

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL**

**STATEMENT OF REASONS FOR THE
DECISION OF A COMMITTEE OF THE PANEL
FOLLOWING AN INSPECTION AND HEARING
ON THE 7TH APRIL 2003**

Case Number: **CHI/45UD/NSI/2003/0001**

Members of the Leasehold Valuation Tribunal:-

**Mr D Agnew, LLB, Chairman
Mr D J Myers, FRICS
Mr P R Owen**

Property: **Flats 1-6 Mulberry Court, East Street
Selsey, West Sussex**

Applicants: **Mr G Thorley
Mr Isaacs
Mrs Abbott
(Tenants)**

Respondent: **J H Watson Property Investment Limited
(Landlord)**

Appearances: **Mr G Thorley – for the Applicants
Mr Petts – Counsel for the Respondents**

**Inspection and
Hearing Date:** **7th April 2003**

Date of Decision: **25 April 2003**

1. Introduction

- 1.1 This is an application submitted on behalf of the tenants of flats at Mulberry Court, East Street, Selsey, West Sussex, for a determination as to the reasonableness of service charges under Section 19(2A) of the Landlord & Tenant Act 1985.
- 1.2 The application form was completed and submitted to the Tribunal Office by Mr S G Bentley who lives at Flat 6 Mulberry Court. He is not a tenant as such but enjoys a "life occupancy", the lease of Flat 6 actually being in the name of Drs Morgan and Burton of Lancing, West Sussex. However, the application form was also signed as Applicants by Mr G Thorley of Flat 5, Mr Isaacs of Flat 2 and Mrs Abbott of Flat 4, and Mr Petts on behalf of the Landlord accepted that the application was therefore properly made.
- 1.3 Mr Bentley attended the hearing as a person affected by the application, as did Mrs Thompson of Flat 1.
- 1.4 The application is dated 24th December 2002 and it relates to "costs incurred in 2001" and "amounts payable before costs incurred" for 2002. The application also indicated that the "standards of works/services" for 2002 was in dispute.

2. Inspection

- 2.1 The Tribunal inspected the property prior to the hearing. The Landlord's maintenance surveyor, Mr D Courtneil was in attendance.
- 2.2 Mulberry Court is a small block of 6 flats situated behind other properties fronting a side road off the main Chichester to Selsey road. The block is approached by a concrete driveway. In front of the property there is a car park covered with pea shingle, and some small areas of grass. At the rear of the property there is a more extensive area of grass and shrubs. The building itself is two-storeys high, brick-built, partly tile-hung, under a tiled roof. The windows are of stained wood. Some windows, including patio windows, had been replaced with UPVC double-glazed units. The whole property is low maintenance and is in good condition.

3. The Leases

- 3.1 The Leases for all six flats are, the Tribunal understands, in common form.
- 3.2 The service charge provision is contained in the Fifth Schedule to the Lease. To paraphrase this schedule, the Landlord is entitled to recover from each tenant a proportionate percentage of cost to the Landlord of carrying out its obligations contained in clause 5(5) of the Lease. These obligations are, again paraphrased:-

- (a) to maintain and keep the main structure, pipes, drains and cables, common parts, boundary walls and fences and all other parts of the building not demised to tenants in good and substantial repair and condition;
- (b) to paint, varnish and decorate the exterior of the building;
- (c) to insure the building;
- (d) to clean the common parts;
- (e) to pay rates and other similar charges on the building but excluding those on individual flats;
- (f) to employ at the Landlord's discretion a managing agent or other professional person;
- (g) to maintain and renew where necessary, if installed, a communal TV aerial;
- (h) to provide an area for dustbins;
- (i) to maintain an electric entryphone system;
- (j) to carry out works of maintenance, safety, amenity and administration in respect of the building;
- (k) to set aside a fund to meet future costs expected to be incurred in replacing, maintaining and renewing those items which the Landlord has covenanted to replace, maintain or renew.

3.3 The proportionate part of the service charge per flat is 10% because the service charge is shared between not only the six flats of Mulberry Court but also properties at 12, 12a, 14 and 14a East Street, a neighbouring block of properties owned by the same landlord. These other properties do not have provision in their leases for a "sinking fund" or "reserve fund" as have the six flats the subject of the application, save for No 12. Thus, any proposed "reserve fund" is shared between only 7 properties in all.

4. The Law

4.1 Section 19 of the Landlord & Tenant Act 1985 states:-

- "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:
- (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.
- (2) 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 or subsequent charges or otherwise.
- (2A) A tenant by whom, or a Landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination:-
 - (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred;
 - (b) whether services or works for which costs were incurred are of a reasonable standard, or
 - (c) whether an amount payable before costs are incurred is reasonable.

5. The Hearing

- 5.1 Mr Thorley was the spokesman for the Tenants and Mr Petts of Counsel appeared on behalf of the Landlord. Evidence was given by Mr Courtnell, the Landlord's maintenance surveyor. A statement by Mr Bentley which accompanied the application, and a statement made by Mr Geoff Bramhill of Watson Property Management on behalf of the Landlord were read by the Tribunal.
- 5.2 After setting the scene as to when the block was built and the type of person for whom the flats were designed, namely for retired people, Mr Thorley set out a history of ground rent and service charge payments sought from 1996 to 2003. He said that whilst the freehold was in the ownership of the previous owner, Vincent Properties from 1996 to October 2001, the service charge had never been more than £305.90 for the year and was on two occasions as low as £150 for the year. When J H Watson Property Investment Ltd acquired the freehold in October 2001, however, there had been a sudden increase in service charge. For the year ended 31st December 2001 a charge of £189.23 was sought in addition to the £150 already paid on account during the year, making a total service charge for 2001 of £339.23. Watsons had only had the freehold for two months at this point in time.
- 5.3 The £189.23 referred to in paragraph 5.2 above was demanded by the Landlord on 5th April 2002. This was accompanied by a demand for an interim service charge payment on account for the six months January to June 2002 in the sum of £224.05 per flat and a demand to pay a contribution of £50.02 per flat for the half-yearly payment to the reserve fund for January-June 2002. This made a total demand on 5th April 2002 for £463.30 per flat.

- 5.4 The figures quoted above are broken down on the Statement of Service Charges for 2001 and Service Charge Estimate for the period to December 2002 which the Landlord's managing agent had sent to the tenants, which documents were before the Tribunal. The detail of these documents showed as follows:-

Statement of Service Charges – period ended December 2001

		<u>Amount per Flat</u>
Gardening and groundskeeping	£ 844.25	£ 84.43
General repairs	£ 447.37	£ 44.74
Buildings insurance	£1,566.94	£156.69
Interest on old bank balance	£ 23.82	£ 2.38
Bank charges	£ 29.46	£ 2.95
Management fee	£ 251.34	£ 25.13
Management fee	£ 229.12	£ 22.91

		£339.23
		=====

Service Charge Estimates for Period Ended December 2002

Gardening and groundskeeping	£1,410.00	£141.00
General repairs	£ 590.00	£ 59.00
Buildings insurance	£ 930.00	£ 93.00
Management fee	£1,551.00	£155.10

		£448.10
		=====
<u>Reserve Fund</u>	700 x 14.29%	£100.03
		=====

- 5.5 Mr Thorley stated that only the following items were now in dispute namely: the amount charged for gardening and groundskeeping, General repairs and the Management fee. The principle of a reserve fund was not disputed but the amount sought by the Landlord was.
- 5.6 With regard to gardening, the amount charged of £70 per visit, reducing to £60 per visit, as arranged by Watson's management company, Mr Thorley said was excessive. The contractor hired by the management company came from Worthing, a round trip of 60 miles for which they no doubt charged. He queried why a more local firm had not been employed. The tenants had suggested two local firms to the management company for 2003 which had

resulted in a considerable saving. The contractor only basically did grass cutting although some weedkiller may have been applied occasionally. The residents themselves tended to the shrubs and swept up leaves. Two fence panels were replaced by Mr Bentley at his expense after the gales of 2001. He stated that grass was growing through the surface of the car park and weeds were in the grassed areas. It was the efforts of the residents in providing shrubs and maintaining them and also flowers in the front of their properties which improved the appearance of the premises. Mr Thorley compared the grounds of Mulberry Court with those of The Willows, another retirement complex in Selsey, where the gardens are beautifully kept at a lower cost he said than charged to Mulberry Court tenants.

- 5.7 Mr Thorley said that the tenants' complaints to the Landlord's agents and a request for a meeting to resolve these matters had gone unanswered leaving the tenants feeling they had no option but to make this application to the Tribunal.
- 5.8 As for management charges, these were much higher than charged by Vincents and there had been no explanation of the basis upon which the charge of £132 plus VAT per flat had been set. It was not clear from the Respondent's statement as to whether the RICS had recommended a figure and if so on what information, or whether it was only that the RICS simply recommended that the management fee be based on unit charges. He thought that £132 plus VAT per flat was high for the amount of work involved.
- 5.9 Mr Thorley accepted that the charges for insurance were not unreasonable and that the requirement to contribute into a reserve fund for future expenditure was not unreasonable but he thought £700 per annum for 7 properties was too much. When asked what he considered to be a reasonable figure he replied, "As little as possible".
- 5.10 Mr Petts called Mr Dave Courtneil to give evidence. He is the Landlord's Managing Agents' maintenance surveyor responsible for the properties managed by his company in the South of England. It is his responsibility to visit the properties and to look after them, to employ contractors, to recommend a budget, and provide a report detailing expenditure at the end of the year. He was contactable on the telephone (his landline has an answering machine if he is not there) and on his mobile telephone. Watsons took over management of Mulberry Court in October 2001. He considered it necessary to include in the interim service charge for 2002 a sum of £590 for general repairs. The figure for expenditure on general repairs for the previous year had been £447.37. As for garden maintenance, he had asked Vincents to carry on doing this over the handover period to the year-end (October to December 2001). He then went out to tender. He had tried to find local contractors in Yellow Pages but his experience had been that such firms were wary of receiving instructions from agents based a long way away and so he resorted to seeking tenders from other gardening contractors he used in Worthing and also asked Vincents (who also, co-incidentally, were based in Worthing) to tender. Vincents were the lowest and he asked them to continue. A copy of the contract and specification were provided to the Tribunal. With the

assistance of the residents of Mulberry Court he had now managed to engage the services of a local gardener at a price of £960 per year (with no VAT charged) or £48 per visit (assuming 20 visits in the year).

- 5.11 On being questioned by the Tribunal, Mr Courtnell admitted that there had been no liaison between himself and the tenants about what was required with regard to gardening at the time that Watsons took over the management. There had been little time.
- 5.12 Mr Courtnell did not become involved in setting management fees. As far as external redecorations were concerned, these were due to take place in 2003 but due to the dispute with the tenants this would now be scheduled for 2005. He had not yet asked for estimates but he thought the cost would be in the region of £3,000-£4,000.
- 5.13 He stated that he visited the property about once per month. He had not met with the tenants although a suggestion that Watsons had made for a meeting had received no response. The tenants said that by that time the matter was in the hands of solicitors who had advised that it would not be appropriate for such a meeting to take place. He had not notified the tenants in advance of his visits because often unforeseen problems arose which meant him having to change his plans constantly. He said he had sent out a report to tenants at the end of 2002 giving them the opportunity of contacting him.
- 5.14 In submissions to the Tribunal, Mr Petts submitted that the tenants' complaints stemmed from the handover from Vincents to Watsons when the service charge increased significantly. Under the Vincents the standard service charge was £150 per annum per flat. This showed a laissez-faire approach to management. The question is whether the items of expenditure charged for 2001 are reasonable. They do not have to be the cheapest. The charge for general repairs in 2001 was the amount incurred by the previous owners. Watsons had requested copies of documents to back-up the expenditure but had received a reply declining to do so and claiming that this was unnecessary as the tenants had not raised any questions or concerns with them. As far as gardening is concerned, a lower rate has been achieved for 2003, but the question is whether the charges actually made are reasonable – not whether they could be acquired at a cheaper rate.
- 5.15 Turning to the Interim Service Charge for 2002, this is based on estimated expenditure. The estimate for gardening was £1,410 whereas actual expenditure was £1,200. For general repairs the estimate was £590 whereas the expenditure for the previous year had been £447. In actual fact, only £60 of expenditure on general repairs was incurred and the difference will be carried forward and be available for future years. He submitted that the amount of management fees had been dealt with by Mr Bramhill in his statement. He submitted that £132 plus VAT per flat was a reasonable charge.
- 5.16 As for the reserve fund, there had been none during the Vincent's period of ownership. It was not correct to say that the current tenants would not have

the benefit of payments made into a reserve fund as when a flat is passed on the benefit of the fund is still there.

6. The Consideration

- 6.1 The Tribunal took into account all the evidence and submissions before it and had regard to their own knowledge and experience of charges for services in Chichester and the surrounding areas.

7. The Determination

- 7.1 With regard to the service charge for costs already incurred for the year ended 31st December 2001 the Tribunal decided as follows:-

- (a) That the charge for gardening and grounds maintenance up to October 2001 was reasonable.
- (b) That the charge for gardening and grounds maintenance for October to December 2001 was unreasonably high. The Tribunal found that a reasonable charge for this period would have been £120. There was not a lot of grounds maintenance to do. The tenants tended the shrubs and swept up leaves and Autumn debris. There would not have been much requirement for grass-cutting at that time of year. It was unreasonable to employ a contractor who needed to travel from Worthing to Selsey to carry out the gardening. There had been no liaison with the tenants as to what they wanted or required. The Tribunal did not accept that it was not feasible for such liaison to have taken place.
- (c) The charge for general repairs had been in respect of costs incurred by Vincents. The Tenants had no complaints about the level of expenditure incurred by their previous landlords. Although there was no evidence before the Tribunal to back-up this expenditure, the Landlord's agent had tried to obtain this without success. The Tribunal decided, therefore, not to disturb the charge for general repairs.
- (d) There was no continuing challenge to the buildings insurance premium charged and this was now accepted by the Tenants as being reasonable.
- (e) Management fee. The Tribunal decided that a management fee of more than £100 plus VAT per flat would be unreasonable for Mulberry Court. There was not a lot of management needed. The figure of £251.34 was Vincent's charge for management from January to October 2001 and was found to be reasonable by the Tribunal. The concessionary figure of £78 per month for October to December 2001 was found to be reasonable.
- (f) The resulting service charge for the year ended 31 December 2001 would therefore have been, using the above figures:

Gardening and Groundkeeping	£ 614.25
General repairs	£ 447.37
Buildings Insurance	£1,566.94
Interest	£ 23.82
Bank charges	£ 29.46
Management fees (1)	£ 251.34
Management fees (2)	£ 229.12

Total:	£3,162.30
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Or: £316.23 per flat

7.2. With regard to the Interim Service Charges for 2002 as explained in the document entitled "Service Charge Estimates for the Period Ended 31.12.02", the Tribunal decided as follows:-

- (a) The proposed charge for gardening and groundskeeping in the sum of £1,410 was unreasonable. A sum of £40 plus VAT per visit, 20 visits per annum was considered to be reasonable. The annual figure on this basis would have been £940.
- (b) General Repairs. The Tribunal decided that it was reasonable for the Landlord's agents to have provided for £590 under this head, particularly as the expenditure for the previous year had been £447.37.
- (c) Again, the insurance estimate was conceded by the Tenants as being reasonable.
- (d) Management fee. As explained at 7.1(e) above, the Tribunal determined that a total of £1,000 plus VAT, ie £1,175, would have been a reasonable figure for management charges and anything in excess of that was unreasonable.
- (e) This would have resulted in an annual interim service charge of £3,635 or £363.50 per flat instead of the £448.10 charged. The sum of £363.50 would have been claimed as to half in January 2002 and half in July 2002.

7.3 With regard to the reserve fund the Tribunal decided that £100 per annum per flat was a reasonable sum.

7.4 The Tribunal decided that the tenants' complaints related essentially to the cost of the services provided by the Landlord rather than the quality of the service, although concerns were expressed by the tenants as to the accessibility


of the managing agents and their lack of response. This could be reflected in the amount of the management fees that the Tribunal considered to be reasonable. Although the Tribunal did not have any jurisdiction to consider service charges other than those covered by the tenants' application dated 24th December 2002 it hoped that the Landlord's managing agent would bear the tenants' comments in mind for the future so that hopefully further disputes and, possibly, further applications to the Tribunal could be avoided..

8. Limitation of Inclusion of Landlord's Costs under Section 20 C of the Landlord & Tenant Act 1985

8.1 In submitting the application Mr Bentley had unwittingly stated that he did not want to apply for an order under this section. Mr Petts did not object to an application to amend the application form to allow the tenants to make such an application although Mr Petts submitted that if the Tribunal found the charges to have been substantially reasonable then no such order should be made. The Tribunal agreed that the Application form be amended to include an application under this section.

8.2 The Tribunal decided that there was evidence for it to conclude that had the Landlord's managing agents responded to the Tenants' concerns and requests earlier and with more diligence that it was probable that the application to the Tribunal and the hearing would have been unnecessary. There had been a regrettable lack of communication and liaison with the Tenants. The Tenants had succeeded in having some of the charges determined as being unreasonable and in all the circumstances the Tribunal decided that it would not be right for the Landlord to seek to recover its costs of the proceedings from the Tenants. An order under Section 20 C of the 1985 Act would therefore be made.

Signed:


Chairman

Dated: