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MAN/00BW/LSC/2011/0134

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**of the**

**NORTHERN RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985**

**SECTIONS 27A and 20C**

**PROPERTY**                      **Various Properties at Scholes Village, Wigan  
Lancashire**

**Applicants:**                      Various leaseholders

**Respondent:**                      Wigan & Leigh Housing Association

**The Tribunal:**                      Chairman:                      John R Rimmer BA, LLM  
Valuer Member:                      John Faulkner, FRICS  
Lay member                      Habib Haziz LLB

**Date of Hearing:**                      14<sup>th</sup> May 2012

**Present**                      Mr R Hall, assisted by Mr P Franzen, on behalf of the  
Applicants

Mr S Ward, Solicitor, assisted by Mr P Gledhill and  
Miss A Cotton, for the Respondent

## ORDER

**The costs of the caretaker, concierge and CCTV provision in the years in question to 31<sup>st</sup> March 2012 fall within the terms of the lease and are reasonably incurred for services of a reasonable standard.**

**The Tribunal makes a order under Section 20C Landlord and Tenant Act 1985 that no costs of the Respondents be added to the service charges for the current or future years.**

### **A. Application.**

1. The Applicants apply under Section 27A of the Landlord And Tenant Act 1985 for a determination that certain elements of the service charges 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 are for the provision of concierge services, CCTV and caretaking. The Applicants allege that there is no reference to those services in the leases and that there should not then be a charge for them.

### **B Background**

- 2 The Applicants hold long leases at low rents of the relevant flats. That which is granted to Mr Hall (jointly with Mrs Hall) was granted on 27<sup>th</sup> November 2006 for a period of 125 years from 30<sup>th</sup> May 1994. It was granted at a premium and an annual rent of £10.00. The long leaseholders own but a small number of flats in a complex of 7 tower blocks containing over 700 units (706 flats of which 18 are held on long leaseholds).
- 3 The lease contains the terms relevant to the service charge in more than one place.
  - Clause 1 of the lease includes within the rent additional payments over and above the £10.00 for insurance and the contributions referred to in Clause 5.2
  - That clause refers to the service charge and reserve fund for the property and particularly to the Fourth Schedule to the lease which reflects how the charges are to be apportioned, the period to which they relate and how they are to be collected or payment enforced. The service charge is stated to include the landlord's obligations in Clause 6.3 of the lease in relation to maintenance and repair of the structure and common parts of the properties.
  - Paragraph 7 of the Fourth Schedule contains within it a provision, so far as it may be relevant to this Tribunal, to the effect that the service charge costs are all the costs and expenses of, or incidental to, the maintenance and management of the main building(s) and the estate.
- 4 Clause 6(3)(b)(ii) of the lease also lists in a definitive manner the services provided as being-
  - In the main building – maintenance of common parts  
Lighting of common parts

## Communal TV aerial

On the estate - maintenance of the common parts

and declares that these are all the services to which the tenant is entitled and that there are no others.

- 5 It was noted by the Tribunal, however, during the course of the Tribunal hearing that there is a lack of consistency between leases, even for flats within the same block, and that although there is no direct reference to a concierge service or CCTV there are some leases with a more particularised list than that in the Halls' lease, containing a specific reference to caretaking.
- 6 The contention of the Applicants is quite simple: The services under consideration do not fall within the list of services provided within the lease and do not fall within the provision of Paragraph 7 of the Fourth Schedule as costs of, or incidental to, the maintenance of the buildings and estate. The Respondent's view may be put equally succinctly. The concierge, CCTV and caretaker services are such as to fall within that Paragraph.

### **C. Inspection**

- 8 On the morning of 14<sup>th</sup> May 2012 the Tribunal inspected the internal common parts of Crompton House and the exterior of the development at Scholes Village. The development is situated close to Wigan town centre and was constructed in the 1970s. It is a complex of local authority flats common to many large local authorities in North West England and elsewhere and which may well have become synonymous with the perception of a contribution to social problems thereafter. The blocks were extensively refurbished and re-let, mainly on assured tenancies, but with 18 long term leases acquired by tenants under "Right to Buy" legislation, so that they now bear little resemblance to their former incarnation. There is extensive parking provision marked out by various means and communal garden areas surrounding the blocks and which are landscaped to a reasonable standard. Security provision is provided by gates operated by key-fob or the concierge service which also monitors the CCTV provision. Both services are in the process of migration to a central system of control operated by the Local Authority.. Access to flats above ground floor level is by staircase or lift. The perimeter is walled and gated with entry phone system security. The development is well situated for access by public transport to the wider locality. The previous use by the landlord of resident caretakers had been replaced by a mobile caretaking service with a wider area of responsibility.

### **D. The evidence and the hearing**

- 9 A procedural chairman gave directions for the future conduct of the application and the matter was listed for hearing at the offices of the Tribunal on 14<sup>th</sup> May 2010. Both parties had helpfully provided the Tribunal with information during the course of its inspection and had provided bundles of documents for further assistance. It was the tribunals understanding that the cost of the caretaking service had now been reduced following the introduction of the mobile service but the costs before that were still being challenged by the Applicants.
- 10 The parties assisted the Tribunal with details of the history of the services in question, particularly how the CCTV system had been obtained via a central

government grant initiative and how it related to the overall public CCTV coverage in the Borough. There was a clear grievance on the Applicants' part that whereas the general Borough CCTV coverage was paid through local authority income there was public use of the Scholes Village system which was funded solely through service charges.

- 11 The Applicants also expressed concern about the extent of the concierge service when contacted on an emergency basis and about the security issues that still occurred despite the monitoring of access and activity on the development.
- 12 It was these concerns that encouraged the Applicants to examine the services provided and then draw the conclusion that they did not fall within the provisions of the lease, so no payments need be made.
- 13 Both the Applicants and the Respondent canvassed before the Tribunal their view as to the extent to which services not clearly set out in the lease may or may not be within the ambit of provision such as Paragraph 7 of the Fourth Schedule. They had different views of, and drew different conclusions from the case of *St Mary's Mansions Ltd v Limegate Investments Co Ltd* as to the need for clear and unambiguous terms in a lease in order to include charges within the service charge.
- 14 Although the Respondent conceded that some leases referred specifically to caretaking as a service whilst others did not, it was adamant that even without a specific reference it could still be seen as a cost of or incidental to maintenance of the buildings and the estate.

## **E Tribunal's Conclusions and Reasons**

- 15 S18 Landlord and Tenant Act 1985 defines "service charge" and "relevant costs" that can be included in such a charge. Those charges that are the subject of this application appear to be within the definition, which is not set out word for word here and appeared to the Tribunal that the parties accepted that this was the case. However 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.
- 16 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.

It is clear in this case that the Tribunal is being asked to go through a two-stage process. Firstly, are the services such as to fall within either the clear wording of the leases as services for which a charge can be made, or sufficiently within the meaning of paragraph 7 of the Fourth Schedule as costs of, or incidental to the maintenance of the buildings and estate?

- 17 The Tribunal noted the point mentioned above that some leases refer specifically to caretaking whereas others do not: there being no mention in any lease specifically referring to a concierge service or CCTV coverage. Nevertheless the Tribunal takes the view that these are services that are costs and services incidental to the maintenance and repair of the buildings and the estate. In this respect they reflect responsible preventative maintenance. The Tribunal is satisfied that the provision of such services will contribute in a significant way to the avoidance of other costs arising from vandalism, trespassers and early notification of matters of general disrepair that might otherwise not become apparent. There are other benefits to leaseholders (for example, enhanced security and a speedy point of contact, neither of which the leaseholders necessarily accept as being in any way perfect), but those benefits falling outside the lease do not negate or detract from those other matters referred to. Furthermore the Tribunal is able to draw a distinction between services or costs not specifically referred to in the lease which are of an essentially different nature, such as the provision of a gym, or sauna, or professional fees or costs, from those that are closely related to, and ancillary to, those clear obligations that a landlord has undertaken to provide.
- 18 Having reached that conclusion the Tribunal moved on to consider whether the costs that have been incurred represent services provided at reasonable cost and to a reasonable standard.
- 19 The Tribunal is keenly aware of the proportion of the total service charge that reflects the three elements in question, notwithstanding the credits that have been made to leaseholders accounts upon the re-assessment the proportion of concierge charges not directly attributable to the leaseholders and also the recent adjustments to caretaker charges upon the establishment of the mobile caretaking service. The Tribunal is, however also aware from its experience and expertise of the significant costs that can be avoided by the provision of these services in a timely and appropriate manner, particularly in relation to large, town centre, tower block developments. The costs are therefore considered to be reasonable and reasonably incurred for services of a reasonable standard.
- 20 The Tribunal noted the comments of the Respondent that it had no power under the lease to recover any costs it incurred in the tribunal proceedings within future service charges and therefore makes a formal order to the effect that such costs cannot be recovered.

J R Rimmer  
Chairman

11 June 2012