

2681

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Property:** 37 Coopers Lane, Ock Street, Abingdon, X14 5GU

**Applicant Management Company:** The Brewery (Abingdon) Management Company Limited

**Applicant's Managing Agent:** Peverel OM Limited, Marlborough House, Wigmore Place, Wigmore Lane Luton LU2 9EX

**Landlord & Developer:** Berkley Homes (Oxford & Chiltern) Limited  
Registered Office: Berkeley House, 19 Portsmouth Road, Cobham, Surrey KT11 1JG

**Respondents:** Robert Travis Johnson and Janet E Johnson  
37 Coopers Lane, Ock Street, Abingdon, X14 5GU

**Case number:** CAM/38UE/LSC/2006/0020

**Application:** For a determination of the liability to pay service charges including the reasonableness of service charge (Section 27A Landlord and Tenant Act 1985) for the financial years ending 30<sup>th</sup> April 2003, 2004 and 2005

An application by the Respondents for the limitation of service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)

**Tribunal:** Mr JR Morris (Chairman)  
Mrs S Redmond BSc (Econ) MRICS  
Mr A Kapur

**Hearing Date:** 7<sup>th</sup> August 2006

**Attending Hearing:**

**Applicant's Representatives:** Mr RJ Sandler                      Senior Company Solicitor  
Mr C Attwater    Estate Manager

**Respondents:** Prof RT Johnson and Mrs JE Johnson

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## STATEMENT OF REASONS

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### The Application

1. By an Order of the Oxford County Court dated 19<sup>th</sup> January 2006, claim number 5HF01291 was transferred to a Leasehold Valuation Tribunal for a determination of reasonableness and payability of Service Charges under Section 27A Landlord and Tenant Act 1985 for the financial years ending 30<sup>th</sup> April 2003, 2004 and 2005. The Applicant made an application pursuant to the Court Order on the 24<sup>th</sup> April 2006.

### The Law

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

#### Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
  - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
  - (a) costs includes overheads and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

#### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
  - (a) only to the extent that they are reasonably incurred; and
  - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs

have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 27A

- 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 payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.

#### **Description of the Property, Building and Estate**

3. The Subject Property is a flat in a Building of 14 flats constructed of brick under slate roof, known as the Brewery Tower (although referred to in the Service Charge Accounts as the Brew House) on an Estate comprising a range of properties including housing owned by a Housing Corporation. The Brewery Tower has Common Parts over which all the tenants of the flats have access and include hallways, stairways and landings. Access to the Estate is over a tarmac roadway, which passes through the Estate to a rear access, which is blocked by removable bollards. There are Communal Areas that include the roadway, paths, grounds and gardens, a playground area and allocated car parking spaces. It also includes a piazza outside the main door of the Brewery Tower where there is a work of art. The Estate is situated in the centre of Abingdon.

#### **Inspection**

4. The Tribunal inspected the Building and Estate in the presence of the Applicant's representatives and the Respondents.
5. The Tribunal viewed the Common Parts of the interior of the Brewery Tower. The Respondents drew the Tribunal's attention to the lift, the windows and state of cleanliness of the Common Parts, the main doors and closers together with the door entry system, a further exterior door and closer and the lighting arrangements for the Common hallway and work of art in the piazza outside the Brewery Tower.

6. The interior of the Common Parts appeared to be well maintained. It was noted that certain windows on the top floors at the rear of the Building are difficult to access for cleaning. In particular a window which is situated on one of the landings of the Common Parts and another that belonged to the Respondents' flat. It was also noted that the front doors were substantial and that the door closers were set at an angle, which was likely to put a strain on them. It was stated that these had broken several times. It was explained that the external lights, which lit the work of art, had been on the same circuit as the Common hallway. As a result of ingress of water due to a defective seal on one of the external lights there had been a short circuit leaving the hall and stairs in darkness on several occasions. It was understood the lights had now been re-wired on separate circuits. It was noted that the door entry system was exposed to the elements and the Respondents stated that it was regularly found to be faulty and needed attention.
7. The Tribunal viewed the exterior of the buildings, the grounds and roadways and parking arrangements on the Estate. These appeared to be well maintained. In addition an inspection was made of the bin store. It was pointed out that refuse vehicles cannot get access to the bin store due to the height of the arch over the entrance to the courtyard where the bin store is situated. In addition an inspection was made of the alternative access at the rear of the Estate, which has removable bollards between the Estate and the public road. This alternative access is apparently only used during Abingdon Fair when the bollards are removed as the Fair blocks the main access.

### **The Lease**

8. The Respondents and the Landlord entered a Lease dated 24<sup>th</sup> May 2002 for the Subject Property. Under the terms of the Lease the Management of the common parts and communal areas are vested in the Applicant. The tenants are all shareholders of the Applicant. The Applicant employed the Managing Agent.
9. The Lease is for a term of 125 years from the 1<sup>st</sup> March 2001 at a rent of £250.00 for the first 25 years and increasing to £500.00, £1,000, £2,000 and £4,000 for every 25 years of the term. The accounting year is the period of twelve months ending on the 30<sup>th</sup> April each year. The Lease in the Second Schedule includes a matrix, which specifies a percentage to be paid by each Tenant in respect of the Costs incurred for each sector of the Estate. These costs are charged under two headings referred to in the Lease. The first is the Estate Maintenance Charge, which relates to the expenditure incurred by the Applicant in maintaining the Communal Areas and the Service Charge, which relates to the expenditure incurred in respect of the Building and Common Parts.
10. The Lease in Clause 7 contains a number of covenants under which the Applicant is obliged to:
  - Insure the Building,
  - Repair and maintain the structure of the Building, the Common Parts and Communal Areas and the boundary walls and fences of the Estate
  - Maintain in good working order and repair all apparatus and equipment plant machinery etc. and the lighting appliances in the Common Parts and Communal areas

- Supply and maintain communal services

The Applicant is also to set aside such sums of money as the Applicant may reasonably require by way of a reasonable provision for future expenditure in complying with its obligations.

- The Tenants in return covenant under clause 8 of the Lease to pay the Estate Maintenance Charge and Service Charge. The manner of payment is that the Tenants agree to pay an Estimated Estate Maintenance and Service Charge by half yearly instalments in advance and the Applicant shall as soon as possible thereafter prepare and supply to the tenant an account together with a certificate of the amount of the charge for that year. If the estimated charge is less than the actual charge the tenant is required to pay the shortfall, if it is more then the amount of any overpayment shall be credited against the next payment due.
- The Second Schedule divides the Estate Maintenance and Service Charge into 5 Sectors:  
Sector 1 Estate and Parking Costs  
Sector 2 New Build Block Structure Costs  
Sector 3 Internal Common Area Costs  
Sector 4 Lift Costs  
Sector 5 Refurbished Block Structure Costs  
Under each sector there is a list of items for which a charge may be made by the Applicant in order to carry out its obligations under Clause 7 of the Lease. The Sectors are referred to and correspond to Schedules in the Service Charge Accounts. The liability of tenants for the costs under each Sector (as per the Lease) or Schedule (as per the Service Charge Account) depends upon which Building in which the demise is situated.
- The Respondent is liable for the costs at the specified percentages under the following Sectors or Schedules:
 

Sector/Schedule 1	Estate and Parking Costs	-	0.72%
Sector/Schedule 3C	Internal Common Area Costs	-	9.62%
Sector/Schedule 4C	Lift Costs	-	10%
Sector/Schedule 5C	Refurbished Block Structure Costs	-	7.78%
- The Tribunal found that all the items listed in the Second Schedule appearing under the headings of "Sectors" as per the Lease or "Schedules" as per the Service Charge Accounts and whether described as "Estate Maintenance Charge" or "Service Charge" all came within the meaning of "Service Charge" under the Landlord and Tenant Act 1985 and therefore fell to be determined by the Tribunal.

### Hearing

- The Hearing took place on the 5<sup>th</sup> June 2006 and was attended by the Applicant's Representatives and the Respondents. Information that was omitted from the bundle in particular invoices relating to the accounts for the year ending 30<sup>th</sup> April 2005 were requested and supplied by the Applicant and the Respondent's reply was received by 30<sup>th</sup> August 2006

## **Preliminary Matters**

16. The Applicant made a claim in the County Court against the Respondents for failure to pay the Service Charge. The Respondents joined the Landlord and Developer under Part 20 of the Civil Procedure Rules and counterclaimed for various items including persistent repairs to the lift and door entry system which were being charged to the Tenants and which should have been met by the Landlord /Developer as a snagging matter.
17. The matter was settled on payment of £2,000 in full and final settlement to take account of fees for the survey report on the operation of the lift and for miscellaneous repairs and court costs.
18. The County Court Judge acknowledged that the Respondents had raised an issue as to reasonableness of the Service Charges and the matter was therefore transferred to the Leasehold Valuation Tribunal.
19. In addition the Respondents had counter claimed that certain Service Charges should be waived by way of compensation for such matters including time, effort and stress in seeking to remedy the problems with the lift, the door entry system, door closures, the external lighting and its adverse effect on the hall lighting.
20. The Tribunal only has jurisdiction to consider the reasonableness of a service charge, if the Tribunal determine that the charge is unreasonable then it will not be payable. The Tribunal cannot make a general waiver of charges under a heading merely to take account of inconvenience or upset that a tenant has suffered, no matter how severe. Nor can the Tribunal order that a service charge item is not payable by way of compensation for a tenant's time, effort and stress in remedying a situation. Nevertheless such circumstances may lead a Tribunal to determine that a specific charge such as a management fee is unreasonable and so not payable.
21. Any claim for compensation for inconvenience, upset or other reason, either through waiver of the Service Charge or by separate payment, is a matter to be settled between the parties or by application to the County Court.

## **Evidence**

22. The Applicant submitted that the Service Charges were reasonable. The Respondents raised a number of specific issues in written representations which the Applicant's Representative, Mr Christopher Attwater replied to in a written statement and confirmed in oral evidence as follows.

### ***Service Charges for Year ending 30<sup>th</sup> April 2003***

23. The Respondents stated that the developer should have covered many of the repair bills and costs, which were charged to the tenants, during the first two years. In response it was stated that the management responsibilities of the Applicant began from the date the Lease was granted which in this case was 1<sup>st</sup> March 2001. However it was accepted that full management responsibilities could not be assumed until the development is completed and will tend to be limited to insurance, accounts and the

provision for interim services and levying of interim service charges. In particular it was stated that no electricity had been charged to residents prior to 19<sup>th</sup> October 2002 and Mr Attwater was not aware of the developer using any electricity charged to the service charge for construction work after that date.

24. The Respondents questioned their share of £50.88 for costs relating to Schedule 1 in the Accounts. Mr Attwater said this was correct. The charge for the whole year was £54.30 but the amount was apportioned, as the Respondents had only been resident for 342 days.
25. The Respondents said that the total amount for Schedule 1 of £2,197.17 was not transparent. Mr Attwater said that the sum was itemised as Maintenance of Landscaped Areas £1,260 (invoices provided) and General Repairs of £307.13 (schedule provided) and Bank Charges (£80.14), Auditors Fees (£450.00) and Filing Fees (£100.00) was said to be clear.
26. The Respondents had complained to the Landlord/Developer about the faulty lights and door closures which appear to be charged for under Schedule 3C of the Service Charge Account. The Respondent considered these matters to be snagging issues and so, should be paid for by the Developer. The Respondent considered that the Applicant should have dealt with these matters through the Managing Agent but had not done so and therefore considered the Management Fee to be unreasonable. Mr Attwater stated that the obligations of the Applicant are limited to managing the development not to resolve developer faults. Therefore the area of concern is a matter between the Landlord/Developer and the Respondent.
27. The Respondents stated that the Landlord/Developer used electricity to install bollards around the piazza and an allowance should be made for this in Schedule 3C of the accounts. Mr Attwater stated that he was not aware nor had any evidence of this having occurred.
28. With reference to Schedule 5C of the Service Charge Account the Respondent stated that the lifts had gone wrong to an excessive degree and the Applicant and its Agent had been slow in remedying the defects. In particular the Respondents had been trapped in the lifts on more than one occasion. Mr Attwater responded that the total costs for the year indicated no more than normal maintenance of the lifts including reserves. He also stated that the lifts are insured for sudden and unforeseen damage, which also provides for statutory inspection of the lifts.
29. The Respondents stated that the Management Fee was unreasonable, as the Respondents had undertaken the monitoring of the many failures of equipment that had occurred on the Estate including the front door entry system, and the refuse collection.
30. The Respondent questioned the legal and mathematical basis of the reserves in Schedule 5C. Mr Attwater replied that Clause 7 granted the Applicant authority to maintain reserve. The arithmetical basis for the reserve is the reasonable assessment of what monies may be needed for future expenditure based upon the Agent's experience and assessment of each block. In the present circumstance more money was collected in the first year than needed and was credited accordingly.

*Service Charges for Year ending 30<sup>th</sup> April 2004*

31. The Respondents requested a waiver of Management Fees in relation to Schedule 1 as the Applicant's Agent neglected to follow through on faulty piazza lighting and bin store problems. The bin store problems arise due the height of the arch over the entrance to the courtyard, where the bin store is situated, being too low for the refuse vehicles to gain access. As a result the tenants have had to arrange the moving of the bins from the store to beyond the arch to enable collection. The Respondents stated that no action had been taken by the Applicant's Agent to remedy the problem. Mr Attwater conceded that repairs to lighting were problematical and although there was a blackout on part of the stairs at no time were they completely without light. The lighting problem was resolved and traced to a light in the piazza having been vandalised and the damage had allowed water to enter the light and cause a short circuit. Eventually that matter was resolved. It was understood that the bins were not emptied and that maggots were found on one occasion but every situation cannot be pre-empted.
32. The Respondent questioned the reserves in Schedule 1 for the work of art, as it was understood from publicity material that it would be maintenance free. In addition the Playground was new so it should be under warranty and therefore there should be no maintenance charge and a reserve should not be necessary. A sum of £1,000 relating to the Playground appears to have been transferred from one item to another. Mr Attwater stated that there are maintenance costs in respect of the piazza and work of art and it is considered prudent to set a reserve fund aside for these. It is correct that a sum of £1,000 had been transferred from general Landscape maintenance to Playground facilities. This was considered appropriate, as the playground is part of the Communal Area. Mr Attwater stated that he did not know of any warranties in relation to the Playground.
33. Other charges in Schedule 1 questioned by the Respondent were the hire of hall and a £1,000 for electricity and bulb replacement. Mr Attwater in reply said that the hire of the hall was for the Annual General Meeting of the Applicant. A breakdown of the costs relating to the electricity charges was provided and not questioned by the Respondents.
34. The Respondents stated that the charge in Schedule 3C for remedial work to the door phone entry should be waived. They believed the system had been installed incorrectly and that therefore its malfunction was a snagging matter and the responsibility of the Developer. Mr Attwater stated that snagging issues were a matter between the Respondents and the Developer not the Applicant or its Agent.
35. The Respondents requested details as to the amount charged for repairs. The Applicant's Agent provided a breakdown of the costs, which was not questioned by the Respondents.
36. The Respondent stated that all the charges regarding the lift in Schedule 4C should be waived. There had been a history of problems with the lift, which has resulted in a survey being carried out at the Respondents' expense. The Respondents were of the opinion that nothing would have been done by the Applicant's Agent to remedy the

problems if the Respondents had not taken action. Mr Attwater submitted that the costs were properly incurred and included insurance and having a telephone line in the lift. He also submitted that there was no indication in any of the reports from the lift company that a major independent survey should be carried out. Invoices and insurance certificates were provided to the Tribunal and were not questioned by the Respondents.

37. The Respondents stated in relation to the items under Schedule 5C that the building insurance certificates have not been produced. Mr Attwater provided building insurance invoices to the Tribunal, which were not questioned by the Respondents.
38. Also in relation to the items under Schedule 5C, the Respondents questioned the reserves for this year and rebates where there is overpayment. Mr Attwater referred to the separate accounts relating to the reserve funds for each Schedule. He referred to the Lease in relation to rebates where it states that an overpayment in one year is set off against a payment in the following year. He also stated that certificates were not required for estimated Service Charges but that an auditors' certificate was required for the end of year accounts and these had been provided.

#### *Service Charges for Year ending 30<sup>th</sup> April 2005*

39. The Respondents stated that the management fees in relation to Schedule 1 should be waived as the Agent had neglected to follow up the problems with the faulty piazza lighting.
40. The playground and work of art are new and so should be under warranty therefore any remedial work should be the responsibility of the Developer and should not be included in Schedule 1. It was asked what the charge of £306.00 was for. Mr Attwater said that he was not aware of any remedial works that should be sent through to the Developer and the charge of £305.50 was for the repair of gates in November 2004.
41. The Respondents stated that, as in relation to the previous year, the failure of the door entry system was a snagging matter and the Developer should meet the cost in Schedule 3C. Mr Attwater stated that the Applicant's Agent was not aware of any warranty in relation to the door system and that any snagging issue was a matter for the Landlord /Developer not the Applicant or its Agent.
42. The Respondents stated in relation to Schedule 1 and 3C that no details of repairs were given. Mr Attwater produced a schedule of expenditure for repairs for the items under these Schedules. The Respondents referred in particular to the amount charged under Schedule 1 of £260.85 relating to the removal and £213.85 for the replacement of the bollards to enable access via the rear entrance was excessive. The main entrance was blocked due the 2004 Abingdon Fair and the Respondents stated that the Applicant and its Agent should have anticipated this, especially as the problem of access had arisen in the previous year due to the 2003 Abingdon Fair. It was pointed out by the Respondents that they had arranged the removal storage and replacement of the bollards for the 2005 Fair.
43. The Respondents seek the waiver of all costs relating to the lift in Schedule 4C as the Applicant's Agent failed to ameliorate a dangerous situation where tenants had been

trapped in the lift. Mr Attwater stated that so far as the Applicant's Agents were aware there was no evidence of continuing difficulties with the lift. The maintenance costs for the Brewery Tower were £1,900 and were not considered to be out of alignment compared with £1,100 and £1,500 for the adjoining blocks. A report was obtained from the lift insurers on 10<sup>th</sup> May 2005 (which was provided to the Tribunal). The insurer is still prepared to insure the lift despite inconvenience with breakdowns. He stated that the report commissioned by the Respondents from Chevron and this together with comments from the Developers and Kone the installers does not appear to indicate any major fault. He also added that the frequency of the call outs in the years ending 2004 and 2005 may have been due to the level of use by tenants moving in to the flats when particularly heavy items may have been carried in the lifts.

44. The Respondents seek a waiver of management fees in Schedule 5C until the windows are cleaned satisfactorily. Mr Attwater conceded that the cleaning of the windows of the Brew House had been problematic from the commencement of the development. Initially a 'reach and wash system' was used but this was discontinued upon the instructions of the tenants. The problems relating to the window cleaning were acknowledged in a letter dated 23<sup>rd</sup> February from the Agent's Regional Estate Manager, Mr Mark Elmore, to Mr Michael Rigby of 29 Coopers Lane. Mr Attwater stated that a contractor recommended by the Tenants had not met the requisite safety standards and Super Clean and All Clean Plus had not accepted the contract. Moores Cleaning Services were now engaged to clean the windows using a cherry picker. Tenants have only been charged costs in the year-end accounts where windows have been cleaned.
45. The Respondents again questioned the reserves for this year. Mr Attwater produced a letter dated 9<sup>th</sup> December 2005 from the Agent's Estate Accountant to the Respondents explaining the apportionment.

### ***Conclusion***

46. The Respondents stated that they considered the management fees excessive as much of the management work had been undertaken by the Respondents and other tenants. Without their pro-activity the quality of life at the Brewery Site would be considerably the poorer. The Respondents submitted that the charges questioned should be waived or reduced as unreasonable or as compensation for the inconvenience, upset and stress they had suffered. The contributions to the reserves were said to be unreasonable, as it could not be seen how they were calculated. The Applicant stated that the Management Fees are charged on a unit basis under Schedule 1 and 5C with 139 units under Schedule 1 and 14 units for Schedule 5C. The unit charges including VAT being approximately:

2003:

Schedule 1     £18  
Schedule 5C   £111

2004:

Schedule 1     £65  
Schedule 5C   £73

2005:	
Schedule 1	£68
Schedule 5C	£75

The Applicant asserted that the charges were properly incurred and reasonable and that the reserves were appropriate and prudent.

### Determination

47. The Tribunal considered the audited Statements of Account provided by the Applicant, as these were actual as opposed to estimated costs. The Tribunal considered the accounts and items in issue as follows.

#### *Service Charges for Year ending 30<sup>th</sup> April 2003*

48. **Schedule 1 - Estate and Parking Costs**

Maintenance of Landscaped Areas	£1,260.00
General Repairs	£ 307.13
Bank Charges	£ 80.04
Auditors Fees	£ 450.00
Filing Fees	<u>£ 100.00</u>
	£2,197.17
Management Fees	£2,500.00
Reserves	<u>£1,531.06</u>
Total	£6,228.23

49. Invoices were provided for the maintenance of landscaped areas. The Tribunal noted that only a limited programme of maintenance had been carried out. Having inspected the Estate the Tribunal found that in its experience the charges for this item are reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The general repairs related to the replacement of locks and keys and were in the Tribunal's knowledge and experience taking into account the size of the Estate determined to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The Bank Charges, Auditors Fees and Filing Fees were not in issue. The matter of the reserves and the Management Fees are dealt with later in these Reasons.

50. **Schedule 3C - Internal Common Area Costs**

Electricity	£763.29
Communal Area Cleaning	£941.65
Fire Equipment Maintenance	£154.71
General Repairs	<u>£565.76</u>
	£2,425.41
Contribution to Reserves	<u>£1,186.70</u>
Total	£3,612.11

51. The quantity of electricity was put in issue in relation to Schedule 3C in that the Developer was said to have used the supply to install bollards. On comparing the charge with subsequent years the amount is more than in 2004 (£458.63) but about the same as in 2005 (£763.29). As the amount also includes bulb replacement in the

absence of further evidence the Tribunal determined the amount to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The item of General Repairs related to investigating faults with various lights. This was likely to include the problem of water leaking into the vandalised piazza light for the work of art, which caused the short circuit of the hallway in the Brew House. There was no evidence to suggest that the lighting had been wired incorrectly or contrary to any regulations. The fault appeared to have been due to damage to the external light and that separating of the external and internal circuits was a precautionary measure. The Tribunal therefore found that the electrical work was not a snagging matter and so payable as part of the service charge. It was also found that in the Tribunal's knowledge and experience the overall charge of £425.35 for remedying the problem did not appear excessive and therefore determined the charge to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The matter of the reserves and general point in relation to management fees is dealt with later in these Reasons.

52. **Schedule 4C – Lift Costs**

Electricity	£92.75
Lift Maintenance and Repair	<u>£99.86</u>
	£192.61
Contribution to Reserves	<u>£892.12</u>
Total	£1,084.73

53. The Tribunal agreed with the Applicant's Agents that the amount of £99.86 for this year was no more than the cost of annual maintenance. The Tribunal determined the amount to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The matter of the Reserves is dealt with later in these Reasons.

54. **Schedule 5C - Refurbished Block Structure Costs**

Insurance	£3,917.05
Window Cleaning	<u>£ 235.00</u>
	£4,152.05
Management Fees	£1,001.72
Contribution to Reserves	<u>£1,553.81</u>
Total	£6,707.58

55. The insurance was not in issue. The Tribunal noted the Respondents' dissatisfaction with the 'reach and wash system' and appreciated that the result may not be of a particularly high standard however this is reflected in the relatively low cost. The Tribunal therefore determined the amount to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The matter of the Management Fees and Reserves is dealt with later in these Reasons.

***Service Charges for Year ending 30<sup>th</sup> April 2004***

56. **Schedule 1 - Estate and Parking Costs**

Maintenance of Hard and Soft Landscaped Areas	£3,165.00
Insurance	£ 320.43
Electricity and Bulb Replacement	£1,000.00

General Repairs	£ 659.58
Purchase of Wheeled Bins	£ 636.71
Auditors Fees	£ 615.00
Bank Charges	£ 80.04
Hire of Hall	£ 50.00
Playground Facilities	<u>£1,000.00</u>
	£7,526.76
Management Fees	£9,137.00
Reserves	<u>£2,565.23</u>
Total	£19,228.99

57. Invoices were provided for the maintenance of landscaped areas including the cost of the playground facilities. The Tribunal noted that a full year of maintenance had been undertaken which was the reason for the increased cost of this item from the previous year. The Tribunal determined that in its experience the charges for Maintenance of Hard and Soft Landscaped Areas and maintaining the Playground Facilities are reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The insurance, purchase of wheeled bins, auditor's fees and bank charges was not in issue. The Tribunal noted the Schedule of Electricity and Bulb Repairs. The electricity consumption was found to be recorded according to the meters and quantity consumed and the cost of replacement bulbs was noted to be £42.57. The general repairs related to the repair of lights (£120.14), supply of copy keys (£32.92) and key cutting (£35.00), bin clearance (£111.63) and pest control (£421.12). The Tribunal determined that in its knowledge and experience these charges, together with that for the hire of the hall for the Annual General Meeting, to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The matter of the reserves and the Management Fees are dealt with later in these Reasons.

58. **Schedule 3C (Brew House) - Internal Common Area Costs**

Door Entry System Maintenance	£577.51
General Repairs	£120.14
Communal Area Cleaning	£1,828.27
Fire Equipment Maintenance	£409.31
Electricity and Bulb Replacement	<u>£458.63</u>
	£3,393.86
Contribution to Reserves	<u>£1,403.56</u>
Total	£4,797.42

59. The Respondents submitted that the cost for maintenance of the door phone entry system should not be included in the Service Charge as it was defectively installed and therefore a snagging matter. The Tribunal found that no evidence had been submitted to show that the system was installed defectively. The Respondents did not dispute the reasonableness of the cost incurred in relation to the maintenance work carried out. The Applicant's Agents submitted a Schedule for the item of General Repairs that was not disputed and therefore in the absence of evidence to the contrary determined as reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The matter of the Reserves and the general point in relation to Management Fees is dealt with later in these Reasons.

60. **Schedule 4C – Lift Costs**

Electricity	£167.92
Lift Maintenance and Repair	<u>£2,029.92</u>
	£2,196.94
Contribution to Reserves	<u>£1,061.37</u>
Total	£3,258.31

61. The Tribunal noted the invoices provided and the reports relating to the condition of the lift. The Tribunal found that there had been four maintenance inspections at a cost of £202.50 and charges for lift telephones of £392.73, which appeared to be reasonable. There appeared to have been 10 call outs one of which related to all three lifts and a further two, which concerned the lighting in the lift car. 7 call outs related to breakdowns although on one occasion the lift was found to be working. The work undertaken at each call out appeared from the invoices to be necessary and the charges were determined to be reasonable.

63. **Schedule 5C - Refurbished Block Structure Costs**

Insurance	£3,811.35
Terrorism Insurance	£ 111.37
Window Cleaning	<u>£ 293.75</u>
	£4,216.47
Management Fees	£1,026.08
Contribution to Reserves	<u>£1,598.19</u>
Total	£6,840.74

63. The insurance was not in issue, the certificates having been produced. As with the Service Charges for Year ending 30<sup>th</sup> April 2003, the Tribunal noted the Respondents' dissatisfaction with the 'reach and wash system' and appreciated that the result may not be of a particularly high standard however this is reflected in the low cost. The Tribunal therefore determined the amount to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The matter of the Management Fees and Reserves is dealt with later in these Reasons.

***Service Charges for Year ending 30<sup>th</sup> April 2005***

64. **Schedule 1 - Estate and Parking Costs**

Insurance	£ 384.50
Electricity	£ 484.38
Maintenance of Landscaped Areas	£6,790.69
General Repairs	£1,399.52 reduced to £1,260.87
Playground Facilities	£ 305.50
Pest Control	£2,132.64
Hire of Hall	£ 30.00
Bank Charges	£ 80.04
Auditors Fees	£ 635.00
Health and Safety Costs	<u>£1,433.50</u>
	£13675.77
Management Fees	£9,405.00
Contribution to Reserves	<u>£2,979.99</u>
Total	£26,060.76 reduced to £25,922.11

65. The Insurance, Electricity, General Repairs, Pest Control, Hire of Hall, Bank Charges, Auditors Fees and Health and Safety Costs were not in issue. Invoices were provided for the maintenance of landscaped areas including the cost of the playground facilities. As for the Service Charges for Year ending 30<sup>th</sup> April 2004 the Tribunal noted that a full year of maintenance had been undertaken. The Tribunal determined that in its experience the charges for these items were reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The amount of £260.85 for the removal of the bollards during the 2004 Fair was considered unreasonable in that the work was carried out as an emergency. The work should have been anticipated. The Tribunal noted that the non-emergency charge would be £94 for the work plus £10 for sundries plus £18.20 for VAT at 17.5% making a total of £122.20. The amount for General Repairs should therefore be reduced by £138.65 to £1,260.87. The matter of the reserves and the Management Fees are dealt with later in these Reasons.

66. **Schedule 3C (Brew House) - Internal Common Area Costs**

Electricity	£ 728.81
Communal Area Cleaning	£1,363.06
Fire Equipment Maintenance	£ 563.39
Door Entry System Maintenance	£ 314.19
General Repairs	<u>£ 470.70</u>
	£3,440.15
Contribution to Reserves	<u>£1,428.64</u>
Total	£4,868.79

67. The Electricity, Communal Cleaning and Fire Equipment Maintenance were not in issue. The cost of the items in the Schedule of General Repairs were in the Tribunals knowledge and experience determined to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents. The Tribunal determined that the cost of Door Entry System Maintenance was reasonable and payable for the reasons already stated. The matter of the Reserves and the general point in relation to Management Fees is dealt with later in these Reasons.

68. **Schedule 4C – Lift Costs**

Electricity	£172.79
Lift Maintenance and Repair	<u>£1,936.84</u>
	£2,109.63
Contribution to Reserves	<u>£1,077.10</u>
Total	£3,186.73

69. The report by Chevron Lifts refers to certain safety improvements and the cleanliness of the pit and the top of the car. There is also a technical statement relating to the ride quality that refers to the amount of 'float' and the adjustment of the 'kicking rollers'. The Kone engineers state that the safety arrangements mentioned have now been made and the pit and car top have been cleaned. On the technical matter Kone stated there is more float in this type of lift installation and the rollers are adjusted correctly. The Tribunal did not find in the reports any reason to question the reasonableness of the cost or standard of the maintenance work carried out. The Tribunal therefore determined the costs under Schedule 4C to be reasonable and the appropriate proportion as specified in the Lease payable by the Respondents

70.	<b>Schedule 5C - Refurbished Block Structure Costs</b>	
	Insurance	£3,534.86
	Communal Area Cleaning	£ 185.67
	General Repairs	<u>£ 19.19</u>
		£3,739.72
	Management Fees	£1,056.13
	Contribution to Reserves	<u>£1,642.32</u>
	Total	£6,438.17

71. The insurance, Communal Area Cleaning and General Repairs were not in issue. The matter of the Management Fees and Reserves is dealt with later in these Reasons.

### **Management Fees and Contribution to Reserves**

72. The Tribunal appreciated the Respondents' point that there had been a number of problems particularly with the lift, the door closures and door entry system, the lighting arrangements for the Common hallway and work of art in the piazza, and the window cleaning. It was further appreciated that these matters had taken some time to resolve and that from the correspondence it would appear that the Applicant's Agents might have given a more sympathetic and prompt response in relation to some of the matters. Nevertheless in the Tribunal's knowledge and experience the Management Fees are determined to be reasonable for the level of service received and the appropriate proportion as specified in the Lease is therefore payable by the Respondents.
73. Clause 7 of the Lease authorises the Applicant to set aside a reserve for future liabilities. A contribution to a reserve fund should be based upon a proper forecast of identified specific future items of expenditure. The Tribunal found that the Respondent had budgeted for specific contributions each year for identifiable items and that to do so was prudent. However greater clarity as to the basis of the calculations should be given. For example where the Lease specifies the period for redecoration of 7 years it should be stated what the anticipated cost is to be which will form the basis of the annual charge to the reserve. Where the Lease does not specify a period then the account should make clear the basis of the annual charge by way of a schedule of condition with anticipated periods of renewal for major items. Notwithstanding this the Tribunal took into account that over time the following works would be required:
- Schedule 1 the cost of repairing and resurfacing the roadways and paths and replacing worn play equipment
  - Schedule 3C upgrading the fire equipment, replacing the door entry system
  - Schedule 4C the upgrading or replacement of the lift
  - Schedule 5C the redecoration and major repair of the Brewery Tower.
- The Tribunal determined that the amounts charged for the years in issue were, in the knowledge and experience of the members, reasonable and the appropriate proportion as specified in the Lease payable by the Respondents.

**Application as to the reasonableness of the Applicant's Agent's costs to be included in the Service Charge Account**

75. Mr Sandler for the Applicant submitted that the Applicant's costs in the proceedings should be payable by the Respondents and requested a determination of their reasonableness. He pointed out that the amount requested only related to his own costs and not Mr Attwater. The charges were:

8 hours at £150.00 per hour	£1,200.00
4 hours travelling at £50 pr hour	£ 200.00
Photocopying	<u>£ 200.00</u>
	£1,600.00
VAT @ 17.5%	<u>£ 280.00</u>
Total	£1,880.00

76. The Respondents submitted that the costs should not be liable for the costs and that they were not reasonable in that the Applicant's Agent employed Mr Sandler and that this work was part of the Management Fees. In addition it was stated that the rate of £150 per hour was excessive as was the period of two hours travel whether from Luton or London. The files had not been agreed bundles and they were not well ordered. The amount charged for photocopying was unreasonable in that many of the documents were in duplicate or triplicate and that when these were removed the ratio was 3:1. If the cost was 10p per copy there were not 2000 sheets.

**Determination on matter of Costs**

77. The Tribunal found that the accounts and correspondence and invoices to be included in the bundles should be to hand and that a Senior Company Solicitor would only need an hour and a half to prepare and check the bundles and the statement by the Estate Manager. The period of attendance of 4.5 hours at the Hearing was confirmed. As regards the time cost the Tribunal found that a Company Solicitor does not have the same overheads as that of a Solicitor in private practice and that an hourly charge of £100.00 was reasonable. The Tribunal considered the time and charge of £50 per hour for travelling reasonable. In the event the bundles were not found to be well prepared and that there were duplicate and triplicate copies in each bundle. Also certain additional invoices had to be requested which should have been in the bundles. The Tribunal considered that the charge for photocopying should be reduced by a half to take account of the duplication of papers across all the bundles. The Tribunal determined the following costs to be reasonable:

6 hours at £100.00 per hour	£600.00
4 hours travelling at £50 per hour	£200.00
Photocopying	<u>£100.00</u>
	£900.00
VAT @ 17.5%	<u>£157.50</u>
Total	£1,057.50

78. The Tribunal found that there was no provision in the Lease to enable the costs of proceedings before the Leasehold Valuation Tribunal to be charged to the Respondents alone. Provision is made in the Lease under Clause 6.19 for payment by a tenant of "all proper legal and other professional fees which may be incurred in

connection with... the recovery of arrears of ...the Estate Maintenance Charge or the Service Charge.” Proceedings before the Leasehold Valuation Tribunal are not for the recovery of arrear of service charges but for a statement of reasonableness. The proceedings for recovery are taken in the courts where an application may be made for costs.

79. The Tribunal found that there was no provision in the Lease to authorise the costs of proceedings before the Leasehold Valuation Tribunal to be charged to the Service Charge. Provision is made in the Lease under Clause 7.8 for the Applicant to employ persons “to enable it to perform or maintain the services ... or for the proper management or security of the Estate”. The Tribunal found that this did not include proceedings for determination as to the reasonableness of service charges before the Leasehold Valuation Tribunal.

### Summary

80. The Tribunal determined that all costs in issue were reasonable except in relation to the item of General Repairs in Schedule 1 - Estate and Parking Costs of the Service Charge Account for Year ending 30<sup>th</sup> April 2005, which were reduced from £1,399.52 to £1,260.87.
81. The Tribunal determined that there was no provision in the Lease to enable the costs of proceedings before the Leasehold Valuation Tribunal to be charged to the Respondents alone or to the Service Charge.

  
JR Morris Chairman