

**Leasehold Valuation Tribunal for
Eastern Rent Assessment Panel**

File Ref No: CAM/22/UB/NSI/2003/8

Leasehold Valuation Tribunal: Decision

Landlord and Tenant Act 1985 ("the Act")

Tribunal Members: Mr John Hewitt, Chairman
Mr Frank James, FRICS
Mr Robert Martin

The Premises:
19 Norwich Walk
Basildon, Essex
SS14 3QP

The Applicant:
Mr Peter Gooch

The Respondent:
Basildon District Council

Appearances:
Mr Peter Gooch

Ms Kirstie Beecroft Counsel
Ms Claire Weller Estate Officer
Mr John Richardson Principal Officer
Ms Carol Barrett Home Ownership Team

Hearing:
Tuesday 27 January 2004 at the Camponile Hotel, Southend Arterial Road, Basildon
SS14 3AE

1. Introduction

- 1.1 There is before the Tribunal applications dated 5 September 2003 made pursuant to sections 19(2A) and 19(2B) of the Act. The Applicant, Mr Gooch, has raised issues concerning service charge costs going back to 1986 when the lease was granted.

- 1.2 Prior to the hearing we were provided with a bundle of documents said to be relevant to the issues to be considered. During the course of the hearing additional documents were made available to us. Both the parties had opportunity to consider the documents before us.
- 1.3 The Respondent, the Council, asserts that the service charges had been paid in respect of all years up to 31 March 2002. Mr Gooch confirmed that this was so. He said he had not paid them voluntarily, in the sense of paying over cash or sending a cheque. He had made payments on account in conformity with the terms of the lease, and these together with a credit issued by the Council in respect of an earlier overcharge had been applied by the Council to clear prior years alleged arrears.
- 1.4 Evidently legal proceedings to recover arrears had been issued by the Council in March 2002. At a hearing in October 2002 the judge suggested that the parties meet to try and resolve issues. A meeting was held in November 2002, but does not appear to have been conclusive.
- 1.5 The Council says, that on 25 November 2002 the court directed the service charge dispute to be referred to the LVT, but a copy of the notice or order was not made available to us.
- 1.6 It is not clear to us what is the exact current status of the court proceedings.
- 1.7 The Council submitted that as all service charges prior to 31 March 2002 had been paid, the Tribunal did not have jurisdiction to consider the reasonableness or otherwise of them. Reference was made to the case of *Daejan Properties Limited v London Leasehold Valuation Tribunal* [2001] EWCA Civ 1095. A copy of the law report was handed to Mr Gooch.
- 1.8 We considered the question of jurisdiction carefully. In the light of the admitted fact that the service charges for years prior to 31 March 2002 had been paid, and in the light of the judgment of Lord Justice Simon Brown in the *Daejan* case, we concluded that did not have jurisdiction to deal with service charges issues prior to 31 March 2002. We came to the conclusion that the test for jurisdiction was whether or not the service charges were paid. We did not consider the fact that the Council effected payment by use of credit gave us jurisdiction. We concluded that the Council was lawfully entitled to apply the credit to prior years arrears. We concluded that if the arrears were paid in a lawful way, we did not have jurisdiction. In coming to this view, we also bore in mind that Mr Gooch might still pursue the issue in the court proceedings and/or make an application pursuant to section 27A of the Act.
- 1.9 In the circumstances we came to the view that we could only consider the reasonableness of service charges claimed for the year 1 April 2002 to 31 March 2003, and the reasonableness of the sums claimed on account in respect of the year 1 April 2003 to 31 March 2004.
- 1.10 The Tribunal had the opportunity to visit 19 Norwich Walk shortly prior to the hearing. Mr Gooch was present together with representatives of the Council. We found a small block of 13 maisonettes, 6 laid out on the ground floor and 1st floors and 7 laid out on the 2nd and 3rd floors. The maisonettes on the ground and 1st floors enjoyed small front and back gardens and had independent access. The maisonettes on the 2nd and 3rd floors were accessed by a common parts stairway to a 2nd floor open corridor along which were the front doors to each maisonette. The block appeared to us to be a 1960's development. Overall it appeared to have a rather tired look. It was in need of care and redecoration. The occupiers of the upper maisonettes have the use of

a small rubbish bin area at ground level. It contained 3 large bins, but there were only 1 and a half lids for them. The area also contained accumulated leaves and other debris. The common parts also contained accumulated debris, including an old sink unit propped against a wall. We were invited to inspect 19 Norwich Walk internally. Mr Gooch drew to our attention the poor condition of the window frames. It was also suggested to us that the heating system might be defective.

2. The Lease and the Service Charge Regime

- 2.1 We were provided with an unstamped, undated and unsigned copy of a lease. We were told by parties, that it was a true copy of the lease granted by the Council to Mr Gooch. It appears to have been granted in 1986. It granted a term of 125 years from an unspecified date in 1986 at a ground rent of £10 per annum payable in advance on 1 April in each year.
- 2.2 Norwich Walk comprises part of an estate defined in the lease as "the Estate" and which is known locally as the Craylands Estate.
- 2.3 Effectively the interior of the Premises only is demised and the Council retains responsibility for the walls and the main structure, including the windows frames, but not the glass within them.
- 2.4 The tenant's covenants are set out in the Sixth Schedule. The following paragraphs are material:
 - 20. to pay on demand:-
 - (a) reasonable part of the cost incurred by the landlord on repairs to the structure or exterior of the Premises
 - (b) a reasonable part of the cost of insurance
 - (c) a reasonable part of all costs and expenses incurred by the landlord in carrying out its obligations under and giving effect to the provisions of Parts I and II of the Seventh Schedule.
 - 21. to pay an on account service charge on each quarter day. That amount to be paid is one quarter of the service charge for the immediately preceding service charge year.
 - 22. to pay, within 21 days of a demand the balance due, if any, of service charge once the final year end account has been prepared and credit given for the payments made on account.
- 2.5 The landlord's covenants are set out in the Seventh Schedule. The following paragraphs are material:
 - Part I
 - 1. to pay existing and future rates and taxes, and charges for the water supply and sewerage and " ...usual environmental services..."
 - 2. to insure and keep insured the flats
 - 3. to keep in repair the structure and exterior of the Premises
 - 5. to equalise expenditure and to carry sums to a reserve fund
 - 6. to keep proper books of account and to prepare an account to be taken on 31 March in each year of the costs incurred in the preceding 12 months
 - 7. to certify the total amount of the costs and expenses for the period and the proportionate amount due from the lessee pursuant to clause 20 of the Sixth Schedule

8. to notify the lessee within 3 months of the date for the account, the total and proportionate amounts specified and certified in accordance with paragraph 7

Part II

1. Fees and expenses paid to any managing agents, and if none employed, an amount equal to the sum of 10% of costs and expenses specified
2. Fees and expenses paid to any accountant, solicitor or other professional person in relation to the preparation, auditing or certification of any accounts, and the collection of the contributions and payments due from the lessee and the lessees of other flats within the Estate (who hold on similar terms to this lease)
3. The normal charges (including profit) when any repairs, redecorations or renewals are carried out

The Issues - Section 19(2A) of the Act

3.1 The service charge account for the year ended 31 March 2003

3.2 We focused on the items which Mr Gooch told us were in dispute as follows:-

Lighting £402.94

Mr Gooch queried this item as historically the lighting costs were about £100 per year.

Ms Weller explained that the sum was made up as follows

TXU Energy Charges	£107.84
Scouting (checking)	£ 20.00
Repairs	£275.10

Ms Weller produced dockets detailing 4 items of repair to or replacement of lighting units in the common parts. Mr Gooch inspected them and said he was satisfied with them. He stated it was essential for the lighting in the common parts to be in good working order.

The tribunal concluded that this expenditure was reasonably incurred and was reasonable in amount.

Cleaning £822.36

Mr Gooch claimed this was a big item in respect of which the Council had not previously claimed. He said he was not sure if the lease allowed the Council to claim for it. Further he did not believe the service was carried out to any appreciable extent. Rubbish was sometimes dumped by others, being non-residents and should be removed free by the Council. He claimed that the Council had no right to treat tenants and leaseholders alike.

Mr Richardson explained that no cleaning had been carried out on the Estate for some years. The Estate had not received services. It had a history of vandalism. When works were carried out, they were soon vandalised. The common parts of Norwich Walk had no regular cleaning service. A general assistant went out on demand. There was no re-charge to the leaseholders.

The Council then introduced a pilot scheme on the Estate, to remove rubbish and clean the common parts of the blocks. The Estate comprises 31, providing 217 units. Tenure is mixed with a predominance of secure tenants. The pilot scheme comprised the weekly sweeping of the stairway to the first floor, sweeping the corridor/landing on the first floor and tidying the bin area.

Mr Richardson further explained that the cleaning service was contracted out. The area office checked the work. A general assistant went out to check, generally once a month and also in response to specific complaints. Ms Beecroft submitted that the expenditure was a service charge item. She said that cleaning of the common parts was embraced within paragraph 1 of Part I of the Seventh Schedule and came within the ambit of "usual environmental services".

Mr Richardson told us that the pilot scheme was on hold. A grant of £20m was to be made to enable the Council to carry a major refurbishment of the Estate. The future of the Estate and the future management of the Estate were uncertain.

Mr Gooch told that he did not reside at the Premises, but spoke frequently with his tenant. He said she told him that cleaning was not carried out regularly. Mr Gooch was also sceptical about the monthly visits to check up. He said there were long standing defects in the common parts and these ought to have been noticed and picked up if inspections were carried out as claimed by the Council. Mr Gooch also complained of double standards. He said the Council claimed to carry out cleaning and to inspect it, but habitually failed to carry out cyclical maintenance.

On this issue, the Tribunal preferred the evidence of Mr Gooch. The Tribunal accepted that some cleaning had been carried out, but the Tribunal had grave reservations as to whether cleaning was carried out on a regular weekly basis. The Tribunal noted the state and condition of Norwich Walk at the time of its inspection. The accumulation of debris and dead leaves in the bin area did not support the contention of a weekly service. On the evidence the Tribunal could not be satisfied that the service was provided to a reasonable standard justifying a cost of £822.36.

Moreover the Tribunal was not satisfied that the expenditure came within the provisions of the lease. Cleaning was not expressly referred to. We were not persuaded that that cleaning came within the ambit of "usual environmental services" in paragraph 1 of Part I of the Seventh Schedule to the lease. It seems to us that that paragraph is concerned with the payment out, by the Council of rates, taxes or sums to utilities and statutory undertakers. We do not accept the Council's submission that cleaning services provided by the Council comes within the scheme of paragraph 1. We note also the Council has only recently introduced a cleaning service and is doing so as part of a pilot scheme.

Having regard to the foregoing, we decide that the sum of £822.36 was neither reasonably incurred nor was it reasonable in amount.

Management Charge £74.00

Mr Gooch asserted that the charge should be limited to 10% of expenditure and drew the Tribunal's attention to paragraph 1 of Part II of the Seventh Schedule to the lease.

Mr Richardson's evidence on the history to this matter, as set out in his proof was noted carefully. In addition Mr Richardson explained to us that the costs of the leasehold estate covered the following:

Home Owner Services - enquiries about repairs, cleaning, redecoration etc.
Financial Services - invoicing, cost of staff time, rent and service charge recoveries, statements of account, administration of insurance and claims notifications, legal administration costs, disputes over lease terms and enforcement of covenants.

Mr Richardson's evidence was accepted by the Tribunal. The Tribunal accepted the Council's submission that paragraph 1 of Part II of the Seventh Schedule was limited to an add on charge where managing agents were not employed. And further, that paragraph 2 of that schedule entitled the Council to recover other costs of managing the Estate, preparing the accounts and collecting the rent and service charges. The Tribunal noted that the Council was not seeking the management charge in addition to the 10% add on. However, what concerned the Tribunal was how the management charge was calculated. Paragraph 2 of Part II of the Seventh Schedule limits the expenses to management within the Estate. Mr Richardson accepted that the Council's costs of management were calculated globally across the whole of its leasehold estate. It has not apportioned costs to the Craylands Estate.

Mr Richardson told us that the Council's leasehold portfolio was growing as more tenants exercised the right to buy. Mr Richardson envisaged that the fixed costs would be spread over a greater number of properties and the management charges should reduce as time went on. We accepted this evidence.

Further the Tribunal noted that Norwich Walk receives very little in the way of services, essentially, insurance and lighting of the common parts. This may be contrasted with other blocks within the Council's portfolio where more sophisticated services are provided.

The Tribunal's attention was drawn to a decision of a previous Tribunal, Case no CAM/96/LVT/SC/083 given 2 October 2002 in respect of 466 Long Riding, Barstable West, Basildon, in which management charge was considered. The Tribunal gave careful attention to this decision. We noted however that the block was quite different and enjoyed more sophisticated services, including for example a door entry system.

The Tribunal finds that the Council is entitled to a management charge under paragraph 2 of Part II of the Seventh Schedule. However, we were not satisfied that £74 was reasonable for the year ending 31 March 2003. We noted that limited services provided to Norwich Walk. We also noted that the Council did not have details of the management costs of the Estate, only those of the whole portfolio. We decide that a management charge of £65 would be reasonable.

The Issues Section 19(2B) of the Act

- 4.1 Mr Gooch drew our attention to the budget for 2003/4 and 3 items were in issue. We therefore concentrated on these.

Lighting	£410
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Mr Richardson said that the budget was based on the previous year expenditure of £402.94.

The Tribunal noted that historically repairs were minimal. See the breakdown at page 31. The year ended 31 March 2003 was exceptional for repairs at £275.10.

We considered that a budget figure of £410 would not be reasonable. We consider that a sum of £230 would be reasonable.

Cleaning	£830
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In the light of our reasoning set out above in respect of cleaning, we do not consider that it would be reasonable to incur any costs on cleaning.

Management Charge	£78
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We noted Mr Richardson's evidence that the charge should reduce as the Council's portfolio increases in size. For this reason, and the reasons we have set out above in paragraph 3.2, we do not consider that a budget figure of £78 is reasonable. We consider that the sum of £65 would be reasonable.

A summary of our findings and decision in respect the year ended 31 March 2003 and the budget for year ended 31 March 2004 is attached.

Chairman.....

John Hewitt

Dated: 5 March 2004

19 Norwich Walk Basildon
Service charges for year ended 31 March 2003 and
estimate for year ending 31 March 2004

		2002/03	2003/04
		Actual £	Estimate £
<u>Block Charges</u>	Repair & maintenance	93.99	100.00
	Lighting	402.94	230.00
	Cleaning	0.00	0.00
<u>Total block charges</u>		496.93	330.00
<u>Flat Proportion</u>	14.29%	71.01	47.16
<u>Specific Charges</u>	Insurance	86.83	90.00
	Reserve Account	60.00	60.00
	Ground Rent	10.00	10.00
	Management Charge	65.00	65.00
<u>Total Recoverable</u>		£292.84	£272.16