

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/24UF/LIS/2007/0010**

**REASONS**

**Application** : Section 27A Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

**Applicant/Management Company** : Carless Close (Gosport) Management Limited

**Respondent/Leaseholder** : Paul Edward Delve

**Landlord** : Blue Boar Property & Investment Company Limited (

**Premises** : 39 Carless Close, Gosport, Hampshire, PO13 9PL, forming part of the Estate

**Estate** : the Westerlies Development at Rowner, Gosport, as defined in recital 2 of the Lease

**Lease** : the lease dated the 2 November 1992 and made between the Landlord (1) the Applicant/Management Company (2) and Versepoint Limited (3)

**Date of Portsmouth County Court Transfer Order** : 8 March 2007

**Date of Tribunal’s Directions** : 13 March 2007

**Date Hearing** : 11 May 2007

**Venue** : Hearing Room, 1 Floor, 1 Market Avenue, Chichester

**Appearances for Applicant/Management Company** : Mr Nicholas Faulkner and Ms Sarah Metherall

**Appearances for Respondent/Leaseholder** : none

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr D Lintott FRICS, and Mr R T Dumont

**Date of Tribunal’s Reasons** : 16 May 2007

## **Introduction**

1. On the January 2007 the Applicant/Management Company issued proceedings against the Respondent/Leaseholder in Portsmouth County Court under claim number 7P000253 for £575 (Estate Service Charges), £630 (Flats Service Charges), and £300.05 (legal costs and expenses)
2. On the 8 March 2007 the Court ordered that the claim be transferred to the Tribunal to determine the reasonableness of the service charges
3. The Tribunal issued directions on the 8 March 2007, including the following :
  - a. the Tribunal's jurisdiction under section 27A of the 1985 Act extended to the sums of £575 and £630, but the further claim for costs appeared to be outside the Tribunal's jurisdiction
  - b. the Applicant/Management Company was to provide the Tribunal and the Respondent/Leaseholder with copies of the service charge accounts showing in each case the composition and the manner of calculation of both the £575 and the £630, and of any demands for payment
  - c. if the Respondent/Leaseholder wished to challenge the amount of any of the sums claimed or whether or not they or any of them were payable he was to send a written statement to the Tribunal with a copy to the Applicant/Management Company stating which of the amounts he challenged and stating in respect of any sum challenged the reasons for doing so together with any supporting documents
4. The Applicant/Management Company has subsequently provided the Tribunal with copies of the documents referred to in these reasons, but no documents have been received by the Tribunal from the Respondent/Leaseholder

## **Section 19(1) of the 1985 Act**

5. Section 19(1) provides as follows :
  - (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

## **Documents**

6. The documents before the Tribunal are those copied at pages 1 to 98 in the Tribunal's bundle, and, unless the contrary appears, in these reasons references to page numbers are references to pages in the Tribunal's bundle

### **Inspection**

7. The Tribunal inspected the Estate on the 11 May 2007, on the morning of the hearing. Mr Faulkner and Ms Metherall also attended. Mr Delve did not attend. A passer-by told the Tribunal that the occupant of the Premises was asleep, and should not be disturbed
8. The Premises comprise a ground-floor flat in a block. Mr Faulkner told the Tribunal that there are 15 units in the block. The upper 2 storeys comprise maisonettes. To the left of the Premises was an external enclosed stairwell. The exterior of the block was in poor condition. Mr Faulkner said that there was a rolling programme to install double-glazed upvc windows throughout the block
9. Mr Faulkner said that there used to be another block, which was why the Flats Service Charge proportion in the Lease had originally been 1/27. However, the other block had been demolished some 15 years or so ago and the site of that block has been redeveloped with a Tesco Metro supermarket and car park
10. Similarly, the Estate had originally comprised 103 units, whereas there were now only 82 units, including the Premises. The Estate Service Charge was accordingly now 1/82
11. The rest of the Estate comprises 67 two-storey terraced houses, mostly in blocks of 6, roadways, car parks, pathways, and lawns. Mr Faulkner said that there was a rolling programme to re-pave the pathways. Otherwise, the Estate was largely in good condition

### **Lease (pages 21 to 67)**

12. The material provisions of the Lease are as follows

Clause 2(a) : a covenant by the Respondent/Leaseholder with the Landlord and the Applicant/Management Company to observe and perform the covenants in the fifth schedule

Fifth Schedule paragraphs 3.1 and 3.2 : covenants by the Respondent/Leaseholder with the Landlord and the Applicant/Management Company to pay to the Applicant/Management Company the Estate Service Charge and the Flats Service Charge, namely the Estate Due Proportion and the Flats Due Proportion of the

Annual Estate Cost and the Annual Flats Cost, respectively

First Schedule : definitions include :

Paragraph O : Estate Due proportion : 1/103<sup>rd</sup> part of the Annual Estate Costs “provided that if any part or parts of the Estate shall be sold or retained for separate development or otherwise such fraction shall be adjusted to accord with the number of houses flats and maisonettes remaining in the Estate”

Paragraph F : Annual Estate Costs : the expenditure incurred by the Applicant/Management Company in any accounting period in carrying out the Estate Service Charge Works

Paragraph S : Estate Service Charge Works : the services specified in part A of the ninth schedule as carried out by the Applicant/Management Company

Paragraph P : Flats Due proportion : 1/27<sup>th</sup> part of the Annual Flats Cost “provided that if any part or parts of the Estate shall be sold or retained for separate development or otherwise such fraction shall be adjusted to accord with the number of flats and maisonettes remaining in the Estate”

Paragraph G : Annual Flats Cost : the expenditure incurred by the Applicant/Management Company in any accounting period in carrying out the Flats Service Charge Works

Paragraph T : Flats Service Charge Works : the services specified in part B of the ninth schedule as carried out by the Applicant/Management Company

Fifth Schedule paragraphs 4.1 and 4.2 : covenants by the Respondent/Leaseholder with the Landlord and the Applicant/Management Company to pay to the Applicant/Management Company sums on account of the Estate Service Charge and the Flats Service Charge by equal quarterly instalments in advance on the 1 January, 1 April, 1 July, and 1 October in each year

**Statement by Mr Faulkner 20 December 2006 (pages 11 to 14)**

13. Mr Faulkner stated that he was a director of Labyrinth Properties Limited, a firm of Chartered Surveyors who managed the properties at Carless Close on behalf of the Applicant/Management Company
14. The Estate Service Charge claimed was £575, comprising £180, being the remainder of the advance Estate Service Charge for the year ending the 31 December 2005, and £395, being the Estate Service Charge for the year ending the 31 December 2006
15. The Flats Service Charge claimed was £630, comprising £205, being the remainder of the advance Flats Service Charge for the year ending the 31 December 2005, and £425, being the Flats Service Charge for the year ending the 31 December 2006

### **Oral evidence by Mr Faulkner**

16. Mr Faulkner accepted that the claim for £300.05 for legal costs and expenses was a matter for the County Court, and not for the Tribunal
17. Mr Faulkner said that the current service charge proportions were 1/82 for the Estate Service Charge, and 1/15 for the Flats Service Charge. Those proportions had obtained for over 10 years
18. The Applicant/Management Company now owned the freehold of the Estate. Each leaseholder owned an equal share in the Applicant/Management Company
19. The Respondent/Leaseholder had purchased the Premises in November 2005. His solicitors had served notice of the assignment to him of the Lease, and had given the premises as his address for service. All service charge demands had been served on him at that address. However, it appeared from a letter which Mr Faulkner had received in April 2007 from David Seymour, letting agents in Gosport, that the Respondent/Leaseholder had let the Premises to a tenant, and was not living there himself. Mr Faulkner had no other address for the Respondent/Leaseholder
20. The Respondent/Leaseholder had paid nothing for service charge since he had bought the Premises. All payments credited to the account at pages 70 to 71 had been paid by the previous owner
21. The claim for £575 for Estate Service Charge comprised £180 for the balance of the Estate Service Charge of £360 for 2005, plus the whole of the £395 for 2006, as shown in the account at page 69
22. The £395 for 2006 was 1/82 of the total budget figure of £32,390.16 on page 76, in respect of which :
  - a. the maintenance figure of £8,000 was for the roadways, car parks, pathways and lawns; there were no long-term agreements, and the capping provisions of section 20 of the 1985 Act did not apply
  - b. the buildings insurance figure of £10,000 was equivalent to an average of about £122 a unit
  - c. the management fees of £6,560 plus VAT were equivalent to an average of £80 a flat plus VAT
  - d. the repairs and maintenance figure of £3,000 was for re-paving and fencing, under a variety of contracts for individual items throughout the year, and was not subject to any single contract which exceeded the capping limit under section 20 of the

1985 Act

- e. the drains figure of £1,000 was a budget to deal with blockages
  - f. the reserve of £1,000 was a reasonable figure
  - g. there were no final accounts for 2006 yet
23. The £360 for 2005 was 1/82 of the total budget figure of £29,520 on page 87, in respect of which the same comments applied as for the 2006 figures
24. However, there had been a final account for 2005, on page 79. The surplus over budget of £582.72 had been transferred to reserves, as shown on the balance sheet at page 81. However, in answer to questions from the Tribunal, Mr Faulkner accepted that under paragraph 4.1 of the fifth schedule to the Lease on page 45 1/82 of the surplus of £582.72, namely £7.11, should have been credited to the Respondent/Leaseholder, reducing the amount owing by the Respondent/Leaseholder from £180 to £172.89
25. The claim for £630 for Flats Service Charge comprised £205 for the balance of Flats Service Charge of £410 for 2005, plus the whole of the £425 for 2006, as shown in the account at page 71
26. The £410 for 2005 was 1/15 of the total budget figure of £6,150 on page 87, in respect of which :
- a. the cleaning figure of £1,000 was for the stairwell, balconies, and the bin area by the stairwell
  - b. the maintenance figure of £4,170 was mostly for the rolling programme of window replacements, under a variety of contracts for individual windows throughout the year, and not all with the same contractors, and was not subject to any single contract which exceeded the capping limit under section 20 of the 1985 Act
27. There had been a final account for 2005, on page 84. The date on that account showed 2004 in error, and it was indeed actually for 2005. The surplus over budget of £2,165.14 had again been transferred to reserves, as shown on the balance sheet at page 86. However, Mr Faulkner again accepted that under paragraph 4.2 of the fifth schedule to the Lease on page 46 1/15 of the surplus of £2,165.14, namely £144.34, should have been credited to the Respondent/Leaseholder, reducing the amount owing by the Respondent/Leaseholder from £205 to £60.66
28. Mr Faulkner had written to each leaseholder about the poor condition of the block and about proposals for re-cladding the exterior to repair the fabric and upgrade the building
29. The £425 for 2006 was 1/15 of the total budget figure of £6,375.02 on page 76, in

respect of which the same comments applied as for the 2005 figures

30. Again, there had been no final accounts for 2006 yet

## **THE TRIBUNAL'S DECISION AND REASONS**

31. The Tribunal finds that in respect of the service charge account for the year ended 31 December 2005 and the budget figures for 2006, the sum of £567.89 is payable by the Respondent/Leaseholder to the Applicant/Management Company for Estate Service Charge, and the sum of £485.66 is payable by the Respondent/Leaseholder to the Applicant/Management Company for Flats Service Charge
32. In making those findings the Tribunal has considered the whole of the evidence in the round, but in particular has taken account of the following findings

### **Service of service charge demands**

33. The Tribunal accepts as straightforward and persuasive Mr Faulkner's oral evidence that:
- a. he served formal demands for the service charges by sending the demands to the Premises
  - b. he received notice of assignment from the Respondent/Leaseholder's solicitors stating that the Respondent/Leaseholder had purchased the premises in November 2005, and that his address for service was the Premises
  - c. he had not received notice of any different address for service for the Respondent/Leaseholder, despite hearing from the Respondent/Leaseholder's letting agents
34. Having considered all the circumstances, the Tribunal finds that demands for the sums in question have been properly served

### **Estate Service Charge and Flats Service Charge proportions**

35. The Tribunal accepts as straightforward and persuasive Mr Faulkner's oral evidence that:
- a. there are now fewer units on the Estate than when the Lease was granted, and that there are 15 units in the block of which the Premises form part, and a total of 82 units on the Estate
  - b. paragraphs 4.1 and 4.2 of the fifth schedule to the Lease allow the original

- proportions to be varied if the number of units varies
- c. the proportions which have been applied in service charge demands for at least 10 years have been 1/82 for Estate Service Charge, and 1/15 for Flats Service Charge
36. Having considered all the circumstances, the Tribunal finds that the proportions demanded, namely 1/82 and 1/15 respectively, are in accordance with the terms of the Lease

#### **Estate Service Charge 2005**

37. The Tribunal finds that :
- a. the figures included in the 2005 budget were reasonable
  - b. the sum of £360 demanded in respect of the Premises was reasonable, and was calculated in accordance with the provisions in the Lease
  - c. the sum of £180 was paid on account by the previous owner
  - d. the sum of £7.11 is to be credited to the balance payable by the Respondent/Leaseholder as the Respondent/Leaseholder's proportion of the surplus shown in the final accounts
  - e. the balance of £172.89 is payable by the Respondent/Leaseholder

#### **Estate Service Charge 2006**

38. The Tribunal finds that :
- a. the figures included in the 2006 budget were reasonable
  - b. the sum of £395 demanded in respect of the Premises was reasonable, and was calculated in accordance with the provisions in the Lease
  - c. the sum of £395 is payable by the Respondent/Leaseholder

#### **Flats Service Charge 2005**

39. The Tribunal finds that :
- a. the figures included in the 2005 budget were reasonable
  - b. the sum of £410 demanded in respect of the Premises was reasonable, and was calculated in accordance with the provisions in the Lease
  - c. the sum of £205 was paid on account by the previous owner
  - d. the sum of £144.34 is to be credited to the balance payable by the Respondent/Leaseholder as the Respondent/Leaseholder's proportion of the surplus shown in the final accounts
  - e. the balance of £ £60.66 is payable by the Respondent/Leaseholder



## Flats Service Charge 2006

40. The Tribunal finds that :
- a. the figures included in the 2006 budget were reasonable
  - b. the sum of £425 demanded in respect of the Premises was reasonable, and was calculated in accordance with the provisions in the Lease
  - c. the sum of £425 is payable by the Respondent/Leaseholder

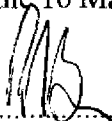
## Summary of findings

41. The Tribunal finds that the following sums are payable by the Respondent/Leaseholder to the Applicant/Management Company :

Estate Service Charge 2005	£172.89
Estate Service Charge 2006	<u>£395.00</u>
Total	£567.89

Flats Service Charge 2005	£60.66
Flats Service Charge 2006	<u>£425.00</u>
Total	£485.66

Dated the 16 May 2007



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P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor