

**SOUTHERN RENT ASSESSMENT PANEL**

Certificate pursuant to regulation 10(2) of the Rent Assessment Committee (England & Wales) Regulations 1971 (SI 1971/1065)

Re: **Memorial Villa, Down Ampney, Cirencester, Gloucestershire, GL7 5QS,**

**and**

**Kneelers Villa, Down Ampney, Cirencester, Gloucestershire, GL7 5QS**

Case No: **CHI/23UC/LIS/2009/0027**

**I certify** pursuant to the above-mentioned Regulation that there is an error in the Leasehold Valuation Tribunal's Decision Document in this matter dated 28<sup>th</sup> May 2009.

On Page 5, Section VI, the sentence "Accordingly this application is dismissed" is to be deleted.

It is to be replaced with "'Furthermore the service charges are recoverable under the terms of the Applicant's lease".

Signed

Andrew Duncan McCallum Gregg  
A Chairman of the Panel  
Appointed by the Lord Chancellor

Dated 24<sup>th</sup> June 2009

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/23UC/LIS/2009/0027

Re: Memorial Villa, Down Ampney, Cirencester, Gloucestershire, GL7 5QS and  
Kneelers Villa, Down Ampney, Cirencester, Gloucester, GL7 5QS

**Between:**

Mark Daniel Bye (First Applicant)  
and Eve Coombs (Second Applicant) ("The Applicants")

And

Fosseway Housing Association Limited ("The Respondent")  
(Bromford Group Home Ownership Services)

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**IN THE MATTER OF AN APPLICATION UNDER SECTION 27A OF  
THE LANDLORD & TENANT ACT 1985 (AS AMENDED)  
(LIABILITY TO PAY SERVICE CHARGES)**

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**DECISION**

Date of Application: 1<sup>st</sup> April 2009  
Date of Directions: 14<sup>th</sup> April 2009  
Date of Determination: 28<sup>th</sup> May 2009  
Member of the LVT: Mr Andrew Duncan McCallum Gregg

**Determination**

This matter has been determined, with the consent of both parties by way of a paper determination and on the basis of written representations and documents received by the Tribunal. No inspection of the premises was deemed necessary.

**I. The Issues**

I.I The First Applicant, Mr Mark Daniel Bye, holds this property under the terms of a lease dated the 26<sup>th</sup> May 2005 for a term of 99 years.

- I.II The First Applicant has requested the Tribunal to determine his liability to pay certain service charges for the year 2009/10.
- I.III Specifically the First Applicant has requested a determination concerning the costs of the sewerage charges applicable to the premises concerned.
- I.IV The Second Applicant, Eve Coombs, of Kneelers Villa, Down Ampney, Cirencester, Gloucestershire, GL7 5QS has, by a letter dated the 1<sup>st</sup> of April 2009 requested to be joined in this application.
- I.V The respondents in a letter dated the 23<sup>rd</sup> of March 2009 set out the basis of the services charges payable for the year commencing 1<sup>st</sup> April 2009.
- I.VI The liability to pay service charges is governed by the provisions of Section 27a of the Landlord & Tenant Act 1985 (as amended) and the terms of the lease.

## **II. Relevant Liabilities Under the Lease of the First Applicant**

- II.I The lease is dated the 26<sup>th</sup> day of May 2005.
- II.II Paragraph 1.13 of the lease defines "service installations" which means all drains, channels, foul and surface water sewers, pipes, wires, cables water courses, gutters and other conducting media whatsoever (and any pumps, apparatus and structures incidental to the user thereof) now or hereafter constructed within the estate.
- II.111 Paragraph 2 of the lease imposes a liability on the leaseholder to pay "firstly the specified rent....."  

"Secondly a sum equal to the amount expended by the landlord complying with its covenants in Clause 5.2....."

"Thirdly, such sum as may from time to time be payable by the leaseholder pursuant to Clause 3.4 hereof to be payable on demand by the leaseholder to the landlord."
- II.IV Clause 3.4 of the lease reads as follows:-  

"Contribution to Common Costs

To contribute a fair proportion to be assessed from time to time by the landlord of

3.4.1 The reasonable cost of repairing, maintaining, renewing and as the case may be the service installations (which for the avoidance of doubt include estate sewage pumps and like apparatus), any party walls.....and further to indemnify the landlord against all such liabilities and outgoings.

3.4.2 The reasonable fees, charges and expenses of the surveyor, any accountant or other person whom the landlord may from time to time reasonably employ in connection with the management and maintenance of the communal facilities.....”

### **III The Law**

III.I Section 27a of the Landlord & Tenant Act 1985 ("the Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, determine

- (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.

III.II For the purposes of the Act a service charge is defined in Section 18(1) as "an amount payable by a tenant of a dwelling as part of or in addition to the rent

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management and
- (b) The whole or part of which varies or may vary according to the relevant costs (including overheads).

III.III "Relevant costs" are defined as costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with the matters for which the service charge is payable.

III.IV Section 19(1) of The Act deals with the test of reasonableness and the only costs that shall be taken into account in determining the amount of the service charge are those that are

- (a) reasonably incurred and
- (b) where they are incurred on the provision of services or carrying out of works if those services or works are of a reasonable standard.

### **IV The Applicant's Case**

IV.I The Applicant's case has been ably set out by the Applicant's father in correspondence with the Tribunal and the Respondents themselves.

#### IV.II The Applicant complains (amongst other things)

- (a) That the Respondents have increased sewerage charges on both properties.
- (b) That Memorial Villa was acquired under the Government Shared Equity Scheme in 2005 and that the property had a private sewer in respect of which charges would be levied that would not be recoverable on housing benefit. This latter point is important because the Applicant is disabled following a serious brain haemorrhage.
- (c) That the Respondent's initial demand for service charges were excessive and based on a miscalculation.
- (d) That the service charges now demanded remain excessive.
- (e) That an administration fee is now charged which had not been previously charged for.
- (f) That the purchase of Memorial Villa had been on the basis of it being affordable housing.
- (g) That the private sewers are only occasionally serviced.
- (h) That the Applicant will be unable to pay the increase in these fees.
- (i) That the Applicant's property and that of his neighbour were only occupied in late May 2005.
- (j) That the sewerage works were undertaken without verification.
- (k) That the costs now demanded exceed those in respect of which previous assurances had been given.
- (l) That there were no incidents or difficulties being experienced so as to justify the service charges.
- (m) That the service charges relate to 9 pumping stations which were therefore excessive.
- (n) That the contractor, Kee Services, have advised him that one pumping station could service up to 100 dwellings and the charge is therefore disproportionate.

#### IV.III The above is a non-exhaustive summary of the main grounds for the Applicant's case.

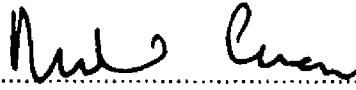
## **V. The Respondent's Case**

- V.I The property was purchased in 2005 as shared ownership with Fosseway Housing Association.
- V.II Fosseway Housing Association have now merged with the Respondents and the control of the shared ownership properties was transferred into their management in September 2008.
- V.III Prior to that time the charge for the maintenance of the sewage system was only increased by a nominal percentage irrespective of actual costs incurred.
- V.IV In line with Clause 3.4.1 of the lease and recommended good practice the charges have now been reviewed and the charges that are levied are the actual costs incurred.
- V.V The Respondent cannot be expected to continue to subsidise the previous shortfall.
- V.VI The maintenance contract that is now in place covers nine pumping stations and is for a 2 monthly visit to check each station to carry out any necessary repairs.
- V.VII The Respondent asserts that it is necessary to carry out regular visits to ensure that the mechanism is running smoothly and problems are kept to a minimum.
- V.VIII The Respondents accept and appreciate that the service charge costs are higher than have been previously charged but maintain that the costs relate to the actual expenditure incurred and that the Applicant should have been made aware prior to his purchase of the possibility of a rise in costs and expenditure.

## **VI. The Determination**

- VI.I Whilst the Tribunal has the greatest sympathy with the predicament of the Applicant and are entirely mindful of his disability this determination has to be made on the basis of the law and of the terms of the Applicant's lease.
- VI.II The Tribunal has determined that the service charges in question are reasonable and proportionate.
- VI.III Furthermore the service charges are recoverable under the terms of the Applicant's lease.

Accordingly this application is dismissed.



.....  
Andrew Duncan McCallum Gregg  
A Chairman of the Panel  
Appointed by the Lord Chancellor

Dated: 28<sup>th</sup> May 2009

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/23UC/LIS/2009/0027

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**IN THE MATTER OF AN APPLICATION UNDER SECTION 27A OF  
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**CORRECTED DECISION**

24<sup>th</sup> June 2009

Date of Application: 1<sup>st</sup> April 2009  
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Date of Determination: 28<sup>th</sup> May 2009  
Member of the LVT: Mr Andrew Duncan McCallum Gregg

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To contribute a fair proportion to be assessed from time to time by the landlord of

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.....  
Andrew Duncan McCallum Gregg  
A Chairman of the Panel  
Appointed by the Lord Chancellor

Dated: 28<sup>th</sup> May 2009

**Corrected: 24<sup>th</sup> June 2009**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL &  
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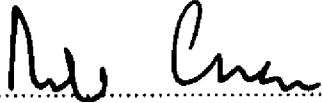
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**RESPONSE TO THE APPLICANT'S REQUEST FOR PERMISSION TO APPEAL  
AGAINST THE DECISION OF THE LVT DATED 28<sup>TH</sup> MAY 2009**

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1. The Residential Property Tribunal Service have received a request from the Applicant Mark Daniel Bye through his father, Mr Derek Bye, for permission to appeal against the decision of the LVT made on the 28<sup>th</sup> day of May 2009.
2. That request is dated the 12<sup>th</sup> day of June 2009.
3. The request sets out four grounds for this appeal.
4. The Tribunal takes note of the reasons put forward for the grounds of appeal.
5. The Tribunal can however only reach a decision by applying the law (the Landlord and Tenant Act 1985) as amended to the particular facts of the case and in the light of the obligations set out in the first Applicant's lease.
6. This the Tribunal has done.
7. Whilst the Tribunal acknowledges and sympathises with the Applicant's financial situation and the fact that Memorial Villa was purchased on the basis of affordable housing, that is not an issue which falls within the purview of the Tribunal.
8. The Tribunal is also mindful of the Applicant's disability but again that is, regrettably, not an issue that the Tribunal can consider in the context of this application.

9. In view of the above the Tribunal declines its permission for leave to appeal against the decision of the 28<sup>th</sup> day of May 2009.

Signed  .....  
Andrew Duncan McCallum Gregg (Chairman)

Dated the 24<sup>th</sup> day of June 2009