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FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UG/LAM/2014/0001**
Property	:	**The Dell Colchester Essex CO1 2YH**
Applicant	:	**Mr G J Dubber and Mrs C Dubber**
Respondent	:	**Peverel Management Services Limited (Managing Agent)**
(Representative)		**Miss Lamb**
Type of Application	:	**For the appointment of a Manager (Section 24 Landlord and Tenant Act 1987)**
Tribunal Members	:	**G Wilson (Chair)** **R Thomas MRICS** **G Smith MRICS FAAV**
Date and of Inspection	:	**23 May 2014**
Date of Hearing	:	**23 May 2014**
Date of Decision	:	**23 May 2014**

DECISION

Decision

1. The application was struck out.
2. The application for an order under Section 20C of the Landlord and Tenant Act 1985 was dismissed.

Reasons

Inspection

1. The Tribunal inspected the Property in the presence of the parties. It comprised three modern blocks of flats for those over 55 set in gardens, close to Colchester Town Centre. There were 60 flats in total.

2. The Applicant drew attention to defective guttering (which appeared defective in design rather than in poor condition) and various shortcomings in garden maintenance (which were less easy to discern).

3. A further description was unnecessary. The Tribunal found that the development appeared pleasant and well-maintained. It found no visual evidence of poor management.

The Law

4. This is to be found in Section 24 of the Landlord & Tenant Act 1984:

> ... [a Tribunal] may only make an order under this section in the following circumstances namely:
>
> (a) where [the Tribunal] is satisfied :
> (i) that [any relevant person] either is in breach of any obligation owned by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
> (ii) ...
> (iii) that it is just and convenient to make the order in all the circumstances of the case;
> [(ab) where [the Tribunal] is satisfied:
> (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
> (ii) that it is just and convenient to make the order in all the circumstances of the case;
> [(aba) where the Tribunal is satisfied
> (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
> (ii) that it is just and convenient to make the order in all the circumstances of the case;]
> [(abb) where the tribunal is satisfied:
> (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
> (ii) that it is just and convenient to make the order in all the circumstances of the case;]
> [(ac) where [the tribunal] is satisfied:
> (i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice) and
> (ii) that it is just and convenient to make the order in all the circumstances of the case;] or
> (b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made

The Hearing

5. The parties had prepared a Hearing Bundle running to 820 pages. Nine witnesses were to be heard (or in the case of some, their statements read). The hearing estimate of 2 hours was plainly inadequate . It was plain that the hearing would last at least one day, if not two.

6. Many interested leaseholders attended the hearing.

7. The Hearing Bundle showed that 10 leaseholders were in favour of the appointment of a (new) manager. 36 were against, as demonstrated by the letters included in the Bundle. Five letters were, the Applicant submitted, to be disregarded as coming from others, not leaseholders. That meant 31 should be recorded as "against" the application.

8. The Applicants thus represented a minority. The Tribunal asked the parties to consider whether, except in extraordinary circumstances (and the present case could not be described as such), it would ever be "just and convenient" to appoint a (new) manager when it was apparent that only a minority, by some margin, was in favour.

9. The Respondent replied that where a majority was in favour of the status quo, when the management board was also supportive, when the site was properly managed (as, it was submitted, was the case here) and when there was no evidence in the form of a witness statement of the proposed replacement, the "just and convenient" test could not be satisfied.

10. The Applicant argued that, in fact, only a little over 50% supported the present manager. More may have supported the application but did not wish to be involved. Though offered the opportunity, none had wished to read the Hearing Bundle, though the opportunity had apparently been offered.

11. The Tribunal established that neither Applicant nor Respondent had written circular letters asking specifically whether leaseholders would support or oppose the application.

12. Against this background, the Tribunal indicated that it proposed not only to consider these representations, but also to consider "striking out" the Application. This the Tribunal may do under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Rule 9 (3) (e) where :

> The Tribunal considers there is no reasonable prospect of the Applicant's ... case... succeeding

13. That rule required the Tribunal to give parties an opportunity to make representations if it is proposed to strike out an application. The hearing was adjourned to enable the parties to consider their representations.

14. The Respondent urged the Tribunal to strike out the application. The Applicant argued that the present manager could be shown to be "less than open", that it had ignored lease provisions and that leaseholders should be able to expect a landlord to honour lease covenants.

15. Despite the Applicant's representations, the Tribunal decided to strike out the application, on the basis that it had no reasonable prospect of success.

16. The words "just and convenient" have no special meaning. The word "just" meant right and fair, or deserved; "convenient" meant fitting in with needs.

17. The Tribunal's own inspection disclosed that the repairing and maintenance covenants appeared to be being observed.

18. A majority preferred the status quo. The Applicant was in a minority. Although they could argue that the evidence may show the application as warranted, the Tribunal was obliged to consider whether further public resources should be devoted to testing this proposition. The Tribunal determined that they should not. It is not the Tribunal's function to spend time on cases that are going to fail; it was next to inconceivable that the Tribunal would impose a manager at the instance of such a minority of leaseholders.

19. The application for an order under Section 20C (see above) (costs not to be recoverable via service charges) was dismissed.

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G. Wilson
(Chair)
23 May 2014