RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case Number: CH1/15UG/LIS/2006/0003

Re: Chalets 8, 9 and 10 Carnmoggas Holiday Park Little Polgooth St Austell Cornwall ("the Premises")

Between: Brian Vallelely and Valerie Vallelely (Chalet 8)
Sheila Muriel Burley (Chalet 9)
Brian John King and Gillian Mary King (Chalet 10)

Applicants

Udlaw Limited

Respondent

Hearing: 19th September 2006

Appearances:
Mr & Mrs B J King, Mr & Mrs B Vallely
and Mrs S Burley (the applicants)

Mr N Gigg and Mr D Morris (John Hodge Solicitors)
for the respondents.

Statement of the Tribunal's decision and reasons

Date of issue: 20th October 2006

Tribunal: D Sproull LLB (Chairman)
R Batho MA BSc LLB FRICS FCIArb
A J Lumby BSc FRICS

Background

By an Application dated the 18th February 2006 the Applicants applied to the Tribunal to determine the liability to pay, and the reasonableness of, service charges in respect of the Premises. A pre-trial review had been held on the 4th May 2006 when Directions were made. The Tribunal inspected the premises and the remainder of the holiday park before the hearing which took place at the Cliff Head Hotel St Austell on the 19th September 2006.

Evidence

Following the directions, bundles of documents had been produced by the Applicants and the Respondent including copies of the relevant Leases. At the hearing the Applicants confirmed that the Premises constituted holiday bungalows but they understood that several of the bungalows on the holiday park were lived in by their owners for most of the year but could only speak with certainty in respect of the immediately neighbouring properties. They confirmed that the Leases of the bungalows contained a covenant that they could only be used as holiday bungalows. The Respondent produced a copy of the most recent Planning Consent which contained a Condition that the bungalows should only be used for holiday purposes and should not be used for permanent residential accommodation. He confirmed that none of the covenants in the Leases had been varied. Mrs Burley of Chalet number 9 had no other home but did go away from her chalet for two or three months each year whereas Mr and Mrs Vallelly and Mr and Mrs King lived elsewhere and used their chalets for holidays only.

The Law

Service Charge is defined by Section 18 of the Landlord and Tenant Act 1985 as "an amount payable by a tenant of a dwelling as part of or in addition to the rent...". Dwelling is defined by Section 38 of the Landlord and Tenant Act 1985 as "a building or part of a building occupied or intended to be occupied as a separate dwelling...". The Applicants did refer us to Section 16 of the Landlord and Tenant Act 1985 which contains the definition of "lease of a dwellinghouse" but this definition specifically refers to Sections 11 to 15 Landlord and Tenant Act 1985 (repairing obligations in short leases) and did not assist us.

There is little judicial authority on the meaning of the word "dwelling" although we did find helpful the Court of Appeal Decision of Caradon District Council v Paton (2000) 35 EG 132 which concerned the construction of a covenant not to use a property for any purpose "other than that of a private dwellinghouse". This case was mentioned to the parties and its conclusion explained but none of them sought time to consider or take advice on the point.

Decision

Clause 2 (x) of the model Lease which had been produced to us provided that the premises should not be used "for any purpose other than that of a holiday bungalow" and the Planning Consent which was produced to us dated 5th May 1999 issued by the Borough of Restormel provided that the development permitted should be "used for

holiday purposes and shall not be used for permanent residential accommodation". In those circumstances we found as a matter of law that the premises did not constitute dwellings for the purposes of Section 18 Landlord and Tenant Act 1985 and that we accordingly did not have jurisdiction to deal with the application.

We considered the Applicants' application under Section 20C Landlord and Tenant Act 1985 which we allowed on the basis that it would not be just and equitable in the circumstances for the Respondent to recover its costs of these proceedings.

Chairman (Signed)

Dugald Sproull LLB

Dated 20th October 2006