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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Property:** 53 Wye Gardens, Fryers Lane, High Wycombe,  
Buckinghamshire HP12 3DU

**Applicant  
(Landlord):** Wye Gardens Management Company Limited, 5 Priory Road,  
High Wycombe, Buckinghamshire HP13 6SE

**Applicant's Agent:** Leasehold Management Services Ltd, 5 Priory Road, High  
Wycombe, Buckinghamshire HP13 6SE

**Head Landlord:** Michael Shanley Homes Limited

**Respondents  
(Tenant):** Mr A Keen

**Case number:** CAM/11UF/LSC/2006/0009

**Application:** Application for a determination of the liability to pay service  
charges including the reasonableness of service charge (Section 27A  
Landlord and Tenant Act 1985) for the financial years ending 24<sup>th</sup> June  
2005 and 24<sup>th</sup> June 2006

**Tribunal:** Mr JR Morris (Chairman)  
Miss M Krisko BSc (Est Man), BA, FRICS  
Mr L Jacobs FRICS

**Date of Review:** 12<sup>th</sup> May 2006

**Date of Hearing:** 18<sup>th</sup> July 2006

**Attending:  
Applicant:** Mr Buller, Leasehold Management Services Ltd  
Ms Cross, Leasehold Management Services Ltd  
Ms Lilford, Director of Wye Gardens Management Company  
Limited

**Respondent:** Mr Keen

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**STATEMENT OF REASONS**

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## **Preliminary**

1. This Application was made following the staying of a claim for arrears of service charges against the Respondent in the High Wycombe County Court Claim No. 5ZA02440 in order for the Applicant to apply to the Leasehold Valuation Tribunal for a determination as to the reasonableness of the service charge.
2. A Preliminary Hearing was held on the 12<sup>th</sup> May 2006 and Directions were given.

## **The Application**

3. The Applicant applied to the Tribunal on 7<sup>th</sup> February 2006 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness of the costs incurred by way of service charge for the financial year ending 24<sup>th</sup> June 2005 and the costs to be incurred by way of service charge for the financial year ending 24<sup>th</sup> June 2006.

## **The Law**

4. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

### **Section 18**

- (1) In the following provisions of this Act "service charge" means 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, improvement 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
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
  - (a) costs includes overheads and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

### **Section 19**

- (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.

#### Section 27A

- 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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.

#### **Description of the Building and Property**

5. The Property is in a block of flats, which are part of a development referred to in the Lease as the Estate. The Estate comprises two Blocks of flats, which are set in grounds laid to gardens and driveways and allocated parking bays. The grounds have security gates and access to the common entrances is via a door entry system. There are bin stores and a bicycle store.

#### **Inspection**

6. The Tribunal inspected the Estate on the 12<sup>th</sup> May 2006 in the presence of the Applicant and the Respondent's Representatives, Ms Lilford, Mr Buller and Ms Cross.
7. The two blocks of flats are of similar construction. They are three story buildings constructed of brick under a tile roof with dormer windows. Over the common entrances there is wood cladding to the upper storeys. There are tarmac drives off which are allocated parking spaces and paved pathways. There is lighting to the drives and pathways. There are gardens laid to shrubs and lawns.
8. The gardens appeared to be in fair condition although some weeds were growing through the grass. The blocks were in good condition having recently been completed.

The Tribunal also inspected the bicycle store and bin store. It was noted that one of the external pillar lights outside the blocks was damaged. There was evidence of considerable parking congestion and the Respondent directed the Tribunal to his parking space and pointed out a car that was parked on the driveway on double yellow lines opposite his parking space.

9. Internally the common areas were carpeted and well lit using a movement detector rather than a time system as a result lights come on during the day. The finish was fair. Heating is by electric heaters. The common parts were metered separately. On the day of inspection one of the internal lights and one of the heaters did not appear to be working. The cleaning did not appear to be carried out very thoroughly and there was dust on some architraves. The window glass was scratched. The Applicant stated that a cherry picker had to be used to clean the windows, as the ground was not suitable for a scaffold tower. Attention was drawn to a door closure system that had had to be repaired and the door still did not close properly. All the flats on the Estate are accessed through the common areas.

### **The Lease**

10. The Applicant is the Managing Company of the Estate and is wholly owned by the tenants. The Company holds the Estate on a long lease from the Head Landlord. The Head Lease between the Head Landlord and the Applicant is for a term of ninety-nine years from the 1<sup>st</sup> January 2003 at a rent of £1 (if demanded) payable on 25<sup>th</sup> December each year.
11. A Lease between the Head Landlord, the Applicant (referred to in the Lease as the Association) and the Respondent (the Lessee) demised the Property to the Respondent. Under the terms of the Lease the Respondent agreed to become a member of the Applicant. A copy of the Lease was provided. The Lease is for a term of ninety-nine years from 1<sup>st</sup> January 2003 at a rent of £300.00 per annum increasing on every twentieth anniversary of the date of commencement in accordance with the Sixth Schedule to the Lease.
12. The First Schedule describes the demise, which includes the use of an exclusive parking space. Under paragraph 26 of the Second Schedule the Respondent has a "Duty to pay to the Association (the Applicant) at the times and in the manner set out in the Fifth Schedule hereto all sums as shall under the provisions of the Schedule be payable in respect of the Demised Premises". The sums set out in the Fifth Schedule are the Association's Maintenance Charge which is a Service Charge within the meaning of the Landlord and Tenant Act 1985.
13. The Fifth Schedule states that the Lease "Maintenance Charge" shall be "equal to one forty ninth... of the aggregate cost to the Association (the Applicant) of:
  - 1.1 Complying with the Association's covenants in this Lease [which are as set out in the Fourth Schedule] and the Association Lease and
  - 1.2 Providing such reserves for future anticipated maintenance as the Association shall from time to time think desirable"The Maintenance Charge shall also cover the cost of the Association (the Applicant) in complying with its covenants including all fees, charges and expenses payable to a solicitor, accountant, surveyor, agent or architect employed or instructed in connection

with any question arising on the maintenance or management of the Estate and all administration accountancy legal and other costs in carrying on its business.

14. Under paragraph 7 of the Fifth Schedule the Lessee shall pay a sum as determined by the Association on account of the Maintenance Charge. By paragraph 8 "as soon as practicable after the expiration of each year ending on 24 June the Association shall ascertain and certify the amount of the actual Maintenance Charge for the preceding twelve months ...and any balance remaining to be paid by the Lessee after giving credit for the interim payments ...shall be paid...or repaid by the Association..."
15. Under the Fourth Schedule the Association (the Applicant) covenants:
  - To insure
  - To maintain and decorate all the parts of the Estate not demised
  - To keep lit and clean all the common parts
  - To clean the windows
  - To maintain the communal areas of drives, pathways and gardens
  - To maintain the parking spaces
16. Under the Articles of Association of the Applicant responsibility for the maintenance etc of the Estate was to pass from the Head Landlord who developed the Estate to the Applicant on the "ultimate date". This was established to be the 1<sup>st</sup> June 2005. From that date the Applicant became liable to comply with the covenants in the Fourth Schedule. Until that date the Head Landlord was, as the developer, responsible for the Estate. It was stated that on that date a sum of money was paid to the Applicant in full and final settlement for any outstanding obligations of the Head Landlord.

#### **Documents**

17. The Tribunal received:
  - A copy of the application form
  - A copy of the Lease between the Head Landlord and the Applicant
  - A copy of a Lease between the Head Landlord, the Applicant and another tenant which appears to contain the same covenants as the Lease held by the Respondent.
  - Company Profit and loss accounts and accounts for year ending June 2005 said to be Service Charge Accounts
  - and 2006
  - A copy of Applicant's Memorandum and Articles of Association

#### **Evidence - Applicant's case**

18. The Applicant's Representatives submitted the following evidence in written and oral representations.
19. With regard to the payment of the Management Charge the Respondent became liable for the costs incurred by the Head Landlord up to 1<sup>st</sup> June 2005 and, subsequent to that date, those incurred by the Applicant when he purchased the flat on the 7<sup>th</sup> April 2004. The Head Landlord's Agent was Victor Kirby and the Applicant's Agent is Leasehold Management Services Ltd. Jackson's Accountants were instructed to prepare actual accounts for the year ending 24<sup>th</sup> June 2005. Leasehold Management Services Ltd prepared estimated Management Accounts for the year ending 24<sup>th</sup> June 2006.

20. The Applicant's Representatives stated that the Respondent had refused to pay the Management Charge and the Applicants had therefore sought to obtain a payment through a claim in the County Court which had stayed the action in order for the reasonableness of the charge to be determined by a Leasehold Valuation Tribunal.

### ***Car Parking***

21. The Applicant's Representatives submitted that the Respondent's refusal to pay the service charge was mainly because of the problems in relation to car parking on the Estate. They said that he did not appear to challenge the figures but considered that he should not have to make a payment until the parking situation had been resolved. They said the Respondent complains that his designated space is regularly obstructed. The Lease provides that each flat will have a designated parking space and the Third Schedule states that "no motor car... shall be parked or remain stationary except (temporarily) in an approved parking space." The crux of the problem is that the estate provides for one car parking space per flat and many of the flats effectively have two cars and some three. It is estimated that there are well over 60 cars trying to park in the 49 allocated spaces.
22. The Applicants were aware of the car parking problem prior to the ultimate date and on 14<sup>th</sup> July 2005 the Applicant's Agent, Leasehold Management Services, wrote to the Tenants drawing attention to the car parking provisions in the Lease informing them of the problems and requesting comments. The Respondent did not reply to the letter. As a result of the letter additional parking bays were marked out after which the respondent raised a number of valid issues with the Planning Department and Fire Service which it would have been helpful to have had mentioned in the course of the consultation before the work had been carried out. Due to these concerns the additional parking space scheme was aborted and double yellow lining was undertaken, however this has proved unsuccessful.
23. The Applicants are now considering the wheel clamping and towing away of vehicles which have been parked in a manner that does not comply with the terms of the lease. However there are a number of difficulties to be resolved before this can be introduced.
24. The Applicants submitted that the car-parking situation did not entitle the Respondent to refuse to pay Management Charge. It was also suggested that he might like to take a more active part in the Management Company where he might be able to make an effective contribution to the resolution of some of the problems of the Estate, including car parking.

### ***Reasonableness of Accounts for year ending 24<sup>th</sup> June 2005***

25. The Applicant's Representatives stated that the Landlord's Agent for the year ending 1<sup>st</sup> January 2005 was Victor Kirby who, in a letter to the Respondent, dated 12<sup>th</sup> November 2004 said "we are not managing agents and we have no knowledge of the day-to-day affairs of the estate. We act only as accountants and registrars for the company". It was observed that Victor Kirby's role was fairly limited. Nevertheless they arranged for services to be carried out in respect of the Estate and Jackson's