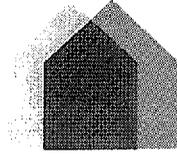


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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985, as amended, Section 27A

Ref :LON/00AQ/LSC/2007/0110

Property: 45A Gordon Avenue, Stanmore, Middlesex HA7 3QQ

Hearing date: 22 October 2007

Applicant: Mr B Graham and twelve others

Represented by: Mr B Graham and Mr M Cinna

Respondent: Fairhold (Huddersfield) Limited

**Represented by: Mrs S Belsham, Mrs M Nerbas (County Estate
Management)**

Members of the Tribunal:

Mr C Leonard (Chairman)

Mr F Coffey FRICS

Mr E Goss

1. Background

2. The Applicant Mr Graham represents 13 Applicants in total. All are residents of a development of 57 houses held on long leases, known as Sunningdale Close ("the Estate"). County Estate Management manages the Estate for the Respondent landlord.
3. Having resolved a number of matters by Mediation the Applicants remain concerned about one service charge for £3,851 from the service charge year 2004/5. This represents the cost of high pressure jetting to the entire foul drainage system serving the Estate.

4. The Lease

5. The copy lease considered by the Tribunal is of 10 Sunningdale Court, dated 7 July 1967. It is understood to be identical to all 57 residential leases in the Estate. It is for a period of 999 years from 29 September 1966.
6. Paragraph 4(5) of the lease identifies the lessee's obligations in relation to drainage costs. It incorporates an obligation "...to pay a reasonable proportion... of the expense of repairing and replacing where necessary all such drains cisterns, pipes wires ducts and any other things as aforesaid as are installed or used for the purposes of the demised premises in common with any other part or parts of the Block". (The meaning of "the Block" is irrelevant in this context).
7. Although neither party raised the point, the Tribunal had to give some thought as to whether the lessee's obligations under the lease extend to paying the cost of cleaning, as opposed to repair, of the drains. Given that a blocked drain does not work, the unblocking of a drain is in effect a repair. Further, the clear intention of the lease is that lessees

should contribute to the cost of keeping the drains in working order. That would include necessary cleaning.

8. The Work

9. The work for which £3,851 was charged was carried out by Burch Services Limited, who had previously carried out high pressure jetting works to foul drains on the Estate. The Applicant's complaint is that most of this year's work was not actually necessary. He contrasts the charge with previous service charges of up to £1,000 per year (inclusive of VAT), carried out on a six monthly or annual basis, for jetting only a stretch of the foul drain system serving houses at 50/56 Sunningdale Close. That, the Applicant contends, is the only troublesome stretch of drain, which has needed such regular cleaning.

10. The History

11. On 30 November 2004, Chris Clark, a property manager at County Estate Management, sent a fax to Burch Services Limited referring to "1-64 Sunningdale Close, Stanmore, Middlesex HA7 3QL" and "41-41A, 41D, 43, 43A, 45, 45A, 47A Gordon Avenue, Stanmore, Middlesex HA7 3QQ". (Despite the numbering and different street names this description comprises the 57 properties on the Estate). His email requested "an annual drain clearance at the property at your earliest convenience".
12. On 1 December 2004, a job sheet was completed by two of Burch Services Limited's operatives. It confirmed that they "arrived on site to find drain in need of jetting through... jetted all drains as requested". The time noted on the job sheet is 8 hours. The consequent charge is £760 plus VAT (£893). The Applicant points out that this matches the routine charge for cleaning the troublesome stretch of drain which had been cleaned every six months or every year in the past. However,

further work sheets for jetting on 31 December 2004 and 4 January 2005 show another 26½ hours of work carried out on those dates, 21 of them on New Year's Eve.

13. According to a letter sent to Mr Clark by Mr Bob Brimson, Contacts Manager, on 21 March 2005, Burch Services Limited had not been sure of the precise scope of his instructions of 30 November 2004, in particular as to whether both foul and surface drainage systems needed cleaning. Mr Brimson stated in the letter that he had made at least three telephone calls to County Estate Management's office requesting that information and that Mr Clark had been unavailable each time. He further stated that he had on 30 December been instructed by "Alex" (meaning, the parties agree, Alex Delbarre, who was then covering for Mr Carr in his absence) to proceed with the cleaning of the "foul system only."

14. Mr Delbarre is no longer employed by County Estate Management and was unavailable to give evidence. However Mr Clark's letter on its face does read as if it extends to the entire Estate and unless he was aware of the precise extent of previous "annual drain clearance" exercises it would have been reasonable for Mr Delbarre to have read it that way.

15. Mr Brimson added to his letter of 21 March 2005 the words "... (Gordon Avenue completed at the beginning of December)". The Applicant submits that this addendum indicates that the work carried out on 1 December must have been work to the historically troublesome stretch of foul drain serving houses at 50/ 56 Sunningdale Close, which he advises is located at Gordon Avenue. On the balance of probabilities, the Tribunal accepts that.

16. Neither Mr Clark nor Mr Brimson was available to give evidence. However it seems clear that Mr Brimson's letter was written following an inquiry by Mr Clark as to the reason for the substantial drainage cleaning charge that had been incurred in his absence. The

Respondent says that Mr Clark would have been required to supply such an explanation by County Estate Management's internal accountants in any event. However if Mr Clark had intended that Brimson should carry out such extensive work presumably he would already have known the explanation. Further, the tone and content of Mr Brimson's letter indicates that Mr Clark had not been expecting to incur such substantial expense, and a handwritten note on an "overdue payment" reminder dated 14 March 2005 reads "Hold - CC is disputing amount".

17. In the absence of evidence from Mr Clark the logical conclusion is that, in sending his instruction of 30 November 2004, he had had in mind (as the Applicant contends) only the limited exercise that had been carried out in previous years. He intended that Burch Services Limited would understand his reference to "annual drain clearance" in that light and initially, they did clean the troublesome section of drain as before. However his facsimile instruction on its face potentially extended to a much more extensive exercise and so Mr Brimson attempted to find out exactly what was required. In Mr Clark's absence he was given the wrong instruction.

18. The Respondent contends that all the work carried out by Burch Services Limited was undertaken because it was necessary. In the absence of attendance by Mr Clark, Mr Delbarre or Mr Brimson the Respondent relies in particular on another letter written by Mr Brimson to Mrs Belsham of County Estate Management on 18 July 2006, eighteen months after the event, in which he stated "in carrying out a high pressure water jetting operation to all the foul drainage runs serving the above premises, we can confirm that a great deal of scale/fat and grease was removed from the system in addition to the normal build-up of debris which one would expect.... in addition we also cleaned out surface water gullies where we felt a build-up of debris had occurred.... we also made a recommendation that all of the drainage system.... should be flushed through on an annual basis".

19. Nothing in Mr Brimson's letter supports the proposition that any thought was given to the need to perform high pressure water jetting on the Estate's entire foul drain system before that work was carried out. Nor does it explain (given that Mr Carr was still querying their charges in March) when and to whom Burch Services Limited's recommendation of annual cleaning of the entire system was made. His letter reads as a justification after the event. It is not satisfactory as evidence in support of the Respondent's contention.

20. Accordingly the Tribunal concludes that on 1 December 2004 a limited cleaning exercise was carried out by Burch Services Limited, as in previous years and at a similar cost. That was all that Mr Clark had intended. However, being unsure of the precise extent of the work required by Mr Clark's instruction of 30 November 2004, Mr Brimson made further enquiries. In Mr Clark's absence, Mr Delbarre gave an instruction which went well beyond what Mr Clark had intended.

21. For the Respondent, Mr Belsham confirmed that once this matter has been resolved it is the Respondent's intention to undertake a CCTV survey of the system to determine precisely what needs to be done by way of maintenance in the future. That is precisely the sort of exercise that needs to be undertaken before the very substantial cost now complained of by the Applicant can be justified. Unfortunately, due to a series of misunderstandings the work went ahead without sufficient checks as to its necessity and there is no satisfactory evidence that it was necessary at all.

22. For that reason, the Applicant's complaint is substantiated. The service charge for 2004-5 representing the cost of jet-cleaning the foul drains should be reduced from £3,851 to £1,000, the sum which the Applicant concedes, based upon previous years, as a reasonable charge.

23. The service charge accounts must be adjusted accordingly.

24. The Applicant has applied under section 20C of the Landlord and Tenant Act 1985 for an order that none of the costs of these proceedings should be taken into account in determining the amount of any service charge. In the absence of a provision in the lease that would allow such costs to be so taken into account by the Respondent, an order under section 20C would be redundant. The lease does not appear to contain any such provision.

Dated 12 November 2007


Colum Leonard

Chairman