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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
EASTERN REGION  
LEASEHOLD VALUATION TRIBUNAL**

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Case No : CAM/33UD/LSC/2012/0151

Properties : Flats 1, 2, 4, 5, 6 & 7 Esplanade Court, 3-4 North Drive,  
Gt Yarmouth, Norfolk NR30 1EQ

Applicants : Mrs J & Mr R Collis (flat 1)  
Mr B & Mrs S Matfield (flat 2)  
Mrs C Levy (flat 4)  
Mr JE & Mrs JH Beeson (flat 5)  
Mr P Runnalls (flat 6)  
Mr AW Jacobs (flat 7)

Respondents : Country Trade Limited as agent for  
Landfast Limited (landlord)

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Inspection : 25<sup>th</sup> March 2013

Hearing : 25<sup>th</sup> March 2013, Imperial Hotel, Great Yarmouth

Determination : 25<sup>th</sup> March 2013

Written Decision : 12<sup>th</sup> June 2013

Tribunal : Mr Stephen Reeder  
(lawyer chair)  
Mr Gerard Smith MRICS FAAV REV  
(valuer member)  
Mr Chris Gowman BSc MCIEH MCMJ  
(professional member)

Decision : Determination of the reasonableness of service  
charges.

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## DECISION

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### **The reasonable service charges payable**

The reasonable service charges payable for each of the flats within the block for the accounting year 2011 [55] comprise –

- (1) Common parts maintenance- £304.37
  - (2) Utilities - £29.14
  - (3) Common parts insurance -£10.32
  - (4) Postages, telephone & other office expenses - £133.73
  - (5) Audit & accountancy expenses - £132.24
  - (6) Bank charges - £8.98
  - (7) Secretarial costs - £125
  - (8) Agents charges – combined with (7)  
Totalling £744.78
  - (9) Management charge @ 15% - £111.72
- Total due £856.50**

The reasonable service charges payable for each of the flats within the block for the accounting year 2012 [57] comprise –

- (1) Common parts maintenance -£342
  - (2) Utilities - £29.87
  - (3) Assessments & reports – no charge
  - (4) Common parts insurance - £10.31
  - (5) Postages, telephone & other office expenses - £55.39
  - (6) Audit & accountancy fees - £102.90
  - (7) Professional fees & charges – no charge
  - (8) Bank charges - £8.90
  - (9) Secretarial costs - £125
  - (10) Agents charges - combined with (9)
  - (11) Sundry items – no charge  
Totalling £674.37
  - (12) Management charge @ 15% - £101.16
- Total due £775.53**

### **The costs of these Tribunal proceedings**

As is conceded by the respondent the lease makes no provision for the costs of these proceedings to be recoverable by way of service charge. Accordingly, there is no need for the Tribunal to make an order pursuant to section 20c of the Landlord & Tenant Act 1985. In the circumstances it is not just and equitable to make orders in relation to the application and hearing fees

incurred by the applicants, nor the costs of the respondent preparing the hearing bundles.

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## **REASONS**

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### **The parties, application & issues in dispute**

1. This is an application by the lessees of flats 1, 2, 4, 5, 6 & 7 Esplanade Court, 3-4 North Drive, Gt Yarmouth, Norfolk NR301AE who challenge the reasonableness of a number of service charge items in the accounting years 2011 and 2012.
2. The service charges for each of the flats within the block for the accounting year 2011 [55] comprise –
  - (1) Common parts insurance ( £304.37) – not challenged
  - (2) Utilities (£29.14) – not challenged
  - (3) Common parts insurance (£10.32) – not challenged
  - (4) Postages, telephone & other office expenses (£133.73) – challenged
  - (5) Audit & accountancy expenses (£132.24) – challenged
  - (6) Bank charges (£8.98) – not challenged
  - (7) Secretarial costs (£156.59) – challenged
  - (8) Agents charges (£788.06) – challenged
  - (9) Management charge @ 15% - percentage not challenged
3. The service charges for each of the flats within the block for the accounting year 2012 [57] comprise –
  - (1) Common parts insurance (£342) – not challenged
  - (2) Utilities (£29.87) – not challenged
  - (3) Assessments & reports (zero) – not challenged
  - (4) Common parts insurance (£10.31) – not challenged
  - (5) Postages, telephone & other office expenses (£55.39) – not challenged
  - (6) Audit & accountancy fees (£102.90) – not challenged
  - (7) Professional fees & charges (zero) – not challenged
  - (8) Bank charges (£8.90) – not challenged
  - (9) Secretarial costs (£203) – challenged
  - (10) Agents charges (£847) – challenged
  - (11) Sundry items (zero) – not challenged
  - (12) Management charge @ 15% - percentage not challenged
4. A Directions Order was made on 9<sup>th</sup> January 2013 and the hearing date of 25<sup>th</sup> March 2013 notified to the parties. On 15<sup>th</sup> March Country Trade Limited ('CTL') informed the Tribunal that it, rather than Landfast Limited, would be conducting the proceedings. In that letter the sole Director of CTL Mr Wright was unable to give his future availability as he

was awaiting an operation. Subsequently the applicants informed the Tribunal that the respondent had failed to provide its statement of case and documents in compliance with the Directions Order. On 7<sup>th</sup> February the Tribunal wrote to the respondent on this issue. On 12<sup>th</sup> February Messrs Holmes & Hill LLP solicitors wrote to the Tribunal seeking an extension. That extension was granted by the Tribunal in a letter dated 21<sup>st</sup> February 2013.

5. On 18<sup>th</sup> March filed and served his witness statement and the hearing bundles. Much of the content was agreed but some included on the insistence of the applicants which CTL viewed as irrelevant to the issues in dispute. In that letter CTL notified the Tribunal that it would not be attending the hearing as the amounts in dispute are small and the cost of the proceedings are not recoverable from the applicants. No discourtesy was meant and none is taken by the Tribunal.

### **The inspection**

6. The Esplanade Court development directly faces the sea front on North Drive and consists of 4 modern purpose built blocks containing 7 flats in each block and so 28 in all. It dates from approximately 2002/3. The subject flats are located in block 1 (plots 1-7 of the site) which is situated at the north end of the plot. The Tribunal has had the opportunity to inspect the external elevations and structure of the block on all sides, together with the immediately surrounding grounds. The block has the benefit of small gardens to the front and a good sized paved area at the rear which provides allocated parking spaces for the flats.

### **The hearing**

7. Mr Peter Runnalls of flat 6 has ably presented the arguments on behalf of the lessees. He has been assisted by others in attendance : Mrs Cynthia Runnalls, Mr Jack Beeson, Mr Roger Colliss and Mr Tony Jacobs. CTL are neither present nor represented for the reasons set out earlier in this Decision.
8. The bases for challenge are set out in narrative form in the application [12-13] but during the hearing the items which are actually challenged have distilled down to those identified in this Decision.
9. We have been provided with a bundle running to over 400 pages and subdivided into sections in accordance with the Directions Order made on 9<sup>th</sup> January 2013. References in [square brackets] in this decision refer to the paginated documents in that bundle unless otherwise identified.
10. Under cover of letter dated 18<sup>th</sup> March 2013 CTL provided a witness statement from Michael Wright (director) which appends a previous witness statement filed in CAM/33UD/LSC/2010/0159 relating to block 3, the specification for internal common parts maintenance, the specification for grounds maintenance, the specification for management

and administration, and a management quotation from OM Property Management (Peveler Group) for the entire CTL portfolio including the Esplanade Court blocks.

11. The Tribunal has considered these documents with care. No expert evidence has been relied upon by either party.

### **The Lease**

12. We are provided with the lease for flat 6 and told that all of the leases for the flats in block 1 are in the same form. That lease includes the following provisions which are relevant to this application :

- Clause 1.10 defines the service charge as the contribution equal to the tenant's proportion of the expenditure described in clause 7.1 and the 3<sup>rd</sup> Schedule plus 15% of such expenditure as a management charge
- Clause 1.11 defines the tenant's proportion as 1/28 of that expenditure which does not relate solely to block 1, and one 1/7 of that expenditure which does relate solely to the block
- Clause 7.1 imposes liability to pay the tenant's contribution by way of service charge in respect of rates, services, repairs, maintenance and insurance being or including expenditure described in the 3<sup>rd</sup> Schedule
- Clause 8 sets out the covenants imposed on the landlord and/or management company including rates, taxes, assessments, repairs, reinstatement, renewal, redecorations, grounds maintenance and insurance.
- The 3<sup>rd</sup> Schedule sets out the service charge expenditure which comprises the costs of meeting the obligations under the lease, estate management expenses, management company administrative expenses, surveyors and agents fees and expenses relating to the apportionment and collection of expenses fees and payments due from the tenants under the lease, the provision of services and facilities and amenities and improvements and other works for the general benefit of the estate and the tenants of the flats, and bank charges and interest and the costs of any loan to meet expenditure.

### **The relevant law**

13. The *Landlord & Tenant Act 1985* as amended by the *Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine liability to pay service charges. *Section 27A(1)* of 1985 Act provides as follows -

*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.*

14. *Section 18* sets out the meanings of 'service charge' and 'relevant costs'.
15. *Section 19* sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.
16. *Section 20C* sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.
17. *Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. *Section 5(1) of Part 1 to Schedule 11* provides -

*An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.*

18. *Section 1* provides a definition of 'administration charge'. *Sections 2 & 3* provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.
19. *Section 87 of the Leasehold Reform, Housing & Urban Development Act 1993* provides that the Secretary of State may approve by order any code of practice which is intended to promote best practice in relation to matters directly or indirectly concerned with the management of residential property. The *RICS Service Charge Residential Management Code* has been approved by the Secretary of State under this statutory provision. *Section 87(7) of the 1993 Act* provides that the *Code* is

admissible in evidence before this Tribunal and that any relevant provision shall be taken into account by this Tribunal when determining whether persons managing the property have complied with the provisions of that *Code*.

### **Determination of the reasonable service charges payable**

#### **Liability to pay the charges under the lease**

20. Liability to pay the charges under the lease was not in dispute. The tribunal has satisfied itself that the applicants are in fact liable in principle to pay the charges demanded. The relevant provisions in the lease are summarised earlier in this Decision. The Tribunal has been provided with copies of the demand for payment and supporting documents sent to tenants [56 et al].

#### **The charges challenged**

21. The bases for challenge set out in narrative form in the application [12-13] are numerous and extensive. During the hearing the individual charges and the context for the same have been considered at some length. As a result the charges which are actually challenged have distilled down to those identified in this Decision.

#### **The 2011 service charge items**

22. The service charges for each of the flats within the block for the accounting year 2011 [55] have been considered individually.
23. The common parts maintenance charge of £304.37 is not challenged. The Tribunal is satisfied that it is reasonable and is payable in full.
24. The utilities charge of £29.14 is not challenged. The Tribunal is satisfied that it is reasonable and is payable in full.
25. The common parts insurance charge of £10.32 is not challenged. The Tribunal is satisfied that it is reasonable and is payable in full.
26. The postage, telephone & other office expenses of £133.73 are challenged. It is said that because the CTL management of blocks 1 and 3 relates to the grounds only the costs should be lower than the 'full' management of blocks 2 and 4 and that, whereas the maintenance, utility and insurance costs are lower, this item is the same as for blocks 2 and 4. Comparison [eg.71] shows that the charge for this block is the same as for the 'full management' blocks. The actual costs this charge relates to are all accounted in detail [eg.61] and the actual sums unremarkable. The Tribunal takes the view that the relevant costs will not be materially different for block 1 than for the 'full management' blocks 2 and 4. It follows that the charge of £133.73 is reasonable and payable in full.

27. The audit & accountancy expenses of £132.24 are challenged. It is said that because the CTL management of blocks 1 and 3 relates to the grounds only the costs should be lower than the 'full' management of blocks 2 and 4 and that, whereas the maintenance, utility and insurance costs are lower, this item is the same as for blocks 2 and 4. Comparison [eg.71] shows that the charge for this block is the same as for the 'full management' blocks. This service is carried out by Chantrey Vellacott DFK LLP of Colchester. The charge is unremarkable. The form and content of the accounts produced indicates that the task will not be materially different for block 1 than for the 'full management' blocks 2 and 4. It follows that the charge of £132.24 is reasonable and payable in full.
28. The bank charge of £8.98 is not challenged. The Tribunal is satisfied that it is reasonable and is payable in full.
29. The secretarial costs of £156.59 and agent's charge of £788.06 are challenged. There is history of difficulties between CTL in relation to the 2010 accounting year with civil proceedings, judgments and the setting aside of the same. Whilst this is not relevant to this application it explains the poor relationship between the parties. One point that is made is that when taken together with the office, accountancy, bank and secretarial costs the sum is disproportionate and unreasonable when set against the actual expenditure on maintenance, insurance and utilities. In addition this block (1) and block 3 are managed by separate right to manage companies established by the respective lessees in each block, leaving just the grounds to be managed by CTL. By contrast blocks 2 and 4 and their respective grounds remain under the management of CTL. It is said that the management tasks remaining with CTL should provide economies of scale in that CTL is managing all 4 blocks. It is said that because the CTL management of blocks 1 and 3 relates to the grounds only the costs should be lower than the 'full' management of blocks 2 and 4. It is also said that the managing agent service provided by CTL is not a reasonable standard. In addition it is said that, as Landfast Ltd, CTL and Robbet Ltd are all linked companies with common staff, the resulting arrangement does not provide true open market value for money. The Tribunal accepts that there is some degree of force in each of these arguments.
30. In the written materials included in the hearing bundle the applicants contend that a reasonable management charge would equate to 25% of the actual expenditure on maintenance, insurance and utilities. In oral submissions Mr Runnals argued that a overall reasonable charge is £100 inclusive of the 15% management company charge. The applicants have provided as a comparator a 'leasehold & section 16 freehold management fee 2012/13' published by the Sutton Housing Partnership [393]. For the reasons explained during the hearing this document does not provide a useful comparator to support the applicants' argument.
31. In his witness statement for the respondent [96] Mr Wright proposes that the combined secretarial costs and agent's charge will actually only be charged in the sum of £125 + VAT for 2011 and 2012 and in the future.



He argues that this is a reasonable sum having regard to a settlement reached with the lessees of block 3, having regard to the specification for internal common parts maintenance, the specification for grounds maintenance, the specification for management and administration, and a management quotation from OM Property Management (Peveler Group) for the entire CTL portfolio including the Esplanade Court blocks.

32. Having regard to the arguments marshalled, the information and evidence provided in the hearing bundle, the lease provision for a 15% management charge and the Tribunal's own valuer expertise we take the view that a fixed annual charge of £125 + VAT for the combined secretarial costs and agent's fee is reasonable for the flats in block 1. Accordingly, that sum is reasonable and payable for both of the accounting years under consideration.
33. Liability to pay a management charge fixed at 15% of the tenant's contribution toward the relevant costs recharged is not challenged. This is unsurprising as clause 1.10 expressly and unambiguously defines the service charge as the contribution equal to the tenant's proportion of the expenditure described in clause 7.1 and the 3<sup>rd</sup> Schedule plus 15% of such expenditure as a management charge.

#### **The 2012 service charge items**

34. The service charges for each of the flats within the block for the accounting year 2012 [57] have been considered individually.
35. The common parts maintenance charge of £342 is not challenged. The Tribunal is satisfied that it is reasonable and payable in full.
36. The utilities charge of £29.87 is not challenged. The Tribunal is satisfied that it is reasonable and payable in full.
37. There is no charge and so no challenge in relation to the accounting provision for assessments and reports.
38. The charge for common parts insurance of £10.31 is not challenged. The Tribunal is satisfied that it is reasonable and payable in full.
39. The charge for postage, telephone & other office expenses of £55.39 is not challenged. The Tribunal is satisfied that it is reasonable and payable in full.
40. The charge for audit & accountancy fees of £102.90 is not challenged. The Tribunal is satisfied that it is reasonable and payable in full.
41. There is no charge and so no challenge in relation to the accounting provision for professional fees and charges.

42. The bank charges of £8.90 are not challenged. The Tribunal is satisfied that they are reasonable and payable in full.
43. There is no charge and no challenge in relation to the accounting provision for sundry items.
44. The charge of £203 for secretarial costs and the agents charge of £847 are challenged. For the reasons set out in paragraphs 29-32 above the Tribunal determines that a charge of £125+VAT is reasonable and payable for the combined relevant costs of both items.
45. Again, the management charge of 15% is not challenged. For the reasons set out in paragraph 33 above it is payable.

### **The costs of the Tribunal proceedings**

46. The applicants have applied for an order pursuant to section 20C of the Landlord & Tenant Act 1985 [14]. In the event, and as conceded by the respondent in correspondence, the lease makes no provision for the costs of these proceedings to be recoverable by way of service charge. Accordingly, there is no need for the Tribunal to make an order pursuant to section 20c of the 1985 Act. Having regard to the circumstances, content and value of this dispute and the outcome of this hearing it is not just and equitable to make orders in relation to the application and hearing fees incurred by the applicants, nor the costs of the respondent preparing the hearing bundles.

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**Stephen Reeder**  
**Lawyer Chair**

**12<sup>th</sup> June 2013**

### **Caution**

**The Tribunal inspected the communal parts of the buildings and grounds referred to solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the building and grounds are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.**