

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

Case Number **CHI/24UD/LIS/2005/0030**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Re: 110-136 (even nos) Twyford Road, Eastleigh, SO50 4HN

Applicant: Childsbridge Properties Limited
C/O, Eyre & Johnson, Solicitors

Respondents: Eastleigh Housing Association and others

Date of Application: 17 June 2005

Date of Hearing: 3 November 2005

Venue: Wells Place Centre, Eastleigh

Appearance	
For the Applicant	Mr S Boon of Eyre & Johnson

Appearance For the Respondents	None
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Members of the Tribunal: **Mr J H S Preston JP FRICS**
 Mr M R Horton FRICS
 Ms J Dalal

Clerk to the Tribunal: Mrs J Rhodes

Date of Decision: 14 November 2005

The Application

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 made by Eyre & Johnson solicitors of 58 Leigh Road, Eastleigh, Hampshire on behalf of the landlord, Childsbridge Properties Limited. The application is in respect of Service Charges for the current year 2005-2006.
2. The only items of Service Charge at issue were stated to be the cost of works to the rear access way and garage forecourt. The tribunal was asked to decide whether the cost was reasonable and the amounts payable by the respondents.

The Property

3. The tribunal inspected the property before the hearing. Mr Boon attended on behalf of the applicant. None of the respondents was present or represented. The property includes three blocks of maisonettes, fronting on to Twyford Road. To the rear of the blocks there is a private driveway with garage forecourt, with entrances from both Twyford Road and Albert Road. This provides access to the dwellings and to garages at the rear.
4. The tribunal inspected the newly tarmaced driveway and forecourt. It was noted that the detail to some of the inspection covers required attention and that the metal grid to one of the surface water catch-pits was broken and would need to be replaced. Mr Boon stated that these would be attended to by the contractors under the contract terms, without additional cost.

The Leases

5. A sample lease was included in the bundle. This was in respect of No. 130, a ground floor maisonette. The lease dated 28 October 1964 is for a term of 999 years from 25 December 1963 at a yearly rent of £10. The lease includes a garage identified as No. 4. The tenant has under clause 1. (IIIa) "the right in common with the landlord and their tenants... to use... the pathways and drives... and the yard or forecourt..." In clause 6 the tenant covenants with the landlord and the other lessees (sub-clause 3) to maintain repair and keep in good order all... sewers drains pathways and drives yards and forecourts..." (Sub-clause 4) "Pay and contribute a rateable or due proportion of the expense of repairing maintaining supporting rebuilding and cleansing all ways pathways and drives yards and forecourts sewers drainpipes...used by the tenants in common with the landlord or the lessees or occupiers of the other maisonettes or garages the liability of the tenants to make such contribution and the proportion thereof in the case of difference to be settled by the surveyor ...and to keep the landlord indemnified against all costs and expenses aforesaid in relation to such matters." The landlord's liabilities are set out in clause 7. There is no express provision to carry out works. However sub-clause (5) states "If so required by the tenants to take all necessary steps to enforce the covenants entered into by the lessees...and on the tenants indemnifying the landlord against all costs and expenses in respect of such enforcement...to take such proceedings as may reasonably be necessary to ensure such covenants being observed."

The Law

6. This is contained in the Landlord and Tenant Act 1985 ("the Act") as amended by the Commonhold and Leasehold Reform Act 2002. The following are particularly relevant to this case: - Section 19 (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.* Section 20B re. Limitation of service charges: time limit on making demands: *(1) if any of the relevant costs...were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection 2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. Subsection (1) shall not apply if within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of this lease to contribute to them by the payment of a service charge.* Section 27A Liability to pay service charges: jurisdiction. *(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to - (a) the person by whom it is payable, (b) the person to whom it is payable, (c) the amount which is payable, (d) the date at or by which it is payable, (e) the manner in which it is payable.*

Directions

7. Directions were made by a member of the Panel on 19 July 2005 as to procedures to be followed prior to a hearing on 20 September. In correspondence Eyre & Johnson requested an adjournment to 4 October, due to the absence of Mr Boon and to the need for additional works to be carried out to deal with drainage problems, the ground works being already in progress. As this would involve extra costs over and above those of which the leaseholders had already been notified, the applicant requested that all leaseholders be made respondents. The tribunal decided the additional costs could be included in this application, rather than being made the subject of a further application, and that the hearing should be further adjourned to 3 November to enable the respondents to decide whether to make representations. In the event, no such representations were made.

The Hearing

8. This was held at the Wells Place Centre in Eastleigh. It was attended by Mr S Boon of Eyre & Johnson for the applicant. None of the respondents was either present or represented.

The Case for the Applicant

9. Within the terms of the lease maintenance was the responsibility of individual leaseholders. Mr Boon suggested that there was a lacuna regarding the maintenance of common parts including the driveways and forecourt. At the request of a number of leaseholders, the landlord had decided to take steps to resurface the drives and forecourt, which had become badly pot-holed and were generally in very poor condition. The landlord decided in effect as a volunteer to take on the necessary maintenance. They instructed Mr Brian Lawrence MRICS, a local surveyor who was known to them, to inspect and to provide recommendations. He surveyed on 22 January 2004 and reported that the whole area was in very poor condition with major breaking up of the surface and base materials. He recommended detailed works to repair and upgrade the areas with the laying of a new base and the surfacing with tarmac. No recommendations were made as to drainage works.
10. Mr Lawrence's recommendations were accepted and he was instructed to provide a specification of works, to obtain quotations and subsequently to supervise the works. He prepared a specification and obtained four quotations. The lowest of these was from Tarmac Ltd. in the sum of £12,877.99 inclusive of VAT.
11. Eyre & Johnson wrote to all leaseholders on 22 April 2004 giving details of the required works and serving a Section 20 Notice. They served a second Section 20 notice on 25 June 2004 with a schedule of the quotations received. On 19 August 2004 they wrote to all leaseholders notifying them of the cost per Tarmac's quotation plus £1,087.50 for the surveyor's fees. Dividing the total of £13,965.49 by the 14 properties resulted in a charge of £997.54 per leaseholder, bills for which were enclosed. It was pointed out (1) that Tarmac's quotation stood for three months from 4 March 2004 and that the landlord could not instruct Tarmac until they had received payments from leaseholders, (2) that it did not include for application of weed killer and (3) that it did not cover for clearance of drains.
12. Eyre & Johnson next wrote to leaseholders on 28 April 2005 reporting that four leaseholders had not yet paid their contributions and asking for settlement within 7 days. In the meantime Tarmac were being asked for a start date. On 22 June they wrote again naming the leaseholders of Nos. 130 and 132 as being the only ones who had not yet paid and reporting that an application had been made to the Leasehold Valuation Tribunal. On 18 August they advised leaseholders that the drains would be inspected on 22 August, that resurfacing work would be carried out between 19 and 22 September and that between 22 August and 19 September there would be two applications of weed killer.
13. On 2 September Mr Lawrence reported that Tarmac's quotation was now £11,729.67 + VAT = £13,782.36. He advised that savings of £611.08 could be made from that figure, giving an adjusted sum of £11,118.59 plus a contingency sum of £937.40. Total £12,055.99 + VAT = £14,165.79.

14. Mr Lawrence reported that the drain pipes had been cleared by jetting, but that it had not been possible to clear the pits, which were silted up. He proposed the construction of three new soak-away pits at a cost of £2,000-£2,500 + VAT also £80 + VAT for the weed killer applications. His extra charge for supervision would be £750. This was reported to leaseholders and confirmation given that the extra cost would be £237.86 per leaseholder.
15. The works were duly carried out and on 6 October Eyre & Johnson wrote to all leaseholders sending a final account and copies of all vouchers. These comprised: - A B Yaldren Groundworks Ltd for the drainage £2,467.50 (inc. VAT); Tarmac Ltd £13,177.73 (inc. VAT); Weed Treatment £94.00 (inc VAT); Brian Lawrence £900 fee + Disbursements £225.97 total £1,125.97 (no VAT); Eyre & Johnson for their charges in dealing with the matter £587.50 (inc. VAT). Grand total £17,452.70 from which they deducted £105.34 interest on deposit account. The total charge per leaseholder was £1,239.10, of which £997.54 had been paid on account. The final charge to each leaseholder was therefore £241.56.
16. In response to questions from the tribunal, Mr Boon stated that Mr Lawrence's fee of £900 for the 40 hours claimed to have been spent on the project equated to £22.50 per hour. This was an extremely low rate for a qualified surveyor to charge. As to his firm's fees, these were in respect of 10 ½ hours professional time, for which his normal charge would have been a minimum of £75 per hour.
17. In closing, Mr Boon reported that all leaseholders except one had paid the first instalment of £997.54 and that most had paid the final instalment of £241.56; some leaseholders had expressed concern at the financial liability, but generally the leaseholders were in favour of the works having been carried out.


The Case for the Respondents

18. No representations were received.

Findings and Decisions

19. The tribunal found that, given the unusual wording in the lease and the specific request from some leaseholders, it was reasonable for the landlord to have acted as he did in commissioning the works and seeking contributions from leaseholders for proportionate shares in accordance with the lease.
20. The landlord had acted properly in instructing a Chartered Surveyor to advise and to supervise the works. It could be said that, in the light of the surveyor's comments on the drainage system in his January 2004 report, they might have instructed him at that time to investigate in detail the need for drainage works, though this would not have significantly altered the final costs.
21. The landlord had acted properly in serving statutory notices on the leaseholders and in keeping leaseholders informed throughout.

22. The works were carried out to an acceptable standard and the result achieved represented reasonable value for money, on the basis of the invoices submitted and the tribunal's inspection.
23. The professional fees charged by Mr Lawrence and by Eyre & Johnson were reasonable.
24. The costs were reasonably incurred and the amount payable by each leaseholder as listed amounts to a total of £1,239.10. This sum is payable to the applicant Childsbridge Properties Limited. Payment should be made forthwith.

Signed  J H S Preston JP FRICS Chairman

Dated 14 November 2005