not the responsibility of the Respondents as they were growing on the public highway, and the reduction in height of the manhole cover was not considered to be cost effective in that it would cost a considerable amount to undertake for very limited real benefit.

The Tribunal determines that in all of the circumstances, both the standard of work under this heading and the charges for it (on the corrected bases) are reasonable and therefore recoverable.

(ii) Administration Charges:

Mr Gregory submitted that the administrative function of the Trust performed very poorly – as demonstrated by the already admitted errors in relation to the gardening service charge; the fact that it had taken fourteen weeks for him to get a reply from the Respondents to a simple question; and that he was charged for arrears collection when he was not in arrears. The Respondents had even accepted this by repaying him the cost of his application fee to the Tribunal, and in summary, he felt they did nothing for this charge.

Mr Horton acknowledged that there had been problems with the garden contract apportionments/charges (ante) and on reviewing the file when Mr Gregory first made his application to the Tribunal, it had been considered that the Trust's dealings with Mr Gregory and his concerns had not been up to the standard the Trust would normally expect. It was for these reasons that the Respondents had refunded the application fee paid by Mr Gregory.

Mr Horton explained that the total administrative charges for the leasehold owned properties of the Trust (mainly relating to the finance function) were determined on a cost basis with individual apportionment for appropriate personnel. The total cost was then divided by 970, being the total number of such owned properties, in order to arrive at an administrative cost per residential unit. In the present case that equated (as the most expensive of the three years in question) to £47.76 for the year 2004-5, which Mr Horton suggested was very modest in relation to the charges made by other organisation for similar work.

Mr Horton emphasised however, that the purpose of apportioning staff time to deal with the leasehold properties of the Trust was to ensure that the general costs of running the business in respect of the circa 10,500 properties which were let on a rental basis did not fall on the leasehold owners such as Mr Gregory.

Mr Horton also referred to the suggestion by the Applicant that as he was not in arrears with any payments, he should not be charged for arrears collection. Mr Horton confirmed that there was no suggestion of Mr Gregory being in arrears, but the collection of arrears from other leaseholders was sometimes necessary and was a legitimate part of the Trust's administrative function for which the cost had to be included in the overall service charge.

Although the Applicant's frustration at a number of (admitted) administrative errors during the service charge years in question is understandable, there is no doubt that there is a significant degree of administrative input in managing leasehold properties. The Fourth Schedule to the lease allows the recovery from the lessee of an appropriate proportion of the management costs involved in looking after the development, and therefore there is a contractural obligation to pay the administrative charges in this case. The question therefore is as to whether the standard of the administrative work under this heading in each of the three years in question has been reasonable and if so, whether the amount of the charges for it have been reasonable.

In answer to the first point, it is accepted by the Respondents that there have been shortcomings, but there is a great deal more to administration in cases such as this than those errors which have been identified. In addition, the Respondents have been very open in admitting mistakes when they have happened and in attempting to "put things right" e.g. not seeking to obtain payment in respect of a previous year's undercharge; refunding the Applicant's fee to the Tribunal; reimbursing overpayment when it has been identified. Consequently, the Tribunal determines that the standard of the administrative service has, in all of the circumstances, been reasonable.

In terms of the charges for that service, no firm evidence was submitted by either party as to what the charges might otherwise have been, but drawing on its own experience, the Tribunal considers that the charges for

each of the three years in question have been reasonable and are therefore recoverable.

(iii) Insurance:

Mr Gregory did not make any specific submission at the hearing in relation to this item, but from his written evidence his concern centred on the fluctuations (normally upwards) in the cost of the building insurance .

Mr Horton explained that the Trust renewed its insurance cover annually and that four different underwriters had been approached in the last four years in order to obtain the most competitive quotation, and the most comprehensive cover i.e. the best value for money. Individual charges were then determined by calculating the floor area of the individual leaseholder's flat as a percentage of the total floor area of all leaseholders' flats, which, in the present case, resulted in a charge in respect of the subject property of 0.12 23%.

The reason for the fluctuations in premium was of course the normal operation of the insurance market which characteristically varied considerably from time to time. For instance, significant increases were seen in insurance costs following the events of 11 September 2001, whereas in the current financial year those charges have fallen quite considerably to £4.12p per month for the subject property.

In the absence of any specific evidence to the contrary, and using its own knowledge and experience, the Tribunal determines that the insurance cover and charges for that cover in respect of the relevant years are reasonable and recoverable.

(iv) Repairs:

In his Application, Mr Gregory referred to a number of repairs for which he had been charged in the relevant years, but which had not, in his view, been his responsibility. He was also concerned about the proposed major works to the roof of the block in which his flat was situated.

Recently, Mr Gregory indicated that he had encountered great difficulty in obtaining the cooperation of the Respondents in firstly, fitting an extractor fan in the (internal)

bathroom of the property, and secondly, dealing with certain problems arising from the fitting of that fan.

Mr Horton referred to the Statement of Case by his colleague, Ms Guy, in which the method of calculating the amount of the recoverable charge was set out, namely by calculating the floor area of the individual leaseholder's flat as a percentage of the floor area of all the flats within the same block. In this instance, that gave a figure of 9.3853%.

Mr Horton then detailed each of the repairs in May 2002, July 2002 and February 2005 for which the total charges to Mr Gregory had been £11.64. All of these were, in his view, properly recoverable under the terms of the lease (see extracts of relevant clauses of the lease detailed above).

Mr Horton acknowledged, however, that Mr Gregory had been charged £12.96 for repairs to a broken rotary clothes line and £0.91p for a repair to a water tank at the development which he had subsequently challenged with the Trust, and which had been repaid to him.

So far as the extractor fan and subsequent dampness in the bathroom were concerned, Mr Horton pointed out that the installation had been carried out in good faith, although it was not actually the responsibility of the Trust (as lessors) to do such work. Under the terms of the lease, the Applicant was responsible for matters of this nature. Nevertheless, the Trust would continue to try to resolve the problems with the fan, but in the circumstances, he suggested that it was not something for which the Respondents should be criticised in terms of the present Application.

Given the wording of the lease, the repairs in May 2002, July 2002 and February 2005 were properly the subject of the service charge provisions. The Tribunal was given no evidence to suggest that the work this entailed was carried out to anything other than a reasonable standard, and the amounts involved are de minimus in terms of a test of reasonableness.

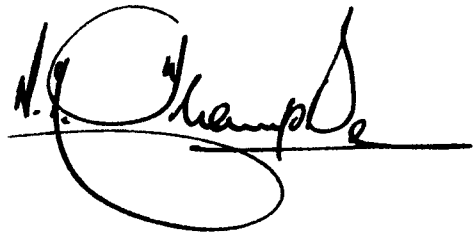
Accordingly, the Tribunal determines that the cost of the repairs in question are reasonable and therefore recoverable.

So far as the extractor fan is concerned, the Tribunal accepts the argument by the Respondents that it was not actually their responsibility to deal with the problems of

poor air circulation and condensation/dampness in the bathroom. Under the provisions of the lease, that is something for which the Applicant (as lessee) is responsible. As the Respondents have therefore undertaken the installation of the extractor fan (either knowingly or otherwise) in good faith, on what amounts to a good will basis, the Tribunal determines that it would be inappropriate to consider the actions or inactions of the Respondents in this connection critically.

(2) Application under Section 20 C of the Act:

Taking into account the representations of the parties and the circumstances of the case, the Tribunal determines that it would be just and equitable to grant the order requested by the Applicant under Section 20C of the Act.



N R Thompson
Chairman

Date: 10th January 2007