

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CHI/24UF/LIS/2008/0048

In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended) (“the Act”)

and

In the matter of 32 Magennis Close Gosport Hampshire (“the property”)

**BETWEEN**

Magennis Close (Gosport) Management Ltd. Applicant

and

Miss C Storey (flat 32), Mr A M Lawrence, Mrs J W Lawrence  
and Mrs S J Lawrence (flat 27) Respondents

**Notice Under Regulation 18(7) of the Leasehold Valuation Tribunals (Procedure)  
(England) Regulations 2003 (SI 2003/2099)**

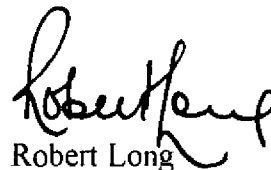
**Date of Issue:** 3 June 2009

**Tribunal:**

Mr R P Long LLB (Chairman)  
Mr D M Nesbit JP FRICS FCI Arb

The Tribunal gives notice pursuant to Regulation 18(7) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2099) that there is an error in the Appendix attached to its decision dated 7<sup>th</sup> May 2009 that has been issued in this matter. The error arises in respect of the figures for "Audit" in the first line of the section of the Appendix that deals with Flat Service Charge, and produces a consequent small adjustment in the amount that the Tribunal found to be payable in respect of the Property.

Thus in the second line of paragraph 55 of the Tribunal's decision the figure there shown of £930-26 is to be substituted by the figure of £932-68, and the Appendix to this notice is to take the place of the Appendix originally attached to the decision dated 7<sup>th</sup> May 2009.

A handwritten signature in black ink, appearing to read 'Robert Long', written in a cursive style.

Robert Long  
Chairman

1<sup>st</sup> June 2009

## Appendix

### 32 Magennis Close Gosport

#### Estate Service Charge

	<u>Budget</u>	<u>LVT Determination</u>
Annual Return Fee	30	Nil
Audit	400	200
Drains	1000	1000
Grounds Maintenance	4500	4500
Directors'/Officers Insurance	600	Nil
Buildings Insurance	7000	7000
Legal Expenses Insurance	1000	1000
Management	10152	9936
Repairs and Maintenance	3000	3000
Reserve	1000	1000
Street Lighting Repairs	500	500
Street Lighting Electricity	500	500
Sundries	574	574
Tree Works	<u>2000</u>	<u>2000</u>
<u>Totals:</u>	<u>32256</u>	<u>31210</u>

#### Flats Service Charge

Audit	150	75
Cleaning	1600	1600
Electric Repairs	500	500
Electricity	400	400
Maintenance	10310	10310
Fire Risk Assessment	250	250
Labyrinth Emergency Assistance	Nil	1132
Reserve	4000	4000
Sundries	<u>568</u>	<u>568</u>
<u>Totals:</u>	<u>17688</u>	<u>18835</u>

#### Service Charge payable is:

Estates Service Charge	
£31210 / 96	325-10
Flats Service Charge 18835 / 31	<u>607-58</u>
Total payable:	<b><u>£932-68</u></b>

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CHI/24UF/LIS/2008/0048

In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act")

and

In the matter of 32 Magennis Close Gosport Hampshire ("the property")

**BETWEEN**

Magennis Close (Gosport) Management Ltd. Applicant

and

Miss C Storey (flat 32), Mr A M Lawrence, Mrs J W Lawrence  
and Mrs S J Lawrence (flat 27) Respondents

**Decision**

The Tribunal dealt with the matter after inspection on 17<sup>th</sup> April 2009 upon consideration of the written representations and accompanying documents received from the Applicant. No representations were received from the Respondents.

**Date of Issue:** 2009

**Tribunal:**

Mr R P Long LLB (Chairman)  
Mr D M Nesbit JP FRICS FCI Arb

## Application

1. This is an application by Magennis Close (Gosport) Management Limited ("the Company") made pursuant to section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine whether a service charge is payable in respect of 32 Magennis Close ("the property") for the year 2008 and, if it is, the amount that is payable. No dispute has been raised as to the identity of the person by whom such amount, if any, would be payable, the time when it would be payable or the manner in which it would be payable. The Respondent is Miss C Storey. Mr A M Lawrence, Mrs J W Lawrence and Mrs S J Lawrence were joined as Respondents at their request by an Order of the Tribunal dated 30<sup>th</sup> December 2008.

## Decision

2. The Appendix at the end of this decision shows the amounts that the Tribunal has found are payable for the budgeted service charges for 2008. The amount it has determined is the amount payable in respect of the property for advance service charge in accordance with the terms of the Lease, as the final 2008 costs were not available to it.

## Inspection

3. The Tribunal inspected Magennis Close in the presence of Ms J Cole AIRPM of Now Professional Property Management and of two of the directors of the applicant company on 17<sup>th</sup> April 2009. It saw an estate built in or around the early 1960's by the Ministry of Defence, originally to a standard for naval personnel. The state comprises a mixture of 65 terraced houses and 31 maisonettes or flats in two blocks, all of which are separated by extensive open spaces laid to grass with trees. It did not appear from a superficial external inspection that the buildings, and the accommodation offered, were of a standard that may be expected for current owner occupation or for modern developments. The properties appear to be of concrete panel construction with internal steel frames with flat roofs. The houses have extensive external wooden cladding and parts of the blocks are also covered in wood cladding. The maisonettes are within two four-storey blocks. The upper maisonettes are approached by means of communal internal stairways that lead to external balcony walkways. The Tribunal did not inspect the inside of any of the properties upon the estate.
4. The Tribunal was told that only one side of each of the two blocks that contain the maisonettes had been repainted. There had been insufficient funds to paint both blocks at once so that in the interests of even-handedness only the weather side of each block had been painted, leaving the remainder of the blocks to be painted subsequently.

## The Lease

5. The Tribunal was shown a copy of the lease ("the Lease") of 42 Magennis Close, which it understands is similar for all material purposes to that under

which the property is held. The lease was dated 16<sup>th</sup> February 1990 and was made between Blue Boar Property & Investment Company Limited (1) the Company (2) and Martin Mackett and Jane Budd (3), and demises that property for a term of 125 years from 1<sup>st</sup> January 1989.

6. The Lease places the responsibility for the management of the estate in respect of the matters pertinent to this application upon the Company. Its obligations in this respect as to the building in which the maisonette is located are contained in the Seventh schedule, and include:
  - a. the maintenance of the structure of the building, of the service conduits, the common parts and access ways, and of boundaries
  - b. the decoration of the exterior of buildings containing flats or maisonettes
  - c. cleaning and lighting common parts and access ways
  - d. insuring the building
  - e. paying any rates on common parts
7. The Ninth Schedule of the Lease allows the Company to provide services upon the estate generally that include the collection and disposal of refuse and the maintenance of the communal garden areas roads and access ways as well as setting up a reserve fund for anticipated future expenditure, and to provide staff to carry out its functions.
8. The combined effect of the definitions in the First Schedule of the Lease when read together with paragraphs 3 and 4 of the Fifth Schedule is that the lessee is to pay 1/31 part of what is described as the Flats Service Charge and 1/96 part of what is described as the Estate Service Charge. The difference between these two items is described in the Ninth Schedule. In effect the former service charge relates to expenses incurred in respect of the building in which the property is located, and the latter service charge relates to expense incurred in respect of the estate generally. Paragraph 4 of the Fifth Schedule to the Lease contains a mechanism whereby service charges are collected in advance against an estimate, and any overpayment is credited against the following year's service charge.

#### **The Law**

9. The statutory provisions primarily relevant to this application are to be found in section 18, 19, and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract (or a summary, as the case may be) from each to assist the parties in reading this decision.
10. Section 18 provides that the expression "service charge" for these purposes 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, improvements or insurance or the landlord's costs of management, and
- b. the whole or part of which varies or may vary according to relevant costs"

"Relevant costs" are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable, and the expression "costs" includes overheads.

11. Section 19 provides that:
  - "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".

It also allows the tribunal to determine whether

12. Subsection (1) and (2) of section 27A of the Act provides that:
  - "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 to whom it is payable
    - b. the person by 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."

There are certain exceptions that limit the Tribunal's jurisdiction under section 27A, but none of those exceptions has been in issue in any way in this case.

13. Subsection (3) of section 27A of the Act provides that an application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services repairs improvements maintenance insurance or management of any specified description a service charge would be payable for the costs, and if it would the Tribunal has jurisdiction to determine the same ancillary matters as are listed above.
14. To such extent (if at all) as the point is not implicit in the wording of the Act, the Court of Appeal laid down in *Finchbourne v Rodrigues* [1976] 3 AER 581 CA that it could not have been intended for the landlord to have an unfettered discretion to adopt the highest possible standards of maintenance for the property in question and to charge the tenant accordingly. Therefore to give business efficiency to the lease there should be implied a term that the costs recoverable as service charges should be fair and reasonable.

## Consideration

15. The Tribunal gave notice on 30<sup>th</sup> January 2009 pursuant to regulation 13 of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003 (SI 2098/2003) (as amended) that it proposed to deal with this matter upon consideration of written representations without an oral hearing. No request for an oral hearing was received by it, and the matter has accordingly been dealt with in that fashion. There were representations from the Company before the Tribunal, consisting of a statement of case, a copy of the site plan and of the Lease and copies of the 2007 service charge accounts and the 2008 budgets. The Tribunal was told that the 2008 accounts were not then available, and that the accounting period (whose dates are at least ambiguous as defined at Schedule 1 paragraph C in the Lease), runs from 1<sup>st</sup> January to 31<sup>st</sup> December in each year). None of the Respondents sent representations. There was thus nothing before the Tribunal that represented opposition to the figures in the budget.
16. Because the 2008 accounts were not available, the Tribunal was asked to deal with the matter by reference to the 2008 budget. It has done so upon the basis that the figures in that budget are in any event subject to the service charge certificate procedure mentioned in paragraph 20 below once the final figures are available. To that extent, and subject to the fact that it has seen the estate, and the standard of any work, after the end of the accounting period in question, it has dealt with the matter in the terms of section 27A(3).
17. This note proceeds by setting out the respective headings under which the service charge that the Tribunal was asked to determine had been raised and a summary of the representations made with regard to that item, followed by the Tribunal's decision, with its reasons, in respect of the item in question. The Applicant's representations deal first with the Estate Service Charge budget figures and then with the Flat Service Charge budget figures. This note follows both that pattern and the order adopted there.
18. The Tribunal observes that in dealing with a matter of this nature it is required (in the context of the present matter) to determine whether an item of service charge is lawfully recoverable and, if it appears that such is the case, to determine whether the item was reasonably incurred and then whether the standard of the works or services in question and their cost are themselves reasonable. The representations made to it were very largely directed to the first of these points, and it has been left in many instances to determine the remaining points on the basis of what it saw during its inspection and by reference to its collective knowledge and experience of what may be a reasonable standard and cost of works or services. Considerable care had plainly been taken to prepare the representations as they stood, but it would have been helpful to it if these other aspects had been addressed in a little more detail.
19. The Tribunal was informed that the Company is now also the freehold owner of the estate. Paragraph 11 of the Fifth Schedule to the Lease requires each



lessee to become and to remain a member of the Company during the period that they remain a lessee.

#### Estate Service Charge

##### *Annual Return Fee - £30-00*

20. The Applicant argued that this sum is recoverable as one of the costs and expenses of managing the estate and as such is recoverable under the provisions of paragraph 15 of Ninth Schedule in the Lease. Because the company exists to own and manage the estate, and this was a cost necessary to its existence, it fell to be recovered under that provision. The Tribunal accepts from its own knowledge that the figure is accurate, but determined that this is a cost that falls to be borne by the Company's members in that capacity. The fact that the Company's only activity is to own and manage the estate is not in its opinion sufficient to alter that position. It adds that if it is wrong about that it would in any case be of the view that the decision of the Court of Appeal in *St Mary's Mansions Limited v Limegate Investments Limited* [2003] 05 EG 146) make it clear that if such a cost is to be recoverable as a service charge then the ordinary natural meaning of the words used must support that recovery, and in this case, in its judgement, they do not.
21. There is of course nothing to prevent the Company from seeking to recover such contributions at the same time as it sends out its service charge demands. They will however require to be paid in whatever proportions the memorandum and articles of association of the Company (which the Tribunal has not seen) provide, and that may be slightly different from the proportions in which the service charge is payable.

##### *Audit Fee - £400-00*

22. The total allowed in the two budgets for audit fee for 2008 is £550-00. This has been informally apportioned as to £400-00 to the Estate Service Charge and us to £150-00 to the Flat Service Charge. Paragraph 15 (c) of the ninth Schedule allows the recovery of the fees and expenses of all surveyors architects engineers lawyers and all other consultants of any sort whatsoever which provide services to the Company in connection with the management of the estate. The Lease defines "the Auditor" in paragraph 1 of the First Schedule as any professional auditor or auditors for the time being appointed by or acting for the Company. His function within the lease appears to be to give a service charge certificate after the end of each accounting period (paragraph 4.1 (a) of the Fifth Schedule to the Lease). There appears to be no express provision relating to his remuneration, but the Tribunal was of the view, bearing in mind the decision in the case mentioned above, that the terms of paragraph 15(c) were just sufficiently explicit to allow his costs in that connection to be recovered as service charges.
23. What happened according to the accounts for 2007 shown to the Tribunal is that chartered accountants prepared the Company's statutory accounts, including its profit and loss account and balance sheet. Those are necessary as

part of its annual return. A schedule to those accounts showed service charge recoverable expenditure for the year 2007 against the budget for that year and against the actual cost for the preceding year. The figures were not broken down into those payable for Estate Service Charge and for Flat Service Charge so that they would not have answered the precise requirements of paragraph 4.1 (a) of the Fifth Schedule without further work.

24. To the extent that the work done represented a part of the work that was required in accordance with the terms of the Lease, but in recognition of the fact that the remainder of it was connected with the statutory requirements of the Company, the Tribunal determined that it would be reasonable that one half of the sum in question, namely £200-00, was apportioned to the costs necessary to the production of the service charge certificate, but the remainder should be apportioned to the statutory costs of the Company that are recoverable from its members in the same way as those of the annual return fee.
25. Because the 2008 accounts were not available at the time when the Tribunal dealt with the matter it follows that it has not seen the service charge certificate. However, since the Lease requires it, and the property is being professionally managed, it considered that it was entitled to assume that one would be produced and served.

#### *Drains - £1000-00*

26. Paragraph 1(b) of the Seventh Schedule to the Lease requires the Company to repair all conduits that do not exclusively serve a house or maisonette. That charge falls within the Estate Service Charge by reason of the provisions of paragraph 1(b) of Part A of the Ninth Schedule. In 2007 a cost of £1645 was incurred for drain repairs. This is an extensive estate with 96 properties on it, and its lay-out means that there will necessarily be lengthy common drains that serve it. Given the date of construction, those drains are now getting on for fifty years old. It is likely therefore that defects in them may arise at any time. In the light of that fact, and of the demonstrated fact that over £1500 had been spent on such work in the previous year, the Tribunal determined that such a provision of £1000-00 in the 2008 budget was reasonable.

#### *Grounds Maintenance - £4500-00*

27. Paragraph 1 of the Seventh Schedule to the Lease requires the Company to maintain any garden or recreation or landscaped area on the Estate, and that charge falls within the Estate Service Charge by reason of the provisions of paragraph 4 of Part A of the Ninth Schedule. As previously indicated, there are considerable open areas on the estate that fall within the definition of the areas that the Company is to maintain. The Tribunal was told that following competitive tendering a contractor has been appointed for the grounds maintenance at an annual contract sum that is less than that charged by the previous contractor. This is why the budgeted sum for 2008 is less than the charge of £5542-52 incurred in 2007.

28. The figure of £4500-00 was obtained by a competitive tendering process. It is quite clearly a price that would appear reasonable for the work that is required to be done. Whilst the Tribunal saw the grounds early in the season in gardening terms, it was apparent that they were in such a condition that showed that they had been appropriately looked after in the preceding year. That being so it was satisfied that the provision in the budget is a reasonable one for work that will plainly be required. The Tribunal understands that the cost excludes tree works, which are dealt with separately at paragraph 41 below.

*Directors and Officers' Insurance. £600-00*

29. The arguments in respect of these items were the same as those in respect of the annual return fee and (in part) the accountancy fee. Again in the Tribunal's judgement they are not properly recoverable as part of the service charge, however sensible it may be that the Company effects such insurance. The items are once more in the Tribunal's judgement recoverable from the members of the company and not as service charges. It repeats its observations about collection at paragraph 21 above.

*Buildings Insurance - £7000-00*

30. Paragraph 1(b) of the Seventh Schedule to the Lease requires the Company to insure the buildings on the estate and paragraph 8 of Part A of the Ninth Schedule allows it to recover the cost as part of the Estate Service Charge. The cost of such insurance in 2007 was £6956-79. Against that figure the budget figure of £7000-00 appears to be reasonable, and indeed by reference to the Tribunal's collective knowledge and experience of the level of such premiums (although it has no comparable quotations before it against which to test the conclusion) the figure appears on the face of it to be if anything lower than the Tribunal may have expected.

*Legal Expenses Insurance. £1000-00*

31. Paragraph 15(b) of the Ninth Schedule to the Lease allows the recovery of costs expenses and fees in connection with the management of the Estate. Paragraph 15(d) of that Schedule allows the recovery of the Company's costs of complying with the Act, including any cost of seeking a declaration from the Tribunal that a service charge or advance service charge is reasonable. The only representation before the Tribunal in connection with this item is that the insurance includes the cost of defending any application to the Tribunal made by a lessee under section 27A of the Act, but no further detail was provided.
32. The Tribunal determined that legal expenses insurance constitutes a sensible provision in connection with the management of the Estate (as opposed to the Company) even if its terms might extend, too, to matters that relate to the management of the Company rather than that of the estate. Without a copy of the policy before it the Tribunal could not form a view upon that point. It bore in mind that cover of this nature is something that might sometimes have been included in the buildings insurance policy, and that might perhaps be a reason

why the premium for the policy appeared to it to be quite low. The provision of £1000-00 compares with a cost of £1008-00 in 2007. There was no evidence of the manner in which the premium was established. The Tribunal determined using its collective knowledge and experience of the level of such premiums, in the absence of any other information having been put before it and in the absence of any opposition to the charge, that the cost is reasonable.

#### *Management Fees £10152-00*

33. Paragraph 15(b) of Part A of the Ninth Schedule to the Lease allows the Company to recover its costs expenses fees and profits in connection with the management of the Estate. Paragraph 15(c) allows the payment of the costs fees and expenses of specified persons and consultants of any sort whatsoever providing services to the Company in connection with the management of the Estate. No argument to the contrary being before it, the Tribunal is prepared to read those provisions in this instance as permitting the employment of managers to manage the estate. It is aware from its own knowledge and experience that the management of an estate of this size is a time consuming matter.
34. The fee proposed of £10152 amounts to a charge of £90-00 plus VAT charged at 17.5% per unit, that is to say a total of £105-75 per unit. It appears that the VAT rate ought now to be reduced to 15% to reflect the current levels, so that the charge will now be £9936. This is another matter that the Tribunal has been left to determine on the basis of no more than its collective knowledge and experience. It is aware that the general level of charge for management in southern Hampshire, whilst not as high as that often to be found for example in Sussex, presently exceeds £90-00 per unit net of VAT. That cost of £90-00 together with VAT at whatever rate is appropriate at the time when the charge is made is in its judgement a reasonable cost.

#### *Repairs and Maintenance £3000-00*

35. Paragraph 1 of the Seventh Schedule to the Lease requires the Company to maintain the buildings, conduits, common parts and common access ways, boundaries and garden or recreation or landscaped area on the Estate. For the purposes of this item of expenditure the cost of maintaining the conduits (other than drains, which are separately dealt with above and street lighting dealt with below), access ways, parking areas, roads and footpaths falls within the Estate Service Charge by reason of the provisions of paragraphs 1 and 2 of Part A of the Ninth Schedule. The cost of such work in 2007 was £3070-72.
36. In budgeting for the cost of work of this nature, the extent of which cannot be known in advance, the only guides are the extent of the area in which problems falling within the heading may occur and the cost that was incurred in the previous year or years. The Tribunal concluded that, against those criteria, a provision of £3000-00 for these items, some of which will almost inevitably arise, is a quite modest one and could not be said to be unreasonable.

*Reserve £1000-00*

37. Paragraph 14 of Part A of the Ninth Schedule to the Lease allows the Company to make such payments to a reserve fund (Estate) for anticipated future expenditure as the Company deems reasonable. A reserve of this size works out at just over £10-00 for each of the 96 units on the Estate. That is a very modest provision for an estate of this size and construction, and subject to that observation the Tribunal is unable to say that it is unreasonable.

*Street Lighting Repairs - £500-00*

38. The Company stated that the street lights in Magennis Close are not adopted by the local authority. They are part of the common access ways that the Company is required to keep reasonably lighted by the provisions of Paragraph 3 of the Seventh Schedule to the Lease. Paragraph 1 of Part A of the Ninth Schedule to the Lease allows the Company to recover the cost of so doing. In 2007 the cost of such repairs was £702-35. In the absence of any other information the Tribunal is unable to find that a provision of £500-00 to cover similar costs in 2008 is unreasonable.

*Street Lighting Electricity - £500-00*

39. The requirements to incur this cost and to provide these services are as set out in the preceding paragraph. The cost of electricity in 2007 was £615-87. Once more, upon the information before the Tribunal, the proposed cost is not unreasonable.

*Sundries - £574-00*

40. This is another item that is said to fall within the provisions of paragraph 15 (c) of the Ninth Schedule to the Lease as a cost or expense of the administration of the estate. It includes reimbursement of directors' expenses, and copying and postage for letters and service charge accounts. The cost in 2007 was £492-56. The Tribunal concluded that this is a proper charge because the items referred to clearly do relate to the administration of the estate as opposed to that of the Company. The make up of the proposed figure of £574-00 was not explained, but it is likely to take account, for example, of an increase in the cost of postages. However, the amount involved is small in the overall context and the Tribunal saw no reason to disturb it.

*Tree Works £2000-00*

41. As indicated at paragraph 26 above, paragraph 1 of the Seventh Schedule to the Lease requires the Company to maintain any garden or recreation or landscaped area on the Estate, and that charge falls within the Estate Service Charge by reason of the provisions of paragraph 4 of Part A of the Ninth Schedule. There are a large number of trees on the estate, all of which have by now grown to such a size since they were planted (presumably when the estate was built) that it is reasonable to anticipate that they will from time to time require attention, not least for safety of those using the land on which they

stand. The cost of such work in 2007 was £4680-36. Again the Tribunal has been given no explanation why the proposed figure for 2008 varies so considerably from that in 2007, but even so it is prepared to accept that the proposed figure is not unreasonable in the overall context of the matter.

#### **Flat Service Charge**

##### *Audit £150-00*

42. The Tribunal finds that one half only this sum, namely £75-00, is recoverable as part of the service charge for the reasons set out in paragraphs 22-25 above, but repeats its observations as to collection in paragraph 21 above.

##### *Cleaning £1600-00*

43. The Company in its representations made plain that this charge relates to the cleaning of the common parts of the blocks containing the maisonettes. Such a charge is recoverable by virtue of the combined effect of the provisions of paragraph 3 of the Seventh Schedule, which obliges it to clean common parts, and of paragraph 1 (and in particular sub-paragraph 1(c)) of Part B of the Ninth Schedule to the Lease. It is plainly reasonable to have incurred such cost. The cost in 2007 is said to have been £1560-00. There is no evidence before the Tribunal as to what is done for the money, except for the information it was able to discover as to the likely extent of the areas involved from its inspection. Using that information, and the fact that there are 31 maisonettes, it calculated that the cost works out at about £1 for each flat per week. In the context of this development it determined that that sum is not unreasonable.

##### *Electric Repairs £500*

44. The Company is required to keep common parts reasonably lighted by the provisions of Paragraph 3 of the Seventh Schedule to the Lease. Paragraph 1(c) of that schedule requires it to repair common parts. The Company's representations make it plain that these costs relate to the communal lighting and door entry system in the buildings containing the maisonettes. Paragraph 1(c) of Part B of the Ninth Schedule to the Lease allows the Company to recover the cost of so doing. In 2007 the cost of such repairs was £418-52. Against that background an estimate of £500 for the year 2008 is not unreasonable.

##### *Electricity £400*

45. The requirements to incur this cost and to provide these services are as set out in the preceding paragraph. In 2007 the cost was £84-99 and no explanation was tendered to explain why the estimate for 2008 is so much higher. The Tribunal bore in mind that the cost deals with lighting and entry devices to four staircases, and lighting to two walkways. On that basis the cost in 2007 seemed to be low, whilst the 2008 estimate at least appeared closer to the sort of figure that the Tribunal might have expected. The Tribunal is aware that

discrepancies can arise in the case of estimated billing although there is no evidence to tell it that this is what happened here. It concluded with some hesitation that £400-00 represents a reasonable estimate of the cost, and bore in mind that if that estimate proves to be in excess of the cost the mechanism for crediting any overpayment in Paragraph 4 of Schedule 5 is sufficient to take account of that fact.

*Maintenance £10310-00*

46. Paragraph 2 of the Seventh Schedule requires the Company to redecorate the exterior of the buildings containing the maisonettes as often as is reasonably necessary (and at least once in every three years). Paragraph 1 of Part B the Ninth Schedule allows it to recover the cost of so doing. The Tribunal was able to see upon inspection that the parts of the blocks that were not recently decorated are in quite urgent need of redecoration. It bore in mind that part of the exterior of the blocks is clad with wood, and that the blocks themselves stand a little more than a mile from the sea so that they are exposed to salt in the wind.
47. The Company's representations indicate that the costs referred to under this heading represent a further part of the cost of the redecoration of the exterior of the blocks, and that the final cost for all the works may prove to be in excess of £30,000. The Tribunal determined that the sum estimated was not an unreasonable amount for the cost of the work that it had seen.

*Fire Risk Assessment £250-00*

48. The Company stated in its representations that following the implementation of the Regulatory Reform (Fire Safety) Order 2005, a fire risk assessment was implemented as those regulations require. It was estimated to cost £250-00. The Company points out that paragraph 5 of Part B of the Ninth Schedule to the Lease permits the Company to "make such payments of the kind referred to in Clause 16 of Part A of this Schedule as the Company deems desirable exclusively in relation to the flats and maisonettes on the estate...". There is no Clause 16 in Part A of that Schedule, but it appears quite clear that the reference is a typographical error and should refer to Clause 15, which refers to various sorts of payment, and the Tribunal has read the lease as such in order to give commercial effect to it.
49. Sub paragraph 15 (c) allows the Company to recover the costs fees and expenses of all surveyors, architects engineers lawyers and all other consultants of any sort whatsoever which provide services to the Company in connection with the management of the Estate. In any event, the Tribunal noted that paragraph 3 of Part B of the Ninth Schedule allows the Company to recover the cost of any services exclusively provided to the flats and maisonettes of a sort mentioned in various paragraphs, including paragraph 10, of Part A of the Ninth Schedule. Paragraph 10 deals with compliance with statutory requirements.

50. The Tribunal was thus quite satisfied that the Company is entitled to recover a sum for a fire risk assessment that statute required it to carry out. There is nothing before it to show how the cost of £250-00 was established, but the Tribunal considers it very unlikely that such an assessment would be carried out in blocks like these for any less, and that such a cost may very well be greater. On that basis it determined that the estimate is reasonable.

*Labyrinth Emergency Assistance £1132-00*

51. The Company explained in its written representations that this payment relates to an insurance policy that it has effected to cover emergencies that may arise outside of normal working hours that may have an effect on the health safety and security of residents of the Estate. The precise nature of the cover that it provides was not described but it appears from the description to be a form of call out policy to provide initial protection until long-term repairs can be effected.
52. In its representations the Company relied again on paragraph 5 of Part B of the Ninth Schedule and followed the argument flowing from it referred to in paragraph 48 and the first part of paragraph 49 above. It appeared to the Tribunal however that this was a service facility or amenity of the sort described in paragraph 13 of Part A of the Ninth schedule, whose cost the Company is permitted to recover under paragraph 3 of Part B of the Ninth Schedule. The cost is not unreasonable in the Tribunal's judgement for such cover as it understands the policy to provide.

*Reserve £4000-00*

53. Paragraph 4 of Part B of the Ninth Schedule to the Lease allows the Company to make such payments to a reserve fund (Flats) for anticipated future expenditure as the Company deems reasonable. Given the commitment that is expected to arise for exterior decoration alone described at paragraph 47 above, the provision that has been made in the budget is modest. The Company is entitled to make such a provision, it is plainly sensible for it to do so, and the amount of the provision made is reasonable. It may even be argued that it is on the low side.

*Sundries £568-00*

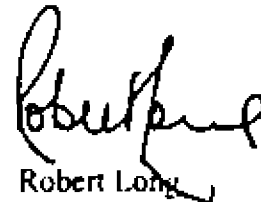
54. The Company again relies on the argument stemming from paragraph 5 of Part B of the Ninth Schedule and paragraph 15 of Part A of that Schedule to justify its entitlement to recover a sum under this heading. On this occasion no alternative argument appears to be available to it. The Tribunal was prepared to accept the argument using the reasoning set out in paragraph 48 above. It was not quite clear to the Tribunal why the estimate for the cost of sundries (as the Company defined the items whose cost it seeks to recover under this head (described at paragraph 40 above)) in respect of the maisonettes should be so similar to those for the estate as a whole when there are 31 flats and maisonettes and another 65 other properties on the Estate, and the matter was not further explained. However, the charge is not of a substantial sum and it is



not hard to see how some £1100 in total could be consumed for such items for the Estate generally so that the Tribunal did not feel able to find that the amount was unreasonable.

### Conclusion

55. The Tribunal finds that the amount of service charge payable for the year 2008 by the lessee of 32 Magennis Close is £930-26. That sum is derived by applying the relevant proportions payable under the Lease of that property respectively to the Estate Service Charge and to the Flats Service Charge and taking the total of the two amounts so produced. The calculation appears in the Appendix to this decision. The Tribunal notes that this sum is in effect a payment of Advance Service Charge as defined in paragraph 4 of the Fifth Schedule and will in due course be subject to modification by the operation of the mechanism set out in that paragraph.



Robert Long  
Chairman

7<sup>th</sup> May 2009

## Appendix

### 32 Magennis Close Gosport

#### Estate Service Charge

	<u>Budget</u>	<u>LVT Determination</u>
Annual Return Fee	30	Nil
Audit	400	200
Drains	1000	1000
Grounds Maintenance	4500	4500
Directors'/Officers Insurance	600	Nil
Buildings Insurance	7000	7000
Legal Expenses Insurance	1000	1000
Management	10152	9936
Repairs and Maintenance	3000	3000
Reserve	1000	1000
Street Lighting Repairs	500	500
Street Lighting Electricity	500	500
Sundries	574	574
Tree Works	<u>2000</u>	<u>2000</u>
<u>Totals:</u>	<u>32256</u>	<u>31210</u>

#### Flats Service Charge

Audit	30	Nil
Cleaning	1600	1600
Electric Repairs	500	500
Electricity	400	400
Maintenance	10310	10310
Fire Risk Assessment	250	250
Labyrinth Emergency Assistance	Nil	1132
Reserve	4000	4000
Sundries	<u>568</u>	<u>568</u>
<u>Totals:</u>	<u>17568</u>	<u>18760</u>

#### Service Charge payable is:

Estate Service Charge	
£31210 / 96	325-10
Flats Service Charge 18760 / 31	<u>605-16</u>
Total payable:	<u>£930-26</u>

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CHI/24UF/LIS/2008/0048

In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended) (“the Act”)

and

In the matter of 32 Magennis Close Gosport Hampshire (“the property”)

**BETWEEN**

Magennis Close (Gosport) Management Ltd. Applicant

and

Miss C Storey (flat 32), Mr A M Lawrence, Mrs J W Lawrence  
and Mrs S J Lawrence (flat 27) Respondents

**Decision on application for leave to Appeal**

**Date of Issue:** 3 JUNE 2009

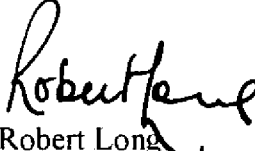
**Tribunal:**

Mr R P Long LLB (Chairman)  
Mr D M Nesbit JP FRICS FCI Arb

1. On 12<sup>th</sup> May 2009 the Applicant's representatives, Now Professional Limited, lodged an appeal in respect of the Tribunal's decision dated 7<sup>th</sup> May 2009 on two grounds. The first of those related to a clerical error in the Schedule that accompanied the decision and has been corrected under regulation 18(7) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2099), so that, unless any issue arises in respect of the notice given under that direction, that aspect of the matter has been dealt with.
2. The second ground was limited to the recovery of costs of management of the Applicant freeholder company. Those costs related to the cost of the annual return fee payable to Company's House and to the cost of the company's annual audit. The grounds of appeal aver that the responsibility for the management of the estate at Magennis Close is placed upon the Applicant, and that the company was set up in order to manage the estate, so that this is its sole purpose. They continue that the lease allows the recovery of "the landlord's costs of management", and aver that this expression is apt to include overheads, which are part of "relevant costs". Finally they point out that each leaseholder is required to be a member of the Company whilst they hold their respective leases.
3. The Tribunal said in paragraph 20 of its decision:

"The Tribunal accepts from its own knowledge that the figure (i.e. that relating to the annual return fee) is accurate, but determined that this is a cost that falls to be borne by the Company's members in that capacity. The fact that the Company's only activity is to own and manage the estate is not in its opinion sufficient to alter that position. It adds that if it is wrong about that it would in any case be of the view that the decision of the Court of Appeal in *St Mary's Mansions Limited v Limegate Investments Limited* [2003] 05 EG 146) make it clear that if such a cost is to be recoverable as a service charge then the ordinary natural meaning of the words used must support that recovery, and in this case, in its judgement, they do not."
4. The Tribunal has not found the definition of "relevant costs" referred to in the grounds in the lease itself. It observes that had the draftsman intended to include the overhead costs of running the company it would have been a very straightforward matter to add those costs to the otherwise very detailed lists of items included in Schedule 9 of the Lease.
5. The Tribunal concludes that the appeal has no realistic prospect of success for the reasons that it originally gave, and that its view has not been altered by the matters raised in the grounds. Accordingly it is not prepared to grant leave to appeal.
6. The Applicants are entitled now to pursue their application for leave to the Lands Tribunal, but must do so within fourteen days of the issue of this decision. An application form and guidance upon the relevant procedure are to

be found at the Lands Tribunal's website, and the relevant link is <http://www.landtribunal.gov.uk/FormsGuidance/index.htm>.



Robert Long  
Chairman

1<sup>st</sup> June 2009