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HM COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985

SECTIONS 27A and 20C

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|-------------------------|---|---------------------------|
| PROPERTY | 39, Rushwood Park, Standish, Wigan Lancashire | |
| Applicants: | Paul Durnian (and other interested leaseholders who have joined in the proceedings) | |
| Respondent: | Greenbelt plc | |
| The Tribunal: | Chairman: | John R Rimmer BA, LLM |
| | Valuer Member: | Jack Rostron MRICS, FRTPI |
| | Lay member | Les Bottomley JP |
| Date of Hearing: | 16 th May 2012 | |
| Present | Mr P Durnian and Mr D Hemsworth, on behalf of the Applicants | |
| | Mr A Shipton, Solicitor, assisted by Mr C Thomson, Mr D Marshall and Mrs V Burrows for the Respondent | |

ORDER

The amounts payable for the provision of the services in respect of the "Amenity Land" referred to in Schedule 4 of the Applicants' leases are the amounts set out in Paragraph 19, herein.

A. Application.

1. The Applicants apply under Section 27A of the Landlord And Tenant Act 1985 for a determination as to whether a service charge for the years from the creation of the relevant leases are reasonably incurred and payable by the Applicant to the Respondent. The charges in question relate to the upkeep of what is termed in the lease "Amenity Land" by greenbelt plc who are a party to the lease but not the landlord. The Applicants essentially allege that the service charge is unreasonable.

B Background

- 2 The Applicants hold long leases at low rents of the relevant properties on Rushwood Drive. That which is granted to Mr Hall (jointly with his partner) was granted on 29th May 2008 for a period of 999 years from 1st January 2007. It was granted at a premium and an annual rent of £100.00 a year.
- 3 The circumstances surrounding the properties are of some interest and should be set out here in outline to establish the background to these proceedings:
 - The developer of the estate was Wainhomes (North West) Limited who appear to have experienced some difficulty in obtaining planning permission from Wigan Borough Council to construct a number of homes on the site.
 - One particular cause for concern was the fact that the site is of significant biological importance as a breeding site for the great crested newt (*triturus cristatus*), a protected species under the UK Biodiversity Action Plan.
 - As part of the eventual planning consent for the site a large area adjoining what is now the housing development was made the subject of an agreement under Section 106 Town and Country Planning Act 1990 to protect the newts in what was to remain of their habitat. (the Agreement is to be found at page 41 of the bundle of documents supplied by the Respondent).
 - Greenbelt plc are a party to that agreement and also a party to the leases of the individual plots. It
 - became responsible for the management of the amenity land and a charge is made to all the leaseholders for the service they provide (see below)
 - The terms under which the leaseholders enjoy the land and the obligation owed to them by the Respondent are set out in the lease and should reflect the template of those terms set out in the Section 106 agreement.

- The leaseholders contend that the service that they receive in respect of the amenity land is unsatisfactory and the cost is too high.
- 4 The leases to the properties on the development appear to be in a standard format and the relevant provisions for the purposes of this Tribunal are:
- Clause 2 contains covenants by the lessee to observe the covenants set out in Schedules 3 and 4 of the lease.
 - Schedule 4 refers particularly to the "Amenity Area" and provides for each leaseholder to pay a proportionate part of the cost of maintaining and managing the plot. The amount in question being either £250.00 a year, plus VAT, or the proportionate amount, if greater. The amount is subject to annual indexation.
 - In addition to provisions as to the sale of leaseholders properties, registration of transfers and the recovery of arrears the Schedule contains covenants by the leaseholder in relation to damage or detriment to the land and particularly
 - (1) Not to exercise any rights of access over the land when such rights are suspended by the Respondent, at its absolute discretion, for the carrying out of works or maintenance
 - (2) Not to use the land other than on a pedestrian basis for recreational purposes.
 - (3) Not to allow dogs on the land
 - In return the Respondent covenants to carry out its maintenance and management obligations to an appropriate standard and not dispose of its interest in the land without a further covenant(s) to protect the open space. (except that this shall not apply if planning permission is granted for a use other than as open space)
- 5 The contention of the Applicant is quite simple: The leaseholders are paying a large amount of money for which they are now getting no access to the land and have no control over what is being expended or indeed any, or any sufficient information as to what the money is being spent on.

C. Inspection

- 6 On the morning of 16th May 2012 the Tribunal inspected the development at Rushwood Park, Standish. The development consists of a number of individual houses and at least one flat, the Coach House. The estate is situated near to Standish Village, approximately 4 miles from Wigan town centre. They represent an unprepossessing suburban housing estate neither better nor worse than many others up and down the country. To the west of the development is a large open area, approximately 9 to 10 acres in size, currently accessed through a gate to which the Respondent holds the key. The long boundaries to the plot have a public footpath to the West and the fence for the development itself to the East. The land itself comprises of a number of ponds with associated wetland and grassland. A number of hibernaculæ have been constructed to provide an environment conducive to the Great Crested Newt and other wildlife. The area is fenced for its whole boundary. It is maintained largely in what appears to be its natural state but with some thinning of vegetation. It attracts some detritus from both the development on the one side and the footpath on the other.

D. The evidence and the hearing

- 7 A procedural chairman gave directions for the future conduct of the application and the matter was listed for hearing at Wigan Magistrates Court on 16th May 2011. Both parties had helpfully provided the Tribunal with information during the course of its inspection and with documents for further assistance. A large pageinated bundle was provided by the Respondent.
- 8 The parties assisted the Tribunal with details of the history of the development of the land and the history of the Amenity Area, together with the area now occupied by the residential development itself. The Tribunal was also assisted greatly by the information provided by Mrs Burrows, the Chartered Environmentalist, engaged by the Respondent and whose breadth of understanding about the environmental concerns for the Great Crested Newt population greatly informed the Tribunal of the relevant issues.
- 9 The Tribunal also had the benefit of submissions made by all parties previously and which the Tribunal has considered at length in coming to its conclusion. The case for the Applicants is also put succinctly in the letter written on behalf of relevant constituents by the local MP, Lisa Nandy pointing out
 - The lack of access to the site for recreational purposes(it being fenced off and the gate locked)
 - Poor maintenance
 - The use of “offenders” to carry out work on the land
 - The necessity for and cost of such work as is carried out on the site
 - The lack of information as to proposals for future work.
- 10 The Respondent makes a number of points in its response, dated 5th April 2012, to the Applicants’ Statement of Case, including:
 - The Respondent is the freeholder only of the “Amenity Land” and not for the individual leaseholders.
 - The “Amenity land is subject to the detailed Section 106 agreement with Wigan Borough Council which sets out the respondent’s obligations to maintain a sustainable habitat
 - Details of the work required to maintain the land are set out.
 - A basic reconciliation of the amounts received from the leaseholders, as against actual expenditure, was provided and a credit to the leaseholders accounts was made to reflect actual, rather than previously anticipated, costs to date.
 - An adjustment has been made to the accounting year to better incorporate updated ecological reports at an appropriate time.
 - The initial sum of £250.00 a year for the charge has been replaced by a more accurate reflection of the actual charges incurred
 - Access to the site is restricted in accordance with the recommendations of the ecological reports to continue to support the establishment of the site as an appropriate habitat and the right to make the charge to the leaseholders is not conditional upon access being granted.
 - As a general principle the invoices for the Respondent’s contractors are confidential and to send them out to individual leaseholders would not be cost effective

- Details of the management plan for the site and monitoring reports, with recommendations, are sent, either to residents or officers of the Residents Association.
- 11 The Tribunal was then able to explore a number of issues with the parties that arose out of what had been seen in the documents provided, seen by the Tribunal on its inspection, or had arisen from the points raised by the parties speaking in support of their submissions:
- The Respondent would look to continue its policy of reconciling the charges levied with the actual costs incurred and not seek to recover a set minimum amount.
 - The Respondent accepted that both the Section 106 Agreement and the leases envisaged the right for the leaseholders to have access to the land for limited purposes and this was currently being denied.
 - The Section 106 Agreement also appeared to envisage limited access by others (schoolchildren).
 - Mrs Burrows conceded that access on a reasonable basis was not a problem to threaten the viability of the habitat that the land encompassed.
 - The perception of the Tribunal on its inspection was that there were maintenance issues in respect of material deposited on the site and not cleared (although the Respondent defended its standard of workmanship)
 - The Applicants did not see access to the site as a defining issue. Many leaseholders had young families, for whom ponds present a serious danger, but more as part of a larger issue of the relationship between The Respondent and the leaseholders concerning responsibility for what was provided and at what cost.
 - It was not clear at present what steps were being taken to address, in a definitive way, the clear differences in opinion between the leaseholders and the Respondent over the competing interests in the land or the communication between the parties in relation to those differences

E Tribunal's Conclusions and Reasons

- 12 S18 Landlord and Tenant Act 1985 defines "service charge" as an amount payable by a tenant of a dwelling as part of or in addition to the rent
- (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) The whole or part of which varies or may vary according to the relevant costs.

Those charges that are the subject of this application appear to be within the definition. They are amounts, in addition to rent, payable by a tenant of a dwelling for a service: the maintenance of the Amenity Land.

- 13 The Tribunal is satisfied that the charge is variable. A minimum amount is set in the lease, £250.00 plus VAT, but the amount may be varied if the actual costs exceed that amount in any year.

14 Thereafter Section 19 of the Act states that the relevant costs to be taken into account as comprising the service charge can only be taken into account to the extent that they are reasonable and that the work is of a reasonable standard. The way in which the Tribunal is to assess that issue of reasonableness is assisted by Section 27A of the Act.

15 The law relating to that jurisdiction found in Section 27A Landlord and Tenant Act 1985 is as follows:

- (1) 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 –
 - (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3) Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

16 The Tribunal is satisfied that the Respondent is correctly identified as a party to these proceedings, not as landlord but as a person to whom the charge is payable and “the person against whom an Applicant seeks an order or determination from a Tribunal” (Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 Regulation 3),

17 The Tribunal must then make a determination as to whether the costs are reasonably incurred for work of a reasonable standard in accordance with Section 19 Landlord and Tenant Act 1985 (above). In this respect the Tribunal has a number of concerns.

- Although there is no direct connection in the leases between the right to enjoy access to the land on the part of the leaseholder and the right of the Respondent to charge for the service(s) provided the Tribunal is satisfied that that the issue of reasonableness of the charge is related to the way in which the Respondent fulfils its obligations and in this case the respondent appears to ignore the rights of access granted by the lease, and indeed envisaged in the Section 106 agreement, in respect of both leaseholders and wider potential visitors. It is less reasonable to make charges for a service if you then deprive the payers of their rights to enjoy it.
- The Tribunal is not satisfied from what it saw on its inspection or at the hearing that the charges that are made reflect the level of work necessary on the part of the Respondent. The Tribunal appreciates the obligations that the Respondent has to ensure the cleanliness and good order of the site and that the ponds are filled with unpolluted run-off water from the houses as part of the sustainable urban drainage system. The “Amenity Area” is still essentially a natural environment which should be largely left in its natural state (although it is clear that some eradication of Japanese Knotweed and other alien flora was required) but it is clear from the Section 106 Agreement and the comments of Mrs

