

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UG/LIS/2005/0060

Property: 37 Baltic Wharf
Clifton Marine Parade
Gravesend
Kent
DA11 0DD

Applicant: Baltic Wharf (Gravesend) Management Company Limited

Respondent: Mr. D. Speed

Date of Hearing: 8th March 2006

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. M.G. Marshall FRICS
Miss J. Dalal

Date decision Issued:

**RE: 37 BALTIC WHARF, CLIFTON MARINE PARADE, GRAVESEND, KENT
DA11 0DD**

Background

1. Baltic Wharf (Gravesend) Management Company Limited ("the Applicant") is the management company in respect of Baltic Wharf, a development comprising three purpose built blocks of flats. The lessees are members of the Applicant and the freeholder is Bellway Homes Limited. Mr. Speed ("the Respondent") is the lessee of 37 Baltic Wharf ("the subject property").
2. The Applicant began proceedings in the County Court against the Respondent to recover arrears of service charges and the Respondent entered a defence. On the Court's own initiative it was ordered that the claim be stayed and that the matter be transferred to the Leasehold Valuation Tribunal.
3. Provisional directions were made in respect of the conduct of this matter and the Respondent asked that the defence which he had entered in the proceedings before the County Court be treated as his written statement for the purposes of these proceedings.

4. The Respondent was notified of the inspection and hearing by letters addressed to him at the subject property and to an address in Herne Bay which he had supplied.

Inspection

5. We inspected the exterior and some of the common parts of the block at Baltic Wharf of which the subject property forms part. We did this in the presence of Mr. White of Crabtree Property Management Limited, the managing agents. Mr. White is also the Company Secretary of the Applicant. The Respondent did not attend and there was no answer from anyone at the subject property.

The hearing

6. The hearing was attended by Mr. White. There was no appearance by the Respondent.
7. Before the hearing documents had been supplied to us by the parties and included in those documents was the Respondent's defence setting out the matters which he disputed. Mr. White gave evidence about those matters and produced documents in support of his evidence.

The Determination

8. We made the following determination and our reasons appear below. We determined that the Respondent should pay to the Applicant within 28 days of the date this decision is sent to the parties the sum of £1,444.85 in respect of demands made up to 31st December 2005 for service charges and water charges.

Reasons

9. We considered the matters which the Respondent had disputed in his defence to the County Court proceedings.
10. The Respondent disputed the excess service charge of £79.84. He stated that his calculation of his proportion of the service charge for the period from 20th August 2004, the date of his lease, to the 31st December 2004 should be £128.09 and that as he had paid £131.18 in advance he was in credit in the sum of £3.71 and that he should not be liable for any excess service charge.
11. Mr. White gave evidence that the amount of £131.18 paid in advance by the Respondent was a sum estimated to be his proportion of the service charges for the proportion of the year 2004 from 20th August 2004 to 31st December 2004 and it was in fact 98p less than the sum required at that time. When the estimates were compared with the actual expenditure for the year it was found that the actual expenditure exceeded the estimates. During the first year lessees were acquiring their leases at different times and were liable for only part of the service charges. The result was that only part of the £60,000 estimated was charged. Only about £21,000 was received because most completions of the purchases of flats fell towards the end of the year. Also the lessees were only billed out at

40%. The result was a deficit of £13,278.65 which had to be charged to the lessees. In accordance with the terms of the lease a demand was made for the balance which amounted to £79.84. We found that that was a reasonable sum which could be charged under the terms of the lease and that in addition because the payment of £131.18 was 98p less than was required at that time, 98p is also payable by the Respondent.

12. The Respondent stated that the water charges were unreasonable and asked that the Applicant be put to strict proof that the sums claimed related directly and specifically to the property. He pointed out that for the 16 week period from 6th October 2004 to 24th January 2005 the charge was £9.61 which equalled 60p per week whereas for the 10 week period from 25th January 2005 to 5th April 2005 the charge was £78.43 which equalled £7.84 per week. The original invoices were produced to us and we were able to see that the invoices were for flats 1 - 40. There was no evidence that the charges were in respect of anything other than those flats. A calculation had been made to take account of the date the Respondent acquired the lease of the subject property and the figure of £18.88 had been demanded in respect of the period 20th August 2004 to 31st December 2004. It was later discovered that that figure was incorrect and it had been credited back. The correct sum of £11.38 was then debited to the account. There had been variations in the charges from Southern Water and it appeared that one reading had been estimated but the next invoice was based on a reading and any excess amount charged had been credited. Various factors could affect the charges including the amount of water used by the occupants of flats 1 to 40. There was also the fact that until all the flats were occupied that would have had an effect on the amount of water used. The bills were for each of the three separate blocks and there was no evidence that the Respondent was paying for water used by anybody else other than the occupants of the flats in this block. There were differences in the bills for different quarters but there was no evidence that the charges were unreasonable. We found that the sums of £11.38, £9.61, £78.43 and £38.82 were reasonably incurred and could be charged under the terms of the lease.

13. The Respondent considers that the total sum claimed for service charges in respect of the year 2005 is excessive and unreasonable. It is correct that an error was made and that a demand for £411 was made in respect of each half year in 2005. It should have been £441 for each half year. That has been corrected and a demand has been made for the balance. Mr. White gave evidence that an increase in the service charges for 2005 was necessary because some items had been underestimated including insurance, cleaning and gardening and repairs and maintenance. For the first year most minor repairs had been carried out by Bellway Homes Limited. Budgets for the first two years were agreed with the directors of the Applicant who originally were staff of Bellway Homes Limited but now the directors of the Applicant are lessees and they have approved the budget. We found that the sum of £441 for each half year in 2005 was reasonable and could be charged under the terms of the lease.

14. The Respondent alleges that sums provided for insurance, cleaning, agents' fees, repairs and major works are particularly excessive. He has produced no evidence in support of that assertion.

15. Mr. White gave evidence that the sum for buildings insurance was estimated by Bellway Homes Limited to be about £14,000 but that when insurance was obtained the sum required was considerably more. He produced invoices and policies which showed the

premiums charged and that each of the blocks was insured separately. We found that the charge for insurance was reasonable and could be charged under the terms of the lease.

16. Mr. White gave evidence that the charge for lift insurance for the three blocks for the year 10th May 2004 to 10th May 2005 was £977.64 which we found was reasonable and could be charged under the terms of the lease.

17. As to cleaning, Mr. White's evidence was that quotes were obtained and that the charges were looked at on a regular basis to see that they were competitive. There is one bill for the whole building. The charges for cleaning were likely to be lower during the first year because not all the flats had been sold. There was no evidence that the charges for cleaning were unreasonable and we found that they could be charged under the terms of the lease.

18. As to agents' fees, Mr. White's evidence was that in the first year a discount had been given from the usual fees because there was less which the agents needed to do. Therefore in 2004 the fees were £141 per unit per annum including VAT. Only a proportion of that was charged from the date of completion of the lease of each flat to the end of the year. For 2005 the full charge of £169.45 per unit per annum including VAT was charged. In addition to the usual fees the agents would charge for solicitors' pre sales enquiries but those charges would be made to the individual lessee concerned. No major works had been carried out but in respect of major works a charge would be made on the basis of a percentage of cost. We found that the agents' fees were reasonable and could be charged under the terms of the lease.

19. We found that a reasonable sum had been included in the service charges to provide for repairs.

20. The provision for major works includes provision for internal and external decoration. Mr. White considered it to be good practice to build up a reserve fund over several years rather than to make large demands of lessees when expensive work needed to be done. Any reserve or surplus is held in a deposit bearing account and in that way the Applicant and in turn the lessees receive the benefit of interest on the reserve. We found that provision had been made for a reasonable sum to build up a reserve and that it was prudent to do this.

21. The Respondent denies that the Applicant is entitled to claim the sum of £176.25 as an additional management fee. He considers it to be unreasonable to charge extra fees when a matter is in dispute and not fully settled. Mr. White's evidence was that this fee was for extra work in chasing non payment of service charges and that the lease provides at clauses 4.9 and 4.9.2 that if the lessee is in breach of the covenant to pay the service charges then the particular lessee may be charged the costs of recovery. He produced a copy of a letter dated 4th July 2005 written to the Respondent dealing with various matters. Mr. White considered that the Respondent had had plenty of time to query the sums claimed. He was warned that action would be taken against him and he then queried the water charges and they were corrected but the water charges were just a small part of the total sum owed. The Respondent had raised the issue of the water charges, it had been corrected but the Respondent had not paid. He had paid nothing other than the £131.18 paid through solicitors on the purchase of the lease. The Respondent was given time to pay and did not pay even a proportion. Mr. White stated that if service charges were not paid and he was aware there was an issue which needed resolving he would deal with the issue before adding charges.