

MAN/00BN/LSC/2007/0005

**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985 SECTIONS 19
and 27A (1) as amended by
COMMONHOLD AND LEASEHOLD REFORM ACT
2002 SECTION 27(A)**

Property: 482 to 496 (even numbers inclusive) Burnage Lane and 1-23
(odd numbers inclusive) and 2-16 (even numbers inclusive)
Carrgreen Close Manchester M19 1LT

Applicants: See schedule attached

Respondent: Places for People Group Limited

Chairman: Mr G C Freeman
Surveyor Member: Mr M Hope B.Sc. FRICS
Lay Member: Mrs D Rivers F Inst LEx

Dates of Hearing: Tuesday 14 August 2007
Tuesday 23 October 2007

DECISION

1. **The amount payable by each Applicant for service charge for the year 007/2008 is to be £88.62**
2. **No part of the costs incurred by the Respondent in connection with the Application shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant**

A Application

- 1 By their application dated 22 January 2007 the Applicants applied for the determination of whether service charges are payable where costs have been incurred or are to be incurred for the service charge year 2007/2008 for the Property.
- 2 The Respondent is a Housing Association registered under the Industrial and Provident Society's Act 1965 and also registered with the Housing Corporation

and a registered Social Landlord. It is the successor to the Landlord named in the Lease of the properties, North British Housing Association Limited.

B Preliminary

- 3 The Application relates to a development of 28 flats at Burnage Lane and Carrgreen Close Burnage Manchester. It was constructed approximately 27 years ago as a scheme for housing elderly persons. There are 20 two bedroom flats and 8 one bedroomed flats

C Inspection

- 4 The Tribunal inspected the Property on the 14 August. The development is located in a cul de sac off Burnage Lane. There are approximately 7 separate buildings with the flats on two floors. The grounds are landscaped and there is a single storey caretaker's building which has storage for cleaning implements and a small kitchen and WC. This is used by a part-time warden employed by the Respondent. There are no common parts to the buildings of the development. Each flat has a separate entrance via an external front door. The cleaning duties of the warden are confined to the landscaped and lawned areas. Each flat has a warden call alarm service. When the warden is not on site, the warden call alarm service is diverted to a remote response centre. Each building within the development has its own communal TV aerial system.
- 5 The Warden is available on the site from between 9am to 11am each morning on Mondays to Fridays. The Warden's duties include checking every resident, if necessary (and only if requested to do so) with a personal call. No flat has its own door entry system whereby a Resident can communicate with the person at the front door and remotely allow them into the flat.

D Lease Provisions

- 7 The provisions for calculating the service charge are contained in clauses 6 and 7 of the Lease. The service charge is to be estimated before the beginning of an account year which is a year ending on 31 March. Broadly the service charge is to be calculated as two components, the first being day to day expenditure to cover the cost of repairs to the common parts, insurance, the cost of providing the Warden and the emergency call system. The second component is a reserve fund to cover cyclical repairs which include the cost of external redecoration, and replacement of long term assets such as the Warden call system. The Lease precludes anyone under 60 from residing at the property unless they are residing with a person who is over the age of 60.
- 8 When a flat changes hands, the Respondent is entitled to a payment of a proportion of the price or market value of the property which is based on the

number of years occupation by the Resident. The fund created by this payment is to be used for the replacement of capital items, such as central heating. The Tribunal noted on its inspection that the Warden call system had recently been replaced.

E **Hearing**

9 A hearing was held at 11.30am on 14 August at the Tribunal's offices in Manchester. The Applicants were represented by Miss D Smith and Mr Liam McMahon (Tenants of the Development). The Respondents were represented by Mrs Viclli (Regional Leasehold Housing Officer) and Miss Payton (Project Manager Home Ownership Services). As a result of the evidence forthcoming at the hearing, the Tribunal decided to issue further directions to the parties and to adjourn the matter until the Directions has been complied with.

10 At the resumed hearing on 27 October 2007 the Applicants were represented by Miss D Smith and Mrs P Hopton and the Respondents were represented by Ms Aldiss (Head of Housing Services) and Mr D Thorley (Group Management Accountant).

11 The Tribunal dealt with the application under the various heads of service charge as follows:-

Cable TV

12 The Respondents stated that the cost of this included in the budget of £275.52 per annum was for the supply of electricity to the amplification units in the buildings. The amount attributable to this item should be 0.67p per week per unit and not 0.82p as shown in the revised service charge budget under consideration.

Cleaning

13 The amount of £1,226.40 per annum shown in the budget represented the cost paid to the Warden for cleaning and litter picking the landscaped areas of the development. The Applicants confirmed that this sum was reasonable.

Landscaping

14 The Tribunal noted that the Respondents employed their own in-house landscape contractors to carry out this work. They considered that the work carried out was satisfactory but that some shrubs were dead and needed replacing. The contract for the landscape gardeners was for maintenance only and did not included replacement of shrubs etc. The Tribunal were disappointed to note that the Respondents had not requested competitive tenders for the landscaping contract. They considered that best practice should require this.

Light and Power

15 The Applicants expressed satisfaction with the cost of this.

Rates for the Wardens Office

16 The Respondent stated that a successful claim had been made to recover over paid rates and that a reduction in the service charge would be made to take this into account.

Telephone

17 The Applicants expressed satisfaction with the cost of this.

Water Rate

18 The Respondent stated that this was a standing charge in respect of the Warden's Office and no application for reduction or appeal could be made. The Applicants suggested that an application could be made for the installation of a water meter which in their opinion would considerably reduce the cost. The Respondents acknowledge this and promised to investigate the possibility of installation of a meter.

Supporting People Warden

19 This expense comprises of the cleaning charge (see above) and the cost of employing the Warden. The total cost including cleaning is £5,102.81 for the period in question. The Tribunal considered this to be reasonable.

Maintenance

20 The Respondents acknowledged that the door entry system for which £6,000.00 had been included in the long term budget for replacement, did not exist. The Respondents also acknowledged that the Warden call system had just been replaced at a cost of £14,462.29. The Respondents also acknowledged that replacement of the soft wood windows included in the maintenance budget in the sum of £53,316.90 would not necessarily be required as the windows had been replaced with UVPC windows in April 2004.

21 The Respondents also acknowledged an error in the service charge calculation of £39.73 per month as a result of a deficit being carried forward incorrectly. The resulting calculation produced a reduced service charge of £37.85.

Management

- 22 The Respondent produced a schedule of their management fees which ranged from £80.00 per unit per annum, where few services were carried out by the Respondent, to £200.00 per unit per annum where much time and attention was required. For this particular development the Respondent charged £170.00 per unit per annum. For this standard of maintenance each resident had access to a contact centre 24 hours a day seven days a week via a free phone system, the provision of a Warden, area offices and attendance at meetings of residents.

Audit

- 23 The Applicants considered that the audit fee was reasonable.

Insurance

- 24 Following an explanation of the factors taken into account when calculating the insurance premium, the Applicants expressed satisfaction with this head of charge.

Minimum Call out Charge

- 25 The Applicants expressed surprise that this figure had been increased by 100% from £30.00 to £60 without prior notification. The Respondents promised to review this.

F Sinking Fund

- 26 Mr Thorley of the Respondents acknowledged that the only asset which now needs replacement in the near future is the central heating system which is covered by the sinking fund. He admitted that the total reserves for this particular development stood at £65,976.00, equivalent to £2,356.00 per property. Even after deducting a sum of £15,000.00 for the installation of the Warden call system, the reserves stood at £50,976.00 equivalent to £1,820.00 per property. He agreed that this amount should cover almost, if not entirely, the cost of replacing the central heating units for the properties.

F The Law

- 27 S 18 of the Landlord and Tenant Act 1985 defines "service charge" as being an amount payable by a tenant for services, repairs, maintenance, insurance and the Landlord's costs of management. "Relevant Costs" are costs or estimated costs in relation to a service charge and can relate to a period either before or after the period in which the service charge is payable.
- 28 S 19 of the Act states that relevant costs are to be taken into account in calculating a service charge only to the extent they are reasonable.

29 Section 27A(1) of the Landlord and Tenant Act 1985 (inserted by S155 of the Commonhold and Leasehold Reform Act 2002) provides that

“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 –

... (c) the amount which is payable”.

30 Section 27A(3) of the Landlord and Tenant Act 1985 provides that an application may also be made “ . . if costs were incurred.....a service charge would be payable. . .” and if so, “ . .

.. (c) the amount which would be payable . .”

31 Section 20C(1) of the Landlord and Tenant Act 1985 provides that “A tenant may make an application for an order that all or any of the costs incurred by the Landlord in connection with the proceedings before . . .a Leasehold Valuation Tribunal, . . .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”.

32 Under the Act reasonableness enters into the question of pay-ability in two different ways. Service charges are only payable to the extent that they are reasonably incurred and where they are incurred, only where the services or works for which they are incurred are of a reasonable standard. There is no presumption either way as to the reasonableness of the service charge.

33 No guidance is given in the 1985 Act as to the meaning of the word “reasonable”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

34 In *Veena S A–v-Cheong* [2003 EGLR p175] Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

G Tribunal’s Conclusions

35 In deciding on the question of reasonableness, the Tribunal felt it should have regard to the Service Charge Residential Management Code issued by the Royal Institute of Chartered Surveyors. Clause 19 of the Code provides that a Landlord/Management Company should consult with Lease holders/Tenants and, if appropriate, hold meetings. The Tribunal noted that the cost of two meetings per annum was included in the management fees charged by the Respondent.

- 36 The reasonableness or otherwise of a service charge item is not dependent entirely on the wishes of the Residents. The Tribunal must first consider whether it has been reasonably incurred and, if so whether it is reasonable in amount. The Tribunal considers that all the items referred to above have been reasonably incurred. However, the Respondent should consider competitive tendering for some of the services for example, landscaping. The Tribunal cannot take into account the personal circumstances of each individual resident. Nevertheless, a balance has to be found between prudence in providing sufficient funds to pay for day to day and cyclical maintenance commensurate with the residents wishes and ability to pay. The Tribunal considered, for example, that a prudent management company would have replaced wooden fascias with UVPC rather than carry out patch repairs. The Tribunal were also disappointed to note that the Respondent had increased the minimum call out charge to £60.00 from £30.00 without informing the Residents of the increase. Numerous accounting errors also appear to have been committed which have been corrected as a result of further consideration by the Respondent in preparing its case, for example, provision for replacement of a non existent door entry system.
- 37 The Tribunal therefore consider that the reasonable calculation of the service charge for each property within the development was to take the previous year's cost of £83.30 per unit per annum and to add back the accounting error made by the Respondent of £2.32 making a total of £85.62. To this should be added a further £3.00 per unit per annum to cover increased costs generally which results in a service charge of £88.62 per unit for the year 2007/2008.
38. Although no application under s 20C of the Landlord and Tenant Act 1985 was made on the application form to exclude the Landlord's costs of the application being recovered by way of service charge from the Applicants, the Applicant made an application for this at the hearing.
- 39 In view of the errors in computing the service charge for the Property which were admitted by the Respondent, and as the Applicants had largely succeeded in their application, the Tribunal decided that no part of the Landlord's costs in the application should be recoverable from the Applicants by way of service charge.

THE SCHEDULE

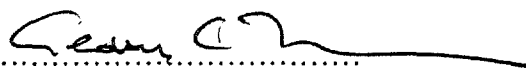
List of Applicants

Burnage Lane

<u>Apartment No</u>	<u>Name</u>
482	Mrs M Higham
484	Mrs W Bloomfield
486	Mr R Rhodes
488	Mrs A Lovegrove
490	Mrs E Potts
492	Mrs J Besmard
494	Mrs E Davies
496	Mr & Mrs E McMahon

Carrgreen Close

1	Mrs K Thompson
2	Miss M Westbury
3	Mrs P Fawcett
4	Miss D Smith
5	Mr R Ashcroft
6	Mrs M Bentley
7	Mr and Mrs T Gavin
8	Empty – up for sale
9	Mr & Mrs A Jones
10	Miss E Kirton
11	Mr E Whelan
12	Mr J Press
13	Mr & Mrs G Simpson
14	Mr D Byrne
15	Mrs L Curtis
16	Mrs R Ellis
17	Mrs C Egan
19	Mrs P Hopton
21	Mr & Mrs R Wilson
23	Empty – up for sale



G. C. Freeman

Chairman

~~19th November~~ 2007
6 December