

**Southern Rent Assessment and Leasehold Valuation Tribunal**

**CHI/18UE/LSC/2007/0017**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT  
1985**

**REASONS**

Applicant:	Mr and Mrs A Ford
Respondent:	Mr R Bond and M R Powell
Re:	2 Brookdale Apartments, 62 South Street, Braunton Devon, EX33 2AN
Date of Application:	1 <sup>st</sup> March 2007
Date of Hearing:	7 <sup>th</sup> June 2007
Date of Inspection:	7 <sup>th</sup> June 2007
Venue:	Castle Hall, The Courtyard, 25 Castle Street, Barnstable, North Devon
Appearances for Applicant:	Mr and Mrs A Ford
Appearances for Respondent:	Mr R Bond and Solicitor Mr Jonathan Googe
Members of Leasehold Valuation Tribunal:	Miss S Casey (Lawyer Chairman) Mr P J R Michelmore FRICS Mr P G Groves Mr P Gerard (Clerk)
Date of Tribunal's Decision:	

## **INTRODUCTION**

1. Since the relevant provisions of the Commonhold and Leasehold Reform Act 2002 came into force on 30 October 2003, application may be made to the Leasehold Valuation Tribunal (the LVT) for a determination of whether a service charge is payable and, if it is, as to the person by whom and to whom it is payable, the amount which is payable, the date at or on which it is payable and the manner in which it is payable (s27A (1)).

2. The Application before the Tribunal, is presented by the Landlords, under S 27A Landlord and Tenant Act, 1985, (the Act), for a determination of service charges to be paid for the financial years ending, 31 December 2005; 31 December 2006 and 31 December 2007.

3. The Applicants are the Landlords of the Property known as 2 Brookdale Apartments which is part of the larger property, 62 South Street, Braunton, Devon, EX33 2AN.

4. In the Application dated 1 March 2007, the Applicant's claim that no service charges or maintenance costs have been paid by the Leaseholders of Flat 2 since they took over the Lease on 2<sup>nd</sup> December 2005.

## **DOCUMENTS**

5. Both parties prepared a bundle of documents for the Tribunal;

6. References to pages in the Applicant's bundle will be cited as AB, followed by the relevant page reference.

7. References to pages in the Respondent's bundle will be cited as RB, followed by the relevant page reference.

## **THE PROPERTY**

8. The Property ("The Property") is known as 62 South Street, Braunton, Devon. EX33 2AN and comprises a substantial detached house with accommodation on three floors together with the attic. There are limited small extensions on the rear.

## **INSPECTION 7 JUNE 2007**

9. The original structure is constructed of rendered and painted stone with brick quoins and relieving archers beneath a dual pitched slated roof and is thought to date from the late 19<sup>th</sup> century and the LVT was advised was converted to six flats in the late 20<sup>th</sup> century. One of those flats subsequently being further sub-divided in recent years.

10. Upon Inspection the Property appeared to be in an above average condition externally, with roofs which had been re-slatted, replacement plastic gutters and down pipes fitted. Windows and doors have been replaced with double glazed plastic units. An internal hall and staircase serves the accommodation on the upper floors and this appears to be in well above average condition. Flat 2 is on the ground floor. It is accessed separately from the rear and has a small enclosed garden area.

11. The front of the building has a narrow, concreted strip, with low wall which fronts directly onto South Street. Running in from South Street immediately beyond the adjoining cottage to the left, there is a tarmac drive. The drive leads to an enclosed gravelled parking area to the rear with various allocated parking spaces. Various other dwelling have shared rights of access over the drive and part of the parking area. There is a single garage utilised by the landlords as a store in connection with the maintenance of the subject property. There are two enclosed areas for storage of bicycles and bins. The drive, having been recently re-surfaced remains in satisfactory order although, there is some wear to the rear-most portion of the gravelled area.

12. Passing immediately alongside the left flank of the Property, there is an access path leading from South Street to the parking area to the rear. There are four external lights and two car park floodlights which are all understood to operate on normal movement detectors. The car parking area is generally maintained to an average standard.

13. During the course of the inspection the Applicant advised the Tribunal Members that he operates a 24/7 emergency call out system for the benefit of the various residents.

### **BACKGROUND INFORMATION**

14. The Applicants had originally granted a lease (“the Lease”) to Mrs A D England (“The Original Lessee”) of Flat 2 Brookdale Apartments. The Lease was for a term of 999 years commencing on 1<sup>st</sup> January 1999. The Original Lease contains a maintenance clause, in the Fifth Schedule, Clause 2. A copy of the Lease appears in the Applicant’s bundle (pages AB19-AB31).

15. On 2<sup>nd</sup> December 2005 the Original Lessee transferred the flat to the Respondents, Mr R Bond and Mr R Powell.

16. In the Fifth Schedule, Clause 2 of the Lease (AB20), the Respondents are obliged to pay a percentage of the maintenance charges stipulated in the Particulars of the Lease. Those charges being expenses which the Applicants shall reasonably and properly incur and expect to incur in each maintenance year in respect of their obligations to maintain the Property.

17. The Eighth Schedule of the Lease (AB29) is headed “Costs and Expenses Charged upon the Maintenance Fund” and refers to the reasonable costs incurred by the Applicants in complying with their obligations in the Sixth Schedule of the Lease (AB 26). The Sixth Schedule (AB26) deals with the Lessors responsibility to keep in good repair decoration and condition of the Property including amongst other things;

- A. The structure of the building.
  - B. The conduits
  - C. Any passageways, landings, staircases, forecourts, parking areas and any other parts of the building or property enjoyed or used by the Lessee in common with other occupiers of the building.
  - D. The boundary walls and fences of and in the curtilages of the building and communal garden areas within the Property.
  - E. As often as may be necessary, to decorate or renew as appropriate, the exterior of the building in a proper and workman like manner.
  - F. To keep clean and reasonably lit any forecourt driveways, passages, landing, staircases and other parts of the building and property enjoyed or used by the Lessee in common with others and not included in the demise of any flat within the building.
  - G. To keep the Property including the demised premises insured to its full reinstatement value (AB27-AB28)
17. The Lease defines the apportionment for the Respondent's share of the service charge at 20% of the total cost.

## **THE ISSUES**

18. The application states no service charge or maintenance costs have been paid by the Respondents.
19. The Applicant's wish the Tribunal to decide;
- (i) the reasonableness of the service/maintenance costs charged for 2005/2006 and from 9<sup>th</sup> August 2006 to 28<sup>th</sup> February 2007.

- (ii) what would be a fair administrative cost payable by the Respondents. To take into account the legal and accountancy costs; and how to retrieve payments made on the leaseholders behalf

20. The service charges claimed for 2005 are as follows:

<b>Brookdale Apartments Communal Expenses</b>				
<b>Expenses 2005</b>				
31/01/2005	General Maintenance	£ 630.00		
27/02/2005	SWEB	£ 30.65		
16/05/2005	SWEB	£ 20.16		
20/07/2005	Building Insurance	£ 1,055.05		
12/08/2005	SWEB	£ 21.81		
24/11/2005	SWEB	£ 36.36		
22/09/2005	Insurance	£ 51.03		
01/12/2005	Plastic Centre	£ 1,100.00		
		<b>£ 2,945.06</b>	20%	<b>£ 589.01</b>
	Ground Rent	£100.00		<b>£ 100.00</b>
	Total			<b>£ 689.01</b>

21. The service charges claimed for 2006 are as follows:

<b>Brookdale Apartments Communal Expenses</b>				
<b>Expenses 2006</b>				
31/01/2006	General Maintenance	£ 630.00		
19/05/2006	SWEB	£ 54.29		

27/02/2006	SWEB	£ 44.50		
28/03/2006	Tar Pavers	£ 3,319.35		
28/03/2006	Tarmac Drive	£ 800.00		
27/04/2006	Smith Plant Hire	£ 888.42		
18/04/2006	Travis Perkins Trading	£ 95.82		
18/04/2006	Travis Perkins Trading	£61.45		
08/05/2006	Travis Perkins Trading	£66.80		
02/06/2006	K&J Electrical	£300.00		
09/06/2006	Paynes Glass	£1,427.97		
20/06/2006	Building Insurance	£1,263.64		
31/07/2006	Pillars and Edging Kerb	£800.00		
08/08/2006	Wayland Rogers	£258.50		
08/08/2006	Signs	£132.80		
		<b>£ 10,143.54</b>	20%	<b>£ 2,028.70</b>
	Ground Rent	£100.00		<b>£ 100.00</b>
	Total			<b>£ 2,128.70</b>
	<b>2005</b>	<b>£689.01</b>		
	<b>2006</b>	<b>£2,128.70</b>		
	<b>Total</b>			<b>£2,817.71</b>
	Mrs England paid 2005			<b>£322.50</b>
	<b>Total payable 2005/6</b>			<b>£2,495.21</b>

**22. The service charges claimed for the period 09/08/06 to 28/02/07**

<b>Brookdale Apartments Communal Expenses</b>				
<b>Expenses for Brookdale Apartments from 09/08/06 to 28/02/07</b>				
<b>For the owners of Flat 2, Brookdale Apartments Mr Richard Powell and Mr</b>				

<b>Richard Bond</b>				
04/09/2006	EDF	£ 38.41		
27/09/2006	K&J Electrical	£ 49.35		
31/01/2007	General Maintenance	£1,210.00		
14/02/2007	EDF	£58.82		
		<b>£ 1,356.58</b>	20%	<b>£ 271.31</b>
	Ground Rent	£100.00		<b>£ 100.00</b>
	Total			<b>£371.31</b>
	Total amount brought forward 2005/2006			<b>£2,495.21</b>
	Total amount from 09/08/2006 to 28/02/2007			<b>£371.31</b>
	Total Payable to date			<b>£2,866.52</b>

## **THE LAW**

22. Modern leases normally contain provision for the payment by the Tenant of separate sums in addition to rent. These sums represent the cost incurred by the Landlord in providing repairs, insurance and other services. These are known as service charges. In this lease the service charge has been referred to as a Maintenance Charge. As regards residential leases, the control of service charges is regulated by ss18-30, Landlord and Tenant Act 1985 ('the Act'), as amended by the Landlord and Tenant Act 1987 and the Commonhold and Leasehold Reform Act 2002. Service charges are defined by section 18 (1) (a) of the Act as, 'amounts payable directly or indirectly for services, repairs, maintenance, improvements, or insurance or the Landlord's costs of management'

23. Service charge expenditure may go up or down from year to year, s.19 of the Act imposes a general requirement of reasonableness. The costs of the service charge must be reasonably incurred and, where they are incurred in the provision of services or the carrying out of works, the services or works must be of a reasonable standard.



24. The recoverability of service charges is dependant upon observance of Section 20B of the Act. The Lease may provide for the service charge to be demanded in advance, but demands may also be issued after completion of the works or provision of the service. In these cases the Landlord must issue the demand within 18 months of the costs being incurred. (s.20B of the 1985 Act). If the demand is provided later than this, the Landlord cannot recover the costs at all, unless a notice is served during the 18 months stating that costs have been incurred and that the Tenant will be required to contribute to them by payment of a service charge.

25. The Landlord's responsibilities with regard to the duty to consult with the Tenants before works are started are subject to the amendments effected by the Commonhold and Leasehold Reform Act 2002, introducing sections S20 and S20ZA into the Act. These sections have been introduced into the 1985 Act and apply where there are 'qualifying works' or a 'qualifying long-term agreement'. Qualifying works are works on a building or any other premises and which of the two consultation regimes applies will depend on whether or not they take place under long term agreements.

26. Where works are to be carried out (other than under a long term agreement) for which any tenant will be required to pay more than £250.00, the Landlord must give a "Notice of Intention" to each Tenant of his intention to carry out qualifying works. The notice must;

- (a) provide a general description of the proposed works or details of the time and place when a description can be inspected. (Facilities to inspect the description of the proposed works must be provided free of charge although this does not prevent the landlord recovering the costs through the service charge.);
- (b) explain why the landlord considers it necessary to carry out the works;
- (c) invite observations in relation to the proposed and state where they should be sent, stating that they should be delivered within 30 days of the notice and the date when the 30 day period expires;
- (d) invite proposals within the 30-day period for people from whom the landlord should try to obtain an estimate. The landlord is obliged to have regard to the

observations. This means he must consider them but does not have to accept them.

27. The Landlord must supply the tenant with a second notice – the Notice of Proposals – setting out the details of the proposed works and the likely costs. The landlord must supply two estimates (at least one of which must be from a wholly unconnected person), a summary of the observations received in response to the first notice and his response to them. Once again, he must invite observations and allow 30 days for them to be made. The landlord must serve a further notice within 21 days of entering into a contract unless the estimate chosen was made by a nominated person or was the lowest. This further notice must include the landlord's reasons for awarding the contract or a place and time when such reasons can be inspected and a summary of any observations and his response to them.

#### **THE HEARING**

28. The Hearing was held on 7<sup>th</sup> June 2007 at Castle Hall, The Courtyard, 25 Castle Street, Barnstable, North Devon. The Applicants, Mr Alan Ford and Mrs Frances Ford both attended and represented themselves. One of the Respondents, Mr R Bond, attended represented by his Solicitor, Mr Jonathan Googe of Bazeley Barnes and Bazeley Solicitors.

#### **THE EVIDENCE**

29. The Applicants confirmed that the Respondents acquired the Remainder of the Term of the Original Lease. They confirmed that the Original Lease contained a Service Charge clause, referred to as, a "Maintenance Clause", in the Fifth Schedule, Clause 2.

30. They advised the Tribunal that the Respondent's Solicitors wrote to them on 15 August 2006, (AB 1), enquiring whether there were any outstanding service / maintenance charges payable by Mrs England or the Respondents themselves.

31. The Applicants wrote, to the Respondent's solicitors on 20 August 2006, (AB 2 -3), and provided details of the service charges owing. The Applicants included for the Respondent's attention, two financial statements with copy invoices attached, to support the charges for the financial year-end, 2005 (AB 12 and 12a-12h). The Applicants also prepared a financial statement for the year-end 2006 (AB 13, AB 13a -13o). The Applicants advised that all of these charges were outstanding excepting a sum of £322.00, which had been paid by the previous Leaseholder Mrs England towards the 2005 account.

32. The Respondent's apportioned share of the total service charge costs is 20%. The Applicants have not received any annual payments from the Respondents for either service charges or rents

33. The Applicants became aware that Mrs England had transferred her interest in the Property but did not know the identity of the new owners, no Notice of Transfer had been served. One of the Respondents introduced himself to the Applicant, Mr Alan Ford when they met at the Property. During this meeting the Respondent was asked to provide his name and contact details to enable communication to take place regarding relevant issues concerning the Property and matters arising under the Lease. No such contact details were ever provided until the Respondent's solicitors served a formal Notice of Transfer by letter dated, 18 September 2006 upon the Applicants. (AB 6).

34. The Applicants confirmed in their letter dated 1<sup>st</sup> October 2006 (AB&7) and during the course of giving their oral evidence, that they had not consulted with the Respondents concerning the works they were carrying out in order to maintain the property and to provide services to the common areas. The Applicants were simply not aware that these requirements existed. In addition they did not have anyone to consult with, as they did not have any contact names or addresses for the Respondents. They accepted that they had not consulted with Mrs England when she was the Lessee.

35. The Applicants conceded that they now knew that consultation would be needed for all qualifying works or provision of services where the Respondent's contribution would exceed £250.00.

36. Four separate cost claims set out in the 2006 account appeared to all relate to the cost of tarmacing the drive. The Applicants were asked to identify the costs that related to the tarmacing project. The Applicant listed the relevant costs as follows;

Tarpavers	£3,319.35
Tarmac Drive	£800.00
Smith Plant Hire	£888.42
Pillars and Edging Kerb	£800.00

37. The Applicants explained that there had been continuing problems with the deterioration of the surface of the driveway and that in the past maintenance had consisted of simply making up potholes on an 'as needs basis' It was then decided that a more lasting solution was needed and that the driveway should be excavated and the surface tarmaced a few weeks later. It had not been tarmaced previously. The Applicants confirmed that a number of other properties used the driveway but only the Leaseholders of Brookdale Apartments contributed to the cost of the maintenance. They advised that only £480.00 of the Pillars and Edging Kerb costs (£800.00) should be attributed to the tarmacing costs

38. The Applicants advised that the first formal demand made for service charge payments was 20 August 2006. They provided the Tribunal with detail of each service charge demand including the nature of the items of work or the type of services for each year and the date upon which those works were incurred and or services which were provided for 2005, 2006 and 2007, 9<sup>th</sup> August 2006 up to 28/02/07.

39. The Respondent argued that the provisions in the lease to pay a service charge take effect subject to:

40. S20 (B) (1)&(2) Landlord & Tenant Act 1985 which provides that a tenant is not obliged to pay a demand for the payment of a service charge unless, during the previous 18 months, he has been given written notice that the relevant costs have been incurred and that he will be required to contribute to them.

41. S20(ZA) Landlord & Tenant Act 1985, and the Service Charges (Consultation Requirements) (England) Regulations 2003. Where the carrying out of relevant works will result in a tenant having to contribute £250.00 or more of their cost a Landlord is required amongst other things to:

- (i) to provide details of the proposed works to the tenant
- (ii) to obtain estimates
- (iii) to invite his tenants to name others from whom estimates could be obtained.
- (iv) To have regard to his tenants observations

failing which a tenant's contributions are limited to £250.00

42. It was asserted on behalf of the Respondent that the Applicant Landlords have not complied with the above requirements in that:

(i) they made a demand for payment of a maintenance charge on 20<sup>th</sup> August 2006 and in consequence due to the 18 month rule some items are non-recoverable. By their own admission, they had given no notice to Mrs England that relevant costs had been incurred and that a contribution to them would be required from her or the Respondents.

And further,

(ii) in respect of all periods referred to in their application, by their own admission they did not consult with their Respondents because they did not believe they were under any obligation to do so and in consequence some items would not be recoverable due to the failure to consult

43. With regard to the Applicant's claim that they were unable to give notice to the Respondent because they were not informed of the transfer of the Lease until 18 September 2006 it is argued this is irrelevant because they did not believe they had to consult with the Respondents in any event, so even if the required details had been provided, the Applicants by their own admission would not have consulted ( see AB7.)

44. It is further argued by the Respondent that the lease incorporates the provisions of S196 Law of Property Act 1925 under which the Applicants could have left effective notices on the property Seventh Schedule Clause 3.

45. The Tribunal asked the Respondents through their solicitors to address the following, points, firstly it did not appear that the requirement in the Lease to give notice of the assignment in Fifth Schedule clause 21 had been complied with and secondly, it appeared that no payments at all had been made by the Respondents, not just in relation to service charges but also in relation to rents since they had acquired their interest. The Respondents confirmed that no such notice had been given to the Applicants and that no payments had been made.

46. The Respondents advised the LVT that they had taken the decision that there was a point to be made and had wished to set a 'marker' in their relationship with the Applicants. They felt that the Applicants had not only failed to consult with them but had in the past also failed to consult with the previous Lessee Mrs England. They hoped that the result of taking this stance would be the establishment of good co-owners relationship in the future.

## **DECISION**

47. There was a liability to pay a maintenance charge under the Lease, Fifth Schedule Clause 2. This Clause referred to a "Maintenance Charge" and the Tribunal determined it a service charge as defined by Section 18 (1) (a) of the Act.

48. Despite the application asking the LVT to consider the reasonableness of the service/maintenance charge there was in fact no issue of reasonableness to be considered pursuant to S19 of the Act.

49. There had been a complete failure on the part of the Applicants to consult. This was not intentional. They simply had not been aware of the legal requirements placed upon them by S 20 and S20ZA of the Act. In consequence any individual costs where the Respondent's contribution exceeded £250.00 would be limited to the sum of £250.00. This had the following effect upon the Respondent's liability to pay service charges for each year as follows;

2005 account – No costs are affected by the failure to consult.

2006 account – The Tribunal determined that the following costs would be limited by the failure to consult. The cost of the tarmacing was in fact a total cost of £5,487.77. It was made up of the cost of Tarpavers, Tarmac Drive, Smith Plank Hire and a proportion of the Pillars and Edging Kerb cost £480.00.

Tarpavers	£3,319.35
Tarmac Drive	£800.00
Smith Plant Hire	£888.42
Pillars and Edging Kerb	£480.00
Total	5,487.77

The Tenants contribution to these works would be limited to £250.00.

The Tenants contribution to the payment to Paynes Glass was affected by lack of consultation, the Respondent's contribution would be limited to £250.00.

2007 account – None of the costs are affected by the lack of consultation.

50. Section 20B (1) and (2) requirements to give notice relevant costs having been incurred had not been observed in respect of part of the 2005 costs. The first demand was made on 20 August 2006. Any charges incurred more than 18 months prior to that date could not be recovered, this requirement only affected the 2005 account for charges incurred prior to 20 February 2005. The Tribunal apportioned the general maintenance charge to identify the period for which costs had been incurred 18 months prior to the issue of the demand. The total cost represented a figure for works carried out over the year, only the costs for the period March 2005 to December 2005 would be allowed. The sum of £86.30 should be deducted from the general maintenance cost of £630.00.

51. The SWEB account (AB 12b) is dated 8<sup>th</sup> February 2005. On the Applicant's summary of costs, (AB 12) the account is dated 27<sup>th</sup> February 2005. The Tribunal determined that the appropriate date to consider was the date on the account itself and in consequence was not recoverable due to the S20B, 18 month rule.

52. The Respondent's liability was therefore limited as follows:-

**2005 Account**

General Maintenance reduced by £86.30 to £543.70

The sum of £30.65 relating to the SWEB account is non-refundable

Total Service charges of 2005	£2,828.11
20% of Service Charge	£565.62
Ground Rent	£100.00
<b>Total Due</b>	<b>£665.62</b>

**2006 Account**

Total Service Charge expenses	£5,727.80
20% of Service Charge	£1,145.56
Ground Rent	£100.00
<b>Total Due</b>	<b>£1,245.56</b>



53. The LVT did not address the other issues raised in the application as they were outside the jurisdiction of the Tribunal.

Signed: ..... *Siobhan Casey*  
Siobhan Casey  
(Lawyer Chairman)

Dated: ..... *9 July 2007*