

LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN
RENT ASSESSMENT PANEL

In the matter of Sections 20C and 27(A) and Paragraph 8 of Schedule 1 of
the Landlord and Tenant Act 1985 as amended

Tribunal: M J Greenleaves Chairman
 J McAllister FRICS
 J Mills

Re: 60 Erica Drive, Corfe Gardens, Corfe Mullen BH21 3TQ "The
Property"

Applicant	Miss N R Deuters	No 60 Erica Drive
Additional Applicants:	Mrs Sibley	No 50
	Miss L Buckby	No 40
	Mrs H Gilfoy	No 58
	Major N Songhurst	No 52
	Mr W Darbyshire	No 48
	Mr & Mrs J Smith	No 56

Respondent: G & O Rents Limited "the Landlord"

Appearances:	The Applicant and Additional Applicants	Mr Annen, Solicitor, Richard Sedgley & Co
	The Respondent	Mr Adnan, with Mr Glover, both of Urbanpoint Property Management Ltd (the Agent)

Inspection & Hearing Date: 7th July 2005

Introduction

1. On 18th February 2005 applications were made to the Tribunal by Miss Deuters ("the Applicant"), in respect of 60 Erica Drive, Corfe Gardens, Corfe Mullen BH21 3TQ (the Property) to determine issues arising between the Applicant and the Landlord as follows:
 - 1.1. Under Section 27A of the Landlord and Tenant Act 1985 ("the Act") whether service charges claimed by Urbanpoint Property Management Limited ("the Agent") on behalf of the Landlord were reasonable in respect of various accounting years.

- 1.2. Under Paragraph 8 of Schedule 1 of the Act challenging the Landlord's choice of insurer.
- 1.3. For an Order under Section 20C of the 1985 Act limiting the inclusion of the Landlord's costs of the proceedings in the service charge.
2. Pre-Trial Review
 - 2.1. On 12th April 2005 a pre-trial review was held which was attended by the Applicant and Mr W Darbyshire of No 48 Erica Drive. The Landlord was neither present nor represented.
 - 2.2. On the application of the Additional Applicants and on the basis of evidence then produced, it was considered that they had a sufficient interest in the application and they were joined as applicants in the proceedings.
 - 2.3. It was ordered that the matters in dispute shall be limited to service charges (including insurance premium) for the following years (all ending 30th June) 1999/2000, 2000/01, 2001/02, 2002/03, 2003/04 and 2004/05.

Inspection

3. The Tribunal inspected the Property in the presence of the Applicant and her Solicitor.
 - 3.1. The Property comprises a first floor flat constructed above four garages of a block of five, one of the garages also forming part of the Property. The garages themselves front on to a forecourt shared with another block of six garages.
 - 3.2. The Property is built of brick under a tiled roof and tile hung elevations. Access to the flat forming part of the Property is through the garden and an external staircase. There were some external hanging tiles missing, capping stones had fallen off the east wall of the forecourt and weeds growing in the forecourt area. It gave an unkempt appearance.
 - 3.3. The flat comprises a living room, two bedrooms, kitchen and bathroom. It has gas central heating and the Applicant has installed double glazing throughout.
 - 3.4. The block containing 10 flats including those of the Additional Applicants was not inspected, but lies to the south of the Property.

Hearing

4. The Tribunal had had the benefit of reading substantial papers from both parties prior to the hearing. Evidence was given by the Applicant and Mr Adnan. Both Mr Annen and Mr Adnan made submissions on behalf of the parties.

5. Preliminary matters

- 5.1. Having heard submissions from the parties and having considered the recently received papers, the Tribunal decided that because the only formal application under Section 27A had been made by the Applicant, the issues to be determined by the Tribunal were limited to charges applicable to the Property only. So the

Tribunal could not consider issues arising from the block occupied by the Additional Applicants.

- 5.2. Under the lease of the Property, the Landlord has the obligation to insure. Paragraph 8 of Schedule 1 to the Act applies only where that obligation is on the tenant, so the application made in this respect does not apply to the Property. However, the amount of insurance premium in dispute was to be considered by the Tribunal.

6. The Case for the Applicants. Mr Annen referred to relevant terms of the Applicant's lease which had been granted to her on 4th March 1982 for a term of 99 years from 1st February 1982. He submitted:

- 6.1. that it was virtually a full repairing lease requiring the Applicant also to repair the roof, main walls and fences. He noted there was some overlap with the Landlord's obligations which included repair of the main structure and foundations of the Building (the flat and 5 garages);
- 6.2. there was no provision in the lease for contribution by the Applicant towards management fees, excess service charge, administration fees or general reserve;
- 6.3. the Applicant was only required to pay the insurance premium for the Property and 5/8ths of all costs and expenses incurred by the Landlord in carrying out its repairing covenant payment to be made (a) as to the estimated amount of such costs and expenses on demand in writing being made to the Applicant prior to the commencement of such work and (b) as to the balance (if any) after such work has been carried out;
- 6.4. administration charges, debt collection fees and excess service charge cannot be charged as they are not stipulated as payable under the lease;
- 6.5. there is no provision for a general reserve in the lease nor for the payment of accountancy fees;
- 6.6. the case of *Gilje v. Charlegrove Securities Ltd* [2002] 16 EG 182 CA which decided that items of charge were recoverable only if they were covered in clear terms by the lease;
- 6.7. *Woodfall on Landlord and Tenant* states that the costs of a managing agent are not recoverable unless the lease expressly so provides. He also stated that that they could not be charged under the provisions of Clause 4(8) of the lease;
- 6.8. there is no calculation of the excess service charges nor is there any evidence to justify payments demanded;
- 6.9. the Applicant said that no maintenance had been carried out by or on behalf of the Landlord to the Property or any common parts since the commencement of her lease;
- 6.10. the Landlord's survey report of June 2001: not only had none of the work been carried out by the Landlord but most of it would be the Tenant's responsibility anyway, rather than that of the Landlord;
- 6.11. the Applicant had made payments on account of service charge simply to satisfy the requirements of her mortgagee, but there is no evidence as to what has happened to her money. Part of the

money had been repaid on 11th March 2005 but £4,775.36 was still being held;

- 6.12. insurance premium: the Applicant had obtained a quote on 1st March 2005 for cover of £300,000 at £279.36;
- 6.13. Section 20C application: it would be wrong to add the Respondent's Tribunal costs to the service charge;
- 6.14. Mr Annen also felt that the Respondent should refund interest, at the rate of 13.59% on the amounts incorrectly charged to and paid by the Applicant.

7. The Case for the Landlord. Mr Adnan said:

- 7.1. the Applicant did not understand the accounts and had not been specific as to what she wants
- 7.2. concerning correspondence, he had written to her in October 2004 with accounts and a credit of £23.50;
- 7.3. Reserve Fund: there would have been money in it if the Applicant had paid her service charge, which she did not do for 4 years until October 2004;
- 7.4. Insurance: the total premium for 2004/05 is £539.69 of which £337.31 was apportioned to the Property although it was not known how the apportionment of 62.5% was made; he is not sure how many garages are included; that the cover provided is fair and reasonable and in accordance with the lease;
- 7.5. Administration charges: Mr Adnan looks after the accounts and it is standard practice to require payment within 14 days or then to send out a reminder which incurs the administration charge;
- 7.6. Management fees: are payable for work such as arranging insurance and dealing with queries, etc; the charges made are reasonable for this work;
- 7.7. The terms of the lease: he could not comment as he was not qualified to do so. He also did not know the identity of or any knowledge of the other leaseholders in the Building i.e. the other garages below the subject flat;
- 7.8. Management Codes: he did not know if the Agent followed any management codes;
- 7.9. Section 20C application: he did not ask for the Respondent's costs to be added to the service charge.

Consideration

- 8. The Tribunal considered all the case papers, the evidence and the submissions made on behalf of the parties
 - 8.1. Service charges. Other than the Section 20C application, the only application before the Tribunal was under Section 27A of the Act which applies to service charges. These are defined in Section 18(1) of the Act as "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 (including overheads).

- 8.2. Services charges do not include administration charges in respect of which an application may be made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Schedule defines administration charge as "..... an amount payable.....(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant, or (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease".
- 8.3. The Tribunal accordingly decided that the following items set out in the Agent's statement dated 17th June 2005 are not service charges and do not fall within the ambit of the Section 27A application and it can make no decision about them:

9 Mar 2000	Admin fee	23.50
18 May 2000	Admin fee – 2nd reminder	35.25
18 May 2000	Debt collection fee	50.00
9 Nov 2000	Admin fee	23.50
13 Nov 2001	Admin fee- 1st reminder	23.50
14 Feb 2002	Admin fee – 2nd reminder	58.75
2 Sep 2002	Admin fee 1st reminder letter	23.50
29 Oct 2002	Administration fee – 2nd reminder	58.75
17 Jun 2004	Administration fee: 1st reminder	23.50
14 Jul 2004	Administration fee – 2nd reminder	58.75
10 Nov 2004	Registration fee- notice of charge	6.17

- 8.4. In relation to service charge items only, the Tribunal accepted the submissions of the Applicant (save that whether service charge is called "excess" or otherwise, it is nevertheless service charge) and found that the only items of service charge which are payable in accordance with the lease are those which are either insurance premium or fall within the wording of Clause 4(5) of the lease which provides specifically for payments of items covered by Clause 5(4). The latter clause provides, in terms, for the Landlord to repair various parts. Only if those parts are actually repaired is the Applicant required to contribute 5/8ths of the cost. The Tribunal accepts the Applicant's evidence that no repairs have been carried out since she took her lease in 1982 and it accordingly finds that no payments are or have been due from her for repair, whether actually carried out or simply paid on account of future repairs into a general reserve.
- 8.5. The Tribunal further finds that neither Clause 5(4) nor any other provision in the lease in any way provides for payment of management fees, accountancy fees or for a reserve fund and they are accordingly not payable.
- 8.6. Legal & professional fees. These relate to the year ended 30th June 2001 for a survey report. It relates partly to valuing the Property and other premises for insurance purposes and partly with a view to carrying out repairs. The Tribunal finds that few if any items mentioned in the report for repairs are repairing obligations of the Landlord, no work has been done and it does not fall under Clause 4(5). To that extent it is not reasonable and is not payable.

However, the Tribunal considers it fair to attribute one-half of its cost to the Landlord's insuring obligation and one half of the cost is allowed accordingly.

- 8.7. Insurance premium. The Tribunal considers that the actual apportionment of premium is reasonable and that the sums charged for premium are reasonable for the cover provided, which again the Tribunal finds to be reasonable.

Decision.

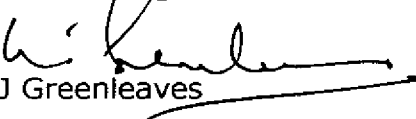
9. The Tribunal accordingly finds in respect of service charges:
10. No sums referred to in the statement of account 17th June 2005 as service charge, excess service charge, interim service charge or any similar description are payable save those items shown as payable below. To the extent that they have been paid, they are repayable to the Applicant.
11. With regard to interest charges, the Tribunal finds that there is no right to charge it under the terms of the lease. Accordingly the Tribunal decides that 75% is refundable under this application as being related to service charges. (The other 25% relates to administration charges – see also 8.2 and 8.3 above)
12. In respect of the annual statements of service charge produced for the years in question the Tribunal decides as follows:

Period	Item	Payable / not payable	Sum due (if any)
Period ended 30th June 2000	Audit and accountancy	Not payable	
	Insurance premium	Payable	112.44
	Management fee	Not payable	
Period ended 30th June 2001	Audit and accountancy	Not payable	
	Insurance premium	Payable	209.95
	Repairs & maintenance	None	
	Legal & professional fees	Payable – one half	119.34
	General reserve	Not payable	
	Management fee	Not payable	
Period ended 30th June 2002	Audit and accountancy	Not payable	
	Insurance premium	Payable	267.14
	General reserve	Not payable	
	Management fee	Not payable	

Period to 30th June 2003	Audit and accountancy	Not payable	
	Insurance premium	Payable	325.71
	General reserve	Not payable	
	Management fee	Not payable	
Period to 30th June 2004	Audit and accountancy	Not payable	
	Insurance premium	Payable	337.31
	General reserve	Not payable	
	Management fee	Not payable	
Period to 30th June 2005	Insurance premium	Payable	343.75
	Total Payable for Service Charges		£1,715.64

13. Section 20C application. The Tribunal finds that there is no provision in the lease enabling the Respondent to recover its costs of the proceedings before the Tribunal, so no Order needs to be made.

Dated 8th August 2005


M J Greenleaves

Chairman
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor.