

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: 53 Wye Gardens, Fryers Lane, High Wycombe,
Buckinghamshire HP12 3DU

**Applicant
(Landlord):** Wye Gardens Management Company Limited, 5 Priory Road,
High Wycombe, Buckinghamshire HP13 6SE

Applicant's Agent: Leasehold Management Services Ltd, 5 Priory Road, High
Wycombe, Buckinghamshire HP13 6SE

Head Landlord: Michael Shanley Homes Limited

**Respondents
(Tenant):** Mr A Keen

Case number: CAM/11UF/LSC/2006/0009

Application: Application for a determination of the liability to pay service
charges including the reasonableness of service charge (Section 27A
Landlord and Tenant Act 1985) for the financial years ending 24th June
2005 and 24th June 2006

Tribunal: Mr JR Morris (Chairman)
Miss M Krisko BSc (Est Man), BA, FRICS
Mr L Jacobs FRICS

Date of Review: 12th May 2006

Date of Hearing: 18th July 2006

**Attending:
Applicant:** Mr Buller, Leasehold Management Services Ltd
Ms Cross, Leasehold Management Services Ltd
Ms Lilford, Director of Wye Gardens Management Company
Limited

Respondent: Mr Keen

STATEMENT OF REASONS

Preliminary

1. This Application was made following the staying of a claim for arrears of service charges against the Respondent in the High Wycombe County Court Claim No. 5ZA02440 in order for the Applicant to apply to the Leasehold Valuation Tribunal for a determination as to the reasonableness of the service charge.
2. A Preliminary Hearing was held on the 12th May 2006 and Directions were given.

The Application

3. The Applicant applied to the Tribunal on 7th February 2006 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 of the costs incurred by way of service charge for the financial year ending 24th June 2005 and the costs to be incurred by way of service charge for the financial year ending 24th June 2006.

The Law

4. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

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

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.

Section 27A

- 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 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 of the Building and Property

5. The Property is in a block of flats, which are part of a development referred to in the Lease as the Estate. The Estate comprises two Blocks of flats, which are set in grounds laid to gardens and driveways and allocated parking bays. The grounds have security gates and access to the common entrances is via a door entry system. There are bin stores and a bicycle store.

Inspection

6. The Tribunal inspected the Estate on the 12th May 2006 in the presence of the Applicant and the Respondent's Representatives, Ms Lilford, Mr Buller and Ms Cross.
7. The two blocks of flats are of similar construction. They are three story buildings constructed of brick under a tile roof with dormer windows. Over the common entrances there is wood cladding to the upper storeys. There are tarmac drives off which are allocated parking spaces and paved pathways. There is lighting to the drives and pathways. There are gardens laid to shrubs and lawns.
8. The gardens appeared to be in fair condition although some weeds were growing through the grass. The blocks were in good condition having recently been completed.

The Tribunal also inspected the bicycle store and bin store. It was noted that one of the external pillar lights outside the blocks was damaged. There was evidence of considerable parking congestion and the Respondent directed the Tribunal to his parking space and pointed out a car that was parked on the driveway on double yellow lines opposite his parking space.

9. Internally the common areas were carpeted and well lit using a movement detector rather than a time system as a result lights come on during the day. The finish was fair. Heating is by electric heaters. The common parts were metered separately. On the day of inspection one of the internal lights and one of the heaters did not appear to be working. The cleaning did not appear to be carried out very thoroughly and there was dust on some architraves. The window glass was scratched. The Applicant stated that a cherry picker had to be used to clean the windows, as the ground was not suitable for a scaffold tower. Attention was drawn to a door closure system that had had to be repaired and the door still did not close properly. All the flats on the Estate are accessed through the common areas.

The Lease

10. The Applicant is the Managing Company of the Estate and is wholly owned by the tenants. The Company holds the Estate on a long lease from the Head Landlord. The Head Lease between the Head Landlord and the Applicant is for a term of ninety-nine years from the 1st January 2003 at a rent of £1 (if demanded) payable on 25th December each year.
11. A Lease between the Head Landlord, the Applicant (referred to in the Lease as the Association) and the Respondent (the Lessee) demised the Property to the Respondent. Under the terms of the Lease the Respondent agreed to become a member of the Applicant. A copy of the Lease was provided. The Lease is for a term of ninety-nine years from 1st January 2003 at a rent of £300.00 per annum increasing on every twentieth anniversary of the date of commencement in accordance with the Sixth Schedule to the Lease.
12. The First Schedule describes the demise, which includes the use of an exclusive parking space. Under paragraph 26 of the Second Schedule the Respondent has a "Duty to pay to the Association (the Applicant) at the times and in the manner set out in the Fifth Schedule hereto all sums as shall under the provisions of the Schedule be payable in respect of the Demised Premises". The sums set out in the Fifth Schedule are the Association's Maintenance Charge which is a Service Charge within the meaning of the Landlord and Tenant Act 1985.
13. The Fifth Schedule states that the Lease "Maintenance Charge" shall be "equal to one forty ninth... of the aggregate cost to the Association (the Applicant) of:
 - 1.1 Complying with the Association's covenants in this Lease [which are as set out in the Fourth Schedule] and the Association Lease and
 - 1.2 Providing such reserves for future anticipated maintenance as the Association shall from time to time think desirable"The Maintenance Charge shall also cover the cost of the Association (the Applicant) in complying with its covenants including all fee,s charges and expenses payable to a solicitor, accountant, surveyor, agent or architect employed or instructed in connection

with any question arising on the maintenance or management of the Estate and all administration accountancy legal and other costs in carrying on its business.

14. Under paragraph 7 of the Fifth Schedule the Lessee shall pay a sum as determined by the Association on account of the Maintenance Charge. By paragraph 8 “as soon as practicable after the expiration of each year ending on 24 June the Association shall ascertain and certify the amount of the actual Maintenance Charge for the preceding twelve months ...and any balance remaining to be paid by the Lessee after giving credit for the interim payments ...shall be paid...or repaid by the Association...”
15. Under the Fourth Schedule the Association (the Applicant) covenants:
 - To insure
 - To maintain and decorate all the parts of the Estate not demised
 - To keep lit and clean all the common parts
 - To clean the windows
 - To maintain the communal areas of drives, pathways and gardens
 - To maintain the parking spaces
16. Under the Articles of Association of the Applicant responsibility for the maintenance etc of the Estate was to pass from the Head Landlord who developed the Estate to the Applicant on the “ultimate date”. This was established to be the 1st June 2005. From that date the Applicant became liable to comply with the covenants in the Fourth Schedule. Until that date the Head Landlord was, as the developer, responsible for the Estate. It was stated that on that date a sum of money was paid to the Applicant in full and final settlement for any outstanding obligations of the Head Landlord.

Documents

17. The Tribunal received:
 - A copy of the application form
 - A copy of the Lease between the Head Landlord and the Applicant
 - A copy of a Lease between the Head Landlord, the Applicant and another tenant which appears to contain the same covenants as the Lease held by the Respondent.
 - Company Profit and loss accounts and accounts for year ending June 2005 said to be Service Charge Accounts
 - and 2006
 - A copy of Applicant’s Memorandum and Articles of Association

Evidence - Applicant’s case

18. The Applicant’s Representatives submitted the following evidence in written and oral representations.
19. With regard to the payment of the Management Charge the Respondent became liable for the costs incurred by the Head Landlord up to 1st June 2005 and, subsequent to that date, those incurred by the Applicant when he purchased the flat on the 7th April 2004. The Head Landlord’s Agent was Victor Kirby and the Applicant’s Agent is Leasehold Management Services Ltd. Jackson’s Accountants were instructed to prepare actual accounts for the year ending 24th June 2005. Leasehold Management Services Ltd prepared estimated Management Accounts for the year ending 24th June 2006.

20. The Applicant's Representatives stated that the Respondent had refused to pay the Management Charge and the Applicants had therefore sought to obtain a payment through a claim in the County Court which had stayed the action in order for the reasonableness of the charge to be determined by a Leasehold Valuation Tribunal.

Car Parking

21. The Applicant's Representatives submitted that the Respondent's refusal to pay the service charge was mainly because of the problems in relation to car parking on the Estate. They said that he did not appear to challenge the figures but considered that he should not have to make a payment until the parking situation had been resolved. They said the Respondent complains that his designated space is regularly obstructed. The Lease provides that each flat will have a designated parking space and the Third Schedule states that "no motor car...shall be parked or remain stationary except (temporarily) in an approved parking space." The crux of the problem is that the estate provides for one car parking space per flat and many of the flats effectively have two cars and some three. It is estimated that there are well over 60 cars trying to park in the 49 allocated spaces.
22. The Applicants were aware of the car parking problem prior to the ultimate date and on 14th July 2005 the Applicant's Agent, Leasehold Management Services, wrote to the Tenants drawing attention to the car parking provisions in the Lease informing them of the problems and requesting comments. The Respondent did not reply to the letter. As a result of the letter additional parking bays were marked out after which the respondent raised a number of valid issues with the Planning Department and Fire Service which it would have been helpful to have had mentioned in the course of the consultation before the work had been carried out. Due to these concerns the additional parking space scheme was aborted and double yellow lining was undertaken, however this has proved unsuccessful.
23. The Applicants are now considering the wheel clamping and towing away of vehicles which have been parked in a manner that does not comply with the terms of the lease. However there are a number of difficulties to be resolved before this can be introduced.
24. The Applicants submitted that the car-parking situation did not entitle the Respondent to refuse to pay Management Charge. It was also suggested that he might like to take a more active part in the Management Company where he might be able to make an effective contribution to the resolution of some of the problems of the Estate, including car parking.

Reasonableness of Accounts for year ending 24th June 2005

25. The Applicant's Representatives stated that the Landlord's Agent for the year ending 1st January 2005 was Victor Kirby who, in a letter to the Respondent, dated 12th November 2004 said "we are not managing agents and we have no knowledge of the day-to-day affairs of the estate. We act only as accountants and registrars for the company". It was observed that Victor Kirby's role was fairly limited. Nevertheless they arranged for services to be carried out in respect of the Estate and Jackson's

Accountants were instructed to prepare company accounts based upon the invoices and receipts obtained for the year ending 24th June 2005.

26. The Applicant's Representatives produced the Applicant's Profit and Loss Account for the year ending 24th June 2005 by way of a Management Charge/Service Charge Account. The Applicant's Agent stated that there were no long term qualifying Agreements to which section 20 of the Landlord and Tenant Act 1985 applied.
27. The items and total costs charged to the Management Charge were as follows:
- | | |
|-------------------------|--------|
| Sundry expenses | £ 9 |
| Rates and Water | £ 167 |
| Insurance | £4,188 |
| Light and Heat | £1,345 |
| Repairs and Maintenance | £3,171 |
| Fire Alarm Contract | £ 479 |
| Window Cleaning | £1,026 |
| Management Fees | £4,933 |
| Gardening | £2,725 |
| Cleaning | £4,181 |
| Filing Fee | £ 30 |
28. The Tribunal noted that there were two water meters referred to as Bin Store 1 and 2. All the readings for Bin Store 2 were actual readings but only the first account for Bin Store 1 was based on an actual reading the subsequent readings were estimated. The Applicant's Representatives stated that it was not cost effective to have an employee from the Applicant's Agent available to ensure actual readings every time but an attempt would be made to appoint a tenant as a contact to ensure actual readings in the future. However the Applicant's Representatives admitted that they did not know for sure where the meters were situated.
29. The Applicant's Agent stated that the Head Landlord's Agent, Victor Kirby, had obtained basic insurance for the period 7th April 2004 to 7th April 2005. The Landlord's Agent was able to obtain a Norwich Union policy through its broker Residentsline, which it believed to be good value. This is a block policy and operates for an annual period of November to November. Therefore it was necessary to take out a short term policy from 7th April 2005 to 26th November 2005 followed by a full year from 26th November 2005 to 2006 to take advantage of the block rates and cover.
30. The Applicants Representatives stated that they understood that each of the common parts had a separate electricity meter but were not clear as to which account related to which meter. Again as with the water meters they were unsure as to where they were situated. From the accounts it was noted that there were seven accounts, which were described as:
- Plot 1 Meter No. F03C09330 Account No. 76185 36013
 - Plot 2 Meter No. F03C09332 Account No. 36164 36010
 - Plot 3 Meter No. F03C28372 Account No. 98420 46010
 - Landlord's Supply Meter No. F03C28762 Account No. 35790 46019
 - Block 9 – 14 Meter No. F03C17020 Account No. 94528 36018
 - Block 15 - 21 Meter No. F03C28380 Account No. 25216 36014
 - Block 34 – 41 Meter No. F03C17016 Account No. 14908 36010

The Readings for 2005 all appeared to be actual readings and therefore the meter readers were gaining access.

31. The charges for repairs and maintenance predominantly related to the gates and were necessary due primarily to vandalism. The invoices were as follows:
 - Two invoices dated 1st October 2004 and 22nd November 2004 from the Magpie Group for a charge of £891.83 and £1,095.10 was for repairs to the main gates due to vandalism.
 - An invoice dated 15th June 2005 from Promac for £105.73 and an invoice dated 7th June 2005 from Protech for £52.00 were both for repairs due to vandalism to the two smaller pedestrian gates.
32. Other charges included: two invoices dated 1st May 2005 and 7th May 2005 from JSJ Electrical Services for a total of £850.11 for repairing damaged bollards due mainly to vandalism and repairing lights in the common hallways and stairs. An invoice dated 29th April 2005 from BP Bennett Roofing of £35.35 of clearing gutters and an invoice date 10th May 2005 from Verdant of £70.50 for disposal of large items of refuse.
33. There is a service contract for the fire alarm system including detectors, venting and emergency lighting at a cost of £478.40.
34. Initially Haynes Cleaning Services was employed to clean the windows but did not have the equipment (i.e. a cherry picker) to be able to clean the windows on the top floor. The invoice dated 28th October 2004 was for a charge of £380.00. Heaven Cleaning was subsequently employed and they were able to clean the top floor windows at a charge of £646.25 invoiced on the 2nd March 2005.
35. The Management Fees paid to the Applicant's Agent, Leasehold Management Services were based on a unit cost of approximately £100 including VAT. A copy of the Management Agreement was provided.
36. The Gardening was not considered to be very satisfactory and at the end of the contract with the contractor, Rance a tendering process, from which three quotations were received, and as a result of which a new gardener, Gilby's, was appointed.
37. The common areas were cleaned every Friday at a cost of Cleaning £80.00 per week.
38. The Applicant's Representatives submitted that the Maintenance Charge for this year was reasonable.

Reasonableness of Accounts for year ending 24th June 2006

39. The Applicant's Representatives produced a Budget Account for the year ending 24th June 2006 for the Management Charge/Service Charge Account. The actual accounts were still to be produced.
40. The items and total estimated costs charged to the Management Charge were as follows:

Buildings Insurance	£3,511
Terrorism Insurance	£ 541

Directors and Officers Insurance	£ 188
Accountancy Fees	£ 330
Management Fee	£5,758
Health and Safety Policy Documentation	£ 324
Electrical H&S Check	£ 665
General Maintenance	£1,500
Electricity	£2,000
Water	£ 500
Gardening	£4,440
Cleaning	£4,420
Window Cleaning	£1,660
Entry Gate Maintenance	£ 177
Fire and Smoke Alarms	£1,008
Reserve Funds	
External Decoration	£10,000
Internal Decoration	£ 1,500
General Contingency Fund	£ 575

41. In addition a list of invoices and copies of invoices were supplied to demonstrate the work and services and costs to date. These were not considered in detail at the Hearing but general comments were made about the works that had been carried out under each Maintenance Charge item.
42. It was said that the lease authorised the insurances that had been taken out and the premiums were being paid by monthly instalments. The budget for Accountancy Fees was in fact the actual amount paid for the previous year's services. The Management Fee was also likely to be the actual amount, which would be paid. The Management Fee was based upon a unit charge with a small increase on the previous year.
43. It was stated that the Health and Safety Policy Documentation and Electrical Health and Safety Check were statutory requirements and the estimated amounts were the actual charges.
44. General Maintenance and maintenance of the Entry Gate System were separate items in the Maintenance Charge Budget. With regard to general maintenance a number of invoices were provided showing work that had been carried out. An examination of the invoices revealed that a number of large items of refuse were being left in the bin stores, e.g. wardrobes, and the cost of their removal was in excess of £150.00. It had been found necessary to power wash the bins in the bin store as a precaution against vermin and invoices to Wheelie Clean (Seahawk) had amounted to £371.00.
45. Two substantial items of expenditure had been the maintenance and repair of lighting and doors including the closures, locks and door entry system. According to the list that had been supplied of invoices paid to date the fitting of lights in the bin stores and repairing and replacing stair well lamps and external lamps in the common parts by JSJ Electrics had cost over £500 and by Suttons had cost £780.

46. Suttons had also been employed to carry out work on the door closures and the invoices relating to an overhaul of these in November had totalled £500. Ronald Bray had carried out work on the closures, locks and doors and these invoices had totalled £614. A new front door had been fitted to one of the blocks at a cost of £658.20. Protech and Promac had carried out maintenance work on the door entry system at a cost of £111.62. Ronald Bray had also installed bollards for £293.00.
47. The expenditure to date on this Maintenance Charge item was calculated to be £5,379.99 and therefore the budget of £1,500 was a substantial underestimate. The costing the previous year had been £3,171 however the Applicant's Agent had anticipated that the cost of this item would have reduced after the first year or so.
48. The Entry Gate Maintenance item was budgeted at £177 and expenditure to date was noted as being £180.76. In fact the entry gate had been damaged due to vandalism but the cost of the repair of over £1,579.91 had been off set by an insurance payment of £1504.91.
49. It was accepted that many of the electricity accounts were based upon estimates and that the demands were likely to exceed the budgeted amount of £2,000 by about £500.
50. The water charge was likely to be an overestimation based upon the previous year but a sum of £500 was said to be a prudent amount to set aside.
51. The tenants had expressed dissatisfaction with the gardening and the gardeners had been changed from Rance Landscapes to Gilby's Gardens who the Applicant's Representatives considered to be providing an improved service. The Applicant's Agent stated that a proper tendering process had been undertaken for the year's contract.
52. The cleaning contract remained with 3C but window cleaning was with Ideal Solutions for the year. Again a tendering process had been undertaken. The budget was based upon the contract prices obtained.
53. The Service Contract for the Fire and Smoke Alarms is £479.00, as for last year, however there were a number of additional invoices due to problems with the emergency lighting. JSJ Electrics carried out the work to the emergency lighting at a cost of £1,203.20. This together with other maintenance work on the emergency lighting brought the expenditure to date to £2,420.14, which was well in excess of the budget of £1,008.
54. The amounts allocated to the reserve were considered to be a prudent measure and were said to be permitted by paragraph 1.2 of the Fifth Schedule of the Lease. The Applicant's Agent stated that external redecoration was anticipated and referred to two quotations of £24,035 and £29,900. The relatively large sum included in the Maintenance Charge was because there is currently no reserve and it is necessary to build up a sum for contingencies.
55. The Applicant's Representatives referred to the cost of £1,374.17 for white and yellow lining, to reinforce their claim that attempts to solve the car parking problems were

being made. In addition they stated the cost might have been limited to only painting the double yellow lines if the Respondent had taken part in the consultation process prior to the marking of additional bays.

56. The Applicant's Representatives stated that the costs of the proceedings before the Leasehold Valuation Tribunal and the legal costs in connection with the Court Proceedings had been substantial and it had been hoped that the tenant could be made liable for these. However it was noted that the Directions had stated that under the Lease the Respondent could not be made liable for the cost of applying to the Leasehold Valuation Tribunal to the exclusion of other tenants.

Evidence - Respondent's Case

57. The Respondent submitted the following evidence in written and oral representations.
58. In written representations the Respondent questioned the purpose of the Application and said that he was withholding payment of the service charge due to a breach of covenant relating to the landlord's failure to provide services or provide services to a reasonable standard. In particular the Respondent stated that he was withholding payment due to the failure of the Applicant to provide a properly managed car park.
59. In addition he made the following comments:
- **Cleaning:** The hallways and other common areas have neither been cleaned regularly nor thoroughly. The carpet, walls and paintwork are dirty and several areas of plaster are chipped. There are also insects in the hallways.
 - **Window Cleaning:** The windows have only been cleaned twice in 24 months. The balcony has never been cleaned nor has the outside of any window frame.
 - **Domestic Waste Collection:** There are too few bins and are only emptied once a week.
 - **Security:** The security gates have been out of action for about 6 weeks in the Autumn of 2004 and 3 to 4 weeks during December 2005 to January 2006.
 - **Maintenance:** The light on the Respondent's landing did not work for 6 weeks and the same light was again out of action from the end of July 2005. The door closers were removed in April 2005 and the doors did not close properly. One of the external bollard lights was not properly fixed to the ground and was left in the pathway. It was eventually fixed in January 2005 some 11 months after the Respondent first saw it when he moved in.
 - **Gardening:** The gardens are generally untidy with litter and leaves strewn around.
60. The Respondent went into considerable detail in written representations regarding the size and position of the parking bays. However this is a matter in relation to which the Tribunal does not have jurisdiction.

61. The Respondent also went into some detail regarding the conduct of the claim and enforcement for non-payment of the Maintenance Charge in the County Court. This is also not a matter for the present proceedings.
62. The Respondent stated that he considered the increase in charges to £402 from June 2005 was unreasonable and could not be justified as it was an uplift of 78% over 15 months since he bought the property. Following the previous demand of £225.00 per half year in 2004 monies were returned to the leaseholders. Since Leasehold Management Services have become involved services have declined.
63. He went on to make a number of observations in respect of the Applicant's case as follows:
- Sums are claimed for contingencies in 2006 to 2008. It was submitted that he should not be charged for maintenance that may be necessary in future years as he may not live that long or may move elsewhere.
 - The management company are claiming additional sums for exceptional items outside periodic maintenance. But these should be covered in the contingencies referred to above.
 - The excessive and dangerous parking on the site may invalidate fire insurance for the buildings. Therefore by not controlling the parking the management company are neglecting safety.
 - The excess parking may breach other safety regulations.
 - The terrorist insurance would probably not pay out because security on the site is so poor.
64. The Respondent appeared to appreciate that the parking was not directly a matter that the Tribunal could deal with however he contended that the Agent's failure to control the situation showed poor management. He submitted that they had done little to solve the problems and when they had attempted to do so they compounded the difficulties by being in contravention of planning and fire safety and health and safety law.

Determination

Car Parking as a Reflection of Management

65. The Tribunal found on its inspection that car parking was a considerable problem. It also found that the Applicant and its Agent had sought to resolve the matter by involving the tenants of the Estate and creating additional spaces, although in the event this was in contravention of planning and fire safety regulations. Action had also been taken by the use of yellow lines to control parking but this had proved ineffective. The Tribunal considered that the Applicant might well have to impose clamping and towing away although it was appreciated that this would have to be done through the Applicant's in General Meeting. The Tribunal determined that the standard of the management was reasonable in this respect.

Reasonableness of Accounts for year ending 24th June 2005

66. Although the Tribunal accepted that every leaseholder was member of the company and therefore would receive the company accounts nevertheless, for the sake of clarity and compliance with the Landlord and Tenant Act 1985, the Applicant should produce

a service charge account for the Maintenance Charge setting out the total service charges for each item and the tenant's share and that such service charge should be certified according to the Lease and the legislation.

67. The Tribunal considered the items of the Maintenance Charge in turn. The sums of £9 for Sundry expenses and £30 for filing the company accounts were not in issue.
68. The Tribunal determined that the cost for water of £167 in this year's account is reasonable and the appropriate proportion of the cost payable by the Respondent subject to the situation of the water meters being ascertained and actual readings being taken in order that a figure that reflects the actual cost is included in the accounts drawn up at the end of the financial year for 2006 and each subsequent year and from which any balancing payment will be calculated.
69. The Tribunal noted that the Applicant's Agent had obtained insurance on the open market through its broker Residentsline and therefore determined that the insurance premium of £4,188 was reasonable and the appropriate proportion of that cost payable by the Respondent.
70. As in relation to the charge for the water referred to above the Tribunal determined that the cost for electricity of £1,345 in this year's account is reasonable and the appropriate proportion of the cost payable by the Respondent. However this is subject to the situation of the electricity meters and the respective accounts being ascertained. Actual readings should also be taken in order that a figure that reflects the actual cost of the electricity is included in the accounts drawn up at the end of each financial year and from which any balancing payment will be calculated.
71. The Tribunal considered the invoices presented for the item of Repairs and Maintenance in the Maintenance Charge and in the absence of any evidence to the contrary determined that the works described and costs incurred of £3,171 were reasonable and the appropriate proportion of that cost payable by the Respondent.
72. The Tribunal determined that in the absence of any evidence to the contrary the service contract for the fire alarm system including detectors, venting and emergency lighting of £479 to be reasonable and the appropriate proportion of that cost payable by the Respondent.
73. The Tribunal considered that the window cleaning was poor. It was noted that Haynes Cleaning Services had not cleaned the top floor windows. The cost of £380 had been spread amongst 49 tenants each paying £7.75. The Tribunal determined this to be unreasonable and that the Respondent's contribution of £7.75 was not payable. The Tribunal determined that the charge of £646.25 for window cleaning by Heaven Cleaning was reasonable and the appropriate proportion of that cost payable by the Respondent.
74. The Tribunal considered in its knowledge and experience that a Management Fee of £100 per unit for a development of this kind was reasonable for the work done. The Tribunal therefore determined that the Management Fees of £4,933 were reasonable and the appropriate proportion of that cost payable by the Respondent.

75. Although the Tribunal found that the current standard of gardening, i.e. for 2005, was not good nevertheless it had heard from the Applicant's Representatives that this was an improvement on the previous year i.e. 2004. It was noted that a charge of £145 per visit had been made for the year ending 14th June 2004. The Tribunal was of the opinion that in its knowledge and experience taking into account the area and level of maintenance that was required following landscaping of the site only a year or so before this charge, which totalled £2,725 for the year was excessive. The Tribunal determined that a reasonable charge for the years ending 24th June 2004 was £1,362.50 and the appropriate proportion of the cost payable by the Respondent.
76. The Tribunal considered that the cleaning was not of a very high standard. It was noted that the total charge was £4,181, which equated to £11.50 per week for each of the seven entrance halls, stairways and landings. The Tribunal considered that at this cost the cleaners could not spend very much time carrying out the work and therefore this was a reasonable charge for the work done and the appropriate proportion of the total cost was payable by the Respondent.

Reasonableness of Accounts for year ending 24th June 2005

77. It was found that the lease authorised the insurances that had been taken out. As with the previous year the Tribunal noted that the Applicant's Agent had obtained insurance on the open market through its broker Residentsline and therefore having taken into account the cost of the insurance of £4,188 for the previous year determined that the estimated insurance premium of £4,240 to be reasonable and the appropriate proportion of that cost payable by the Respondent.
78. The Tribunal determined that in its knowledge and experience the Accountancy Fees of £330 were reasonable and the appropriate proportion of that cost payable by the Respondent
79. The Tribunal determined that in its knowledge and experience the Management Fee of £117 per unit for this development was reasonable for this year and the appropriate proportion of that cost payable by the Respondent.
80. The Tribunal find that any Health and Safety Documentation should be a part of the Management Charge. No evidence was adduced that either the Health and Safety Documentation or the Electrical Health and Safety Check were statutory requirements which must be undertaken and for which a charge would be justified. The Tribunal did not consider these items reasonable and therefore the appropriate proportion of £324 and £665 are not payable by the Respondent.
81. The Tribunal understood that the Applicant's Agents believed that the site would "settle down" and that the item of General Maintenance would reduce especially with the maintenance of the entry gate system being a separate item. However it is apparent from the invoices for the work so far that £1,500 is an under estimation and will lead to a substantial balancing payment being demanded. However this opinion is formed with the benefit of hindsight and it is determined that at the time the budget was demanded the sum estimated was reasonable and the appropriate proportion of that cost payable by the Respondent.

82. The Tribunal determined that the estimated cost of water at £500 and electricity at £2,000 are reasonable and the appropriate proportion of that cost payable by the Respondent. However this is subject to actual readings being taken in order that a figure that reflects the actual cost is included in the accounts drawn up at the end of each financial year from which any balancing payment can be calculated.
83. The Tribunal determines that the estimated cost of the gardening by the new contractor of £4,440 to be reasonable and the appropriate proportion of that cost payable by the Respondent.
84. The Tribunal, taking into account the previous years cost of £4,081, determines that the estimated cost of the cleaning of £4,420 to be reasonable and the appropriate proportion of that cost payable by the Respondent.
85. The Tribunal took into account the invoice of £646.25 for window cleaning by Heaven Cleaning which included the top floor and determined that the budget of £1,660 for window cleaning to be reasonable and the appropriate proportion of that cost payable by the Respondent.
86. The item of Entry Gate Maintenance of £177 is determined as reasonable for these proceedings and the appropriate proportion of that cost payable by the Respondent.
87. The Tribunal noted the cost of the Service Contract for the Fire and Smoke Alarms in the previous year as £479.00 but appreciated that in budgeting a cost of £1,008 the Applicant's Agent was allowing for additional costs of maintenance. In the event it appears this was an underestimate as actual costs on this item to date are in the region of £2,420.14. The Tribunal determines that the budgeted cost of £1,008 to be reasonable and the appropriate proportion of that cost payable by the Respondent.
88. The Tribunal found that the reserve was permitted under the Lease and was prudent as was shown by the reference by the Applicant's Agent to the anticipated External Redecorations for which quotations have been received of £24,035 and £29,900. The Tribunal considered the amounts budgeted to be reasonable and the appropriate proportion of that cost payable by the Respondent for each of the funds of:

External Decoration	£10,000
Internal Decoration	£ 1,500
General Contingency Fund	£ 575

Respondent's Comments

89. In relation to the comments by the Respondent the Tribunal noted that there had been problems with the door closure, the lights and the security gates but found that these matters were being dealt with as evidenced by the invoices for works being carried out. The issues of cleaning of the common parts, window cleaning, gardening and the reserve funds have been addressed in this Statement of Reasons. The determinations that the estimated amounts are reasonable does not preclude either a landlord, management company or leaseholder from applying to a leasehold valuation tribunal for a determination as to the reasonableness of the actual sums or standard of work.

Observation by Tribunal

90. The Tribunal noted that Ms Lilford appeared to be the sole Director of Wye Gardens Management Company Limited and as such was obliged to handle the management of the Estate herself. The Tribunal were concerned that if Ms Lilford should assign her Lease and other tenants/members of the company were not prepared to involve themselves in the administration of the Estate then the company in general meeting would need to consider the appointment of a managing agent who would undertake that role.


JR Morris Chairman