

4968

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Property:** 200 –238 (Evens Only) Hargate Way, Peterborough, Cambridge PE7 8FQ

**Applicant:**

**Management Company** Drakes Mere Management Co Ltd

**Managing Agent:** Labyrinth Properties, 2 The Gardens Office Village, Fareham, Hampshire PO16 8SS

**Landlord** Covent Garden Limited, Wolflands, High Street, Westerham, Kent TN16 1RQ

**Respondent:** All Underleesees of the Property

**Case number:** CAM/00JA/LSC/2009/0114

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

**Tribunal** Mr JR Morris LLB LLM PhD (Chair)  
Mr R Brown FRICS  
Mr GRC Petty MRICS

**Date of Hearing:** 10<sup>th</sup> February 2010

**Attendance:**

**Applicant:** Miss Helen Macrae of Leasehold Legal services Limited  
Ms Sinead Cowell (assisting Miss Macrae)  
Mr Alan Freedman Area Manager for Labyrinth Property Management Limited

**Respondent:** Ms Joanna Robinson Flat 220  
Ms Claire O'Donnell Flat 208

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**DECISION & STATEMENT OF REASONS**

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**Decision:**

- The Tribunal determined the costs incurred in the Service Charge for the year ending 30<sup>th</sup> June 2009 to be reasonable and payable by the Respondent to the Applicant in the proportion of 1/20<sup>th</sup> per flat as demanded.

- The Tribunal determined the costs to be incurred in the Estimated/Budget Service Charge for the year ending 30<sup>th</sup> June 2010 to be reasonable and payable by the Respondent to the Applicant in the proportion of 1/20<sup>th</sup> per flat as demanded.

## Reasons

### **The Application**

1. The Applicant applied to the Tribunal on the 17<sup>th</sup> September 2009 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness and payability of the service charges incurred for the year ending 25<sup>th</sup> June 2009 and to be incurred for the year ending 29<sup>th</sup> June 2010.
2. The Applicant's requested that the application be representative and applicable to all Underlessees. The Tribunal noted that all leaseholders had been sent a copy of the Application Form and Directions and had been had been invited to make representations. No representations had been received.

### **The Law**

3. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18
  - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
    - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
    - (b) *the whole or part of which varies or may vary according to the relevant costs*
  - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
  - (3) *for this purpose*
    - (a) *costs includes overheads and*
    - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
5. Section 19
  - (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
    - (a) *only to the extent that they are reasonably incurred; and*
    - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
  - (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs*

*have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

6. Section 27A

(1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

(2) *Subsection (1) applies whether or not any payment has been made.*

(3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*

- (a) the person by whom it would be payable,*
- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*
- (e) the manner in which it would be payable.*

**Description and Inspection of the Subject Property**

7. The Tribunal inspected the Property in the presence of Mr Alan Freedman, the Area Manager for Labyrinth Properties Limited representing the Applicant.
8. The Property is a development comprising two three storey purpose built blocks of 20 flats constructed circa 2006. The blocks are constructed of brick under a pitched tile roof and have upvc windows, doors and water goods. The Blocks are situated on either side of the road. They are set in communal grounds with a mixture of shrubberies and hard landscaping. Each Block has a car park and the flats have allocated spaces. Each car park has an automated gated entrance. By each entrance there is a bin store with access to the road and a further entrance to the rear, which is now kept locked. The reason given for locking the rear entrance is to stop unauthorised person entering the unlocked front entrance of the bins store and gaining access to the car park by-passing the gated entrance.
9. The Development was generally well maintained. The shrubberies were reasonably stocked and the hard landscaping and car parks were swept and clear of litter. Externally the Blocks being new buildings were in generally good condition.
10. The bins stores were pointed out to be a particularly troublesome area because the bin men did not ensure that the doors were closed after they had collected the rubbish. The Applicant's Representative also stated that it was the bin men who would not accept keys and it was not possible for the managing agent to unlock and lock the doors before and after each rubbish collection. As a result it was believed that, although some large items of waste were left incorrectly in the bins stores by the Tenants, other items were believed to have been fly tipped.

11. Access to the Internal communal areas was via a door entry system. Each Block has one entrance with a hall way and stairs to the upper floors where there are landings on each floor with inner lobbies off which are the flats. The carpets were in fair condition. The areas appeared to have been cleaned within the past week.

### **The Lease**

12. A copy of a Lease dated 3<sup>rd</sup> July 2006 between (1) JS Bloor (Northampton ) Limited and (2) Oluwafemi Olanipekun Ashaye and Saheed Oluwadamilare Oyebola and (3) Drakes Mere Management Co Limited was provided. All flats are believed to have similar leases.
13. Under Clause 3 of the Lease the Tenants covenant to *apply to become a Member of the Management Company and upon becoming a Member will continue to be so whilst s/he remains as a Tenant and agrees that execution of this Lease may be treated as an application for membership of the Management Company*
14. Under Clause 4 and the Fifth Schedule the Landlord covenants to enforce the covenants of the Lease if the in the event that the Management Company fails to do so and to keep the Property insured which the Tenant covenants to reimburse.
15. Under Clause 5 of the Lease the Management Company covenants to undertake the works and services set out in the Seventh Schedule.
16. Under Clause 2 of the Lease the Tenants covenant to pay the Service Charge, which is defined in the Seventh Schedule as the Service Costs, which are set out in the Sixth Schedule.
17. The Sixth Schedule lists the Service Costs to be paid by the Tenants and amongst other things includes (in précis):
  - Carrying out of works and the provision of services (these are set out in the Seventh Schedule)
  - The costs of employing managing agents and other professional persons for the administration of the Development
  - The cost of keeping the books and records
  - The payment of all liabilities in respect of the cost of repairing, maintaining, cleansing and renewing any part or other walls fences structures and service media roadways paths yards and other things in common to the Block
  - The costs of employing or engaging solicitors, counsel or other professional persons in connection wit the management for the Development
  - The cost of bringing or defending any action or proceedings and making or opposing any application
  - The cost of opening or maintaining one or more bank accounts
18. The Seventh Schedule requires Tenants to pay an interim Service Charge based upon an Estimate. If the Interim Charge is more than the actual Service Costs an Additional Interim Charge may be levied. If at the end of the year the Service Costs are found to be more or less than the Interim Charge then the New Interim Charge shall be adjusted accordingly.

### **Documents**

19. Documents received are:

- Application Form
- Copy of a Lease
- Certified Accounts for the year ending 30<sup>th</sup> June 2009
- Invoices for the year ending 30<sup>th</sup> June 2009
- Budget Accounts for the year ending 30<sup>th</sup> June 2010
- Some invoices for costs incurred for the year ending 30<sup>th</sup> June 2010

**Matters in Issue**

20. The issues identified in the Application relate to the reasonableness and payability of the service charges incurred for the years ending 30<sup>th</sup> June 2009 and to be incurred for the year ending 30<sup>th</sup> June 2010.
21. No items were identified as being either agreed or in dispute and therefore all items in the service charge were put in issue. No correspondence had been received from the Respondents however Ms Joanna Robinson leaseholder of Flat 220 and Ms Claire O'Donnell Leaseholder of Flat 208 attended the Hearing and questioned certain items of the Service Charge.

**Evidence**

22. The accounts for the year ending 30<sup>th</sup> June 2009 were provided which included the budget and actual costs together with the invoices. The accounts included columns identifying the period as to when the costs were incurred and paid i.e. A = costs paid the previous year relating to the year in question, B = costs for the previous year paid in the year in question, C = costs paid for the year in question, D = costs paid during the year in question for the next year and E = cost incurred for the year in question but for which no demand had yet been made. The budget accounts setting out the estimated costs for the year 30<sup>th</sup> June 2010 were also provided together with some of the invoices already presented for that year. Under the costs are apportioned equally with each Tenant paying 1/20th.
23. The Applicant's Representative produced a Statement of Case that was largely a repeat of the relevant terms of the Lease however the Applicant did identify the items of the Service Charge and the corresponding terms of the Lease. The Bundle also contained the Cleaning Schedule and Contract, Window Cleaning Schedule and Contract, the Landscaping Schedule and Contract, Buildings Insurance Certificates and Schedules, Legal Expenses Insurance Certificates and Schedules, Emergency Assistance Insurance Certificates and Schedules and Director's & Officers' Insurance Certificates and Schedules.

**Accounts for the year ending 30<sup>th</sup> June 2009**

24. The Accounts presented were as follows:

<b>Year Ending 30<sup>th</sup> June 2009</b>	
Annual Return	30.0
Accountancy Fees	631.50
Co Secretary Fees	288.83
Cleaning	1,788.85
Communal TV Aerial	916.51
Door Entry System	117.50
Landscaping	1,350.00
General Maintenance and Repairs	182.13

Management Fees	3,353.82
Directors' & Officers' Insurance	317.19
Legal Expenses Insurance	210.00
Buildings Insurance	2,750.00
Buildings Insurance Excess	250.00
Emergency Assistance Insurance	790.83
Sundries	273.91
Water	428.33
Window Cleaning	162.50
Gate Maintenance	2,173.14
Reserve	2,000.00
<b>Total</b>	<b>18,346.79</b>

25. The Tribunal considered the accounts item by item.

***Annual Return, Company Secretarial Fees, Directors' and Officers' Insurance***

26. The Tribunal noted from the Lease that the Applicant Management Company was intended to be a wholly owned Tenant's company with the Tenant's being elected Directors and Officers. It was noted that this had not yet taken place and that the Directors and Officer of the Applicant are persons appointed by the original Landlord. The Applicant's Representatives stated that all the flats had only just been sold and that it was intended to call a meeting to explain matters to the tenants and to give them an opportunity to become Directors and Officers. Until then it was necessary to make annual returns, to have a Company Secretary and to put in place Directors' and Officers' Insurance. It was submitted that these costs were recoverable as part of the Service Charge under the Sixth Schedule of the Lease. Therefore the only issue was the reasonableness of the cost of the Company Secretary of £250 plus VAT and Directors' and Officers' Insurance premium of £317.39, the annual return of £30.00 being a statutory disbursement.

***Accountancy***

27. The Applicant's Representatives confirmed that the Accountancy contract went to tender every couple of years and bids from three accountants were considered. The tender was for each individual property and that sometimes a local accountant was used. The most competitive tender had been taken. It was stated that the charge for Accountancy was £526.50 (£450.00 plus VAT) together with an additional fee of £58.75 (£50.00 plus VAT) for the Dormant Company Accounts for the annual return to Companies' House for the Applicant. These were charges were paid in arrears and so were for the previous year's accounts. It was also noted that the cost included part of the fee (20%) for the year ending 24<sup>th</sup> June 2007 of £105.75.

***Communal Cleaning***

28. The Applicant's Representatives stated that Communal Cleaning was on an annual contract and as such was re-tendered every year. A copy of the contract for the year in question was provided. Cleaning was undertaken fortnightly and included the two entrance halls, stairways, landings and internal lobbies. Carpets were vacuumed and surfaces dusted. In response to the Tenants' question of whether the cleaners could get access since the door entry system was defective the Applicant's Representatives replied that the cleaners have a key so any problem with the door entry system should not affect them. It was said that an inspection was undertaken at least every 6 to 8 weeks unless a matter was raised between those times. The cost was £43.00

plus VAT for each fortnightly visit. It was stated that there had been three additional charges of £60.00 plus VAT (£295.00) for the removal of unauthorised rubbish from the bins stores. Where possible such charges are made to the Tenants responsible but this was often very difficult to find out and in some cases the rubbish had been fly tipped by persons other than Tenants.

29. The Tenants stated that the cleaning was not good. It was agreed that on the day of the inspection it was satisfactory but the Tenants said that it was the best it had looked for sometime.

### ***Community TV Aerial***

30. The Tenants stated that they considered the costs for the repairs to the satellite system high. The invoice of £88.13 including VAT from Crystal electronics appeared to be for only disconnecting the system. The invoice from Cox's Aerials to investigate the loss of satellite and TV channels was for £763.75 including VAT and there was no split between the cost of the labour and the cost of the multi-switch amplifier. It appeared all the more costly to the Tenants as neither watched the sky channels.
31. The Applicant's Representatives states that they relied upon the expertise of the contractors who were a reputable company. It was understood that there was a safety issue if the earth was not connected properly and therefore it was justified to disconnect the system. Cox's aerials were probably brought in to carry out the work because they were cheaper. It was stated that the connection of each flat to the system would need to be checked and the satellite equipment is very technical and therefore costly.

### ***Door Entry System***

32. Ms Robinson, one of the Tenants was particularly aggrieved that the door entry system to one of the blocks had not been working correctly since she had moved in to the Property. She said that the front door had to be left on the latch to allow the postman to enter, as he could not get access through the tradesman's button, which should be set to allow him to enter in the morning. She could not see what the £117.50 had been spent on.
33. The Applicant's Representatives stated that there were two door entry intercoms, one on the automated gates and another on the front door giving access to the communal areas. The invoice for £117.50 related to the intercom on the automated gates, which had not been working due to the casing leaking. A copy of the invoice was provided at the Hearing.
34. Ms Robinson further expressed her dissatisfaction at the front door entry system not working, as it was a very significant security risk when the flats were particularly suitable for single women such as her.

### ***Landscaping***

35. The Applicant's Representatives stated that Landscaping was a contract that is tendered annually. A copy of the current contract was provided. No issues were raised regarding the cost.

### ***General Maintenance and Repairs***

36. The Applicant's Representatives stated that there were two invoices under Maintenance and repairs. The first was for the removal of a mattress from the bin store. This had been inadvertently placed under this heading although all other costs relating to the removal of rubbish had been placed under cleaning. The second invoice was for a fire brigade a call out due to the alarms being set off.
37. Ms Robinson said that the problem of the alarms being set off had escalated to the fire brigade attending because no one on the premises had a key to turn off the alarm and it was not known whom to contact for a key.
38. The Applicant's Representatives conceded that there had been a problem. The invoice was to check and correct the fault on the system. It was said that arrangements were now in place to ensure a key holder was available should it occur again.

### ***Management Fees & Sundries***

39. In response to the Tenant's request to know what the duties of the managing agent were the Applicant's Representatives stated that they arranged:
  - the insurances,
  - for contractors to attend to carry out repairs
  - landscaping
  - payment of utility bills
  - preparation of accounts and returns for the Management Company
  - collection of service charge
40. The cost of management was said to be £144.25 per unit plus VAT. A copy of the Management contract was provided at the tribunal's request following the Hearing. The Applicant's Representatives stated that the cost of the Management was kept relatively low because the item of sundries included postal cost for sending letters regarding parking, use of bins sores and dealing with insurance claims, which were not included in the Management Charge. If there were very few additional matters the Tenants would receive the benefit of a lower overall fee.

### ***Legal Expenses Insurance***

41. The Applicant had taken out insurance for the payment of fees, which are the subject of a section 20C order of a Leasehold Valuation Tribunal.

### ***Buildings Insurance and Buildings Insurance Excess***

42. The Applicant's Representatives stated insurance was undertaken through brokers who went in to the market place to obtain the best quotations and prepared a tender report. The reinstatement value was assessed every 3 years.

### ***Emergency Assistance Insurance***

43. The Tribunal questioned the 24-hour emergency assistance insurance. A copy of the policy was provided. The Applicant's Representatives stated that this was an additional service that was provided to the Tenants, which ensured 24-hour coverage for any emergency that arose. Tenants were given a number to ring for assistance. The call centre would then give the name and number of a suitable contractor to carry out the work needed. It covered damage to common parts but was said to be particularly useful where, for example, a leak occurred in one flat and damaged another. Although intended for common parts it was conceded that it in the



circumstances of a leak, as referred to, it might cover incidents that could also be included in a Tenant's own insurance. It was said that the provision of the insurance would be allowable under Sixth Schedule paragraph 2 of the Lease.

### **Water**

44. The water charges were questioned by the Tenants as to what communal water was used. The Applicant's Representatives stated that there were taps in each bin cupboard and a drain on the car park. The Applicant confirmed this after an inquiry to Anglia Water following the Hearing. It was said that there was a metered charge for the water used from the taps in the bin cupboards and a sewerage charge for the wastewater from the drain in each car park.

### **Window Cleaning**

45. The Applicant's Representatives stated that window cleaning was a contract that is tendered annually. A copy of the contract was provided which stated that for the contract price of £32.50 the windows of the communal areas were cleaned inside and outside. This was to take place every two months. It was added that the clean did not include the internal lobby windows or the front door. The Tenants question whether the windows had been cleaned inside certainly as far as Ms Robinson's Block due to the difficulty of access. The Tenants stated that in any event the windows were not clean and that the front door was very dirty and should be included as part of the communal cleaners duties or those of the window cleaners.

### **Gate Maintenance**

46. The Applicant's Representatives stated that the gates had required several repairs. It was not clear from the invoices whether both or only one set of gates had required the work. It was noted that on 10<sup>th</sup> June 2008 the left hand leaf of one set of gates had required a new 'operator' costing £569.88 including VAT. On 24<sup>th</sup> September 2008 the right hand leaf of one set of gates had required a new 'motor' at a cost of £117.50 including VAT. On the 13<sup>th</sup> and 14<sup>th</sup> November 2008 the left hand leaf of one set of gates had required a new 'operator' and PCB and the intercom required repair costing a total of £992.26 including VAT. It was said that the gates were outside any guarantee. There was also a missing invoice for £493.50 for the supply of a gate operator. The reasons for the gates being defective were said to include vandalism and the pushing by vehicles.
47. The Tenants said that the defective gates were a particular problem. Some days it was said that it was not possible to get out of the car park. The problems did not appear to be due to vandalism and there was not mention of vandalism on the invoices when describing the work that had been done.

### **Reserve Fund**

48. No comments were made regarding the Reserve Fund.

### **Budget for the year ending 30<sup>th</sup> June 2010**

49. The budget account for the year ending 30<sup>th</sup> June 2010 was provided together with a number of invoices.

<b>Year Ending 30<sup>th</sup> June 2010</b>	
Annual Return	30.00

Accountancy Fees	450.00
Communal Cleaning	1,350.00
Communal Electricity	630.00
Co Secretary Fees	200.00
Communal TV Aerial	100.00
Door Entry System	100.00
Fire Alarm System	300.00
Gate Maintenance	1,000.00
General Maintenance and Repairs	1,000.00
Insurance:	
Buildings	2,750.00
Directors & Officers	400.00
Excess	200.00
Emergency Assistance Cover	730.00
Legal Expenses	210.00
Landscaping	1,600.00
Management Fees	3,500.00
Reserve Fund	2,000.00
Sundries	100.00
Water	300.00
Window Cleaning	200.00
<b>Total</b>	<b>17,150.00</b>

51. No specific issues were raised with regard to the Budget Accounts for the year ending 30<sup>th</sup> June 2010.

#### **Determination for Accounts for the year ending 30<sup>th</sup> June 2009**

52. The Tribunal considered the Lease, accounts and invoices provided and the evidence seen at the inspection.

#### **Annual Return, Company Secretarial Fees, Directors' and Officers' Insurance**

53. The Tribunal accepted that at the time of the Hearing the Managing Agents had not had an opportunity to call a meeting of the Tenants as shareholders of the Management Company with a view to them deciding what steps they wished to take with regard to the management of the Property. However it was stated that this would be undertaken shortly. On this understanding the Tribunal determined that the cost of the Company Secretary and Directors' and Officers' Insurance premium was reasonable. The Tribunal stated that it was for the Tenants as both tenants of the Property and shareholders of the Management Company to read the Lease and the Memorandum and Articles of Association and to take advice as to what steps they wished to take with regard to the future management of the Property.

#### **Accountancy**

54. The Tribunal determined that in the knowledge and experience of its members the Accountancy costs were reasonable.

#### **Communal Cleaning**

55. The Tribunal determined that in the knowledge and experience of its members that the cost of £43.00 plus VAT for each visit was reasonable. The Tribunal found on the inspection that the Property looked as if it had been cleaned regularly and accepted

that this was once a fortnight. The Tribunal considered that after a week the communal parts were likely to look as if they required cleaning, particularly at certain times of the year. If the Tenants wished to have the communal areas cleaned once a week this would inevitably increase the overall charge. In the absence of evidence to the contrary it was determined that the three charges of £60.00 plus VAT for the removal of unauthorised rubbish from the bins stores were reasonable. The charge for the removal of the mattress, which had been placed under the heading of repairs, was also determined to be reasonable.

### ***Community TV Aerial***

56. Although the Tenants attending the Hearing did not watch Sky, other Tenants did and as a communal service under the lease all Tenants were obliged to pay. The Tribunal was aware that communal satellite and aerial systems are sophisticated and costly to maintain. The Tribunal therefore determined that the repair costs were reasonable.

### ***Door Entry System***

57. The Tribunal accepted Ms Robinson's comment regarding the door entry system and had noted at the inspection that the postman was not able to gain access to the post boxes in the entrance hall. Nevertheless the Tribunal's role is to determine the reasonable of the costs and if no cost has been incurred then the item is outside its jurisdiction. However the Tribunal appreciate that in this instance the Tenants of the Block might not mind a reasonable cost being incurred if it ensured the intercom worked.

### ***Landscaping***

58. In the absence of evidence to the contrary the tribunal determined the cost of the Landscaping to be reasonable.

### ***General Maintenance and Repairs***

59. The Tribunal found that the repair of the fire alarm was necessary and determined the charge to be reasonable. No cost appeared to have been incurred with regard to the fire service call out.

### ***Management Fees & Sundries***

60. The Tribunal noted that the managing agent sought to balance a basic management fee with additional costs being charged to sundries. To assess the reasonableness of the charge the management fee and sundry costs needed to be added together to give an overall cost for the work. The Tribunal found that the cost of management was £156.00 plus VAT per unit. This was in the experience of the Tribunal determined to be reasonable for the level of management.

### ***Legal Expenses Insurance***

61. It was explained that the insurance might arise in the following circumstances. A landlord or its agent may incur legal fees in relation to an application to a Leasehold Valuation Tribunal. The Lease may provide, as in this case, for such fees to be paid through the Service Charge. The tenant or tenants may apply to the tribunal to make an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord from recovering such fees through the Service Charge. An example of where a tribunal might make an order is where the tribunal is of the opinion that the

proceedings need not have taken place if the landlord had dealt properly with the tenant's complaints. In a previous case where the management company was owned by the landlord, not the tenants, a tribunal treated the premium as a part of the management charge on the basis that, subject to the total sums attributed to management being reasonable, there is nothing to prevent a landlord or its agent from taking out such insurance. However whether such insurance is reasonable as a separate item in its own right in the Service Charge depends on the circumstances. In the present case the Tenants are also shareholders in the Managing Company and it is the Managing Company that would be the subject of a section 20C Order therefore the Tenants will be liable to pay any legal expenses incurred in relation to an application to a Leasehold Valuation Tribunal. Therefore if no Order is made the Tenants will pay the expenses as Tenants under the Service Charge. If an Order is made then the Tenants will pay the expenses as shareholders of the Management Company. The Tribunal were of the opinion that the insurance was for the benefit of the Tenants, although as shareholders. However, since the Management Company had not yet been fully constituted the Service Charge was at the moment the only means of paying for such a cost. After careful consideration the Tribunal found that in the circumstances the insurance was reasonable and determined that the premium was reasonable.

#### ***Buildings Insurance and Buildings Insurance Excess***

62. The Tribunal determined that the premium for the Buildings insurance and provision for excess was reasonable.

#### ***Emergency Assistance Insurance***

63. The Tribunal accepted that the provision of the insurance would be allowable under Sixth Schedule paragraph 2 of the Lease and determined that the premium was reasonable.

#### ***Water***

64. The Tribunal accepted the explanation for the water charges and in the absence of evidence to the contrary determined the cost as billed to be reasonable.

#### ***Window Cleaning***

65. The Tribunal determined that the cost of £32.50 per visit to clean the communal windows was, in the experience of its members, is reasonable.

#### ***Gate Maintenance***

66. The Tribunal found that there was no evidence to suggest that the work had not been carried out on the gates or that it had not been carried out to a reasonable standard. In the experience of the tribunal members the cost of parts for automated gates are expensive e.g. £500.00 for an 'operator'. The Tribunal therefore determined the cost to be reasonable.

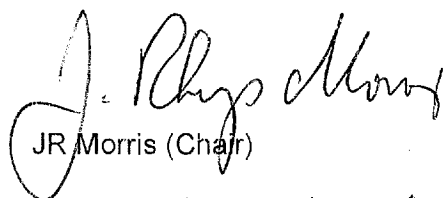
#### **Budget for the year ending 31<sup>st</sup> December 2009**

67. The Tribunal noted that although there were differences in the costs for the year ending 30<sup>th</sup> June 2009 in relation to General Maintenance and Repairs and Gate Maintenance nevertheless the actual costs for 2009 matched the estimated costs for most of the items for the year ending 30<sup>th</sup> June 2010. The Tribunal having

determined the costs incurred for year ending 30<sup>th</sup> June 2009 to be reasonable it therefore determined that the Budget for the year ending 30<sup>th</sup> June 2010 to be reasonable.

### Summary of Determination

68. The Tribunal determined the costs incurred in the Service Charge for the year ending 30<sup>th</sup> June 2009 to be reasonable and payable by the Respondent to the Applicant in the proportion of 1/20<sup>th</sup> per flat as demanded.
69. The Tribunal determined the costs to be incurred in the Estimated/Budget Service Charge for the year ending 30<sup>th</sup> June 2010 to be reasonable and payable by the Respondent to the Applicant in the proportion of 1/20<sup>th</sup> per flat as demanded.
70. The determination in relation the Budget Service Charge for the year ending 30<sup>th</sup> June 2010 for those costs *to be incurred* does not preclude the Applicant or Respondent from making an Application under section 27A of the 1985 Act for a determination as to the reasonableness of the *actual costs when they have been incurred*.

  
JR Morris (Chair)

26<sup>th</sup> April 2010