

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL****Property:** 59 Stephens Way, Redbourn, Hertfordshire, AL3 7EA**Applicant(s):** Ms BS Mortimer**Respondent(s):** St Albans City and District Council, St Peters Street,
St Albans, Hertfordshire AL1 3JE**Case number:** CAM/26UG/LSC/2005/0072**Application:** A determination of the liability to pay service charges including
the reasonableness of service charge (Section 27A Landlord
and Tenant Act 1985)An application for the limitation of service charge arising from the
landlord's costs of proceedings (Section 20C Landlord and Tenant Act
1985)**Tribunal:** Mr JR Morris (Chairman)
Miss M Krisko BSc (Est Man) BA FRICS
Mr MZ Bhatti JP**Hearing Date:** 16th March 2006**Attending Hearing:****Applicants:** Mr B Fisher (Representative – Applicant's father)**Respondents:** Mr B Maltz (Counsel)
Ms N Kint (Legal Department)
Mrs C Hawkins (Housing Manger)
Mr J Bennie (Parks Manager)
Mrs M Donaghy (Area Team Leader)
Mr T Payne (Finance Department)**The Application**

1. The Applicant applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to whether costs incurred by way of service charge in respect of grounds maintenance for the year 1st April 2005 to 31st March 2006 are reasonably incurred and payable.

The Law

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (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; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance,

improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

Description of the Building and Property

3. The Property is a two-bedroom first floor flat in a block of four flats (the Building) with communal gardens to front, side and rear.

Inspection

4. The Tribunal inspected the Property in the presence of the Applicant's Representative and the Respondent's Representatives. As the sole item in issue was the grounds maintenance charge the Tribunal only inspected the gardens to which the charge related. A plan of the gardens had been provided indicating the grassed area and beds.
5. The Tribunal found that the layout of the gardens corresponded generally to the plan.
6. In the garden to the rear there was:
 - a row of sheds in the south west corner which on the plan were marked as a bed
 - a row of tall evergreen trees which formed a hedge on the western boundary,
 - a number of large evergreen trees in the bed on the southern boundary
 - a compost heap in the south east corner
 - a number of shrubs and a few of which were evergreen along the eastern boundary
 - a number of shrubs along the wall of the Building.

The beds did not appear to have been dug over or mulched during the year and the shrubs appeared to have been strimmed rather than cut or pruned to shape. Although it was evident that the grass had been mown during the full growing season nevertheless it was not well tended and did not seem to have been cut at the end of the season. The paths were uneven with grass growing between the cracks.

7. In the garden to the front the beds did not appear to have been dug over and were not well tended. There were a few poor shrubs and some bulbs

The Lease

8. The freeholder is the Respondent who is also the immediate landlord. The Applicant is one of the four tenants in the block who has purchased a long lease. A copy of the Lease was provided. The Lease is for a term of one hundred and twenty five years from 22nd October 1984 at a rent of £10 per annum with an additional annual payment for insurance. The Landlord under clause 5(3)(e) of the Lease is responsible for maintaining the garden areas and under clause 1 of the Lease may reclaim the cost from the tenants. The Tenant is liable for a quarter share of the cost of the outgoings

relating to the building including the maintenance of the communal gardens. The extent of the gardens relating to the Building is marked on plan attached to the Lease. The Tenant is only liable to an eighth share of the maintenance costs in respect of the path at the front of the building that is used by the tenants of the block of flats opposite.

Documentation

9. The documents provided by the parties as being of particular relevance for the determination of the Tribunal included the following:
- Copy of the Applicant's Lease
 - Copy of the application form
 - Copies of Statement of Service charge for 1st April 2004 to 31st March 2005 and 1st April 2005 to 31st March 2006
 - Correspondence relating to how the charges for the maintenance of the grounds are calculated
 - Copy of a statement of how grounds maintenance contracts are tendered
 - Copies of tables setting out the rate of charge for certain grounds maintenance works
 - Copy of the measurements and charge for the communal grounds for the Building and Tenant's share.

Matters in Dispute

10. The Applicant applied for a determination as to the reasonableness cost of the item of Grounds Maintenance in the service charge account for the year 1st April 2005 to 31st March 2006.

Hearing

11. The Hearing took place on the 16th March 2006 and was attended by the Applicant's Representative Mr B Fisher and the Respondent's Representatives: Mr B Maltz (Counsel), Ms N Kint (Legal Department), Mrs C Hawkins (Housing Manger), Mr J Bennie (Parks Manager), Mrs M Donaghy (Area Team Leader), Mr T Payne (Finance Department).

Applicant's case

12. In a letter to the Respondent's dated 16th November 2005 the Applicant had stated that the cost of the communal gardening had risen by 300%. In the year 1st April 2004 to 31st March 2005 the cost was £35.81 but in the year 1st April 2005 to 31st March 2006 is £100. She stated that she believed that the grass was cut between April and October on average about once a month and that the weeds were strimmed twice a year. She said that she often cut the grass after the contractor had made the first couple of cuts.
13. In written representations dated 22nd January 2006 the Applicant stated that she had measured the front garden area, which is 8 metres by 20 metres and the rear garden, which is 13 meters by 20 metres. She noted that couple of years ago she had asked the contractor, John O'Connor to maintain the beds in the back garden but he had said that these had not been created by the Council and so could not be maintained by them.

14. The Applicant's Representative stated that the Respondent's reply dated 21st November 2005 to the Applicant's letter dated 16th November 2005 had merely said that the contract was performance based not frequency based. There was no breakdown or further explanation. The Applicant only saw the information now provided when she applied to the Tribunal.
15. The Applicant's Representative questioned the area upon which the costs were based referring to the area taken by the sheds in the Southwest corner and the compost heap in the Southeast corner. He said that he thought the overall area calculated by the Respondent was too large and the map was not to scale although he had only paced it out. He submitted that the shrub area, which formed the largest part of the cost, was 122 square metres not 168.
16. The Applicant's Representative also said that the standard of work was poor. He said that Dr Osborne, the tenant from number 61, had paid for the high evergreen tree hedge on the western boundary to be trimmed and had maintained the front garden beds. He said that he had cut the grass and maintained the garden more often than the contractors. When the contractors cut the grass the clippings were just left on top. They never did any digging they only strimmed the shrubs, which damaged them. He also said that the shrubs and plants that were planted by the Tenants were damaged for example a climbing rose. In addition he said that the paths were not maintained. He added that the first time he had seen them come to trim the shrubs was just before the inspection by the Tribunal.

Respondent's case

17. Counsel for the Respondent stated that the increase in service charge for the year 1st April to 31st March 2006 is because in past years the true cost has not been charged. In the past the charge was calculated on an area basis rather than block-by-block. This is inequitable and so the charge is now made with reference to each block, which in this case has resulted in a substantial rise. However even now the Respondent is not charging the full cost, which would be £127. However as this item is more than a £100 per service charge payer tenant the Respondent would be obliged to comply with the consultation procedure in respect of long term maintenance agreements under section 20 of the Landlord and Tenant Act 1985. However it is more economical for the Respondent to cap the charge at £100 rather than undertake the consultation process.
18. Counsel referred the Tribunal to the statement by Mr Bennie the Respondent's Parks and Green Spaces Manager, which set out the manner of tendering. It was submitted that the manner of selection of the current contractor was rigorous. Contracts were normally for 5 years with an option to extend for a further 2 years. The current contractor's contract was extended for the two-year period in 2004.
19. The cost of the grounds maintenance is calculated on a price per lineal or square metre depending on the type of plant to be maintained. The costs were as follows: Grass 17.74p per square metre, Hard surfaces 10.18p per square metre, shrubs £2.36 per square metre and hedge row £1.24 per lineal metre.
20. These rates applied to the gardens of the Building result in the following charge:

Grass	552.810 m @ 17.74p per m	£98.07
Hard Surfaces	77.994 m @ 10.18p per m	£7.94
Shrubs	168.517 m @ £2.36 per m	£397.70
Hedge row	6.416 m @ £1.24 per m	£7.96
Total		£511.67
Shared by 4 properties 55 to 61		£127.92 per property

21. Counsel for the Respondent said that the Respondent did not accept that the plan was not to scale as it was based upon an Ordinance Survey map. The plan marks out the area and all that is on the plan the contractor is obliged to maintain and does maintain. In any event the reduction from £127.92 to £100.00 per tenant factors in a margin of error.
22. Counsel commented that no mention had been made in written representations that the standard of work was an issue. The Applicant did not take issue with the cutting of the grass and so the Respondent should not be prevented from recovering the charge. In relation to the paths it was said that the sum of £7.94 was very low which reflected the work carried out. The shrubs were the most labour intensive part of the contract. The gardens are reasonably extensive for the block and the shrubs are quite densely planted. This work is carried out in winter, which is why the contractors attended recently.
23. Counsel said that the contractors had to balance their obligations under the contract with trying to avoid damaging shrubs planted by the tenants. If leaseholders choose to carry out works this should not affect the recoverability of the service. Counsel drew the attention of the Tribunal and the Applicant to a provision by which the Respondent would enable Tenants on long leases to maintain their own gardens and thereby be exempt from the grounds maintenance service and charge.
24. It was submitted that no evidence had been adduced which showed that the costs were anything other than competitive and the Tribunal's attention was drawn to the tendering process and to the Grounds Maintenance customer care leaflet, which sets out a procedure for making a complaint where the work has not been carried out satisfactorily.

Determination

25. The Tribunal accepted that the tendering process had been conducted appropriately and that the method of costing was reasonable. The Tribunal found that it was inherent in an application under section 27A of the Landlord and Tenant Act 1985 for the Tribunal to be able to determine whether the costs had been reasonably incurred and whether the work was of a reasonable standard, whether or not the Applicant raised these matters expressly as an issue.
26. The grass was not well kept but the cost of £98.07 was reasonable for the standard of work. No distinction is drawn between the path for which the Applicant is liable for an eighth and that for which she is liable for a quarter. Although the paths in the rear gardens were not well maintained those to the front were in a reasonable state and the sum attributed to their maintenance of £7.94 was very small. The tall evergreen trees forming a hedge were well looked after. There was no clear evidence as to who has

maintained them. It was stated on behalf of the Applicant that the Tenant of 61 had done so although no direct evidence or statement from the Tenant of 61 was adduced to the Tribunal and in any event the sum of £7.96 was relatively small for the work involved.

27. The Tribunal noted that there was some dispute in relation to the area of the shrubs. However the Tribunal considered that the content and standard of maintenance of the shrub borders was of more significance than the area attributed to the shrubs. In respect of the content of the borders there were a number of shrubs that did not require even annual maintenance and there were several areas of earth with no evidence of plants at all. With regard to the standard of work it was noted that the shrubs that were cut were strimmed, not pruned and shaped, and the earth had not been dug or mulched. The Tribunal determined that the work in relation to the shrubs was not of a reasonable standard for the cost incurred and that therefore should be limited to £200.00 for the Building.

28. The Tribunal determined that the costs for Grounds Maintenance to be:

Grass	552.810 m @ 17.74p per m	£98.07
Hard Surfaces	77.994 m @ 10.18p per m	£7.94
Shrubs		£200.00
Hedge row	6.416 m @ £1.24 per m	£7.96
Total		£318.97
Shared by 4 properties 55 to 61		£78.49 per property

Section 20C Application

29. The Respondents agreed that the Lease did not contain a provision, which allowed the costs in connection with these proceedings to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.


JR Morris (Chairman)