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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
EASTERN PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No : CAM/22UJ/LSC/2010/0047

Property : 51 Mallows Green, Harlow, Essex CM19 5SA

Applicants : Mr Stephen Sadler

Respondent : Harlow District Council

Inspection : 12th July 2010

Hearing : 12th July 2010

Determination : 12th July 2010

Tribunal : Mr Stephen Reeder (chair)
Mr Richard Marshall FRICS FAAV
Mr Peter A Tunley

Application : Application for a determination as to the
payability and reasonableness of service charges
pursuant to section 27A of the Landlord &
Tenant Act 1985

Decision

Service charges

The Tribunal determines that for the years 2004/05 to 2009/10 the reasonable service charge payable by the applicant in respect of cleaning the internal common parts of the block, the management and cleaning of the external bin stores, and the gardening and cleaning of external block grounds is as follows :

	Common parts	Bin Stores	Gardening
2004/5	£ 176.92	£ zero	£ zero
2005/6	£ 200.79	£ zero	£ zero
2006/7	£ 213.78	£ zero	£ zero
2007/8	£ 238.99	£ zero	£ zero
2008/9	£ 255.80	£ zero	£ zero
2009/10	£ TBC	£ zero	£ zero

Costs

The respondent accepts that there is no provision in the lease which permits it to recharge the costs of these tribunal proceedings as a service charge now or in the future. Accordingly, the Tribunal makes no order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding it from doing so.

Reasons

The application and issues

1. The applicant tenant is the long lessee of 51 Mallows Green pursuant to a lease acquired 10th May 2004 granting a term of 125 years from 16th March 1987. The premium paid was £23,520. The freehold landlord is Harlow District Council.
2. The applicant has applied to the Tribunal for a determination as to the payability and the reasonableness of the service charges and relevant costs payable in respect of his flat for the accounting years 2004/5 to 2009/10 inclusive in respect of the charges made for –
 - (i) the cleaning of the the internal common parts of the block ;
 - (ii) the management and cleaning of the external bin stores ; and
 - (iii) the ‘estate’ gardening of external block grounds.

The Tribunal's jurisdiction

3. The *Landlord & Tenant Act 1985* as amended by the *Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine liability to pay service charges, together with the consultation requirements imposed on landlords. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of 'service charge' and 'relevant costs'

- (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, improvements¹ 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 for 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 or later period.

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 reasonable 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 20C : Limitation of service charges : costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made –
 - (a)
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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 is payable.

The property and the inspection

4. On Monday 12th July 2010 the Tribunal has inspected the external parts and grounds to the block along with the internal common parts. The parties have assisted that inspection by pointing out relevant parts of the building and surroundings and relating the same to the issues raised on the application. 51 Mallows Green is a flat situated on the first floor of a block containing 5 flats numbered 49-53 Mallows Green. Flats 49 & 50 are situated on the ground floor, flats 51 & 52 on the first floor, and flats 53 & 54 on the second (top) floor. The flats are accessed by a ground floor common entrance door leading to a hallway and staircase to the first floor which then continues up to the second floor. Each 'pair' of flats on each floor has a shared common lobby within a common entrance doorway. The hallways, staircase and lobbies are common parts retained by the landlord under the leases. The block is one of several which make up the Mallows Green estate. Communal bin stores are located to the rear of the block and comprise concrete housings within which stand standard refuse bins. There is one further modern plastic wheelie bin for refuse which can be recycled. This block, in common with others on the estate benefits from grassed areas together with small borders planted with shrubs. The internal communal areas give the appearance of being dated, dilapidated and achieving only basic cleanliness. There are signs of fire scorching to corners on the ground and first floor. The bare floors and walls are marked and unattractive.

The leases

5. The Tribunal is provided with the lease for 51 Mallows Green. The lease includes a number of covenants which are relevant to the issues before the Tribunal and which are summarised below (adopting the numbering of the lease) –

Covenant 3(a) provides that the flat is leased subject to the payment of the rent, service charge and improvement contribution (if any)

Covenant 4(b) requires the applicant lessee to pay to the respondent council the service charge payable for the items

listed in paragraph 1 of Schedule G to the lease in accordance with the provision of that Schedule

Covenant 4(c)(i) requires the applicant to pay the estimated annual service charge, being an estimate of the total costs the respondent expects to incur during the financial year save for major works charges

Covenant 4(c)(ii) provides that the estimated annual service charge may be paid by monthly instalments by variable direct debits if agreed between the parties

Covenant 4(c)(iii) provides that, in the event that there is no agreement for monthly instalment payments, then the estimated annual service charge is payable by the applicant on 1st April each year

Covenant 4(g) is the only provision in the lease relating to landlord costs and refers only to the costs of forfeiture proceedings.

Covenant 7(c) requires the landlord to maintain those services specified in paragraph 4 of Schedule B to a reasonable level

Covenant 10 requires the landlord to maintain replant and reconstruct the grounds to the block and service the refuse needs and provide amenity cleaning within those grounds. The covenant expressly acknowledges that the landlord has been paid £1400 at the time of the grant of the lease as consideration for providing this service in perpetuity

Paragraph 4(vi) of Schedule B provides that the tenant will have the benefit of cleaning and lighting to the lobbies, passageways, stairs; lifts and other common parts

Schedule G provides that the tenant is liable to pay as a service charge a reasonable proportion of the costs of providing, inter alia, the Schedule B services (see Schedule G paragraph (1)(i)).

Schedule G further provides that the tenant is liable to pay a service charge as follows -

G(1)(vii) – to include a reasonable proportion of the administrative costs of billing & collecting service charges

G(2) – the service charge year shall be the landlords financial year

G(3) – the service charge shall comprise the “basic part” and the “specific part”

G3(ii) – the “basic part” part shall be the generic costs shared across the landlords housing stock

G3(iv) – the “specific part” shall be the specific costs relating to this property

G4(i) – the actual service charge shall be notified by 30/9 for each Yr ended 31/3 previous

G4(ii) – the actual service charge must give account for any payment made toward the estimated charge

G5(i) – the landlord shall supply a summary of the relevant costs incurred should the tenant demand the same, and such a summary shall be certified by an accountant

The hearing

Representation & attendance

6. The Tribunal has heard from the applicant Mr Sadler who has occupied the premises for some 15 years and been a long leaseholder of the same since 2004. The respondent has been represented by Mrs Bradford, who has been assisted by a number of officers : Claire Hicks (home ownership team leader), Kelly Jeffries (housing officer) and Cheryl Herrett (cleaning services contract manager).

A summary of the applicant’s case

7. Mr Sadler has forcefully identified the issues he wishes to pursue. He states that he takes pride in his home and the block, and that the respondent does not provide an adequate level of services for the charges made. The estate gardening is not adequately maintained in his view and he points to the weeds growing out of the block at ground level and an adjacent bush which, previously attractive, has

been stripped back to nothing. In relation to the bin stores he reports that the overflow pipes leaked onto to them for a period until remedied some weeks ago. He complains the refuse collectors often split the refuse bags as they collect and leave a mess which attracts rats and maggots. He states that the stores had become overgrown with creepers until they were cut back by the applicant assisted by Mr Jackson of 53 Mallows Green. He reports that he himself has been carrying out internal cleaning common parts cleaning to make up the poor service provided by the cleaning contractor. He states that the contractor cleans for approximately 10 minutes on weekdays but that the time during visits does vary. He states from his own experience that an adequate sweep through of floors, stairs and walls would take 10 minutes and an adequate mop through a further 10-15 minutes. He points to the scorch marks on the walls on the ground and first floors as having been there since he lived there and so showing the lack of adequate cleaning throughout that time. He recalls that fire damage and graffiti and dents to the walls have been caused by people coming in from outside the block and for some time by anti-social behaviour by a previous tenant on the ground floor and his visitors. Mr Sadler has provided a number of DVD recordings of various events on various dates which the Tribunal have viewed. The Tribunal takes the view that only one of the DVDs shows anything of relevance to the issues to be decided. That DVD shows the cleaning contractor leaving the block via the communal front entrance door and shows Mr Sadler then walking through the communal parts to that door and filming the floors, stairs and walls to show that the newly completed cleaning is to a poor standard. This appears to have been recorded in or about late June/early July 2010. The Tribunal has provided facilities for the respondent to view this DVD during the hearing.

A summary of the respondent's case

8. In relation to the common parts cleaning a witness statement from Mrs Herrett explains the cleaning schedule, provides a copy of that schedule, and explains that Mrs Jeffries inspects sometimes to ensure the work is done to an acceptable standard. In oral evidence it has been established that the specification is based on that used by the respondent's direct labour organisation until the work was contracted out in 2007, and that the DLO specification was itself based on a time and motion study produced in 1998 which calculated an average time required to carry out the specified works. The specification requires the contractor to sweep the balconies and stairs, mop the landings and stairs, polish the interior surfaces of the glazing, wipe

the sills, wipe the banisters, wipe the railings and clean the outside areas. The respondent's statement of case confirms that the average time employed to carry this out is 1.1 hours. The respondent contends that both the inspection and the DVD disclose a reasonable standard of cleanliness and so quality of work. It is able to point to correspondence in April & May 2005 which refers to complaints from the applicant and monitoring visits by the cleaning manager who states that s/he is satisfied with the contractors work. In relation to cleaning of the bin stores Mrs Herrett states that they are viewed as the tenants' responsibility but are nonetheless cleaned once each week. It is clear that once weekly refuse collections are carried out by a contractor, Veola, who are expected to leave the stores in a reasonable condition after collection. The council are able to point to a number of documents recording responsive visits to deal with complaints such as those recorded from the applicant in April 2005 and August 2008. In relation to the garden/grounds maintenance this is carried out by a contractor Kier Harlow by seasonal visits in April and October. Additional visits are only in response to complaints. Grass cutting is carried out every 6 weeks. Beds and shrubs are attended to only on the April visit. Weed spraying is part of the contract. This work is supervised by a bi-annual inspection by housing management. Otherwise Kier Harlow are left to be self-supervising. Those with direct involvement on the contract (Darren Fazackerly of the respondent and Sussane Punty of Kier Harlow) were not asked to attend the hearing and so the Tribunal has had a paucity of evidence as to what if any supervision of this contract actually takes place.

Determinations

Gardening/grounds maintenance

9. Covenant 10 requires the landlord to maintain replant and reconstruct the grounds to the block and service the refuse needs and provide amenity cleaning within those grounds. The covenant expressly acknowledges that the landlord has been paid £1400 at the time of the grant of the lease as consideration for providing this service in perpetuity. It follows that no ongoing periodic service charge is payable for the gardening/grounds maintenance. The respondent accepts this both in its statement of case and during the hearing. The Tribunal's determination is to confirm the position that no ongoing periodic service charge is payable for the gardening/grounds maintenance. Nonetheless, it is apparent from our inspection and the

information before us that the gardening/grounds maintenance is not being provided to a reasonable standard. On inspection the gardens and grounds appear as unsightly and unkempt. We note that the grass is cut every 6 weeks throughout the year whereas sensible management is seasonal so that cutting is more frequent during the growing season and less so outside of that season (eg. 13 cuts p/a with only 2-3 during the Winter months). Similarly, shrubs might be maintained twice per year whilst weeding is required more regularly. Finally, the lack of any reasonable supervision of contractors by the respondent allows these unsightly and unkempt conditions to continue.

Bin stores

10. Covenant 10 requires the landlord to maintain replant and reconstruct the grounds to the block and service the refuse needs and provide amenity cleaning within those grounds. The covenant expressly acknowledges that the landlord has been paid £1400 at the time of the grant of the lease as consideration for providing this service in perpetuity. It follows that no ongoing periodic service charge is payable for the servicing of cleaning of the bin stores. The respondent accepts this both in its statement of case and during the hearing. The Tribunal's determination is to confirm the position that no ongoing periodic service charge is payable for the servicing of and cleaning of the bin stores.

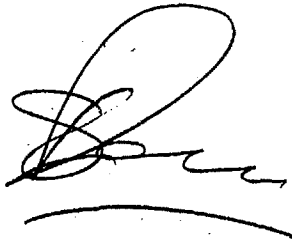
Cleaning of the internal common parts

11. Paragraph 4(vi) of Schedule B provides that the tenant will have the benefit of cleaning and lighting to the lobbies, passageways, stairs; lifts and other common parts. Schedule G provides that the tenant is liable to pay as a service charge a reasonable proportion of the costs of providing, inter alia, the Schedule B services (see Schedule G paragraph (1)(i)). Accordingly, the applicant is liable to pay his due proportion of the costs of cleaning the internal common parts as a service charge. The Tribunal's visual inspection today found a basic and poor standard of cleanliness in the common areas. This corresponds with the state immediately after a cleaning visit as shown in the DVD provided by the applicant. However, the present cleaning costs recharged as service charges are, in the view of the Tribunal, reasonable for the present level of cleaning to meet the present specification in the present time allowed under the contract. The Tribunal therefore determines that the service charges demanded for

common parts cleaning are payable and reasonable. Nonetheless, the Tribunal recognises the applicant's concerns and frustrations at the poor level of cleanliness in the common parts. The respondent should revisit the extent and quality of the cleaning service. The present specification is inadequate (eg. it does not include the walls) and should be revised to take into account lessees concerns and include all of the common parts. The present time allowed is based on a very old assessment and should be revisited based on a more comprehensive specification. Supervision by some body other than the contractor will be advisable to ensure adequate service delivery.

Costs

12. The respondent accepts that there is no provision in the lease which permits it to recharge the costs of these tribunal proceedings as a service charge now or in the future. In such circumstances there is no need for the Tribunal to consider an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding it from doing so.



Stephen Reeder
Chairman

Caution

The Committee inspected the subject block and the plot on which it is situated solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the block or plot in this Decision are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the block or plot.

