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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property:	**Flats 9, 12, 17, 19 & 42 Lister Gardens, Bradford BD8 7AG.**
Applicants:	**Mr N Mir and Mr H Mir** Represented by Craven Professional Solutions.
Respondents:	**Lister Gardens Management Company Limited.** Represented by Benjamin Bentley & Partners (Bradford) Ltd.
Case number:	**MAN/OOCX/LSC/2012/0167**
Date of Application:	**Jan 2013**
Type of Application:	**Application for a determination of liability to pay and reasonableness of a service charge pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985.**
The Tribunal:	**Phillip Barber (Chair)** **Mr A Robertson (Valuer)** **Mrs M Oates (Lay Member)**
Date of decision:	**8 April 2013**

Reasons and Decision

1. Mr Naveed Mir and Mr Haseeb Mir("the Applicants") are the leasehold owners of 5 flats in the development known as Lister Gardens, BD8 7AG. They own flats 9, 12, 17, 19 and 42. They made an application in January 2013 for a determination as to the payability and reasonableness of the

service charge payable on the above flats under section 27A of the Landlord and Tenant Act 1985. That application asked the Tribunal to consider the service charge for the years 2009 through to 2014. It is not entirely clear from the application form which elements of the service charge were in dispute but generally the application refers to the increasing cost of the service charge as being a problem and that in comparison with other local leasehold flats the increases were unjustified by reference to the services provided. The Applicants were represented by Mr Borchert from Craven Professional Solutions ("Craven") who appeared at the hearing.

2. The respondent to the application, Lister Gardens Management Company Limited were represented by the managing agents, Benjamin Bentley & Partners (Bradford) Limited (BBP) who had, for a number of years, been contracted to manage the two blocks which comprise the freehold estate. Mr Oddy has taken the lead in managing the blocks and appeared at the hearing to represent the views of the Management Company.

3. The properties are subject to what we understand to be a generic lease and we had a representative example of a lease for number 17 dated 30 September 1985 for a term of 999 years. It is not necessary to reproduce the exact provisions as they were not in dispute, but the service charge is dealt with under clause 4 of the lease requiring payment for the cost of management and maintenance under clause 5 of the lease. There is nothing unusual about the service charge provisions and it was not in dispute that as long as the service charge did not contravene section 27A of the Landlord & Tenant Act 1985 it would be contractually payable under the service charge provisions.

4. On the 17 January 2013, Craven wrote to the Tribunal advising that £90 per quarter per flat was in dispute and subsequently the Applicant's submitted a statement of case dated 12 February 2013 where their case was set out in a little more detail. It is fair to say that the exact challenge to the service charge is a little unclear from that statement but as it transpired, it seems that the Applicants are unhappy with the increase of the service charge over the years as not providing good value for money when compared to other local developments (Lister Court and Lister Mills, in particular). On the 27 February 2013, Mr Oddy, of BBP, submitted a response to the Application setting out the history of the development, some general information about the flats and a paragraph by paragraph response to the Applicant's statement of case, together with a schedule of documents including the service charge accounts for each of the years in question.

5. On the 15 March 2013, the Applicants responded to the Respondent's response where a little more detail was provided in relation to the application and thereafter BBP responded to the Applicants response by "comments" dated 28 March 2013.

6. From the service charge demands contained in section "G" of BBP's schedule to the response it is apparent that in 2009 the service charge was £195 per quarter for the first quarter, then from the second quarter of 2009 through to the third quarter of 2011, the service charge was £210 per flat per quarter. From the last quarter of 2011 the service charge increased to £300 per flat per quarter.

The Inspection

7. The Tribunal inspected the development on the morning of 8 April 2013 in the company of Mr Naveed Mir and Mr Oddy, of BBP. The following are the Tribunal's findings at the inspection.

8. Lister Gardens occupies a large site on a significant incline. There are 42 flats built in the 1970s. The development is built traditionally of cavity brick with a felt flat roof and there are two, three story blocks, 1-20 in upper block and 21 – 42 in the lower block.

9. The development presents well, although several items of disrepair are evident: in particular, the coping to the parapet and the condition of some parts of the brickwork, both to the main buildings and to the retaining walls between the levels. The condition of the footpaths and driveways is poor in parts and over recent years some renovation work has been undertaken to the site. Internally the common parts are fairly basic but clean and generally tidy.

The Hearing

10. At the hearing we sought to clarify with Mr Naveed and Mr Borchert, from Craven, the true extent of the application under section 27A. We were told that they were comparing this development with Lister Court and Lister Mills and that the quarterly service charge in 2009 of £195 per quarter was a reasonable amount. Thereafter the increase to £300 per quarter meant that the service charge was not reasonable by £90. It might have been thought that this meant that the Applicants viewed £210 as a reasonable level of payment but Mr Mir told us that the increase from £195 to £210 also made the service charge unreasonable. It was difficult to understand, therefore, why the Applicants were of the view that the service charge of £300 was unreasonable by the tune of £90 but that also the service charge

of £210 was unreasonable. However, we accept that the Applicant's case is that any payment of service charge above £195 per flat for this development is unreasonable and that the balance should not be payable pursuant to section 27A of the Landlord and Tenant Act 1985.

11. Mr Mir told us that increases in the service charge should be nominal and should be phased in over a long period of time and that in essence, rather than waiting for works to become urgent and necessary they should be done in a more piecemeal fashion over the years. He also thought that a more substantial sinking fund should have been built up over the years.

12. Mr Mir identified the following problems at the development: the footpath; the lighting, which could have been attended to earlier; the woodwork and painting, which should have been done earlier and the coping stones. His argument was that if these had been done piecemeal over the years it would have been cheaper. He also explained his use of comparators by reference to the fact that in other developments the service charge is cheaper.

13. Mr Oddy, of BBP, responded to the above by reference to the following. He told us that he takes his directions from the Board of Directors who are made up of individual leaseholders representing the interests of all leaseholders. He told us that the increase in the service charge from £70 per month to £100 per month is because the Company requires funds to pay for major works. He told us that the works done on the development over the years to keep it in check were good value for money and that it was the Management Companies decision to do the works in a more piecemeal fashion as and when necessary in order to save costs. He told us that in his experience it is cheaper to do small works as and when necessary until such a time as enough disrepair has built up to make it cost effective to employ builders to undertake more major works. In this way the cost of scaffolding, for example, would be considerably less and the cost of getting in builders to undertake a program of works would be less than had they attended to undertake more minor jobs here and there. He told us that the site is a large site and that a couple of years ago a point was reached where it was necessary to undertake some improvements as well as general repair work. He told us, for example, that the footpaths could not really be repaired as a minor repair and that there came a point in time where major works were necessary to refurbish the footpaths which had severely degraded. He also told us that the roof had steadily deteriorated and that it would not have been cost effective to regularly install scaffolding for more minor issues.

14. In relation to the sinking fund which Mr Mir believes should have been built up over the years, Mr Oddy pointed out that this may well have been a good idea in an "ideal world" but in any event in the long run the cost would have been the same.

15. Finally in relation to the use of comparators, Mr Oddy pointed out that it is impossible to compare developments in this way. He made the point that if Lister Gardens did not require major works then the service charge would not have been increased. He pointed out that in other developments there may be more people paying the service charge and thus resulting in a lower charge for everyone overall; he pointed out that the other developments may have other options for reducing the service charge (such as mortgaging a flat owned by the Management Company) and that other developments may be constructed in different ways with different repairs needs over the years.

16. In short, Mr Oddy accepted that there was a big jump in the service charge but that this is what the Directors of the Management Company viewed as necessary for the purpose of undertaking the works necessary under the terms of the lease.

17. Mr Borchert then raised the fact that BBP's management costs had also increased over the years with little evident value to which Mr Oddy responded that they had increased in line with RPI and by agreement with the Directors of the Management Company.

18. Finally, Mr Bicat who attended the hearing as an observer from the Directors asked to speak. As neither party objected the Tribunal took evidence from him. He said that he had been a Director for 8 years until the present and that he had never met Mr Mir before. He said that he is an owner occupier and would have a different perspective to Mr Mir who is an absentee landlord: he would have bought in to make a profit whereas the owner occupiers (the overwhelming majority of the residents) want a pleasant environment in which to live and they care about the appearance of the development and want to keep it "up to scratch". He explained about the paving stones requiring works due to the trees which cannot be cut down and that paving is a skilled job requiring professional work – which is not cheap. He also said that the poor winters over the recent years had caused a lot of problems which required works to be carried out and that the Directors as a whole had voted on the cost of works and had faith in Mr Oddy's abilities as an administrator.

19. We were grateful for Mr Bicat's views which we thought were reasonable, appropriate and relevant.

The Law

20. Sections 19 and 27A of the Landlord and Tenant Act 1985, so far as relevant, provide as follows:

19.— Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

27A Liability to pay service charges: jurisdiction

(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.

(2) Subsection (1) applies whether or not any payment has been made.

21. Accordingly the Tribunal has jurisdiction to entertain an application in relation to the reasonableness and payability of a service charge whether or not it has been paid and whether or not the works have been or are to be carried out.

Findings of Fact and Decision

22. The Tribunal reject the Application in its entirety and generally prefer the submissions of the respondent Management Company made via BBP and Mr Oddy. We made the following findings of fact:

23. There is no dispute that £195 per flat per quarter was a reasonable level to pay for the services provided and so we had no need to go behind this figure.

24. Both the charge set at £210 and £300 are reasonable and payable in accordance with the terms of the lease and in accordance with sections 19 and 27A.

25. The Tribunal's site inspection satisfied it that works have been carried out and others remain urgently required. The Tribunal is satisfied that it was necessary to carry out the following works and that the works have been carried out to a good standard:

a. Replacement of the internal lighting and emergency lighting at a cost of £5,226
b. Taking up and relaying substantial areas of footpath and steps at a cost of £6,366
c. Substantial repainting and replacement of balcony rails, rotten woodwork at a cost of £10,000
d. Renewal of external decorations at a cost of £10,000

26. The Tribunal find as fact that the proposed works over the next couple of years are reasonable and that the service charge is payable in accordance with these works:

a. Renew internal decorations at a cost of £4,000
b. 1st phase capping to coping stones at a cost of £6,000
c. 2nd phase capping to coping stones at a cost of £16,000
d. 1st stage repairs to the defective brickwork to retaining walls at a cost of £4,000

27. The Tribunal reject the Applicants' case that works should have been done in a more piecemeal fashion over the years. The Tribunal entirely agree with Mr Oddy when he said that deciding when to undertake works is a matter of judgment and that in relation to many items it is appropriate to carry out small scale patch work or let things deteriorate to a position when it is more cost effective to undertake one or two major works than many minor works. The Tribunal's view is that this is entirely the most

appropriate way to manage this (and any other development). The Tribunal's view is also that Mr Oddy's judgment is sound and that he is best placed, as an employee of the managing agent company, to determine what works are necessary and when to undertake them.

28. Accordingly the Tribunal acceptS his submission that it is necessary to build up a sinking fund now to undertake these works and accept entirely the Respondent's case that these works are necessary and reasonable.

29. The Tribunal reject any suggestion in the application that it is appropriate to compare this development with other developments in relation to the service charge. The Tribunal accept Mr Oddy's submissions that a comparison has no value. This development requires a certain level of maintenance and another development may require a different level of maintenance. Developments deteriorate at different rates and there are many other facts which could account for the difference in the level of a service charge between one development and another. The Tribunal find as fact that there is no benefit to be gained from a comparison of other developments in relation to this application.

30. In relation to the management costs of BBP, it is noted that Mr Oddy believes these to have increased in line with RPI. This may or may not be the case but in any event the Tribunal is satisfied that this level of remuneration has been agreed by the Directors of the Management Committee and in the Tribunal's expert view this level of remuneration for a development of this nature and in this region is proportionate and reasonable. In its expert view and from the Tribunal's impression of Mr Oddy at the hearing, BBP is carrying out a sound and professional service in a way which the Tribunal think is actually saving money for the leaseholders. For example, the decision to cap the coping stones in aluminium strikes the Tribunal as a good idea which should save costs over other forms of renovation and repair works and the Tribunal is confident in Mr Oddy's ability to determine when it would be appropriate to carry out major works and when it would be more appropriate to undertake minor patch work. Accordingly the Applicant's claim that BBP provide poor value for money is rejected (if indeed that is what they are saying) and find as fact that the costs of management of the development are reasonable and payable.

31. As mentioned above, the Tribunal is grateful for Mr Bicat attending and providing his views. The Tribunal accept what he stated in relation to the different agendas of the owner occupiers and the absentee landlords. His views were well made and insightful and the Tribunal agree with him that an owner occupier's judgment as to an item of expenditure in the

development may be viewed as unreasonable by an absentee landlord who has a greater desire to cut costs and make a profit. In the written submission, the Applicants make reference to the difficulties in gaining rental income which is sufficient to cover their mortgage costs and service charge. Whilst the Tribunal take the view that this is entirely irrelevant to the issue of the reasonableness and payability of the service charge, it confirms Mr Bicat's suggestion that the Applicant's reasons for the application are at odds with the leasehold owner occupiers.

32. For the above reasons the Tribunal dismisses the Application and in its judgment the service charge payable for the years in question are reasonable and payable in their entirety.

Decision

33. The Tribunal determines that the service charges in question are both reasonable and payable in accordance with sections 19 and 27A of the Landlord and Tenant Act 1985. The service charges for the years 2009 through to 2012 are reasonable and payable in accordance with our findings of fact detailed above. The Tribunal was unable to make a determination in relation to the years 2013 and 2014 although they were mentioned in the application, as no accounts for these years have been produced.

Signed.....Phillip Barber