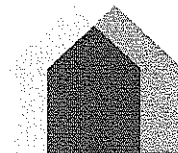


**LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL**

10 Alfred Place, London WC1E 7LR
Telephone: 020 7446 7700 Facsimile: 020 7637 1250
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**Residential
Property
TRIBUNAL SERVICE**

Ms K Glanville
Pemberton Greenish
Solicitors

Your Ref:

Our Ref: LON/00AG/LVE/2007/0001

**DX 38166
Knightsbridge**

Date: 13 May 2008

Dear Ms Glanville

**Commonhold and Leasehold Reform Act 2002 – Section 159(3)
Re: Hampstead Garden Suburb**

The Tribunal has considered Mr Botterill's application for leave to appeal and I enclose a copy of their decision.

I also enclose a copy of a correction certificate for the decision dated 7 April 2008.

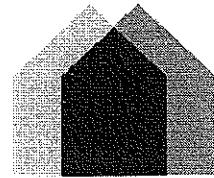
Copies of both documents have been sent to all the parties.

Yours sincerely

A handwritten signature in cursive script that reads "Sheila Sanz".

**Mrs Sheila Sanz
Clerk to the Tribunal**

**THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL.**



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LON/00AC/LVE/2007/0001

Commonhold and Leasehold Reform Act 2002

CORRECTION CERTIFICATE

Applicants: Mr A Botterill and other Estate Management Charge payers

Respondent: Hampstead Garden Suburb Trust Ltd
Mr M Mandell
Mr D Bogush

1. The LVT issued a reasoned decision dated April 7, 2008 in this matter. It has come to the Tribunal's attention that a typographical error was made in that decision and accordingly it seeks hereby to correct that error.
2. In paragraph 61 of the decision the sentence "The Tribunal did not consider that in order to satisfy section 159(3)(b) it would in *these* circumstances be necessary to establish a case to a standard akin to *Wednesbury* unreasonableness" should be substituted for the sentence "The Tribunal did not consider that in order to satisfy section 159(3)(b) it would in *all* circumstances be necessary to establish a case to a standard akin to *Wednesbury* unreasonableness"

Signed:

.....
SM-MH

Dated:

12.5.08

Tribunal:

**Siobhan McGrath
Mr C. Kane
Ms S Wilby**

**THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL.**



**Residential
Property**
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LON/00AC/LVE/2007/0001

Commonhold and Leasehold Reform Act 2002

DECISION ON AN APPLICATION FOR PERMISSION TO APPEAL

Applicants: Mr A Botterill and other Estate Management Charge payers

Respondent: Hampstead Garden Suburb Trust Ltd
Mr M Mandell
Mr D Bogush

Decision

- 1. The Tribunal has considered Mr Botterill's request for permission to appeal dated April 24, 2008, and determines that permission be refused . In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, Mr Botterill may make further application for permission to appeal to the Lands Tribunal.**

Reasons

- 1. The Tribunal considers that its decision is correct for the reasons set out in its decision document dated April 7, 2008.**

2. The position of the applicant in the proceedings is set out in paragraph 5 of the LVT's decision. Mr Botterill is one of a number of applicants to the LVT. No lead applicant was appointed to replace Mr Walker.
3. In paragraph 2 of the Grounds of appeal, Mr Botterill states that the Trust withdrew its resistance to the application "and resolved that it should not take sides in the debate about the desirability or otherwise of a progressive charge". This was not the basis on which the LVT made its decision. At a case management conference convened on February 21, 2008, it was agreed by all parties that the LVT would proceed to make a determination on the basis of the representations received up to and including the hearing on June 21, 2007. The representations made and evidence given at the hearing on June 21, 2007, on behalf of the Trust, were in opposition to the application and were not neutral.
4. In paragraph 20 of the Grounds of appeal, Mr Botterill points out that the Tribunal was not absolutely clear in its reasoning. In paragraph 61 of its decision, the Tribunal had intended to state that "The Tribunal did not consider that in order to satisfy section 159(3)(b) it would in *these* circumstances be necessary to establish a case to a standard akin to *Wednesbury* unreasonableness". The Tribunal apologises for the error and has issued a correction certificate in this respect. It considers that its reasoning is now clear.
5. In paragraph 37 of the Grounds of appeal, Mr Botterill implies that the Tribunal attached especial weight to the view of the Respondent. On the contrary the Tribunal states in paragraph 71 of its decision that it "did not consider that the decision of the Trust not to proceed to apply for a variation in the scheme helped them in the assessment of unreasonableness". In order to establish grounds for variation under section 159(3), an applicant must demonstrate that a formula is "unreasonable". In order to apply for a variation under clause 11 of the Scheme there is no requirement to establish unreasonableness.
6. In paragraph 44 of the Grounds of appeal, Mr Botterill suggests that the LVT relied on evidence taken from the second part of the application and that this evidence was not discussed before the Tribunal. The LVT rejects this suggestion. The evidence and submissions on which the LVT's decision was based is set out in paragraphs 17 to 40 and 41

to 58 of its reasoned document. The Tribunal made no reference to and took no account of any material not specifically shown to it by either one of the parties.

7. Paragraphs 59 to 73 of the LVT's decision address most of the issues raised by Mr Botterill in paragraphs 47 to 55 of his Grounds of appeal. However, the position in respect of the numbers and views of charge payers is dealt with in paragraphs 36 to 38 of the LVT's decision. In particular by the date of the LVT's hearing, the chairman of the residents association had written to withdraw support for the application.
8. It is recognized that this is the first decision of an LVT on the meaning of "unreasonable" within section 159(3) of the 2002 Act. However the issue of whether a particular formula is or is not unreasonable will depend upon the factual circumstances of each case and the LVT rejects the suggestion in paragraph 56 of the Grounds of appeal, that the decision is critically relevant to all the section 19 schemes of management in the Country.

Signed:


.....

Dated:

12.5.08
.....

Tribunal:

Siobhan McGrath

Mr C. Kane

Ms S Wilby