

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Section 27A Landlord and Tenant Act 1985
(as amended)

BETWEEN

**Mrs B Smyth and others
Teign Housing**

**Applicants
Respondent**

DECISION AND REASONS

Case Number:	CHI/8UH/LSC/2007/0056
Property:	Flats 2, 4 and 7, Queensway House, Queensway Buckland Newton Abbot. South Devon
Applicant (nominee purchaser):	Mrs. Smyth and others
Respondent (reversioner):	Teign Housing
Date of Application:	18 th June 2007
Date of Consideration:	Paper Determination 14 th November 2007
Appearances:	None
Witnesses:	None
In Attendance:	None

Tribunal Members:

Ms Cindy Rai LLB (Chairman)
Mr Tim Dickinson BSc FRICS IRRV
(Valuer Member)
Mr Peter Groves FB Eng JP
(Lay Member)

Date of Decision:

21st November 2007

SUMMARY OF DECISION

- 1 Having considered the disputed items all of which are referred to in the Provisional Directions (referred to later) but also succinctly set out in the Applicants Statement of Case undated but received at the Tribunal office on the 13th September 2007 the Tribunal decided as follows:-

Disputed Items	Amount shown on Applicants service charge account for year 2007/2008
Communal Maintenance	Accepted at "on account" level charged
Communal Lighting	Estimated amount reasonable but should be split between 22 properties and not 10 [Reduction to £62.95]
Door Entry	Accepted as estimated
Fire Alarm	Estimated considered to be reasonable but should be split between 22 properties and need for regular maintenance (if this is occurring) should be investigated to enable estimate to be reappraised thus demonstrating it to be fair and reasonable [Reduction to £22.65]

TV Digital	Amount charged "on account" reasonable but should be payable only if used to accord with lease provisions
Caretaking External	Amount charged "on account" reasonable
Caretaking responsive	Amount estimated and charged "on account" reasonable subject to proviso that the actual charge should be allocated appropriately when identified
Grounds Maintenance	Amount charged "on account" reasonable
Grounds Maintenance responsive	Amount charged "on account" reasonable subject to proviso that the actual charge should be allocated appropriately when identified
Management Charges	15% is a reasonable percentage charge but clearly the actual amount charged on account will need to be adjusted to reflect the downward adjustment of some of the estimated charges

BACKGROUND

- 2 The Tribunal met at the Queensway House which is the building within which the Property is situate at 1000 hours on the date scheduled for its consideration and in compliance with paragraph 13 of the Directions dated the 9th August 2007 made by Robert Long (Chairman, Panel President and a member of the Leasehold Valuation Tribunal). Tamara Brooks and Shelley Hale of Teign Housing (the Respondent) met the Tribunal members and also present for parts of the inspection was a resident who appeared to represent at least one (and perhaps all) of the Respondents. The Respondents each are owners of long leasehold interests in the

Property. The Members explained that as both parties had requested and agreed to a “paper determination” neither party could make representations. The members explained that they had struggled to fully understand the extent of each of the Applicant’s Properties and other descriptions in the leases without coloured copies of the plans and Ms Brooks and Ms Hale volunteered to copy coloured plans from the copy leases held by the Respondent and left the Queensway House to obtain these, (returning later with coloured copies of the plans relating to the three flats that were the subject of the Applicants’ application;) The Respondent’s representative was present throughout the members inspection and locked the lower ground floor external doors behind the Tribunal Members on completion of their inspection of the internal communal areas within the Building.

- 3 The Applicants respectively own long leasehold interests in Flats 2 4 and 7 within Queensway House, (“the Building”) in which the three flats are located and which comprises a three storey building at its front elevation which abuts a feeder road running parallel with the main highway. The Building comprises a total of ten flats which are arranged in two adjacent and conjoined blocks. The southern side of the Building (which is the part in which the Applicants’ is located comprises two flats (2 and 3) at the ground floor level and two flats on each of the first and second floors. The northern side of the Building comprises four shops at ground floor level, with four flats above on the first and second floors (but was not inspected by the Members as none of the Applicants Property was located within that part of the Building.) Underneath the “ground floor” of the Building and accessed only from the rear are eight garages and in addition access staircases serve the six flats on the Southern side and the four flats on the Northern side of the Building respectively. Access to the rear yard from the flats is from the communal corridor via steps down from the ground floor entrance hall through a door opening outwards to the rear yard in front of a block of store sheds In addition external steps lead down from the road adjacent to the

northern elevation and appear to also serve the adjacent building. At lower ground floor level are eight lock up garages and the two entrance doors which lead respectively to the six flats numbered 2 – 7 (within which the Property is located) and which was inspected) and presumably to the four other flats which were not the subject of this application and the access to which was not inspected. It is therefore not known if the second access also serves the four shops.

- 4 At the rear of the building is a concreted area on which the two blocks comprising six storage sheds each are located and three of these sheds are included within the Leases of the Applicants' Property. Two manholes covers are located within the rear area together with a storm drain near to the grassed area which was overgrown with weeds. Three exterior lights are affixed to the Building, two on its rear elevation at a height which would enable them to "flood light" the rear area and one on the northern side elevation which would light the stairs leading to the front of the Building. In addition a lamp post is situate at the rear and adjacent to the grassed area. To the rear of the concreted area are 10 marked car parking spaces which would appear to form the parking area that is shown coloured blue on the Applicants' lease plans and a small triangle of grass shown on the Applicant's lease plans and described in the leases as a drying area although there is no evidence of a washing line or lines currently located on this area. To the northern side of the car parking spaces is a bin store on which wheelie bins are located and which area is referred to in one of the leases. The rear area is located via a rear service road which belonged to the original Landlord. It is not clear to the Tribunal whether this road belongs to the current Landlord. The lamp post in the rear yard appears to be Council Property and matches another located behind the adjacent block of flats to the North. Beside the south elevation of the Building is an overgrown area of land. From the rear yard steps run up beside it adjacent to the Building but the access to the front has been blocked at some time past by a single

block wall. That area is overgrown with a creeping plant similar to ivy. It does not appear to be within the definition of "Building" delineated on the plans of the leases of the Applicants Properties

PROCEDURAL MATTERS

- 3 Provisional Directions ("the Directions") were issued by the Robert Long a Tribunal Chairman and panel President on the 9th August 2007. The parties have complied with the Directions
- 4 At the inspection and at the request of the Members coloured copies of the plans incorporated in the three leases of the Property were produced to the Members and copies are annexed hereto for reference as these were relied upon by the members of the Tribunal.

LEGISLATION

- 5 The application is made under section 27A of The Landlord and Tenant Act 1985 which enables an application to be made to a Tribunal for a determination as to 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.*

In this case the only issues that the Applicant has asked the Tribunal to determine are whether the charges that the Respondent has invoiced to the Applicants as being payable is payable and if such charge is payable what amount should be paid.

DECISION AND REASONS

- 6 The items of service charge in respect of which the Tribunal is asked to make a determination are listed in paragraph 3 of the Directions in sub paragraph (a) to (j) inclusive and referred to by the Applicant in their statement of case by reference to the same "lettered" paragraphs
- 7 The Tribunal have considered each paragraph on the basis of the Applicant's statement and the Respondent's statement; and in accordance with the information contained in each of the three leases of the Property and with regard to the application of the legislation namely Section 27A of the Landlord and Tenant Act 1985. The Tribunal have considered whether the items are payable and whether the amount payable is fair and reasonable and in reaching its conclusions have also considered the reasonableness of the stated division of the anticipated expenditure as indicated by the Respondent.
- (a) Communal area maintenance - This is assumed to relate to the internal communal areas. The area serving the Property is the entrance through the front doors and hall and steps up to the first and second levels and the steps leading down to the lower level. "Grab" hand rails are located on the walls adjacent to the steps but only the level between the ground and first floor has hand rails on both walls. There are two extinguishers located on the first and second floor landings. Lights serve the hall and stairwells. The area is concrete and unadorned. A fire alarm box is located within the front hall and the access into the hall is controlled by a door entry system. The rear outer door is locked from within by what appears to be a one way locking system. Although the Applicants refer to exterior works it appears from the Respondent's statement that this head of charge relates to the internal areas. An amount of £13.52 appears to be a reasonable estimate. It is a payment on account and the actual charge and items of expenditure should be disclosed by the Landlord at the end of the current service charge year

at which time the actual amounts spent should be identifiable.

- (b) Communal Lighting - The Respondent indicates that the lighting charge is based on the estimated expenditure having regard to last years accounts. Whilst the charge does seem to cover costs which are anticipated to be incurred for the communal benefit in that the external lighting and the alarm would apparently benefit the Applicants it appears that they also benefit and serve the occupiers of the four shops and the eight garages and therefore should be divided between 22 and not just the 10 flats but on the basis that the appropriate actual costs are adjusted once identified; Clearly at the end of the year the actual account for the electricity consumed should be disclosed to enable the Applicant to satisfy itself what electricity costs are shared. If necessary (and as it may be the case that the two meters serving the internal areas should be divided between the ten flats) this should not prevent a different division in respect of the electricity for the external lights and the alarm which apparently serves not only the flats but the shops and the garages. Whether or not the Landlord actually recharges a service charge to the occupiers of the garages should not in the Tribunal's view influence the basis of the division of the charge; It is open to the Respondent to adjust rents charged to ensure that full recovery is made for electricity charges and not reasonable to expect the Applicant's to subsidise other occupiers (or indeed vice versa)
- (c) Door Entry - This charge is an estimated charge and appears to be reasonable amounting to 39 pence per week. If the actual cost of this is higher or lower the actual amount charge will be adjusted appropriately
- (d) Fire Alarm- Two particular issues have been raised by the Applicant:-

- i. The Tribunal considered that this charge is properly included since the leases provide that the Landlord may recharge the Tenant for all costs incurred (or to be incurred) in providing services. See Schedule A of the Leases of all Flats. As the Respondent has not disputed that the Fire Alarm System serves the whole Building (and indeed this is confirmed in the letter from the Respondent dated 2nd May 2007 the division of the estimated charge is incorrect and should be divided between the 22 parties who benefit;
 - ii. If the estimated maintenance costs have been increased on account of a requirement for regular testing the Landlord should investigate if this can be carried out more cost effectively if the Caretaker carries out regular testing. It is not clear to the Tribunal, from the Landlord's response, if the allegation by the Applicants that monthly maintenance is carried out is correct; It is assumed that the regular testing might well be either a legal requirement or a requirement of the Landlord's insurers. In principle however the amount of the cost estimated is not considered unreasonable but the division of the cost should be between 22 and not 10,
- (e) TV Digital – The Tribunal determined that this cost should be paid only by those of the Applicants who use the system. In each lease the requirement to pay for the services provided is subject to a Proviso at the end of Schedule A that:-
- “the exercise of all rights specified in the schedule shall be subject to the contribution by those claiming to exercise the same of a share of the reasonable costs incurred by the Council (now Landlord) of keeping all structures apparatus equipment facilities and land affected by such rights in good repair..... “*

In a letter to one of the Applicants the Landlord seems to have accepted that only those using the TV system should pay (see letter dated 2nd April 2006) In a letter dated 2007 the Landlord now departs from this view but without an explanation citing why it now considers that it can charge for this service regardless of actual use. This is not accepted by the Tribunal but whether or not the Applicants are liable to pay this charge must depend upon whether they use the service provided. It is a service which each lease provides that the Landlord should provide and recharge.

- (f) Caretaking (External) - The Tribunal determined that it was reasonable that this charge should be split between the 22 interested parties since all 22 of the properties within the Building of which the Property forms part benefit from this; If the total estimated amount is divided between 22 the total estimated amount is reasonable but the basis of the allocation to each property is not.
- (g) Caretaking (Responsive) - This does appear to be reasonable. Indeed reference to the fly tipping in the letter from the Respondent dated 21st May 2007 seem to indicate that a service has been provided
- (h) Grounds Maintenance Regular - The only evidence of this clearly visible from the inspection of the Property and Building by the members of the Tribunal is that the grassed area at the rear of the Building had been cut recently. Grass cuttings were still visible on the surface of the area. Even if this is done four times a year the estimated charge is reasonable representing a contribution of approximately 12 pence a week for each of the 10 flats.
- (j) Grounds Maintenance Responsive. - This is reasonable as an "on account" charge particularly if the actual costs incurred are allocated subsequently and appropriately on the basis of the actual expenditure

- (k) Management Charges – From the information supplied by the Respondent and from its own knowledge as a expert Tribunal and having regard to the evidence contained in the cases extracts of which were supplied by the Respondent it appears that the percentage charge is in line with other providers and is therefore considered to be reasonable. The Tribunal noted that a small development such as the Property is likely to involve an amount of management time disproportionate to the total budget for service charge costs to the Building of which the Property forms a part and this would properly influence the assessment of what was a reasonable percentage charge in respect of management time.

CONCLUSION

In summary therefore and by reference to the each of the disputed items the Tribunal determined that the amount payable by the Applicants for the 2007/2008 service charge year is a follows;-

Paragraph	Disputed Items	
a	Communal Maintenance	Accepted at "on account" level charged
b	Communal Lighting	Estimated amount reasonable but should be apportioned between 22 properties and not 10
c	Door Entry	Accepted as estimated
d	Fire Alarm	Estimated considered to be reasonable but should be apportioned between 22 properties and need for regular maintenance (if this is occurring) should be investigated to enable estimate to be reappraised thus demonstrating it to be

		fair and reasonable
e	TV Digital	Amount charged "on account" reasonable but should be payable only if used to accord with lease provisions
f	Caretaking External	Amount charged "on account" reasonable
g	Caretaking responsive	Amount estimated and charged "on account" reasonable subject to proviso that the actual charge should be allocated appropriately when identified
h	Grounds Maintenance	Amount charged "on account" reasonable
j	Grounds Maintenance responsive	Amount charged "on account" reasonable subject to proviso that the actual charge should be allocated appropriately when identified



Cindy A. Rai
Chairman

21 November 2007