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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : Nos. 3,4,5,6 Black Horse Walk, Worcester, WR1 1NE

Applicants : Mrs G.A. Woodbridge (Original Applicant)
Mr A.J. Leamon (Joined Party)
Mr J. Oliver (Joined Party)
Ms S.A. Barlow FRICS (Joined Party)

Respondent : Holding & Management (Solitaire) Limited

Case number : BIR/47UE/LSC/2011/0023

Date of Application : 7th June 2011

Type of Application : Determination of reasonableness and liability to pay service charges under s.27A of the Landlord & Tenant Act 1985 for the period 1st April 2006 - 30th April 2012 and under s.20C to determine whether the costs in these proceedings should be added to the service charge.

Appearances : For the Applicants: Mr J. Oliver
For the Respondent: Mr E.N. Andresen, Solicitor

The Tribunal : I.D. Humphries B.Sc.(Est.Man.) FRICS (chair)
D. Jackson (Lawyer)

Date of Decision : 27th October 2011

DECISION

1 The Tribunal's determination on the various disputed items is recorded in the attached Scott Schedule.

REASONS

Introduction

2 This is an application by the lessees of four Flats for the Tribunal to determine the amount of service charges payable in respect of the period 1st April 2006 to 30th April 2012. They pay service charges in two parts; a 'block charge' to cover maintenance of the block and land immediately around the building and an 'estate charge' to cover maintenance of a parking area and access way. For the period 1st April 2006 to 7th June 2009 the property was managed by Holding & Management (Solitaire) Ltd. who submitted accounts for both the block and estate charges. After that point the lessees had the block charges transferred to a Right to Manage (RTM) company but Holding & Management (Solitaire) Ltd. continued to administer the estate charge.

- 3 The respondents had sent both sets of accounts to the lessees but the estate charge was shown as a 'contribution to common service' in the block accounts. It is therefore necessary to look at both sets of accounts to see the total costs and their breakdown.
- 4 The parties had helpfully completed a Scott Schedule identifying the items in issue prior to the Hearing which is used as a basis for our Decision and attached to the Reasons. Our findings are shown on the Schedule but the commentary on each item is set out below.

The Property

- 5 The Tribunal inspected the site with the parties' representatives prior to the Hearing.
- 6 It comprises two linked blocks of flats forming part of a larger scheme close to Worcester city centre built by Kendrick Homes Ltd. in about 2005. Each block has a ground and first floor flat, four in total. The blocks are two storey with rendered ground floor elevations, brick first floor elevations and pitched slate roofs. There is a small area of landscaping around each block.
- 7 At the back there is a communal car park with electric gates to the road frontage, a central brick paved access way and individual tarmac parking bays to each side. Crucially the car park is not for the exclusive use of these flats as it also provides a means of access to other property.

The Leases

- 8 We have not seen all the leases but have been provided with a copy lease of Flat 4 and have been advised that they are all in similar form. It was granted for 999 years (less 15 days) from 24th July 1998 at a ground rent of £75 p.a. subject to review.
- 9 The lease was between the Freeholder Kendrick Homes Ltd. (1), the management Company Holding & Management (Solitaire) Ltd. (2) represented in these proceedings by Mr Andresen of their agents Peverel Ltd. and the Lessees (3).
- 10 The tenants are each required to pay 25% of the service charge for the block which is payable in two half yearly amounts based on estimates at the beginning of the year and subject to adjustment at the end of the year depending on the costs incurred. The block charge is reserved in the Fourth Schedule and itemised in Part 1 of the Fifth Schedule and includes items such as the cost of repair and decoration of the structure and common parts, payment of outgoings for common parts such as any rates that may be levied, water supplies to common parts, the cost of management, interest, other services such as tv aerials, insurances and provision for a sinking fund to cover the cost of large items of a periodic nature.
- 11 The estate charge items are listed in Part 2 of the Fifth Schedule and include items such as maintenance of the car park and shared access, outgoings, management, interest charges and insurances.

The Relevant Law

- 12 The relevant law for service charge disputes is contained in the Landlord & Tenant Act 1985.
- 13 Section 27A(1) provides that an application may be made to a Leasehold Valuation Tribunal for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 14 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 15 Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

Submissions

- 16 The parties provided detailed written submissions that were read before and discussed at the Hearing address each item in dispute.

Findings on Disputed Items in Scott Schedule

Audit Year 1.4.06 - 31.3.07

17 Contribution to Common Services

Respondent Claim:	£1,358.61
Applicant Offer:	£ 0
LVT Determination:	£1,023.83

- 18 This item in the Block accounts represents the four Applicants' contribution to the Estate Charges incurred by the Respondent. The parties positions are shown on page 5 of the Respondent Bundle and the detailed estate account is on page 113.
- 19 The Respondent had originally charged £1,517.11. This was based on the sum of Estate Charges of £2,275.66 for the six properties covered by this Account but as Nos. 1 & 2 Black Horse Walk are not part of this application the amount had been charged at a ratio of 4/6 x £2,275.66, i.e. £1,517.11. However, at the Hearing the Respondents reduced one of the inputs, the contribution to the cost of landscape maintenance, from £487.78 to £250.00 which in turn reduced the net claim from £1,517.11 to £1,358.61.

The elements of the Estate Account and our determinations are as follows:

<u>Item</u>	<u>Respondent Charge £</u>	<u>Applicants Offer £</u>	<u>Tribunal Determination £</u>
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1 Gate Maintenance Contract	0	0	0
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2 Landscape Maintenance	250.00	0	0
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The Respondent said the cost had been incurred and the reduced charge was a concessionary offer.

The Applicants said there were in fact no garden areas, shrubs or borders within the area covered by the estate charge and accordingly the charge should be nil.

The Tribunal inspected the site and noted various shrubs around the buildings. However, 'The Block' is defined on page 1 of the lease as 'The land and building edged green on Plan A' which clearly shows the shrub borders around the building as part of the Block, not part of the area subject to estate charges. We therefore find as a matter of fact that the landscaping charge is not payable and should be shown as nil.

3 Sweeping Contract	308.03	Not contested	308.03
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4 Electricity	75.00	Not contested	75.00
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5 Repairs and Maintenance	0	Not contested	0
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6 Insurance	262.51	Questioned	250.00
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The insurance certificate from Zurich was shown at page 136 of the Respondent Bundle. The Respondent has a duty to insure in the lease covering the electric gates, a canopy for the Bin Area and third party insurance for the driveway. The total premium was £262.51 including IPT but the Tribunal noted that the bulk of this, £239.62, was for 'buildings' which we considered excessive bearing in mind the limited structures covered by the policy. We accept that insurance is required and essential but find a reasonable premium to be £250.00 including IPT.

7 Reserves (General, External etc)	485.41	0	400.00
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The lease allows the Respondent to accumulate reserves for future payments [Fourth Sch. Part III 2.(ii)].

The Respondent said the amount was reasonable bearing in mind the potential cost of repairing the gates in the event of damage caused by vehicle strikes and vandalism. The Applicants considered the amount unreasonable for this relatively new development.

The Tribunal considered the parties' views and bearing in mind the potentially high cost of repairing the electric gates to the communal car park we find a reasonable total reserve to be £400.00. The accounts split the reserve under three headings, General Reserve, External Reserve and External Reserves Excess but we regard this as an accounting function and group the total at £400.00.

8 Account Handling Charge	90.65	Not contested	90.65
9 Bank Interest Paid	74.59	Not contested	74.59
10 Bank Interest Received	(1.77)	Not contested	(1.77)
11 Audit Fees	45.50	Not contested	45.50
12 Administration / Management	381.24	Questioned	250.00

This item is reserved in the lease and chargeable. The Respondent said the amount had been agreed with the developer at the outset and increased annually in line with inflation. We find there is very little administration required to manage this car park and a reasonable sum to be £250.00 plus VAT.

13 VAT on Management Fee	66.72	Questioned	43.75
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VAT is reduced in line with the management fee, charged at 17.5% at the relevant date.

- 20 The Respondent's modified total of items 1-13 above was £2, 037.88
 The Tribunal total is £1,535.75 for Nos.1-6 Black Horse Walk.
 Deducting for Nos. 1 & 2, the charge for Nos. 3-6 = £1,535.75 x 4/6 = £1,023.83

Audit Year 1.4.07 - 31.3.08

21 Contribution to Common Services

Respondent Claim:	£1,773.25
Applicant Offer:	£ 0
LVT Determination:	£1,289.97

Similar considerations apply as for the previous year. The Estate Accounts are at page 139 of the Respondent Bundle, the original total for all six properties had been £3,502.88 (£2,335.25 for the Applicants' share) but at the hearing the claim was reduced to £2,659.88 of which the Applicants' share would be £1,773.25.

Each item in the schedule was raised at the Hearing but the only contested points were as in the previous year; the cost of landscape maintenance, insurance, the amount of reserves and the management fee.

The Tribunal's reasoning and findings are exactly the same as the previous year, i.e. landscape maintenance £0, insurance £250.00, reserves totalling £400.00, management fee £250.00 and VAT on the fee of £43.75.

The other headings were not contested by the Applicants.

Accordingly the Tribunal find the total to be £1,934.96 of which the Applicants' share is 4/6, i.e. £1,289.97.

22 Landscape Maintenance

Respondent Claim:	£1,729.50
Applicant Offer:	£ 846.00
LVT Determination:	£ 750.00

This item related to the cost of maintaining the landscaping immediately around the building for which the Respondent was still liable in the year to March 2008. It is not the same as the charge for landscaping discussed above that related to the alleged cost of maintaining shrubs around the car park.

At the Hearing the Respondent offered to reduce the charge to £750.00 which was accepted by the Applicants.

23	<u>Bin Area Cleaning</u>		
	Respondent Claim:	£	98.00
	Applicant Offer:	£	0
	LVT Determination:	£	98.00

Conceded by the Applicants at the Hearing

24	<u>Window Cleaning</u>		
	Respondent Claim:	£	168.00
	Applicant Offer:	£	144.00
	LVT Determination:	£	144.00

Conceded by the Respondent at the Hearing

Audit Year 1,4.08 - 31.3.09

25	<u>Contribution to Common Services</u>		
	Respondent Claim:		£2,281.70
	Applicant Offer:	£	0
	LVT Determination:		£1,097.94

Similar considerations apply as for the previous year. The Estate Accounts are at page 182 of the Respondent Bundle, the original total for all six properties had been £3,422.55 (£2,281.70 for the Applicants' share) but at the hearing the Respondent offered to reduce the cost of estate landscape maintenance to £250.00.

Each item in the schedule was raised at the Hearing but the only contested points were as in the previous year; the cost of landscape maintenance, insurance, the amount of reserve funds and the management fee.

The Tribunal's reasoning and findings are exactly the same as the previous year save that in this year the Respondent had reduced the reserve fund charge to £350.00 and it would be inequitable for us to increase the reserve beyond that requested by the Respondent. Accordingly we find reasonable charges to be landscape maintenance £0, insurance £250.00, reserves totalling £350.00, management fee £250.00 and VAT on the fee of £41.66 (the VAT rate was reduced from 17.5% to 15% in that year).

The other headings were not contested by the Applicants.

Accordingly the Tribunal find the total to be £1,646.91 of which the Applicants' share is 4/6, i.e. £1,097.94.

26	<u>Landscape Maintenance</u>		
	Respondent Claim:		£1,471.52
	Applicant Offer:	£	846.00
	LVT Determination:	£	750.00

This item related to the cost of maintaining the landscaping immediately around the building for which the Respondent was still liable in the year to March 2009. It is not the same as the charge for landscaping discussed above relating to the alleged cost of maintaining shrubs around the car park.

At the Hearing the Respondent offered to reduce the charge to £750.00 which was accepted by the Applicants.

27	<u>Bin Area Cleaning</u>		
	Respondent Claim:	£	96.00
	Applicant Offer:	£	0
	LVT Determination:	£	96.00

Conceded by the Applicants at the Hearing

28	<u>Window Cleaning</u>		
	Respondent Claim:	£	174.00
	Applicant Offer:	£	144.00
	LVT Determination	£	144.00

Conceded by the Respondent at the Hearing

Audit Year 1.4.09 - 31.3.10

29	<u>Landscape Maintenance</u>		
	Respondent Claim:	£	138.00 (reduced to £86.66 at Hearing)
	Applicant Offer:	£	0
	LVT Determination	£	86.66

Conceded by the Applicant at the Hearing. This cost related to April and May 2009 when the Respondent was still managing the Block, before the RTM took over.

30	<u>Insurance</u>		
	Respondent Claim:	£	684.87 (reduced in Scott Schedule to £668.88)
	Applicant Offer:	£	Questioned
	LVT Determination	£	250.00

This relates to insurance of the electric gates, bin store and third party cover for the access way and communal parking area. As above, the Tribunal find the cost excessive for the risks covered and determine a reasonable premium to be £250.00.

31	<u>Health & Safety Costs</u>		
	Respondent Claim:	£	86.95
	Applicant Offer:	£	0
	LVT Determination	£	86.95

Conceded by the Applicant at the Hearing.

32	<u>Management Fees</u>		
	Respondent Claim:	£	575.67
	Applicant Offer:	£	Questioned
	LVT Determination	£	250.00 plus VAT

The cost relates to management of the Estate area, i.e. the access way and communal parking area. As above, the Tribunal find the cost excessive for the amount of input required and determine a reasonable fee to be £250.00 plus VAT.

33	<u>Bank Account Handling Fee</u>		
	Respondent Claim:	£	114.13
	Applicant Offer:	£	0
	LVT Determination	£	114.13

The cost of any bank charges incurred in general administration is covered by the terms of the lease and as the charges were incurred due to non-payment of service charges by the Applicants we find the fee reasonably incurred and a reasonable sum.

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Audit Year 1.4.10 - 31.3.11

34	<u>Bin Area Cleaning</u>		
	Respondent Claim:	£ 350.00	(reduced to £0 in the Scott Schedule)
	Applicant Offer:	£ 0	
	LVT Determination	£ 0	

Conceded by the Respondent at the Hearing.

35	<u>Landscape Maintenance</u>		
	Respondent Claim:	£1,250.00	(reduced to £0 in the Scott Schedule)
	Applicant Offer:	£ 0	
	LVT Determination	£ 0	

Conceded by the Respondent at the Hearing.

36	<u>Repairs and Maintenance</u>		
	Respondent Claim:	£ 680.00	(reduced to £0 in the Scott Schedule)
	Applicant Offer:	£ 0	
	LVT Determination	£ 0	

Conceded by the Respondent at the Hearing.

37	<u>Insurance</u>		
	Respondent Claim:	£ 580.00	(reduced to £278.39 in the Scott Schedule)
	Applicant Offer:	£ Questioned	
	LVT Determination	£ 250.00	

This relates to insurance of the electric gates, bin store and third party cover for the access way and communal parking area. As above, the Tribunal find the cost excessive for the risks covered and determine a reasonable premium to be £250.00.

38	<u>Management Fees</u>		
	Respondent Claim:	£ 621.00	
	Applicant Offer:	£ Questioned	
	LVT Determination	£ 250.00	

The cost relates to management of the Estate area, i.e. the access way and communal parking area. As above, the Tribunal find the cost excessive for the amount of input required and determine a reasonable fee to be £250.00 plus VAT.

39	<u>Bank Account Handling Fee</u>		
	Respondent Claim:	£ 172.03	
	Applicant Offer:	£ 0	
	LVT Determination	£ 172.03	

The cost of any bank charges incurred in general administration is covered by the terms of the lease and as the charges were incurred due to non-payment of service charges by the Applicant we find the fee reasonably incurred and a reasonable sum.

Audit Year 1.4.11 - 31.3.12

40	This relates to the current year and is an estimate of charges to be incurred. The Applicants withdrew their request for determination at the Hearing which was agreed by the Tribunal subject to a proviso that the Applicants are at liberty to re-appeal the charges at a later date.		
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Scott Schedule

- 41 The Scott Schedule relating to the points above is attached to and forms part of this Determination.

Application pursuant to s.20C of The Landlord & Tenant Act 1985

- 42 This is an application by the Applicants concurrent with the s.27A service charge application for the Tribunal to find that none of the costs incurred in connection with these proceedings are added to the service charge account for this or subsequent years.
- 43 In closing submissions Mr Andresen for the Respondent said the Respondent would not resist an application and accordingly we grant the order sought by the Applicants.

Summary

- 44 The Tribunal have read all the evidence supplied by the parties and discussed the items in dispute at the Hearing. Our findings are detailed above and in the Scott Schedule and we trust the parties are able to agree revised sets of Accounts for the period incorporating our findings.
- 45 Finally, we would like to take the opportunity of thanking the parties for their clear presentation of the evidence and their courtesy throughout.



I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date 26th January 2012.

Scott Schedule for reasonableness of service charges

APPLICANT					RESPONDENT			DETERMINATION	
Item No.	Subject Matter	Amount £	Why unreasonable	What would be reasonable £	Lease reference	Why Reasonable	If wrong what would be reasonable £	Reasonable/unreasonable	If unreasonable, £ reasonable
1	Contribution to Common Services	£1,400.00	<p>Clarification needs to be sought as to what is being charged for under this heading as all components of the Estate and Service Charges, as given in the Lease, appear to have been included under the other headings in the annual audit. The Management Company have not substantiated the amount being charged and the Tenants consider the sum to be unreasonable and should be waived.</p> <p>See overleaf</p>	£0	Fourth Schedule Part III and Fifth Schedule Part II	<p>For each service charge period, two sets of accounts were historically prepared by Solitaire, one covering service charge costs solely attributable to 3-6 Blackhorse Walk ("Block Accounts"), and another covering the Estate service charge costs contributed to by the Block, Hercules House and 1 Blackhorse Walk, together comprising the Estate ("Estate Accounts"). The line item in the Block Accounts referred to is the Block's share of the Estate service charge costs (the calculation of that share is shown on the last page of the Estate accounts).</p> <p>The Respondent does not agree that all Estate service charge costs have been included in Block service charges. Services are often charged separately to Block and Estate as they will relate to different areas.</p> <p>The Applicants have used the budget figure for the year – the actual figure is shown to the</p>	1,517.11		£1,023.83

Audit Year 01/04/06 – 31/03/07

Page No. 1

						right. A full set of copy Block and Estate Accounts with supporting invoices have been supplied herewith although the Respondent believes the accounts were already in the possession of the late Mr Woodbridge.			
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1a The tenants have repeatedly sought clarification as to what is included under this heading in both the Statements of Anticipated Expenditure and audit of service charges. To date no satisfactory explanation has been received and therefore it would appear that there is no valid reason for this charge. Without a satisfactory explanation and demonstration that the amounts have not been included under other headings of the audit complete with back-up, the charge cannot be acceptable.

Response – the Respondent apologises if no proper explanation of the way in which Estate charges have been accounted for has previously been given. It believes that the Applicants have been confused by an attempted explanation given in a letter from Solitaire dated 7 May 2009. Since Solitaire became part of the Peverel Group the preparation and presentation of service charge accounts has been reviewed and changed to provide greater transparency for Leaseholders. The Respondent is happy to meet with the Applicants to review the accounts and expenditure and provide explanations following the review undertaken as a result of the complaints in these proceedings.

1b On the 24/09/08 Mr J Oliver met Ms Linda Moore of Solitaire to discuss the invoicing. It was concluded that the invoicing for Contribution to Common Services and Landscaping had been incorrect for at least the previous 2-3 years.

Response – the Landscaping costs have been reviewed for the years challenged within this application and points raised dealt with below. If the Applicants would particularise what if anything Ms. Moore agreed to, the Respondent will consider this further. Ms. Moore left Solitaire some time ago, and is not available to the Respondent for these proceedings.

1c In the covering letter, dated 7 May 2009, presenting the Statement of Anticipated Service Charge Expenditure for the year commencing April 2009 (unsigned) Solitaire state "Where part of your payment is in respect of services which are shared with other properties or block (estate expenditure), this contribution was shown as a single line and described as a contribution to common service." As indicated in the lease documents and plans, the freehold properties at 1 & 2 Black Horse Walk and leasehold properties at 3-6 Blackhorse Walk (including the adjacent parking area and its access) is a self-standing estate and separate from the other developments carried out in the area by Kendrick and managed by OM Property Management. Applicable charges are listed in the lease documents and include for apportionment of costs listed under Estate Charges. These do not include for anything outside the development and charges should be limited only to those within the estate.

Response – the Respondent refers to the clarification given to item number 1 in the Scott Schedule above. The properties contributing to Estate service charges are shown on the last page of the Estate Accounts together with their percentage contributions.

Scott Schedule for reasonableness of service charges

APPLICANT					RESPONDENT			DETERMINATION	
Item No.	Subject Matter	Amount £	Why unreasonable	What would be reasonable £	Lease reference	Why Reasonable	If wrong what would be reasonable £	Reasonable/unreasonable	If unreasonable, £ reasonable
1	Contributions to Common Services	£2,335.25	Clarification needs to be sought as to what is being charged for under this heading as all components of the Estate and Service Charges as given in the Lease appear to have been included under the other headings in the annual audit. The Management Company have not substantiated the amount being charged and the Tenants consider the sum to be unreasonable and should be waived. Please see overleaf	£0	As item 1 above.	Please see response to Item 1 above.			£1,289.97
2	Landscape Maintenance	£1,729.50	To what is this charge attributable? There is no landscaping within the estate except a strip of shrubbery to the front and back of the block of flats	£846.00	Fifth Schedule Part I, Para 15 & Part II, Para 1(a)	The Respondent has reviewed the costs against the areas of the site maintained. Landscaping was being charged at £30 per visit plus VAT for work done to areas around the Block and £45 per visit plus	1,000		£ 750.00

			that does need some cutting back from time to time but not to the value requested An equitable charge for this work should be agreed. Please see overleaf			VAT for other Estate landscaping. The split between Block and Estate landscaping is shown on the attached journal notes. The Respondent has reviewed the expenditure overall and agrees the charges on their face appear excessive. Reduction to Block costs proposed as in right hand column.			
3	Bin Area Cleaning	£ 98.00	There has been no charge under this heading since the commencement of the lease (2004) and should be deemed to have been included under one of the other headings in the annual audit. Surely, if the Landlord is going to make a separate charge for bin cleaning there should be a commensurate reduction in one of the other charges. This has not been done. The reduction is requested.	£0 To be included under Landscape Maintenance?	Fifth Schedule Part I, Para 2(a) and Para 15	This is a valid charge for regular cleansing of a bin store area used exclusively by the Leaseholders of 3-6 Blackhorse Walk. From reviewing the accounts the Respondent believes Solitaire mistakenly budgeted for this service within the Estate Accounts, although no actual expenditure was shown for the year, with the only cost being charged to the Block as the bin store was theirs. The regular cost was charged at £7 every four weeks.			£ 98.00
4	Window Cleaning	£ 168.00	There has been no charge under Window Cleaning since the commencement of the lease (2004) and should be deemed to have been included under one of the other headings in the annual audit. Surely, if	£144.00	Fifth Schedule Part I, Para 2(a) and Para 15	The window cleaning is charged separately so as to identify this cost with precision. It has not been previously included under another cost heading, as may be seen from the previous year's accounts where a charge of £140 was shown. The Respondent however accepts that there appears to have been	144		£ 144.00

			<p>the Landlord is going to make a separate charge there should be a commensurate reduction in one of the other charges. This has not been done. The reduction is requested.</p> <p>Please see overleaf</p>			<p>a duplicated accrual within the figure charged and that the cost should reduce.</p>			
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1a The tenants have repeatedly sought clarification as to what is included under this heading in both the Statements of Anticipated Expenditure and audit of service charges. To date no satisfactory explanation has been received and therefore it would appear that there is no valid reason for this charge. Without a satisfactory explanation and demonstration that the amounts have not been included under other headings of the audit complete with back-up the charge cannot be acceptable.

Response – the Respondent repeats its response to the same point for the previous year. Invoices for this year have been supplied.

1b On the 24/09/08 Mr J Oliver met Ms Linda Moore of Solitaire to discuss the invoicing. It was concluded that the invoicing for Contribution to Common Services and Landscaping had been incorrect for at least the previous 2-3 years. Linda Moore also stated by e-mail that we had been overcharged for gardening by £1900.

Response – the Respondent has accepted that the charges for Block landscaping on their face appear excessive as per the above.

1c In the covering letter, dated 7 May 2009, presenting the Statement of Anticipated Service Charge Expenditure for the year commencing April 2009 (unsigned) Solitaire state "Where part of your payment is in respect of services which are shared with other properties or block (estate expenditure), this contribution was shown as a single line and described as a contribution to common service." As indicated in the lease documents and plans the freehold properties at 1 & 2 Black Horse Walk and leasehold properties at 3-6 Blackhorse Walk including the adjacent parking area and its access is a self-standing estate and separate from the other developments carried out in the area by Kendrick and managed by OM Property Management. Applicable charges are listed in the lease documents and include for apportionment of costs listed under Estate Charges. These do not include for anything outside the development and charges should be limited only to those within the estate.

Response – the Respondent repeats its response to the same point for the previous year.

2.& 4 From the Account Journal sheets supplied by Ms Navneet Dhillon of Solitaire, it may be seen that for the second half of the year Garden Maintenance was being charged at £70.50 pm and Window Cleaning at £12.00 pm. Over the year this would equate to £846.00 for the Garden maintenance and £144.00 for the Window Cleaning which is still more than is being charged to the RTM but at least is more reasonable than the charge made.

Response – the Applicant's figure on window cleaning at 4 is accepted for the reasons shown above. As to landscaping at 2 above, the Applicants are mistaken. The costs are as per the invoices disclosed herewith and the charging rate is shown above. A reduction has been proposed as it is accepted the costs on their face appear excessive.

Scott Schedule for reasonableness of service charges

APPLICANT					RESPONDENT			DETERMINATION	
Item No.	Subject Matter	Amount £	Why unreasonable	What would be reasonable £	Lease reference	Why Reasonable	If wrong what would be reasonable £	Reasonable/unreasonable	If unreasonable, £ reasonable
1	Contributions to Common Services	£2,281.70	Clarification needs to be sought as to what is being charged for under this heading as all components of the Estate and Service Charges as given in the Lease appear to have been included under the other headings in the annual audit. The Management Company have not substantiated the amount being charged and the Tenants consider the sum to be unreasonable and should be waived. See overleaf	£0	As Item 1 above.	Please see response to Item 1 above.			£ 1,097.94
2	Landscape Maintenance	£1,471.52	To what is this charge attributable? There is no landscaping within the estate except a strip of shrubbery to the front and back of the block of flats that does need some	£846.00	As Item 2 for previous year.	Please see response to Item 2 for previous year. Again, the Respondent agrees that the costs on their face appear excessive and proposes a reduction in Block costs as in right hand column.	1,000		£ 750.00

			cutting back from time to time but not to the value requested. An equitable charge for this work should be agreed.					
			See overleaf					
3	Bin Area Cleaning	£ 96.00	There has been no charge under this heading since the commencement of the lease (2004) and should be deemed to have been included under one of the other headings in the annual audit. Surely, if the Landlord is going to make a separate charge there should be a commensurate reduction in one of the other charges. This has not been done. The reduction in the charge is requested.	£0 To be included under Landscape Maintenance?	As Item 3 in previous year.	Please see the response to Item 3 in the previous year.		£ 96.00
4	Window Cleaning	£174.00	There has been no charge under Window Cleaning since the commencement of the lease (2004) and should be deemed to have been included under one of the other headings in the annual audit. Surely, if the Landlord is going to make a separate charge	£144.00	As Item 4	Please see response to Item 4 in previous year. For this year, no reduction seems necessary as the cost is supported by invoices.		£ 144.00

			there should be a commensurate reduction in one of the other charges. This has not been done. The reduction is requested.						
			See overleaf						

1a The tenants have repeatedly sought clarification as to what is included under this heading in both the Statements of Anticipated Expenditure and audit of service charges. To date no satisfactory explanation has been received and therefore it would appear that there is no valid reason for this charge. Without a satisfactory explanation and demonstration that the amounts have not been included under other headings of the audit complete with back-up the charge cannot be acceptable.

Response – the Respondent repeats its response to the same point for the previous year. Invoices for this year have been supplied.

1b On the 24/09/08 Mr J Oliver met Ms Linda Moore of Solitaire to discuss the invoicing. It was concluded that the invoicing for Contribution to Common Services and Landscaping had been incorrect for at least the previous 2-3 years.

Response – the Respondent has accepted that the charges for Block landscaping on their face appear excessive as per the above.

1c In the covering letter, dated 7 May 2009, presenting the Statement of Anticipated Service Charge Expenditure for the year commencing April 2009 (unsigned) Solitaire state “Where part of your payment is in respect of services which are shared with other properties or block (estate expenditure), this contribution was shown as a single line and described as a contribution to common service.” As indicated in the lease documents and plans the freehold properties at 1 & 2 Black Horse Walk and leasehold properties at 3-6 Blackhorse Walk including the adjacent parking area and its access is a self-standing estate and separate from the other developments carried out in the area by Kendrick and managed by OM Property Management. Applicable charges are listed in the lease documents and include for apportionment of costs listed under Estate Charges. These do not include for anything outside the development and charges should be limited only to those within the estate.

Response – the Respondent repeats its response to the same point for the previous year.

2 & 4 From the Account Journal sheets supplied by Ms Navneet Dhillon of Solitaire it may be seen that for the second half of the year Garden Maintenance was being charged at £70.50 pm and Window Cleaning at £12.00 pm. Over the year this would equate to £846.00 for the Garden maintenance and £144.00 for the Window Cleaning which is still more than is being charged to the RTM but at least is more reasonable than the charge made.

Response – the Respondent has addressed window cleaning above. As to landscaping at 2 above, the Applicants are mistaken. The costs are as per the invoices disclosed herewith and the charging rate is shown above. A reduction has been proposed as it is accepted the costs on their face appear excessive.

Scott Schedule for reasonableness of service charges

APPLICANT					RESPONDENT			DETERMINATION	
Item No.	Subject Matter	Amount £	Why unreasonable	What would be reasonable £	Lease reference	Why Reasonable	If wrong what would be reasonable £	Reasonable/unreasonable	If unreasonable, £ reasonable
1	Landscape Maintenance	£138.00	The RTM consider that the Landscape Maintenance is listed under Service Charge and falls within the area of the Block of flats and consequently falls within the scope of works being looked after by the RTM. Charges have been paid by the RTM directly to the company providing the work. This charge should be withdrawn. Please see overleaf	£0	As same cost heading in previous years (Item 2)	The charge is for two months costs in April and May 2009, when Solitaire still managed the Block as well as the Estate. The cost is reasonable.			£ 86.66
2	Insurance	£684.87	Insurance for the Common Areas only need cover for <u>Third Party</u> as the building insurance is included under Service Charge headings being paid for by the RTM. This split is in accordance with the charges included under	£ ? As determined by Insurance Company	Fifth Schedule Part II, Para 7	The charge is for Third Party Liability cover only for the Estate, together with an insurance revaluation fee. A direct debit fee charged of £15.99 is conceded. Invoices have been supplied.	668.88		£ 250.00

			Estate Charges and Service Charges respectively of the Lease and charges should reflect this. Please see overleaf					
3	Health & Safety Costs	£86.95	The Health & Safety costs, if applicable would be a cost chargeable to the building and not the open air of the parking area. Nonetheless the charge is made for risk assessment of Legionella and a type 2 Asbestos Survey. Asbestos Surveys are not applicable to buildings constructed after the asbestos legislation was introduced and Legionella is applicable to buildings with air-conditioning and/or ducted ventilation systems. The flats are heated by radiators. This charge should be withdrawn. Please see overleaf	£0	Fifth Schedule Part II, Para 8	The charge is for a Health & Safety site inspection of the Estate. The Applicants' may be confused with the health and safety charges included in the Closing Position Statement supporting invoices supplied to the RTM Company in December 2010, which were Block service charge costs incurred prior to the acquisition date. As to those costs, legionella testing is not confined to the types of building suggested by the Applicants but to all situations where water is stored. The Respondent believes that construction of the Block may have started before the asbestos legislation came into force and that a test was therefore reasonable.		£ 86.95
4	Management Fees	£575.67	The management fees exceed those for previous years. My experience is that management fees are generally charges as a percentage of overall	£? As determined by LVT as reasonable.	Fourth Schedule Part II, Para 2(iii)	The management fee is not percentage based. The amount per unit on the Estate is equivalent to £95.95 inclusive of VAT. However, the Block only pays 2/3 of any cost included in the Estate.		£ 250.00 plus VAT

			costs or turnover not, as it appears, an arbitrary amount. This is questionable and should not be allowed without substantiation. Please see overleaf			The increase from the previous year overall is £51.43, largely due to VAT changes.		
5	Bank Account Handling Fee	£114.13	Bank handling fees are double to those being charged when the sum of the charges is only some 1/6 th of previously audited amounts. This cannot be valid and should be withdrawn. Please see overleaf	£0	Fifth Schedule Part II, Paras 4 and 5	The bank charges and interest were incurred by reason of non-payment of service charge contributions by Lessees leading to the maintenance of an overdraft facility to fund services. The bank account at year end was overdrawn by £2,745.94.		£ 114.13

1-5. The RTM Company was formed in February 2009 and notice served on Solitaire of the intent to start management of the property with effect from 8 June 2009. This was acknowledged by default in that no counter notice was received. The RTM's understanding was that it was managing all the parts indicated in the Lease, that is the complete Estate except the freehold properties No's 1 & 2 Black Horse Walk. The RTM negotiated with contractors to perform the works, supply electricity, and carry out maintenance on the gate all as required by each and every heading under Estate and Service Charges contained in the Lease. New insurance was taken out under the similar terms as those in the policy supplied by Solitaire.

Response – the RTM Company acquired the right to manage 3-6 Black Horse Walk (the Block) only. It did not and cannot in the Respondent's view acquire the right to manage any part of the wider Estate, where obligations to provide services are owed by the Respondent to the Block Lessees and other owners in common. The Respondent contends that the costs it has incurred for Estate service charges since the acquisition date are legitimately chargeable by way of apportionment to the Applicants.

On receipt of invoices for "estate service charges" (please note no separation) an e-mail was sent on 28/09/10 querying these charges by Mr John Oliver to Natalie Clay of Solitaire. She replied "we are still to collect service charge for the estate costs such as ground rent." This was responded to pointing out that ground rent was paid directly to Estates & Management. No reply was received so we continued to understand that the RTM was managing the whole of the estate and responsible for all works included in both the estate and service charges accounts.

Response – the Respondent believes that the e-mail response referred to has unnecessarily confused the Applicants, and apologises for such confusion. The sender did not understand the distinction between ground rent and service charge and failed to clarify the point made above, that service charges are split between Block and Estate. To address the other point raised by the Applicants, all the relevant charges are "service charges". The only difference are the services to which they relate.

In view of the above, and as the RTM were carrying out the works in connection with both the estate charges and the service charges and OM Management/Solitaire did not appear to be carrying out any of the functions detailed in the Lease under estate charge, the invoice for the period should be waived.

Response – the Respondent repeats the matters set out above. The charges for Estate services are legitimate and recoverable.

Scott Schedule for reasonableness of service charges

APPLICANT					RESPONDENT			DETERMINATION	
Item No.	Subject Matter	Amount £	Why unreasonable	What would be reasonable £	Lease reference	Why Reasonable	If wrong what would be reasonable £	Reasonable/unreasonable	If unreasonable, £ reasonable
1	Bin Area Cleaning	£350.00	Bin Cleaning is more correctly associated with the running and maintenance of the flats in the Block and costs should be included in the service charges managed by the RTM. Charges have been paid by the RTM directly to the company providing the work. This charge should be withdrawn. Please see overleaf	£0	As for same item addressed in previous years above,	Please note that the figures referred to are Estate estimates only, and that the actual expenditure figures are included in the signed audited accounts sent to Leaseholders on 17 January 2011. The correct figures have been inserted into the right hand column. These comments apply to all items for this year and the following year, since final accounts are now available. Credit for the unused budget has been given in the adjustments to the 2011 accounts. This figure was a budget estimate figure included under Estate costs, and incorrectly carried over from previous years' budgets. The expenditure was £0 as the service is Block-related and passed over to the RTM Company.	0		£ 0
2	Landscape Maintenance	£1,250.00	The RTM consider that the Landscape Maintenance is listed under Service Charge and falls within the area	£0	As for same item addressed in previous years.	The final expenditure was £0. The Respondent left the RTM Company to deal with landscaping work required in conjunction with the Block landscaping.	0		£ 0

			<p>of the Block of flats and consequently falls within the scope of works being looked after by the RTM. Charges have been paid by the RTM directly to the company providing the work. This charge should be withdrawn.</p> <p>Please see overleaf</p>					
3	Repairs and Maintenance	£680.00	<p>All repairs and maintenance is being carried out by the RTM Company. Charges have been paid by the RTM directly to the company providing the work. This charge should be withdrawn.</p> <p>Please see overleaf</p>	£0	Fifth Schedule Part II, Paras 1 and 8	The budget figures were £300 for general repairs and £380 for Gates/barrier maintenance. No expenditure was included in the 2011 accounts and the Respondent repeats the matters in Item 2 above.		£ 0
4	Insurance	£580.00	<p>Insurance for the Common Areas only need cover for <u>Third Party</u> as the building insurance is included under Service Charge headings being paid for by the RTM. This split is in accordance with the charges included under Estate Charges and Service Charges respectively of the Lease</p>	£ ? As determined by Insurance Company	As item challenged in previous year.	The actual sum charged for this cost heading was £278.39 in the final accounts. A breakdown of this figure is shown in the account supporting documents. The cost is for Third Party liability for the Estate.	278.39	£ 250.00

			and charges should reflect this. Please see overleaf					
5	Management Fees	£621.00	The management fees exceed those for previous years. My experience is that management fees are generally charges as a percentage of overall costs or turnover not, as it appears, an arbitrary amount. This is questionable and should not be allowed without substantiation. Please see overleaf	£? As determined by LVT as reasonable.	As for same item challenged in previous year.	The Respondent repeats what is set out for the previous year. The cost per unit (without factoring apportionment) is £100.50 inclusive.		£ 250.00 plus VAT
6	Bank Account Handling Fee	£114.13	Bank handling fees are double to those being charged when the sum of the charges is considerably less than previously audited amounts. This cannot be valid and should be withdrawn Please see overleaf	£0	As for same item challenged in previous year.	The Respondent repeats the response to this item for the previous year. The actual cost is shown to the right, and the budget figure was £25, not as shown by the Applicants.	172.03	£ 172.03

1-6. The RTM Company was formed in February 2009 and notice served on Solitaire of the intent to start management of the property with effect from 8 June 2009. This was acknowledged by default in that no counter notice was received. The RTM's understanding was that it was managing all the parts indicated in the Lease, that is the complete Estate except the freehold properties Nos 1 & 2 Black Horse Walk. The RTM negotiated with contractors to perform the works, supply

electricity, and carry out maintenance on the gate all as required by each and every heading under Estate and Service Charges contained in the Lease. New insurance was taken out under the similar terms as those in the policy supplied by Solitaire.

On receipt of invoices for "estate service charges" (please note no separation) an e-mail was sent on 28/09/10 querying these charges by Mr John Oliver to Natalie Clay of Solitaire. She replied "we are still to collect service charge for the estate costs such as ground rent." This was responded to pointing out that ground rent was paid directly to Estates & Management. No reply was received so we continued to understand that the RTM was managing the whole of the estate and responsible for all works included in both the estate and service charges accounts.

In view of the above, and as the RTM were carrying out the works in connection with both the estate charges and the service charges and OM Management/Solitaire did not appear to be carrying out any of the functions detailed in the Lease under estate charge the invoice for the period should be waived

Response – the Respondent repeats what is set out above in response to the same queries.

Scott Schedule for reasonableness of service charges

Audit Year 01/04/11 – 31/03/12 - WITHDRAWN BY APPLICANT WITH PROVISIO TO RE-APPLY AT LATER DATE								Page No. 6	
APPLICANT				RESPONDENT				DETERMINATION	
Item No.	Subject Matter	Amount £	Why unreasonable	What would be reasonable £	Lease reference	Why Reasonable	If wrong what would be reasonable £	Reasonable/unreasonable	If unreasonable, £ reasonable
1	Repairs and Maintenance	£330.00	The Estate Charges for this audit year and subsequent years should be established by the precedent of the previous years. Similarly those items which should be managed by the RTM who are on the site and are better placed to monitor and react to the need for repair and/or maintenance of the whole of the development on a day-to-day basis needs definition. Therefore, we are unable to provide a 'reasonable' cost figure until management rights are determined. Please see overleaf	£?	As for same item in last two years	The Estate budget for this year contains an estimate of £300 for general maintenance based on previous years.	300		
2	Contribution to Common Services	£540.00		£?	n/a	There is no such budget estimate – the only charges being estimated are for Estate service charges.	n/a		
3	Insurance	£440.00		£?	As for same item in previous years.	This is an estimated cost for Estate insurance in accordance with lease terms.			
4	Audit Fees	£175.00		£?	Fifth Schedule Part II, Para 4	This is the estimated cost of audit fee for dealing with the accounts, based on previous years.			
5	Management Fees	£634.00		£?	As for same item in previous years.	The Respondent refers to its response for the previous two years. The (unapportioned) cost per unit would be £105.67 inclusive.			
6	Bank Account Handling Fee	£ 25.00		£?	As for same item in previous years	This is included as an estimate since the account remains overdrawn due to arrears.			

1-6. The RTM wish the following to be considered in connection with its request to manage those parts of the development to which the Estate Charge, as detailed in the Lease, shall be applied:

The charge is applied to maintenance, cost of repairs and payment of all costs in connection with the running and management of the Shared Access Area and Visitors Car Parking Spaces. Implicit in these clauses is that the cost of repairs and payment of all costs in connection with the running and management of the parking spaces allocated to each flat is included in the Service Charge which comes under the functions of the RTM Company.

The charge is applied to the maintenance of the electrical system and electrical supply operating the gates and keeping the Shared Access Area, Visitor Car Parking Spaces and gate area lighted. The electrical system to the development is supplied from the mains to the Block of Flats where it is metered. If electricity for the gates and lighting to the Shared Access Area, etc., is to be supplied separately to that under the management of the RTM, this would require either: (i) the installation of a new meter, or (ii) the RTM to invoice OM Management for that electricity.

Could the LVT clarify why the RTM Company is being told that it cannot manage and operate the area of Shared Access, Visitors Car Parking and Gates as well as the Flats contained within the Block and its Landscaped Area? What is being requested by the RTM is management and operation, not ownership. In this respect what is the difference of management and operation by the residents of the property versus a third party management organisation?

Response – the RTM Company are only entitled to acquire the “right to manage” that part of the property covered by its Section 79 Claim Notice (being the Block), together with “appurtenant property” within the meaning of Section 112 of the Commonhold and Leasehold Reform Act 2002. It cannot acquire management rights over parts of the Estate for which the Respondent is obliged to provide services to others as well as the Leaseholders of the Block. The Respondent does not now, however, charge the Leaseholders of the Block for a number of the services previously provided as part of the Estate service charge costs, as may be seen from the 2010 and 2011 accounts and invoices provided.