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REF LON 00AL/LSC/2009/0753
IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A AND 20C

AND IN THE MATTER OF 186 Alnwick Road London SE12 9BT

Applicants

Andrew James Graham

In Person

Respondent

London Borough of Greenwich

Represented by

**Ms E Rewane Solicitor London
Borough of Greenwich
Ms P Campbell Head of Home
Ownership Services**

The Tribunal

Mr P Leighton LLB (Hons)

Mr T N Johnson FRICS

Mr A Ring

Hearing Date

12th April 2010

Date of Decision

13th April 2010

Introduction

- 1 By an application dated 18th November 2009 the Applicant applied to the Tribunal for a determination of liability to pay service charges in respect of the property at 186 Alnwick Road London SE12 under section 27A of the Landlord and Tenant Act 1985 ("the Act") and an order restricting the landlord's right to recover costs under Section 20C of the Act
- 2 Directions were given on 14th January 2010 and the matter came before the Tribunal on 12th April 2010.
- 3 At the hearing the Applicant appeared in person and the respondent was represented by Ms E Rewane solicitor of the London Borough of Greenwich and Ms P Campbell head of Home Ownership Services.

The Property

- 4 The Applicant resides in a pre war two bedroom first floor flat in a block of four situated on an estate known as "Horn Park Estate", Lee, in the London Borough of Greenwich.. The estate consists of various flats, houses, grassed areas, private paths and roadways and car parking spaces which are not allocated to any individual dwellings.

The Lease

- 5 The Applicant occupies under the terms of a lease for 125 years dated 12th August 1991 at a peppercorn rent acquired by him under the Right to Buy legislation.
- 6 In the lease the "estate" is defined as "the building and the outbuildings, gardens and grounds thereof (if any) and any other neighbouring building or land for the time being managed by or on behalf of the Council as a single administrative unit together with the building." The "building" means the building of which the flat forms part.
- 7 Under Clauses 6(c) and (d) of the lease the Applicant covenanted to pay the interim and final service charges payable in respect of services provided by the Respondent under the Seventh Schedule of the Lease.

- 8 The Seventh Schedule defines the services provided which include (where appropriate) lighting, cleaning, maintenance of common parts, recreation areas, greens, parking places and private roads/paths. It includes the employment of gardeners, caretakers and cleaners. The firm employed by the Respondent is called Cleansweep
- 9 The Respondent under the lease retains a right to impose a management fee under the Sixth schedule Part 1 Paragraph 1(d) and this is determined as a proportion of the costs of the services provided. Liability to pay the service charge is apportioned according to rateable value and in the event of abolition of rateable value by reference to floor area. The management fee imposed by the Respondent is set at 20% of the cost of services provided. .

The Law

- 10 Service charges are recoverable in accordance with the provisions of Section 19 of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 in so far as they are relevant costs reasonably incurred.
- 11 The Applicant raised an issue as to whether service charges are registrable in accordance with the Land Registration Act 2002. Section 10 of the Land Registration Act 2002 requires all leases of seven years or more to be registered.

The Issues

- 12 The matters raised by the Applicant in his application related to the years between 1992 and 2009 in relation to the payment of a management fee. He contends that the standard of management of the estate was so poor that he ought not to be required to pay a management fee or that such fee should be considerably reduced to mark the poor performance. He did not contend that a management fee of 20% was in principle excessive but raised the issue s to whether it was recoverable.
- 13 The Applicant further complained that a number of other residents on the estate, particularly owners of freehold properties, were not being required

to pay service charges for the estate and that he was being unfairly discriminated against following earlier disputes between him and the London Borough of Greenwich, which are not related to leasehold matters but about which he feels a deep sense of grievance. He referred to those issues at the hearing and although they were not directly relevant to the issues which the Tribunal had to determine, it explained to some degree the suspicion he felt that the Council were not treating him fairly.

- 14 The Applicant complained that he was being charged for caretaking and cleaning of his block and further that the areas for which he was being charged namely estate cleaning costs were in fact public areas which were being cleaned by Council employees payable out of the Council tax as highway costs.
- 15 With regard to estate repairs the Applicant did not challenge the cost of these repairs but challenged the cost of clearing blocked drains, repairs to railings, fixing estate signage etc. on the basis that he was not liable to pay under the lease. He did not challenge the actual costs incurred.

Evidence

- 16 Many complaints raised by the Applicant were beyond the remit of the Tribunal. He had a serious grievance against the local authority and in particular claimed that he had received no advice regarding his entitlement to benefits which would enable him to meet the costs of the service charges. The Council maintained that such services were available and there was no question of them being withheld from the Applicant.
- 17 He also made a number of allegations concerning mismanagement by the Council, one of the most important of which related to the demolition of changing rooms in the community area of the estate which he maintained was against the wishes of the majority of residents. The Council indicated that he had not been charged anything by way of service charge for this cost, which he accepted. The Council further relied upon clause 11(d) of the lease which permitted them to build or demolish buildings on the land at their discretion.

- 18 With regard to cleaning and caretaking costs the Respondent maintained that no charges were made in respect of caretaking costs for the blocks and that estate charges were limited to the cleaning and maintenance of private roads, pathways, green areas and car parking spaces on the estate. This amounted to approximately 16 hours per week charged at the current rate of £14.60 per hour. The total estate charges payable by the Applicant for the period 2003/2009 were £70.29, and £13 estimated for 2009/10. The ground maintenance for the same period was £127.21, and £34 estimated for 2009/10.
- 19 The figure for estate repairs amounted to £6.61 for the same period, and £1 estimated for 2009/10

Section 20C Costs

- 20 It was agreed at the hearing that the Respondent would not seek to recover any of the costs of the proceedings so that it was not necessary for the Tribunal to determine the liability of the Applicant under section 20C of the Act and the Tribunal records that the Respondent will not seek to recover such costs.

The Tribunal's Decision

- 21 .A leasehold title is required to be registered under section 10 of the Land Registration Act 2002. The lease itself contains the covenants to pay service charges so that registration of the lease meets any liability to register an obligation to pay service charges and no separate registration of the obligation to pay service charges is necessary in the view of the Tribunal.
- 22 The Respondent indicated in evidence that owners of freehold properties had an option at the date of purchase of their properties either to pay an additional premium in order to avoid liability for service charges or to pay the service charges on the estate as they fell due. Many purchasers had exercised the option to pay a premium and therefore were not liable to pay service charges on an annual basis.

- 23 The Tribunal accepted this evidence and held that there was no unfair discrimination against the Applicant and did not in any way affect his obligation to pay service charges under the terms of his lease. It appears that he may not have been aware of this option at the time when he purchased his property in 1991, or it may not have been available in respect of flats as opposed to houses...
- 24 The Applicant had alleged that for the first 8 years he had not been charged service charges other than for insurance. This was accepted by the Respondent and Ms Campbell stated that the only explanation for this was that the costs had been misallocated for the earlier years but that under the lease they were payable and had now been correctly allocated. The Tribunal accepted that the service charges had been omitted incorrectly in earlier years which was to the Applicant's advantage, but that the present claim for service charges was correctly made
- 25 The Tribunal accepted that the caretaking, cleaning and repair charges were payable as estate charges. The Tribunal was satisfied that they related to areas owned by the Council and not part of the highway. The Cleansweep team undertook the work on a regular basis and Mr Graham did not deny that the charges were reasonable if the work was undertaken. Accordingly these sums are allowed.
- 26 The Tribunal accepts that in many respects Mr Graham does not benefit directly from the services as many of the areas cleaned and maintained are not those close to his property but this applies to many other leaseholders on the estate who are required to contribute to the estate costs.
- 27 The Tribunal is also satisfied that the charges in question are recoverable under the terms of the lease. Although the lease specified for various services which are not provided such as window cleaning, laundry and hot water supply, these are not actually charged for and therefore are not an issue for the Tribunal to determine.

28 With regard to the figures claimed by way of management charges these varied between £23.87 and £82.16. The Tribunal considers that these figures are extremely low and in the experience of the Tribunal where significantly larger figures have been allowed. The Applicant recognised this but considered that deductions should be made because of the mismanagement over the years, but was unable to point to specific instances of mismanagement which in the view of the Tribunal would justify significant reductions. Any failures of management by the Respondent would be more than compensated for by the sums which are presently being charged as management fees. Accordingly the Tribunal allows the management fees in full without making any express findings on the quality of management provided by the Respondent. However, the Applicant accepts that a large number of the functions carried out by the Respondent were correctly performed. His main complaint relates to their failure to deal in correspondence with issues raised by him.

Conclusion

29 The Tribunal concludes that the claims for payment made by the Respondent are payable under the lease and reasonable in amount and accordingly the Tribunal finds that the Applicant is liable to pay the amounts claimed by the Respondent for each of the years 2003/9 and the estimated amount for the year 2009/10 in accordance with the lease: namely 2003/4 £143.23; 2004/5 £166.72; 2005/6 £183.67; 2006/7 £194.82; 2007/8 £492.94; 2008/9 £199.80; 2009/10 estimated £332.

Chairman Peter Leighton
Date 13^h April 2010

