

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/43UD/LSC/2005/0104

Property: Cavendish House, Eastgate Gardens, Guildford, Surrey, GU1 4AY

Landlord and Tenant Act 1985, section 27A

Applicants: Cavendish House (Residents) Management Limited

Respondent: Palm Assets Limited (Wadham & Isherwood Limited)

Members of the leasehold valuation tribunal:

Mrs B Hindley

Mr R A Potter FRICS

1. This is an application to determine the reasonableness and, therefore, the payability of service charges for the years 2004 and 2005.
2. A Directions hearing took place on 9 December 2005 and the matter was set down for a paper hearing.
3. On 28 April 2006 the Tribunal inspected the subject property in the company of representatives of the freeholder, his agents and the Chairman of Cavendish House (Residents) Management Ltd.
4. They found the flats to be accessed from the pavement of Eastgate Gardens via steps leading up to the entrance doorway. The flats were situated on the second and further upper floors of the building. Shops and offices, accessed from the High Street at the front of the building, occupied the lower floors.
5. The bin store for the flats, located beneath and slightly to the left of the entrance, could be accessed only from the car park.
6. The car park lay immediately to the rear of the building and was clearly designated as private. There was a vehicular right of way across the rear of the car park to the rear of adjoining commercial premises and their car parking.
7. On the far side of the subject property from the entrance an open metal fire escape staircase led down to the car park from the second floor.
8. The Tribunal noted that the applicants claimed that they should not be liable for service charges in connection with the car park because, under the terms of their lease, they had no rights to its use. The Second Schedule expressly provided that they had 'A right of way for the purpose of access to and egress from the demised premises over the land to the west of the Building and currently used as a car park' but (a) provided 'the lessee shall not use or permit or suffer to be used any portion of the rear access way for the parking or waiting of vehicles or for loading or unloading of vehicles'.
9. The respondents claimed that
 - (a) The applicants needed to walk through the car park to access the flats
 - (b) The applicants enjoyed the benefit of the car park at weekends when the spaces were not being used by the licence holders
 - (c) The applicants benefited from the availability of the car park providing a facility for deliveries
 - (d) The lease expressly provided for the applicants to contribute to the cost of maintaining the car park
10. The Tribunal was of the opinion that (a) above was incorrect and that (b) and (c) provided no grounds for establishing that any service charge was payable. They, therefore, turned their attention to the lease provisions.
11. The Tribunal considered the provided lease, dated 21 October 1981 for a term of 999 years.
12. The demised premises were described in the First Schedule as 'All those second third fourth and fifth floors of the Building and those parts of the ground and first floors and basement shown edged red on the plans annexed hereto including the staircase from the ground to the first floor and the first floor to the second floor and the lift'.
13. The lease plans attached showed the footprint of the building which included the protruding access stairway, the bin store access and the metal fire escape. The lease plan did not otherwise include the area of the car park..
14. At page six of the lease it was stated in sub clause (111) that the maintenance costs of the leaseholders were 40% of the cost of maintaining, repairing and

15. At page seven, sub clause c, reference was made to liability for the cost of cleaning and lighting a number of items, including the car park.
16. At page 10, sub clause 3(3), the lessor covenanted to maintain, cleanse etc, the car park amongst other things, subject to a 40% contribution from the lessees.
17. The Tribunal considered that from the above it was clear that, whilst the car park was not included in the demise to the applicants, nevertheless they did have an obligation under the terms of the lease to contribute towards its maintenance.
18. Accordingly, the Tribunal examined the service charge costs of £357.60p, and £520, invoiced @ 40%, for maintenance of the car park in, respectively, 2004 and 2005. They found them, in the context of a car park situated just off the High Street of a busy town centre, to be reasonable, reasonably incurred and, therefore, payable.
19. The applicants also applied for an order under Section 20C to prevent the respondents from adding their costs in respect of this application to the service charge account. In the light of their determination the Tribunal was not persuaded that it would not be just and equitable to make such an order. However, the Tribunal noted that the costs incurred cannot have been considerable and any excessive charge could, of course, be challenged by the applicants as not reasonable.

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