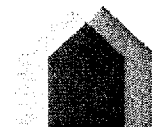


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HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

**NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: MAN/00EB/LSC/2012/0174

DECISION of the LEASEHOLD VALUATION TRIBUNAL on an application under Section 27A of the Landlord and Tenant Act 1985, and Schedule 11 of the Commonhold and Leasehold Reform Act 2002

Property: Flat 5, Mariners Point, Commercial Street, Hartlepool, TS24 0FB

Applicant: Mariners Point (Hartlepool) Management Company Limited (Lease Appointed Manager)

Represented by: SLC Solicitors

Respondent: Mr P. Saunders (Leaseholder)

Represented by: In person

Date of Transfer: 30th November 2012

Date of Determination: 25th March 2013

Date of Decision: 23rd April 2013

Tribunal: Mr L.W. G. Robson LLB (Hons)
Mr I. D. Jefferson TD BA BSc MRICS

Decision Summary

- (1) In the referred County Court case, the Tribunal decided that the service charges already conceded were payable, but the administration costs claimed in the statement of claim in County Court Case No. 2YL51154 were not due from the Respondent. The claims for contractual interest under the Lease on the service charges were valid in principle, but required recalculation. The Tribunal had insufficient information to do the recalculation itself.

- (2) The Tribunal made the other decisions noted below.
- (3) This case is now referred back to the Dartford County Court to deal with court costs and any other outstanding matters.

Preliminary

1. By an order made on 30th November 2012 in the Dartford County Court in Claim No. 2YL51154 District Judge Glover referred the Applicant's claim for service charges and administration charges to this Tribunal. The Applicant seeks an order for payment of service charges under Section 27A of the Landlord & Tenant Act 1985 and (in fact) also under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the payability of certain administration charges pursuant to a lease dated 2nd May 2005 (the Lease).
2. Extracts from the relevant legislation are attached as Appendix 1 below. The Tribunal notes for the benefit of the parties that it has no jurisdiction relating to Ground Rent, costs, or any interest claimed pursuant to statute in the County Court. These matters remain within the jurisdiction of the Court. The Tribunal also has no jurisdiction in a referred case under Section 27A relating to any matters raised which were not raised in the claim or defence in the County Court.
3. Pursuant to Directions of the Tribunal made on 10th January 2013 the Tribunal made a paper determination on 25th March 2013 at a meeting at Hartlepool Magistrates Court.

Applicants case

6. The Applicant Landlord made written submissions dated 28th January 2013 and 21st February 2013. The Respondent Tenant made undated written submissions which were received on 19th February 2013.
7. The Applicant submitted that it had conceded (in the County Court) the administration charges of £760.88 demanded on 29th June 2010 to which the Respondent had originally objected, but that the remaining service charges, administration charges and legal costs remained due and payable in full. Payment of the service charges was a lease obligation (Fourth Schedule paragraph 2.1). These sums were deemed to be payable as rent (Clause 1). Additionally, Schedule 11 of the Commonhold and Leasehold Reform Act 2002 entitled the Applicant to recover administration charges "on a statutory basis". The Respondent had withheld service charges in excess of the disputed sum and had admitted liability in his Defence for payment of the service charges. The administration charges incurred in attempting to recover these arrears were fair and reasonable. Withholding payment of the service charge was not the appropriate course of action to resolve the dispute.

Respondent's case

8. The Respondent submitted that he had paid his service charges from 2007 until 2010. He had received an invoice on 27th July 2010 for professional charges referring back to prior to his purchase of the property in 2007. The agents could not explain what it was for. He spoke to and emailed them on several occasions but they failed to reply. He paid his service charge until the end of 2010, but then refused to pay his service charge until they resolved the matter. His solicitor had written to them at the time of the purchase in 2007 asking if there was any money outstanding but they never replied. If they had done so the sellers would have settled the charge at the time. He contacted his solicitors again in February 2011 and they wrote to the agents. They failed to reply. He had spoken to the agents on several occasions stating that he had no problems paying his service charge but would not pay until the invoice was removed from his account. In their Reply to his Defence they admitted the invoice was in error. The agents had been reckless. They should have dealt with the invoice from day one. He wanted all the other charges removed. He conceded in his Defence that the service charges demanded were payable.

Decision

9. The Tribunal considered the evidence and submissions. Paragraph 4 of Schedule 4 of the Lease appeared to permit charging of the administration charges, it was a "catchall" clause. From the documents, the demands made by the Applicant (including the original demand) had a number of arithmetical discrepancies, and did not appear to tally with some of the charges noted in the running account. Some of the charges claimed appeared to be costs incurred or to be incurred in the Court claim. The originally disputed amount appeared only in the Respondent's evidence. It was an invoice from Brethertons, solicitors, but the narrative stated to be attached to it was missing. There had been several rounds of correspondence by email between the parties, particularly from September 2011 to 7th April 2012. The Applicant claimed that the disputed charge related to legal advice it had obtained relating to a failure by the Respondent to register notice of assignment, but produced no evidence of this point, and eventually conceded. It was only on 12th December 2012 immediately prior to the transfer of this case to the Tribunal that the Applicant admitted that the original invoice was in error, although it had started the Court claim on 27th July 2012.
10. The Tribunal found the letter from the Respondent's solicitors dated 11th April 2011 significant. It recorded the letter in August 2007 querying certain service charge demands, and again requested a proper breakdown. There was no evidence of any challenge or reply to that letter. The Tribunal also accepted the Respondent's evidence that he had tried to raise the disputed amount with the agent in 2010 without reply. His Solicitor's letter of 11th April 2011 met the same fate. The Applicant in September 2011 attempted to blame the Respondent's solicitor for the situation, but provided no evidence and ultimately conceded the invoice concerned.

11. The Applicant's submission, particularly paragraph 4 of its Reply invited the Tribunal to look solely at the Administration charges levied, and effectively to ignore the original invoice which had been conceded. The Tribunal considered that it should look at the situation as a whole, not just parts. The Applicant had never made a satisfactory response to the Respondent's concerns, although in 2011 it had made some ineffectual attempts to do so.
12. Considering the administration charges claimed, from the "running account" attached to the claim, these totalled £480. The amount originally stated to be claimed in Court in the letter before action dated 13th April 2012 amounted to £4,286.84 (including unpaid service charges), but various legal costs and interest had been added in the actual claim, so the Court claim was for £4,906.38. This apparently included solicitors' costs of £558, but a further amount of £80 was claimed as fixed costs. In short, the amounts claimed appeared to be muddled, and almost certainly included some double counting. The Tribunal also noted that the claim was for less than £5,000, and thus a small claim. The Tribunal decided that it could place little reliance upon the amounts being claimed for costs and administration charges.
13. In the end, the Tribunal decided that the Applicant had not properly engaged with the Respondent over the original amount in dispute of £760.88, but continued to charge administration and other charges during the period from 27th July 2010 up to 27th July 2012. In essence, the Applicant's agent wanted the Respondent to pay for its own lack of diligence. The Tribunal accepted that the Respondent should not have withheld service charges he agreed were owed, but the Tribunal accepted that this was probably the only effective way of getting the agents to take notice of his complaints. Nevertheless, The Respondent had agreed in the Lease to pay interest at 4 per cent per annum above the base rate of the Allied Irish Bank plc from the due date of payment of any sum if it was more than thirty days overdue.
14. Thus the Tribunal decided that none of the Administration charges demanded were payable, but only those service charges already admitted to the Court, with contractual interest payable thereon from the relevant due dates of payment to the date of actual payment as noted in paragraph 13 above.

Other matters

15. While not forming part of this decision, the Tribunal notes that in relation to costs in connection with the application to the Tribunal (as opposed to the Court proceedings), neither party formally raised such matters in the papers. Without submissions by the parties the Tribunal is therefore unable to decide upon such matters. If an application to the Tribunal was made by the tenant for an order under Section 20C of the Landlord

and Tenant Act 1985 that the costs incurred in connection with these proceedings by the landlord should not form part of any future service charge, such application would fall to be dealt with separately by the Tribunal.

Chairman: Mr L. W. G. Robson LLB (Hons)

Signed: Lancelot Robson

Dated: 27th April 2013

Appendix 1

Landlord & Tenant Act 1985

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, improvements 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 for 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 or later period.

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 provisions 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.

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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Appendix 2

See Lease dated 2nd May 2003 attached hereto

E1015

I hereby certify this to be a true and accurate copy of the original
Signed Watson & Brown
Watson & Brown Solicitors

8/7²⁰¹¹

LAND REGISTRATION ACTS 1925 TO 1997



LANCASHIRE AND DISTRICT
PRODUCED
TITLE NUMBER
PROPERTY
NEWCASTLE

Hartlepool

CE132245

Plot 5 Mariners Point Commercial Street Hartlepool
TS24 0FB (Apartment 5 Mariners Point aforesaid)

THIS LEASE is made the 2nd day of MAY 2003

BETWEEN

- (1) HARTLEPOOL RENAISSANCE LIMITED (Company Registration Number 02389054) whose registered office is at Mandale House 2 Sedgefield Way Portrack Interchange Business Park Stockton on Tees TS18 2SG (hereinafter called "the Landlord")
- (2) MARINERS POINT (HARTLEPOOL) MANAGEMENT COMPANY LIMITED (Company Registration Number 4605434) whose registered office is at Pennine House Russell Street Leeds LS1 5RN (hereafter called "the Management Company")
- (3) LAWRENCE MILLAR of 4 Chapel Street Innerleithen Peebleshire EH44 6HN (hereinafter called "the Tenant")

In this Lease the following expressions shall unless the context otherwise requires have the following meanings respectively that is to say:-

- 1. "the Landlord" shall (where the context so admits) include the person or persons for the time being entitled to the reversion immediately expectant upon the determination of the term hereby created including successors in title
- 2. "the Tenant" shall include the person or persons in whom the term hereby created is from time to time vested whether by assignment devolution in law or otherwise and whenever the expression "the Tenant" shall include more than one person (whether the original Tenant or the Tenant by devolution of title) then the covenants on the part of the Tenant hereinafter contained shall be deemed to be joint and several
- 3. "the Demised Premises" shall mean the property and premises described in the First Schedule hereto together with all additions and improvements at any time and from time to time made thereto and all fixtures of every kind which shall from time to time be in or upon the Demised Premises (whether originally affixed or fastened to or upon the same or otherwise) except such tenant's fixtures as can

be removed from the Demised Premises without defacing the same and (where the context so admits) shall include any part thereof and the easements rights and privileges appurtenant thereto granted or arising thereby

4. "the Apartments" shall mean the apartments which form part of the Development
5. "the Plan" means the plan annexed hereto
6. "the Development" shall mean the property edged in blue on the Plan
7. "the Common Parts" shall mean all such parts of the Development as are intended for the common use of the residents thereof including the gardens landscaped areas footpaths and accessways comprised therein and the entranceways halls passages landings refuse disposal staircases and lifts thereof and may (where the context so admits) include any part thereof and the easements rights and privileges appurtenant thereto
8. "the Management Costs" shall mean such costs and expenses as shall be incurred in respect of the obligations under clause 4 hereof together with such other costs and expenses as the Landlord or the Management Company shall incur generally in connection with the management of the Development (including the costs of employing managing agents) and in providing such services to the tenants or occupiers of the Apartments
9. "the Services" means the existing and future gas and water pipes water tanks and apparatus drains sewers electric lines and cables and other conducting media TV aerials and leads ducts and gas electricity and water meters In the above "future" services are limited to those coming into existence within Eighty years of this Lease which is the perpetuity period applicable to this Lease under the rule against perpetuities
10. "the Service Charge" shall mean the amount or amounts properly certified in accordance with the provisions of clause 5.3 as being payable by the Tenant

WHEREAS

1. The Landlord is seised of the Development with absolute title subject as herein mentioned but otherwise free from incumbrances
2. The Landlord has previously granted Leases or intends hereafter to grant Leases of the Apartments in the Development other than the Demised Premises in the form of this Lease or as near thereto as the circumstances will permit or require to the intent that so far as practicable each of the tenants shall hold his or her Lease upon terms in the form of this Lease
3. Pursuant to the said desire the Landlord has agreed with the Tenant for the grant to the Tenant of a Lease of the Demised Premises for the consideration at the

rent and on the terms and conditions hereafter appearing

NOW THIS DEED WITNESSETH that in consideration of the sum of One hundred thousand pounds (£100,000.00) on or before the execution hereof paid to the Landlord (the receipt whereof the Landlord hereby acknowledges) and of the rent covenants and provisions hereinafter reserved and contained:-

1. The Landlord hereby demises unto the Tenant from and including the date hereof the Demised Premises TOGETHER WITH (in common with the Landlord and other persons authorised by the Landlord and all other persons entitled thereto and subject to the exceptions reservations and provisions hereinafter contained) the easements rights and privileges set out in the Second Schedule hereto EXCEPT AND RESERVING AND SUBJECT TO the exceptions and reservations set out in the Third Schedule hereto TO HOLD the same UNTO the Tenant from and including the First day of October 2002 for a term of 125 years determinable nevertheless as hereafter provided ("the Term") YIELDING AND PAYING therefor unto the Landlord the yearly rent of Fifty pounds (£50.00) on the First day of April in each year and by way of further rent to the Management Company the Service Charge SUBJECT TO the covenants on the part of the Tenant and the conditions hereinafter contained
2. The Tenant hereby covenants with the Landlord and the Management Company and with other tenants of the Development and their successors in title that the Tenant will at all times during the said Term perform and observe the provisions and stipulations set forth in the Fourth Schedule hereto and observe the regulations set forth in the Fifth Schedule hereto ("the Regulations")
3.
 - 3.1 The Landlord hereby covenants with the Tenant (subject to the Tenant paying the rent (if demanded) and performing and observing the several covenants and conditions herein contained and on the Tenant's part to be performed and observed) that the Tenant may peaceably and quietly possess and enjoy the Demised Premises during the Term without any lawful interruption from or by the Landlord or any person rightfully claiming through or under the Landlord
 - 3.2 The Landlord further covenants with the Tenant to ensure that the Leases granted by the Landlord of all other apartments comprised in the Development contain covenants on the part of the various lessees to observe the like obligations as are contained in the Fourth Schedule and regulations as are contained in the Fifth Schedule hereto
 - 3.3 The Landlord undertakes with the Tenant to transfer the freehold reversion to the Development to the Management Company immediately following the Lease by the Landlord of the last of the Apartments in the Development and in any event no later than the First day of October Two

thousand and four and until such transfer takes place the Landlord undertakes to the Tenant in the same terms as the covenants by the Management Company under clause 4 of this Lease

3.4 Until the Landlord has granted leases of the other Apartments complying with the provisions of clause 3.2 above the Landlord will observe similar obligations in relation to each unleased apartment as those undertaken in this Lease by the Tenant in relation to the Apartment

3.5 If the Management Company shall unreasonably fail to perform any of its obligations hereunder the Landlord at the request in writing of the Tenant shall perform such obligation or obligations and any payment by the Tenant in respect thereof shall be made to the Landlord instead of the Management Company

4. The Management Company hereby covenants with the Landlord and as a separate covenant with the Tenant as follows:-

4.1 To keep the following in repair maintained and decorated:-

(a) the roof (including the joists above the top floor and the roof trusses) of the Development and the gutters and rainwater pipes and the drains and soakaways serving the rainwater pipes

(b) the foundations of the Development all external walls of the Development (including the site boundary walls and fences of the Development) all load bearing walls floor and ceiling structures in the Development (except the inside plasterwork and decorations of such external or load bearing walls where such inside plasterwork and decorations form part of the Apartment and the floor and ceiling finishes form part of the Apartment) and the balconies

(c) the Services used in Common by any two or more Apartments in the Development

(d) the Common Parts

(e) the main entrance and external door entry systems

4.2 Without prejudice to the generality of the foregoing to keep the garden and landscaped areas comprised in the Common Parts in a neat and tidy condition

4.3 So far as practicable to keep lighted in a reasonable manner all internal parts of the Common Parts

- 4.4 At all times during the Term to insure and keep insured the Development (but not the contents of the Demised Premises) against loss or damage by fire storm tempest and flood and the bursting or overflowing of water pipes and apparatus and such other insurable risks as the Management Company may from time to time deem appropriate for such sum as shall represent the full replacement cost thereof from time to time (including architects' surveyors and other professional fees) and to make all payments necessary for the above purposes as soon as reasonably practicable after the same shall respectively become due and if required by the Tenant to produce evidence that this covenant is being performed
- 4.5 To insure against the third party and property owners' liability in respect of the Development
- 4.6 To apply all monies to be received on account of any such insurances aforesaid towards making good from time to time all loss or damage to the Development and if reinstatement is impossible the Management Company shall hold the proportion of the insurance money applicable to the Tenants' interest in the Demised Premises in trust to Tenant for the time being
- 4.7 To keep or cause to be kept proper books of account with respect to:-
- 4.7.1 All sums of money expended and all costs incurred by the Management Company of and incidental to the performance or the exercise of its power under this Lease or under any other lease or lease to the tenants of any of the other apartments
- 4.7.2 All sums of money credit or other consideration (if any) received or to be received by or on behalf of the Management Company from the tenants of the Apartments by way of Service Charge or any sinking or reserve fund or otherwise
- 4.7.3 All such other expenditure and receipts (if any) including the expenses of collecting the rents the Service Charge or incurred generally in the general management of the Development for the benefit of the tenants of the Apartments whether by managing agents or otherwise including the cost of borrowing (which is hereby authorised where necessary) and the cost of employing caretakers or other staff
- 4.8 At least once in every year to cause its auditors or accountants to prepare an account showing the Management Costs and to procure that the said auditors or accountants shall on the basis of the said account and after taking into consideration all other factors considered relevant by such

auditors or accountants certify the amount which in the opinion of the said auditors or accountants the Management Company should charge in respect of such ensuing year as the amount of the Service Charge in respect of the Demised Premises and also in respect of the other apartments and to forward a copy of such audited accounts each year to the Tenant

- 4.9 Upon request and upon receiving such funds on account of costs as it may reasonably require enforce against the tenants of other apartments comprised in the Development the covenants on the part of those tenants contained in the Leases of any such apartment

5. It is hereby agreed and declared as follows:-

- 5.1 If and whenever the rent or any part thereof shall be in arrear and unpaid for twenty one days after the same shall have become due (whether the same shall have been formally demanded or not) or if the Tenant shall at any time fail or neglect to perform or observe any of the covenants or conditions herein contained and on the part of the Tenant to be performed or observed then and in any such case and thenceforth (and without prejudice to any other right or remedy of the Landlord) it shall be lawful:-

5.1.1 For the Landlord to re-enter into and upon the Demised Premises or any part thereof in the name of the whole and thereupon the Term shall absolutely cease and determine but without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained PROVIDED THAT the Landlord shall not exercise the Landlord's right of re-entry under this sub clause without first giving twenty eight days written notice of the Landlord's intention so to do to any subsisting mortgagee of the Demised Premises (whose interest has been notified to the Landlord in writing) specifying the nature of the breach and PROVIDED THAT the breach shall not have been remedied prior to the expiry of such notice

5.1.2 For the Landlord or the Management Company to enter upon the Demised Premises or any part thereof and execute and do such works acts or things as may be necessary or proper to secure compliance with the covenants relating to such works acts or things on the part of the Tenant herein contained and to recover the cost of all sums of money expended by the Landlord or the Management Company (as the case may be) in or about such works acts or things as aforesaid together with all costs and expenses of or incidental to the exercise of this power:-

- 5.1.2.1 by remaining in or (as the case may be) entering into possession or receipt of the rents and profits of the Demised Premises until thereby or otherwise all such sums are paid or
 - 5.1.2.2 by action in debt
- 5.2 This demise shall not confer upon or be deemed to include (by implication or otherwise) in favour of the Tenant any right of light or air liberties privileges easements or advantages except such as may be specifically granted by this Lease in through over or upon any part of the remainder of the Development
- 5.3 The Service Charge payable by the Tenant shall be such sum as the Managing Agents auditors or the accountants of the Management Company acting reasonably shall certify to be appropriate in accordance with clause 2.1 of the Fourth Schedule hereto
- 5.4 Notwithstanding the acceptance of or demand for rent by the Landlord with knowledge of a breach of any of the covenants on the part of the Tenant or the conditions herein contained the Landlord's rights to forfeit this Lease on the grounds of such breach shall remain unimpaired
- 5.5 The Landlord shall have the same remedies for the recovery of all sums which may from time to time become due to the Landlord hereunder as the Landlord would or might have for rent in arrear
- 5.6 Any sums payable hereunder by the Tenant shall be deemed to be exclusive of Value Added Tax and the amount of any such tax payable thereon shall be paid by the Tenant to the Landlord
- 5.7 Section 196 of the Law of Property Act 1925 shall apply to all notices served under the terms of this Lease
- 5.8 Any non structural walls separating the Demised Premises from any adjoining apartment or apartments or the internal Common Parts of the Development shall be mesne or party walls and shall be maintained or repaired at the joint expense of the respective party owners
- 6. The Tenant declares that the survivor of them can/cannot give a valid receipt for capital money arising on a disposition of the Demised Premises
- 7. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration (other than the

Rent) exceeds Two hundred and fifty thousand pounds (£250,000.00)

IN WITNESS whereof the Landlord and the Management Company have caused their Common Seals to be affixed and the Tenant has hereunto set his hand to this Deed the day and year before written

THE FIRST SCHEDULE

The Demised Premises

The property and premises following that is to say:-

1. All that apartment and premises being Apartment Number 5 and situate on the second floor of the block of apartments forming part of the Development and more particularly delineated on the Plan thereon edged red and lying between a horizontal plane following the line of the lower edge of the floor finishes of the Apartment but not the floor structure and another plane following the ceiling finishes of the Apartment but not the ceiling structure immediately above the Apartment hereby demised including:-
 - 1.1 the inside plasterwork and decorations of all external and internal walls thereof and the ceiling and floor finishes thereof; and
 - 1.2 the internal non-load bearing walls within the Apartment;
 - 1.3 all heating and other appliances fixtures and fittings therein;
 - 1.4 all glass in the windows of the Apartment hereby demised;
 - 1.5 the Services solely used by the Apartment;
 - 1.6 the car parking space numbered 5P on the Plan and thereon edged in red

THE SECOND SCHEDULE

Easements Rights and Privileges

1. The right of free and uninterrupted passage and running of gas electricity water and soil in common (where appropriate) with all others using the same to and from the Demised Premises or any part thereof through along and from such parts of the Services as pass through any other part of the Development
2. All such rights of support as are now enjoyed by the Demised Premises or any part or parts thereof over and from any part or parts of the Development as are necessary to ensure the full enjoyment of the Demised Premises

3. So far as the same are capable of being granted such rights of or in the nature of protection from the elements for any part of the Demised Premises over and from any other part or parts of the Development so far as the same are necessary to ensure the full enjoyment of the Demised Premises
4. The right for the Tenant with or without servants workmen and others at all reasonable times and from time to time upon notice (except in case of emergency) to enter into and upon any part or parts of the Development for the purpose of maintaining repairing or decorating the Demised Premises or inspecting cleansing repairing renewing and installing so far as may be necessary any such Services as form part of the Demised Premises causing as little disturbance as possible and making good all damage caused
5. A right of way at all times and for all purposes connected with the use of the Demised Premises as a private dwelling FIRSTLY on foot only for the purpose of access to and egress from the Demised Premises over through and across the footpaths accessways entranceways halls passageways landings staircases (subject to observing any recommended loading restrictions) and SECONDLY together with others so entitled with or without vehicles over the roadways and courtyards forming part of the Development as the same are shown on the Plan
6. A right to use a refuse container in the refuse area within the Common Parts allocated by the Management Company to the Demised Premises
7. A right of way over and a right to use and enjoy the gardens and landscaped areas

Provided all such rights easements privileges and benefits being exercised in common with the landlord and the tenants and occupiers of the other apartments and being subject to and conditional upon the Tenant complying with the Regulations in respect thereof and paying the Service Charge in accordance with the covenants herein contained

THE THIRD SCHEDULE

Exceptions and Reservations

1. The right of free and uninterrupted passage and running of gas electricity water and soil in common (where appropriate) with the Tenant to and from all other parts of the Development or any part or parts thereof through along or from such parts of the Services as are now in under or pass through any part of the Demised Premises and which do not exclusively serve the Demised Premises
2. All such rights of support for all other parts of the Development as are now enjoyed thereby over and from any part or parts of the Demised Premises as are necessary to ensure the full enjoyment of all other parts of the Development

3. So far as the same can subsist as legal rights in the nature of protection from the elements for all other parts of the Development or any part or parts thereof as are now enjoyed by the same
4. The right for the Landlord the Management Company and all persons authorised respectively by the Landlord including the tenants of any part or parts of the Development with or without agents servants workmen and others at all reasonable times and from time to time upon notice (except in case of emergency) to enter into and upon any part of the Demised Premises for the purpose of maintaining repairing or decorating any part or parts of the Development or of inspecting cleansing maintaining repairing renewing and installing so far as may be necessary any such Services as may be in under or over or pass through the Demised Premises and which serve other parts of the Development causing as little disturbance as possible and making good all damage caused
5. The right for the Landlord or the Management Company its surveyors and agents with or without workmen and others at all reasonable times on notice (except in case of emergency) to enter into and upon any part of the Demised Premises for the purpose of enabling it to carry out its obligations hereunder causing as little disturbance as possible and making good all damage caused

THE FOURTH SCHEDULE

Tenant's Covenants

1. To pay the rent hereby reserved at the times and in the manner aforesaid
 - 2.1 To pay the yearly Service Charge which shall for the year ending on the Thirtieth day of September next ensuing after the date hereof be the sum of £711.00 and in respect of each subsequent year such sum as the Management Company or its duly authorised agent shall in respect of any given year by notice in writing served on the Tenant in that behalf specify as the amount of the Service Charge for that year from the First day of October in each year subject as hereinafter provided without any deduction (the first payment being a proportionate part of the amount of such yearly Service Charge calculated from the date hereof) to be paid on the execution hereof
 - 2.2 The contribution under 2.1 above for each year shall be estimated by the Management Company or its duly authorised agent (whose decision shall be final) as soon as practicable after the beginning of each year of the Term and the Tenant shall pay the estimated contribution in four instalments on the First day of April and the First day of July and the First

day of October and the First day of January in every year of the Term by standing order

3. To pay all rates taxes duties charges burdens assessments outgoings and impositions of every description which now are or may hereafter be during the said Term imposed rated taxed charged assessed or made payable upon or in respect of the Demised Premises or any part or parts thereof or any erections thereon or additions thereto or upon the Landlord or the Tenant in respect thereof or partly upon the Demised Premises and partly upon other premises or partly upon the Landlord or the Tenant and partly upon any other person or persons to the extent of the liability which shall fall upon the Demised Premises or upon the Landlord or the Tenant (but not taxes of the freehold reversion or the receipt of rent) the extent of such liability to be determined if not agreed by the Landlord's surveyor for the time being whose fees and expenses shall be paid by the Tenant
4. To pay to the Landlord all costs charges and expenses (including legal costs and fees together with VAT thereon payable to a surveyor) which may be incurred by the Landlord in connection with the recovery of arrears of rent or for the purpose of or incidental to the preparation and service of any notice or proceedings under Section 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court
 - 5.1 At all times during the Term when and as often as need shall require well and substantially to cleanse repair support and uphold the Demised Premises save for such parts as are the responsibility of the Management Company hereunder and it is hereby declared that the generality of this provision shall in no way be restricted by any of the subsequent sub paragraphs of this paragraph
 - 5.2 Once in every five years of the Term and in the last year thereof (whether determined by effluxion of time or in any other way) to paint in a proper and workmanlike manner all the inside wood and iron work usually painted of the Demised Premises with two coats of good paint and so that such internal painting in the last year of the Term shall be of a tint or colour to be approved by the Management Company and also with every such internal painting to whitewash colourwash distemper grain varnish paper and otherwise decorate in a proper and workmanlike manner all such internal parts of the Demised Premises as have been or ought properly to be so treated
 - 5.3 To execute all such works as are or may be under or in pursuance of any Act or Acts of Parliament already or hereafter to be passed be directed or required by the district council local or public authority to be executed at any time during the Term upon or in respect of the Demised Premises

or any part thereof whether by the Landlord or the Tenant thereof

6. At the expiration or sooner determination of the Term quietly to yield up unto the Landlord the Demised Premises in such state of repair and condition as shall in all respects be consistent with a full and due performance by the Tenant of the covenants in that behalf on the part of the Tenant hereinbefore contained
7. To permit the Landlord and the Management Company and their respective agents workmen and others authorised by them at all reasonable times during the Term to enter into and upon the Demised Premises for the purpose of examining the state and condition thereof and of ascertaining whether the covenants on the part of the Tenant herein contained are being duly observed and performed and to repair and make good all defects of which notice in writing shall be given by the landlord or the Management Company (as the case may be) to the Tenant and for which the Tenant may be liable hereunder and if the Tenant shall not within three calendar months after such notice proceed diligently with the execution of such repairs then it shall be lawful for the Landlord or the Management Company (but without prejudice to the right of re-entry hereby conferred on the Landlord or to any other right or remedy of the Landlord or the Management Company) to enter upon the Demised Premises with all necessary workmen and execute such repairs at the expense of the Tenant in accordance with the covenants herein contained notwithstanding that the carrying out of such works in a reasonable and proper manner may cause temporary obstruction annoyance or inconvenience to he Tenant or other occupiers and the costs and expenses thereof shall be a debt due from the Tenant to the Landlord or the Management Company (as the case may be) and be forthwith recoverable by action
8. To indemnify and keep indemnified the Landlord from and against all actions claims costs proceedings and demands whatsoever arising out of the use of the Demised Premises or any part or parts thereof
9. Forthwith to take all steps on his part required to enable the Tenant to become a Member of the Management Company and not to assign this Lease without ensuring that the Assignee takes all steps on the part of the Assignee required to enable the Assignee to become a member in place of the Tenant or outgoing Assignee
10.
 - 10.1 Not at any time during the Term to transfer assign underlet or part with the possession of part only of the Demised Premises
 - 10.2 Not during the last seven years of the Term to transfer assign underlet or part with possession of the Demised Premises without first obtaining the consent in writing of the Landlord

- 10.3 Not at any time during the Term to transfer nor assign the Demised Premises except upon and subject to the condition that the Tenant shall simultaneously with such transfer or assignment apply jointly with the Transferee or Assignee in writing for the transfer of the share of the Tenant in the Management Company from the Tenant to the Transferee or Assignee (such application to be deemed to be irrevocable)
- 10.4 Not to underlet charge mortgage or create any other derivative interest in the Demised Premises which would or might have the effect of enabling the chargee mortgagee or other person to assign the Demised Premises otherwise than in compliance in all respects with the provisions of the foregoing sub paragraph of this paragraph
11. At all times during the continuance of the Term to deliver or cause to be delivered to the Landlord a notice of every assignment disposition or devolution of or charge on or transfer of title to the Demised Premises or any part thereof whether by way of mortgage or otherwise within one month after the execution of any deed or signature to any document or after the date of any Probate Letters of Administration or other instrument or any Order of Court by which such assignment disposition devolution charge or transfer may be effected or evidenced such notice to specify the name address and description of the person or persons to whom or in whose favour the assignment disposition devolution charge or transfer shall be made to take effect and also at the time of delivering every such notice to produce the deed document instrument or order by which such assignment disposition devolution charge or transfer shall purpose to be effected or evidenced as aforesaid for the purpose of having a memorandum thereof entered in the registers to be kept by the Landlord for that purpose and to pay to the Landlord a reasonable fee (not being less than £35.00 plus VAT) for each such registration
- 12.1 Not to make or permit or suffer any structural alterations or additions to the Demised Premises whatsoever and not to cut maim alter or injure the Demised Premises
- 12.2 Not to make or permit or suffer any other alterations or additions except with the prior written consent of the Landlord and the Management Company
13. Forthwith to repair and make good at the Tenant's expense any damage caused to the Common Parts by the Tenant or the Tenant's family employees licensees or visitors or by any other person under the control of the Tenant to the reasonable satisfaction of the Landlord
14. Not to do anything by reason of which any policy of insurance in respect of the Development or any neighbouring or adjoining property may become void or voidable either wholly or in part or which may render any increased or additional premium payable for any such insurance and to pay to the Landlord the cost of

any such increased or additional premium or demand

15. To observe the covenants referred to in the Charges Register of Title Number CE132245 so far as the same are still subsisting undetermined and capable of taking effect and affect the Demised Premises and to indemnify the Landlord against all actions costs claims and demands in respect of any future breach or non-observance thereof
- 16.. If the payment of the rent hereby reserved or the Service Charge or any other sum due from the Tenant to the Landlord or to the Management Company under the provisions of this Schedule is more than thirty days overdue then without prejudice to any other right or remedy of the Landlord and the Management Company the Tenant shall pay interest at the rate of four per centum per annum above the base rate of Allied Irish Bank Plc from time to time ruling or if the same shall become incapable of determination such reasonable rate of interest as the Landlord may from time to time specify in substitution therefore, such rate to apply before as well as after any judgement, on such payment from its due date until actual payment and in making any payment hereunder the Tenant shall not be entitled to make any deduction or set off

THE FIFTH SCHEDULE

Regulations as to User

1. Not to use the Apartment included in the Demised Premises otherwise than as a private residential property
2. Not to do anything on the Demised Premises or the Development which may cause annoyance nuisance damage or inconvenience to the occupiers of the remainder of the Development or any adjoining or neighbouring property or which may prejudice the character or value of the Development as residential apartments
3. Not to use any television radio record disc or tape player or other device for the reproduction of sound or any washing machine spin dryer or other domestic appliance or other apparatus of any kind so as to cause annoyance nuisance or inconvenience to the other occupiers of the Development
4. Not to hold any political religious charitable or other meeting on the Demised Premises or to use the Demised Premises for dancing music or singing lessons or practice
5. Not to display any poster advertisement notice or other writing of any description so as to be visible outside the Demised Premises
6. To keep all windows of the Demised Premises adequately curtained and not to

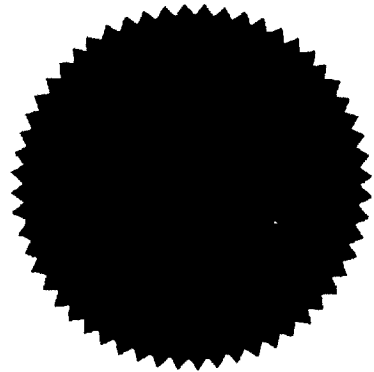
- hang or throw anything out of the windows of the Demised Premises
7. Not to shake any mats or curtains outside the Demised Premises
 8. Not to overload or strain any part of the Demised Premises or the Development or set up any machinery or apparatus thereon other than the usual domestic appliances
 9. To clean all windows in the Demised Premises at least once every month
 10. Not to keep any animal or bird in the Demised Premises other than the normal domestic pets and to control such animals or birds so as not to cause any annoyance nuisance or inconvenience to the other occupiers of the Development
 11. To arrange for the suppression of all electrical equipment used on the Demised Premises so as to prevent interference with radio and television reception in the remainder of the Development
 12. Not to fix any radio or television aerial receiver or satellite dish to the exterior of the Demised Premises or the Development
 13. Not to permit any water or any other damaging structure to escape or overflow from the Demised Premises and to make good or pay compensation for any damage so caused except in so far as any damage is covered by the Management Company's Insurance Policy for the Development
 14. Not to cause any obstruction or damage to the pipes serving the Development
 15. Not to obstruct or leave any article or thing on the Common Parts
 16. When using the Common Parts to do so as quietly as possible and especially between the hours of 11 p.m. and 7 a.m. and not to allow any person or child including the Tenant to loiter or play games in or on the Common Parts or the Development so as to be an annoyance nuisance or inconvenience to the occupiers of the remainder of the Development
 17. Not to permit any laundry to be hung or spread out in any part of the curtilage or grounds of the Development or from any window or balcony or other exterior parts of the Demised Premises so as to be visible from any part of the Development or any adjoining property
 18. Not to park any vehicle on the Common Parts so as to cause obstruction annoyance nuisance or inconvenience to the occupiers of the remainder of the Development and not to park any vehicle on the Common Parts overnight or wash or repair any vehicle on the Commons Parts

19. Not to litter the Common Parts and to deposit all rubbish and litter only in the refuse container provided for that purpose in the refuse area allocated to the Demised Premises pursuant to clause 6 of the Second Schedule hereto
20. The Landlord reserves the right to make such other rules and regulations from time to time (either in addition to or by way of variation or of substitution for these rules and regulations or any of them) as the Landlord may deem necessary or expedient for the management care and cleanliness of the Development or for securing the safety comfort and convenience of the occupiers or visitors to apartments comprised in the Development any such rules and regulations as aforesaid shall be deemed to be incorporated herein
21. Not to use the Parking Space included in the Demised Premises other than for the parking of one private motor vehicle
22. To park quietly in the Parking Space included in the Demised Premises and especially between the hours of 11p.m. and 7a.m.
23. No petrol or other inflammable or explosive substance shall be brought on to the Parking Space comprised in the Demised Premises other than in the petrol tank of a vehicle placed thereon

THE COMMON SEAL of HARTLEPOOL RENAISSANCE LIMITED was hereunto affixed in the presence of:-

Director

Director/Secretary



THE COMMON SEAL of MARINERS POINT (HARTLEPOOL) MANAGEMENT COMPANY LIMITED was hereunto affixed in the presence of:-

Director

Secretary

