



Case Number: CHI/00AH/LIS/2007/0018

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

PROPERTY: 19 Homebourne House, Belle Vue Road, Paignton, Devon, TQ4 6PT

APPLICANT: Mr John C Wood

RESPONDENT: Peverel Investments

In The Matter Of

**Section 27A of the Landlord and Tenant Act 1985
(Liability to Pay Service Charges)**

**Tenants' application for the determination of reasonableness of
service charges for the years 2004 / 2005 and 2005 / 2006**

Tribunal

Mr T E Dickinson BSc FRICS IRRV (Chair)
Miss C Rai
Dr M L James MA BA FRSA

DETERMINATION

The Application

1. On 12 May 2007 Mr John C Wood, the owner of the leasehold interest in Flat 19, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by the Landlord, Peverel Investments for the financial years 01.09.04 to 31.08.05 and 01.09.05 to 31.08.06.

Pre-Trial Review

2. Pursuant to the representations of the parties at a Hearing at Oldway Mansion, Paignton on 20 June 2007, the following orders of direction were made:
 - a. Mr Wood withdrew his application in respect of the financial year 2006/2007 as the financial year had not ended. The Tribunal agreed that his application should be amended to include consideration of the financial year 2004 / 2005.
 - b. It was agreed that Mr and Mrs C Buck could be jointed as parties to the application.
 - c. On or before 10 August 2007 the respondent was asked to send to the applicants copies of the service charge accounts for the years 2004/2005 and 2005/2006, with all supporting documents to include estimates, quotations receipts and invoices; to include an explanation for the calculation of any management fees. As a schedule to the statement the respondent was asked to prepare a summary in the form of a table for each of the years in question with columns showing the items claimed, a column for the amounts claimed, a column for any comments, a column for the applicants' replies and a column for the Tribunal's use. The target date set for the Hearing was the last week of September 2007.
3. On 20 August 2007 Mr and Mrs Buck withdrew their support.
4. In a letter dated 13 July 2007 Sandra Barton, Legal Services Manager for Peverel Management Services, stated that she was endeavouring to gather the application information together in accordance with the directions. However, the amount of documentation was greater than anticipated. A time extension was requested as it was not possible to provide everything by 18 July. The documents would however be available by Friday 10 August 2007.

5. In a letter dated 8 August 2007 Mrs Barton confirmed that the documents in compliance with the Tribunal directions had been provided to Mr Wood.

Lease

6. The Tribunal had been provided with a copy of the lease of Flat 19 made on 11 August 1986 between McCarthy & Stone (Developments) Ltd and the original lessee Minnie Amy Wharrier. The lease referred to a block of 44 flats to include a warden's flat, a community room, a guest room and other communal facilities.
7. Under Clause 3 (2) the tenant covenanted with the lessor to pay to the lessor without any deduction by way of further and additional rent a two One Hundred and Tenth (2 / 110th) part of the expenses and outgoings incurred by the lessor in the repair, maintenance, renewal and management of the building and the estate (including the warden's flat), the provision of services and other heads of expenditure, including the fees of its managing agents and accountants or other professional persons.
8. The tenant's Clause 3 also provides details of accounts regulations, including inter alia in Clause 3 (g) that the tenant shall be required by the lessor to pay to the lessor such sum or sums in advance and on account of the service charge as the lessor or its accountants or managing agents shall specify through their discretion to be a fair and interim payment.
9. The lessor's obligations to maintain the building are set out in detail in Clause 5 which in summary refers to the main structure, services, communal areas and the warden's flat, the boundary walls, paths, roads, furniture and equipment in the community room and the laundry room.

Inspection and Description of the Property

10. The Tribunal inspected the property on the morning of 28 September 2007. Present at that time were Mr and Mrs Wood, Mrs Barton and the Warden. The Tribunal made it clear that the purpose of the inspection was not to receive evidence, but rather to inspect relevant features of the property. The Tribunal saw the common parts of the building internally, the laundry room, the communal lounge and kitchen, the warden's flat and the interior of Mr and Mrs Wood's flat, No 19. The Tribunal also inspected the exterior of the building, the car parking areas, the grounds and boundaries. The site in question consists

of a single four and five storey block of 43 flats plus a warden's flat originally built by McCarthy & Stone Developments in the late 1980's. There are communal gardens with a gate onto Belle Vue Road which leads into Sands Road about 200 metres from the sea front. There is a tarmac car parking area with five visitor's spaces and seven residents' spaces, a garage for the warden and a car port for mobility bikes. External lighting is provided around the building and to the car park. The block is of traditional construction with cavity walling, part rendered and part tile hung elevations and the roofs are mainly pitched and covered with concrete tiling. Lift access is provided to all floors with a warden call facility. There is also a twin guest bedroom with en-suite shower/wc which the Tribunal did not inspect.

Hearing

11. The Hearing took place later that morning at Oldway Mansion, Paignton, with those present including Mr and Mrs Wood and Mrs Barton of Peverel Management Services. Also present were two witnesses for the respondents, Mr K Barr, Director Estates Accounts for Peverel Management Services Ltd and Mr S Herson, former Estate Manager, Peverel Management Services Ltd.
12. At the Hearing the Chair provided an outline of the law relating to the case, together with the limits of the Tribunal's jurisdiction. In order to narrow down the issues, reference was made to the Scott Schedule prepared for the case ("The Schedule") which included details of the statistics under 29 cost headings for the two financial years in question. Mr Wood confirmed at the outset that there are no issues relating to six of these headings, mainly bin hire light bulbs, prior year adjustment, audit fees, guest room income and sundry income.
13. Mr Wood presenting his case to the Tribunal stated that costs for electricity had increased significantly since he purchased the flat. The costs of telephone calls were excessive and the cost of grounds maintenance was exorbitant. Mr Wood also queried what General Maintenance items covered under Cost Heading 1470 and was also concerned about the costs of lift maintenance.
14. Mr Wood went on to say that he and his wife accepted the service charges for the 2004/2005 year stating that the sum of £532.42 per half-year was what they were expecting to pay. Mr Wood stated his concern however about the increase in service charge costs for the 2005/2006 year to a total of £1,157.28, representing an increase of

£83, or about 8.6%. Mr Wood then stated that he thought it would have been fairer for the service charge costs in that year to have increased in line with the Retail Prices Index.

15. Mr Wood then stated his concerns about the budget meetings, which apparently had lasted some forty minutes and did not feel that he had been given sufficient time to state his case.
16. Mrs Barton for the respondent stated that Peverel Management Services had managed this block since it opened and that the company managed a huge portfolio. Prices did tend to rise and it was not always the best option to use the cheapest option. Mrs Barton stated that budget meetings were held on an annual basis and that the managers took majority views. The management used preferred contractors and listened to the residents views. The management had no control over third party costs. With regard to management charges, these had been increased in line with inflation and were in line with charges levied on other blocks in the portfolio.
17. Mrs Barton went on to say that Peverel Management Services Ltd had specialist experience relating to the management of sheltered developments. It was the Estate Managers job to consider the building including the age, the need for contingency and redecoration funds and the need to spread costs over a period of time. Mrs Barton explained that the external redecoration of the property had been delayed until 2007 to take into account the reserve fund position and it was considered that the block had been well managed. There were few grumbles at Homebourne House and no specific complaints from other residents. Mrs Barton stated that the residents were aware of how the management were budgeting for future expenditure. Peverel were indeed a large organisation but they do listen to their leaseholders. The Leasehold Valuation Tribunal was considered an ideal opportunity for leaseholders to bring their concerns to the fore.
18. With regard to accounts, Mrs Barton explained that the accounts do show that expenditure performs well against budget and she thought they had done a good job in achieving that. Spending had been sensible and they were saving for a rainy day in the reserve funds. Mrs Barton stated that Mr Wood had not put forward any counter proposals for the costs incurred in the service charge years concerned. It was emphasised that Peverel does not allow for any frivolous spending and any expenditure through petty cash was of a necessity and carefully managed. In conclusion Mrs Barton stated that she thought the block had been managed well overall. There had been an 8.6% increase in the service charges for the 2005 / 2006 year, although the accounts took into account the larger than

normal price rises for electricity charges which would have affected every electricity consumer.

19. Mr Barr, who had provided a witness statement regarding accounting issues, stated that all of the accounts had been audited by well known national firm Stoy Hayward. The accounts had been signed off and circulated. There had been an opportunity for residents to scrutinise invoices and he considered that all of the requirements under the terms of the lease had been complied with.
20. A second witness, Mr Hernon, had provided a written statement but at the hearing explained about the affect of electricity cost increases on the accounts. A three year agreement with Scottish Power had expired in March 2005. This in Mr Hernon's opinion had proved to be a good decision that had saved all the residents money. Mr Hernon stated that he was proud of the fact that he had explained everything in fine detail at the budget meetings.
21. Mr Wood cross examined the witnesses and asked for an explanation of a number of cost heads. With regard to the telephone costs Mr Hernon explained that these were emergency lines and call costs had been kept to a minimum, about 20% of all expenditure. The 24-hour monitoring service was set up with Careline. With regard to water and sewerage costs Mr Hernon explained that these costs were primarily responsible for the budget not increasing by inflation. Two extraordinary things happed in the 2005/2006 year, electricity costs rose significantly, as did costs for water and sewerage incurred from South West Water. Mr Hernon explained that two-thirds of the cost related to sewerage. Mr Hernon added that through an agreement with OFWAT, South West Water were permitted to increase their annual charges by 10% plus inflation and the managers had no control over that whatsoever.
22. With regard to Mr Wood's queries on cleaning and materials, Mr Hernon explained that the sum of £300 incurred for materials was substantially lower than on other schemes.
23. With regard to grounds maintenance, Mr Hernon explained that Homebourne House had extremely attractive gardens and there were significant areas to maintain by the contractor. Local contractors were used and most of the costs related to labour only.

24. With regard to costs for the fire system and smoke detectors, Mr Heron responded by stating that he would never compromise on such issues and considered that all costs had been reasonably incurred.
25. Through the Chair Mr Heron was questioned on the reserve funds. Mr Heron stated that he much favoured the Peverel system of two distinct reserve funds for contingencies and redecoration. With regard to redecoration, the moneys budgeted for had been caught out by changes to health and safety requirements which had triggered additional costs for scaffolding etc.
26. Mr Heron was questioned on the costs of monitoring and confirmed that Careline was owned by Peverel. He did however explain that Careline are highly competitive and the independent company known as "Tunstall" were more expensive. Of the 12,000 managed developments the vast majority used the Careline "Cirrus" system, which was considered to be more competitive.
27. When questioned on costs incurred for refurbishment of the House Manager's accommodation, Mr Heron explained that it was common practice on buildings of this age (20 years approx) to refurbish the House Manager's accommodation. He felt that the request for such works had been reasonable and had issued notices of communication and had invited comments within 14 days. No objections had been received from the residents.
28. When questioned by Mr Wood on the subject of management fees, Mr Barr explained that these were split as follows:
- 70% for the costs of estate management
30% for the costs of accounts
- The estate management costs were in line with costs incurred on other developments in the Paignton area and the Tribunal had seen a Schedule of comparable costs.
29. When questioned by Mr Wood on the costs of general maintenance, Mr Heron responded by stating that British Maintenance Industries statistics suggested that the hourly rate for skilled trades had been increasing in costs by 15% per annum. He had been budgeting for 8% - 9% increases and thought that all the costs were reasonably incurred. Mr Heron went on to say that with regard to the 2005 / 2006 financial year, if one were to strip out

the cost increases for water, sewerage and electricity, then the service charges would have increased by just over 5% from the previous year.

30. Mr Wood queried the costs of remuneration for the warden. Mr Barr responded by stating that there was an annual salary for wardens employed by Peverel, although the hourly rate was not much more than the minimum wage, around £5.80 per hour, which was considered to be reasonable. Mr Wood went on to query cost head £1210 relating to relief /deputy costs. Mr Barr explained that these did vary according to the House Manager's habits, holidays, sickness etc. He also confirmed that these costs included the landlord's national insurance contributions.
31. On behalf of Mr Wood the Chair queried the costs of window cleaning. Mr Heron responded by stating that there had again been health and safety issues. They did compare prices and found the existing local contractors to be competitive. Costs had been reduced with the utilisation of the "pole method" and the use of deionised water. Many of the windows would be difficult and even impossible to clean from the inside.
32. Mr Heron was questioned by the Tribunal on the lift maintenance costs and he confirmed that a contract had been agreed with Lift Serve, an independent company. A Silver Service Contract had been entered into involving a regular service on a six-weekly basis and as a result of this the lift had very rarely broken down. Mr Heron concluded that the costs were very reasonably incurred and that this level of service was appropriate bearing in mind the height of the building and the age of many of the residents.
33. Further queries from the Tribunal related to the cost of the door entry system and bank charges. With regard to petty cash, a float of £150 was maintained but all expenditure had been strictly monitored.
34. In her closing statement Mrs Barton explained that Peverel owned the freehold reversions of 700 sheltered schemes and did not own any companies that were building contractors. Peverel Management Services were looking to comply with all legislation and were striving to provide safe and secure homes for all residents. The residents had the benefit of a House Manager, an emergency call system and the management charges incurred were considered to be reasonable. Peverel had other developments and management costs were in line with these other developments. Mrs Barton concluded by stating that Mr Wood accepted the 2004/2005 accounts and had not substantially challenged the 2005 /

2006 accounts. She finished by stating that all costs had been reasonably incurred and they had managed the building as efficiently as possible.

35. Mr Wood in his closing statement again queried the management costs and was concerned about the moneys incurred by the House Manager. With regard to management costs, there were nine similar premises in Torbay and not all of the comparable management charges had been shown on the Schedule of Management Fees for developments in the Paignton area.

Decision

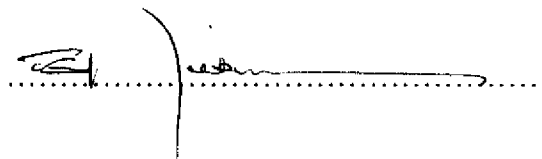
36. The Tribunal gave due consideration to the matters raised by the applicant and the statement of the respondent, together with the two witness statements from Mr Barr and Mr Hemon.
37. The Schedule provided referred to the respective cost heads for the two financial years ended 31 August 2006 and during the course of the Hearing each individual cost head had been covered.
38. At the Hearing the applicant conceded that he accepted the service charges of £1064.84 for the 2004/2005 year, although looking at the increase for the 2005 / 2006 year Mr Wood stated that the costs were a little bit more than he would have expected. An increase of 8.6% was considered to be unreasonable and Mr Wood would have preferred to see an increase for that year in line with Retail Price Inflation.
39. At the Hearing the respondents had provided sufficient evidence to convince the Tribunal that if third party costs were stripped out then the increase in overall costs for the 2005/2006 year would have been approximately 5%. With regard to the House Manager, the respondents had confirmed that she only had access to a small budget and this had been carefully monitored and controlled.
40. With regard to management costs the amounts levied for the nine properties in Torbay have not been fully included on the Schedule, although management costs for the 2005/2006 year were found to be in line with the subject property. At Page 71 of the bundle the respondents had provided a Schedule of management fees in the Paignton area analysed on a per unit basis, including Homepalms House, Torquay, Homequay House,

Torquay, Tembani Court, Pegasus Court and Albany Court. The Tribunal finds that the management fees incurred on the subject development are in line with fees for these other developments in the area and thus did not by comparison appear to be excessive.

41. The Tribunal found that comprehensive paperwork had been supplied by the respondent in accordance with the provisions of the Directions Order dated 28th June 2007. The respondent had appointed two witnesses who had provided written statements, verbal statements to the Tribunal and had undergone cross examination from the applicant and also questions asked by the applicant through the Chair by way of assistance.

42. This Tribunal finds that the Respondents tried very hard to answer queries on each of the individual points raised and this Tribunal concludes that it is sufficiently satisfied on an analysis of the written information supplied to it supplemented by the evidence it had heard at the Hearing, that service costs for Homebourne House for the years 01.09.04 to 31.08.05 and 01.09.05 to 31.08.06 were reasonably incurred.

Signed:

A handwritten signature in black ink, appearing to read 'T E Dickinson', is written over a horizontal dotted line. The signature is fluid and cursive.

T E Dickinson BSc FRICS IRRV (Chairman)

A Member of The Southern Rent Assessment Panel and Leasehold Valuation Tribunal Appointed by The Lord Chancellor

Dated: 16 October 2007



Case Number: CHI/00AH/LIS/2007/0018

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

PROPERTY: 19 Homebourne House, Belle Vue Road, Paignton, Devon, TQ4 6PT

APPLICANT: Mr John C Wood

RESPONDENT: Peverel Investments

In The Matter Of

**Section 27A of the Landlord and Tenant Act 1985
(Liability to Pay Service Charges)**

**Tenants' application for the determination of reasonableness of
service charges for the years 2004 / 2005 and 2005 / 2006**

Decision of the Tribunal upon the Application of Mr John C Wood for Leave to Appeal

Tribunal

Mr T E Dickinson BSc FRICS IRRV (Chair)
Miss C Rai
Dr M L James MA BA FRSA

DECISION

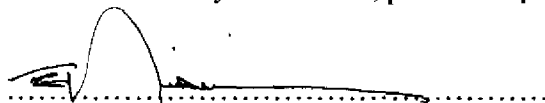
1. The Tribunal refuses the Application by John C Wood (“the Applicant”) for Leave to Appeal in this matter for the reasons set out below.

That being the case, it is open to the Applicant to renew his Application for Leave to Appeal before the Lands Tribunal within 28 days of the date when this Decision is sent to him.

REASONS

2. The Applicant wishes to use his letter of 2nd November 2007 as a basis for the Appeal but no specific grounds are set out in that letter received at the Chichester Office on 6th November 2007.
3. Some of the information contained in the Applicant’s letter relates to matters beyond the Tribunal’s jurisdiction as Mr Wood at the Pre-Trial Review on 20th June 2007 withdrew his Application in respect of the financial year 2006 / 2007.
4. At the Tribunal Hearing at Oldway Mansion on 28th September 2007 the Applicant conceded that he and his wife accepted the service charges for the 2004 / 2005 year.
5. With regard to the service charge accounts for the 2005 / 2006 year the Applicant stated his concern about the increase in service charge costs, representing an overall increase of about 8.6%. The Tribunal however took evidence from the Respondent’s representative and two expert witnesses, relating to a total of 29 items referred to in the 2005 / 2006 financial year and the Applicant was given ample opportunity to present his case, cross examine the Respondent’s representative and witnesses and provide a final summing up. Questions were also asked through the Chair and Tribunal Members by way of assistance to the Applicant.
6. Nothing in the Application, as it has been set out, is sufficient to satisfy the Tribunal, either that a Tribunal acting reasonably might not have reached the decisions that it made upon the evidence before it, or that there has been any error in law, practice or procedure in reaching those decisions.

Signed:



T E Dickinson BSc FRICS IRRV (Chairman)

A Member of The Southern Rent Assessment Panel and Leasehold Valuation Tribunal Appointed by The Lord Chancellor

Dated: 13 November 2007