SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MW/LIS/2010/0016 and CHI/OOMWL/LSC/2010/0044

Between:

Gurnard Pines Holdings Limited (Applicant)

and

Mr and Mrs R Middleton
Mr T W Holmes and
Mr and Mrs Y Mason (Respondents)

Premises: Chalets 4, 3 and 129 Gurnard Pines, Gurnard, Cowes, Isle of Wight, PO31 8RA ("the Premises).

Date of Hearing: 11 and 12 October 2010

Tribunal: Mr D Agnew BA LLB LLM Chairman
Mr D Lintott FRICS

DETERMINATION AND REASONS

Background

1. In early July 2009 the Applicant issued proceedings in the Newport Isle of Wight County Court against Mr and Mrs R Middleton of Chalet 4 Gurnard Pines Holiday Village, Cowes, Isle of Wight PO31 8QE claiming arrears of service charge in respect of those premises in the sum of £991.69 pursuant to a demand for payment of service charge dated 1 October 2008 on account of service charges for the service charge year 2009. Mr Middleton entered a defence and counterclaim alleging "unjustified charges and non-provision of the services for which they had been charged". A counterclaim alleged overpayments of insurance premiums going back to 2002 the total of the counterclaim amounting to £924.77 plus interest.

2. On 17 November 2009 District Judge Grand in Newport Isle of Wight County Court transferred the issues raised by the defence and counterclaim to the Tribunal to determine.

3. Directions were issued by the Tribunal on 26 March 2010. The Applicant issued a further application this time to the Tribunal direct seeking a determination under Section 27A of the Landlord and Tenant

Act 1985 ("the Act") in respect of the liability for and the reasonableness of the budget for the 2010 service charge year the Respondents being stated to be Mr T W Holmes of Chalet 3 and Mr and Mrs Y Mason of Chalet 129 at Gurnard Pines Holiday Village.

4. The Tribunal directed that all three cases should be heard together and the case was prepared for hearing on 11 and 12 October 2010 at Northwood House, Ward Avenue, Cowes, Isle of Wight.

Inspection

5. The Tribunal carried out an inspection of Gurnard Pines Holiday Village immediately preceding the hearing on 11 October 2010. The holiday village occupies a large site of approximately 50 acres close to the seaside town of Cowes on the Isle of Wight. It comprises parkland and woodland and an award winning nature trail. The largest building on site is what is referred to hereafter as the Park Centre. This comprises a café/restaurant a gymnasium/fitness centre, conference rooms and offices. Adjacent to this building is the outdoor swimming pool and children's play area. The Park Centre was in good condition well decorated and equipped.

6. Scattered throughout the grounds of the park were a number of chalets. The applicant owns 115 of them, most of which are let out to holiday makers for a week or so at a time. Some of these chalets are made to look like log cabins, others are brick built with flat roofs. 40 of the 115 units are situated in what is known as the top site. They are all of the log cabin type and will feature prominently later in this determination.

7. In addition to the landlords' units there are a number of chalets which have been let to lessees such as the Respondents under long leases. These vary in condition. Some are well maintained, others less well maintained.

8. On the day of the Tribunal's inspection the whole of the park was in a neat and tidy condition. The grass had been cut and there was no litter. The condition of the roadways and paths varied in different parts of the site. Those at the entrance leading down to the car park area outside the Park Centre were in good condition as were the tarmac-ed tennis courts located in this area. One roadway at the bottom end of the site had been left without its top surface. In another part of the lower site the roadway had been considerably worn away and was potholed and rutted. Another road outside a row of chalets belonging to the landlord had a recently laid shingle roadway which was in good condition. There were signs of patch repairs to pot holes in the roads in other parts of the site.

The Hearing

9. The hearing took place over two days on 11 and 12 October 2010. Those attending on behalf of the Applicant were Mr Petts of counsel, two representatives of his instructing solicitors, the Applicant's project manager, Mr James Chiodini, and Mrs Y Ras, a manager having certain responsibilities for service charge matters. Mr Middleton was the spokesperson for the Respondents. The Respondent Mrs Mason was present at the hearing to assist Mr Middleton but she was content to leave Mr Middleton to speak on her behalf. A number of other lessees were in attendance as observers.

The Leases

10. The Tribunal was supplied with a copy of Mr Middleton's lease. Although there are five different leases applicable to properties on the holiday village site the Tribunal was told that with regard to the matters the Tribunal had to decide that lease could be regarded as typical.

11. By Clause 4 (c) of the lease the lessee covenants "to pay to the landlord by way of service charge plus any VAT thereon a fair proportion of the total cost to the landlord for providing services to the landlord's holiday village to include when provided (but such list shall not be exhaustive) the onsite management, lighting of roads and paths, gardening including planting and grass cutting, repair and maintenance of the existing roads and paths including resurfacing as necessary, repair, maintenance and renewal of drains pipes cables and all service media and other costs deemed by the landlord necessary for the proper upkeep and insurance in respect of the landlord's holiday village. Such fair proportion shall be assessed by dividing the total cost (less recoveries from commercial occupiers on site) overall incurred by the number of the units on the landlord's holiday village. The landlord shall have the records of expenditure audited by a chartered accountant whose decision shall be final. Such audit will reflect expenditure from 1 January to 31 December in each and every year and the service charge will be payable in advance on 1 October in each and every year together with the ground rent. Such monies due shall be a debt due from the tenant to the landlord and shall be recoverable by action or by distress as rent in arrears should payment not be made.

12. By Clause 5 of the said lease the landlord covenants with the tenant as follows:-
"(ii) to provide and maintain roads on the landlord's holiday village to a reasonable standard consistent with the use as a holiday village, and to provide the other services listed in Clause 4 (2) (c) hereof."

13. By Clause 5 (iv) of the lease it is the landlord's responsibility to keep the demised premises insured.

Matters in issue

14. The first matter for the Tribunal to consider is whether the service charge demand issued in October 2008 was a reasonable charge. As the actual figures for 2009 are now known (although certified accounts have not yet been issued) the reasonableness of the charge made in 2008 can be judged against the reasonableness of the actual expenditure for 2009. Accordingly, the Tribunal examined each item of expenditure which was in dispute which went towards the service charge account for 2009. The next issue that the Tribunal had to decide was what constitutes a "unit" on the holiday village as the total service charge expenditure has to be divided by the total number of such units to establish the individual leaseholder's proportion of his contribution towards the overall service charge. Finally and for the same purpose it was necessary for the Tribunal to determine how many such units should be included for the purpose of dividing up the service charge.

15. The items in dispute from the 2009 service charge accounts and the parties position with regard to each item were as follows:-
(a) On-site management costs. Mr Chiodini gave evidence on behalf of the Applicant. He said that on site management costs were made up of the wages of himself, Mr Blacksell, Mrs Ras, the main receptionist and of a firm called Crystal Solutions. They all had a part to play in managing the maintenance of the site or the administration thereof and the accounts. Mr Chiodini gave details of the salaries of each of the persons involved in on-site management and he also gave the percentage apportionment that had been done for the benefit of the long lessees as opposed to the landlord company. He explained the roles that the various people played. Mr Middleton's case was that the cost of on-site management had gone up significantly in recent years. Prior to the present owners taking over the holiday village, everything was managed by fewer people at a lower cost and, according to Mr Middleton, the village was kept up to a far higher standard than is currently the case. He challenged the percentage of time spent by the various managers for the benefit of the lessees as opposed to the landlord company. In response to a question from the Tribunal Mr Chiodini accepted that he was asking the lessees and the Tribunal to take on trust the apportionment of on-site management salaries that had been placed against the service charge account as no records were kept as to the time spent on matters for the lessees as opposed to the landlord company.

In response to Mr Middleton's query as to what benefit the lesses received for the increase in management costs over the years Mr Chiodini explained that the previous owners made no attempt to recover the true cost of the service charge from the lessees. They did not try to account accurately for the division of costs between those benefiting the lessees and those benefiting the landlord. They simply fixed a service charge that they thought the lessees would accept

without challenge. Accordingly, it was not possible to compare the value of the services the lessees were receiving now with those that they received under the previous owners. Since Mr Chiodini has been in post from June 2007 he has been trying to put the service charge accounts onto a proper and rational basis. This has inevitably led to a significant increase in the service charge demands from those made under the previous owners. In response to Mr Middleton pointing out that Crystal Solutions invoices tended to suggest that the work they were doing was for the landlord's properties only Mr Chiodini accepted that the invoices were "ambiguous" but he assured the lessees and the Tribunal that Crystal Solutions did carry out work for the benefit of the lessees and that he considered that a 50% apportionment of their fees between the lessees and the landlord was a fair split.

On-site maintenance - £41,060.13.

16. Mr Middleton queried who were some of the staff part of whose wages went towards the service charge and he also queried the apportionment of their wages charged to the service charge as opposed to the landlord's own commercial costs. Again Mr Chiodini was unable to produce any time records to back up the apportionments applied. Mr Middleton also pointed out the poor standard of some of the roads and manhole covers where the land around them had sunk causing the covers to stand proud. He also challenged the charge of £13,395.25 made by Crystal Solutions for on-site maintenance, 50% of their charge being split with on-site management.

    Mr Chiodini agreed that some of the roads were not in good condition and patch repairs are no longer viable. There is a plan to improve the roads and he has discussed what needs doing with the lessees' representatives. A plan has been sought from structural engineers for resurfacing the whole of the site as it is prone to subsidence. He confirmed that the landlord was going to honour the promise to resurface one of the bottom roads to the lower park at no cost to the service charge.

17. Mr Middleton also challenged the charges of Speedy Hire. He said this was to erect mesh fences around part of the site that was being developed by the landlord. Mr Chiodini said that 10% of this charge had been allocated to the service charge account and he thought that this was reasonable as the cost was contributing to the safety of the site.

On-site Security

18. Mr Middleton's complaint was that the cost of on-site security was a waste of money. The service provided was not of a reasonable standard. He did not think that it deterred criminal or anti-social behaviour. The security personnel in his view seemed to be more concerned with harassing lessees for their alleged failure to comply

with the covenant to vacate the site for a period each year. He considered that CCTV would be a more effective deterrent and security measure.

Mr Chiodini responded that prior to 2006 there had been more on-site entertainment such as discos at the park and these had their own door staff. By 2006, however, that business model had become redundant. They now seek to encourage young families with activities designed for such visitors such as outdoor pursuits. Security guards are on patrol. Where necessary they are backed up by a police patrol car attending at different times. 75% of the cost of the security firm's cost was applied to the service charge. He considered that much of the undesirable behaviour was from the lessees sub-letting and that the security patrols were a deterrent. CCTV was not commercially practical he thought but if in his discussions with the tenants' representatives they wished him to investigate this further he would be happy to do so.

Accountancy/Audit fees

19. Mr Middleton's complaint about this item was that the cost of this had increased considerably and yet there were still errors in the accounts. The apportionment of the wages of one employee in the accounts department was regarded by Mr Middleton as too high. Mr Chiodini explained the roles of the various employees part of whose wages were applied to the service charge. He considered that the apportionment of 3.5% of the wages of two employees in the accounts department was, in his view, reasonable.

Service Media expenses

20. Mr Middleton thought the charge of £811.44 for running the computer system to be excessive. It does not require expensive and sophisticated computer equipment to run a £150,000 budget. He thought that half of this amount would be a reasonable cost.

Mr Chiodini explained that he thought that Mr Middleton's challenge in respect of this item showed his failure to grasp the extent of the work that is necessary to administer the service charge at Gurnard Pines. They have six computers and four printers plus processing and memory space on two main servers. The costs include licence fees, repairs and renewals, electricity consumption, utilisation of broadband internet, maintenance and support contract and email servers amongst other things.

Insurances

21. Mr Middleton agreed the apportionment of 2.5% of the cost of insurance being applied to the service charges. Mr Chiodini explained that this was a nominal contribution to reflect the public liability cover provided by the insurance policy which benefited the lessees. Mr

Chiodini said that he had made enquiries of the company's auditors and their advice was that VAT had to be charged on the insurance that the landlord was required to effect under the leases for the benefit of the lessees. Mr Middleton had no evidence or authority to the contrary save for a letter from HM Customs and Revenue which he considered implied that the landlord could choose whether or not to charge VAT.

22. The Applicant made a specific application before the Tribunal to consider the estimated budget for 2010. Mr Chiodini said that the figures were based on the 2009 actual figures. Mr Chiodini explained that the on-site management estimate was lower for 2010 than for 2009. Only 50% of his time was allocated to on-site management for 2010 as he considered that the management of the lessees part of the estate had settled down and a lower figure could now be attributed to the amount of time spent on this. Other adjustments had been made to reflect changes since 2009. He explained that the heading "Development costs" included things such as enhanced road signage, traffic calming measures, lighting and landscaping.

What is a Unit?

23. The individual lessees' service charge is calculated by dividing the global costs of all service charge items by the number of "units" on the holiday park. Regrettably the word "unit" is not defined anywhere in the lease. The lessees' position is that the number of units should be 298 to include the gatehouse and two chalets currently used as storage. The landlord's position is that the number should be 255. The difference between the two is that the landlord does not consider that the gatehouse should be included as a unit, neither should the 40 chalets in the top site, which the landlord regards as being in a separate category. Expenditure on these chalets and the top site area has not been added to the total service charge nor should those total costs be divided by a number including those 40 chalets.

With regard to the gatehouse, Mr Chiodini explained that this was originally the general manager's house. More recently it has been occupied by a company involved in running activities from the top site.

With regard to the 40 chalets, Mr Chiodini explained that the grounds round these chalets had become in poor condition. The company had hoped to sell off this area but that had fallen through. The company therefore incurred substantial costs in putting the area into a safe condition and these chalets are now used for schools and other organisations to send young people on activity holidays.

Mr Middleton responded that the costs of the works done on this part of the site was to enhance the landlord's own commercial enterprise and that none of those costs should be allocated to the service charge account. Nevertheless the chalets should be included in the number by which the overall service charge costs is divided because the

landlord is getting an income from these units and the lease simply states that the total costs should be divided by the number of units and these chalets are units. In answer to a question from the Tribunal Mr Chiodini said that in the industry a unit is a unit of lettable accommodation.

Mr Middleton said that the lease provided that the total service charge costs should be reduced by income received from commercial lettings before division. This would include the occupiers of the gatehouse. Also, could the Applicant's own Park Centre not be regarded as a commercial occupier?

Mr Chiodini explained that originally there were some third party commercial occupiers of the Park Centre (for example a hairdresser) who may have made a contribution towards the service charge as part of the terms of their occupation of the premises but this was before his time so he did not know any details. The company occupying the gatehouse does not make any contribution towards the service charges.

The Law

24 By Section 27A of the 1985 Act it is provided that:-
(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, improvement, 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 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

The Determination

25 The Tribunal recognises that there is always a tension between a landlord's commercial interests and the interests of service charge

paying long lessees where costs are not clearly and easily identifiable to one or other parties' benefit. That is the case here. The landlord is running a commercial enterprise with a view to making a profit out of the operation of its holiday park site. To that end it supplies services not only to itself but also to the owners of the properties on site which have been sold off on long leases. Those lessees benefit from the services provided and from the economies of scale that can be achieved. However there is also a price to pay resulting from the complexity of running such a mixed operation.

26. The lessees are entitled to be assured that they are being charged a reasonable amount for services which are the landlord's responsibility to provide under the lease and to a reasonable standard. Unless the landlord keeps a detailed record of time spent on each service charge activity neither the lessees nor the Tribunal can check and be sure that the apportionment applied to the service charge account in respect of any particular item is a reasonable proportion.

27. In this particular case the Landlord has not kept such records and the Tribunal therefore has had no way of assessing the reasonableness of the apportionment of costs. As the Applicant's project manager conceded he was asking the lessees and the Tribunal to take on trust the apportionment that he and his colleague managers have made to the various items of expenditure. Mr Chiodini told the Tribunal that he was prepared to consider ways of making the apportionment more transparent and therefore acceptable to the lessees and the way forward may well be in his discussions with the lessees' representatives progress in respect of which is now being made. This still leaves the Tribunal with a difficulty in assessing reasonableness of the service charge for 2009. The Tribunal has resolved this difficulty by looking at the services provided to the lessees and considering what a tenant could reasonably expect to pay by way of service charge for receiving such services. Approaching the matter in this way the Tribunal noted that the lessees live on a site where the grounds are in general well kept. The grounds were generally neat and tidy and the grass cut. Even their own particular gardens were attended to by the landlord's grounds maintenance staff (although Mr Middleton complained that it was not done as often as he would have liked). His other complaints about manhole covers becoming exposed was in the Tribunal's view a relatively minor point and can be a problem where land is liable to subsidence. The roads are of varying quality but a scheme is in hand to improve those that need attention. On a site such as this the Tribunal accepts that there will be times when some roads may well be in better condition than others. On the whole, the Tribunal formed the view that the site was reasonably well cared for and the lessees do obtain a benefit from the ambience of the site as a whole. Looked at in that way the Tribunal did not consider that £695.99 that the Respondent has been charged for 2009 which was the service charge claimed in the County Court proceedings (to which was added costs of insurance which was not challenged at £141.65 plus VAT

thereon and the insurance premium tax) bringing the total to £991.69 was not unreasonable. The Tribunal accepts the Applicant's submissions that VAT was necessarily chargeable on the supply of insurance and that the Respondents' claim to be reimbursed the VAT paid as part of his counter-claim in the County Court proceedings does not succeed.

28. The Tribunal does find, however, that the Applicant has been dividing the total service charge expenditure figure by an incorrect number of units. The Tribunal finds that the 40 chalets situated in the top site area should be included in the total as should the units currently being used by the landlord for storage. The Tribunal does not find, however, that the gatehouse should be included in this figure. In the Tribunal's view it was not the intention of the parties when the lease was entered into that the gatehouse should be considered a "unit" on the landlord's holiday park. This was intended to be the general manager's house and was not a lettable unit. The Tribunal accepts the Applicant's evidence that in the industry a "unit" would mean a lettable unit of accommodation. Furthermore, unless the landlord is actually receiving a contribution from a third party commercial occupier towards service charges under the terms of their occupation then in the Tribunal's view there is no income from the commercial occupiers to put towards the service charges.

29. Accordingly, ignoring for the moment any adjustment to the overall service charge costs in respect of the top site area, the total expenditure for 2009 was £157,293.01 which should have been divided in the Tribunal's view by 295 rather than 226 making a contribution from each lessee of £533.20. When one adds to that the appropriate proportion of the insurance premium, VAT thereon and the insurance premium tax the total comes to £800.41.

30. On the information before it, therefore, the Tribunal finds that a reasonable sum for the Respondent to pay the applicant on account of the 2009 service charge year (and in respect of which the County Court proceedings were initiated) is £800.41 rather than the £991.69 claimed in the County Court proceedings. There may, however, be some communal charges emanating from the top site which are properly to be added to the total service charge for that year and which were excluded when the landlord was applying a lower figure by which to divide the total. Any such adjusted figure must be for works which have genuinely been for the repair or maintenance of the grounds and not in order to enable the landlord to develop that part of the site purely for the landlord's commercial benefit. The Tribunal does not have any evidence as to what that figure might be and therefore cannot determine what the final figure for a lessee to pay for the 2009 service charge year will be if the overall service charge account is to be amended to include any such additional expenditure hitherto excluded. The Tribunal suggests that the Applicant and Respondents meet to try and agree any amended total the Applicant seeks to apply to the 2009

service charge year, that the Applicant supplies all necessary information and copy invoices to the Respondents to enable them to consider the amendment. If the parties can agree the figure for each lessee's contribution towards the 2009 service charge year then that will be an end to the matter. If the parties cannot so agree then provided either party writes to the Tribunal within six weeks of the date of this determination asking the Tribunal to determine the reasonableness of any extra cost to be attributed to the 2009 service charge year in respect of the top site then the Tribunal will consider written representations from the parties on the point. If the Tribunal does not receive such a request from any party hereto within that six week period this Determination will be treated as being final.

31. With regard to the budget for 2010, the Tribunal decided that the basic amount sought, namely £155,559.18 is a reasonable total sum but this has to be divided by 295 units resulting in a charge per leaseholder of £527.32 plus VAT plus insurance.

Section 20C Application

32. Counsel for the Applicant accepted that there was no provision in the lease enabling the landlord to add the cost of the proceedings before the Tribunal to future service charge accounts. Had that not been the case then the Tribunal would have been prepared to make an order. It could be said that Mr Middleton has succeeded in part in his application with regard to the total number of units by which the total service charge bill has to be divided. In any event, in view of the way in which the service charges have increased significantly over the years it was reasonable for Mr Middleton to challenge them and in particular the apportionment applied to the various items of expenditure. Accordingly, the Tribunal would have considered it just and equitable that an order be made had the lease provided for the recovery of such costs. The Tribunal notes Mr Petts' point that by accepting that there is no provision in the lease for the landlord to be able to add the Tribunal costs to future service charges he was not conceding that the landlord will not seek to recover costs from the Respondents under Clause 4 (13) (b) of the lease. Should the landlord seek to do that it would be open to the Respondents to apply to the Tribunal for a determination, first, as to whether clause 4 (13) (b) applies to any such costs and secondly, whether the costs sought were reasonable under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Dated this 11th day of November 2010

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D. Agnew BA LLB LLM
Chairman