

3281

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Property:** Flats numbered 1 – 24 Blocks (K and N) and Flats numbered 50 – 64 (Block M) Courtlands, Patching Hall Lane, Broomfield, Chelmsford, Essex, CM2 0Z

**Applicant Landlord and Freeholder:** Patching Hall Management Company Limited

**Applicant's Managing Agent:** Cooper-Hirst Ltd Goldlay House, 114 Parkway, Chelmsford, Essex CM2 7PR

**Applicant's Solicitors:** Wortley Redmayne Kershaw Solicitors, Stonebridge House, Stone bridge Walk, High Street, Chelmsford, Essex CM1 1EY (Ref: DP.MAB.PAT.6.8.6)

**Respondents:** Flat 1 Lily Gwendoline Jones and Osman Parry Jones, 7 Sidmouth Road, Springfield Chelmsford CM1 6LR  
Flat 2 Keegan  
Flat 4 Margaret Alban Shaw  
Flat 5 Frank Alfred Mose  
Flat 6 Margaret Jane Gillebrand, c/o Mrs CP Hazelton, 20 Greenways Chelmsford CM1 4EF  
Flat 7 John Pritchard Rees  
Flat 8 Judith Campbell Fraser  
Flat 9 Jo-Han Jean Diss  
Flat 10 Myrtle Arnold  
Flat 11 Mr or Ms Thomas  
Flat 12 Mr or Ms Sparrow  
Flat 15 Nevil Trevor Paul Kiddier, 22 Willow Close, Broomfield, Chelmsford CM1 7AY  
Flat 16 Giuseppe Anghelone, 17 Victoria Place, 48 Montague Street, Rothesay, Isle of Bute A20 0BT  
Flat 17 Esther Rose  
Flat 18 Marion Linda Francioni  
Flat 19 Nicholas John Pattie and Frances Anne Pattie, 1 Cornelius Vale, Chelmsford CM2 6GY  
Flat 20 Anthony Webster  
Flats 21 & 54 Thomas Gerard Muldoon 6 Deveril Close, Broomfield, Chelmsford CM1 7HX  
Flat 22 Barbara Rosalind Kirkby  
Flat 23 David Bert Mallett and Penelope Eleanor Mallett, Hazeleigh, Riffhams Lane, Danbury, Chelmsford CM3 4DS  
Flat 50 Irena Denise Christine Ward  
Flat 51 Matthew David Wrenn  
Flat 52 Stephen Clark McCullough  
Flat 53 Roy John Condren, 23a Grove Road, Chelmsford CM2 0EZ  
Flat 55 Roger Alan Stevenson Stevenson  
Flat 59 Joan Winifred Warman  
Flat 61 Nigel Ralph Bevitt-Smith, Church End, Chelmsford CM1 4TA

Flat 64 Stephen John Burgess

**Recognised  
Tenants'**

**Association:**

Courtlands Kingswood Leaseholders and Residents Association,  
Secretary: Miss J Diss 9 Courtlands Patching Hall Lane Chelmsford,  
Essex CM1 4DD

**Case number:**

CAM/22UF/LSC/2007/0017

**Application:**

Application for a determination of the liability to pay  
Service charges including the reasonableness of service charge  
(Section 27A Landlord and Tenant Act 1985)

**Tribunal:**

Mr JR Morris (Chairman  
Ms M Krisko BSc (Est Man) BA FRICS  
Mr R Thomas MRICS Dip RE

**Date of Hearing:**

11<sup>th</sup> May 2007

**Attendance:**

**Applicant:**

Mr SC Knight FRICS of Cooper-Hirst Ltd  
Mrs Fitch of Cooper-Hirst  
Mrs Pemberton Secretary, Patching Hall Management Company Ltd  
Mr B Chalmers, Director, Patching Hall Management Company Ltd

**Respondents:**

No Respondents or representatives attended

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**STATEMENT OF REASONS**

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**The Application**

1. The Applicant applied to the Tribunal on the 31<sup>st</sup> January 2007 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness and payability of the costs incurred for the financial years 25<sup>th</sup> December 2005 to 24<sup>th</sup> December 2006 and to be incurred for the financial year 25<sup>th</sup> December 2006 to 24<sup>th</sup> December 2007.

**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

- (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 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 if 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 Building and Property**

- 3. The Property is three 3-storey Blocks of purpose built flats of brick with flat roofs. Two of the blocks are of 12 flats and one is of 15 flats. Externally the Blocks appeared to

be in fair condition. They are set in communal grounds laid to grass. Adjacent to the flats are garages and stores and garages, which are let to Tenants as part of their demise. Some of the garages were in poor condition and in need of extensive refurbishment. The Respondent currently owns the area in front of the garages and stores. The Local Authority has adopted the access roads. The boundary between the garage and stores area and adopted access roads is marked by sets of stones.

### Inspection

4. The Tribunal inspected the exterior of all three Blocks and the communal grounds and the common parts of the interior of Block K (Flat 13 – 24).
5. Externally the Blocks and car park surrounding communal grounds were in fair condition. The interior was utilitarian but was generally well maintained. The lighting and fire equipment were noted. The windows had been cleaned and the stairs and landings appeared relatively clean.

### The Lease

6. The Applicant is the Freeholder, Landlord and Management Company and employs a Managing Agent. The Respondents are Tenants. A copy of the Lease dated 23<sup>rd</sup> January 1968 was provided. The Lease is for a term of One hundred and ninety-nine years from 25<sup>th</sup> December 1965 at an initial rent of £25 per annum rising by increments every 25 years of the term.
7. The Demise of each Tenant is described in the First Schedule to the Lease and includes a garage for at least some the Tenancies. Rights of way included in the Demise and right to which the Demise is subject are included in the Second and Third Schedules respectively. The Obligations of the Lessee to the Lessor including payment of all amounts due are set out in the Fourth Schedule and the Lessees' mutual covenants are set out in the Fifth Schedule.
8. The rights and obligations of the Lessor are set out in the Sixth Schedule and include the obligations to:
  - Pay all outgoing
  - Decorate
  - Keep the common parts and services clean and in good and substantial repair including television aerialsIt also includes the rights to:
  - Hire tools and equipment
  - Maintain a sinking fund
  - Enforce covenants
  - Employ managing agents or other supervisory person
9. The cost of carrying out the obligations and rights set out in the Sixth Schedule may be charged to the Tenants by virtue of Clause 3 (B) of the Lease together with an administrative charge of 10% of the costs for the Lessor's overhead administrative expenses. These costs and expenses are referred to in the Lease as "Maintenance costs".
10. The costs and expenses of running the Blocks, car parks and communal grounds are set out in the Seventh Schedule and include the cost of:
  - Cleaning, lighting, maintaining, repairing, resurfacing and renewing the footpaths, drives and forecourts not adopted by the Local Authority

- Keeping in good condition the gardens and lawns
  - Acquiring tools equipment or materials for maintaining the grounds
  - Providing insurance
  - Rates
  - Employing managing agents or any other supervisory person
  - Enforcement of the covenants
  - Maintaining fences
  - Maintaining a sinking fund
11. Clause 3 (c) (1) of the Lease enables the Lessor to recoup from the Tenants the cost and expenses set out in the Seventh Schedule together with an administrative charge of 10% of the costs for the Lessor's overhead administrative expenses. These costs and expenses are referred to in the Lease as the "Service Charge".
12. Tenants are liable for either one twelfth (Blocks K or N) or one fifteenth (Block M) of the total cost of the Maintenance and Service Charge attributable to their Block depending on the Block their flat is situated. Under Clauses 2 and 3 the Maintenance Costs and Service Charge may be estimated and a demand made in two instalments on the 24<sup>th</sup> June and 25<sup>th</sup> December in each year based upon that estimated charge. Under Clause 3 (c) (5) as soon as convenient after the 25<sup>th</sup> December of each year the Lessor shall prepare an account to be certified by professional accountants and a balancing payment made by the Tenant if the estimated Maintenance and Service Charge are less than the actual cost. If the estimated Maintenance and Service Charge are more than the actual cost the excess may be carried over and credited to each Tenant.

#### **Documents**

13. The Tribunal received:
- Application Form
  - Copy of the Lease
  - Applicants statement of case
  - Copy of the Accounts for the year ending 25<sup>th</sup> December 2005 to 24<sup>th</sup> December 2006
  - Copy of the budget Accounts for the year ending 25<sup>th</sup> December 2006 to 24<sup>th</sup> December 2007
  - Invoices for the years in issue

#### **Matters in Dispute**

14. The Application is for a determination as to the reasonableness and payability of the costs incurred by way of service charge for the year 25<sup>th</sup> December 2005 to 24<sup>th</sup> December 2006 and the costs to be incurred by way of service charge for the year 25<sup>th</sup> December 2006 to 24<sup>th</sup> December 2007. The parties identified no specific items as being in dispute.

#### **Evidence**

15. The Applicant's representative stated that the Respondents had failed to pay the Service Charge for the costs incurred for the year ending 31<sup>st</sup> December 2005 and the Service Charge for the costs to be incurred for the year ending 31<sup>st</sup> December 2006 on time as at the date of the Application and sought a determination that the costs were reasonable. It was acknowledged that some of the Respondents that had been named had now paid the outstanding charges but that a number had not. It was

also stated that the Respondents were currently purchasing the Freehold of their Blocks and the Applicant had been advised to bring the matter to the Tribunal by their solicitor to avoid any difficulties in claiming the balance of any outstanding Service Charge on enfranchisement.

### Actual Accounts for the year ending 31<sup>st</sup> December 2006

16. A copy of a Maintenance and Service Charge Account was provided for the year ending 31<sup>st</sup> December 2006. The accounts were arranged in six columns. The first stated the service provided, the second the total cost of the service and the following three columns set out the cost of the service apportioned between the three blocks K (Flats 13-24) N (Flats 1-12) and M (Flats 50-64) The sixth column listed the amount of the total cost apportioned to the 25 flats of Blocks L-J (Flats 25-49) which were owned and occupied by the Landlords. Except for electricity, the costs were apportioned between blocks K (Flats 13-24) N (Flats 1-12) and M (Flats 50-64) according to the number of flats in each block i.e. Blocks K and N have 12 flats and Block M has 15. For electricity each Block was separately metered and therefore each was charged according to the readings for their respective metres. It was stated that if an item was specific to a Block then a charge was made to that block alone.

Kingswood Services		Block K 13 - 12	Block N 1 - 12	Block M 50 - 64	Block L-J (25-49)
Costs exclusive to Blocks L-J	17,562				17,562
TV Aerial Maintenance	295	91	91	113	
Electricity	763	172	184	407	
Repairs	2,564	788	788	988	
Management Company	4,958	1,526	1,526	1,906	
Fire Extinguisher Rental	355	109	109	137	
Legal and Professional Fees	353			353	
<b>Sub total</b>	<b>9,288</b>	<b>2,686</b>	<b>2,698</b>	<b>3,904</b>	
<b>General Services</b>					
Insurance	6,949	1,303	1,303	1,629	2,714
Window Cleaning	2,050	384	384	480	802
Garden Maintenance	2,762	518	518	647	1,079
<b>Sub total</b>	<b>11,761</b>	<b>2,205</b>	<b>2,205</b>	<b>2,756</b>	<b>4,595</b>
<b>Caretaker Services</b>					
Wages & National Insurance	12,514	2,346	2,346	2,933	4,889
Heating & Lighting	69	13	13	16	27
Repairs and renewals	1,186	222	222	278	464
Telephone	205	38	38	48	81
<b>Sub total</b>	<b>13,974</b>	<b>2,619</b>	<b>2,619</b>	<b>3,275</b>	<b>5,461</b>
Caretakers Rent	<b>2,800</b>	862	862	1,076	
<b>Total</b>		<b>8,372</b>	<b>8,384</b>	<b>11,011</b>	<b>27,618</b>
Management (10%)	<b>4,675</b>	837	838	1,101	1,899
<b>Total</b>	<b>60,060</b>	<b>9,209</b>	<b>9,222</b>	<b>12,112</b>	<b>29,517</b>

17. With the accounts were provided the invoices for the year ending 31<sup>st</sup> December 2006 together with a Spreadsheet, which listed the invoices and set out the cost of the invoice in a column headed with the item of service charge to which the cost was charged.

18. Mrs Fitch said that she dealt with the accounts and explained the manner in which the accounts were drawn up and the costs charged in accordance with the Lease. She pointed out that if the estimated charge exceeded the actual cost for any one tenant by £100 or more then this would be refunded rather than credited against the next year.
19. The Applicant's Representatives then commented on each of the items listed on the Service Charge Account for the year ending 31<sup>st</sup> December 2006 referring to the invoices according to the Spreadsheet provided. The Tribunal questioned the Applicant's Representatives on each item.

#### ***TV Maintenance***

20. An invoice for TV aerial maintenance was provided which related to an annual service contract for £295.00 with Leslie Henson Essex Limited.

#### ***Electricity***

21. The Applicant's Representatives stated that each Block has its own meter and the caretaker is available to give the metre reader access although occasionally a reader does not for some unknown reason record all the readings and therefore estimated bills are received. The invoices were produced. It was noted that the invoice for Block K was high and it was commented that there was a problem with this meter, which was being addressed.

#### ***Repairs***

22. A number of invoices were produced relating to new lights, unblocking of drains, redecoration and repair of cills.

#### ***Management***

23. Cooper Hirst are employed to manage the estate including carrying out of accounting services. This work was carried out under the Sixth Schedule paragraph 7 and Seventh Schedule paragraph 6.

#### ***Fire extinguishers***

24. The Applicant's Representatives stated that fire equipment was installed in the common parts and was maintained and updated regularly under a rental agreement.

#### ***Legal and Professional Fees***

25. The Applicant's Representatives said that Mr Wates, a resident of Block M was a civil engineer, now retired. He had expressed concerned about cracking in the Block and requested the Landlord investigate. A structural survey was carried out and a report provided at a cost of £353 (invoice provided). This was charged to Block M only as it was a matter specific to that building. In the event nothing abnormal was found. The Landlord felt justified in acting upon Mr Wates' request due to his qualifications, knowledge and experience. In addition he had on a previous occasion alerted the Landlord to a structural problem, which he had correctly identified as requiring remedial work.

## **Insurance**

26. The Applicant's Representatives stated that the whole Development is insured with Royal and Sun Alliance. A valuation had been done in the early 1990s and this was index linked and increased accordingly each year. The Applicants said that they had stayed with the same insurer because there had been some structural problems but their present insurer knew the property and had never refused a claim and the excess was only £100. The Applicant's Agents said that in their experience insurers would often offer a lower premium for the first year to encourage the insured to change but that it would subsequently rise to an amount that was the same or similar to what had been paid previously. In the present instance because of the past structural problems there was a reluctance to move from insurer to insurer to get the cheapest premium because there was a significant risk that claims may not be accepted. It had therefore been considered prudent to remain with the same insurer. The Applicant's Agents added that in their experience the premium currently paid compared reasonably with premiums for similar properties that they managed and was reasonable. Details of the insurance and premium paid were provided.

## **Window Cleaning**

27. The Applicant's Representatives stated the window-cleaning contract had been obtained by going out to tender. The windows are cleaned on a six weekly basis. The caretaker checks that the work is carried out. The contract is not paid on a retainer; a charge is only made when the windows are cleaned. Invoices were provided.

## **Garden Maintenance**

28. The Applicant's Representatives stated that the caretaker carries out the day-to-day garden maintenance such as the cutting of the lawns. Specialists such as Pleshey Tree Services, from whom there was an invoice for £282, undertake the cutting back of trees. The invoices from Grasshopper (horticultural) Limited were for the maintenance of the mowers and other equipment. Mr Chalmers declared his interest in relation to the invoices from Barrie J Chalmers. He said he had a vehicle, which was suitable for the carrying of these materials such as fertilisers, bedding plants, edging stones etc. and so he purchased them from the supplier and submitted the invoice accordingly. He also provided this service for cleaning and other caretaking materials. Invoices were provided and entries shown under the respective headings of Garden Maintenance and Caretaking on the Spreadsheet.

## **Caretaking**

29. The Applicant's Representatives said that the services of the caretaker were a particularly attractive feature of the Development. Her duties included the cleaning of the common parts together with the day-to-day maintenance such as changing light bulbs, checking the windows were cleaned, the meters were read and tradesmen given admittance. She also mowed the lawns and carried out the day to day maintenance of the grounds although repairing paving slabs etc was undertaken by specialists and came under the heading of repairs and this was noted from the invoices.
30. Mrs Pemberton and Mr Chalmers said that, as Tenants as well as Landlords, they considered the employment of the caretaker was cost effective.



## **Management**

31. The Lessor's overhead administrative expenses were noted as being 10% of the Maintenance costs and Service Charge.

## **Sinking Fund**

32. The sinking fund accounts were produced which showed a total of £54,070 as at 31<sup>st</sup> December 2006. It was confirmed that these were held in a separate account as required by the legislation.

## **Estimated Accounts for the year ending 31<sup>st</sup> December 2007**

33. The estimated accounts for the year ending 31<sup>st</sup> December 2007 were produced and were as follows compared with 31<sup>st</sup> December 2006:

<b>Items</b>	<b>2005/6</b>	<b>2006/7</b>
Caretaker Services	15,000	15,500
Cleaning/window cleaning	4,536	4,536
Garden	5,000	5,000
Electricity	1,200	1,300
Repairs	6,000	6,000
TV Aerial Maintenance	500	500
Insurance	7,000	7,350
Accountancy Fees	5,000	6,000
Management Fees	8,420	8,630
Leal/Professional fees	3,500	3,500
Miscellaneous	500	500
	<b>56,656</b>	<b>58,816</b>

34. The actual costs for the year ending 31<sup>st</sup> December 2006 were £60,060 which after adjustments relating to the caretaker's proportion of costs amounted to £57,671 and the estimate for 31<sup>st</sup> December 2007 is 58,816, which was a 1.985% increase and submitted to be reasonable. In addition a sum of £400 per annum per flat was levied towards the Sinking Fund.


## **Decision**

35. The Tribunal considered the audited Maintenance and Service Charge Account provided by the Applicant for the year ending 31<sup>st</sup> December 2006. The Tribunal in the course of the Hearing questioned the Applicant's Representatives and their evidence and responses to the Tribunal's questions are incorporated into the account of the Evidence given in these Reasons.
36. The Tribunal determined that, based on the evidence put before it, the costs incurred as set out in the Maintenance and Service Charge Account for the year ending 31<sup>st</sup> December 2006 including the amount to be allocated to the Sinking Fund are reasonable and payable by the Respondents to the Applicant as demanded.
37. The Tribunal considered the estimate for the Maintenance and Service Charge for the year ending 31<sup>st</sup> December 2007 and found that the provision was in line with both the estimated and actual costs for the year ending 31<sup>st</sup> December 2006. As these had been found to be reasonable the Tribunal determined that based on the evidence put

before it, the costs to be incurred as set out in the estimated Maintenance and Service Charge Account for the year ending 31<sup>st</sup> December 2007 including the amount to be allocated to the Sinking Fund are reasonable and payable by the Respondents to the Applicant as demanded.

**Determination of Application under Section 20(c) of the Landlord and Tenant Act 1985**

38. The Respondents applied for an order under Section 20(c) of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.
37. The Tribunal found that there was no provision for charging the costs of these proceedings to the service charge in the Lease.

  
JR Morris, Chairman