

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: Black Bear Court, High Street, Newmarket, Suffolk, CB8 9AF

Applicant: Black Bear Court Association Limited

**Applicant's
Managing Agents:** Smiths Gore, 190 High Street, Newmarket, Suffolk CB8 9WJ

Landlord: Sandpiper Group, 1340 Stratford Road, Hall Green, Birmingham
B28 9EH

Respondent: Dean Bartle, 6 Black Bear Court, High Street, Newmarket,
Suffolk,
CB8 9AF

Case number: CAM/42UC/LSC/2006/0046

Application: Application for a determination of the liability to pay
Service charges including the reasonableness of service charge
(Section 27A Landlord and Tenant Act 1985)

Tribunal: Mr JR Morris (Chairman)
Mr R Marshall FRICS FAAV
Mr L Jacobs FRICS

Hearing Date: 30th November 2006

Attending Hearing:

Applicants: Ms Mummery of Smiths Gore, Managing Agents representing the
Applicant

Respondents: Neither the Respondent nor a representative of his attended

STATEMENT OF REASONS

The Application

1. The Applicant applied to the Tribunal on the 24th August 2006 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness and payability of the costs incurred by way of service charge for the year 1st January to 31st December 2005 and the costs to be incurred by way of service charge for the year 1st January to 31st December 2006.

The Law

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

- (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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (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.

Description of the Building and Property

- 3. The Property is in a three storey Block of twenty units of 6 offices on the ground floor and 14 flats on the first and second floors (The Building). The Building is constructed of brick under a tile roof and was built circa 1985. There are three common stairways to the flats. The common areas are utilitarian but maintained to a fair standard. Access to the common areas and flats is via a door entry system that is timed to be open during the day and but entry can only be obtained by the use of a code at night. The car park is lit by security lighting. The Building has a car park to the rear. Each flat has a designated parking space.

Inspection

- 4. The Tribunal inspected the exterior of the Building only in the presence of the Applicant and Respondent's Representatives. None of the issues raised relate to the interior of the Property and therefore no inspection was made of this part of the Building.
- 5. Externally the Building and car park surrounding it were in fair condition.

The Lease

- 6. The Applicant is the Management Company and employs a Managing Agent. The Respondent is a Tenant. A copy of the Lease dated 4th November 1985 was provided. The Lease is for a term of ninety-nine years from 25th March 1985 at a rent of £30 per annum subject to variation as stipulated in the Lease.
- 7. The Demise is described in the Sixth Schedule to the Lease. The Demise includes the Parking Space allocated to the Flat.
- 8. Under Clause 5.1 the Lessee covenants to pay the one twentieth (as mentioned in the Sixth Schedule) of the costs expenses and outgoings and matters mentioned in Part 1 of the Fourth Schedule.
- 9. Under Clause 5.2 the Respondent is to pay the Service Charge in respect of every Maintenance Year by two equal instalments in advance on the half yearly days with a balancing payment in accordance the year ending on the 31st December.
- 10. Clause 6 sets out the obligations of the Management Company and Clause 7 requires the management Company to insure
 - Decoration and repair of structure and maintenance of the grounds
 - Decoration and repair of common parts
 - Payment of staff
 - Costs incurred in management
 - Insurances
- 11. The Fourth Schedule sets out the expenses and outgoings and matters in respect of which the Lessee is to contribute through the service charge including:
 - The obligations of the Management Company in 6 and 7
 - Insurance
 - Payment of staff
 - Costs incurred by managing agents, accountant, solicitors

- Costs incurred in management
- Reserve

Documents

12. The Tribunal received:
 - Application Form
 - Lease
 - Applicants statement of case
 - Minutes of Applicant's Meetings with Tenants
 - Accounts for the year ending 31st December 2005 and budget accounts for the year ending 2006
 - Invoices for the years in issue received 14th December 2006
 - Correspondence from the Applicant's Managing Agent to the Respondent. No replies were received from the Respondent.
13. Two sets of accounts for the period 1st January to 31st December 2005, which lists the items of the Service Charge and their cost, were provided. One was included in the Financial Statement for the Black Bear Court Association Limited under the heading Administrative Costs (Account 1) and are included in Appendix 1 and the Applicant's Managing Agent prepared the other for the Application (Account 2) and are included in Appendix 2. At the Tribunal's request the Applicant's Managing Agents provided copies of all invoices to the Tribunal and the Respondent on the 14th December 2006.

Matters in Dispute

14. The Application is for a determination as to the reasonableness and payability of the costs incurred by way of service charge for the year 1st January to 31st December 2005 and the costs to be incurred by way of service charge for the year 1st January to 31st December 2006. The items identified by the Applicant, as being in dispute are:
 - Cleaning
 - Repairs
 - Insurance
 - Electricity
 - Management Fees
 - Accountancy

Evidence

15. The Applicant's Managing Agent as the Applicant's Representative stated that the Respondent had failed to pay the Service Charge for the costs incurred for the year ending 31st December 2005 and the Service Charge for the costs to be incurred for the year ending 31st December 2006 and sought a determination that the costs were reasonable.
16. The Applicant's Representative attended the Hearing on the 30th November 2006. The Respondent did not attend.
17. The Applicant's Representative submitted the Account 1 and 2 and a selection of invoices.
18. The Tribunal noted that in Account 2 there were two budget figures one for 2005 and the other for 2006. The third figure was headed "anticipated actual amount". None of the amounts were actual costs. The Tribunal therefore took Account 1 to be the

actual cost of the services provided as this was understood to be the account which continued the figures for the audited accounts.

19. The Tribunal found that the reasonableness of the Service Charge could not be assessed from Account 1 and the selection of invoices provided and therefore the Applicant's Representative was requested to provide all the invoices for the items of the Service Charge. These were received by the Tribunal on the 14th December 2006 in a bundle with the invoices being in the parts lettered as follows:
Window cleaning for years ending 31st December 2005 and 2006 Parts C and D
Cleaning of Common Parts years ending 31st December 2005 and 2006 Part E
Repairs for years ending 31st December 2005 and 2006 Part I
Insurance for years ending 31st December 2005 Part G
Insurance for years ending 31st December 2006 Part H
Electricity for years ending 31st December 2005 and 2006 Part J
Management Charges for years ending 31st December 2005 and 2006 Part K
Accountants Fees years ending 31st December 2005 and 2006 Part L
Miscellaneous years ending 31st December 2005 and 2006 Part M
20. It was noted that the ground floor shop units have their windows cleaned more often than the upper floor flat units. However the shops pay a share of the cleaning of the common stairways which they do not benefit from and therefore the Applicant's Representative submitted that overall the window cleaning and cleaning costs and their attribution were within the terms of the Lease and reasonable.
21. It was noted by the Tribunal that although the Lease allowed the Applicant to establish a reserve for future works from monies raised through the Service Charge there was not item referred to as "the reserve fund", as required by the Fourth Schedule of the Lease. It was noted that in the year ending 31st December 2005 the advance payments of Service Charges resulted in a surplus. It was apparent from the minutes of the meetings of the Applicant's shareholders referred to in the next paragraph that such overpayments were held over from year to year and treated as a reserve fund. The Applicant's Representative confirmed this to be the case.
22. The Applicant's Representative stated that the advance payment to be made in respect of the Service Charge cost to be incurred, as allowed by the Lease was agreed at meetings of the Applicant's as shareholders who are all Tenants. It appeared that this was done based upon the Applicant's annual accounts for the previous year.
23. The Applicant's Representative provided minutes of the meetings of the Applicant's shareholders. At the meeting held on the 9th November 2004 it was noted that the Service Charge was discussed but that there was no minute referring to an advance amount being set and agreed although the Applicant's Representative said that it was her understanding that this did occur. At the meeting held on the 15th September 2005 the Service Charge was discussed and at the meeting held on the 19th January 2006 it was minuted that an advance Service Charge contribution was set and agreed at £615 per flat. Although at the meetings accounts were referred to and approved these would seem to be the Applicant's Company Accounts. The Tribunal were provided with an unaudited copy of these for year ending 31st December 2005 and the section relating to the Service Charge items, referred to in these Reasons as Account 1, is contained in Appendix 1. However there did not appear to be any accounts sent to the Tenants which were clearly indicated as being Service Charge Accounts and which recorded the monies raised by the Service Charge during the year, the actual costs incurred during the year, together with any money set aside in reserve, followed by a balancing sum which was either outstanding and to be met by

the Tenants or overpaid and to be set against the next year's Service Charge as required by Clause 5.3 of the Lease.

24. The Applicant's Representative confirmed that the Service Charge was set at the meeting and was based upon the previous year's accounts of the Applicant but that all the Tenants as shareholders of the Applicant received a copy of these accounts. The Applicant's Managing Company then invoiced the Tenants. Any overpayment was held as a surplus and treated as a reserve.
25. No response was received from the Respondent in writing in answer either to the original Application or to the later provision of invoices by the Applicant.

Determination

26. The Tribunal determined that the items of the Service Charge were authorised within the Lease.
27. The Tribunal found that costs in Account 1 did not correspond to the invoices and therefore in order to be able to assess the reasonableness and payability of the costs incurred and to be incurred for the years in issue the Tribunal drew up an account of the Service Charge expenditure and this is set out in Appendix 3 for the year ending 31st December 2005 and Appendix 4 for the year ending 31st December 2006.
28. A Service Charge Account detailing the Service Charges received by way of income and the cost of each item by way of expenditure should be prepared together with any amount outstanding or overpaid and sent to each Tenant. The account should also state what payment is to be made in advance for costs to be incurred in accordance with the Lease. This does not appear to be done. Instead reliance is placed upon the Applicant's Company Accounts which do not in this case contain the same pertinent information as would be expected in a Service Charge Account.
29. A contribution to a reserve fund should be based upon a proper forecast of identified specific future items of expenditure. The Tribunal noted that in the present case the Applicant treated any surplus as a reserve. The Tribunal commend to the Applicant the practice of drawing up a schedule of condition and including an amount within the service charge to be used for identified and budgeted future works. Any surplus should be applied to offset the cost of the following year's Service Charge in accordance with Clause 5.3 of the Lease and not used as a reserve.
30. The Tribunal found that the work referred to in the invoices was of a kind that is common in relation to premises such as the Building. The cost of the work itemised in the invoices appeared reasonable and no issue had been raised that it was not of a reasonable standard.
31. It was noted that an invoice for £342.74 for flood repairs was included in respect of the Service Charge for year ending 31st December 2006. The Tribunal determined that the Applicant and its Managing Agents should investigate the possibility of an insurance claim. If such a claim is feasible any repayment over the excess of £100 should be reimbursed, as was noted from the papers provided, had been done in respect of a previous claim.
32. **The Tribunal determined that the total Service Charge for the costs incurred of £11, 042.51 for the year ending 31st December 2005 as set out in Appendix 3 was reasonable and that £552.13, being one twentieth as required by the lease, is immediately payable by the Respondent to the Applicant.**

33. The Tribunal determined that the budget for the costs to be incurred for the year ending 31st December 2006 and" set out in the column headed "Proposed Budget 2006" in Account 2 at Appendix 2 was reasonable and further determines that the invoices to date for the year ending 31st December 2006 submitted to the Tribunal and set out in Appendix 4 are reasonable.

JR Morris Chairman

A handwritten signature in cursive script, appearing to read "J. Rhys Iwan".

Appendix 1

Black Bear Court Association Limited

Administrative Expenses for the year ended 31 December 2005

	2005 £	2004 £
Administrative expenses		
Management charges	2,200	2,200
Insurance	2,690	2,246
Electricity	238	292
Cleaning	1,896	2,325
Repairs and maintenance	3,314	5,929
Legal and professional	-	37
Accountancy	570	531
Bank charges	101	88
General expenses	62	55
	<u>11,071</u>	<u>13,703</u>

Black Bear Court Association Limited

Expenditure

	Budget 2005 £	Anticipated Actual 2005 £	Proposed Budget 2006 £
Repairs	2,000	4,375	3,000
Cleaning	2,800	1,850	1,800
Electricity	400	350	400
Accountancy	550	554	600
Management	2,200	2,200	2,200
Insurance	2,610	2,747	3,000
Bank Charges	90	93	90
Misc	<u>200</u>	<u>40</u>	<u>200</u>
Total Expenditure	10,850	12,209	11,290

Income

Service Charge	12,300	12,300	12,300
Bank Interest	<u>100</u>	<u>116</u>	<u>100</u>
Total Income	12,400	12,416	12,400
Total Expenditure	10,850	12,209	11,290
Surplus (Deficit) for year	1,550	207	1,110

Anticipated Balance at Bank 31 December 2005 £4,857

Anticipated Balance at Bank 31 December 2006 £5,967

John MacLachlan
19 December 2005

Appendix 3

1st January – 31st December 2005

Cleaning

Window Cleaning (Parts C and D of bundle provided)

9 months @ £45.00 = £405.00

3 months (@ £150.00 = £450.00) £855.00

Cleaning of Common Parts (Part E of bundle provided)

7 months @ £130.00 = £910.00

3 months @ £58.75 = £176.55 £1,086.25 £1,941.00

Repairs (Part I of bundle provided)

Commercial Fire Services - Fire equipment £ 272.01

Pearson & Gourley – Decoration £ 813.10

GC Sore – Fencing £ 548.73

MT Roofing £ 229.13

JV Waugh – Tree felling £ 205.63

GC Sore – Repairs to door £ 42.30

Cambs Lock & Safe - Fitting new door entry system £1,555.90

Gasworks – repairing leak £ 40.00

DW Tonge – New security lighting £ 319.40

Hobbes – Fire blanket £ 24.49 £2957.68

Insurance (Part G of bundle provided)

Premium including tax and charges £2,747.40

Electricity (Part J of bundle provided)

15th March 2005 £112.54

9th June 2005 £18.07

14th September 2005 £6.76

10th December 2005 £80.97 £218.34

Management Charges (Part K of bundle provided)

Smiths Gore Managing Agents –

1 quarters @ £549.99

3 quarters @ £549.90 = £1649.70 £2,199.69

Accountants Fees (Part L of bundle provided) £554.40

Miscellaneous (Part M of bundle provided)

Refund of insurance claim £350.00

Hire of hall £40.00

Tax £34.00 £424.00

Total £11,042.51
1/20th £ 552.13

Appendix 4

1st January - 31st December 2006

Cleaning

Window Cleaning (parts C and D of bundle provided)

7 months @ £45.00 = £315.00

3 months @ £150.00 = £450.00 £765.00

Cleaning of Common Parts (part E of bundle provided)

4 months @ £58.75 = £235.00

1 month @ £41.25 = £41.25

5 months @ £50 = £250.00 £526.25 £1,291.25

Repairs (Part I of bundle provided)

Cambs Lock & Safe - Door entry system maintenance £70.06

Flood repairs £342.74

Commercial Fire Services - Servicing and fire blanket £96.35

Clover Landscapes – Grounds maintenance £70.50

Clover Landscapes –

Grounds Maintenance (transferred from part E) £23.50

DW Tongue – maintenance of outside lights £116.87

Saniclean – unblocking drains £130.00

Clover Landscapes – Grounds maintenance £104.81

DW Tongue £87.23 £1,042.06

Insurance (Part H of bundle provided)

Premium including tax and charges £1,965.75

Electricity (Part J of bundle provided)

15th March 2006 £178.59

14th June 2006 £39.66

20th September 2006 £32.32

Management Fees (Part K of bundle provided)

Smiths Gore Managing Agents - 3 quarters @ £549.90 £1,649.70

Accountants Fees (Part L of bundle provided) £565.30