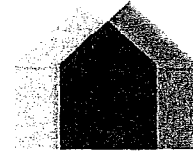


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**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL (Eastern Region)**

**LANDLORD AND TENANT ACT 1985 Sections 27A and 20ZA ("the Act")**

**CAM/38UE/LSC/2012/0041**

**Property: Quakers Court, Abingdon, Oxfordshire OX14 3AY**

**Applicant: TM (Abingdon) Management Company Limited**

**Respondents: Long Lessees**

**Representatives for Applicants: Mr M Comport of Dale & Dale Solicitors for the Applicants  
Dr R Cox  
Mr W Salkeld**

**Representatives for Respondents: Mr I Thompson of 25B Vineyard, Abingdon**

**Date of Applications: 23<sup>rd</sup> March 2012**

**Date of Hearing: 27<sup>th</sup> June 2012**

**Tribunal Members: Mr Andrew Dutton – chair  
Mrs D Banfield FRICS  
Mr A K Kapur**

**Date of Decision: 23<sup>rd</sup> July 2012**

## DECISION

The Tribunal determines that of the £23,697.55 incurred in connection with Rentokil invoices in the year 2009 the sum of £20,299.80 should be apportioned equally between all the leaseholders of Quaker Court and to include the town houses unless those town houses do not share the communal drainage system.

All other expenses incurred in relation to the rat infestation in the year 2009 and the sum of £3,649.90 incurred in the year 2010 is block costs payable by the leaseholders of Block A only.

The Tribunal determines for the reasons set out below that the budget figures set out in the year 2011 and 2012 are reasonable and are recoverable save that the contributions to the reserve fund should be allocated on an equal unit basis for these two years and on-going until such time as the deficit which appears to exist in the reserve fund can be resolved and all debits and credits have been finalised. For the avoidance of doubt the town houses will contribute at whatever agreed proportion they ordinarily contribute to the estate costs as defined by the lease.

With the agreement of the parties the costs of these proceedings shall be recoverable as an estate service charge

## REASONS

1. These applications were made on behalf of the management company for the development (the Applicant) by their solicitors Messrs Dale & Dale on 23<sup>rd</sup> March 2012. The application under Section 27A of the Act sought a determination by the Tribunal in respect of pest control invoices in the years 2009 and 2010 and a determination for future years based on budgets for the years 2011 and 2012. It is right to record that in fact the actual accounts were prepared and available for 2011 but it was not necessary to consider those in detail for the reasons we shall set out in the findings section of this decision.
2. The background to the matter starts with difficulties associated with rat infestation which appeared to first manifest themselves towards the end of 2007. It is appropriate to record the make-up of Quakers Court. It consists of three blocks of flats and seven freehold town houses. The block which has suffered from the rat infestation is Block A consisting of 18 flats. Block C has 48 flats, Block E one flat. It appears that Blocks A and E were completed in 2004 as the first part of the development and Block C was completed some three years later.
3. Prior to the Hearing we received a bundle of papers which contained the Applications, a specimen lease, the Applicants' statement of case with a number of exhibits, statements from Dr James Allan and Dr Stephan Corley, a lengthy witness statement from Dr Roger Cox the Chairman and Company Director of the Applicant Management Company and a short

statement from Mr William Salkeld agreeing with the contents of Dr Cox's witness statement.

4. In addition to the above we had copies of the 2009 and 2010 accounts, a report by BBS Chartered Building Surveyors and a lengthy submission by Mr Thompson (with exhibits) acting on behalf of the leaseholders of Block A. We have read the statements of case and statements and considered the bulk of the documentation which was before us and which at the Hearing was relevant to the matters that we were required to determine. It does not seem to us that it is necessary that we recount in great detail the written evidence put forward by both parties as the paperwork is common to them both.
5. At the commencement of the Hearing Mr Thompson was asked whether he would be prepared to accept an equal division of the costs associated with the rat infestation invoices in 2009 and 2010 and not pursue or make any objections by virtue of Section 20 or Section 20B of the Act. He said he would. After a short adjournment the representatives of the Applicant declined to settle on that basis indicated that we would need to consider the issues.
6. Mr Thompson was then asked by Mr Comport whether he disputed the quantum of the invoices, the reasonableness of incurring those invoices and the standard of work. Initially Mr Thompson's response was that he did dispute the quantum and did dispute that they had been reasonably incurred but had no concerns as to the standard of work. It transpired that in fact his major concern centred around two invoices in the year 2009, one in the sum of £8,107.50 which appeared to relate to a CCTV drainage survey and the other in the sum of £1,633 which he said also related to a drainage survey although some three months later being linked only because the job number was the same. The Applicants for the record accepted that the invoice in the sum of £8,107.50 did indeed relate to a drain survey and discussion took place as to the extent of such survey. It was not possible to determine clearly from the documentation before us whether the survey was limited solely to the drains in the vicinity of Block A. Mr Comport pointed out that the survey which was carried out and which was at the behest of RMG the then managing agents. It was conducted without the knowledge of the present directors of the Applicant Company and without the knowledge, he said, of the owners of the town houses and the residents of Block C who knew little of what was going on until they received the accounts in 2009 when Dr Cox wrote to RMG querying certain matters. We should record that initially the costs associated with the rat infestation had been dealt with by payments from the reserve fund and had not been specifically allocated to any particular block. When the control of the management company was vested in the residents, away from the directors of Persimmon, who were the original developers, further investigations were undertaken by those directors which lead them to conclude that in fact the costs associated with this initial rat infestation problem as evidenced by the invoices in 2009 and 2010 should be allocated solely to the leaseholders of Block A. It was this

that has caused the dispute between those leaseholders and the Applicants.

7. It was suggested that the works in relation to the rat infestation were overseen by the residents of Block A and that Mr Thompson had direct input into these works. Mr Thompson did not accept this. He stated that RMG had never given advice to the lessees in Block A as to the cost of the work that was being undertaken and he only became involved in September of 2008 through the incompetence of RMG. That incompetence had led the residents of Block A to refer the matter to the Environmental Health Officer and at that point it seems that more investigation was undertaken by RMG. Mr Thompson told us that he was never party to any of the decisions and that RMG did not communicate with them with regard to the costs of any of these services. He said that he was led to believe by RMG that Persimmon would meet the costs.
8. It was also suggested by Mr Comport, and it has to be said agreed by Mr Thompson, that if the totality of the leaseholders were to be responsible for the costs of the rat infestation in 2009 and 2010 the costs incurred did not exceed the sums required for consultation purposes. Only the invoice of £8,107.50 would be susceptible to consultation if those costs were confined to Block A.
9. We then considered the question of the budgets and Mr Thompson told us that it was really the budget figures for 2012 which were an issue and again in reality it appeared that it was not the quantum of the budget figures but the allocation of those costs between the respective blocks. Matters were, however, clarified we believe to the acceptance of Mr Thompson. This is on the basis that the information given to us at the Hearing turns into reality. We were 'blessed' with the attendance of Mr Draper who is the Director and Manager of Common Ground Estates Management who took over the management of the development in December of last year. He told us that the figures for the 2012 budget had been based on the best estimates received from contractors who had been asked to differentiate between the charges to be made to the individual blocks so that there could be a full and clear allocation of costs when the final accounts were prepared. He told us that he had been unhappy with some of the contractors who had been employed in the past as they were not local and he had therefore obtained his own contractors to carry out much of the service charge activity and made it clear to them that they needed to break down the costs on a block by block basis.
10. We were told insofar as the electricity costs were concerned there is a possibility that another block attached to Block C is potentially utilising Block C's electricity. He was in the process of investigating this and to determine what meters existed and clearly if there was a meter for Block A that would govern the costs of the lighting, although estate lighting would still be dealt with under the estate costs provisions contained in the lease.
11. In respect of the TV aerial and the door entry for Block A it appears that, somewhat questionably, in 2004 contracts were entered into for both,

running until 2018 containing substantial cancellation charges. It appears that there are at the moment no contracts available for the maintenance of the TV satellite system in Block C or the door entry phone. Further investigations are being undertaken because certainly the residents of Block C have the benefit of the TV aerial/satellite system which may be linked to the electricity confusion and the joining with another block which we understand was built by Persimmon at about the same time. Mr Draper told us that he was doing his best to try and get to the bottom of these various contracts so that the matter could be resolved. Although he had met with RMG in December of last year no contracts had been produced. This did unfortunately have the effect of the totality of the costs of these two invoices resting with Block A but at least they had the benefit of knowing that there was a service contract in existence for the television reception and door entry which is more than could be said for Block C. Mr Salkeld pointed out that the budget figure relating to these matters for Block C was an estimate to cover any repairs that may be required.

12. Another issue that had caused Mr Thompsen concern was the block's contributions towards the reserve fund. He thought that these were unfairly allocated and that Block A was required to make unreasonable, excessive and unfair contributions towards the reserve fund. Mr Salkeld told us that apparently there had been a deficit in Block A since 2006 and it was the attempt of the management company to resolve this deficit as quickly as possible that resulted in the increased reserve fund demands. It appears that there is no on-going maintenance programme in place but that is something that we hope will be considered. But Mr Thompsen was firmly of the view that it was unfair to penalise the residents of Block A by requiring them to make greater contribution to the reserve funds although he accepted that the deficits needed to be cleared as quickly as possible and a reserve fund created.
13. Mr Thompson summed up by saying that he had a general complaint about the lack of information and continuing problems that still beset Block A particularly with the rat issue although that was much improved. He thought that the directors should have consulted more although it was made clear that none of the residents of Block A serve on the management company board.
14. On the question of costs Mr Comport referred us to the terms of the lease and thought that the costs should be recoverable as a service charge and payable by everybody including the town houses and Mr Thompson agreed that that was appropriate.
15. The Hearing concluded at 1.20pm.

### The Law

16. The law applicable to this Application is set out in the appendix attached hereto.

## Findings

17. The first matter we propose to deal with is the costs of the rat infestation in 2009 and 2010. We found that the initial complaint with regard to rat infestation probably occurred towards the end of 2007. It appears that RMG and Persimmon did not deal with the matter as one of any great urgency until Mr Thompson became involved in 2008. This also led to the involvement of the local Environmental Health Officer and pressure was then put upon RMG to resolve the matter. It appears that they, without consultation from the residents, undertook, off their own bat, to contact Rentokil having previously used another company to deal with the rat infestation but which had sadly failed. Rentokil carried out an initial survey and by an email sent by Mr Alan Patterson to a Bradley Almond of TM Abingdon recited the steps that were to be taken with the costs and requested at the foot of the email the following: *"I don't know who will be paying for these works but I will need an order number and confirmation email to get moving on this. (It might be a good idea to try and split the costs with Persimmons)."* Mr Almond forwarded that email to Mr Tony Pate, Mr Mike Race of, it seems Persimmon, and residents of Block A on 12<sup>th</sup> December 2008 one day after he had received it, stating as follows: *"Due to the severity of the issue we will instruct Rentokil to go ahead with the works asap but we would appreciate your comments on this issue and if any contributions could be made to TM (Abingdon) by Persimmon Homes."* It is not clear what response was made to that email but it is clear that Persimmon appeared to wash their hands of any responsibility. We accept the evidence of Mr Thompson that at no time were any costs associated with these works put to him and that he was lead to believe that these costs would be met, if not by Persimmon, then from the residents as a whole and not just those in Block A. He accepted at the Hearing, and indeed in his submission, that the on-going rat infestation issues, that is to say the regular attendances, should be a block charge confined to Block A. It was these initial investigations and works which he felt should be shared.
18. We share his view. It seems to us from considering the invoices that were set out at page 73 of the bundle that there are a number which relate to regular attendances giving rise to costs of just over £200 or £500 or thereabouts but there are a number which seem to us that relate to the initial investigation and other works undertaken which are not, on the face of it, standard attendance charges. In the year 2009, the invoices that we have considered closely are those numbered:

11319503	£2,175.80
11352602	£4,013.50
11352601	£4,002
11420075	£2,001
11478092	£8,107.50 (which is accepted as being the service cost)
11551038	£1,633 (which Mr Thompson thought related to the survey on the basis that the job number was the same)

On our calculation these invoices total some £21,932.80. However, we are not satisfied that the invoice in the sum of £1,633 did relate to the drain survey. Our findings are that it was not until the drain survey was carried out in July of 2009, that Rentokil were able to be confident that the infestation problem was confined to Block A. We find on the balance of probabilities that Rentokil, in undertaking a drain survey, would have ensured that this covered the drainage system to the estate. For Rentokil to do otherwise would seem to have been only half the job, and there is no suggestion that Rentokil did anything other than fully comply with their obligations. We find, therefore, that up until July 2009 there was no certainty that the rat infestation was confined to Block A, or would be confined to Block A, and that whilst these investigations were proceeding it is reasonable that those costs should be incurred by the leaseholders as a whole. The invoice for £1,633 on 29<sup>th</sup> October 2009 post-dates the survey carried out by Rentokil and we conclude that that is a cost that should be borne by the leaseholders in Block A together with the other costs in that year.

19. For the year 2010 we are satisfied that these costs relate solely to Block A and the regular attendances and baiting that was carried out by Rentokil and should be borne by the residents of Block A alone. That is in the sum of £3,649.90. The on-going pest control invoices will be dealt with on a block basis as has been agreed.
20. Turning then to the budget figures. The issues raised by Mr Thompson were the allocation of these figures. On the evidence given to us by Mr Draper at year end the actual costs associated to each block will be ascertained and applied to the budget monies paid in advance by the residents. Accordingly at the end of each year there should be a reconciling process undertaken which should remove any concerns that Mr Thompson may have that costs which should be borne by other blocks are being borne by Block A and vice versa. The only area where we find that there is unfairness in the allocation of the budget figures relates to the reserve fund payments. We understand that there are monies to come back in respect of other matters, not just confined to rat infestation. It seems to us, therefore, that for the time being until the accounts are clarified following our decision and until all credits and debits to the reserve fund have been properly dealt with, that it would be inappropriate for contributions to be made other than on an equal basis as per the terms of the lease including the town houses. Accordingly for the years 2011 and 2012 the allocations to the reserve fund should be made equally. This may cause something of an accounting dilemma but we will leave the Applicants to resolve that satisfactorily as we are sure will be the case.
21. We were impressed by the case made by Mr Thompson and indeed the response put forward by the Applicants. It is a pity that no residents of Block A have sought fit to join the management company to ensure that their position is properly represented and we would urge that a representative be found. We are satisfied, however, that the existing directors of the Applicant Company have the best interests of the leaseholders at heart and are endeavouring to undertake a difficult job

faced with what would seem to be some deficiencies on the part of the previous managing agents and the unwillingness, on the face of it, of Persimmon to consider making contributions towards the costs of the rat infestation. Whilst we have no power to make any order that affects Persimmon, it does seem to us that the infestation caused in 2007, so soon after Block A had been built and, we suspect during the building works for the remainder of the estate, is something we would have thought a developer of Persimmon's stature would have been prepared to have become involved in and to have assisted. It is a pity that they have not and perhaps there is the possibility that they will review their position. We were also somewhat unhappy at the kneejerk reaction of RMG to the problem. We understand that they were the managing agents appointed by Persimmon at the outset which we suspect put them in a somewhat difficult position. It would be unfair of us to make any real criticism of their involvement without them having the opportunity to make submissions. We hope, however, that they will assist the present managing agents in ensuring that they hand over to that company all records and contracts that they have so that the present managing agents can endeavour to determine what has happened with some of the supplies and the contracts which have been set up, or not set up, for the various blocks on the development.

Chairman:

\_\_\_\_\_  
A A Dutton

Date:

25/7/2012