Residential
Property
TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/43UF/LIS/2009/0084

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address:	14 Bramble Close, Redhill, Surrey, RH1 6RU
Applicants:	(1) Mr Harjinder Dyal Singh Bansel (2) Mrs Harbans Kaur Bansel
Respondents:	(1) Saffronland Holdings Ltd (2) Mr Amin Lakhani
Application:	8 October 2009
Inspection:	26 April 2010
Hearing:	26 April 2010
Reconvene:	27 May 2010

Appearances
Applicants
Mr Bansel — Leaseholder

Respondents
Miss Barton) Peverel Management Services Ltd, Managing Agent
Mr Barr)
Mrs Brown)

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Mr N Robinson FRICS
Miss J Dalal

DECISION

Introduction

1. This is an application made by the Applicants under s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of various service charges incurred for the years ending December 2005 to 2008 and the estimated expenditure for the year ending 31 December 2009.

2. In their statement of case, the Applicants had initially sought to make numerous and extensive challenges in relation to various heads of expenditure and other matters. However, at the hearing the Tribunal ruled that a number of challenges were not properly brought because they either related to other service charge years that did not fall within this application or fell outside the jurisdiction of the Tribunal. The service charges that were considered by the Tribunal are set out below.

3. Oaklands Park is a development of 113 units with 14 leasehold units, of which the subject property forms part, and 99 freehold units. Within the development is a care home. The development was constructed in various stages between 1988 and 1994.

4. The freehold interest of the estate is partly held by the First and Second Respondents. The First Respondent holds the freehold interest to the common parts of the estate. Their entitlement to the estate service charges in issue is made pursuant to a lease dated 26 June 1992 made between (1) Wates Built Homes Ltd and (2) Nuffield Health Care Ltd and (3) Ruth Mary Bashford and Keith Bashford ("the lease"). Where necessary the relevant lease terms are referred to in the body of this Decision.

5. The Respondents appointed Peverel Management Services Ltd ("Peverel") to manage the development from 1 March 2005. This did not include the management of the care home, which is managed by the Respondents.

The Relevant Law

6. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

7. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

> *"(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 works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly."*

Inspection

8. The Tribunal inspected the common parts of the estate on 26 April 2010. Flat 14, the flat belonging to the applicant, was not inspected as the case related to the common parts of the estate and the service charges rather than anything concerning the physical aspects of the flat itself or block in which the flat was situated. The common parts of the estate comprise one main road (Hartspiece Road) also giving access to the Care Centre and various smaller roads/closes off this main road which principally serve the houses or flats within that road/close. Hartspiece Road also leads to a railway bridge giving pedestrian and cycle access to Philanthropic Road to the north of the railway line and outside this development. Attention was also drawn to "communal land" that

residents of the estate can use under the terms of a licence that can be withdrawn at any time at the Landlord's decision.

Decision

9. The hearing in this matter also took place on 26 April 2010. Mr Bansel, the First Applicant appeared in person on behalf of both Applicants. The Respondents were represented by Miss Barton (Legal Services Manager), Mr Barr (Group Head of Estate Accounts) and Mrs Brown (Area Manager), all from Peverel.

First Quarter of 2005 Overcharge

10. It seems that the Applicants had received two demands for the period 1 January to 31 March 2005. One was from, Nuffield Health Care Ltd ("Nuffield"), and the other was from Peverel. Mr Bansel submitted that he had no contractual liability to pay the second demand in the sum of £328.50 to Peverel and that it represented an overcharge.

11. The Tribunal was satisfied that the second demand did not represent an overcharge. It accepted the evidence of Mr Barr that the demand was the correct charge for the first quarter in 2005 having made the necessary adjustments for any payments on account made. Furthermore, the Tribunal also accepted the Respondents' submission that the Applicants were liable to pay the demand under the covenants given clauses 5(c) and (d) of the lease to the "Service Company" which is defined as Nuffield and its assignees. The Applicants did not challenge the reasonableness of the demand and, accordingly, it was allowed as claimed.

Sinking Fund (All Years)

12. Mr Bansel contended that the sinking fund contribution of £150 demanded for each of the relevant service charge years was unreasonable because no explanation was given as to what the sinking fund was going to be expended on and, in any event, stood at £75,000.

13. However, the Tribunal found the sum of £150 demanded for the sinking fund to be reasonably incurred and reasonable in amount for the reasons given by Miss Barton. She said that the balance of the sinking fund was approximately £94,000 as at 31 December 2009. She also explained that, although no major works were proposed at the present time, a budget based on planned maintenance over a 10 year period had been made. This was reviewed in October of each year by Mrs Brown. A draft budget is sent to residents and a discussion takes place and the level of the sinking fund contribution is agreed.

14. The Tribunal was of the view that this is a large and complicated estate and that the present reserve fund balance of approximately £94,000 was not a large sum and was possibly on the low side. Furthermore, the residents on the estate were elderly with low incomes and, by collecting a sinking fund contribution in each year, enabled the cost of any planned maintenance to be defrayed and, it seems, this was done with the agreement of the vast majority of the residents. Accordingly, the sum of £150 was allowed as claimed for each of the years.

Nursing Care (2005 only)

15. A sum of £33,439 was claimed by the First Respondent from January to July 2005 for the provision of this service. It appeared to be based on the same figure charged by Nuffield in 2004.

16. Mr Bansel contended that in the earlier Tribunal decision (CHI/43UF/LIS/2005/0052) relating to 2004 ("the earlier decision"), it had been determined that the same amount was unreasonable and had been reduced by 20%. There had been no material change in the provision of this service in the interim. Therefore, there should also be a reduction of 20% in this instance.

17. Miss Barton explained that the sum claimed had been provided to Peverel by the First Respondent. She accepted that a 20% deduction had not been made in line with the earlier Tribunal decision but said that she did not have authority to make that concession at the hearing.

18. Having regard to the finding made by the earlier Tribunal and the fact that Miss Barton implicitly accepted that a 20% reduction should be made, the Tribunal found the same amount had not been reasonably incurred and made a deduction of £6,687.80 from the amount claimed.

Gardener's Wages (2005 only)

19. The sum of £9,287.96 claimed for the period March to July 2005 by the First Respondent was agreed by Mr Bansel.

VAT (All Years)

20. Mr Bansel submitted that Peverel should not be charging VAT for the monitoring service and replacement and repair of the monitoring equipment. As authority for this proposition, he referred the Tribunal to H M Customs & Excise Notice 701/7 which exempts all those suffering from chronic diseases from any VAT liability. Therefore, this apportionment should be carried out by the supplier (Care Line) of this service and Peverel has not insisted on this.

21. Miss Barton said that Peverel was simply passing on the liability for VAT charged by Care Line. It was not a VAT charge made by the Respondents or Peverel. In addition, if Mr Bansel's assertion was correct, the cost of carrying out this apportionment may exceed any benefit gained by so doing. It would be an administrative nightmare given the adjustments that would have to be made as a result of the mobile population on the estate.

22. The Tribunal did not accept Mr Bansel's submission as being correct. A proper reading of the H M Customs & Excise Notice 701/7 reveals that it only applies where a person suffering from a chronic disease personally contracts with a supplier. In the present case, the VAT charged relates to the contractual liability as between Care Line and the Respondents even though the tenants are the beneficiaries of that service. Indeed, paragraph 3.5 of the Notice makes the same distinction. Accordingly, the Tribunal found that the Applicants were liable for VAT for the provision of this service.

Insurance (2008 & 2009)

23. Mr Bansel withdrew the challenge made in relation to the buildings insurance premiums for 2005-2007. He submitted that the premiums for 2008 and 2009 were unreasonable because they were excessive and no alternative quotations had been obtained. He relied on an indicative quotation he had received from Zurich Insurance dated 18 February 2009 in the sum of £12,885. This, he said, had been based on the policy document provided to him and provided the same level of cover. It had also taken into account the claims history provided to him by Peverel. He contended, therefore, that the premium for each year should be £17,061, being the quote obtained by the Respondents in 2010.

24. Miss Barton explained that the premiums in 2008 and 2009 were higher than the present year. The insurance had been arranged through "Kingsborough", which is an independent company of insurance brokers. She confirmed that, although the company was part of the Peverel group of companies, there is no commission sharing. Quotations are obtained every 2 years as a block policy. The insurance premium had increased in 2008 because of the review that had taken place in that year. However, in 2009, the premium was £18,341.57. The current premium had been reduced after lengthy negotiations with the underwriters, who are now prepared to accept that the property represents a lower risk than previously considered.

25. The buildings insurance premiums charged in 2008 and 2009 were £22,374.96 and £18,341.57 respectively. The Tribunal did not accept Mr Bansel's submissions for the following reasons. The insurance market varies annually. It follows that quotations obtained and premiums paid will also vary in the same way. The fact that the current premium paid is lower than in preceding years does not necessarily mean that the earlier premiums were inherently unreasonable. That inference cannot be properly made. Therefore, some caution had to be exercised in relation to the indicative quotation obtained by Mr Bansel. Furthermore, the quotation was qualified by the fact that it was "indicative" and would not necessarily result in the same premium being charged. The fact that the insurance premium for the present year was lower was indicated that the Respondents were properly testing the market to obtain

value for money for the tenants. It is also now settled law that a landlord is not obliged to obtain and accept the cheapest quote provided the premium obtained is within a reasonable range[1] and the Tribunal was satisfied that the premiums in 2008 and 2009 were. Accordingly, they were allowed as claimed.

Street Lighting (All Years)

26. The issue here was simply one of apportionment of this cost as between the tenants and the care centre. Mr Bansel contended that the First Respondent had not apportioned the cost correctly so that the tenants were only required to pay a 75% contribution, as was the case in the earlier decision.

27. Miss Barton's evidence was that Peverel was informed by the First Respondent of the appropriate usage which is then passed on to the tenants. She said that she had not seen the original invoices and was only given the unit cost. Nevertheless, she believed that the cost has been correctly apportioned at 25%.

28. The Tribunal had before it a letter from the First Respondent to Miss Barton date 12 May 2010. Annexed to the letter was a schedule of costs for the street lighting for each of the relevant years together with a calculation of how the cost had been apportioned. The letter appears to concede that 100% of the cost had been recharged to the tenants and the estate had benefitted by the sum of £1,105.12 had the cost been recharged at 80%. No explanation is given why the figure of 80% has been adopted. It is simply asserted that this is the correct figure. The 75% apportionment recorded in the earlier decision was a figure that had previously been used to apportion this cost as between the tenants and the estate. In the absence of any explanation or evidence why the First Respondent had used an apportionment of 80%, the Tribunal determined that an apportionment figure of 75% was reasonable. In the light of this finding, an adjustment to the service charge accounts for each of the relevant years for this item will be necessary.

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[1] see ***Berrycroft Management Ltd v Sinclair Gardens Investments (Kensington) Ltd*** (1996) 29 HLR 444, CA

Roads and Footpaths

29. This issue here was one of liability. Mr Bansel said that he was not sure if the cost of maintaining the roads and footpaths should fall on the service charge account instead of the Respondents.

30. Miss Barton said that this head of expenditure related solely to the cost of cleaning the roads and footpaths and was part of the gardener's responsibility. The cost itself was negligible and formed part of the overall cost of the contract.

31. The Tribunal found that the tenants were liable for this expenditure. It was satisfied that the cost related to the cleaning of the roads and footpaths by the gardener, for which the lease requires a service contribution to be paid. The lease does not distinguish or apportion the liability for the estate costs on the basis of any benefit derived.

CCTV and Cameras (2005 only)

32. The sum of £1,476.45 had been claimed for CCTV maintenance in the 2005 service charge accounts. It was conceded by Miss Barton that, of this figure, £492.50 had been misallocated and should be deducted leaving a balance of £984.25. This figure she also said had been misallocated and did not relate to CCTV maintenance at all. The explanation she gave was it formed part the Nuffield invoice dated 28 February 2005 in the sum of £11,885.11 in respect of which the credit of £10,819.09 in an earlier Nuffield invoice dated 10 February 2005 was applied. On the face of the invoices, it is clear that no expenditure had been incurred for CCTV maintenance in 2005. The Tribunal was, therefore, satisfied that no costs had been claimed in this regard in this year.

Management & Administration Charges (All Years)

(a) House Manager

33. Mr Bansel conceded that this head of expenditure had been reasonably incurred and was reasonable in amount.

(b) Accounts Administration & Estate Management Charges

34. This expenditure was considered together by the Tribunal because they both form the two elements of the overall management charges of Peverel and are apportioned 30% and 70% respectively. These global figures were:

2005 - £33,194
2006 - £34,023.60
2007 – 35,044.30
2008 - £36,796.54
2009 - £38,636

35. Mr Bansel submitted that the charges were excessive and, therefore, unreasonable. He contended that the accounts administration could be done by a qualified bookkeeper at a cost no greater than £5,000 per annum. In relation to the estate management charges he contended that in the earlier decision a figure of £150 plus VAT was found to be reasonable. Thereafter, Peverel's charges have increased by 5% in each successive year.

36. A detailed explanation is given at paragraph 4.13 in the Respondent's statement of case of the various duties performed in relation to the accounts administration and estate management. In summary, Miss Barton said that the management was not such a simple matter as Mr Bansel had asserted. It also included additional duties such as the preparation of budgets, banking, reconciliation and pursuing outstanding service charge arrears. She submitted that, having regard to all of these matters, the charges were reasonable.

37. Whilst the Tribunal considered 30% apportionment of the overall cost for the accounts administration to be at the high end, it nevertheless accepted Miss Barton's evidence that this was a large and complicated estate with an elderly population. This in turn would place a greater demand on the accounting function of the managing agent. This would also apply to the other non-accounting functions provided by Peverel. Therefore, the Tribunal found that increase in the management fee of Peverel for each of the relevant years was

reasonably incurred and reasonable in amount and they were allowed as claimed.

Section 20C & Fees

38. The Applicants had also made an application under s.20C of the Act seeking an order that the Respondents be disentitled from being able to recover all or part of the costs they had incurred in responding to this application.

39. The Tribunal made no order because on almost all of the substantive issues, the Applicants had not succeeded. Moreover, the Respondents had undoubtedly incurred greater costs than was necessary in having to deal with a substantial number of irrelevant issues that did not fall within the jurisdiction of this application. For the same reasons, the Tribunal also makes no order that the Respondents should reimburse the Applicants the fees they had paid to the Tribunal to issue this application and have it heard.

Dated the 19 day of July 2010

CHAIRMAN.....

Mr I Mohabir LLB (Hons)