

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/33UG/LIS/2005/0003/01



Residential
Property
TRIBUNAL SERVICE

Property : 14 Hobart Square, Norwich NR1 3JB

Application : For determination of liability to pay service charges for the year 2002 [LTA 1985, s.27A]

Applicant : Cary Meadows, 14 Hobart Square, Norwich

Respondent : Norwich City Council, c/o Leasehold Management Team, Directorate of Housing & Revenue Services, Room 111, City Hall, Norwich NR2 1NH

PAPER DETERMINATION

Handed down : 23rd January 2006

Tribunal : G K Sinclair (chairman), J Dinwiddy FRICS, & R S Rehahn

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Determination

1. The Applicant is lessee of a maisonette on the upper level of a block known as 13-24 Hobart Square,¹ Norwich. The area has suffered from anti-social behaviour and in early 2002 the council had the opportunity to carry out work to provide a secure door entry system to the block. Most of the cost would be met by a subsidy from the government. In March 2002 the local authority wrote a letter in which the nature, estimated cost, level and availability of subsidy, and reasons for the work were set out. The letter referred

¹ There are 12 properties in the block but only the upper 6 are accessed by a common stairway, and directly affected by the disputed works

to section 20 of the Landlord and Tenant Act 1985 and purported to consult lessees in compliance with the Act. However, it did no such thing. No competitive estimates had ever been sought or obtained. Instead, the work was undertaken by CityCare, a private contractor whose staff were mostly former direct employees of the council, and with whom the council had entered into an exclusive long-term maintenance and works contract.

2. The work was duly completed and the only amount in dispute, £367, is the outstanding balance levied as part of the Applicant's service charge for 2002. The Applicant objects to the cost because the door entry system has not, as things later turned out, improved the previous situation at all. The parties have consented to the tribunal determining the application on paper, but on two bases : first, the amount payable by the lessee if the council were to apply to the County Court and succeed in obtaining dispensation from compliance with the section 20 consultation requirements; and secondly, the amount recoverable (the maximum permissible) should it not. The tribunal undertook its own external inspection.
3. For the reasons which follow the tribunal determines that :
 - a. The maximum amount recoverable from the Applicant, should dispensation be granted, is £203.12 (of which the Applicant has already paid £40.24)
 - b. The maximum recoverable, in the absence of any dispensation, is £83.33² (minus the sum already paid).

The dispute

4. When the Applicant acquired his lease under the Right to Buy provisions of the Housing Act 1985 certain maintenance and improvement works were in contemplation. The area had suffered from anti-social behaviour in the past and in early 2002 the council had the opportunity to carry out work to provide a secure door entry system to the block, controlled by door entry telephones in each maisonette. Part of the cost would be met by a subsidy from the government. According to a consultation letter addressed to the Applicant, dated 19th March 2002, the Single Regeneration Budget would meet 75% of

² £1,000 divided by the 12 properties within the block

the cost, but :

This subsidy is only available specifically for this project and at this time. In the event that the work does not proceed this subsidy will not be available in the future.

The letter explained why the council regarded the work as necessary.

This block of flats is subject to nuisance from people who access the common areas to short-cut, vandalise or use the common areas as a toilet. Installation of an access control system to existing and new entrance doors will prevent this abuse, will enable residents to control access to visitors to the block and will reduce the fear of crime.

5. Despite the work later being carried out vandalism at the property, including vandalism to the new doors themselves, has not ceased. This has not been assisted by the actions of a person or persons unknown (but believed to be one of the council's secure tenants) propping the front door open when it ought to be locked, thus defeating the whole object of the exercise. As a result, maintenance and repair costs since the installation of this security system are higher than all concerned may have had a right to expect. The Applicant has complained about these costs and what he perceives to be a total lack of benefit from this scheme to the landlord's housing officers, to his local councillor and his Member of Parliament. He asks why he should be asked pay when, he says, a lessee of an adjoining block was not required to contribute to the costs associated with his (ie the adjoining) building.

Relevant lease provisions

6. The Applicant's lease was granted following his successful application under the Right to Buy provisions of the Housing Act 1985, as amended. By section 139 of that Act a lease so granted shall conform with Parts I and III of Schedule 6. These include covenants in respect of service charges.

7. By clause 4(3) of the lease³ the lessee covenants

Without prejudice to the provisions of paragraphs 16B C and D of Schedule 6 of the Act and sections 18 to 30 of the Landlord and Tenant Act 1985 to pay such sums of service charge as are payable in accordance with the provisions of Schedule C

³ The tribunal has seen only the council's standard draft lease used for grants under the 1985 Act, not the actual lease for this property and building

8. The "Service Charge" is defined in Schedule C as
- such percentage as shall from time to time be a fair share as determined by the Council's Housing Manager or such other officer of the Council as shall be appropriate of the Council's Expenditure attributable to the Property proportionate to the number and/or nature and/or size of the properties from time to time comprised in the Building...
9. Amongst the definition of the "Council's Expenditure" are
- The reasonable expenditure of the Council (including interest paid on any money borrowed for that purpose) :-
- (a) in complying with its obligations set out in clause 6(1) (2) and (9) [repairs, provision of services, etc]
 - (b) in respect of any improvements for which the lessee is required to make an improvement contribution as defined by section 187 of the Act and
 - (c) [in keeping the property insured...]

Relevant statutory provisions

10. Section 18 of the Landlord and Tenant Act 1985 defines service charge, for the tribunal's purposes, 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, improvements or insurance or the landlord's costs of management...
11. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
- 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.
12. This is subject to a further limitation on costs incurred without prior consultation with those liable to pay for them. Under section 20, as it was at the material time and prior to amendments coming into force in late 2003, the landlord was obliged to obtain competitive estimates and submit them to consultation with all affected leaseholders. Without such consultation the landlord's ability to recover the cost was limited to the greater of £1000 in total or £50 per flat⁴ unless, under section 20(9), the County Court granted dispensation.

⁴ As increased by the Service Charge (Estimates and Consultation) Order 1988 (SI 1988/1285)

13. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A.⁵ Provided that the application is made to the tribunal after 30th September 2003 these powers apply irrespective of whether the costs were incurred before the coming into force of this new section.⁶ Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)⁷ is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the tribunal under section 27A.
14. Paragraph 16C of Schedule 6 to the Housing Act 1985 states :
- (1) Where a lease of a flat requires the tenant to pay improvement contributions, his liability in respect of costs incurred in the initial period of the lease⁸ is restricted as follows.
 - (2) He is not required to make any payment in respect of works for which no estimate was given in the landlord's notice under section 125.
 - (3) He is not required to pay in respect of works for which an estimate was given in that notice any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.
15. In the instant case the section 125 notice gave an estimate for improvements, including an access control system valued at £18,000 (individual contribution £1,500).

Inspection

16. The tribunal inspected the premises shortly after 10:00 on the morning of 20th December 2005. At the time of the inspection the weather was cold and cloudy but dry. The building in question is one of a number forming part of the council's Hobart Square estate. As one approaches from Hall Road one passes a block of similar construction, but that adjacent is lower, with separate staircases giving access to the upper flats or

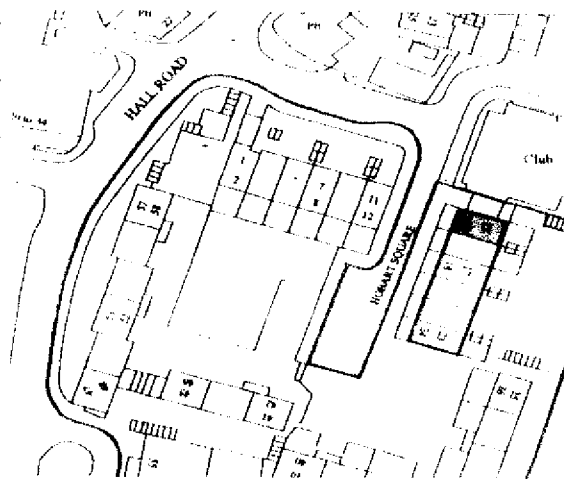
⁵ As introduced by the Commonhold and Leasehold Reform Act 2002, section 155(1)

⁶ See the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 [SI 2003/1986], Article 2(c) and Schedule 2, para 6

⁷ Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

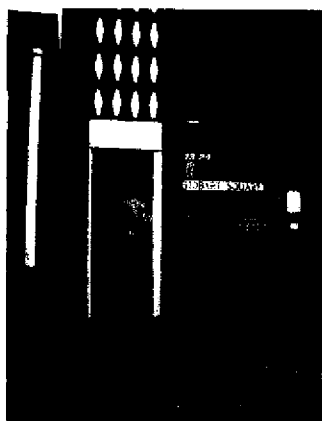
⁸ The initial period is 5 years : para 16C(4)

maisonettes. Number 14 is the first door of six one comes to on the open upper landing . Access is gained via a front door which, at certain times of day, can be opened only by an electronic key fob passed close to or touching a metal pad or by pressing a button for a particular maisonette and requesting access from an occupant.



Location plan : Hobart Square, Norwich

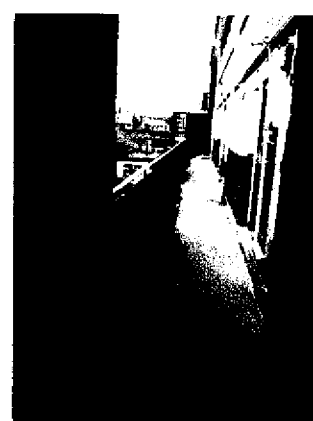
17. The tribunal's inspection took place before the end of the period during which the door remains open for service callers (milkman, post, utilities or deliveries). Access to the entrance lobby and stairs could therefore be gained by pressing the service button on the large metal control pad next to the door. Inside is a concrete floored lobby with concrete steps ascending two return flights to an open walkway running the length of the



Front entrance with button key pad



Rear entrance from yard



Upper walkway (from top of stairs)

east side of the building. If one passes straight through the lobby access is given to a large rear yard through another wooden door. This does not come equipped with the same large key pad, but there is a service button. The impression given was that both the door and the fixed window panels on either side were new. Access to the ground floor maisonettes is reached from this large yard, through individual small fenced yards. If the residents of these properties have no key access through the lobby entrance doors then they or their visitors must walk the entire length of the block and enter the yard from its southern end.

Discussion and findings

18. The tribunal read and considered the written submissions and accompanying documents provided by each of the parties, including the council's draft or model lease, and makes the following observations :

- a. Both the lease, and the statutory provisions on sale under the tenant's Right to Buy, provide for recovery of a share of the cost of improvements
- b. This issue, and the potential maximum amount that the council might seek to recover, were flagged up at the time of sale of the Applicant's property in the section 125 notice, viz one twelfth of the total estimated cost of £18,000
- c. The claimed net cost to the leaseholder is less than that recoverable under the original notice, but in its 2002 schedule of specified works and cost⁹ the total is estimated as £9,650.64 and, net of the 75% grant aid, the Applicant's share was assessed at £402.11, or one sixth. This was later amended to £407.24¹⁰
- d. Although the ground floor residents do not benefit from this security system, and arguably might be said to suffer from a restriction in access to their properties via the north end of the building, the tribunal can see nothing in Schedule 6 to the lease entitling the landlord to levy different percentage service charges for specific cost items incurred. For example, would the council charge only the lessees of the upper floors for roof repairs? With twelve properties in this service charge unit the maximum recoverable is therefore only one twelfth of the net cost
- e. The residents were all consulted in writing about the proposed works, and there is no evidence of any objections, or indeed of any response by the Applicant or others at that stage
- f. The full cost of the improvement works is not necessarily reasonable, because there is no evidence of costings beyond a single contractor (viz City Care)
- g. However, the availability of 75% grant aid further reduces the cost, and explains the council's urgency in getting the work done in that year
- h. On balance a cost to the Applicant of £201.06 is therefore extremely reasonable, if the section 20 tendering and consultation requirements are dispensed with.


⁹ Landlord's enclosure 2

¹⁰ Landlord's enclosure 3

Were court proceedings to be issued under section 20(9) the tribunal offers its own non-binding opinion that, had the new section 20 applied to these works, it would have granted the necessary dispensation under s.20ZA

- i. As a proposed improvement the works seem a good idea, given the problems of security, but the length of the period of insecure tradesman's access (06:00–12:00 noon) militates against the effectiveness of the system, and this factor was not mentioned in the consultation. (The tribunal notes that the period of access was originally longer but is now reduced)
- j. In the tribunal's view the council's initial decision was reasonable. Installation is not the problem; it is the misuse of the system by residents which has caused legitimate complaint
- k. The council as landlord will need to sort out these management issues, ie the likely complaints about the cost of maintaining the system, the service charge to be levied in subsequent years if the problem is caused by its own tenants, and its apparent inability to control the behaviour of such tenants.

Dated 23rd January 2006



Graham K Sinclair – Chairman, for the Leasehold Valuation Tribunal