

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MS/LSC/2007/0004

Application under Section 27A of the Landlord and Tenant Act 1985

Re: West End House, West End Road, Southampton

	West End House	Flat No
Applicants	Mr T Bega	4
	Mr P Maton	22
	Mr & Mrs K Whittaker	28
	Mr & Mrs Richards	17
	Mr Glenn Edwards & Miss Nita Patel	15
	Colin Higham	8
	Godfrey Mugoti	19
	Dan Attree	9
	Rob Evans	11
	John Patrick	12
	David Lees & Amanda Jackson	18
	Mr Mudliar & Miss Crittall	25
	Chris Welch	27
	Miss Gabrielle Berry	24
	Ben Rogers	5
	Eastside Court	Flat No
	Lloyde Gashu (Eastside Court)	17

First Respondent: Seager & Hughes Limited

Second Respondent Belgarum Property Management

Date of Application 16th January 2007

Date of Inspection 18th June 2007

Date of Hearing 18th June & 15th October 2007

Venue Wells Place Centre, Eastleigh

Appearances for the Applicants In person: Mr Maton & Mr & Mrs Whittaker on 18th June and Mr Whittaker on 15th October

Appearances for the First Respondent Mrs Webster and Mr Culhane

Appearance for the Second Respondent Mr Culhane

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
D Lintott FRICS	Valuer Member
Mrs M Phillips JP	Lay Member

Date of Tribunal's Decision: 30th October 2007

Decision

- The Tribunal determines that the following budgeted items of service charge relating to West End One, Hatley Road Southampton (the Estate) are reasonable to the extent shown in the fourth column:

Service charge year	Budget Item	Budgeted sum ££	Sums found to be reasonable ££
2006	Reserve fund for future road repairs	5,000	5,000
2007	Estate roads, paths, car park & borders maintenance	1,850	1,850
	Estate electricity	500	500
	Fire and safety	1,100	Reduced to 750
	Estate repairs (gates, lighting, etc)	2,500	Reduced to 1,750
	Lift maintenance	1,500	1,500
	Lift electric & telephone	1,750	1,750
	Estate public liability insurance	525	Reduced to Nil
	Managing agent's fees (estate)	4,288	4,288
	Managing agent's fees (blocks)	7,200	7,200
	Reserve fund for road and estate repairs	2,000	2,000
	Reserve fund for block repairs	3,000	3,000

- The Tribunal did not make any finding about how those charges were to be apportioned between any units on the Estate.
- The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 that the First and Second Respondents' costs incurred in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

Reasons

Introduction

- This is an application made by the Applicants under Section 27A of the Landlord and Tenant Act 1985 to determine, in respect of the Estate, whether certain service charges for the years 2006 and 2007 are reasonable.
- The application was made on 16th January 2007 and the items to be considered by the Tribunal were as set out at paragraph 9 below.

Inspection

- On 18th June 2007 the Tribunal inspected the premises in the presence of Mr Maton and Mr & Mrs Whittaker, representatives of the Applicants, and Mr Culhane and Mrs Webster representatives of the First and Second Respondents.

7. The subject premises, West End House, otherwise known as Block C, form one block in an estate of 4 blocks and 8 houses of which the freeholder is Seager & Hughes Limited (the First Respondent). There are a total of 73 units of accommodation on the estate which is laid out to access road, car parking gardens and landscaped areas. The access road is protected by security gates against vehicles. The development had been completed in about 2005 and is in good condition generally. The estate is managed by the Second Respondent Belgarum Property Management Limited.

Hearing

8. The same persons attended the first day of hearing as attended the inspection That hearing was adjourned with further directions. The hearing of the matter resumed on 15th October 2007 when Mr Whittaker only attended on behalf of the Applicants and Mrs Webster and Mr Culhane for the First and Second Respondents.
9. The issues to be determined by the Tribunal were whether services charges were reasonable.
10. The service charges in question had been identified at the Pre-Trial Review of the matter held on 3rd April 2007 as being the following budget items:

Service charge year	Budget Item	Budgeted sum ££
2006	Reserve fund for future road repairs	5,000
2007	Estate roads, paths, car park & borders maintenance	1,850
	Estate electricity	500
	Fire and safety	1,100
	Estate repairs (gates, lighting, etc)	2,500
	Lift maintenance	1,500
	Lift electric & telephone	1,750
	Estate public liability insurance	525
	Managing agent's fees (estate)	4,288
	Managing agent's fees (blocks)	7,200
	Reserve fund for road and estate repairs	2,000
	Reserve fund for block repairs	3,000

11. The Tribunal heard evidence from the parties, their submissions and considered all the case papers and further documents submitted. The Tribunal had a copy of the lease dated 24th June 2005 relating to Flat 4 West End House in favour of Mr Bega and Peninah Njeri Nderitu for a term of 155 years from 1st November 2004. It treated this as the standard form of lease applying to all units on the Estate, but also inspected a number of other counterpart leases as referred to below.
12. It is understood that save as to apportionment of service charge, the leases are in this standard form. So far as relevant to the issues in dispute, the lease, in terms, provides:
- In clause 11 for the service charge specified in paragraph 7 of Schedule 7 to be payable; to pay contributions or estimated contributions
 - Schedule 7 provides for the proportion of Service Charge to be payable in respect of "the relevant parts of Schedule 5"
 - Schedule 5 contains two parts:

- i. Part 1 – General Provisions: the service charge including contribution to reserve funds, rates and other charges; and, in paragraph 1.2.3, “all other expenses (if any) incurred by the Manager in and about the maintenance and proper and convenient management and running of the areas referred to *in that Part of this Schedule* (which is unidentified);
 - ii. Part 2 – All Apartments: management expenses, fees and disbursements and expenses for carrying out obligations for repair, maintenance, insurance etc of the estate as fully contained in Clause 13 of the lease.
13. The evidence from the Respondents was limited, some documents and information not having been brought to the hearing and also because Mrs Webster and Mr Culhane did not have knowledge of many of the issues which arose.
 14. The Applicants case was generally that the items to be determined represented a large increase over the previous year, that reserves for repairs were not yet appropriate as the development had only been completed in 2005; they did not have the experience to know whether sums claimed were appropriate. Mr Whittaker indicated that when he bought his flat he had been led to believe the service charges would be under £500 while many of the budget figures are vastly higher.
 15. For want of evidence on many aspects, the Tribunal also took into account, and had to rely heavily on, its own knowledge and experience in other cases.

Interpretation of the Lease.

16. The sums which the Tribunal has considered represent the total budgeted provision to be divided between accommodation units. The First Respondent’s budgets showed how they proposed to do this. Some items would be shared only between units in one block, e.g. the lift maintenance in West End House, and other items would be divided between units in two or more blocks. Where they proposed that items be shared only between units in West End House, for example, they provided for equally sharing. Where they proposed that items be shared by all units on the estate, they proposed equal sharing. That does not accord with the provisions in the leases seen by the Tribunal as outlined in Paragraph 21 below.
17. The Respondents had realised there were difficulties with managing the estate in the light of provisions of the leases and they had adopted an approach of dividing service charges which they considered to be fair and reasonable.
18. The Tribunal did not need to make any decision about whether their approach was fair and reasonable but instead had to consider the terms of the leases to ascertain how the apportionments were required to be made by those contractual provisions.
19. At the hearing Mr Culhane produced the counterpart leases of 11 flats in West End House. It is accepted that other than apportionment of service charge these are all in the same form.
20. The Lease is badly drafted to the extent that it is not possible to make any satisfactory or sensible interpretation of the service charge apportionment provisions.
21. While the Tribunal would expect that one apportionment would apply to charges such as estate roads, which might be divisible between all units on the Estate, and single block expenses (such as electricity for common parts of one block) might be divided only between the units in that block, the leases do not differentiate between the two and, at best, only provide one apportionment for all service charge items. For example the lease of Flat 4 West End House provides for that flat to bear 1/27th of the cost of all service charges, *possibly* whether they relate only to West End House or to the entire estate.. The Tribunal found that that could not have been the intention. Furthermore, within West End House there are 5 different apportionments of all charges: 1.68%, 1.48%, 1/57th, 1/27th while the lease of Flat 2 has no provision stated at all.
22. It is because of these difficulties that the First Respondent has hitherto taken a pragmatic approach and is now making an application to the Tribunal for variation of the leases under

Section 35 of the Landlord and Tenant Act 1987. The Tribunal is anxious that that application should fully address (so far as that Section allows) all issues arising on the lease – not only apportionments, but the meaning and sense of Schedule 5. For instance, what is the meaning of Paragraph 1.2.3 of Schedule 5 to the lease (see paragraph 12.c above)?

23. None of the parties was able to provide any guidance as to how the various apportionments were arrived at and the Tribunal has found it impossible to determine what is intended. While any ambiguity should be construed against the Landlord, the Tribunal declined to do so because that might result in substantial difficulties in the continued management of the estate and for all those having an interest in it. It is in the interests of all parties that charges do continue to be paid and that pending the outcome of the Section 35 application, all parties continue to co-operate in the difficult circumstances in which they find themselves. If that should not prove to be possible, interpretation of the leases may be a matter for the County Court involving very significant time and expense for all concerned. The Tribunal earnestly hopes that can be avoided.
24. The following must be read in the context of the above serious difficulties in interpreting the lease.

Tribunal's findings on specific items of service charge

25. The issues arising on and the findings of the Tribunal on each item were as follows:

a. 2006: Reserve fund for future road repairs.

- i. Submissions and evidence. The Applicants claimed that the road is adopted (it has a highway authority road sign) and the road having been re-surfaced in 2006, there should not at present be a reserve fund. The security gates were installed in 2006 and should be covered by warranty. The Respondents said the Council had informed them the road is not adopted. Mrs Webster said the gates had been installed in about 2005 and the guarantee ran out in 2006
- ii. Tribunal's findings. There was no firm evidence, but the Tribunal considered it very unlikely that an adopted highway would be secured (against vehicles) by gates against the public and therefore found that the road is not actually adopted so that its maintenance and repair would be chargeable to service charge. The Tribunal considered prudent management would necessitate making early provision for future repairs and maintenance and that the sum of £5,000 budgeted for was therefore a reasonable provision

b. 2007: Estate roads, paths, car park and borders maintenance

- i. Submissions and evidence. The Respondents had no invoices but said they asked for quotations for mowing, weeding, sweeping etc. Croft Estates obtained the work on this basis and are still doing that work. They did not have copies of other quotes received and did not know which other firms had submitted them. Croft Estates has no connection with the Respondents.
- ii. Tribunal's findings. The Tribunal considered the summary of invoiced expenditure for 2006 prepared by the First Respondent on 20th April 2007 to show the basis for the 2007 budget. On the basis of its understanding of those figures relating to gardening, the nature and extent of the gardens of the property and its own knowledge and experience of the likely cost of such work, it considered the budgeted figure of £1,850 to be reasonable and payable as service charge as above

c. 2007: Estate electricity & lift electricity and phone (the Tribunal took these items together in view of difficulty in separating them)

- i. Submissions and evidence. The first Respondent produced various electricity bills for several Blocks including West End House. These bills, for

West End House from December 2006 to September 2007 totalled £3,285, including £2,524 for about 3 weeks to 12th January 2007 commencing with an estimated meter reading. No explanation for that was available; Mrs Webster said that this particular payment was not authorised in the normal way. It appears that those bills would cover internal lighting, the lift and some of the external lighting. The Respondents believe that the cost of electricity for external lighting is divided between the blocks and houses so that part of that lighting is supplied through the meter of the nearby block/houses. It seems therefore there is no separate identification of the cost of external electricity usage either for lighting or, indeed, the security gates. Mr Whittaker thought that the phone costs of £218 per year were high. The Respondents said that this would be appropriate for an emergency lift phone which would be on a business tariff.

- ii. Tribunal's findings. In respect of those 4 electricity bills relating to West End House, the Tribunal noted that substantial credits had been applied to the bills for March, June and September 2007, and it considered that the bills would reasonably be expected to total about £1,200 per year. It also noted the phone bills, which it considered to be reasonable, so total actual bills of £1,400 for these items. The First Respondent had budgeted £500 and £1,750 for these items, a total of £2,250. Although this is significantly more than the actual cost, the Tribunal considered that when budgeting, it would not have been unreasonable for the First Respondent to provide for the budgeted sums. In the light of actual experience, it may well be that in future it would be appropriate to reduce budgeted sums.

d. 2007: Fire & Safety

- i. Submissions and evidence. Invoices showed that in 2007 about £449 had been spent on this item
- ii. Findings. The Tribunal considered that the sum spent in 2007 was of the order to be expected, that to budget for £1,100 was unreasonable and that a reasonable sum would have been £750.

e. 2007: Estate repairs (gates, lighting etc).

- i. Submissions and evidence. In 2006 £1,979 had been spent on gate repairs. Mrs Webster accepted that there had been initial problems and that future costs should now be less.
- ii. Tribunal's findings. The first Respondent had budgeted for £2,500. The Tribunal did not consider that it would be reasonable to budget for that sum in relation to the gates alone, but that £1,750 would have been reasonable. The Tribunal also made allowance for the fact that lighting had been dealt with elsewhere and no further provision for it was appropriate.

f. 2007: Lift maintenance.

- i. Submissions and evidence. The Respondents could not produce the maintenance contract or invoices paid under it. Their summary showed expenditure on the contract of £1,227 in December 2006.
- ii. Tribunal's findings. The budgeted figure of £1,500 is in line with the contract cost and very much as the Tribunal would expect from its own knowledge and experience, so the budgeted figure was found to be reasonable.

g. 2007: Estate public liability insurance.

- i. Submissions and evidence. Mrs Webster said that they had taken over insurance arrangements from the developer and therefore still had separate policies for each block. These did not include public liability which was

required as there was a public right of way on foot through the estate. She did not have evidence of the premium payable.

- ii. Tribunal's findings. The Tribunal considered that prudent management would require that the whole estate should be brought under one insurance policy which would thereby reduce overall premiums and that public liability would be included. The Tribunal therefore considered it was inappropriate for any separate budget heading for this item. It would be reduced to nil.

h. 2007: Managing agents fees (estate and blocks).

- i. Submissions and evidence. Mr Whittaker said these charges represented a significant and ridiculous increase. Mrs Webster said that £150 plus VAT per unit were usual in the area.
- ii. Tribunal's findings. The budgeted items together total £11,488. There are 73 units on the estate so that excluding VAT, the budget is for £133.93 per unit. The Tribunal agreed with the Respondent's evidence from its own knowledge and experience and found the budgeted sums to be reasonable.

i. 2007: Reserve funds for road and estate repairs & for block repairs

- i. Submissions and evidence. The budgets included provision for future road-surfacing, renewal of gates and provision for repairs to the Blocks. Mr Whittaker said that initial repairs would be covered by their NHBC guarantees.
- ii. Tribunal's findings. In the same way as it considered the £5,000 provision for 2006 to be reasonable, the Tribunal so found for these items, but these funds should be ring-fenced and placed in a separate account designated for these purposes

26. In coming to its conclusions on the individual items, the Tribunal wishes to stress that in no sense should the budgeted sums or those items as reduced in certain instances, be treated other than reasonable estimates for the then forthcoming year. All future budgets should be prepared taking into account actual experience and expenditure and should be a reasonable calculation of future costs.

Limitation of Costs.

27. The Applicants sought an Order preventing the Respondents' costs of this application being recovered from the Applicants by way of service charge.
28. The Tribunal found that in view of their findings on a number of service charge, the ambiguities in the leases and that the service charges accounts and budgets were prepared on a basis which was not provided for in those leases, the application made was entirely reasonable and that the Applicants should not be penalised for so doing.
29. The Tribunal found that there was no provision in the Applicants' leases which was sufficiently widely drawn to enable the Respondents to recover their costs in connection with the proceedings from the Applicants. In case it was wrong about that, the Tribunal made an Order under Section 20C of the Landlord and Tenant Act 1985.
30. The Tribunal made its decisions accordingly.

Dated 30th October 2007



A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor