

Housing

Ombudsman Service

REPORT

COMPLAINT 202002748

Tower Hamlets Homes

14 September 2020

Our approach

1. *The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.*
2. *Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.*

The complaint

3. The complaint is about the landlord's management of trees and bushes in the communal area around the building and its investigation of the issues raised.

Background and Summary of events

4. The resident has been a tenant of the landlord, at the property, from 2 December 1991.
5. The landlord's website advises that it manages its trees on a 3-5-year cyclical tree programme, where a specialist contractor surveys all the communal trees.
6. The landlord has adopted a two-stage complaints process, whereby it aims to investigate a complaint at stage one, within 20 working days and where a resident remains dissatisfied with the outcome of their complaint and requests a review, this will also be carried out within 20 working days.
7. On 9 March 2020 the resident submitted a complaint to the landlord about the trees and bushes in the communal area around the building. In particular, she expressed her dissatisfaction with fruit trees having been planted, due to them blocking light and dropping fruit which has historically been left on the ground to rot. She also stated her dissatisfaction with the ground maintenance and landscaping around the building, with the landlord allowing trees and shrubs to become overgrown and for trees to have been planted too close to the building and saplings left to grow close to the building. The resident also appears to have raised an issue with a planned beehive around this time.
8. On 10 March 2020 the resident submitted "*further comments*" to the landlord in respect of her complaint, where she listed different types of trees and the "*safe distance*" at which they should be planted from a property. In particular, she referred to silver birches having been planted by the landlord, at 3-4 metres distance from the property, when the recommendation is that they should be planted at least 10 metres away.

9. On 1 April 2020, the landlord sent its stage one response to the complaint. It addressed the issues raised as follows:

- **Newly planted trees and fruits from the trees**

It explained that The Tenant's and Resident's Association (TRA) had requested permission to plant trees and this was agreed, providing they were planted at least two metres away from properties and that the TRA would maintain them in future. It confirmed that following inspection, it was found that this had been done, but that it would remind the TRA to deal with any fallen fruits should these cause a health or safety concern or nuisance.

It said that despite some loss of natural daylight by the planting of the trees, the social, health and economic benefits outweigh the cost. In addition, it said that the planting of the trees supports its duty to maintain a diverse looking and natural landscape.

It added that the trees planted by the school wall were also planted at an appropriate distance and should not cause an issue. It said it would not be removing any of the trees.

- **Purchase/installation of a beehive**

The landlord explained that this was in consultation phase, however would be likely to be delayed due to the current pandemic. It said that if this should go ahead, all risk assessments and communications would be carried out.

- **Bushes**

It stated that its gardening team were aware of the maintenance of the bushes and to keep them below window level and to not block any area. It said it would not be removing any of these but that it would instruct its gardening team to ensure the bushes were not posing any health or safety risk.

10. On 9 April 2020, the resident requested that her complaint be escalated to stage two of the landlord's complaints process, referring to a number of points and questions that had not been addressed by the landlord in its stage one response.

11. On 15 May 2020, the landlord responded to the complaint at stage two of its complaints process, apologizing that some points were left unanswered. In it, it answered a number of points and queries the resident had raised. It reiterated that the trees were two metres away from the building, although it advised it would trim the trees and bushes by the end of the month, agreeing that one bush in particular was "*very high*". It explained that it had not previously been able to provide a date for pruning because of the coronavirus crisis. The landlord advised that if the resident would like to attend a site visit, she could

contact the Estate Services team. On the same date, the resident accepted the invitation for a joint visit of the estate.

12. The landlord has provided to this investigation an inventory of the trees, bushes and grass areas on the estate, dates they were visited, assessment of the conditions and any recommendations. The visits to the trees date back to 2010, with the most recent visits having been carried out in 2017.

Post complaint

13. The resident has stated that on 28 July 2020, she attended a walk around the estate with the landlord's *"landscape officials"*. There is no information as to the outcome of this meeting.

Scope

14. The resident has said that as resolution to her complaint, she would like the landlord to *"closely inspect the estate"* and for the Ombudsman to *"scrutinize the landlord's spending on landscaping and gardening in the borough, ask social landlords to keep detailed records of all plants on estates, ordering them to keep planting neat and tidy at all times, order social landlords to remove all shrubs and trees which hamper safety of walls and residents and recommend planting of green walls along busy roads to counter exhaust fumes instead of planting many shrubs, bushes and trees within the grounds of an estate"*. The resident has also referred to her *'Right to Light'* and the trees impinging on this.
15. The Ombudsman's role is not to make rulings on social landlords more widely, to scrutinize a landlord's spending or to recommend or order a landlord to carry out works it is not obliged to do. Nor is it to rule on the *'Right to Light'*; this is a matter for a Court. Further, any issues regarding the landlord's spending, which relate to service charges, should be properly taken to the First Tier Tribunal (Property Chamber), in accordance with paragraph 39(g) of the Scheme, which states that *"The Ombudsman will not investigate matters, which, in its opinion, concern the level of rent or service charge or the amount of the rent or service charge increase"*.
16. The role of this Service is to investigate and assess the landlord's response to the complaint made and to determine whether the landlord's actions were appropriate and reasonable in the circumstances and in accordance with its policies and procedures.

Other issues

17. The resident has referred to her dissatisfaction with the TRA having only leaseholders on the committee, her wish to not have a beehive installed in the area and sent in a photograph to this Service of a crumbling wall, on 6 August 2020, which she said the overgrown shrubbery has been covering up. In terms of the TRA, whilst the resident raised the fact that only leaseholders are

currently involved, the landlord has confirmed that although this is disappointingly the case, tenants are also able to join if they so wish, including the complainant herself. The issue with the beehive is a wider community issue, to which the landlord responded that she will be consulted/communicated with. Moreover, the substantive complaint was not about these issues; these were merely raised in her communications with the landlord.

18. In terms of the crumbling wall, this was raised on 6 August 2020, after the conclusion of the complaints process and as such, the landlord has not had an opportunity to respond to this. The resident is required to report matters requiring repair to the landlord, to enable it the opportunity to inspect and carry out any repair works as required. As this was not a matter reported or later complained of and progressed through the landlord's complaints process, it will not be considered here. What this investigate will adjudicate on is the substantive matter of the landlord's management of shrubs, bushes and trees in the communal area.

Assessment and Findings

19. The landlord is required to carry out maintenance of the communal areas in accordance with the terms of the tenancy. Although the specific terms of the tenancy have not been provided to this investigation, it is accepted by the landlord that it is its responsibility to maintain bushes so that they are not higher than window level, that trees will not be planted closer than 2 metres to the building and that it carries out cyclical tree inspections.
20. The landlord had not maintained at least one of the bushes, acknowledging that it was "*very high*" from the photograph the resident provided and it is clear that gardening works were needed at the time of the complaint, with it advising as part of its complaint response that it would carry out pruning by the end of that same month, explaining that it had not previously been able to provide a date because of the pandemic. It is not known, however, the frequency of pruning that it is required to carry out or to what extent the lockdown situation did or did not delay this. What is clear is that whether this is or is not the case, the landlord's records provided to this investigation, do not indicate any gardening work having been carried out since 2017.
21. Whilst three years may be a reasonable amount of time for a tree to not be pruned and this would be within the landlord's cyclical timeframe, not all of the trees were pruned in 2017, with many not having been recorded as being pruned for a number of years. In addition, it is unlikely that bushes and shrubs would not need pruning for a number of years, being plants that grow much more quickly and the landlord's agreement to keep them at a certain height.
22. The landlord stated that it would carry out the pruning required by the end of May 2020, although it has not provided evidence to this investigation that it has done this. In the absence of evidence, this investigation cannot be satisfied that this has been done.

23. The landlord also stated that the trees were not closer than two metres to the building and that it would inspect the saplings. In terms of the distance, it appears to have ascertained this from photographs, which would not satisfactorily determine this; it is not possible to measure without carrying out a physical inspection. Regarding the saplings, it is also unknown whether the landlord attended to inspect the newer (non-fruit) trees to which the resident referred to growing closer to the building.
24. Regarding tree distance more specifically, although the resident has researched recommended tree distances, these distances are recommendations only and are not enshrined in law. The landlord has made a policy decision that trees should not be planted closer than two metres to the building, which it is entitled to do on its land (although the resident has referred to the '*Right to Light*' (The Rights of Light Act 1959), which could be applicable where light in the property was restricted by a tree and she had received daylight in the property for the last 20 years). The landlord is also responsible under the tenancy and in law, for the structure of the building and consequently, any damage caused by tree roots, to it. The landlord has agreed, however, not to plant trees closer than two metres to a building and there is consequently a reasonable expectation that it will not do this.
25. The landlord is not required to remove trees (or indeed other plants) where there is no health and safety risk and/or other reason requiring it to do so, such as advice from its specialist tree contractor. It has said that no risk has been identified, although again, no evidence of a risk assessment has been provided to this Service.
26. Turning to the fruit trees specifically, the landlord explained that it had given permission for these to be planted and maintained by the TRA, which it was entitled to do and it stated that it did inspect these particular trees, following receipt of the complaint, although evidence of an inspection has not been provided to this Service. The landlord should, however, reasonably consult or communicate its plans or agreements regarding the planting of trees or shrubs which directly effect the resident in her property, for example, trees planted directly in front of her window. It should be reiterated that the resident is also able to join the TRA if she wishes.
27. The landlord responded to the complaint in a mostly timely fashion, with its stage two response only very slightly over time and in accordance with its complaints policy and its response at stage one, making clear its position and why. It did not address all of the resident's concerns, however, or offer to inspect the area that the resident was complaining of, to ascertain whether there were works to trees or bushes that were required.
28. It is not known what, if any, investigation of the issues raised was undertaken, besides an inspection of the fruit trees alone (which has not been evidenced to this Service). Despite the restrictions in the UK at the time, due to the pandemic, the landlord appears to have inspected the fruit trees, but not the other areas referred to. Or possibly, the landlord's inspection of the fruit trees pre-dated the pandemic, in which case, it would not have been current enough in light of the

complaint. It is understandable that the pandemic may have delayed physical inspections but if that was the case, it would have been appropriate to have waited before responding to the complaint in full (and communicated this), rather than responding to the complaint without having sufficiently investigated the issues raised.

29. Finally, the landlord missed an opportunity to express understanding and empathy for the resident's concerns or to explain to her how and when it maintains the grounds or when it would assess risk and in not doing so, did not communicate effectively or manage expectations; notwithstanding the coronavirus pandemic difficulties, building and maintaining the landlord-resident relationship, providing explanation and managing expectations are key parts of responding to a complaint, which the landlord did not sufficiently do.

Determination

30. In accordance with paragraph 54 of the Housing Ombudsman Scheme there was service failure by the landlord in respect of the complaint.

Reasons

31. There was service failure insofar as the landlord did not adequately maintain the trees and bushes in the communal area, specifically, it did not maintain its pruning obligations, nor did the landlord sufficiently investigate the issues raised, by inspecting the area or carrying out any required works within a reasonable period of time.

Orders and Recommendation

Orders

32. The landlord to pay the resident £75 for the service failure identified;
33. The landlord to carry out an inspection of the communal garden area to:
- i. Assess risk;
 - ii. Ascertain what, if any, gardening works are required;
 - iii. Identify whether any trees are closer than two metres to the resident's property itself, and;
 - iv. For the landlord to document its findings from the inspection and where works are identified, for the landlord to carry these out within a reasonable period of time.
34. The landlord to ensure its cyclical tree program and inspections/works are up-to-date;

35. The landlord to communicate to the resident what gardening works it carries out and the frequency of these.
36. The landlord to confirm compliance with the above orders **by 12 October 2020**.

Recommendations

37. The landlord to document and maintain records in respect of its maintenance program to the communal gardens and any works carried out.
38. The landlord to document records of inspections and any recommendations or findings deriving from those.
39. Whilst the landlord is not obliged to comply with recommendations it is requested that the landlord confirms its intentions to this Service as to the above recommendations by **12 October 2020**.