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RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL of the  
MIDLAND RENT ASSESSMENT PANEL

No. BIR/39UD/LSC/2009/0045

BETWEEN:

Mr N.Hartland, Mr N.Bateman & others Applicants

and

Leabrook Lodge Limited & others Respondents

Properties: - Bungalows at Meadowbrook Court, Twmpath Lane,  
Oswestry SY10 7HD

Section 27A of the Landlord and Tenant Act 1985 (the Act)

TRIBUNAL

Mr A.J.ENGEL M.A.(Hons.) - Chairman

Mr R.BROWN F.R.I.C.S.

Mrs. C. SMITH

**DECISIONS**

- A. The budgeted service charge for 2009/10 for Meadowbrook Court is reduced from £231,840 by £3,000 to £228,840 (i.e. £3,814 per annum - £317-83 per month - for each of the 60 bungalows).**
- B. Any costs incurred or to be incurred by Leabrook Lodge Limited in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the service charges payable in respect of the Properties.**
- C. Leabrook Lodge Limited to re-imburse Mr N.Hartland forthwith the £50 fee Mr Hartland has paid to the Tribunal in respect of these proceedings.**

## REASONS

### Introduction

1. Meadowbrook Court is a development comprising 60 bungalows let on long leases. The Landlord is Leabrook Lodge Limited.
2. The service charge year runs from 1<sup>st</sup> April to 31<sup>st</sup> March.
3. A budget is set by the Landlord prior to 1<sup>st</sup> April of each year and the budgeted service charges are payable by monthly instalments in advance with an adjustment after the end of the service charge year when the final accounts for the year have been drawn up.

### The Application

4. By written application, dated 13<sup>th</sup> October 2009, Mr N.Hartland, the Lessee of 10, Meadowbrook Court applied to the Tribunal for a determination of the amount payable by him in respect of the (budgeted) service charges for 2009/2010.

(Mr Hartland has paid a fee of £50 to the Tribunal in respect of the proceedings.)

5. Thereafter, other Lessees of bungalows at Meadowbrook Court (including Mr N.Bateman) were joined as parties to the proceedings.
6. The Landlord is a Respondent.

### The Budget

7. Attached to Mr Hartland's application was a letter from the Landlord, dated 20<sup>th</sup> May 2009, which had attached to it the service charge budget for 2009/2010. This contained itemised amounts, which came to a total of £231,840, which was divided by the 60 bungalows – £3,864 per annum (£322 per month) - for each bungalow.

## Hearings

8. A Pre-Trial Review was held, before the full Tribunal, on 22<sup>nd</sup> January 2010 which was attended by Mr Hartland and a number of other parties – but the Landlord was not represented at the Pre-Trial Review.
9. The full hearing took place on 27<sup>th</sup> April 2010. This hearing was attended by Mr Hartland, Mr Bateman and a number of other parties – but again the Landlord was not represented at the hearing.

(Further, the Landlord failed to comply with the Tribunal's Directions, which meant that the documentation before the Tribunal was incomplete.)

## Issues

10. The issues were:-

- (i) Was the amount of £13,750 which appeared in the budget under the heading "Performance of Covenants in respect of Communal Lounge & Nursing Station (Schedule 6 Clause 9)" payable?
- (ii) Was the amount of £6,000 which appeared in the budget under the heading "Mrs Sue Jones" payable?

(These issues were raised by Mr Hartland)

- (iii) Was the budget affected by an incorrect inclusion of VAT?

(This issue was raised by Mr Bateman)

## Performance of Covenants

11. At the hearing on 27<sup>th</sup> April 2010, Mr Hartland agreed that the Landlord retained the freehold of the Communal Lounge and Nursing Station but he referred to the charge as a "phantom charge" as nothing had been paid by the Landlord.

(At the Pre-Trial Review, Mr Hartland had conceded that if the Landlord had to pay for the provision of a Communal Lounge and Nursing Station, £13,750 would be a reasonable amount to pay.)

12. We consider that although no expenditure was incurred, the Landlord is entitled to charge for the provision of the Communal Lounge and Nursing Station and that although Schedule 6 Clause 9 of the Leases does not refer to the Communal Lounge, we consider that Schedule 6 Clause 12 in the Leases covers the Communal Lounge.

Thus, we allow the £13,750 to remain in the budgeted account.

### **Mrs Sue Jones**

13. Mrs Sue Jones is employed by the Landlord and provides services to the residents of Meadowbrook

14. Mr Hartland accepts that £6,000 is a reasonable sum for such services but he contends that this £6,000 is duplicated in the Estate Management Charge of £24,000 (£400 per bungalow).

15. Whether or not, there is duplication, we are unable to determine on the documentation before us - which due to the Landlord's limited participation in these proceedings - is clearly far from complete.

16. Doing the best we can, we consider that the fairest way of dealing with the matter at this stage is to allow £3,000 - bearing in mind that we are dealing only with a budget - which is subject to adjustment at a later stage.

### **VAT**

17. Mr Bateman submitted to the Tribunal that the Estate Management Charge of £24,000 (£400 per bungalow) had been based on a miscalculation of the Total Expenditure.

18. Mr Bateman referred the Tribunal to Clause 1(3) of Part 1 of the Seventh Schedule to his Lease which states that the Estate Management Charge “shall not be less than Twenty two per cent of the Total Expenditure (excluding v.a.t. and excluding the Management Charge and v.a.t. thereon).

19. Mr Bateman then referred the Tribunal to a document which suggested that (during a previous service charge year) VAT had not been (fully) excluded when the Total Expenditure had been calculated.

20. Although it is impossible for us to determine on the (incomplete) evidence before us, it may well be that, if the Total Expenditure was a factor in the calculation of the Estate Management Charge for the 2009/10 budget, VAT was erroneously included.

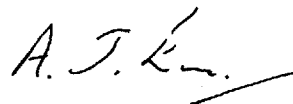
However, as the Total Expenditure is – according to Mr Bateman’s Lease - the basis for calculating a minimum figure for the Estate Management Charge and as it has not been suggested that the £24,000 is below such minimum figure, this matter does not assist us in determining the amount payable in respect of the 2009/10 budgeted accounts.

### **Section 20C and Fee Re-imburement**

22. At the hearing on 27<sup>th</sup> April 2010, Mr Hartland applied for an Order under Section 20C of the Act and for an Order for re-imburement of the £50 fee he had paid to the Tribunal - pursuant to Regulation 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

23. We consider it just and equitable to make the Orders set out at B and C above – having regard to our Order set out at A above and the matters referred to at Nos. 8,9,15 and 20 above.

SIGNED:



(A.J.ENGEL – Chairman)

DATED:

6<sup>th</sup> May 2010