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MAN/13UH/LIS/2007/0007

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

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985 SECTION 19
SECTION 27A (1) AND SECTION 20C as amended by
COMMONHOLD AND LEASEHOLD REFORM ACT
2002 SECTION 27(A)**

Property: 8 Webbs Court Northwich CW9 8RU
Applicants: Miss Victoria Webb and Mr John Carroll
Respondent: Premier Estates Limited
Chairman: Mr G C Freeman
Surveyor Member: Mr D Pritchard FRICS
Lay Member: Mrs E Thornton Firkin BSc MRICS
Date of Hearing: 2 November 2007

DECISION

- 1 The service charge for the Property for the period ended 31 December 2004 is £77.44
 - 2 The service charge for the Property for the year ended 31 December 2005 is £275.48.
 - 3 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**
- 2 By their application dated 1 April 2007, the Applicants applied for the determination of whether service charges are payable were costs have been incurred or are to be incurred for the service charge years 2004 and 2005 (inclusive) for the Property

- 3 The Respondent is a management company formed for the purpose of managing let property and is a party to the lease of the Property dated 28 May 2004.

B Preliminary

- 4 The Application relates to a development of apartments and town houses at Webbs Court off London Road, Northwich Cheshire CW9 8RU ("the Development"). It was completed in approximately 2004 by J S Bloor (Wilmslow) Limited. The Development consists of two blocks of 17 flats which have their own communal gardens, bin stores and car parking spaces. There is a further house which also contributes to service charge for the Development. Separated from the blocks by an estate road is a terrace of five town houses of which the Property forms part. Thus there are, in total, 23 properties which contribute to service charge. To the rear of the town houses is a grass field ("the field") which is separated from the adjoining properties (including the town houses) by a six foot high wooden fence. This field is available for recreational use by the occupiers of the flats as well as the town houses and access is gained along the side of the town houses from the estate road referred to above.

C Inspection

- 5 The Tribunal inspected the Development on the morning of the hearing. The property adjacent to 8 Webbs Court consists of, at the front, shrubbed borders, grassed areas and car parking spaces. To the rear, each property has its own self contained garden which is separated from the field by a fenced passageway which, in some cases, gives access to the rear gardens of the town houses. The Development occupies a pleasant, primarily residential, area just off London Road, close to the centre of Northwich and with the river Dane to the rear of the Property. There is a small industrial estate adjacent to the Development. The field is shown on the plans attached to the Lease as public open space.

D Lease Provisions

- 6 The Applicants produced a copy of the lease for the Property dated 28th May 2004. The Respondents produced a specimen lease for a flat. Service charge provisions differ in the respective leases, for flats and townhouses. Service charge expenses in all leases are divided into four classifications in Schedule 5 as follows:-
- (a) Those which relate to the landscaped areas, car parking and outside communal areas ("Part A: Development Costs")
 - (b) Those which relate to costs of repairing and maintaining the buildings of which the flats form part and Buildings Insurance ("Part B: the Building Charge").

- (c) Those which relate to costs of repairing and maintaining the internal communal parts of the Building (("Part C: Internal Communal Costs")).
- (d) Those which relate to the costs of upkeep of the maintained property, management costs, accountancy fees for the management and the legal and other costs reasonably and properly incurred by the Manager in connection with the lease. ("Part D: Costs applicable to Parts A B or C above")
- 7 The Applicants contribute to the Part A Development Costs and the Part D Management Costs as owners of the Property.

E Hearing

- 8 A hearing was held at the Floatel Hotel, London Road, Northwich at 11.15am on Friday 2 November 2007. The Applicants attended in person. The Respondents were represented by Mr B Jordan Managing Director of Premier Estates Limited and Mr M Delaney the Estates Manager of Premier Estates Limited.

F The Applicants' Case

- 9 The Applicants claim that they completed their purchase on 28 May 2004. No management was carried out by the Builder or the Respondent at this time. The Applicants were required to pay the sum of £195.75 towards the initial costs of management at the time they completed their purchase. During the period covered by the application, the Applicants allege that there were no site visits by the Respondent. There was little or no supervision of contractors employed to carry out landscaping of the communal areas, there was no liaison or meetings with the leaseholders by the Respondent and that the management service was not carried out to a reasonable or acceptable standard. The Applicants produced photographs of the field showing the grass overgrown and litter and leaves uncollected.

G The Respondent's Response

- 10 On behalf of the Respondent Mr Jordan stated that the site had not been handed over by the Developer to the Respondents until late July 2004. The Respondent consider themselves to be a responsible management company having approximately 9,500 units under management. It has a Customer Charter which requires staff to return all phone calls within 24 hours. An Estate Manager is appointed for each separate development within the company's responsibility. Mr Delaney is appointed as the Estate Manager for Webb's Court. The Respondent is under a duty to other owners in Webb's Court to collect arrears of service charge. What ever the merits of the Applicants' case over the lack of landscaping and garden service, the Respondent still has a duty to collect service charge to cover other expenses, for example, communal electricity. Mr Jordan denied the contention that the site was never visited. He claimed that regular visits, at least

on a monthly basis, were carried out by Mr Delaney and suggested that the possible reason for the Applicants' allegation for no visits having taken place, was that they did not recognise him.

- 11 The Respondents commenced management of the Development in August 2004. They had been informed by the Developer that the field was to be mown every three months. They employed a landscaping contractor known as Bowmans following a tender exercise. Following representations from owners within the Development, they realised that the field needed to be mown at more frequent intervals. They dispensed with the services of Bowmans in July 2005. As a result a new landscape contractor was employed known as Garden Style, who were instructed to mow the field least once a month during the growing season.
- 12 Mr Jordan stated that for landscaping for the year 2004 the amount of £39.56 was payable in respect of this Property and for the entire period in 2005 the equivalent amount was £90.00. The amount charged for management fees for the period 2004 was £35.50 including VAT. For 2005 the amount was £52.48 excluding VAT. Mr Jordan considered that this was reasonable value for money for the services provided.

H The Law

- 12 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.
- 13 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.
- 14 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".
- 15 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 . ."

- 16 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".
- 17 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.
- 18 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.
- 19 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].

I Tribunal's Conclusion

- 20 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. It is clear from the evidence presented to the Tribunal that there has been a lack of communication between the Respondent and the Applicants and possibly the remaining occupiers of Webbs Court. This has not been helped by the fact that there appear to be many "Buy to Let" properties within the Development which may result in short term lessees/occupiers having little interest in the long term management of the Development as a whole.
- 21 The Tribunal concluded from the evidence that for the periods May, June and July 2004 no services were being carried out for the Development by either the Developer or the Respondent. No fault can be laid at the Respondent's door for this. The Tribunal considered that a deduction of £65.25 should be made for the service charge year 2004 to allow for this.
- 22 The Tribunal noted that no service charge statements had been produced in the Respondents bundle. However, there were accounts for the management of the Development for the periods ended 31 December 2004 and 31 December 2005 prepared by Booth Ainsworth Chartered Accountants. (Documents 5.3.6 and 5.4.5 of the Respondent's Bundle) . The Tribunal referred to these and in particular the

income and expenditure account for both periods. This reveals the following expenses attributable to the Property for the management and maintenance of the Development:-

Period ended 31 December 2004

	£
Management fee (Part D)	2,022.00
Garden Maintenance (Part A)	910.00
Accountancy (Part D)	282.00
Bank charges (Part D)	<u>68.00</u>
	<u>3,282.00</u>

$£3282 \div 23 = £142.69$ per property

- 23 Deducting this sum from the amount paid by the Applicants on completion (195.75) produces a credit of £53.06. Allowing a further £65.25 representing the period during which no services were provided produces a credit figure for the service charge for the Property of £118.31 to be carried forward to the following year.

Year ended 31 December 2005

	£
Management fee (Part D)	3516.00
Gardening Maintenance (Part A)	2705.00
Accountancy (Part D)	282.00
Bank charges (Part D)	<u>213.00</u>
	<u>6716.00</u>

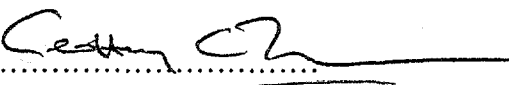
$£6716 \div 23 = £292.00$ per property

- 24 The Tribunal noted that the cost of employing Bowmans was £2,422.00 for a full year and that the cost for Garden Style was £2,475.00. Both these quotations are, in the Tribunal's opinion, within the parameters of a reasonable charge for landscaping and gardening maintenance for the development bearing in mind that they have been subject to a tendering exercise. Nevertheless, Bowmans do not appear to have carried out the work properly and the Respondent appears to have been dilatory in recognising this and acting on residents' objections.
- 25 The Tribunal noted that Mr Jordan stated that numerous complaints had been made by other owners in the Development about the standard of gardening at this time. The Tribunal also noted from Garden Style's estimate that they had provided for £380.00 for putting the landscaped areas into good order. This equates to £16.52 per property. Had the Respondents acted promptly on the

complaints, then the cost of this additional work might have been avoided. The Tribunal therefore considered that this sum should be deducted from the service charge costs for 2005. This results in a service charge of £275.48 per property per annum. The Tribunal therefore orders that the reasonable service charge for the period ended 31 December 2005 for 8 Webbs Court London Road Northwich is £275.48. This amount will not necessarily be the actual amount payable, because there is a credit balance to be brought forward from the previous year.

J **Costs of the Application**

- 25 The Applicant applies under s 20 (c) of the 1985 Act (as amended) to prevent the Respondent from recovering the costs of the application in the service charge payable by the Applicants.
- 26 The Applicants have largely succeeded in their application, albeit, in respect of the period ended 2004, through no fault of the Respondent. Nevertheless, the Tribunal considers it is just and equitable to grant the application.


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G. C. Freeman
Chairman

19 November 2007