

**Eastern Rent Assessment Panel**  
Great Eastern House Tenison Road Cambridge CB1 2TR  
Telephone: 0845 1002616 Facsimile: 01223 505116



**REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL**  
**Landlord & Tenant Act 1985 Sections 27A and 20C**

**Premises:** 216 Teviot Avenue, Aveley, Essex RM15 4QJ  
**Our ref:** CAM/00KG/LSC/2004/0010

**Application dated 21 March 2004**

**Hearing:** Determined by Written Representations on 25 August 2004

**Applicants:** Mr Roger Savill  
Brooklands Farm, Romsey Road, East Wellow, Hants SO51 6BG

**Respondent:** Thurrock Borough Council  
PO Box 1, Civic Offices, New Road, Grays, Essex RM17 6LT

**Members of Tribunal:**  
Mr G M Jones - Chairman  
Mr J R Humphrys FRICS  
Mr P A Tunley

**0. BACKGROUND**

**The Property**

- 0.1 This property is a second floor flat in a building forming part of a large Council estate. The flat was purchased by the sitting tenant Peter Hughes under the "right-to-buy" legislation. The lease dated 16<sup>th</sup> March 1998 is a fairly standard "right-to-buy" lease for a term of 125 years from the date of the lease at a rent of £10 per annum. The lease imposes on the Council fairly standard obligations of management, maintenance and repair, subject to reimbursement by the tenant of the relevant proportion of associated costs through service charge provisions.

**1. THE DISPUTE**

- 1.1 The dispute is over administration charges for the years 2002-3 and 2003-4. For 2002-3 the sum claimed by the landlord was £121.34; for 2003-4 the estimated figure is £125. The Applicant says these charges are excessive. He says that a Council officer has admitted to him that the charges are not specific to the block and the Council is unable to prove what administration costs actually relate to the block.

1.2 The Applicant further says that in his experience all other Councils charge 10% on the cost of work carried out on their blocks. The charges in this case are higher than the London Borough of Havering, Winchester City Council or Nene Housing Association.

1.3 The Procedural Chairman took the view that the dispute was suitable for determination by written representations. Both parties have agreed to this course.

## **2. THE EVIDENCE AND ARGUMENTS**

2.1 The Council's initial response to the Application is a statement dated 1 July 2004 from Patrick James McGreal MRICS ACIH, the Council's Senior Assistant Lands Officer. His duties include the overall management of service charges and the statutory right-to-buy scheme. He says he gives evidence as an expert witness (though obviously not independent).

### **The Evidence of Patrick McGreal**

2.2 Teviot Avenue forms part of the Kenningtons Estate built by London County Council in the 1950's. The Estate contains a mix of houses, bungalows and flats. 216 Teviot Avenue is a two-bedroom centrally heated flat in a three-storey block of six flats built in pre-cast concrete according to the "Cornish" system. This system has inherent defects; but fortunately periodic surveys have revealed no problems arising from those defects. The block benefits from a caretaking service, communal lighting and secure entry doors.

2.3 The administration charges fall within the definition of chargeable services in the lease. The service charge year is 1 April to 31 March. At the end of each financial year the cost of relevant expenditure for each block (as per Schedule 5 to the lease) is established, necessary adjustments made and the total is divided by the number of flats in the block (as per Schedule 4 to the lease).

2.4 The reasons for and the calculation of the administration charge are explained in detail; in short, staff keep timesheets, other costs are assessed and the total cost of services to leaseholders is divided amongst all the leaseholders to whom the Council provides services. This is admittedly a broad-brush approach. However, the process of allocating time and cost to individual properties would be uneconomic. The London Housing Unit's good practice guide "Managing Local Authority Leaseholds" accepts that a broad-brush approach is reasonable.

2.5 In 2000 the Council conducted a Best Value review which established that the Council's administration charge for 1999 (then £80 p.a.) was below the average of £92.53 p.a. of 17 councils sampled. Since then, the trend has been upwards because of inflation and because new legislation places greater demands on landlords. In case reference CAM/00KG/LSC/2004/0009 the Council's charge was held to be reasonable.

2.6 Mr McGreal contacted the public sector landlords listed by the Applicant. Havering LBC say their charges, based on 15% of costs, do not cover their management costs. Winchester CC say their leases specify the higher of £10 p.a. or 10% of costs, which leaves a large element

to be subsidised by weekly and monthly tenants. Nene Housing Society say they charge the higher of £50 p.a. or 10% of costs, a rate established some years ago and in need of review. Overall, in the opinion of Mr McGreal, the Council's charges are reasonable.

- 2.7 By way of counter-representations dated 2 August 2004 Mr McGreal asks the Tribunal to make declarations as regards the actual charges for 2002-3 and the estimated charges for 2003-4.

#### **Applicant's Response**

- 2.8 Mr Savill says the Council's evidence does not address his basic objection. The Council is simply not able to establish the cost of services provided to his flat.

### **3. THE LEGAL PRINCIPLES**

- 3.1 Under section 18 of the 1985 Act (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management.
- 3.2 Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.
- 3.3 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if 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 so, the amount which would be payable.

### **4. CONCLUSIONS**

- 4.1 The Tribunal accepts that the matters covered by the administration charge are within the service charge provisions for the lease. This does not appear to be in dispute. The Council appears to have proper systems and procedures for identifying the cost to the Council of providing services to leaseholders and there is no reason to suppose that their calculations are wrong. The Tribunal is satisfied that those costs were incurred.
- 4.2 Under paragraph 4 of Schedule 5 to the lease, the service charge payable by the tenant is to be the specified proportion calculated either by:
- Dividing the aggregate of the expenses and outgoings incurred in respect of the items of expenditure in respect of the building by the number of flats in the building or

- In the case of those items for which the landlord's expenses extend to the estate or other estates then a fair and reasonable proportion of the costs of such expenses attributable to the premises such proportion to be determined by the finance officer whose decision shall be final and binding or
- Such other method as the landlord shall specify acting fairly and reasonably in the circumstances and from time to time and at any time

(including but without prejudice to the generality of the above any combination of methods).

- 4.3 These provisions appear to be designed to meet the objection raised by the Applicant and to avoid the practical difficulties highlighted by Mr McGreal in making a more precise apportionment. Clearly, the Council should in fairness be entitled to recover a reasonable sum for the services provided to each and every one of its leaseholders. In the judgment of the Tribunal, these lease provisions provide a mechanism to enable that to happen in a reasonable and practical way. The Tribunal is satisfied that the mechanism has been applied in a reasonable fashion. The Tribunal points out that, if it were necessary, in order to recover costs at all, to apportion every penny precisely to each property, the administrative costs of making that apportionment would be considerable and the tenants would be unable to complain if they were required to pay those additional costs.
- 4.4 It is nevertheless necessary to consider whether the overall administrative charges to the Applicant are reasonable. In making this judgment, the Tribunal should and does scrutinise the opinion of Mr McGreal in the light of the expert knowledge of its members. If the Council's costs are unreasonably inflated by poor working practices, or extravagant use of staff and resources, the wasted costs cannot reasonably be charged to leaseholders. On the other hand, the charges need not be the cheapest among public sector landlords. The extract PJMcG7 from Managing Local Authority Leaseholds shows the huge variation in charges made by London boroughs. The circumstances of each local housing authority or housing association are different. Some may be undercharging, whether knowingly or unknowingly, deliberately or by accident or force of circumstance (eg unfavourable lease terms). Nevertheless, the Tribunal accepts the evidence of Mr McGreal that the charges in this case for 1999 were below the average of 17 councils (mostly based in North London and Essex).
- 4.5 Moreover, a useful comparison can be drawn from private sector charging rates in the locality (a matter of which the Tribunal has considerable experience). Few commercial managing agents in Essex would undertake this type of management at the Council's rates. On the evidence, the Tribunal is satisfied that the actual charge of £121.34 for 2002-3 was reasonably incurred, the estimated charge of £125.00 for 2003-4 is reasonable and both are payable.

**Geraint M Jones MA LLM (Cantab)**  
**Chairman**  
**21 September 2004**

