

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**  
**CAM/33UC/LSC/2006/0062**

- Property** : 49-193 Laurel Court, Armstrong Road, Thorpe St Andrew, Norwich NR7 0LS
- Application** : For determination of payability of management fees claimed by way of service charge for the periods I.x.04-31.iii.06 (18 months) & I.iv.06-31.iii.07 and sums claimed in advance for the period I.iv.07-31.iii.08 in respect of computer equipment and works to the manager's flat [LTA 1985, s.27A]
- Applicants** : Maureen Hartwell, Chairperson of the Laurel Court Residents Association, of 107 Armstrong Road, Thorpe St Andrew, Norwich NR7 9LS, and the other lessees of flats listed in the Application
- represented by** : Jack Smith, Audrey Smith & Joyce Clarke (secretary, LCRA)
- Respondent** : Home Group Ltd, Malt House, 281 Field End Road, Ruislip, Middlesex HA4 9XQ
- represented by** : Tim Hall (Regional Manager) & John Miller (Area Manager)

**DECISION**

(Handed down 30<sup>th</sup> March 2007)

- Hearing date** : Tuesday 20<sup>th</sup> March 2007, at The Top, Norwich City FC, Carrow Road, Norwich
- Tribunal** : G K Sinclair, G J Dinwiddy FRICS, Mrs J Clark

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**Decision**

1. For the reasons which follow the tribunal determines that the management fees levied or to be levied by the Respondent landlord in the periods in question are reasonable and therefore payable in full by the leaseholders of Laurel Court. Having considered the

terms of paragraph 2(1) of the First Schedule to the specimen lease, inspected the flat and listened to the evidence the tribunal is also satisfied that :

- a. On its true construction the leaseholders are liable by way of service charge to pay for the usual and periodic maintenance, repair and renovation of the resident manager/warden's accommodation by the landlord, and
- b. That the proposed works are reasonable and of the periodic nature for which a sinking fund is maintainable under the lease.

As the budget for the current year had already been set and requests for payment issued before receipt of an earlier tribunal decision concerning leaseholders' liability for the cost of office computer equipment, and as the reduction per flat is less than £10 for the year, the tribunal will allow its collection in full as the additional cost to the freeholder in recalculating amounts due and re-serving demands would be disproportionate.

### **Background**

2. Four separate issues can be identified in the application form, viz
  - a. The payability of unexplained management fees claimed for the period from 1<sup>st</sup> October 2004 to date
  - b. The lessees' liability (if any) to pay for projected works of refurbishment to the bathroom and kitchen of the resident manager/warden's flat
  - c. The lessees' liability to pay for office computer equipment (for staff use only) linking the Respondent landlord's various residential developments and its head office
  - d. The differential service charge percentages payable by the one and two bedroom flats on the development, whereby the 40 one bedroom flats each pay 1.52% whereas the 32 two bedroom flats each pay only 1.23%.
3. At the outset of the hearing the chairman sought confirmation from the Applicants' representatives that they were aware that the issue of liability to pay for the computer equipment had been raised by Home Group Ltd in an earlier application involving this and a number of other developments (Case no. CAM/33UC/LSC/2006/0057) to a differently constituted tribunal and that a decision had been issued on 24<sup>th</sup> January 2007. This decision was binding, but the Applicants considered that this tribunal could still decide whether the budget for the year commencing 1<sup>st</sup> April 2007 (which had been produced and distributed before the earlier tribunal's decision was received on 12<sup>th</sup> February 2007) should be adjusted to reflect the reduced liability, assessed by the tribunal at a cost for that year of less than £8.33 per flat.
4. The chairman also pointed out to the Applicants that, as the percentage service charge liability for each flat was specified in its lease, the tribunal could not consider adjusting it unless an appropriate application were to be brought for variation of the service charge provisions of all the leases on the grounds that they are unsatisfactory and that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.<sup>1</sup>
5. That left only two outstanding issues : the Respondent's justification of its management fees and the Applicants' liability for refurbishment to the Respondent's staff flat.

<sup>1</sup> See the Landlord and Tenant Act 1987, ss.35-37

## Relevant lease provisions

6. The services and works were provided, and payment is requested, under the provisions of a 99 year lease, the specimen of which produced to the tribunal is an unsigned and undated draft of that between Mr & Mrs Smith and Warden Housing Association (the former name of the Respondent). The relevant charging provisions are :
- a. Clause 4(1) – the tenants' covenant to pay the service charge
  - b. Clause 5 – the landlord's covenants, and in particular sub-clauses 1) (to keep in good and substantial repair, etc), 5) (to provide a warden service), 6) (to insure), and 8) (to pay into a sinking fund the amount referred to in clause 7.4)(e))
  - c. Clause 7(4)(e) – the landlord's entitlement to deduct from the sale price of any surrendered flat a sum equal to 2% of the repayment sum, which the landlord considers to be a reasonable sum to provide for a sinking fund for depreciation, etc
  - d. The First Schedule – which provides for certification of the service charge at the end of each financial year and for payment of any undercharged balance, for a list of items of expenditure to be covered by the service charge, and that the service charge attributable to the demised premises shall be 1.520% of the total annual collectable service charge for the whole development.<sup>2</sup>
  - e. In particular, paragraph 2(1) of that Schedule provides that one item for which the service charge shall make provision is :  
*The cost of the warden's salary and emoluments provision of accommodation for the warden and all other costs in connection with the provision of the warden service.*

## Applicable law

7. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985.<sup>3</sup> Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)<sup>4</sup> is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.
8. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
- a. only to the extent that they are reasonably incurred, and
  - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

## Inspection and evidence

- <sup>2</sup> The proportion payable by each of the two bedroom flats, none of which are in the main building, is only 1.23%
- <sup>3</sup> As introduced by the Commonhold and Leasehold Reform Act 2002, section 155(1)
- <sup>4</sup> Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

9. Accompanied by Mr Hall, Mr Miller and Mr Smith the tribunal inspected the exterior and internal common parts of the Laurel Court development between 10:00 and 10:30 on the morning of the hearing. At the time the weather was cold and windy, with showery intervals. Only Mr Miller accompanied the tribunal on its inspection of the resident manager's flat, and in particular the kitchen and bathroom.
10. The development comprises a series of two storey buildings around a short stretch of public highway - a cul de sac – leading off Armstrong Road. At the head of the cul de sac lies the main building, comprising 40 one bedroom flats, a small office, a small communal kitchen, separate ladies' and gents' WCs, a passenger lift, a large communal lounge, a laundry room, guest bedroom (which on this occasion the tribunal was unable to inspect, due to it being occupied)<sup>5</sup>, and the resident manager's 3 bedroom flat situate above the lounge. Externally, the buildings are structurally in good order and, like the extensive gardens surrounding the development, looked well maintained - in some instances by individual leaseholders themselves. Windows are single glazed throughout, save where some tenants had installed double glazing in their own flats.
11. The bathroom has a short, bright pink plastic bath to one side, with a loose or broken side panel. An over-bath shower with wall-mounted water heater/control unit is at the window end of the bath. The WC and wash hand basin are of a matching colour. From their colour and dated appearance these items are original. The landlord wishes to install a new, longer bath and take this opportunity to rearrange its layout (in such a way as not to disturb the position of the shower) and update the WC and wash hand basin. The kitchen comprises a number of fitted formica floor and wall units of similar vintage and dated appearance, arranged in an L-shape, with a stainless steel sink and drainer by the window. Some of the door hinges sag; a consequence of age and regular use. The corner joint in the formica worktop is sealed inadequately by a metal strip which sits slightly proud of the surface. The tribunal was informed that this is a source of regular leakage into the unit carcasses below. A built-in oven, hob and overhead extractor unit are provided by the landlord, with all other white goods and equipment provided by the manager/warden.
12. The hearing commenced at 11:05 but, after dealing with the issues of the computer and the different proportionate service charge liabilities of the one and two bedroom flats, it soon became apparent that the Applicants did not have in their possession the further submissions with documents annexed forwarded to the tribunal under cover of a letter dated 15<sup>th</sup> January 2007. Mr Hall also had a copy covering letter addressed to Mrs Clarke, the secretary to the residents association, but both she and the other Applicants present claimed never to have seen either it or the documents supposedly served with it. Copies were provided, and under regulation 16(2) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 the tribunal allowed the Applicants first half an hour and then a further two hours in which to study and consider their response to the newly seen documents. The hearing then resumed at 14:00.
13. The principal points made in oral evidence and submissions were as follows :
  - a. That the sinking fund is not as large as it should be, and rather than recalculate the budget sum and send fresh invoices to every leaseholder (for the sake of about

<sup>5</sup> The chairman had previously inspected it in June 2004

- £8.33 per flat) the landlord would prefer to collect the amount sought and apply any surplus to the sinking fund
- b. That the leaseholders object in principle to paying for the refurbishment of a flat owned by the landlord and used by its manager/warden. They challenge the recoverability of amounts expended for this purpose under the terms of the lease
  - c. That, in any event, they consider that the bathroom and kitchen are no older than their own and should not be replaced purely for the sake of updating
  - d. That the leaseholders, having clubbed together for the purpose, have in recent years replaced the worktop in their communal kitchen next to the lounge, and added further units – but this was because of a perceived need to lengthen and extend the facilities, not due to them being worn out
  - e. That they consider the attitude of the landlord in this respect to be arrogant, as exemplified by the tone of Mr Miller's letter to the residents association dated 23<sup>rd</sup> November 2006 :

*Dear Mrs Clarke*

*As per the standard consultation process for works to Resident Manager's flats (copy enclosed), I am writing to inform you officially that I have agreed to the renewal of the bathroom in No 117 Laurel Court, as specified in Savills survey of Laurel Court. The cost of these works will be borne by the scheme's Sinking Funds.*

*A tender for the works was furnished to three contractors, with the resulting quotes as follows*

*[contractors and quotes set out]*

*Copies of their estimates are also enclosed.*

*I would welcome any comments relating to these works to be addressed to me and received within 14 days of the date of this notice.*

- f. That in response the landlord considers that provision for periodic refurbishment of the manager's flat is covered by the First Schedule to the lease, that the decision concerning the bathroom is one reached after professional survey, on the basis of condition (which is not the result of misuse) and not simply outdated appearance, but that the kitchen is less urgent and can be put off for several years
- g. That the leaseholders have regularly sought financial information concerning the state of the sinking fund, and calculation of management fees, but feel that (while bank statements could easily be disclosed) this has not been provided
- h. That the secretary to the residents association does, however, receive a monthly account of what has been spent on the development
- i. That the landlord considers that a lot of information is already available on site, in the manager's office, and is available for inspection. Bank statements for the sinking fund could, however, be misleading as they would not show sums payable under invoices received, or amounts yet to be received pending completion of flat sales.

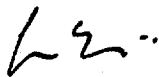
### **Discussion and findings**

- 14. Having read the lease and other documentary evidence, and listened carefully to the oral evidence and submissions of the parties, the tribunal considers that the main issue that the parties need to remedy is the lack of information and trust that the leaseholders have in the landlord as a property manager. More than once the word they used was

“arrogance”. An example, cited above, is the consultation letter dated 23<sup>rd</sup> November 2006. That may satisfy the current official understanding of the term, viz “we are inviting your views on a matter about which we have already taken a decision, but those views will not alter our plans as they are already too far advanced to change now”.

15. This is not a case, however, where the landlord acts secretly, telling the leaseholders nothing. It transpires that the secretary to the residents association receives a monthly account of what has been spent. She does not receive monthly bank statements for the sinking fund or any other account, but the tribunal does not know the precise frequency with which such statements would be received by the landlord’s finance department. If they are available it would not be difficult for a photocopy to be supplied with the figures sent monthly to the residents association, or even once per quarter.
16. No specific challenge having been made to the management charges once Mr Hall had taken the trouble to go through and answer questions on his witness statement, it is the decision of this tribunal that the management fees in issue be allowed in full.
17. On the subject of refurbishment of the manager/warden’s flat the tribunal agrees with the landlord’s interpretation of paragraph 2(1) of the First Schedule to the specimen lease. An obligation to pay for accommodation must include an additional obligation to ensure that it is a properly maintained one. The provision of accommodation is also part of the salary and remuneration package offered to a prospective warden, and such a person would want to know that the accommodation provided was up to modern standards and/or subject to a scheduled maintenance and refurbishment regime.
18. The tribunal considers that while the original developer may have imposed an awkward bathroom layout and installed short, uncomfortable baths in every flat this will not have prevented those individual leaseholders who choose to do so from altering them, as they may with their kitchens. The landlord is similarly under no such constraint. If asking the leaseholders to pay for the exercise, however, the landlord must demonstrate that both the decision and the cost are reasonable. The tribunal agrees that it is reasonable, in the current year, to refurbish the bathroom. It also agrees that sinking funds are intended for just such periodic expense. The landlord proposes to defer any refit of the kitchen for a few years and, subject to any increase in leakage through the joint in the worktop and damage to the carcass beneath, this would appear to be a sensible decision on its part.

Dated 30<sup>th</sup> March 2007



Graham K Sinclair – Chairman  
for the Leasehold Valuation Tribunal