LRX/176/2006

LANDS TRIBUNAL ACT 1949

LANDLORD AND TENANT – Service Charges – Landlord and Tenant Act 1985 as amended ss 18 and 19 – Housing Act 1988 ss 13 and 14 – Assured non-shorthold periodic tenancy – whether the landlord's ability (subject to any reference to a Rent Assessment Committee) to serve a yearly notice of increase of rent (which included a service charge) brought the payments for services within s.18(1) of the 1985 Act

IN THE MATTER OF AN APPEAL FROM THE LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

BETWEEN **HOME GROUP LIMITED** **Appellant**

and

(1) MR A W LEWIS
(2) MR R MARSDEN
(3) MR J EASTON **Respondents**

Re: Bungalows 42, 37 and 43
Salters' Gardens
Church Road
Watford
Hertfordshire
WD17 4QE

Before: His Honour Judge Huskinson

Sitting at Procession House, 110 Bridge Street, London EC4V 6JL
on 26 October 2007

Mr Ranjit Bhose instructed by Coffin Mew LLP for the Appellant
Mr Lewis, Mr Marsden and Mr Easton (the Respondents) were present as observers

DECISION

Introduction

1. The Appellant appeals to the Lands Tribunal, with permission, from the decision of the Leasehold Valuation Tribunal for the Eastern Rent Assessment Panel ("the LVT"), being a decision given upon an application by the Respondents purportedly made under section 27A of the Landlord and Tenant Act 1985 for a decision regarding their liability to pay service charges in respect of the above mentioned premises. The application was made in respect of the years commencing 1 April and ending 31 March as described in the LVT's decision (although Mr Lewis asked me to note that in fact he made an application in respect of two years, being 1 April 2005 to 31 March 2006 and also in respect of the then future year of 1 April 2006 to 31 March 2007).

2. I say that the application was purportedly made under section 27A of the 1985 Act because the principal argument raised on this appeal is the question of whether the LVT had jurisdiction to entertain the Respondents' application under section 27A. As a primary point it is argued by the Appellant that, having regard to the terms of the tenancies and to the provisions of the 1985 Act and also of the Housing Act 1988, there was not payable under the tenancies any sum which constituted a "service charge" within the meaning of section 18(1) of the 1985 Act. Thus it is argued that s.18(1)(b) is not satisfied in relation to the sums payable under the tenancies, i.e. it is argued that it cannot properly be said that these are sums "the whole or part of which varies or may vary according to the relevant costs".

3. There are certain further grounds of appeal which are relevant if the Appellant is wrong on this primary point. I propose to consider this primary point and then turn to the other matters so far as they arise.

The Facts

4. Mr Lewis holds Bungalow 42 upon the terms of a tenancy agreement dated 15 July 2002 which was granted by Warden Housing Association Limited. The precise relationship between Warden and the Appellant was not explained to me at the hearing but nothing turns upon this. The application proceeded before the LVT and before me on the basis that the Respondents held their respective bungalows from the Appellant under the terms of the tenancy agreements between themselves and Warden and that, anyhow for the purposes of this appeal, the Appellant can be treated as the landlord of each of the Respondents upon the terms of their respective tenancy agreements with Warden.

5. Nothing turns on any differences between the terms of the individual Respondents' tenancy agreements and I can take Mr Lewis's tenancy agreement as an example.

6. The tenancy agreement is proclaimed at its head to be an assured non-shorthold tenancy agreement. The agreement states that the tenancy began on 15 July 2002

> "... and is an assured non-shorthold monthly tenancy the terms of which are set out in this Agreement."

The following terms can be noted:

1. By clause 1.1 the monthly payment for the premises at the date of the tenancy agreement was stated to be:

Net Rent	£298.18
Service Charge	£56.12
Water Charge	
Total payable	£352.30

2. Clause 1.2 provided:

   "The Association shall provide the services as below and detailed in your handbook in connection with the Premises for which the Tenant shall pay a Service Charge.

   Resident Manager, Communal Cleaning, Lighting, Gardening, Alarm System and TV aerial"

3. The tenancy agreement then had the following provisions in respect of rent in clauses 1.3 to 1.4c:

   "1.3 In this Agreement the term "Rent" refers to the sum of the net rent, and service charge and water charge set out above or as varied from time to time, in accordance with this Agreement. The payment of monthly rent is due in advance on the 1st day of each month

   1.4a During the first year of this tenancy the Association may increase or decrease the Rent payable only once. The Association will give the Tenant no less than one calendar month's notice in writing stating the new Rent.

   1.4b After the first year, the Association will increase or decrease the Rent once a year by giving the tenant no less than one calendar month's notice, in writing, of the increase or decrease. The notice shall specify the Rent and the included Service Charge proposed. Subject to clause 1.4c below, the Rent shall not be increased more than once a year and no increase shall take effect less than a year after the last increase. The revised Rent shall be the amount specified in the notice of increase unless the Tenant exercises his/her right to refer the notice to a Rent Assessment Committee to have a market rent determined. In which case the maximum Rent payable for one year after the date specified in the notice shall be the Rent so determined.

   1.4c The rent payable may be varied by mutual consent at any time if the Tenant agrees to the Premises being modernised or improved by the Association."

7. The Respondents' bungalows are situated within a development of sheltered housing which is described in the LVT's decision in paragraphs 3 to 5 and it is not necessary to repeat that description here. What may be noted however is that, this being a development including sheltered housing, a difficulty arose as a result of a Court of Appeal decision in 1998 regarding the payment of housing benefit (this being of course a general countrywide difficulty rather than specifically arising in relation to the development at Salter's Gardens). It is not necessary to go into this difficulty in any detail beyond the following very brief summary. It was decided that a person who was otherwise entitled to housing benefit could only claim housing benefit in respect of certain aspects of his/her housing costs, which could include the basic rent element (for the use of the premises) and certain matters by way of service charge, but that certain other matters which might broadly have been thought of as service charge matters were not eligible if they could properly be described as charges for the provision of welfare services rather than for the provision of services associated to the occupation of the property. As a result special provisions regarding transitional housing benefit were introduced and from 1 April 2003 a new statutory framework came into force whereby payments towards these welfare related matters were funded separately from housing benefit, namely through the Supporting People initiative. As these charges (namely the basic rent and basic service charges on the one hand and the support charges on the other hand) needed to be capable of quantification so that they could be dealt with under these two separate regimes it became necessary for these charges to be separately identified by the providers of such accommodation. It therefore came about that the Appellant in its accounts for the years relevant to the present application to the LVT has separated payments into service charges and support charges.

8. For the purpose of the question of the Appellant's primary point regarding jurisdiction however this distinction does not matter for the following reason. It was found by the LVT and not challenged by the Appellant that the Appellant's right as a matter of contract to charge for the various charges it sought to levy against the Respondents arose under the tenancy agreement and arose equally in respect of those services which could be called basic services and those services which could be called support services. Although there were documents (the authenticity of which was challenged before the LVT) which were called Support Contracts and which were said to have been entered into by Mr Lewis and Mr Marsden, the LVT made no findings regarding those documents and did not consider they added to or altered the factual position relevant to the present case. The LVT proceeded on the basis that all of the charges which the Appellant sought to recover from the Respondents and which the Respondents sought to refer to the LVT under section 27A were charges which arose as contractually payable under the terms of the relevant tenancy agreements.

9. The Appellant does each year serve a notice altering the Rent (ie the rent plus service charge) payable under the tenancy agreements by the Respondents. I was not shown a copy of such a document for any of the relevant years but I was told that this was a document which complied with the provisions of section 13 of the Housing Act 1988 and I was shown a specimen of such notice served on another tenant in February 2007. This document was not before the LVT and I make no finding as to precisely what documents as a matter of fact have been served on the present Respondents. However, I note that the Appellant recognises (as would indeed seem clearly to be the case) that its power to alter the rent each year under the terms of the tenancy agreement is subject to the provisions of the Housing Act 1988 and especially sections 13 and 14 thereof. For present purposes I assume without deciding that the

various alterations in rent (being rent plus service charge plus support charge) which have been sought by the Appellant through increase of rent notices have been notified to the Respondents in the appropriate form as required by the Housing Act 1988.

10. The manner in which the Appellant has calculated the rent for each forthcoming year is explained in its Statement in Reply before the LVT at page 54 and following of the bundle. Put broadly the service charge element is calculated by estimating the costs of providing the services for the service charge year from the forthcoming 1 April. There is consultation with the tenants on these figures. A management fee is included. Once this proposed overall service charge figure has been calculated the position then is as follows, according to the Appellant's evidence:

> "Once set, the monthly service charge is a fixed charge for the financial year and does not vary according to the actual costs during the course of that year. If the Respondents' actual expenditure on the items for which a service charge is levied exceeds the amounts tenants are contractually liable to pay, it absorbs the shortfall itself; if the actual expenditure is less, it retains the difference. There is no 'year end' accounting and no payment of a balancing charge."

The Appellant's Statement in Reply at paragraph 7 and following then describes how the "support charges" are calculated. I will not set that out here, beyond noting once again that there is no provision for a balancing charge or balancing credit to be made at the end of any year. Thus in summary any notice of alteration in rent given by the Appellant to the Respondents is a document notifying a new figure which has been calculated by the Appellant, so far as concerns the service charge and support charge element, on the basis of the estimated costs for the forthcoming year commencing on 1 April.

11. At the hearing before me the Respondents were not legally represented and had indicated that they did not wish to be considered as formally participating in and responding to this appeal. They did however appear as observers. I invited them, through Mr Lewis (who has acted on their behalf in the submission of documents to the Tribunal) whether he wished to address me and he did so briefly upon certain facts of the case. Understandably he did not seek to advance any arguments of law.

The Law

12. Sections 18 and 19 of the Landlord and Tenant Act 1985 as amended provide as follows:

> "**18. Meaning of 'service charge' and 'relevant costs'**
>
> (1) 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.

(2) 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.

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 provision 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."

13. The Housing Act 1988 sections 13 and 14 provide so far as presently relevant as follows:

"**13. Increases of rent under assured periodic tenancies**

(1) This section applies to –

(a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy, and

(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than –

.... [there then follow provisions regarding the dates from which an increase in rent can be made to take effect]

(3) ....

(3A) ....

(3B) ....

(4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice, –

(a) the tenant by an application in the prescribed form refers the notice to a rent assessment committee; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

14. Section 14 of Housing Act 1988 provides:

"**14. Determination of rent by rent assessment committee**

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy –

(a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;

(b) which begins at the beginning of the new period specified in the notice;

(c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and

(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) to (3B) ....

(4) In this section 'rent' does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, [in respect of council tax] or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.

(5) ....

(6) ....

(7) Where a notice under section 13(2) above has been referred to a rent assessment committee, then, unless the landlord and the tenant otherwise agree, the rent determined by the committee (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the rent assessment committee that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.

(8) ....

(9) ...."

The Appellant's submissions

15. Mr Bhose drew attention to the reasoning of the LVT on the jurisdiction point at paragraph 33 which is in the following terms:

> "The Tribunal found the argument that the Service Charge was fixed, persuasive. The Rent which is the net rent and service charge combined would not be more than a market rent for the property as agreed between the parties or determined by Rent Assessment Committee under s 14 of the Housing Act 1988. Nevertheless the Tenancy Agreement referred to the service charge as being varied from time to time and the Tribunal found that the Respondent treated the charge as variable by setting an amount each year based upon the actual costs of the previous year and making adjustments to take account of changes from year to year. The Tribunal had found that the carrying forward of an overpayment of a service charge from one year to the next was permitted by many leases in the open market. In support of his argument Counsel for the Respondent had said that the Respondent had met the cost of underpayments however the Tribunal had not seen any evidence of an underpayment in the years in question. The tribunal therefore found the charge to be a variable service charge and therefore had jurisdiction to make a determination pursuant to s27A of the Landlord and Tenant Act 1985."

16. Mr Bhose submitted that a charge was not made a 'service charge' within section 18(1) merely because there was a provision in the tenancy agreement enabling the rent (including the service charge) to be varied from time to time, nor from the fact that the manner in which the Appellant chose to vary the rent was informed by an estimate of the costs of providing the services. He also submitted, so far as concerns the LVT's observation that it had not seen any evidence of an underpayment in the years in question, that the LVT was factually inaccurate in making this statement, because there was evidence of an underpayment at page 308 of the bundle. Separately from that he argued that the question of whether a charge arising under a tenancy agreement was a service charge within section 18 of the 1985 Act must be capable of proper determination upon the construction of the tenancy agreement and of the statute from the outset. The decision on this point could not depend upon (and vary with) the happenstance of whether in any particular future year there was or was not some underpayment which was absorbed by the landlord.

17. Mr Bhose submitted that in order to fall within section 18(1) a charge must be one which either was directly related to (and varied with) the costs incurred or was a charge payable on account with a balancing charge (by way of further payment or credit/refund) being made at the end of the relevant period once the relevant costs were known. He submitted that in the present case once the landlord had notified the new rent this would be the fixed rent (or the rent assessed in substitution therefor by the Rent Assessment Committee under section 14 of the Housing Act 1988 would be the fixed rent) for the forthcoming period of a year and that there was no provision for alteration up or down by way of balancing charge. He submitted that the service charge payable under the Respondents' tenancy agreements (ie as part of the Rent there defined) could therefore not be said to be a payment "the whole or part of which varies or may vary according to the relevant costs" within section 18(1).

Conclusions on the primary point (jurisdiction)

18. With respect to the LVT I am unable to agree with their conclusion that the service charge (including support charges) payable by the Respondents under their tenancy agreement constitutes a service charge within section 18 of the 1985 Act. My reasons for so concluding are substantially those advanced by Mr Bhose in argument and are as follows.

19. I agree with Mr Bhose that it is irrelevant whether as a matter of fact over any particular past year there has or has not been an underpayment. The question of whether the charges levied under these tenancy agreements constitute a service charge within section 18 must be capable of decision without waiting to find out (and being influenced in the answer by) whether in some particular year there is or is not an underpayment which is absorbed by the landlord. I also accept that as a matter of fact the LVT overlooked a document which was before it indicating that there had been an underpayment, see page 308 of the bundle showing an underpayment for the year ending March 2005.

20. In the present case the Respondents' tenancy agreements contemplated, in accordance with the scheme under the Housing Act 1988 for assured non-shorthold tenancies which are periodic tenancies, that the rent can be altered by the Appellant on a yearly basis. The tenancy agreements expressly state that a tenant under such an agreement can refer the rent to the Rent Assessment Committee, which is of course an entitlement arising under section 13. Mr Bhose argued (and I accept) that section 13(1)(b) does not exclude the present tenancies from section 13 and 14 of the 1988 Act. They are thus subject to the statutory code for the alteration of rents so far as concerns the contents of and restrictions upon notices of increase. Also a tenant in receipt of a notice altering the rent has the right to refer the matter to the Rent Assessment Committee.

21. There is nothing in the tenancy agreements indicating that any altered rent is to be calculated in any particular manner, or linking an alteration in rent (including service charge) with an alteration in the costs of providing any relevant services. Accordingly, it seems to me that section 18(1)(b) is not satisfied. It is true that it can be said that the Appellant in deciding whether to serve a notice of increase and, if so, how much that increase should be may well inform itself (as indeed it accepts it does) by reference to the estimated costs of providing

services in the forthcoming year. However the ability in someone to serve a notice increasing the rent, if it chooses to do so, and to calculate that proposed new rent taking into account increases in the costs of services does not enable it in my judgment to be said that the rent (including service charge) is a payment "the whole or part of which varies or may vary according to the relevant costs". The sum payable does not vary in accordance with the relevant costs. Nor in my judgment can it be said that it "may vary" in accordance with those costs. There is no direct relationship between the amount of the costs as a cause and the amount of the service charge as a consequence. Interposed between the amount of the costs and the amount of the service charge is the independent decision of the landlord (here the Appellant) or of the Rent Assessment Committee as to how much the new rent/service charge should be. Of course it can be said that the Appellant and that Rent Assessment Committee may take into account the reasonably estimated amount of the service costs in the forthcoming year, but that in my judgment is at least one remove from a situation where a rent varies or may vary according to the relevant costs.

22. Further, if in a case such as the present the conclusion was reached that, by reason of the ability to increase the rent taking into account the estimated amount of the forthcoming service costs, section 18(1) of the 1985 Act was engaged, then it is difficult to see how any assured non-shorthold tenancy under which a payment was made for services could escape falling within section 18(1) of the 1985 Act, which would leave section 14(4) of the 1988 Act as effectively a pointless provision which could never apply. The fact that a new rent under an assured non-shorthold tenancy may be calculated by a landlord or by the Rent Assessment Committee paying regard to the amount of the estimated service costs in the forthcoming year is surely what is contemplated as something which may fall to be done under section 14(1) and (4) of the 1988 Act. It would be strange if the very circumstance which these provisions appear specifically designed to deal with were circumstances which automatically removed the jurisdiction to deal with the service charge payment from the Rent Assessment Committee under these provisions and left the jurisdiction with the LVT under the 1985 Act.

23. In the result therefore I uphold the Appellant's primary ground of appeal and conclude that the LVT had no jurisdiction to deal with this application which was purportedly made under section 27A of the 1985 Act.

24. While this is not relevant to the decision, it may be noted that in fact Mr Lewis did make an application to the Rent Assessment Committee for a determination of the rent in 2004, but he received a letter from the Eastern Rent Assessment Panel indicating that housing associations do tend to charge less than the open market rent and that "it is a real possibility that we would decide that the open market rent for your property is in fact more than you have been asked to pay" see the letter of 4 May 2004 enclosed with Mr Lewis's letter to the Tribunal dated 6 April 2007.

The other grounds of appeal

25. Bearing in mind my conclusion on the question of jurisdiction it is not necessary for me to give any detailed consideration to the other matters raised. As however they were argued, albeit comparatively briefly, by Mr Bhose it is appropriate for me to set out in summary my conclusions upon them.

26. Grounds 2 and 3. Mr Bhose argued having regard to the nature of the matters in respect of which the support charges were payable, it could not properly be said that these charges were for "services" within section 18(1) of the 1985 Act (ground 2). It was also argued that it could not be said that these charges were amounts "payable by a tenant of a dwelling" within section 18(1) (ground 3). I do not accept that these arguments are well founded. The fact that there may be a welfare element in the nature of the services provided does not in my judgment prevent them from being capable of being services within section 18(1). The fact that they are treated differently for housing benefit purposes and are instead dealt with under the Supporting People initiative cannot decide for the purposes of section 18(1) whether they are capable of constituting a service charge. It seems to me that the provision of, for instance, a monitored alarm system for tenants is just as much the provision of a service as the provision of a resident porter, so far as consideration of section 18 of the 1985 Act is concerned. Also I consider these payments are payable by a tenant of a dwelling. They are payable under a tenancy agreement and they are payable in relation to services provided at or about the demised premises.

27. Ground 4. This complains that the LVT erred in particular in paragraph 68 of its decision by failing when assessing the reasonableness of the support charges to have regard to the fact that the charges sought to be levied by the Appellant had been approved by Hertfordshire County Council. However Mr Lewis had submitted additional documents which became numbered 679 and following of the bundle which included a letter of 8 June 2005 from Hertfordshire County Council. This indicated the Council's position on obtaining value for money. This did not indicate any particularly focused attention being given to the particular services being provided by this Appellant for these Respondents at Salters Gardens. Instead the Council's approach (wholly understandably and no criticism is intended in these observations) was to take a much broader approach and to consider whether the proposed costs fell within the median quartiles or whether they fell within the upper quartile and were unacceptable. In my judgment the LVT was entitled for the reasons it gave in paragraph 68 not to find of any significance on the question of reasonableness (supposing it had been a matter for the LVT) the fact that the charges were approved by Hertfordshire County Council.

28. Ground 5. The complaint here is that in deciding upon the amount recoverable by way of support charge the LVT first set out the Appellant's case in paragraphs 53 and 54. In paragraph 53 references are made to the Resident Warden's ancillary costs and to Housing Officer's costs. These categories of expenditure are listed within the Appellant's evidence to the LVT in its Statement in Reply, see in particular paragraph 13 thereof which lists in subparagraphs (a), (b), (c) and (d) the various categories of costs which go to make up the support charges and which include in paragraph (c) costs of £3,123 in respect of Housing Officer's costs and a further figure of £2,000 for the higher level management costs. These

figures had been before the LVT not merely in the Statement in Reply but also at page 625 of the bundle. However, when the LVT came in paragraph 54 of its decision to indicate how (as part of its recounting of the Appellant's case) the support charge sums were calculated the LVT set out effectively the material in paragraph 13 (a) and (b) and (d) of the Appellant's Statement in Reply but wholly omitted any reference to subparagraph (c), which included the £3123 and £2000. The LVT further omitted to make any inclusion for these amounts in their tables at the end when they calculated the payable service charges and support charges. The only explanation that Mr Bhose could offer as to how this omission might have been made was that the LVT had, wrongly, decided to take the relevant costs from page 414 of the bundle, which is an internal document of the Appellant's which does not include these paragraph (c) charges, but which was a document which was referred to at the hearing before the LVT and which was pointed out to the LVT was not intended to be exhaustive and did not include these charges.

29. In my judgment the LVT has erred in law in this point in that it has mistakenly recorded what the Appellant's case was and has omitted, without giving any reason, an element of the support charges. I do not consider the matter is adequately explained in the LVT's reasons for refusing permission to appeal. Accordingly, if the matter had been within the jurisdiction of the LVT (and had in consequence been within the jurisdiction of the Lands Tribunal) I would have allowed the appeal so as to alter the amount recoverable by way of service charge/support charge so as to add back these omitted items.

30. As it is, my decision is that the Appellant is entitled to succeed on its primary ground of appeal. I conclude that the LVT had no jurisdiction to entertain the Respondents' purported applications under section 27A of the 1985 Act. I therefore allow the Appellant's appeal.

31. Neither the Appellant nor the Respondents made any application for costs. Bearing in mind this Tribunal's very limited jurisdiction to award costs in an appeal from the LVT no order for costs would have been appropriate in any event and no order for costs is made..

Dated 3 January 2008

His Honour Judge Huskinson