

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/24UE/LSC/2005/0077

Decision of the Leasehold Valuation Tribunal on application(s) under Sections 20C and 27(A) of the Landlord and Tenant Act 1985 as amended

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Chairman
P D Turner-Powell FRICS	Valuer Member
Mrs C Newman JP	Lay Member

Date of Tribunal's Decision: 19th November 2005

Applicant(s): Mark Wells – Flat 2
Pamela Curtis – Flat 3
Mark & Karen Blanchard – Flat 4

Respondent(s): Kenneth Ross

Re: 2,3 & 4 Consort Court
5A High Street
Fareham

Date of Application 14th August 2005

Date of Inspection 1st November 2005

Date of Hearing 1st November 2005

Venue Portsmouth Central Library
Portsmouth

Appearances for Applicant(s) Mr Wells & Mrs Curtis in person

Appearances for Respondent(s) Mr Ross in person

Introduction

1. These were applications made to the Tribunal by Mark Wells, Pamela Curtis and Mark and Karen Blanchard (the Applicants) under Section 27A of the Landlord and Tenant Act 1985 (the Act), in respect of Flats 2,3 and 4 (the subject properties) of Consort Court, 5A High Street, Fareham (Consort Court as a whole hereafter being called the Property) to determine for the accounting years 2004 and 2005 whether certain service charges were reasonable within the meaning of Section 19 of the Act
2. The applications were issued indicating Fyrecrown Properties Limited as the Respondent. In the course of the hearing it was accepted that the correct Respondent is Kenneth Ross as freeholder of the Property and the record of the case is amended accordingly
3. The service charges for consideration by the Tribunal were, in respect of both years, the following items set out in the invoices of Fyrecrown Properties Limited, the managing agents, dated 17th November 2004:

Item of charge	2004	2005
Gate entry system (4/9ths)	870.44	870.44
Common area lighting	200.00	200.00
Accountancy charge	200.00	200.00
Bank charges	20.00	20.00
Bookkeeping charges	100.00	100.00
Agent's charge	496.50	496.50

4. The above items are divisible equally between the four flats comprising including the subject properties

Inspection

5. The Tribunal inspected the Property in the presence of Mr Wells and Mrs Curtis.
6. The Property is in a residential and shopping area situated off High Street, Fareham access being gained by a passageway. The Property is beyond high metal gates and comprises a block of five units, of which 4 comprise the flats including the subject properties and one freehold house. There are another 4 freehold houses belonging to the Respondent. All units are laid out in common areas. There are two storage rooms.
7. The subject properties are built of brick under a concrete tiled roof, with two flats on each of the ground and first floors. Flats 2, 4 and 5 share a common front door which leads into a small hallway and staircase. Flat 3 has its own separate entrance door. The building appears to be in good condition having been constructed in 2003/04.

Hearing

8. On the same day the Tribunal held a hearing which was attended by Mr Wells and Mrs Curtis in person for the Applicants and Mr Ross also in person. The Tribunal heard evidence from each of them. The Tribunal also had the benefit of documents produced including a copy of the lease (the lease) of Flat 3 (it being

understood that the other leases were in similar terms), accounts, invoices and correspondence.

9. From the lease the provisions material to the issues before the Tribunal are:
 - 1) The tenant covenants (in terms) (Clause 3(4) and Schedule 4) to pay the Landlord one quarter (so far as material to the issues in the case) of the maintenance charges reasonably incurred or estimated by the Landlord in respect of the Landlord's rights and obligations and also interest incurred.
 - 2) The Landlord's rights and obligations (amongst other items not material to the present issues) are:
 - i) To keep the common parts lighted (Clause 5(8))
 - ii) To employ managing agents and others at his discretion (Clause 5(11)). An accountant instructed under this Clause would draw up accounts (Schedule 4, paragraph 2(iv))
 - iii) To pay hire expenses of, for example, security equipment (Clause 5(12))
 - iv) To keep service charge at the lowest reasonable figure (but the Lessee would not be entitled to challenge or object to the cost of work or services on the ground that they might have been provided or performed at a lower cost) (Clause 5(15))
10. The main points of evidence given on behalf of the Applicants, in summary and so far as material to the issues, was as follows:
 - 1) Generally they complained that the Respondent had failed to provide information, despite requests, until they had received invoices for both years in November 2004. In particular they had not been aware of the costs of the entry system before they purchased.
 - 2) Entry system: the system does not work, although they had not informed the Respondent or his managing agent; the gate gets left open as it is not on an automatic closer and they anyway have to go to their front door so it had little purpose. They did not consider they should have to pay for the Landlord renting the system.
 - 3) Lighting: the estimated cost of lighting - probably about 4 light bulbs - was excessive
 - 4) Managing agents' fees: no work was done so the amount of administration should be minimal but the charge is high: it is not justified by the work involved
 - 5) Accountancy: the accounts are not audited and are not supported by invoices and they queried how much work had to be done by the accountants; the accounts had only been put together for the hearing.
11. Mr Ross gave evidence, the main points, in summary, being as follows:
 - 1) The invoices of 17th November 2004 were based on estimates other than for the entry system. He had not got round to preparing estimates before November 2004 and that was the first opportunity to mention costs
 - 2) The entry system: the lease entitled him to rent such a system if the cost was reasonable, even if not the lowest cost. The charge was the monthly rent for 12 months and a further £69.80 for maintenance carried out by EIS. He had paid their bill but had not checked the work had been done.

- 3) Lighting: he had estimated this from experience of other properties.
- 4) Interest: had been incurred because he had had to make payments; he agreed that he had been entitled to have an advance service charge payment on completion of the sales but had not done so.
- 5) Management charge. These were calculated as 15% of the other charges; he was entitled under the lease to employ others to carry out administrative and other work – including bookkeeping - and debit service charge. Bearing in mind another Leasehold Valuation Tribunal's decision earlier that year on another of his properties, he would in future be charging £150 per unit.
- 6) He accepted the managing agents did not follow a management code; he did not consider that paragraph 2.5 of the RICS Management Code meant that the basic charge should cover bookkeeping costs. There is a management agreement between him and the agents but he did not produce it.

Consideration

12. The Tribunal considered all the documents received and all the evidence and submissions on behalf of both parties.
13. Section 19 of the Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
 - 1) Only to the extent that they are reasonably incurred, and
 - 2) 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;
 - 3) And the amount payable is limited accordingly
14. Section 19 further provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.
15. Entry system. The Tribunal noted the Applicants' complaints about the inadequacies of the gates and entry system in terms of usage. However, the Tribunal was satisfied that the Respondent was entitled to install it, whether required by the planning authority or not, and to debit the ongoing rental cost to service charge. The Tribunal calculates 12 monthly rentals to be £1,801.44 of which a 4/9ths share (for the subject properties) is £800.64. The Tribunal finds that charge to be reasonable. The Tribunal accepted the Applicants' evidence that the system did not work properly but that the Applicants had not complained about that. The Tribunal noted also that the Respondent could not produce an invoice for maintenance costs and that he had not checked the work had been done. The Tribunal is not satisfied that it has been incurred and accordingly finds that the charge of £69.80 is not reasonable and is not payable for either year.
16. Common area lighting. The Tribunal notes the figure for communal power in the accounts of £109 for the year 2004. The Tribunal finds that there are not more than 5 bulbs for which there should be an electricity charge. The Tribunal has to consider what, in November 2004, would have been a reasonable estimate for the Landlord to make in respect of these charges. It does not accept that £200 per year could be a reasonable estimate and finds that reasonable estimated sums would be £100 for 2004 and £110 for 2005.

17. Accountancy charges. While the Tribunal notes the evidence of the Applicants, the Tribunal finds that the Landlord is required under the lease to prepare accounts and is entitled to charge the cost to service charge. It further finds that the sum of £200 per year was a reasonable estimate for the work.
18. Bank charges. The Respondent did not produce evidence of any bank charges incurred up to the date of the hearing. The Tribunal noted that the Respondent had not required any advance payment on completion of the sales of the flats as he was entitled to do under the leases. Had he done so, he would have had funds out of which to make any payments due. The Tribunal accordingly found that if any bank charges were payable or estimated to be payable, that would be caused by the failure of the Respondent and he cannot reasonably expect the Applicants to pay. The Tribunal therefore finds that the estimate for bank charges in each year is unreasonable and should be disallowed entirely.
19. Bookkeeping. While the Tribunal accepts that the Landlord is entitled to charge for employment of others to carry out work, the Respondent did not produce any invoices for the work. The Tribunal notes the provisions a basic fee in paragraph 2.5 of the Management Code referred to above. The Tribunal is satisfied that bookkeeping costs are expected to be covered by the basic management fee. The Tribunal deals with that basic fee below and disallows any additional costs incurred for bookkeeping for either year.
20. Management fees.
- 1) The Tribunal does not consider that it is reasonable to calculate management fees as a percentage of expenses incurred or to be incurred. In the Tribunal's experience it is normal and appropriate practice to charge on the basis of a fixed basic fee per flat for usual management work as referred to in paragraph 2.5 of the Management Code.
 - 2) The Tribunal noted the Respondent's intention to charge £150 per unit on the basis of another Tribunal decision. The Tribunal apprehends that the decision to which he refers is that relating to 26 and 28 Granada Road Southsea
 - 3) In that case, the relevant section of the decision reads: "The Tribunal's experience is that for this type of property it would be reasonable to charge a flat fee of £150 (ex VAT) per flat for usual management work." That property had been converted into flats, was of some age and included flat-roofed areas. It was a very different type of property which would require significantly more management than the new purpose built flats of Consort Court. The Tribunal is satisfied that it is not an appropriate comparable and that such a charge in the case of Consort Court would not be reasonable. The Tribunal finds that a reasonable charge per unit in the present case would be £125 (ex VAT) as the management fee to cover all paragraph 2.5 Management Code items including bookkeeping.

Decision.

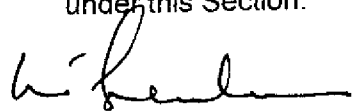
21. The Tribunal accordingly finds the reasonable charges, within the meaning of Section 19 of the Act, as above, for the years in question and payable in respect of the 17th November 2004 invoices are as follows:

Item of charge	Actual or estimate	Reasonable charges	
		2004	2005
Gate entry system (4/9ths)	Actual	800.64	800.64
Common area lighting	Estimate	100.00	110.00
Accountancy charge	Estimate	200.00	200.00
Bank charges	Estimate	0.00	0.00
Bookkeeping charges	Estimate	0.00	0.00
Agent's charge	Actual	500.00	500.00

22. It is emphasised that in respect of the above lighting and accountancy items only, adjustment may be made in due course in accordance with the lease when actual figures are ascertained.

23. Section 20C application.

- 1) The Applicants had also applied for an Order under this Section preventing the Landlord from recovering costs incurred in connection with the proceedings before the Tribunal as part of the service charge.
- 2) The Tribunal had no evidence that the Respondent had incurred such costs.
- 3) The Tribunal finds that because of the Tribunal's findings it is just and equitable that an Order should be made and the Order is made accordingly under this Section.



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