

Property	Lea Cliff Park Dawlish Warren Devon EX17 3AW
Applicant:	Lea Cliff Park Residents Association
Respondents:	Carr & Madge Ltd
Case Number:	CHI/18UH/LSC/2006/0044
Applications:	Application to determine the reasonableness of service charges levied by the Respondent in the years 2000-2005; to include whether a management fee can be charged Application to determine reasonableness of future service charge 2006 Application for the Tribunal to consider whether a "sinking fund" is allowed by the Lease Application to debar the Respondent's from adding their costs to the service charge
Tribunal:	Kay Firth-Butterfield, Lawyer chair Tim Shobbrook FRICS, Valuer member
Date of Hearing:	28 th September 2006

DECISION

Introduction

1. The Applications before the Tribunal were:
 - a. A determination under s27A of the Landlord and Tenant Act 1985 as to whether the Applicant's have or had a liability to pay service charge levied since 2000 and future liability.
 - b. A determination under s20C of the Landlord and Tenant Act 1985 as to whether the Landlord can charge his costs of the Tribunal in the service charge.

The Property

The Tribunal inspected the property. We were shown around by Mr Peter Griffin (Chair Resident's Association); Mr John Aspinwall (Treasurer Resident's Association); Mrs P Parmigiani; the new Lessor; Mrs D O Carr of the Respondent's and Mr M Moore FCA, the Respondent's accountant. We inspected the blocks and site from the outside. The Tribunal only had a lease for Block B. Upon the request of the Tribunal leases for the blocks C and A were obtained and copied for us. As we carried out the inspection various matters were discussed in front of all the parties mentioned.

The matters discussed which have played a part of our decision are:

- a. We were told that the terms of the leases are different. Having considered the leases we find that the schedules dealing with service charges in the leases of Block B and C are the same whereas the schedule is different in the lease for Block A.
- b. Mr Moore explained that he had seen the invoices for the expenditure he had included in the Income/Expense sheets he had provided to us.
- c. Mr Moore admitted that there is no provision in the lease to allow a management charge to be levied
- d. Mr Moore admitted that levy of the service charge which he had raised was never in accordance with the Leases because it didn't seem fair to the Respondent's

Summary of Facts

The site comprises 3 blocks of flats now let on long leases TOGETHER WITH communal gardens, car parking facility, reception block, laundry and storage block which are the subject of the issues before the Tribunal and also comprises 14 Chalets and freeholders dwelling house which are retained by the lessor. Until February 2005 12 mobile homes were also included within the site. These were owned and operated by the Respondents but sold in about February 2005.

The Respondent's sold the site in question to the new owner, Mrs Parmigiani with completion taking place on 21 July 2006.

The evidence is that the Respondents operated the site as a whole for services, groundkeeping, maintenance and repair. At their discretion Mr Moore allotted different expended sums to the flats which had been sold. The flats were sold in the following manner. First Block A (j1-5/k1-5/l1-3), then Block B (K 6-16 without a number 13) and finally Block C (F1-4/H1-2/G1-4). Although sold last Block C is the oldest building of the three blocks.

All residents, regardless of their lease have the use of the on-site laundry.

The terms of the leases of the Applicants are capable of circumscription by ss19 and 27A of the Landlord and Tenant Act 1985. Thus the service charge is only recoverable if it is reasonably incurred in whole or in part.

The Hearing

The Tribunal considered prior written submissions only given the fact that the parties had agreed at the outset that the Tribunal would deal with this case on

the paper track basis of written representations and documents only without a formal hearing.

Decision

a. Sinking Fund

Having seen the Leases (Para 9, Part 1 of the 6th Schedule) it is clear that a Sinking Fund can be set up through the Service Charge.

We find that the Applicant's sum which it proposes for the year ended March 2006 and the preceding 5 years are reasonable and thus payable by the Lessees.

b. Consultation requirement

There is no evidence of compliance with CLARA or the Landlord and Tenant Act by the Respondents and so the Tribunal sets out below (The Schedule) the Charges which it approves as reasonable for the items and years in question. The Parties will have to calculate, according to the Leases, the actual amount Applicants should have paid, individually, based upon our permitted sums.

We make the following comments:

- i. It is impossible to discover which block received the benefit of which services. We determine, therefore, that it is equitable to divide the charges equally between each Lessee from year to year.
- ii. In future division must be in accordance with the Leases
- iii. We allow an Accountants fee under Part 1 Para 8 Sch 7. Although the actual calculation was incorrect we do accept that invoices were appropriated between the Respondent's costs for their part of the site and those of the Flats
- iv. In future a copy of the insurance for the flats and copies of the audited accounts must be made available to the Lessees
- v. We have used our expert knowledge as a Tribunal to allow or not allow or award the sums set out in The Schedule below.
- vi. The Lease does not allow a Management Charge nor any Bank Charges to be levied.

c. There has been a fundamental breach of the Leases in this case and we find in favour of the Applicants.

THE SCHEDULE

Service Charge Account for Year Ended 30.09.00

Expenditure:

Roofing	2115.00	Allowed
General Repairs	1593.17	Allowed
Trago Mills Tools etc	1608.39	Allowed
Tractor Repairs and Rentals	92.66	Allowed
Management charges	2300.00	Not Allowed

Bank Charges	37.82	Not Allowed
Insurance Premium	1380.00	Allowed
Water Rates	1751.68	Allowed
Cleaning and Sundry	113.27	Allowed
(Accountants fee	300.00	Awarded)

The provision for ongoing Maintenance	1200.00	Allowed
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Service Charge Account for the Year Ended 30.09.01

Expenditure:

Re-surfacing	3384.00	Allowed
Line Marking	352.50	Allowed
General Repairs	2577.94	Allowed
Trago, Tools, Repairs etc	1001.31	Allowed
Tractor Rental	58.75	Allowed
Management fees	2300.00	Not Allowed
Bank Charges	66.74	Not Allowed
Insurance Premium	1380.00	Allowed
Water rates	2009.98	Allowed
TV Aerial	239.23	Allowed
Cleaning & Sundry	176.87	Allowed
(Accountants fee	325.00	Awarded)

Service Charge Account for Year Ending 30.09.02

Concrete and Cement	654.36	Allowed
Flat Roof	3492.10	Allowed
Fencing	210.54	Allowed
Garden	72.48	Allowed
General repairs	837.39	Allowed
Tractor Repairs	58.75	Allowed
Bank Charges	79.40	Not Allowed
Insurance Premium	1380.00	Allowed
Water rates	1959.18	Allowed
Aerials	575.66	Allowed
Management Charges	3450.00	Not Allowed
Cleaning and Sundry	200.00	Awarded (not £732.29)
Waste Collection	58.75	Allowed
Stationary	73.98	Not Allowed
(Accountant's Fee	350.00	Awarded)

Service Charge Account for Year Ending 30.09.03

Fencing	84.84	Allowed
Plumbing	87.63	Allowed
Cement	307.94	Allowed
Window Repair	196.97	Allowed

General Repairs	743.00	Allowed
Garden	196.19	Allowed
Felling Trees	1000.00	Allowed
Water Rates	2700.00	Awarded (not £3675.02)
Bank Charges	77.27	Not allowed
Tractor Rental	58.75	Allowed
Aerials	387.74	Allowed
Management Charges	3450.00	Not Allowed
Insurance Premium	4600.00	Allowed
Cleaning and Sundry	47.00	Allowed
Stationary	50.61	Not Allowed
Wages	800.00	Not Allowed
(Accountants Fee	375.00	Awarded)

Service Charge Account for the Year Ending 30.09.04

Water Rates	2736.49	Allowed
Property Repairs	1240.88	Allowed
General Repairs	635.32	Allowed
Bank Charges	70.22	Not Allowed
Cleaning	279.34	Allowed
Tractor Rental	58.75	Allowed
Wages	200.00	Allowed
Management Charges	7500.00	Not Allowed
Insurance	4500.00	Awarded (not £6000)
Electricity	673.00	Allowed
Tsfr Fees in advance	450.00	Not Allowed
Accountants Fees	400.00	Awarded

Service Charge Account For Year Ended 30.09.05

Water rates	3871.97	Allowed
Property Repairs	4892.93	Allowed
General Repairs	1122.40	Allowed
Bank Charges	91.11	Not Allowed
Cleaning	51.41	Allowed
Tractor Rental	58.75	Allowed
Wages	1000.00	Allowed
Management charges	8250.00	Not Allowed
Insurance	4800.00	Awarded (Not £7729.31)
Electricity	542.00	Allowed
(Accountants fees	425.00	Awarded)

Dated 13.10.06

Signed

Kay Firth-Butterfield

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Respondents:	Carr & Madge Ltd
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Tribunal:	Kay Firth-Butterfield, Lawyer chair Tim Shobbrook FRICS, Valuer member

Date of Hearing: 28th September 2006

DECISION

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Electricity	542.00	Allowed
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Dated 13.10.06

Signed

K. L. Puthuraj

Property	Lee Cliff Park Dawlish Warren Devon EX7 0NE
Applicant:	Carr & Madge Ltd
Respondents:	Lee Cliff Park Residents Association
Case Number:	CHI/18UH/LSC/2006/0044
Application:	Permission to Appeal the Decision of this Tribunal dated 1 st November 2006

The Application

This is an application to Appeal the Decision of the Tribunal dated 01.11.06. The Applicant puts its request for permission in the following manner:

- a. The Tribunal was not fully informed of full justification for expenses included within the service charge
- b. There appears to have been considerable mis-understanding with regard to the proceedings and particularly that no response was given to the statement of case set out by the Lee Cliff Residents Association forwarded to the Tribunal on 13th July 2006.
- c. It was not clear, before hearing on 28th September 2006, that the case was to be determined, on a paper track, without a hearing. This meant that no full response had been entered and there was no opportunity to give a full response at the site meeting.
- d. The directors failed to understand the implications between a formal hearing and a paper determination due to the fact that they were in the midst of a matrimonial dispute leading to divorce proceedings and were also in the course of selling their business. As a result no instructions were given to their accountants or solicitors to respond to the points in the case
- e. There is a specific appeal against the amounts dis-allowed in the computation of the service charge in the 6 years to the 30th September 2005.

Respondent's Reply

In a letter to the Tribunal Ms O'Connor makes the following reply, opposing the Appeal

- i. All parties were informed at the initial stages that the application would be dealt with on a paper track basis. There was the opportunity to object at the very beginning. Ms O'Connor said that she, as a lay person, understood the proceedings and, therefore, cannot accept that the respondents, along with their Accountants, failed to understand.

ii. The argument that the Landlords were in the midst of divorce proceedings should not be taken into account as, despite these divorce proceedings, they were able to finalise the sale of their house, business, and the freehold of our flats and to issue service charge bills to the residents on time.

iii. The respondents paid to the new landlord a sum of £6,401 which amounted to a proportionate amount of the ground rent and service charges e.g. 72 days for the period 21st July to 30th September. This indicates that no proper accounting has ever been carried out that they simply charge an amount each year and keep whatever is left, regardless of what has been spent out. The new landlord has stated that she will now have to find income from another source to finance the rental part of the site.

iv. The Applicant's Accountants had also written to the Respondent's Solicitors stating that they do not accept any liability for these charges. The company, Carr & Madge Ltd is no longer actively trading. If the Tribunal can make provision to state that the directors of Carr & Madge Ltd should be held liable for any amounts owed to the residents, this would be appreciated.

v. If an appeal is allowed to go ahead, the Respondents' ask that a full inspection of the accounts is carried out as they suspect that many more items that have been allowed by the Tribunal could be shown to be excessive and not applicable to the buildings e.g. roofing in 2000.

Decision

As to Point a.

The Tribunal had the following papers:

- i. Application
- ii. Lease (2 others handed to us on the day)
- iii. Directions Order dated 26 May 06
- iv. Letter 25 May 06 from Ms O'Connor (Secretary of Residents' Association)
- v. Letter 05 June 06 from Thomas Westcott (Applicant's Accountants). This enclosed "Notes on Service Charge Account", "Copy Site Plan" Certified Accounts for years 2000-2005.
- vi. Letter 18.09.06 from Ms O'Connor
- vii. Copy of letter to Ms Parmigiani dated 26 June 06 from Ms O'Connor
- viii. Copy letter to the Applicant's dated 26th June 06 from Ms O'Connor
- ix. Copy letter to Tribunal from Ms O'Connor dated 13 July 2006
- x. Copy letter Ms O'Connor to Carr and Madge with Statement of Case dated 13 July 06
- xi. Further Directions Order 29th June 06.

At the Inspection the Applicant was represented by Mrs Carr who was accompanied by her Accountant, Mr Moore. All the parties were given ample

time to show us around the site and to point out any matters to us. At the end of the Inspection, Mr Moore was given ample opportunity to make representations for the Appellant, which he did; the important parts of those submissions are recorded in our Decision.

The Chairman asked both parties if they required an oral hearing, indeed, unusually she asked if anyone wanted evidence given on oath, as Mr Moore had given so much information. The Lessees were given the opportunity to ask Mr Moore questions. Both parties declined the offer of an oral hearing.

It is not a valid point of Appeal that the Hearing was conducted on the basis of written representations because

- a. The Directions Order of 26th May 2006 clearly stated it would be unless either party objects (they did not)
- b. In the circumstances it is not for the Tribunal to insist upon an Oral Hearing especially when, given the opportunity of such a hearing, even on the day of the Inspection, neither Party requested the same.
- c. It is clear that the Applicants were advised both by their Accountants and Solicitors at the time of the Directions Order. (see Point b below)

Point b.

It is clear that the Residents' Association had written to the Solicitors acting for the Applicants (See their Statement of Case 13th July 2006). The letter was dated 08.05.06.

It is also clear that the Accountant for the Applicant set out their view of the Service Charge Account in their enclosure to their letter of 05.06.06.

It is not a valid point of Appeal that the Applicant did not understand the difference between paper determination and hearing. They were, according to the evidence before us at the time, advised by both Accountant and Solicitor. It was open to them to take advice.

Point c.

This point cannot be made out on the evidence before the Tribunal. See Points a and b above.

Point d.

This is not a valid point of Appeal. There is clear evidence that the Applicants had both Solicitors and Accountants at some stage during the Application.

Point e.

The Applicants do not specify against what items they appeal and so a proper determination cannot be made. However it is noted that the Applicants had

been breaching the terms of the Lease throughout the period in respect of charging to the service charge account

- a. The Bank interest
- b. Management charges

This was specifically admitted by the Applicant's accountant at the site inspection when they said that because initially only a few flats had been sold they assessed the service charges and apportioned the charges not in accordance with the lease. As the Applicants has had the leases drawn up in order to sell the units this mode of charging seemed to the Tribunal extraordinary. In fact these charges were the principle ones disallowed by the Tribunal.

Permission to Appeal is not allowed

Kay Firth-Butterfield
Chairman

24.11.06