RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 : SECTION 27A & 20C

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/00MR/LSC/2004/0052
Property:	**Homerose House** **Cottage Grove** **Southsea** **Hants PO5 1DU**
Applicant:	Mr J F Grant
Respondent:	Peverel Management Services Ltd
Date of Application:	10 September 2004
Pre-trial review hearing:	14 December 2004
Hearing:	14 March 2005
Members of the Tribunal:	Mr D M Nesbit JP FRICS FCIArb (Chairman) Mr P D Turner-Powell FRICS Mrs C Newman JP
Date decision issued:	3 May 2005

RE: HOMEROSE HOUSE, COTTAGE GROVE, SOUTHSEA, HANTS

Introduction

1. This matter arises from an application dated 10th September 2004 made by Mr J F Grant on behalf of the Homerose House Residents' Association, in accordance with Section 27A, Landlord & Tenant Act 1985, seeking a determination for liability to pay service charges.

2. The applicant sought determinations for service charges paid for the financial years ending 2002, 2003 and 2004, and for service charges payable for the current year to 2005.

3. A Pre Trial Review was held at Homerose House on 14th December 2004, where following discussions between Mr J F Grant and a representative of the respondents, Peverel Management Services, issues were identified and Directions issued dated 16th December 2004, requiring specific documents, accounts and contracts to be provided within time limits.

Inspection

4. Prior to the Hearing, the Committee made an inspection of the property, and specifically noted the appearance, condition and state of cleanliness of the common parts, to include the entrance hall, landings and passageways, stairs and communal rooms. The applicant and representatives of Peverel Management Services were present.

Hearing

5. The applicant, Mr J F Grant (Flat 9), was accompanied by Mr & Mrs Light (Flat 12), Mrs Hoyle (Flat 26), and Mr Walker (Flat 32). Also present were representatives of Holmbush House, and Homerose House, Southsea. The respondent, Peverel Management Services (PMS) were represented by Mr J Llewelyn, solicitor Legal Services Department, and Mr G F Schofield, Southern Region Estates Manager.

6. Mr Grant submitted a formal statement in connection with the two substantive issues to be resolved – namely, a change of cost headings in accounts moved to other headings duplicating those costs, which Mr Grant maintained was unreasonable and unfair. Secondly, that Peverel Management Services (PMS) had implemented changes affecting service charges without notice or explanations, such changes were maintained to be

unreasonable. The changes and the costs all relate to training costs and cleaning costs.

7. Mr Grant referred the Tribunal to the documents and bundle of correspondence in the case papers. He outlined the cleaning arrangements since Homerose House was opened in 1985, whereby cleaning of the communal areas had been the duties of the House Manager, and the cost included in that person's salary.

8. The House Manager's contract from August 2001 had not changed that arrangement, but because of concerns from the lessees, a meeting was held with Peverel Management Services to resolve the complaints. That meeting also challenged PMS for employing contract cleaners in June 2004. Mr Grant stated the complaint was upheld and the cost was reimbursed by PMS. That meeting also agreed that an application to the Leasehold Valuation Tribunal for a judgement was the best way forward. Subsequently, the lessees were surprised to find that contract cleaners had been employed for two man hours. It appears that no contract was actually agreed, but that costs of £936 arose.

9. Mr Grant maintained that PMS had acted unreasonably in not informing the lessees of the employment of contract cleaners, that the legality of a Works Order was questionable, that cleaning costs had duplicated and the contract cleaning service was inferior and inadequate.

10. Mr Llewelyn presented a formal schedule of documents, to include a copy of the standard lease for the building, extracts from audited accounts, together with a legal statement, and a Witness Statement for Mr G F Schofield. Copies had been provided to Mr Grant.

11. Mr Llewelyn explained that the financial year for the building was 1st September to 30th August and that the account meeting for the year to 30th August 2004 had not yet been held. He called Mr G F Schofield, who formally presented his statement. Mr Schofield confirmed he had some 19 years property management experience, and 9 years with PMS. He was responsible for Homerose House, being a block of 51 retirement flats with a resident House Manager and communal facilities.

12. Mr Schofield stated that Peverel Management Services was formed in 1982 as a subsidiary of the McCarthy & Stone Group. PMS manage in excess of 1,000 developments with over 40,000 individual properties nationwide, and employed approximately 2,500 staff, the majority of whom were resident

Managers. Peverel Management Services Ltd subsequently separated from McCarthy & Stone and operated independently, they were founders of and are leading members of the Association of Retirement Housing Managers (ARHM), and strongly supported the ARHM Code of Practice for residential property management of retirement properties.

13. Mr Schofield said that PMS with its specialist knowledge and considerable experience, provided a professional and high standard of service.

14. On the specific matters raised, he maintained there was no doubt that the House Manager's training cost itemised at £100 for the financial years, 2002, 2003 and 2004 were payable as service charges.

15. In previous years, PMS had effectively absorbed all House Manager training costs, which were paid for out of the management fee. Previously training requirements for House Managers was not expensive, but due to legislation and social changes, training had increased substantially. Specifically, Mr Schofield mentioned training in the management of dementia was of increasing concern with aged residents and costs of nursing care.

16. Consequently, PMS had hired trainers to assist with training, and House Managers had training courses to ensure that House Managers complied with statutory obligations and lease requirements.

17. It was appropriate that these changes that the accounting system for House Manager training was shown as a separated item from management fees.

18. For the year ended August 2002, a contribution only towards training costs was sought from the residents – the charge was £100 per annum for the development. The cost was not a duplicate, it was a contribution towards training costs for the 2003 accounts, the residents contribution towards House Manager training was about 70%, the remainder being paid by PMS through their management fee.

19. Mr Schofield maintained that if management fees were increased to pay for increased training, then the lessees would have paid. The company sought to be open and transparent, and to communicate reasons to the lessees. He acknowledged that the move to clarity in budgets had not been popular, and consequently PMS had reverted to paying House Managers' training costs out of the management fee, the management fee being increased accordingly.

20. In relation to the cleaning costs, Mr Schofield referred to Health & Safety legislation and the Working Time Directive. These requirements have impacted on Homerose House and other developments due to the nature of the building and residents, limiting hours that a resident House Manager could undertake their duties within a building. They could not be expected to undertake the same work and responsibility in the shorter hours available. It was decided, therefore, that cleaning was to be contracted out. For existing developments cleaning contracts had commenced 7 or 8 years ago, and all new buildings had contract cleaners. The introduction for contract cleaning to Homerose House which had been resisted, he maintained was reasonable.

21. Concluding, Mr Schofield referred to the letter in the case papers from Mr Grant enclosing an extract from the ARHM Code of Practice. A complaint had been considered by ARHM, who in a decision dated 16th February 2004, had decided that Peverel was not in breach of its Code of Practice for the introduction of a charge for training costs for Housing Managers. The Code referring to the list of management duties say that list "may" include some, or all, of the items, but that not all items in the list must be charged as part of management fees. It was practice for a separate charge for training costs for House Managers to be shown.

22. In answer to questions from the Tribunal, Mr Schofield stated that contract cleaners had been introduced to all developments and there had been discussions with the lessees and Mr Grant on various matters. PMS had sought to be co-operative. He confirmed that there was no current contract for the cleaners, which was for two hours once a week at the rate of £9 per hour. The House Manager undertook some cleaning, but the contract cleaning included all hallways, stairs and landings, cleaning carpets and skirtings etc. There were separate window cleaning arrangements,.

23. Mr Schofield responded to various questions raised by Mr Grant in respect of ARHM Code of Practice, the annual budget, challenging Mr Schofield's assumption that the existing House Manager had insufficient time to undertake cleaning.

24. Concluding, Mr Llewelyn drew attention to his legal submission in relation to the definition of service charges, Section 19 of the Landlord & Tenant Act 1985, amendments arising from the Commonhold Act effective from September 2003 and the lease terms. Mr Llewelyn maintained that the total of service charge items was reasonable, that the cleaning work was of a reasonable standard and that the costs were properly payable.

25. He clarified the actual annual cost as £936 per annum, not £500 as indicated.

26. The Tribunal requested that the parties provide copies of additional documents and correspondence in connection with matters arising from the Hearing for their consideration, which was sent to both parties.

Consideration

27. The Tribunal subsequently reviewed the further correspondence and documents that had been requested, together with the extensive case papers, their inspection notes and notes of the Hearing, including a full review of the statements by Mr Grant and Mr Schofield, and the legal submission.

28. We reminded ourselves of the relevant statutory requirements. A service charge is an amount payable by a tenant (the lessee) of a dwelling -

i) which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlords' costs of management; and

ii) the whole or part of which varies, or may vary, according to the costs or estimated costs incurred or to be incurred.

29. Case law has determined that there is an implication that service charges must be reasonable and Section 19, Landlord & Tenant Act 1985 states that

a) the total cost of service charge works must be reasonable
b) the work must be of a reasonable standard, and
c) payments on account must be no more than is reasonable.

30. There is a protection given to the lessees in that "the amount payable shall be limited accordingly."

31. The legislation as amended by the Commonhold Act entitles parties to make applications to an LVT to determine whether or not any amount is payable for service charges, and the person by whom, and to whom, it is payable, the amount and date and manner in which it is payable.

32. As the respondents remind us, basic challenges to a service charge demand are -

i) the lease does not permit the landlord to recover costs
ii) the landlord has failed to comply with statutory obligations
iii) the work was not necessary
iv) the work was too expensive.

33. We referred to the lease for Homerose House and the tenants' covenants included at Clause 3 (2) "to pay to the lessor without any deduction further and additional rent being 4/128ths part of the expenses and outgoings incurred by the lessor in the repair, maintenance, renewal and management of the building which includes the warden's flat, and for the provision and services of heads of expenditure incurred by the lessor in the performance of its covenants, including fees of managing agents, accountants and professional persons".

34. The lessor's obligations at Clause 5 include the insurance of the building, and to keep clean and reasonably lighted the passages, landings, staircases, communal room, guest room, residents' lounge, residents' kitchen, laundry store and other parts of the building so enjoyed or used by the tenants in common. The lease also imposes obligations on the lessor in relation to the services of a warden for the assistance and benefit of the lessees.

35. We carefully noted the cleanliness and condition of the common parts during our inspection. The appearance and cleanliness was very good, and we have no hesitation in concluding that the common parts have been well maintained and were in an excellent state of appearance and cleanliness.

36. We understand the difficulties that may arise for some lessees, specially those in retirement blocks, such as Homerose House, in being familiar with, or understanding legal documents. In particular being aware of changes in legislation which require changes in residential flat management and costs associated with those changes.

37. The landlords and their Managing Agents have increasing obligations to keep lessees informed, and to consult on specific major works. There is a role for Residents' Associations as a link between lessors and their members, and as one means of keeping residents informed. From our review of all of the evidence, we understand why the work of the House Manager need be changed specifically in relation to the cleaning element of the Manager's responsibilities. We accept that being trained and kept up to date is a necessary and essential requirement for those providing services to retirement flat owners. Such training is imposed by a wide range of

requirements and regulations, and ultimately for the benefit of lessees and residents.

38. Accordingly, we are satisfied that the service charge costs for training, and also in respect of such costs for cleaning services are reasonable, of a reasonable standard and have been reasonably incurred.

39. We noted that the lessors, through PMS, had sought to identify House Manager's training costs as a separate item, such costs having previously been included in the management charges. Whilst this Tribunal feels it is appropriate that training costs be separately identified and shown in accounts, we noted that in deference to the views of the Residents' Association there may be no such separation from the management charges. We feel it is appropriate that such matters should continue to be for discussion between the parties, but there should be a clear understanding of exactly what items and costs are included within the management charge. Co-operation, discussion and an understanding of all parties' requirements and obligations are essential requirements for effective residential management of blocks of residential flats.

D M NESBIT
Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Leasehold Valuation Tribunal

Re: Homerose House, Cottage Grove, Southsea PO5 1DU

Case No: CHI/OOMR/LSC/2004/0052

APPLICATION TO APPEAL

1. This is an application by Mr J F Grant, Chairman Homerose House Residents Association, for permission to appeal the Decision of the Leasehold Valuation Tribunal dated 3rd May 2005.

2. The grounds stated in Mr Grant's application dated 19th May 2005 were

   a) The challenge to the service charges, paragraphs 32 to 38 in the decision document, does not appear to have taken into consideration that the costs were additional, resulting in a too expensive increase; and

   b) The statements made by Mr Schofield as shown in the decision document, paragraphs 15 and 20, are both inaccurate and misleading.

3. In a letter accompanying his application, Mr Grant submits further comment and observations.

4. In reviewing this application, the Tribunal makes the following statements of fact.

   4.1 The Reasons for their Decision were detailed and in extended form having regard to the passage of time, the extent of evidence and representations received from both parties, and additional information requested by the Tribunal following the Hearing.

   4.2 The comments noted by the Tribunal in paragraphs 15 and 20 were part only of the evidence made by Mr G F Schofield, the

landlords' Southern Region Property Manager, at the Hearing. The Tribunal fully reviewed the whole of the landlords' case, as Respondents.

4.3 Paragraph 32 referred to the case submitted by Mr Grant. Paragraph 38 records the Tribunal's findings.

4.4 The Tribunal reached its determination following a full review of all the evidence and representations made.

5. The Tribunal is entitled to reach its conclusions on the facts and information available. The substantive issue related to cleaning costs. The responsibility for the Tribunal was to decide whether the cleaning costs were reasonable, and reasonably incurred, not whether the work could be undertaken at a lower cost.

6. The Tribunal having closed the Hearing, requesting and considering additional information, and issuing formal Reasons with its determination, is not now able to consider further comment and observations when it has discharged its functions.

7. The amounts of money for the cleaning costs were small in relation to the total service charges for the building. There were no legal points in dispute between the parties. The Applicants were not legally represented.

8. The Tribunal refuses this application for Appeal. However, the Applicant may apply to The Lands Tribunal, Procession House, 55 Ludgate Hill, London EC4M 7JW.

Signed:.....

D M Nesbit, Chairman
A member appointed by the Lord Chancellor

Date: 6th JUNE 2005

dca
Department for Constitutional Affairs
Justice, rights and democracy

SOUTHERN
27 JUL 2005
RAP&LVT

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Please reply to THE REGISTRAR

Leasehold Valuation Tribunal of the Southern
Rent Assessment Panel
1st Floor
1 Market Avenue
Chichester
West Sussex
PO19 1JU

Your Ref: CHI/OOMR/LSC/2004/0052

Our Ref: LRX/69/2005

25 July 2005

Dear Sir/Madam,

Homerose House Residents Association vs. Peverel Management Services Ltd
Homerose House, Cottage Grove, Southsea, Hants, PO5 1DU

An Appeal against the decision of the Leasehold Valuation Tribunal in the above matter has been lodged with the Tribunal.

Please find enclosed the determination of the Lands Tribunal dated 21 July 2005 **refusing** leave to appeal against the decision of the Leasehold Valuation Tribunal.

Yours faithfully,

Nayeem Uddin
Lands Tribunal Registration Officer
Direct Tel.: 020-7029-9789
For the Registrar

LRX/69/2005

LANDS TRIBUNAL ACT 1949

APPLICATION
under section 175(2) of the Commonhold and Leasehold Reform Act 2002 for
PERMISSION TO APPEAL
against the decision of a Leasehold Valuation Tribunal

Applicant: Homerose House Residents Associatio

Property: Homerose House, Cottage Grove, Southsea, Hants PO5 1DU

Decision of the Leasehold Valuation Tribunal for the Southern Rent Assessment Panel dated 3 May 2005

Permission to appeal is REFUSED for the following reasons:-

There is no reason to believe that the tenants' contentions in relation to the cleaning costs were misunderstood or ignored by the tribunal or that its decision that the costs were reasonably incurred was one to which it could not reasonably have come. An appeal would have no reasonable chance of success.

Dated 21 July 2005

George Bartlett QC, President