8167

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00BA/LSC/2012/0195
Premises:	59 and 63 Langland House, Chaucer Way, London SW19 1UN
Applicants:	(1) Harold Frederick Pluss and Beata Barbara Pluss (Tenants of Flat 59) (2) Joy Kabugu (Tenant of Flat 63)
Representative:	N/A
Respondents:	Amicus Horizon Limited, the Landlord
Representative:	N/A
Date of hearing:	16th July 2012
Appearances for Applicant:	Mr. and Mrs. Pluss and Ms. Kabugu
Appearances for Respondent:	(1) Ms. Michelle Emery – Head of Home Income, Amicus Horizon Limited (2) Ms. Claire Manton– Home Ownership Leader, Amicus Horizon Limited

Leasehold Valuation Tribunal:	(1) Mr. A Vance (Chair) LLB (Hons) (2) Mr. P. Roberts DipArch RIBA (3) Mrs. L. West
Date of decision:	28th August 2012

Decision of the Tribunal

1. The managing agent's costs incurred by Ringley Chartered Surveyors are not payable by the Applicants for service charge years 2010/11 and 2011/12. Nor is the interim charge for 2012/13 in respect of these costs payable by the Applicants.

2. The sums sought in respect of communal grounds maintenance for service charge year 2010/11 (£224.17 per flat) and 2011/12 (£341.60 per flat) are reasonable and payable by the Applicants. The sum demanded by way of an interim charge for 2012/13 is reduced to £375.76 per flat.

3. The management charges of Amicus Horizon are reduced to £200 for each of the service charge years in issue namely 2010/11 and 2011/12 as well as in respect of the interim charge for 2012/13.

4. The sums sought from each of the Applicants for general repairs in the sum of £7.09 for 2010/11 and £77.33 for 2011/12 are reasonable and payable.

5. The sums sought from each of the Applicants for bulk refuse removal of £59.33 in 2010/11 and £58.67 for 2011/12 are reasonable and payable.

6. We make no order under s.20C of the Landlord and Tenant Act 1985.

7. We order that the Respondent reimburse the application fee of £200 and the hearing fee of £150 paid by the Applicants in full pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003).

Introduction

8. This is an application under section 27A of the Landlord and Tenant Act 1985 ("The 1985 Act") for a determination of liability to pay service charges in respect of 59 and 63 Langland House, Chaucer Way, London SW19 1UN ("the Properties"). The Properties are both two-bedroom flats located in a nine-flat purpose-built block on an estate at Chaucer Way (the "Estate").References in square brackets below refer to page numbers in the Respondent's bundle unless otherwise stated.

9. The Applicants are the original tenants of their respective flats. The Respondent, Amicus Horizon Limited ("AH") is their landlord.

10. The lease for Flat 59 is dated 13.08.07 and made between (1) SLFHA Limited and (2) Mr. & Mrs. Pluss for a term of 125 years.

11. The lease for Flat 63 is dated 10.12.07 and made between (1) SLFHA Limited and (2) Ms Kabugu for a term of 125 years.

12. Both leases impose obligations on the landlord to insure the Properties, to carry out repairs and redecorations and to provide services. Both leases impose obligations on the tenants to contribute, by way of service charge, towards the costs and expenses incurred by the landlord in carrying out its obligations. The Tribunal was satisfied that the charges in dispute between the parties amounted to service charges as defined by s.18 of the Act save that we did not consider management charges incurred by Ringley Chartered Surveyors ("Ringley") were recoverable from the lessees for the reasons set out below.

13. SLFHA Limited acquired their interest in Langland House by virtue of a Transfer of Part dated 16.10.98 and made between (1) Bewley Homes PLC and (2) South London Family Housing Association ("the Transfer"). AH are the successors in title to South London Family Housing Association.

14. In the Respondents' statement of case it was clarified that whilst AH manage, Chaucer Management Company Ltd ("Chaucer Management") are responsible for providing management services for the whole of the Estate of which Langland House forms part. Chaucer Management's obligations in this respect are contained in the Transfer.

15. In order to meet those obligations Chaucer Management entered into an agreement with Ringley to provide services on its behalf. One of the issues requiring determination in this application was whether or not costs incurred by Ringley and paid by AH were recoverable from the Applicants.

The Pre-Trial review

16. An oral pre-trial review ("PTR") was held on 03.04.12 which was attended by Mr. and Mrs. Pluss and Ms. Kabugu as well as Ms. Emery and Ms Manton for the Respondents. Directions were issued by the Tribunal on the same day.

17. At the PTR the Tribunal identified the following issues as requiring determination:

    17.1 <u>Service charge years 2010/11 and 2011/12:</u>

        a) Communal cleaning;

        b) Communal grounds maintenance;

        c) Amicus Horizon management charges;

d) Ringley Managing Agents charges;

e) Day to day repairs; and

f) Bulk refuse removal.

17.2 The reasonableness of the interim service charge demand for the year 2012/2013.

17.3 The Applicants' application under s.20C of the Act in relation to the Respondent's costs and;

17.4 Whether or not fees incurred by the Applicants in pursuing this Application should be reimbursed.

The Hearing

18. The hearing was attended by the same parties that attended the PTR.

19. The Applicants confirmed that in light of information contained in the Respondent's Statement of Case the challenge in respect of communal cleaning was no longer being pursued.

20. At the request of the Tribunal a copy of the management agreement between Chaucer Place Management Ltd and Ringley Chartered Surveyors dated 14.01.00 was provided by the Respondent as well as a copy of the register of the freehold title for the Estate (Title number SGL604556). Copies of these documents were passed to the Applicants and inserted into the hearing bundle. The Applicants were provided with time to consider them. We allowed their submission as evidence.

The Matters in Dispute

21. The Applicants' case was that there had been an unreasonable increase in the amounts demanded from them by way of service charge. They said that they had been questioning the level of these charges with the Respondents for around 12 months but because a satisfactory response had not been received to their enquiries they felt compelled to pursue this Application. They also considered that they were due credits to their account because of overpaid charges.

22. We deal with all of the items in dispute below.

Ringley Management Charges

23. Under the terms of the Transfer, SLFHA's contribution to the costs of the services provided by Ringley (on behalf of on behalf of Chaucer Management) was defined as

being 26% of the Maintenance Charge for each year (subject to variations as set out in the Transfer). This 26% figure was, we were told, calculated on the basis that SLFHA originally owned nineteen properties on the Estate namely the nine flats in Langland House as well as ten houses on the Estate (26% equating to 19/73rds).

24. We were informed by Ms. Emery that at some point after 2010 the ten houses were sold leaving just the nine flats in Langland House in AH's ownership. AH's contribution had, she said, now been recalculated at 12.33% (9/73rds for the nine flats in Langland House).

25. Computation of the Maintenance Charge is dealt with in Schedule 4 which refers to the charge being payable in respect of the purposes set out in Clause 6 of the Transfer. This appears to be a drafting error and that the relevant clause is, in fact, clause 7 and not clause 6.

26. Under clause 7 the purposes for which the Maintenance Charge is to be incurred includes maintaining and repairing the private access road, parking spaces and entry gate servicing the Development as well as maintaining public liability insurance for those areas.

27. Under the terms of the Transfer the land transferred to South London Family Housing Association is defined as being that part of the Development at Chaucer Road edged red on the plan annexed to the Transfer together with the dwellings and garages and parking spaces thereon. Before us, Ms. Manton and Ms. Emery agreed that this was the case. They also agreed that 'the Development' comprised everything within the boundary line shown marked on the same plan.

28. In the service charge year 2010/11 Ringley charged AH £10,421.46 as the contribution due in respect of the Maintenance Charge. This amount was queried by AH who considered the charges to be unreasonable and that a new property manager at Ringley had misinterpreted the Transfer Deed and incorrectly calculated the contribution due.

29. In anticipation of a reduction being agreed AH amended the 2010/11 service charge account to refund £7000 [20/3]. This was notified to the Applicants by letter dated 30.11.11 [20/5-7] in which it was stated that their individual service charge accounts would be corrected by 08.12.11 to show the correct balance owing as £137.58 per flat (as opposed to the £217.88 originally demanded).

30. Ms. Emery informed us that since that credit adjustment was made Ringley has refunded that £7000 as well as a £7000 refund for 2011. She indicated that both sums had been applied to the service charge account.

31. AH consider the balance of charges demanded for 2010/11 and 2011/12 and the 2011/12 interim charge (£30 per flat) to be reasonable. Very brief details of the costs incurred by Ringley for 2010/11 are set out in their budget at [8/1]. Ms Emery informed us that the services Ringley provide included grounds maintenance and maintaining the security gate and communal lighting in the Estate. She said that

Ringley bill AH for these services every 6 months. An example of an invoice at [10/13] refers to "general estate expenditure" and a "reserve fund" contribution. Ms. Emery confirmed that no other breakdown of the costs incurred is provided by Ringley although AH carry out quality inspections to check the work carried out.

32. Mr Pluss confirmed that at the PTR the Respondent had stated that the lessees' service charge accounts were going to be adjusted as indicated by Ms. Emery. However, since that date they had received a further statement that still showed the original amount as outstanding. He also queried whether or not the charges were reasonable and what the costs related to given the lack of any breakdown from Ringley in their demands. In addition he pointed out that mention is made in the demands to payments due in respect of a reserve fund whereas there is no reserve fund in place for Langland House. He asked what these reserve payments relate to.

33. Ms Emery confirmed that the credit adjustments will be made to the Applicants' account once the Tribunal has made its decision. In addition, whilst the lease allows the landlord to collect a reserve fund it does not, in fact, do so. It appears to us that the reserve fund referred to in the Ringley demands related to its own reserve fund.

34. After lunch the parties were informed that the Tribunal had formed a preliminary view that the charges claimed by Ringley and paid by AH did not appear to be recoverable from the lessees. We explained our reasoning was as follows:

34.1 Clause 3.2 of each lease contains a covenant by the tenant in the following terms:

> *"To pay to the Landlord without any deduction by way of further and additional rent the Service Charge by equal monthly payments in advance on the first day of each month the first payment to be made on the execution hereof".*

34.2 "Service Charge" is defined in the preamble to each lease as follows:

> *"...a fair and reasonable proportion of the costs expenses and outgoings from time to time in respect of the items set out in Parts 1 and 2 of the Fourth Schedule paid in accordance with the terms and conditions contained in clause 3.2 and the Fifth Schedule"*

34.3 Part 1 of the Fourth Schedule concerns the Landlord's costs charges and expenses in respect of the Building in which the Flat is situated. It includes an obligation to contribute towards reasonable costs incurred by the Landlord in the management of the Building.

34.4 Part 2 of the Fourth Schedule concerns the Landlord's costs charges and expenses in relation to the Estate. It includes an obligation to contribute

towards reasonable costs incurred by the Landlord in the management of the Estate.

34.5 "The Building" is defined in the lease as meaning the building in which the Flat is situated i.e. Langland House.

34.6 "The Estate" is defined in the lease as meaning "the land on which the Flat and Building are located, registered at H.M. Land Registry under Title Number SGL604556".

34.7 The property register for Title Number SGL604556 describes the land and estate comprised in the title as being *"The freehold land shown edged with red on the plan of the above title filed at the Registry and being land lying to the east side of Chaucer Way, Wimbledon, London."*

34.8 The red edging on the official copy of the title plan comprises Langland House and the immediate surrounding area including some of the nearby parking spaces. It does not relate to the wider estate retained by the developer on entry into the Transfer such as the private access road.

34.9 In our view there appeared to be an error in the drafting of the two leases in that the definition of the Estate comprised Langland House and the immediate surrounding area and not the area for which AH says it is obliged to contribute towards a Maintenance Charge under the terms of the Transfer. As such we did not consider AH could recover the costs incurred by Ringley as these relate to the area outside of the area edged red on the official copy of the title plan to Title Number SGL604556.

35. The parties were invited to make any further representations on this point but none were made save that the Applicants requested us to deal with the reasonableness of the charges claimed, in any event, even if our decision was that these charges are nor recoverable from them.

36. However, it was our view that if we decided the charges were not recoverable that it would be inappropriate for us comment on their reasonableness given that the Respondents clearly had limited information from Ringley as how the sums claimed were broken down. We did not consider we had sufficient information to determine the question of the reasonableness of those charges.

Communal Grounds Maintenance

37. Mr Pluss submitted that the sums claimed for 2010/11 (£224.17) and 2011/12 (£341.60) represented a year on year increase of 52.35% and that this is excessive. Whilst the lessees had been informed by AH that fees from April 2011 to September 2011 were going to be reduced by 50% these reductions had not been applied to their accounts.

38. Moreover, he said, the estimate for 2012/13 of £502.11 per flat per annum amounted to a further increase of 46.94% totalling a 99.3% increase in two years, more than reversing the 50% reduction for the previous year.

39. In addition, Mr Pluss queried what these charges related to as there is only a small communal garden outside Langland House. He had also observed gardeners working at Bank Holidays when, he speculated, costs would be higher.

40. In response, Ms. Emery confirmed that a credit of 50% had been applied for the period April 2011 – September 2011 as stated by Mr. Pluss. However, a 50% credit had also been given for the whole of the year April 2010 – March 2011. Both of these credits were due to the grounds maintenance contractor not performing satisfactorily. As a result, the lessees were compensated.

41. The contractor was replaced in October 2011 and is performing well. In Ms Emery's view the charges sought are reasonable. She indicated that the contractor visits once a fortnight and that the schedule of works they are required to complete includes grass cutting and strimming; shrub pruning; rose pruning if applicable (it was agreed that there are none at Langland House); removal of litter and leaf litter; weed removal and hedge reduction. She was not sure how many gardeners attend on each visit but believed this might vary. She confirmed that the area maintained was the communal area around Langland House and adjacent to the neighbouring parking bay marked "65" on their lease plan.

Amicus Horizon Management Charges

42. The Applicants sought a determination as to the reasonableness of the sum of £230 per flat per annum charged by AH for each of the service charge years being challenged. They considered the quality of the management service provided did not justify the amounts sought.

43. They queried whether or not regular site inspections took place (there appeared to be none between December 2011 and May 2012) and that AH failed to take appropriate action following inspections or on being notified of problems. For example, the fire door on the ground floor of Langland House is frequently jammed in an open position and the landing on the first floor is frequently cluttered. They were not aware of any cyclical works having taken place since 1999.

44. Mr. Pluss also submitted that AH should not charge for their attendance at the LVT given that they receive a fixed management fee that, according to the information provided in their Statement of Case, included representation at the county court and LVT.

45. He also mentioned that AH did not act on being informed of breaches of lease or tenancy terms by other residents and was disappointed that a promise made in March 2009 to remove laminate flooring in one of the flats had not been carried out. Another resident played music very loudly but no action had been taken to remedy this problem.

46. Ms. Emery set out details of the services provided by AH at paragraph 4.1 of the Respondent's Statement of Case. In her view these were reasonable. She conceded that one quarterly inspection due in March 2011 did not take place until May 2012 but this was delayed rather than omitted. She agreed that there was a problem with residents jamming open the fire door and agreed to arrange for a sticker to be placed on the door encouraging residents not to do so. She also confirmed that AH would not be charging the lessees for attendance at the LVT as this is included in their management fee. She was not aware of the issues raised by Mr. Pluss concerning noise nuisance and so could not comment on these.

Repairs

47. The sums sought from individual leaseholders for general repairs to the building are £7.09 for 2010/11 and £77.33 for 2011/12.

48. No challenge was made in respect of the 2010/11 costs. As for the 2011/12 costs Ms. Kabugu queried an invoice for £300.41 in that a communal letter box referred to in that invoice had not been replaced. Similarly, the communal door on the second floor had not been painted despite this invoice including a sum for doing so.

49. Ms. Emery's response was that the door in question should have been painted and that this will now be done. As for the letter box it had not been possible to replace the letter box as it turned out that it would cost approximately £2000 to do so. She stated that only the work actually carried out in the building had been charged to the lessees. Ms Emery stated that the maintenance team would replace the letter box.

Bulk Refuse Removal

50. Sums claimed from the individual leaseholders were £59.33 in 2010/11 and £58.67 for 2011/12. The Applicants' primary concern over these charges did not appear to relate to the amounts claimed (although Ms. Kabugu thought they were high). Instead, the main concern was that charges were being incurred because bulky items were being dumped outside Langland House by persons who did not live within the building. Their case was that the charges should be shared with the residents of other buildings on the Estate that consists of four blocks and two long terraces.

51. In response, Ms. Emery agreed that dumping of bulky items was a problem but that they have no option but to remove them for health and safety reasons and because on some occasions they have blocked the bin areas thereby preventing the local authority from emptying the bins. She said that AH are trialling the use of dummy CCTV cameras on other sites and if successful may introduce them at Langland House. She agreed to put up a notice asking people not to dump items outside the building. As for the charges themselves, Ms. Manton stated that each charge was a standard one as set out in an agreement with their contractors. The charges in question were £70.50 per visit rising to £90 after 03.03.11.

2012/13 Interim Charge

52. The following items and amounts were identified as being in issue:

    a) Communal grounds maintenance - £502.11 per flat

    b) AH management charges - £230.00 per flat;

    c) Managing Agents charges - £360 per flat; and

    d) Bulk refuse removal - £65.44 per flat.

53. In their statement of case the Respondent states that the estimated charge had been calculated based on expected increases in contract rates, expected works and any new anticipated obligations. The cost of some items has reduced. Others have increased. Overall the Respondent claims there is an increase of 11.6% from the previous year's estimated charge.

54. They state that the Ringley charge has been reduced to a £30 per month contribution from each lessee.

55. Mr. Pluss, on behalf of the Applicants, disputed that the increase in sums claimed amounted to an 11.6% increase from the previous year because the actual charge for 2011/12 had been reduced from £1492.92 to £1002.04. According to his calculations the increase was just over 60% as opposed to 11.6% and this, he said, was excessive.

56. He argued that the cost of communal grounds maintenance was already excessive and to increase it to £41.84 per month was unacceptably high.

57. The Applicants' challenge in respect of AH management charges, Ringley managing agent charges and bulk refuse removal were the same as for the previous two service charge years.

58. In response. Ms. Emery stated that the 2011/12 charges included a £7000 refund in respect of the Ringley management charges and that explains the reason why there appeared to have been a disproportionate increase in the 2012/13 interim charge. She maintained that the other costs demanded were reasonable.

Accountancy Fee

59. The issue of accountancy fees was apparently raised at the PTR at which the Respondent agreed that AH were not entitled to charge for this. Mr. Pluss accepted that a credit had been made for 2010/11 in reimbursement for those charges but queried whether or not a refund had been given for 2011/12. Ms. Emery confirmed that a full refund in the sum of £19.80 had been applied for 2010/11 and that a full

refund of £18.72 had now been credited for 2011/12. Her response satisfied the Applicants and this challenge was not pursued further.

S.20C Application and Reimbursement of Fees

60. The Applicants' position was that they had complained for many months about the charges that had been demanded of them. Mr. Pluss referred us to email exchanges between him and Mrs. Pluss and Ms. Emery between 15.12.11 and 23.01.12. He informed us that no response had been received to an email he sent to Ms. Emery dated 07.01.12 in which he queried the amount of £124 per month being demanded from the Applicants despite a chaser email sent on 23.01.12.

61. In addition, there had been unjustified delay in reimbursing credit adjustments to the lessees' service charge accounts. The Respondent's explanation (that they wanted to wait until this Tribunal's decision before adjusting the accounts) was, in Mr. Pluss' submission tantamount to leaving decisions to the Tribunal that they ought to be making themselves.

62. The Applicants took the view that as their requests for clarification were not being addressed they had no option but to make this application to the LVT. They sought an order under s.20C preventing the Respondents from recovering any costs incurred in these LVT proceedings from the lessees by way of service charge. They also sought reimbursement of their application fee of £100 per Applicant and the sum of £150 for the hearing fee.

63. Ms. Emery confirmed that the Respondents would not, in any event, be seeking to recover any costs incurred by them in respect of these proceedings from the lessees by service charge or otherwise. In her view, the Respondent had acted responsibly in reducing fees where required. They would normally have had a consultation with the tenants to discuss the charges being demanded but this did not happen due to a longer than expected delay in a new computer software system being deployed.

64. We asked the parties whether or not there had been any attempt to engage in mediation following the PTR. Ms. Emery stated that she had handed the relevant LVT leaflet concerning mediation to the Applicants after the PTR and that she had mentioned that if they wanted to engage in mediation that they should contact her. She said that no request was made.

65. Mr Pluss acknowledged that a leaflet was handed over but that when the Applicants saw, in three separate places in the Respondent's Statement of Case that they wanted this Tribunal to make a decision before making adjustments to service charge accounts that they formed the view that no purpose would be served by seeking to mediate.

The Law

66. Section 27A of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination as to whether a service charge is payable.

67. Under Section 19, 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.

68. Under Section 20C a tenant may make an application to this Tribunal seeking an order that costs incurred by their landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs for the purposes of determining the amount of any service charge payable by the tenant.

The Tribunal's Decision and Reasons

Ringley House Management Charges

69. We determine that the charges claimed by Ringley and paid by AH are not recoverable from the Applicants for the reasons stated in paragraph 34 above.

70. Although this point was not raised before us we have considered whether or not the definition of "The Estate" in the leases should be construed so that the reference to Title Number SGL604556 is regarded as referencing the freehold title number for the Flat and Building as opposed to the Title Number of the land on which the Flat and Building is located. In other words, should we read the definition of the Estate as being *the land on which the Flat and Building are located* so that the Respondent is entitled to recover the management charges incurred by Ringley.

71. In the absence of any definition in the lease as to what "the land" in question would comprise we do not consider such a construction to be appropriate. If an obligation to contribute towards management or maintenance charges is to be imposed on the Applicants we consider the terms of such an obligation should be clear and unambiguous, This clause is not clear and we consider that the ambiguity should be construed *contra proferentem* and against the interests of the Respondent.

72. The costs claimed in respect of the Ringley managing agents charges for the service charge years 2010/11, 2011/12 and the interim charge for 2012/13 are therefore not, in our determination, payable by the Applicants.

Communal Grounds Maintenance

73. We determine that the sum of £224.17 per flat sought in respect of service charge year 2010/11 is a reasonable sum for what appeared to us on the evidence (including photographs provided) to be a well-presented estate. We determine that it is reasonable and payable by the Applicants.

74. The reduced sum claimed for 2011/12 amounts to £341.60 per flat. When asked, neither Ms. Manton nor Ms. Emery were able to clarify how many contractors attended the fortnightly visits. Nor could either of them clarify how the charges claimed were apportioned.

75. In our view allowing for, say, 26 visits over the course of a year with, on average, one person attending most of the visits that a charge of £288 per lessee plus VAT to be a reasonable sum. That equates to £345.60 which is slightly more than the sum demanded. We therefore determine that the sum demanded of £341.60 per flat is reasonable and payable by the Applicants.

76. As for the charge demanded for 2012/13, allowing for a 10% increase in overheads and inflation from the £341.60 figure for 2011/12 we determine that £375.76 per flat is a reasonable sum. The charge claimed of £502.11 per flat is to be reduced accordingly.

Amicus Horizon Management Charges

77. We considered that, on the evidence before us, Langland House is not a building that requires much more than minimal management by AH. There is little by way of services for AH to supervise and monitor. For example, there is no caretaker nor is there a lift in the building.

78. We were also of the view that some of the contracts entered into by AH to provide services such as the gardening contract and that relating to bulk refuse removal lacked a degree of transparency. For example, invoices submitted in respect of the communal gardening are paid without AH being provided with details of the work actually carried out on each visit.

79. We recognise that AH have acted responsibly in seeking to challenge the error made by Ringley in apportioning their charges. However, in our view more could and should be done by AH to inform the lessees about how the service charges demanded from them are calculated. The correspondence between the Applicants and Ms. Emery contained in the Applicants' bundle and the oral evidence from Mr. Pluss, in our view, supports that assessment. Significant queries as to how the charges have been calculated do not appear to have been adequately responded to.

80. Overall, given our view of the level of management required and the level of management service actually provided we consider the sum of £200 for each of the service charges years to be a reasonable sum for the lessees to pay.

Repairs

81. In the event there turned out to be no substantive challenge to any of the costs being sought. We determine that the sums sought from each of the Applicants in the sum of £7.09 for 2010/11 and £77.33 for 2011/12 are reasonable and payable.

82. We note the Respondent's agreement to ensure that the fire door is painted and that the communal letter box will be replaced and trust that they will keep the Applicants informed as to when this will take place.

Bulk Refuse Removal

83. Again, we did not consider there was any substantive challenge to the costs being sought and we determine that the sums claimed from the individual leaseholders of £59.33 in 2010/11 and £58.67 for 2011/12 to be reasonable and payable.

84. It is, of course, regrettable that the residents of other buildings on the Estate apparently dump items outside Langland House but, as far as we can identify, there is no mechanism for AH to impose a contribution from those residents.

85. Clearly, AH have to remove items when they are dumped and in our view the charges for doing so are reasonable. Preventative measures are probably the most effective way to combat the problem. With that in mind, we welcome the Respondent's agreement to erect a notice asking individuals not to dump items outside the building and to consider the possible use of dummy cameras. We would expect AH to act promptly on these assurances.

Limitation of costs and reimbursement of fees

86. In light of the Respondent's assurance that it will not be seeking to charge any of its costs of these proceedings to the lessees by way of service charge we make no order under s.20C of the Act.

87. The Applicants make an application under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003). This provides that in relation to any proceedings in respect of which a fee is payable under the Regulations a LVT may require any party to the proceedings to reimburse the other party for the whole or part of any fees paid in respect of the proceedings.

88. We order reimbursement of the application fee of £200 and the hearing fee of £150 paid by the Applicants in full to be paid within three weeks of the date of this decision. In our view, there was good reason for the Applicant to bring this Application to clarify

the payability of the costs demanded. Without this application the non-recoverability of Ringley's costs is unlikely to have been identified. Furthermore, we are satisfied that there was a lack of effective communication between AH and the Applicants when responding to the Applicants' queries. The Applicants have succeeded in the most significant of the points they raised in their Application and it appears to us unlikely that this outcome would have been achieved if not for the Application.

Chairman: _____

Mr. A. Vance

Date: 28th August 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

- 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, improvements 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.

- 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 for 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 or later period.

Section 19 – Limitation of service charges: reasonableness

(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 provisions 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.

20C. Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court[, residential property tribunal] or leasehold valuation tribunal, or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A – Liability to pay service charges: jurisdiction

(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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.