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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1987
SECTION 27A and Section 20C**

PROPERTY 9, Pavilion Gardens, Westhoughton, Bolton BL5 3AS

Applicants: Jones Residential (Leasing) Limited

Respondents: Paulette Entwistle and Jonjo Walker

The Tribunal: Chairman: John R Rimmer BA, LLM
Valuer Member: Duncan Pritchard FRICS
Lay Member Nazrin Ali LLB

Date of Determination: 11th April 2012

A paper determination without a hearing

ORDER: The Tribunal is satisfied that the service charges for the years 2009-10 and 2010-11 are reasonably incurred for work of a reasonable standard **SAVE AND EXCEPT** that for both the years in question the landscaping charges payable by the Applicant be reduced by one-third to £46.16 and \$55.60 for those years respectively

Application and Background

- 1 The Applicant is the management company responsible for the provision of services to the development at Pavilion Gardens, Westthoughton and the Respondents are the long leaseholders of the terraced house numbered 9 on the development..
- 2 The Applicant has commenced proceedings in the County Court to recover alleged arrears of service charges amounting to £186.42 (and subsequent fees and costs). Those proceedings were transferred to the Leasehold Valuation Tribunal by order of District Judge Swindley sitting at Bolton County Court on 28th September 2011 for the tribunal to decide what, if any, service charges were properly due and payable.
- 3 The Applicant duly lodged with the Tribunal an application outlining its service charges relating to 9, Pavilion Gardens for the years 2009/10 and 2010/11: there being, in its view a shortfall between what was due and what was paid by the Respondents.
- 4 A copy of the counterpart lease for 9, Pavilion Gardens was provided to the Tribunal, it being one made between P E Jones (Contractors) Ltd and the Respondents dated 14th April 2005, for a period of 999 years from 1st October 2003 at a premium and an initial rent of £140.00 per year with provision for increments at specified anniversaries. As is common with many leases the provisions relation to the service charge are contained in various places:
 - A tenant's covenant to pay in the Fourth Schedule "to pay the lessor on demand a fair and reasonable proportion attributable to the Demised Premises as reasonably and properly determined by the landlord or its Managing Agents of the costs of maintenance repair and renewal of the Private Drive/Forecourt the Service Installations the Parking Space the Visitors Parking Spaces and the landscaped areas within the Estate and all other costs associated therewith". (Paragraph 1.2)
 - Those various aspects within the charge are defined in Clause 1 of the lease "To pay the service charge to the landlord as additional rent"
 - The obligation is further extended by Paragraph 16 of the Fourth Schedule an obligation "to pay a fair and proper proportion of the expense from time to time incurred in cleansing maintaining repairing and renewing all party walls and fences and Service installations and other easements...".
 - Again definitions are provided in clause 1.
- 5 The Respondents' argument for not making the appropriate service charge payments was that services had not been provided to a satisfactory standard or at all. Reference was made particularly to the standard of landscaping/gardening and maintenance of the boundary fences. Furthermore the manner in which the agent for the Applicant had responded to complaints unsatisfactory.
- 6 Following the Application documentation and submissions were received from both parties which clarified the issues to a position where they might be set out as follows:
 - The Applicant dealt primarily with the extent of the landscaping and gardening work required and the cost derived from the most competitive quotation received, there being no other criticism apparent from other leaseholders or occupiers.
 - The Respondent, Miss Entwistle, now being the only leaseholder remaining, at the property, detailed her view of the landscaping as unsatisfactory, as was the management of the service and the ensuing complaints.

Inspection

- 7 On the morning of 11th April 2012 the Tribunal inspected the development at Pavilion Gardens and found it to comprise a small number of terraced houses and apartment blocks situated near to Westhoughton town centre and its amenities. It is well served by public transport. The houses have their own garden areas to front and rear with other communal grounds in addition. There are parking spaces for occupiers and further visitor spaces. The individual properties have wooden slatted fencing to separate garden areas (maintenance obligations for this being set out in the lease) with further similar and extensive fencing delineating the border to the development.

Tribunal's Conclusions and Reasons

- 8 Section 18 of the Landlord and Tenant Act 1985 defines "service charge" and "relevant costs" that can be included in such a charge. The charges that are the subject of this Application appear to be within the definition, which is not set out word for word here, and there appears no doubt that the parties accept that to be the case. but includes repairs at Section 18(1)(a) and it appears to the Tribunal that the parties accept that this was the case. Section 19 of the Act states that the relevant costs to be taken into account as comprising the service charge can only be taken into account to the extent that they are reasonable and that the work is of a reasonable standard. The way in which the Tribunal is to assess that issue of reasonableness is assisted by Section 27A of the Act.
- 9 The law relating to that jurisdiction found in Section 27A Landlord and Tenant Act 1985 is as follows:
 - (1) 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 payableand the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)
- Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.
- 10 The Tribunal were assisted by the intervention by Miss Entwistle during its inspection to indicate that the difficulties and differences of opinion between herself and the Applicant were now largely historical and the work that she had regarded as being required was now being done to a satisfactory standard.
- 11 The Tribunal does however have two causes for concern that remain:
 - There is clear evidence from the information contained in the documentation before the Tribunal that there has been a continuing and lengthy disparity of views as to the adequacy or otherwise of the landscaping provision for the years in question. The Tribunal is satisfied that the recollections of the Respondent, as set down in writing, are reliable and the inspection carried out by the Tribunal enabled it to see

how improvement had been made when compared with the Respondent's photographs.

- The recollections of the Respondent similarly persuaded the tribunal that the problem had been exacerbated by the tardiness of the response, or lack of understanding of the difficulties, emanating from the Applicant's agents.

12 The Tribunal is however mindful that the management fees charged are reasonable for the type of development that is under consideration and the nature of services being provided. It is therefore appropriate for the Tribunal to reflect its concerns as to any unreasonableness in the service provided or the costs thereof by reducing the landscaping costs for each of the two years under consideration by one third.

J. R RIMMER
(CHAIRMAN)
22 May 2012