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**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**

**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **MAN/36UD/LSC/2016/0002** |
| **Property** | : | **1 The Walled Garden, Moor Park, Beckwithshaw Harrogate HG3 1QN** |
| **Applicant** | : | **JOHN DAVID SEED** |
| **Respondent** | : | **MOOR PARK MANAGEMENT LIMITED** |
| **Type of Application** | : | **Landlord and Tenant Act 1985, section 27A** |
| **Tribunal Members** | : | **A M Davies LLB**<br>**J Jacobs MRICS** |
| **Date of Hearing** | : | **6 May 2016** |

## DECISION

1. The Applicant shall pay the service charges identified by the Respondent in his service charge accounts for the years ending 30 June 2015 and 30 June 2016.

2. There is no costs order.

## REASONS

BACKGROUND

1. The Applicant is the original leaseholder of a house at 1 The Walled Garden, Moor Park, Beckwithshaw, and a director of the Respondent management company. He has been in emailed communication for some two years with the Respondent regarding maintenance of the hedges near his property, and the parties have been unable to reach agreement on the matter.

2. On 5 January 2016 the Applicant lodged an application to the Tribunal for determination as to the service charge he was to pay for gardening services provided by the Respondent at Moor Park, in the service charge years ending 30 June 2015 and 30 June 2016. The applicant valued the disputed charges at £150 for each of the two years.

3. Directions were given without a hearing on 10 February 2016, and were complied with by the parties.

INSPECTION

4. On the morning of the hearing, the Tribunal inspected on foot the pathways, hedging and planting on Moor Park, especially to the front of the Applicant's property and around the garden of the adjacent property "The Dovecote". The Tribunal were accompanied by Mr N Warren of J H Watson Property Management on behalf of the Management Company, and by the Applicant and his friend Mrs Linnette who also lives at 1 The Walled Garden.

5. Moor Park is an exclusive residential development in a park some two miles outside Harrogate. Apart from the flats inside the main house, there are some 35 dwellings in the surrounding garden area including the Applicant's property and The Dovecote. The estate was laid out between 2002 and 2004, the Applicant having bought the leasehold of his house in 2002.

6. The developers marked the boundaries of the various leasehold properties with metal fencing. Hedging has been planted along the fences, in most cases immediately inside the boundary fence. Between the properties on the estate are many footpaths, one of which leads to the Applicant's front door and also to the back door of The Dovecote. This path like many others on the estate is now bordered by mature hedging, which has grown through the boundary fence and requires regular cutting back, both along the outer faces of the hedges to keep the footpaths open, and on top to control the height.

7. The Tribunal noted that for a short distance near the front door of The Dovecote hedging had been planted more recently (but some years ago), immediately outside the metal boundary fence, and the Tribunal were told that Mrs Phillip, the owner of The Dovecote, had carried out this planting to give her property more privacy.

PRELIMINARY APPLICATION

8. At the hearing, Mr Warren spoke for the Respondent, which was also represented by Mrs Gray, a resident and a director of the Respondent. The Applicant was not represented but was assisted by Mrs Linnette.

9. The Applicant told the Tribunal that he wished for an adjournment, as his solicitor was not present. He explained that he had contacted his solicitor, who practices in Sussex, he thought in the week beginning 18 April, to ask if he would represent him before the Tribunal. He had not sent his solicitor a copy of the application, the lease, or other Tribunal papers. His solicitor had explained that he was due to take a holiday from about 25 April to 3 May, and would not be able to represent the Applicant in Yorkshire at the hearing on 6 May.

10. On the afternoon of Friday 29 April the Applicant, who had had previous correspondence by email with the clerk managing this case at the Tribunal office, emailed her to ask for an adjournment. His email did not give the reference number for the application, and was incorrectly addressed, so that it was delivered to a clerk in a different Tribunal office. On Tuesday 3 May (Monday being a bank holiday) that clerk asked the Applicant for more details of his case. The Applicant sent her the case reference; he was informed that he had emailed to the wrong address and was reminded of the correct address. The Applicant eventually sent his request for an adjournment to the correct clerk after she had left her office on 5 May. The request therefore had not reached the Tribunal members prior to the hearing.

11. The Applicant told the Tribunal that he wanted legal representation because he did not feel capable of addressing them on interpretation of the lease. He said that he wanted to use his solicitor in Sussex rather than any local solicitor, and would have paid his solicitor to travel to Yorkshire for the day. He could not explain why his application for an adjournment was made so late or to the wrong clerk.

12. The Tribunal refused the request for an adjournment on the following grounds. Firstly, refusal did not materially prejudice the Applicant. The application had been lodged on 5 January 2016; directions were given on 10 February, and the Applicant had had since then to arrange for legal representation or to obtain advice on the terms of his lease. He had had plenty of time since speaking to his solicitor on or about 18 April to instruct a local solicitor, and had chosen not to do so. A copy of his lease was in the hearing bundle and the Tribunal was able to determine its meaning without the assistance of legally qualified advocates for either party. Secondly, the Tribunal is bound to manage hearings efficiently and not to waste public resources. In this case there was one service charge issue before the Tribunal, the total value of which, in terms of any alteration to the Applicant's service charge account, was £8.57 at most. In the circumstances, it would be an excessive and unjustifiable use of public funds to grant an adjournment.

THE APPLICANT'S CASE

13. The Applicant explained that from 2004 to 2014 the owner of The Dovecote, Mrs Phillip, had cut both the outer and inner faces of the hedge that surrounds her garden on three sides. The hedge had been allowed to grow in height. In 2014 the outer face of the hedge had not been cut as usual and it was encroaching across the narrow path to the Applicant's front door. The Applicant had complained to the Respondent about this and the excessive height of the hedge.

14. The Applicant confirmed to the Tribunal that the Respondent, of which he was a director, had at an early stage adopted a general policy of instructing the estate's gardening contractors, currently Conker Landscapes Ltd ("Conker"), to cut the outer faces of hedges growing alongside the estate pathways, roads and carparks. However he objected to the fact that in February 2015 Conker had trimmed the outer face of the hedge at The Dovecote and reduced its height, and in November of the same year had cut back the outer face of Mrs Phillip's hedging, because this represented a change in the previous arrangement whereby Mrs Phillip's own gardeners had done such work.

15. Mrs Linnette said that she had seen the work being carried out and that it had taken 3 hours in February 2015 and 45 minutes in November 2015. The Applicant had contacted the Respondent's agents J H Watson Property Management, who had informed him that the cost of 3 hours' work would be £150. The Respondent believed that because she had previously had all work to her hedge carried out privately, Mrs Phillip should reimburse the Respondent the sum of £150 for the work Conker carried out to her hedge in each of the service charge years ending 30 June 2015 and 30 June 2016.

16. At the hearing, the Applicant told the Tribunal that he considered that if Mrs Phillip paid £300 to the Respondent, that sum should be credited to the estate's Reserve Fund, and that he did not consider this to be a service charge issue. The Applicant was reminded that he had made an application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The Tribunal took the view that as the Respondent would be entitled to adjust the service charge account if it received a credit from Mrs Phillip, this was at least potentially a service charge issue and that the Tribunal had jurisdiction to

continue the hearing.

THE LAW AND THE LEASE

17. Section 27A of the 1985 Act provides that on the application of either party to a qualifying lease the Tribunal shall determine what service charge is payable, by whom, to whom, when and in what manner. Section 19 of the 1985 Act provides that a service charge is payable only to the extent that it is reasonably incurred, and only if the services provided are to a reasonable standard.

18. The leases held by the Applicant and by Mrs Phillip are the same in all material respects. They provide at the Seventh Schedule that the Respondent may charge each of the 35 owners of properties situated in the grounds at Moor Park a proportion of the cost of, among other things, meeting the following obligations:

"3. *To keep the Reserved Property* [ie the estate grounds other than the residents' dwellings].....*in a good and substantial state of repair and condition.....and including (without prejudice to the generality of such provision):.....*

*(b)* *the Common Road and all access ways roads and forecourts and other parts of the Estate enjoyed or used by the Lessee in common as herein provided*

*(c)* *the paths and parking areas and landscaped areas and gardens on the Estate and the boundary walls and fences bounding the Reserved Property so far as the obligation for maintenance and repair thereof rests upon the lessor or the Management Company.....*

*(f)* *all other parts of the Estate not included in the foregoing sub-paragraphs and not included in the Dwellinghouses*

*PROVIDED THAT nothing herein contained shall prejudice the Management Company's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Management Company or the Reserved Property by the negligence or other wrongful act or default of the Lessee or such other person.*

19. The leases require each lessee to contribute his proportion of the Service Costs, which are defined as

*the costs and expenses described in the Ninth Schedule hereto...."*

The Ninth Schedule provides at paragraph 1 that Service Costs include

*"All costs expenses and outgoings whatsoever incurred by the Management Company in and about the discharge of the obligations on the part of the Management Company in particular (but without limiting the generality of such provision) those set out specifically in the Seventh Schedule hereto and also the costs of providing any additional service or item deemed necessary or desirable by the Management Company".*

20. The leases refer to T-marks on the lease plans, which were intended to indicate responsibility for maintenance of boundary structures, but in fact

neither of the leases seen by the Tribunal had any T-marks on its plan. In any event, the Tribunal was not called upon to determine whether the boundary structures consisted of the metal fences or the hedge, or both.

THE RESPONDENT'S CASE

21. The Respondent denied that the residents had suffered any loss by the decision to ask Conker to cut the outer face and top of Mrs Phillip's hedge. In 2013 the Respondent had entered into a contract with Conker, expiring on 30 June 2016, which sets out the work to be done by Conker for an annual fee. The work includes "trim hedges as directed". Conker had not charged extra for the work at The Dovecote: it was included in their annual fee. All other work for which they are responsible on the estate has been carried out. There has therefore been no loss or expense to the Applicant.

22. A number of residents, including Mrs Gray, pay their own gardeners to trim both the inner and outer faces of the hedges surrounding their gardens. Conker are instructed by the Respondent to trim the outer faces where they border common parts of the estate, but Mrs Gray explained that they sometimes find that this has already been done. Mrs Gray said that Conker were instructed to trim the outer face of Mrs Phillip's hedge and its top in February 2015, and the outer face of her hedging in November 2015. If as Mrs Linnette claims they also trimmed the inner face, or garden side, of the hedge they had no specific instructions to do so. However the Respondent takes the view that as Mrs Phillip had trimmed both the inner and outer faces of her hedge for a number of years, it would not be unreasonable to reciprocate by reducing the height of her hedge for her in 2015.

23. The Respondent had discussed the matter and decided that it would be inappropriate to ask Mrs Phillip to pay for any time spent by Conker working on her hedge. The Respondent denied that Conker had spent as long on the work as Mrs Linnette claimed.

24. Mr Warren for the Respondent also argued that the Applicant had waived his right to complain about the work carried out to Mrs Phillip's hedge, in that he had for a number of years accepted that other hedges and shrubs around residents' gardens (including his own) could be trimmed by the Respondent's contractors. Further, as the Respondent's directors had given the contractors standing instructions to cut the hedges adjoining common areas of the estate, the Applicant was estopped, Mr Warren said, from making any claim to recover the cost of that work.

CONCLUSION

25. The Tribunal finds that there has been no cost to the Respondent – and therefore no addition to the service charge – as a result of the work carried out to Mrs Phillip's hedge in February and November 2015.

26. The proviso to clause 3 of the Seventh Schedule to the lease cited at paragraph 17 above gives the Respondent the right to recover from a lessee any cost

arising from a default on his or her part. The Tribunal determines that it was reasonable for the Respondent to choose not to exercise this right in relation to the reduction in height of Mrs Phillip's hedge in February 2015, recognizing that Mrs Phillip had in previous years reduced the Respondent's contractors' work by paying her own gardeners to trim the outer aspect of her hedges.

27. Paragraph 1 of the Ninth Schedule in any event gives the Respondent the power to decide what expenditure should be included in the service charge, and the Tribunal determines that insofar as such decisions have been made in relation to Mrs Phillip's hedge the Respondent's power has been exercised reasonably.

28. The Applicant's service charges are therefore payable as demanded in the years ending 30 June 2015 and 30 June 2016, insofar as they may otherwise have been affected by this application.

COSTS

29. The Applicant chose not to make any application under section 20C of the 1985 Act, and the Respondent made no costs application. No costs order was made by the Tribunal.