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LEASEHOLD VALUATION TRIBUNAL for the

LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref :LON/00BJ/LSC/2009/0784

Property:	46 & 77 McCarthy Court, Banbury Street, London SW11 3ET
Applicants:	Mrs C. Bradford and Mr S. Plumb
Represented by:	Mrs C. Bradford
Respondent:	London Borough of Wandsworth
Date of hearing:	25 February 2010 & reconvene on 13 May 2010
Date of inspection:	No inspection found to be necessary

Leasehold Valuation

Tribunal: **Mrs S O'Sullivan**

Mr R Potter FRICS

Mr E Goss

Procedural Background

1. An application was also made by the Applicants dated 25 November 2009 seeking a determination of the liability of the leaseholders to pay for the repairs and maintenance to central heating boiler, plant and equipment, charged by the landlord.
2. The Tribunal made directions in this matter dated 13 January 2010 which provided that the application be dealt with on paper. However the applicants requested a hearing and a hearing took place on 25 February 2010. As there was insufficient time in which to hear the matter a further hearing took place on 13 May 2010. The Tribunal also made directions following the first hearing for the provision of further documentation by the Respondent and for the Applicants to serve a further statement of case to which the Applicants had a right of reply.

The Hearing

3. The hearing of this matter took place on 25 February 2010 and 13 May 2010. The Applicants were represented by Mrs Bradford. The Respondent was represented by Mr Holbrook of Counsel. Mr Pike, Ms Parrette, Mrs Frost and Mr Coudy also attended on behalf of the Respondent and were all in the employ of the Respondent company.
4. In accordance with the directions made both parties prepared bundles for use at the hearing.
5. The Tribunal identified the following issues which it considered in turn, whether the obligation on the part of the Applicants was to pay for fuel only or fuel and maintenance, whether the Respondent was entitled to move from charging the costs on a block rather

than pool basis and whether the costs themselves are reasonable. A summary of the evidence heard and the Tribunal's decision is set out below. This decision contains only a summary of the most salient evidence, the parties already having copies of all the evidence which was before the Tribunal.

Background

6. By way of background the Tribunal heard from Mr Pike, Head of Technical and Programming Services, that the cost of fuel and maintenance of the boiler and plant had previously been part of a cost which was pooled across the whole of the Borough. However the Respondent had decided to de pool these costs and they were now being charged on a block basis. The de pooling exercise was carried out in September 2009 applying a retrospective charge back to 6 April 2009. The Applicants had previously been unaware that they were in fact paying a contribution to the maintenance costs and had thought that they paid only for fuel. The change from a pool to block system had meant that the charges to the leaseholders had increased dramatically although it should be noted that the Applicants had enjoyed the benefit of the pooling system for some years. The Tribunal noted that had to the pooling exercise been carried out in 2008/09 the charge to the leaseholders would have been much higher although this would depend on the level of expenditure for other years. Mr Pike explained that the whole point of the de pooling was to ensure that the users of a particular boiler house pay for the costs of that boiler house and that the cost of those works is not imposed on others.

7. In calculating each leaseholders cost the Tribunal heard that the total cost of repairs to the block is apportioned as a whole and them calculated to each unit using a weighting factor described in his witness statement. Leaseholders were then charged direct and tenants' contributions were collected direct from the Housing Revenue Account. As a result Mr Pike's evidence was that there was no subsidy by the leaseholders towards the tenants.

Are the leaseholders liable to pay for fuel/and or maintenance of the boiler and plant equipment?

8. The First Applicant, Mrs Bradford holds her property pursuant to a lease dated 15 January 1990 made between the Respondent (1) and C. Mackenzie and E. Mackenzie (2). She also entered into a heating agreement dated 25 February 1990 (the "Heating Agreement") with the Respondent which governs the payments made in respect of the heating and plant equipment as her lease is an old style lease which did not make provision for the payment of a heating charge.

9. The Second Applicant, Mr Plumb, holds his property pursuant to a lease dated 20 August 1993 made between the Respondent and the Second Applicant (the "Lease"). No

separate agreement was entered into by the Second Applicant as he holds a new lease which obliges him to pay a heating charge.

10. The Applicants accept that they are liable to pay for the cost of fuel but say that they are not liable to pay for the repairs and maintenance charges for the provision of hot water. The issue in this regard before the Tribunal was simply a matter of construction.

11. The Tribunal considered the provisions of the Heating Agreement. Clause 2 obliges the leaseholder to "pay the Council the charges for the supply of heat and hot water". The Tribunal considered the meaning of the words "charges for the supply of heat and hot water" and considered that the natural and ordinary meaning of those words would include those charges incurred by the Respondent in supplying the heat and hot water. In addition the Tribunal considered a reasonable person would expect the Respondent to be able to recover the costs of supplying the heat and hot water which would include the cost of fuel and maintenance.

12. The Tribunal then went on to consider the provisions of the Lease which it heard was a newer lease which contains a contractual provision at clause 6(2)(c) which requires the lessee "to pay the Council the charges for the Heating Supply...". "Heating Supply" is defined as including "hot water and space heating". The Tribunal likewise considered that the ordinary and natural meaning of those words would include those charges incurred by the Respondent in supplying the heat and hot water which would therefore include the cost of maintenance of plant and equipment.

13. The Tribunal's view was therefore that both the Heating Agreement and the Lease provided that the Applicants pay a contribution towards both the cost of fuel and maintenance of the boiler and plant equipment. The Tribunal informed the parties of its view during the course of the hearing and Mrs Bradford confirmed that she accepted the Tribunal's view and no longer wished to contest this point.

Does the Respondent have the ability to charge on a block basis?

14. The Applicants were unhappy that the costs were now charged on a block basis which had resulted in higher charges and questioned the Respondent's ability to recover the charges on a block basis.

15. Counsel for the Respondent submitted that in relation to the Heating Agreement clause 2 of that agreement had the effect of leaving it to the Respondent to decide how the heating charges should be calculated. He accepted that in relation to the Lease the heating supply was clearly linked to the flat but submitted that the Lease did not provide how the charge should be calculated.

16. The Tribunal considered the provisions of both agreements carefully.

17. The Heating Agreement provides at clause 2 that the leaseholder pays the charges for the supply of heat and hot water. "Heating Equipment" is defined as "the pipes wires cables....installed by the Council for the purpose of providing space heating hot water to the Flat". Although the Lease does not provide for a method of calculation it was the Tribunal's view that the ordinary and natural meaning of those words is that the leaseholder is obliged to pay for the heating supply in relation to the flat. It would therefore be unreasonable to calculate the charges on a borough wide basis. The current method of charging by the Respondent was in the Tribunal's view a reasonable manner in which to ascertain the cost of the heating supply to the flat.

18. Clause 6(2)(cc)(ii) of the Lease defines Heating Equipment as meaning "the pipes wires cables..installed..for the purpose of providing a Heating Supply to the Flat". Again although the Lease does not provide for a method of calculation it was the Tribunal's view that the ordinary and natural meaning of those words is that the leaseholder is obliged to pay for the heating supply in relation to the flat. It would therefore be unreasonable to calculate the charges on a borough wide basis. The current method of charging by the Respondent was in the Tribunal's view a reasonable manner in which to ascertain the cost of the heating supply to the flat.

19. The Tribunal would note that the charges were de pooled from 6 April 2009. In their application the Applicants questioned only the charges for 2009/10, i.e since the charges have been de pooled. It is entirely possible that the charges calculated on the current block basis for previous years would result in a higher charge to the Applicants. As a result the Applicants confirmed that they did not wish to challenge the way in which the charges had been apportioned for any period prior to 2009/10.

Are the charges themselves reasonable?

20. At the hearing on 25 February 2010 Mrs Bradford on behalf of both Applicants confirmed that the Applicants would like to challenge the costs as a whole for the period 2003 to 2009. The Tribunal made further directions for the provision of a breakdown of the costs to be supplied by the Respondents on a year by year basis and for the Applicants to make a further statement of case setting out why the costs were challenged and on what basis with the Respondent making a statement in reply.

21. Further documentation was provided in accordance with those directions and the Applicants lodged a further statement for the reconvened hearing dated 23 May 2010. Mrs Bradford did not attend the reconvened hearing and thus the Tribunal relied on the documentation provided by her. In relation to the breakdown of charges for each year Mrs Bradford said "I have no comment to make on these other than the large variations year on year". The Applicants therefore had no challenge to make on the costs themselves.

22. The Applicants appeared to challenge the basis upon which the costs had been incurred. The Tribunal heard evidence from Mr Pike in relation to each years costs and was satisfied with the explanations provided in relation to the actions taken by the Respondent in relation to the repair and replacement to the boilers during this period. It also noted Mr Pike's evidence that the costs during this period were being charged on a pool basis and thus the actual charges in question were in fact minimal.

23. No real challenge being made to the individual charges themselves the Tribunal did not consider that any reductions should be made to the sums charged. The sums charged to the Applicants in respect of heating charges for the whole of the period before the Tribunal were therefore allowed in full.

Application under Section 20C

24. In her written statement Mrs Bradford made an application for an order under section 20C of the Landlord and Tenant Act 1985. In view of the Tribunal's determination as set out above it does not consider it appropriate to make an order under section 20c in this case. However the Tribunal was informed that the Local Authority does not intend to pass on any charges through the service charge.

Chairman Sonya O'Sullivan

Dated: 2 July 2010