

**SOUTHERN RENT ASSESSMENT PANEL AND  
LEASEHOLD VALUATION TRIBUNAL**

**In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended)  
and in the matter of The Village, Grange Road, Gosport, Hampshire**

**Case Reference: CHI/24UF/LSC/2008/0123**

**Between**

Rowner Estates Limited

Applicant

and

The Village Residents Association

Second Applicant

And

The lessees of properties at The Village

Respondents

**Decision of the Tribunal**

Following consideration of the Application  
without a hearing on 13<sup>th</sup> February 2009

Issued: 16<sup>th</sup> February 2009

**Tribunal**

Mr R P Long LLB (Chairman)  
Mr J B Tarling MCMi

## **Decision**

1. The Tribunal has determined that the proposed service charges set out in the budget for 2009 appear to it to be reasonable and to be payable by the Respondents in accordance with the terms of and in the proportions set out in the leases under which they respectively hold their properties at The Village. No issue has been raised concerning the identity of the persons responsible for making such payments, the dates by which such payments are to be made or the manner in which payment is to be made. Paragraph 13 deals with a problem that the Tribunal experienced in the light of a lack of information over the identity of the payee.

## **Reasons**

### Application

2. The Applicants and the Second Applicants made application to the Tribunal on 7<sup>th</sup> November 2008 pursuant to section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") for a determination of the liability of the Respondents to pay service charges in respect of the items set out in a budget ("the budget") for the year 2009 that appears at page 10 of the application. The application was advertised in newspapers circulating in the Portsmouth area by the Tribunal on 17<sup>th</sup> and 20<sup>th</sup> November 2008 with an invitation to any lessee who wished to oppose the application to communicate with the Tribunal. The Tribunal also understands that the Second Applicants made the lessees aware of the application. No lessee has indicated a wish to oppose the application.
3. Directions were given as to the progress of the matter on 19<sup>th</sup> December 2008. Those directions included the relevant notice to the effect that the Tribunal intended to consider the matter today upon the basis of the written representations then before it in the absence of any request for a hearing. No representations have been received other than those from the Applicants and the Second Applicants, and no request for an oral hearing has been received.
4. One of the members of the Tribunal is familiar with The Village, having inspected it in recent years on at least two separate occasions. No inspection has taken place on this occasion.

### The Law

5. The application requires the Tribunal to determine, in accordance with section 27A of the Act, whether a service charge is payable, the person to whom it is payable, the amount which is payable, the date at which it is payable, and the manner in which it is payable. Section 18 of the 1985 Act defines the elements that are included in a service charge, namely costs for maintenance, improvement, insurance, or management of any specified description. Section 19 provides that service charges are only payable to the extent that they are reasonably incurred.

## The Leases

6. The maisonettes at The Village are let for a term of 125 years from 1<sup>st</sup> January 1987 at rents that escalate by doubling the rent previously payable at twenty-five year intervals from £25 per annum in the first period of twenty-five years to £400 per annum in the last period. The Tribunal understands from the earlier decisions placed before it that here are 301 maisonettes, of which 189 are two-bedroomed and 112 are three-bedroomed. The leases are structured so that there is a management company interposed between the landlord and the various leaseholders.
7. The tenants' covenants are set out in the Fifth Schedule of the leases. So far as is material for the purposes of the matters presently before the Tribunal, service charge payments are made in advance against a budget and there is provision for adjustment at the end of the year when a final account is taken. The works for which service charges are payable are those set out in the Ninth Schedule.
8. Following a Lands Tribunal decision in 2007 the proportions in which the total service charge mentioned in the budget is payable are 0.2982% thereof for two bedroom maisonettes, and 0.3451% for three bedroom maisonettes.

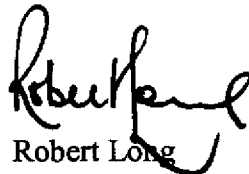
## The Evidence

9. The service charges payable for the years 2006, 2007 and those in respect of the budget set for the year 2008 were determined by a Tribunal in a decision dated 29<sup>th</sup> October 2008 (case reference CHI/24UF/LSC/2007/0112). The evidence before the Tribunal is that, except as mentioned below, the 2009 budget reflects merely an increase of 4% between the two figures to allow for inflation between the dates when the 2008 and the 2009 budgets respectively were set. The Tribunal is informed that management fees have been brought into line with the 2008 determination for the year 2009, and that tenders have been sought for the cleaning and landscaping contracts, although at the time of the Applicants' representations received by the Tribunal on 25<sup>th</sup> January 2009 no response had been received.
10. No major works are said to be planned for 2009, and no provision has been made for payments to the sinking fund because of the planned redevelopment of the whole site (as to which the Tribunal has seen a copy of a letter to Labyrinth Properties Limited from Messrs C B Richard Ellis Limited giving notice of an application to the Gosport Borough Council for permission to demolish the existing buildings and to redevelop the site).
11. The Tribunal has received no representations from any lessee, whether supporting or seeking to criticise the whole or any part of the 2009 budget. It has however received a letter of support for the application from the Second Applicant dated 13<sup>th</sup> November 2008. That was accompanied by a copy of the newsletter circulated by it to lessees in September 2008 in which it welcomes 'the service charges negotiated for 2009', which it states in its letter are those

that appear in the budget. The Tribunal is not informed how many of the lessees are represented by the Second Applicant.

Determination

12. There is nothing before the Tribunal upon which it might base a finding that the service charges proposed in the 2009 budget are unreasonable. In its collective knowledge and experience the costs proposed appear to be of the kind of level that it might expect to see for such work in the locality in which The Village is situate. Plainly since they represent charges for work yet to be carried out it is unable to make any finding about the quality of such work. Accordingly it finds that a service charge is payable by each lessee amounting to the proportion of the total amount in the budget of £405817-75 set out in paragraph 8 above attributable to their property.
  
13. The leases indicate that a company called New Horizons Management Limited was to manage the property and that it was to receive the payments of advance service charge. The Tribunal understands that Labyrinth Properties Limited now manage the property despite that apparent contractual arrangement. Nothing in the documents before it explains that apparent contradiction, and the Tribunal is unable to reach any further conclusions upon the identity of the payee of the service charge in the absence of any explanation.



Robert Long  
Chairman  
13<sup>th</sup> February 2009

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CHI/24UF/LSC/2008/0123

In the matter of The Village, Grange Road Gosport

**BETWEEN:**

Rowner Estates Limited

Applicant

And

The Village Residents Association

Joint Applicant

And

The Lessees of properties at The Village

Respondents

**Decision of the Tribunal**

Upon the application of Mr M R Harrison for leave to appeal against the decision of the Tribunal dated 13<sup>th</sup> February 2009 and issued on 16<sup>th</sup> February 2009

Issued: 12 May 2009

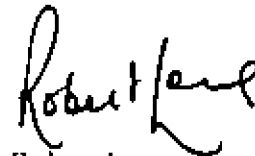
**Tribunal**

Mr R P Long LLB (Chairman)

Mr J B Tarling MCM

1. For the reasons set out below, the Tribunal declines to grant leave to appeal.
2. On 16<sup>th</sup> February 2009 the Tribunal issued its decision following an application to it by Rowner Estates limited and The Village Residents Association to determine the proposed service charges, effectively the budget for advance service charges, for the estate known as The Village at Rowner Gosport Hampshire for the year 2009.
3. On 12<sup>th</sup> March 2009 Mr M R Harrison applied to it by letter for leave to appeal against that decision. Although his application was made out of time, the Tribunal has exercised its discretion to extend the period for application for leave to appeal in this case. Mr Harrison lives in Spain and so may not have received the Tribunal's decision as promptly as may have been the case had he lived in this country. Furthermore, the Tribunal has received two other applications for leave to appeal that are essentially made on the same sort of grounds as those that Mr Harrison advances, namely that the Landlord has been in breach of covenant. It appears appropriate to the Tribunal to deal with all three such similar applications.
4. Mr Harrison's grounds for seeking leave to appeal are:
  - a. that there has been a high level of water ingress into his flat over several years,
  - b. that recent roof repairs did not reflect the full extent of the work required,
  - c. that water ingress continues through out the property, and
  - d. that as a result his flat does not comply with the "Decent Homes Standards" and so is not fit for habitation.
5. Mr Harrison says that the landlord has not complied with its covenant to keep the property in repair. It has also failed to repair roofs and lifts and to take action to rectify other shortcomings as required by Court Orders issued in Portsmouth in 2001 and 2004, thus resulting in the loss of his home. Thus he argues that service charges in his case should be suspended during the period in which the property has been in a severely damaged state.
6. It is questionable whether those issues are strictly relevant to the matter that was before the Tribunal, namely that of the consideration of a budget for advance service charges. The Tribunal did not have the advantage of hearing any argument on that point.
7. It is clear from the Tribunal's published decision that the matters that Mr Harrison now raises were not before it. There is nothing before the Tribunal to suggest that this could not have been done. They involve two associated issues, one the question of possible damages for breach of landlord's obligations and of a possible consequential right of set-off, which may lie within the Tribunal's jurisdiction, and the other the question of enforcement against the landlord of the same obligations, that plainly does not.

8. The Tribunal bore in mind the guidance given by HH Judge Rich in *Canary Riverside Developments PTE v Schilling LRX/65/2005* and in *Continental Property Ventures Inc v White LRX/60/2005* in which he indicated that it is appropriate for a LVT to leave for the County Court matters where the LVT has jurisdiction to determine only one aspect of a matter better determined as a whole. In the Tribunal's judgement the issues that Mr Harrison has raised plainly fall into that category for the reasons set out in the preceding paragraph.
9. Thus even had the matters been raised before it, the right course for the Tribunal to follow (on the information presently before it) would have been to direct that the matters be determined by the County Court. The Tribunal accordingly refuses leave to appeal. In its view, and leaving aside the question of the fact that the subject matter of the appeal was not put before the Tribunal and the issue of possible relevance, the appeal procedure here is inappropriate. The correct course appears to the Tribunal to be that the matters that Mr Harrison wishes to raise should be determined by the County Court. That course will require the appropriate application by him to that Court.
10. Mr Harrison is entitled to renew his application for leave to appeal to the Lands Tribunal at 43-45 Bedford Square WC1B 3AS, but must do so within fourteen days after the date of this decision. An application for leave to appeal may be found on the Lands Tribunal website at [http://www.landtribunal.gov.uk/Documents/rules\\_procedures\\_and\\_forms/AprilNewForms/LR.pdf](http://www.landtribunal.gov.uk/Documents/rules_procedures_and_forms/AprilNewForms/LR.pdf)



Robert Long  
Chairman

5 May 2009

**SOUTHERN RENT ASSESSMENT PANEL,**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CH/24UF/LSC/2008/0123

In the matter of The Village, Grange Road Gosport

**BETWEEN:**

Rowner Estates Limited

Applicant

And

The Village Residents Association

Joint Applicant

And

The Lessees of properties at The Village

Respondents

**Decision of the Tribunal**

Upon the application of Miss Kelly Dodds for leave to appeal against the decision of the Tribunal dated 13<sup>th</sup> February 2009 and issued on 16<sup>th</sup> February 2009

Issued: 12 May 2009

**Tribunal**

Mr R P Long LLB (Chairman)

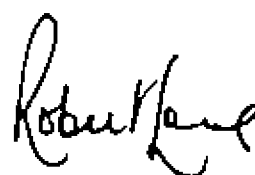
Mr J B Tarling MCMI



1. For the reasons set out below, the Tribunal declines to grant leave to appeal.
2. On 16<sup>th</sup> February 2009 the Tribunal issued its decision following an application to it by Rowner Estates limited and The Village Residents Association to determine the proposed service charges, effectively the budget for advance service charges, for the estate known as The Village at Rowner Gosport Hampshire for the year 2009.
3. On 6<sup>th</sup> March 2009 Miss Kelly Dodds applied to it by letter for leave to appeal against that decision. Miss Dodds' ground for seeking leave to appeal is that she says that the Landlord has been in breach of obligations owed to her under her lease. She itemises breaches that she alleges of covenants to keep the estate and common areas and walkways clean, and to keep them in good repair, to do external repairs, and to make good any damage caused to tenants property by the landlord's contractors or by lack of maintenance. She has provided copies of correspondence that she has had with the managing agents upon the matter as well as a lengthy diary of events from November 2007 to February 2009. She states that she has suffered considerable financial loss as a result of the matters that she has itemised. It does not appear from what she says that she has taken steps to date other than communication of various sorts with the managing agents to seek to enforce the covenants that she says have been breached.
4. It is questionable whether those issues are strictly relevant to the matter that was before the Tribunal, namely that of the consideration of a budget for advance service charges. The Tribunal did not have the advantage of hearing any argument on that point.
5. It is clear from the Tribunal's published decision that the matters that Miss Dodds now raises were not before it. There is nothing before the Tribunal to suggest that this could not have been done. They involve two associated issues, one the question of possible damages for breach of landlord's covenants and of a possible consequential right of set-off, which may lie within the Tribunal's jurisdiction, and the other the question of enforcement against the landlord of the same covenants, that plainly does not. The breaches that Miss Dodds alleges are such that it would clearly be appropriate whilst seeking damages for the matters of which she complains also to seek an Order of the Court to enforce compliance with those obligations in the future.
6. The Tribunal bore in mind the guidance given by HH Judge Rich in *Canary Riverside Developments PTE v Schilling LRX/65/2005* and in *Continental Property Ventures Inc v White LRX/60/2005* in which he indicated that it is appropriate for a LVT to leave for the County Court matters where the LVT has jurisdiction to determine only one aspect of a matter better determined as a whole. In the Tribunal's judgement the issues that Miss Dodds has raised plainly fall into that category for the reasons set out in the preceding paragraph.
7. Thus even had the matters been raised before it, the right course for the Tribunal to follow (on the information presently before it) would have been to direct that the matters be determined by the County Court. The Tribunal accordingly refuses leave to appeal. In its view, and leaving aside the question of the fact that the

subject matter of the appeal was not put before the Tribunal and the issue of possible relevance, the appeal procedure here is inappropriate. The correct course appears to the Tribunal to be that the matters that Miss Dodds wishes to raise should be determined by the County Court. That course will require the appropriate application by her to that Court.

8. Miss Dodds is entitled to renew her application for leave to appeal to the Lands Tribunal at 43-45 Bedford Square WC1B 3AS, but must do so within fourteen days after the date of this decision. A form of application for leave to appeal to the Lands Tribunal may be found on the Lands Tribunal website at [http://www.landstribunal.gov.uk/Documents/rules\\_procedures\\_and\\_forms/AprilNewForms/LR.pdf](http://www.landstribunal.gov.uk/Documents/rules_procedures_and_forms/AprilNewForms/LR.pdf)



Robert Long  
Chairman

11<sup>th</sup> May 2009

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CHI/24UF/LSC/2008/0123

In the matter of The Village, Grange Road Gosport

**BETWEEN:**

Rowner Estates Limited

Applicant

And

The Village Residents Association

Joint Applicant

And

The Lessees of properties at The Village

Respondents

**Decision of the Tribunal**

Upon the application of Mr B Smithen for leave to appeal against the decision of the Tribunal dated 13<sup>th</sup> February 2009 and issued on 16<sup>th</sup> February 2009

Issued: 18 May 2009

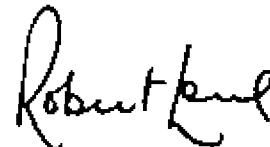
**Tribunal**

Mr R P Long LLB (Chairman)  
Mr J B Taring MCMI

1. For the reasons set out below, the Tribunal declines to grant leave to appeal.
2. On 16<sup>th</sup> February 2009 the Tribunal issued its decision following an application to it by Rowner Estates limited and The Village Residents Association to determine the proposed service charges, effectively the budget for advance service charges, for the estate known as The Village at Rowner Gosport Hampshire for the year 2009.
3. On 5<sup>th</sup> March 2009 Mr B Smithen applied to it by letter for leave to appeal against that decision.
4. Mr Smithen's grounds for seeking leave to appeal are that shortly after he purchased his flat at 31 Lawrence Walk tenants moved into the flat above it, 63 Lawrence Walk, who installed two large Rottweiler dogs that they use for breeding purposes. The dogs have been left all day every day on the outside balconies and the resultant sewage has been washed down into his flat, rendering it uninhabitable. The managing agents have failed to take any effective steps to prevent the nuisance, and as a result of these matters he says that his service charge demands should be written off.
5. The Sample Lease before the Tribunal contains a covenant by the Tenant "not to keep pets in the Flat without the prior consent in writing of the Landlord or the Company". This is Covenant 5(c) on page 26 of the Sample Lease. The letter from the managing agents to Mr Smithen dated 7 April 2008 that he produced shows that to the best of the agents' knowledge the dogs were in the flat without consent, but goes on to say that the agents "have no authority over the tenant, only the leaseholder".
6. It is questionable whether these issues are strictly relevant to the matter that was before the Tribunal, namely that of the consideration of a budget for advance service charges. The Tribunal did not have the advantage of hearing any argument on that point.
7. It is clear from the Tribunal's published decision that the matters that Mr Smithen now raises were not before it. There is nothing before the Tribunal to suggest that this could not have been done. The Tribunal has no jurisdiction to "write off" the service charges as Mr Smithen asks, although it may in some circumstances examine the possibility of set off where sums are due to the lessee by the landlord in respect of some matter. The matters that Mr Smithen has raised thus involve two associated issues, one the question of possible damages for breach of landlord's obligations (that is to say such obligation if any as it may have to remedy the nuisance of which Mr Smithen complains) and of a possible consequential right of set-off, which may lie within the Tribunal's jurisdiction, and the other the question of enforcement against the landlord of the same obligations, that plainly does not. Again the Tribunal has heard no argument about those points.
8. The Tribunal bore in mind the guidance given by HH Judge Rich in *Canary Riverside Developments PTE v Schilling LRX/65/2005* and in *Continental Property Ventures Inc v White LRX/60/2005* in which he indicated that it is appropriate for a LVT to leave for the County Court matters where the LVT has

jurisdiction to determine only one aspect of a matter better determined as a whole. In the Tribunal's judgement the issues that Mr Smithen has raised plainly fall into that category for the reasons set out in the preceding paragraph.

9. Thus even had the matters been raised before it, the right course for the Tribunal to follow (on the information presently before it) would have been to direct that the matters be determined by the County Court. The Tribunal accordingly refuses leave to appeal. In its view, and leaving aside the question of the fact that the subject matter of the appeal was not put before the Tribunal and the issue of possible relevance, the appeal procedure here is inappropriate. The correct course appears to the Tribunal to be that the matters that Mr Smithen wishes to raise should be determined by the County Court. That course will require the appropriate application by him to that Court.
  
10. Mr Smithen is entitled to renew his application for leave to appeal to the Lands Tribunal at 43-45 Bedford Square WC1B 3AS, but must do so within fourteen days after the date of this decision. An application for leave to appeal may be found on the Lands Tribunal website at [http://www.landtribunal.gov.uk/Documents/rules\\_procedures\\_and\\_forms/AprilNewForms/LR.pdf](http://www.landtribunal.gov.uk/Documents/rules_procedures_and_forms/AprilNewForms/LR.pdf)



Robert Long  
Chairman

*SL* May 2009

**SOUTHERN RENT ASSESSMENT PANEL AND  
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**Second Applicant**

**And**

**The lessees of properties at The Village**

**Respondents**

**Decision of the Tribunal**  
**Following consideration of the Application**  
**without a hearing on 13<sup>th</sup> February 2009**

**Issued: 16<sup>th</sup> February 2009**

**Tribunal**

**Mr R P Long LLB (Chairman)**  
**Mr J B Tarling MCMl**

## Decision

1. The Tribunal has determined that the proposed service charges set out in the budget for 2009 appear to it to be reasonable and to be payable by the Respondents in accordance with the terms of and in the proportions set out in the leases under which they respectively hold their properties at The Village. No issue has been raised concerning the identity of the persons responsible for making such payments, the dates by which such payments are to be made or the manner in which payment is to be made. Paragraph 13 deals with a problem that the Tribunal experienced in the light of a lack of information over the identity of the payee.

## Reasons

### Application

2. The Applicants and the Second Applicants made application to the Tribunal on 7<sup>th</sup> November 2008 pursuant to section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") for a determination of the liability of the Respondents to pay service charges in respect of the items set out in a budget ("the budget") for the year 2009 that appears at page 10 of the application. The application was advertised in newspapers circulating in the Portsmouth area by the Tribunal on 17<sup>th</sup> and 20<sup>th</sup> November 2008 with an invitation to any lessee who wished to oppose the application to communicate with the Tribunal. The Tribunal also understands that the Second Applicants made the lessees aware of the application. No lessee has indicated a wish to oppose the application.
3. Directions were given as to the progress of the matter on 19<sup>th</sup> December 2008. Those directions included the relevant notice to the effect that the Tribunal intended to consider the matter today upon the basis of the written representations then before it in the absence of any request for a hearing. No representations have been received other than those from the Applicants and the Second Applicants, and no request for an oral hearing has been received.
4. One of the members of the Tribunal is familiar with The Village, having inspected it in recent years on at least two separate occasions. No inspection has taken place on this occasion.

### The Law

5. The application requires the Tribunal to determine, in accordance with section 27A of the Act, whether a service charge is payable, the person to whom it is payable, the amount which is payable, the date at which it is payable, and the manner in which it is payable. Section 18 of the 1985 Act defines the elements that are included in a service charge, namely costs for maintenance, improvement, insurance, or management of any specified description. Section 19 provides that service charges are only payable to the extent that they are reasonably incurred.

## The Leases

6. The maisonettes at The Village are let for a term of 125 years from 1<sup>st</sup> January 1987 at rents that escalate by doubling the rent previously payable at twenty-five year intervals from £25 per annum in the first period of twenty-five years to £400 per annum in the last period. The Tribunal understands from the earlier decisions placed before it that there are 301 maisonettes, of which 189 are two-bedroomed and 112 are three-bedroomed. The leases are structured so that there is a management company interposed between the landlord and the various leaseholders.
7. The tenants' covenants are set out in the Fifth Schedule of the leases. So far as is material for the purposes of the matters presently before the Tribunal, service charge payments are made in advance against a budget and there is provision for adjustment at the end of the year when a final account is taken. The works for which service charges are payable are those set out in the Ninth Schedule.
8. Following a Lands Tribunal decision in 2007 the proportions in which the total service charge mentioned in the budget is payable are 0.2982% thereof for two bedroom maisonettes, and 0.3451% for three bedroom maisonettes.

## The Evidence

9. The service charges payable for the years 2006, 2007 and those in respect of the budget set for the year 2008 were determined by a Tribunal in a decision dated 29<sup>th</sup> October 2008 (case reference CH1/24UF/LSC/2007/0112). The evidence before the Tribunal is that, except as mentioned below, the 2009 budget reflects merely an increase of 4% between the two figures to allow for inflation between the dates when the 2008 and the 2009 budgets respectively were set. The Tribunal is informed that management fees have been brought into line with the 2008 determination for the year 2009, and that tenders have been sought for the cleaning and landscaping contracts, although at the time of the Applicants' representations received by the Tribunal on 25<sup>th</sup> January 2009 no response had been received.
10. No major works are said to be planned for 2009, and no provision has been made for payments to the sinking fund because of the planned redevelopment of the whole site (as to which the Tribunal has seen a copy of a letter to Labyrinth Properties Limited from Messrs C B Richard Ellis Limited giving notice of an application to the Gosport Borough Council for permission to demolish the existing buildings and to redevelop the site).
11. The Tribunal has received no representations from any lessee, whether supporting or seeking to criticise the whole or any part of the 2009 budget. It has however received a letter of support for the application from the Second Applicant dated 13<sup>th</sup> November 2008. That was accompanied by a copy of the newsletter circulated by it to lessees in September 2008 in which it welcomes 'the service charges negotiated for 2009', which it states in its letter are those



that appear in the budget. The Tribunal is not informed how many of the lessees are represented by the Second Applicant.

#### Determination

12. There is nothing before the Tribunal upon which it might base a finding that the service charges proposed in the 2009 budget are unreasonable. In its collective knowledge and experience the costs proposed appear to be of the kind of level that it might expect to see for such work in the locality in which The Village is situate. Plainly since they represent charges for work yet to be carried out it is unable to make any finding about the quality of such work. Accordingly it finds that a service charge is payable by each lessee amounting to the proportion of the total amount in the budget of £405817.75 set out in paragraph 8 above attributable to their property.
  
13. The leases indicate that a company called New Horizons Management Limited was to manage the property and that it was to receive the payments of advance service charge. The Tribunal understands that Labyrinth Properties Limited now manage the property despite that apparent contractual arrangement. Nothing in the documents before it explains that apparent contradiction, and the Tribunal is unable to reach any further conclusions upon the identity of the payee of the service charge in the absence of any explanation.



Robert Long  
Chairman

13<sup>th</sup> February 2009