

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UF/LSC/2008/0050

Application under Section 27A of the Landlord and Tenant Act 1985

Re: 2, 3, 9, 10, 16, 20, 21 Commodore Place, Weevil Lane, Gosport, Hants

Applicants	Mr R Nelson No 2	No 2
	Mr R Davies No 3	No 3
	Mr D Painting No 9	No 9
	Mrs G Gregory No 10	No 10
	Mrs Czoch	No 16
	Mr & Mrs Pharaoh	No 20
	Mr & Mrs Sealy	No 21
Respondents	Berkeley Homes (Hampshire) Limited (1) ("BH") Royal Clarence Yard (Phase I) Limited (2) ("RCY")	
Date of Application	21 st May 2008	
Date of Inspection	1 st October 2008	
Date of Hearing	1 st October 2008 & 14 th January 2009 at Portsmouth Central Library	
Representing the parties	Mr Painting & Mrs Gregory for the Applicants Mr J Hanham, of Counsel, for the Respondents	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves	Lawyer Chairman
	P D Turner-Powell FRICS	Valuer Member
	Mr R T Dumont	Lay Member
Date of Tribunal's Decision:	29 th January 2009	

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the calendar year 2008 the following are reasonable estimated sums and payable in respect of 6, 9, 10 Commodore Place, Weevil Lane, Gosport (the premises):
 - a. Each of the estimated sums of service charge set out in the revised estimated service charge account dated 9th January 2009 for the calendar year 2008 save that the reasonable sum for Landlord's Electricity Supply including Bulb Replacement is the sum of £1,000.
 - b. The part of those reasonable sums apportioned to Phase I as a whole for payment as to 1/47th by each unit in that Phase are as follows:

Formula Definitions:

1. Total Area (TA): The sum of the square footage of each unit including all build complete properties of unsold units on the development (except Phase J)
2. Phase I Area (PA): the sum of the total square footages for Phase I units

Formula:

3. The proportion of Estate service charge payable by each unit in Phase I = $PA/TA/47$

- c. The Formula applies to the following items:
 - d. The items are: Estate Staff & On-costs, General repairs and sundries, Pest Control, Health & Safety, Accounts/audit fee, Management fee, Sea wall reserves.
 - e. The Formula shall apply to 90% of the following items: Insurance Premium, Weevil Lane repairs reserves, Electricity supply etc, General contracts, Pumping station.
2. Under Section 20C of the Act, the Tribunal makes an Order that the Respondents costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Reasons

Introduction

3. *NB. Notes in italics are those of the Tribunal.*
4. This was an application initially made by Mr Derek Painting and Mrs Gillian Gregory for determination by the Tribunal under Section 27A of the Act of the reasonable sums payable in respect of estimated service charges for the accounting years 2008 and 2009. No figures were available for 2009 so the application dealt only with the estimated charges for 2008.
5. The application stated the items of charge to be in issue are:
 - a. Contribution towards "General Estate" costs £1,045
 - b. Sewerage pumping station
 - c. Weevil Lane costs and apportionment
 - d. Accountancy charging method (amount not in question)

e. Contribution towards Estate Staff and on-costs

But the range of items raised enlarged in the course of the proceedings.

5. The application also sought an Order to be made under Section 20(C) of the Act.
6. The other persons named as Applicants were joined as such by the Tribunal at the request of those persons.

Inspection

7. On 1st October 2008 the Tribunal inspected the premises and the surrounding development in the presence of representatives of the parties.
8. The whole development broadly comprises seven Phase areas, known as A, B, E, G, I, J and K.
9. Phases A J and I lie to the west of Weevil Lane. Phase J comprises 81 units of social housing which has been sold off. Phase I containing the subject properties is new-build.
10. The other Phases lie to the east of Weevil Lane and are bounded on the west by a wall, including the Ceremonial Gate and gatehouses adjoining Weevil Lane and on the north and east by the sea. The premises in these Phases largely date from the 19th Century and are of particular character. A Marina is included lying to the east. Some of the units in these Phases have been developed or converted into living or commercial units. Development of other units for sale is ongoing.
11. Weevil Lane is the common vehicular access to all parts of the development as well as to other facilities such as sailing clubs at the north end.

Hearing & Representations

12. A hearing was held on 1st October 2008 and the adjourned hearing on 14th January 2009.
13. Evidence was given by Mr Painting, Mrs Gregory, Mr Hodder and Ms Bowen in addition to which the Tribunal had statements, documents and other papers filed by the parties.
14. The Tribunal had a copy of various leases and sub-leases. The Phase I units had been sold off on long sub-leases in about 2003. The service charge provisions require, by reference to the superior lease of the entire development, payment of three specific charges: (a) Phase service charge relating only to charges incurred in respect of Phase I; (b) Building Service charge in respect of buildings containing dwellings in the Phase; and (c) Estate Service charge in respect of other charges incurred by the superior Lessor in respect of the entire development.
15. The issues related to services charges payable for the Estate Services as apportioned to Phase I.
16. The Phases to the west of Weevil Lane are hereafter together referred to as "west phases" those to the east of Weevil Lane are referred to as "east phases".
17. Of those issues, the substance of the Applicants' case, submissions and evidence was as follows:
 - a. The pumping station. They initially contended that they should not pay for the pumping station costs, that station lying within the east phases, as they thought it did not served Phase I. They subsequently conceded that it did serve Phase I. They accordingly accepted they were liable to contribute to its cost on a pro rata basis.
 - b. Contribution to charges for common parts in east phases. Mr Painting took the Tribunal through the complex provisions of the sub-leases affecting Phase I, the

superior lease and a specimen lease of a property in Phase B. In effect, his conclusion was that while Phase I was required to contribute to costs incurred in respect of east phases common parts, east phases are not required to contribute towards costs of west phases. This resulted in west phases contributing to east phases charges from which they received no benefit at all.

- c. Wall bounding the east side of Weevil Lane. Phase I did not benefit from this wall and so they should not have to contribute towards it. Similarly the Ceremonial Gate was of no benefit: they could not access it; indeed Phase I occupiers could not see it from their properties: they only passed it when travelling along Weevil Lane; there is nothing in the lease to cover it; while it would be very attractive from Phase B, it was not so for Phase I.
- d. Weevil Lane. Weevil Lane constituted only its road, pavement, drainage and lighting, not the east bounding wall or Gate. He said that it was used not only by estate owners and occupiers, but also the developers for access for building purposes, marina users (there are 1230 berths), sailing clubs (including the Civil Service Sailing Club with about 500 members), the Ministry of Defence, Gosport Borough Council, Phase J occupiers and also members of the public. He submitted those users should in effect suffer 60% of the cost of Weevil Lane and that Phase I should pay 5%.
- e. Estate Costs –
 - i. Estate Staff & On-costs. The Applicants consider that the work done by Mr Bennett – to whom this relates – is all covered by the Management Fees which are separately charged, so this is duplication. They had examined the Job Description and found it wide ranging and all within the management functions. Accordingly there should be no charge under this heading.
 - ii. Public liability, buildings and material damage premium. This had been estimated for 2008 at £3,100 but they agreed the revised estimate of £1,125.
 - iii. Electricity supply, bulb replacement. They agreed the item so far as it relates only to Weevil Lane.
 - iv. General contracts. They agreed the item so far as it relates only to Weevil Lane.
 - v. General Repairs and Sundries. For 2008 this could only relate to Weevil Lane and Careline. They were not aware of any service generally available to residents other than the usual Careline service for the elderly, so there should be no charge.
 - vi. Pest control. The heading was agreed subject to actual costs incurred being charged to the Phase(s) actually incurring the cost.
 - vii. Health & Safety. They agreed the item so far as it relates only to Weevil Lane and adjacent areas.
 - viii. Accounts preparation & Audit Fee. This heading was now agreed, but retained sums for Phase I should be kept in a separate fund.
 - ix. Management fees. On the basis that these are now charged as Phase service charge at £70 per house and £145 per apartment, these were reasonable.

x. Reserve Funds.

1. Major Repairs. They agreed the item so far as it relates only to Weevil Lane.
2. Sea Wall. He contended that Phase I should not contribute to its cost and upkeep because it did not benefit Phase I but only east phases and also because there was no similar wall protecting Phase I from the north so that the existing wall would not assist in preventing flooding of Phase I.
3. Re-decoration of estate items. They would only benefit from decoration of lighting columns on Weevil Lane and the cost should be charged accordingly.

f. They challenged the apportionment of all items for the following reasons:

- i. Phase J. It appeared that the landlord does not recover from the owners/occupiers of Phase J any service charge for any facilities while those in Phase I are being charged. This results in Phase I being expected to pay a proportion so the landlord recoups that which it does not recover from Phase J. They should not have to do so.
- ii. They should not have to pay a contribution towards any cost of any facility or other cost from which they do not benefit.
- iii. To the extent that they do benefit from a facility or cost, the cost should be divided, by square footage of each unit, as a fraction of the total square footage of all units so benefitting.

g. They applied for an Order under Section 20C of the Act.

18. The evidence in support of the Respondents' case was given by

- a. Mr Hodder, a Chartered Accountant and Director of both Respondents. He had made a written statement dated 9th January 2009;
- b. Ms Fleur Bowen, the Divisional Property Manager of BH.

19. So far as material to the issues raised by the Applicants, Mr Hodder's evidence was:

- a. He withdrew the third sentence of Paragraph 11(i) of his statement but otherwise confirmed it to be correct.
- b. Estate Service Charges. These cover the entire development and from Phase I RCY currently recovers a total of 12.375% of the total. He produced a revised estimate dated 9th January 2009 ("new estimate") of charges for 2008 resulting from a review of costs. This is apportioned between all sold properties (around 300 or so at present), other than Phase J. BH contributes to the total charge in respect of any "build complete" properties until sold. Phase I should contribute to the service charge for any unit (such as the 81 units in Phase J) which does not pay service charge.
- c. Common Parts. The Estate charges do not apply to any common parts which are a Phase or Building Common Part. He could provide a statement of those common parts charged for.
- d. Estate Staff and On-Costs. They are entitled to charge for the cost of employing staff. He produced a copy of Mr Bennett's job description. The review had resulted

in reduced costs in the new estimate. There is no duplication in the work done by Mr Bennett and the landscaping contractor so no duplication of cost. The employment of Mr Bennett resulted in saving of costs which would otherwise be incurred, giving examples, as well as it being beneficial to Respondents and Applicants to have an on-site presence. He said that Mr Bennett's duties were not covered by the separate management fees. In relation to jobs such as litter-picking, these were incidental jobs that Mr Bennett did because of his presence on site and saved the cost of employing other contractors.

- e. Maintenance of landscaped areas (previously General Contracts). This relates to maintenance of landscaped areas as well as Weevil Lane and pathways. These are areas which provide amenity to Phase I which overlooks them.
- f. Insurance premium. The premium paid in 2008 was £1,125. He thought that part might not relate to Phase charges, but the cost per unit was very small.
- g. Electricity and bulb replacement. This largely relates to areas shown on a plan (*Weevil Lane and the landscaped areas – see 19e. above*). There are 43 lamp columns along Weevil Lane. No charges have yet been made by the supplier. He would limit the estimated charge to £1,000.
- h. Estate plant and buildings. There is no estate plant requiring maintenance by BH so this will be removed from the Estate Charge, but buildings which do serve phases will be charge to those phases.
- i. Pest control. There had been no cost in 2008, but any such problem would affect the whole estate and should therefore be included in the Estate charge unless the problem arose only in a specific phase.
- j. General repairs and sundries. These relate to out-of-hours Careline service for emergency repairs, etc.
- k. Health and Safety. There had been no 2008 cost but it would probably arise and cover the whole estate and be charged as such, but if an issue affected only a particular phase the cost would be charged to that phase.
- l. Accounts preparation & audit fee. While the leases provided for individual phased accounts, that would be more expensive than the cost of preparing one set and gives greater transparency. Individual accounts could be produced if required, but at a higher cost.
- m. Management fee. Phase I flats are charged a total of £145 plus VAT of which £35 plus VAT is apportioned to Estate charge.
- n. Reserve funds. These are a legitimate charge and relate, broadly, to Weevil Lane, the sea wall and re-decoration. He said the development could not have been built without the sea wall so that was a charge affecting the whole estate. The Ceremonial Gate provides a backdrop to Weevil Lane and enhances the site (including Phase I) and is a key part of the estate's uniqueness. He also referred to likely work to the Gate and to lighting columns on Weevil Lane.

20. Ms Bowen's evidence was:

- a. She had been involved in the estate since September 2007 and since October 2008 in its management.

- b. She confirmed Careline's service covered also out of hours (5pm to 8am) contact for management services and is available to Phase I (*although they seemed to be unaware of it*). It is not available to Phase J as they do not pay. The service is not included in the management fee
- c. Mr Bennett.
 - i. His salary included an assessed one hour per week for inspection of the estate (including litter picking). The on-costs provided for employers' national insurance, insurance and support supplies. The charge of £35,000 was estimated to be his overall cost but the charge for 2009 had not yet been calculated.
 - ii. His Job Description is catch all but it does not mean he does all that work. Job descriptions commonly include a wide range of items to enable an employer to require the employee to do them if it chose to do so. The work actually done by Mr Bennett does not include any work covered by the Management Fee.
- d. Management fee. This includes administrative services at head office and regular attendance for inspection, etc. it is calculated at an overall rate of £70 per house and £145 per apartment.
- e. She was aware of the RICS Code of Management and confirmed that the management fee covered all the services referred to in that Code (*see Section 2 of the Code*).

- 21. Phase J. Mr Hanham accepted there were no lease provisions specifically requiring other Phases to contribute to the cost of providing services uses by Phase J. However, he said that it was logical in developments of this kind, where part is designated for social housing such as Phase J, that 100% of the service charges can be recovered from those liable to pay for the whole estate.
- 22. Ceremonial Gate. Mr Hanham submitted that the gate was a focus and symbol for the whole development and as such is a common benefit to which all units should contribute.
- 23. Wall bounding the east side of Weevil Lane. Mr Hanham submitted it was either a party wall, formed part of Weevil Lane or entirely east phases, but that it should be treated as part of Weevil Lane.
- 24. It was accepted by Mr Hanham for the Respondents that Phase I only benefitted from Weevil Lane, the Ceremonial Gate, the pumping station and pest control, the Weevil Lane wall, the sea wall and estate insurance.
- 25. Mr Hanham conceded that there was no provision in the leases/sub-leases enabling the Respondents to charge to service charge their costs in connection with the Tribunal proceedings and in view of the revised estimate felt that an Order under Section 20C, if appropriate, could not be resisted.

Consideration

- 26. The Tribunal considered all the documents to which it had been referred, the evidenced and submissions made by or on behalf of the parties, its inspection of the development and also took into account its expert knowledge and experience.
- 27. General.

28. This development is unusual. It comprises two very distinct parts being east or west of Weevil Lane. The part lying to the east is substantially separate from that on the west. Not only are the east phases of particular historic character, but they are almost entirely separated from the west phases by the wall on the east side of Weevil Lane. Conversely the west phases comprise new build (Phase I), social housing (Phase J) and also Phase A private housing.
29. It appears to be substantially because of this division, that the Applicants feel they are in a significantly different situation but are nevertheless expected to pay towards most common parts in the east phases from which they derive no benefit and cannot see. Further, that all other users of Weevil Lane should also contribute a fair share to its upkeep.
30. The Respondents, however, view the development as a whole and rely on the contractual terms of the leases as to what Phase I has to contribute towards. They consider that the apportionment of service charges which they make are reasonable within the terms of the unit sub-leases.
31. The Tribunal first sets out its reasons about specific items of charge in the Estate charges to which it is contended the Applicants should contribute and then the basis on which they should contribute. First, the items:
- a. The pumping station. The Applicants conceded that they should contribute towards this cost so there is nothing more to decide other than apportionment.
 - b. Sea wall. The Tribunal notes that the existing sea wall provides incomplete protection, but also that it is likely there would have been no development on this site without at least the existing wall being in situ. While the flood defences would be improved by further sea wall to the north, the existing wall was of benefit to the whole development including Phase I.
 - c. Weevil Lane, the east wall and the Ceremonial gate. The Tribunal takes this to include the landscaped areas referred to by Mr Hodder lying either side of Phase I. A significant issue is to what extent if at all the east bounding wall is part of Weevil Lane. The Tribunal decided that the original purpose of the wall was to bound and contain the east phases rather than to serve any function for Weevil Lane. As such it logically formed part of the east phase areas and it still serves that purpose. Accordingly that it should be treated entirely as part of the east phases. The Tribunal also found that the Ceremonial Gate was very much part of and benefitted the character of the east phases, but served no such purpose for Weevil Lane or the west phases; additionally that it could not be seen from Phase I and therefore that it was difficult to find that it was of any benefit to Phase I at all. The Tribunal accordingly found that Weevil Lane and the landscaped areas were of benefit to the whole development including Phase I and should be funded accordingly, but the wall and Ceremonial Gate did not.
 - d. Staff/on-costs and Management fees. For a development of this size and nature, the Tribunal considered it was entirely reasonable to employ Mr Bennett on the basis and cost, including on-costs, submitted by the Respondents in the new estimate. The Tribunal is also aware that, as stated by Ms Bowen, it is normal for job descriptions to be "catch-all" and that does not necessarily mean that the employee carries out all the stated duties. The Tribunal was also satisfied that Mr Bennett does not carry out management functions as defined by the RICS Code (see below), so there is no duplication of cost.

- e. Pest control. The Tribunal accepted Mr Hodder's evidence that unless pests affected only a particular phase, the entire development should contribute to the cost.
- f. Insurance premium. The Applicants agreed the reduced estimated cost of £1,125.
- g. Electricity supply, etc. The Tribunal accepted that this item relates only to Weevil Lane and the landscaped areas and agreed Mr Hodder's proposal to limit the estimated charge to £1,000.
- h. General contracts/landscaped areas. The Tribunal accepted the new estimate charge of £1,300 was reasonable for the maintenance of the stated areas.
- i. General repairs and sundries. This only appears to relate to the Careline out-of-hours service and the charge of £1,044 appears reasonable. It is understood to be available to all units on the estate (except Phase J) and should be paid by all units except Phase J. However, if it is the case that the Applicants have not been aware of the service, the Tribunal invites the Respondents to review whether it is appropriate for them to be charged for 2008.
- j. Health and Safety. The Tribunal accepted the Respondents' approach to this aspect, but there is no estimated charge in the new estimate
- k. Accounts/audit fee. It is understood that the cost and mode of accounting is accepted by the Applicants. The estimated cost of £3,480 in the new estimate for this particular development appears to be reasonable.
- l. Reserve Funds.
 - i. Major repairs of accessways, etc. On the basis that this relates to Weevil Lane the reserve of £2,000 appears reasonable.
 - ii. Sea wall. The reserve of £1,000 appears reasonable.
 - iii. Re-decoration. This relates to the Ceremonial Gate. For the reasons stated above there should be no reserve fund contribution payable by Phase I for this item.

32. Apportionment.

- a. The sub-lease dated 17th June 2003 of 10 Commodore Place, which the Tribunal takes to be a standard form, mutatis mutandis, affecting all units in Phase I, , provides that the amount of Estate service charge payable by a unit in Phase I shall be "such percentage as the Landlord shall reasonably determine".
- b. The Tribunal is had to determine whether the apportionment determined by the Respondents is reasonable.
- c. It is common for leases to provide for a fixed fraction or a formula for ascertaining apportionments but because of the nature and character of this particular development, it is understandable that the provision is phrased as it is, but it leaves the issue open to dispute.
- d. The approach taken by the Respondents to apportionment of Estate service charge in this case is to work on the basis of
 - i. the square footage of each unit including all build-complete properties of unsold units (Mr Hodder's statement Paragraph 11(ii)) on the development (except Phase J)

- ii. to total the square footages of all those units (A)
 - iii. for the total square footages for Phase I units to be added together(B)
 - iv. for the Phase I units collectively to pay the share of Estate Service charge equal to B divided by A as a percentage.
 - v. (This approach is hereafter referred to as “Formula A”)
- e. The Tribunal is not satisfied, in all the circumstances of this development, that it is a reasonable apportionment for the following reasons:
- i. To make a simply mathematical apportionment takes no account of significantly differing degrees to which particular units or phase may benefit from a particular service. The Tribunal takes the view that the degree of benefit on this development is highly pertinent to what is reasonable.
 - ii. That Phase J comprising 81 units apparently does not contribute at all to services from which it benefits
 - 1. The Respondents say that the other units on the development should contribute the costs which are attributable to use by the owners/occupiers of Phase J units. There is nothing in the sub-lease to suggest that a Phase I unit should pay for the use by another unit and the Tribunal does not consider that can be implied or that it is logical as the Respondents suggest.
 - 2. It may be convenient to the Respondents, but it seems to the Tribunal that BH, when selling off that Phase, ought to have secured appropriate agreement for contribution. If it did not, it ought to have taken that into account in the sale terms and price or to have made it abundantly clear to other purchasers on the development that they would have to make up the resulting shortfall. It did not do so.
 - iii. No allowance is made for contribution to costs by others, in particular Weevil Lane.
 - 1. It is not disputed that other users of Weevil Lane are developers for access for building purposes, marina users (there are 1230 berths), sailing clubs (including the Civil Service Sailing Club with about 500 members), the Ministry of Defence (although the Tribunal noted the Ministry’s email about that), Gosport Borough Council, Phase J occupiers and also members of the public (hereafter referred to as “other users”)
 - 2. Again the Tribunal considers it reasonable that those users should pay a reasonable proportion of the costs but that in any event Phase I owners/occupiers should not be expected to suffer the cost of their use.

33. Applying those principles to particular heads of charge, the Tribunal decided as follows:

- a. Formula A should apply to the following items on the basis that
 - i. as Phase J is separately managed, having been sold off for social housing, it should not contribute to these items.
 - ii. There is a broadly equal benefit to all non-Phase J units from these items.

iii. The items are: Estate Staff & On-costs, General repairs and sundries. (for 2008 this relates only to the out-of hours Careline service), Pest Control, Health & Safety, Accounts/audit fee, Management fee, Sea wall reserves

b. Where items of charge relate largely to Weevil Lane, including the landscaped areas where relevant the Tribunal decided that the other users should for 2008 be deemed to contribute 10% of the cost so that the service charge payable by Phase I should be payable only on the other 90% on Formula A.

i. These items are: Insurance Premium, Weevil Lane repairs reserves, Electricity supply etc, General contracts.

Pumping station. The Tribunal assumes that the other users also benefit from this facility. The plan produced relating to the foul drainage system suggests that they do, so concluded it would be reasonable for other users to pay towards 90% of the cost on Formula A

34. The Tribunal wishes to emphasise that while it has set specific apportionments for Estate service charges, they do not necessarily all apply beyond 2008. For instance, use by the developer of Weevil Lane will presumably reduce to nil over the next few years and it might become reasonable for the percentage apportioned out of the ambit of Formula A for Weevil Lane repair reserves to be reduced. What is reasonable is not set in stone by the Tribunal's decision. It is to be hoped, however, that now the Respondents have reviewed the estimated service charged for 2008 and the Tribunal has made its determination, the parties will more readily agree variations between them in future.

35. It does not fall within the ambit of Section 27A of the Act to make a determination as to accounting for funds or keeping of funds for different phases in different accounts. The Tribunal simply draws the attention of all parties to the legislation and Code of Practiced in this respect.

36. Section 20C. It appears to the Tribunal that the Respondents are not entitled by the sub-lease to recover their costs in connection with the Tribunal proceedings. In case that is not so, the Tribunal makes an Order that the Respondents costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

37. The Tribunal made its decisions accordingly.



Chairman

A member of the Tribunal
appointed by the Lord Chancellor

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

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Application under Section 27A of the Landlord and Tenant Act 1985

Re: 2, 3, 9, 10, 16, 20, 21 Commodore Place, Weevil Lane, Gosport, Hants

Applicants	Mr R Nelson No 2	No 2
	Mr R Davies No 3	No 3
	Mr D Painting No 9	No 9
	Mrs G Gregory No 10	No 10
	Mrs Czoch	No 16
	Mr & Mrs Pharaoh	No 20
	Mr & Mrs Sealy	No 21

Respondents	Berkeley Homes (Hampshire) Limited (1) ("BH")
	Royal Clarence Yard (Phase I) Limited (2) ("RCY")

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
P D Turner-Powell FRICS	Valuer Member
Mr R T Dumont	Lay Member

Date of Tribunal's Decision: 29th January 2009

Applicant's Application for Leave to Appeal

Decision

1. Leave to appeal is refused.

Reasons.

2. By letter dated 20th February 2009 signed by Mrs Gregory on behalf of the Applicants, the Applicants seek leave from the Tribunal to appeal the Tribunal's decision so far as it relates to that part which relates to the Applicants' liability to contribute to the cost of the sea wall through service charge.
3. The Applicants submit that
 - a. the Tribunal's decision gave no weight to some evidence which contradicted the Respondents' claim that the sea wall benefitted the whole estate;

- b. there is no justification to link the Tribunal's view that "there would have been no development on this site without at least the existing wall being in situ" with liability of Phase I to contribute towards its cost;
 - c. Phase I is nevertheless at risk of flooding as it is open to flooding from the north;
 - d. The amount of the liability is unknown and could affect saleability and price of Phase I properties.
4. The Tribunal deals with those points as follows:
- a. Having considered all the evidence to which it had been referred the Tribunal came to that conclusion which it believes to be justified;
 - b. As noted at Paragraph 33 of its reasons, the Tribunal considered that because of the nature of the entire development, a reasonable apportionment of service charge under the terms of the leases of the units should largely be based on the degree of benefit received by a unit from a particular head of charge. The leases, in terms, cover liability for all parts of the estate which includes the sea wall. While the Tribunal quite understood that the existing sea wall was not, by any means, a complete answer to the risk of flooding, it felt that Phase I did benefit and it would be reasonable for the units in that Phase to contribute as stated in the decision.
 - c. See 4b above.
 - d. The facts that the cost of the liability is unknown and could affect saleability and price, are ones which first, are not relevant to determining whether Phase I units should contribute or the apportionment which is reasonable; secondly they would presumably have been issues which prudent present *owners* of units have already taken into account in making their purchases.
5. Accordingly the Tribunal refused leave to appeal.

3rd March 2009


Chairman

A member of the Tribunal
appointed by the Lord Chancellor