

**EASTERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**CAM/22UD/LSC/2006/0035**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT  
1985.**

<b>Applicant:</b>	<b>Mr David G Knight</b>
<b>Respondent:</b>	<b>Thorndon Hall Management Company Limited</b>
<b>Property:</b>	<b>59, West Quadrant, Thorndon Hall, Thorndon Park, Brentwood, Essex CM13 3RJ</b>
<b>Date of Application:</b>	<b>17<sup>th</sup> July 2006</b>
<b>Date of Hearing:</b>	<b>3<sup>rd</sup> November 2006</b>
<b>Venue:</b>	<b>Weald Park Hotel &amp; Country Club, Coxtie Green Road, South Weald, Brentwood, Essex CM14 5RJ</b>
<b>Appearances for Applicant:</b>	<b>Mr David Knight</b>
<b>Appearances for Respondent:</b>	<b>Mr J M R Alty FRICS MCI Arb, Kemsley Whiteley &amp; Ferris – Managing Agents Mr R Sepkes, Director</b>
<b>Also in Attendance:</b>	<b>None</b>
<b>Date of Decision:</b>	<b>14<sup>th</sup> December 2006</b>
<b>Members of the Tribunal:</b>	<b>Mr John Hewitt     Chairman Mr Frank James     FRICS Ms Cheryl St Clair   MBE MA</b>

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**DECISION**

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**Decision**

1. The decision of the Tribunal is that:

- 1.1 The service charges payable by the Applicant for the years 2000 – 2005 inclusive are to be calculated by reference to the certified accounts for those years.
    - 1.2 The budget for the year 2006 is a reasonable budget (including the provisions for transfer to the sinking fund) and the payments on account to be made by the Applicant shall be calculated by reference to it.
    - 1.3 No order shall be made on the Applicant's application under s20C of the Act.
  2. The findings of the Tribunal and the reasons for its decision are set out below.
- NB** Prior to the hearing the Tribunal was provided with a trial bundle which was, for the most part, page numbered. Later reference in this decision to a number in square brackets ([ ]) is a reference to the page number of the trial bundle.

### **Background**

3. The Applicant has made an application dated 17<sup>th</sup> July 2006 pursuant to s27A of the Act [1-13]. The Applicant has also made a related application under s20C of the Act in connection with the Respondent's costs of these proceedings.
4. The Applicant is the lessee by assignment of the Property which is a two bed-roomed apartment in a development known as Thorndon Hall which is a listed building.
5. The lease of the Property is dated 16<sup>th</sup> March 1990 and was granted by Thomas Bates and Son Limited as the Lessor, the Respondent as the Management Company and Ford Motor Company as the Lessee for a term of 125 years from 1<sup>st</sup> February 1980 at the ground rents therein set out and on other terms and conditions therein contained.

6. By clause 5 of the lease the Lessee covenanted with the Management Company to contribute to the costs and expenses referred to in the Fourth Schedule. By clause 7 the Management Company covenanted with the Lessee to insure the development and to repair and redecorate and provide services as therein set out. Each lessee is a member of the Management Company which appoints the directors and thus the lessees as a body control the development.
7. The Lessee's contributions to the cost of insurance and the provision of services are service charges within the meaning of s18 of the Act.
8. Directions were duly given and have been complied with [12-16]. The application came on for hearing on 3<sup>rd</sup> November 2006. The Applicant (Mr Knight) appeared in person and represented himself. The Respondent (the Company) was represented by Mr Alty of Kemsley Whiteley and Ferris (KWF), managing agents retained by the Company and Mr R Sepkes, a director of the Company and currently the chairman of the board. Immediately prior to the hearing the Tribunal was able to visit Thorndon Hall in the company of Mr Knight and inspected his apartment and those parts of the grounds and common parts relevant to the application. The Company had been invited to have representatives at the inspection but declined to send anyone along.

### **Opening Statements**

9. Each party was invited to make a short opening statement to set out the gist of the case they wished to advance and so that we could all be clear as to the issues the Tribunal needed to determine.
10. Mr Knight said that he had been a resident at Thorndon Hall for 10 years and the service charges had risen dramatically. He said this had affected adversely the prospects of him selling his apartment. He explained that he had been a director of the Company for a while and when on the board he had tried to reduce costs. He had three main

complaints about the unfairness of some of the service charges levied on him:

Cleaning of common parts: His apartment is accessed directly from the parking area and he does not have the use or right of use of any common parts

Lifts maintenance and insurance: His apartment is on the ground floor and does not enjoy a lift service and he does not have the right to use the other lifts which are situated in the main part of the building

Door-entry system: His apartment is accessed directly from the parking area and he is outside of the main buildings and so does not enjoy or have the use of the door-entry systems

Mr Knight made clear that he had no issue with the amount of the costs incurred on these items; his case was that he should not be obliged to contribute to the costs incurred because he cannot and does not use or enjoy the services provided.

11. Mr Knight explained that the development was divided into three main cost centres. The Main Hall, The Pavilions (East and West) and The Cottages. The Main Hall and the two Pavilions enjoy common parts, lifts and door-entry systems. Mr Knight's apartment is in a quadrant which connects the Main Hall and the West Pavilion and so has none of these services. The Cottages comprise a separate complex of houses in the grounds of Thorndon Park. They have a separate service charge regime and are not obliged to contribute to the costs associated with the Main Hall and the Pavilions. Mr Knight contended that the

apartments comprised within the two quadrants should be similarly treated.

12. Mr Knight also had concerns about the annual contributions to the reserve fund, which he believed, were far too high.
13. Mr Alty said that he had sympathy with Mr Knight but the service charge strategy was set up when the leases were granted, and was in accordance with them. The lease of the property now vested in Mr Knight provided that the lessee should contribute to Block Costs as set out therein. He said his firm, KWF, took over management of the Thorndon Hall in 1995. On doing so it reviewed the service charge regime and the lease provisions and took legal advice. This was to the effect that the percentages of service charges payable by the respective lessees was fixed and set out in each lease.

#### **The Lease**

14. Basic details of the lease have been given in paragraph 5 above. A copy of the lease is at [17-44].
15. Key provisions relevant to matters before us are as follows:

1. Clause 1 – definitions:

**The Development** ‘means the land which is within the red line on the site plan and all buildings ‘the Blocks’ hereinafter defined walls fences and other erections thereon or on any part of thereof

**The Blocks** ‘means the buildings comprising three blocks of flats together with the entrances halls staircases passages therein and all appurtenances thereto which are intended to be known as Thorndon Hall ...and are edged yellow on the site plan and Block ‘A’ ‘B’ and ‘C’ mean the respective blocks as shown on the site plan’

**NB** A coloured copy of the site plan was not made available to us but it was agreed between the parties that the Property in question was within the definition of 'the Blocks'.

**The Cottages** 'means all cottages forming part of the Development and shown on the site plan'

**The Reserved Parts** a detailed definition which includes lobby halls, terraces, staircases and passages and all parts of the Blocks which are used in common by the owners lessees or occupiers of any two or more flats... or by their visitors

2. Clause 5 – Lessee Covenants

5(i) 'To pay to the Management Company as contribution towards the costs charges and expenses referred to in the Fourth Schedule...'

5(ii) 'To pay to the Management Company from 1<sup>st</sup> January 1990

- (a) an amount equal to  $x/y$  times (such of the costs expenses outgoings and matters mentioned in the Fourth Schedule as are referable solely to the maintenance management and insurance of the Blocks) where  $x$  is the floor area of the flat as shown in the First Schedule hereto and  $y$  is the total floor area of the flats plus
- (b) an amount equal to  $w/z$  times (such of the costs expenses outgoings and matters mentioned in the Fourth Schedule as are referable to the whole of the Development other than those as are solely referable to the Blocks and referred to in sub clause (a) hereof) where  $w$  is the floor area of the flat as shown in the First Schedule hereto and  $z$  is the total area of the flats and the cottages

3. Clause 7 Management Company Covenants

Detailed covenants to insure the Development, keep the reserved parts repaired cleaned and maintained.

4. The First Schedule

Specifies that the ground and first floor flat being 59 West Quadrant has a floor area of 1,133 square feet.

5. The Fourth Schedule

This schedule comprises a detailed list of costs and expenses which comprise the service charge expenditure, including

2. 'Such sum (to be fixed annually) as shall be estimated by the Management Company (whose decision shall be final) to provide a sinking fund for any part of the Reserved Parts that the Management Company decides as necessary'

8. Detailed provisions for keeping the sinking fund on a separate account and for interest net of tax to be accrued to it.

### **The Service Charges Challenged**

**Cleaning of common parts:**

**Lifts maintenance and insurance:**

**Door-entry system**

16. Mr Knight accepted that for the purposes of the calculation of service charge percentages, the square footage was as follows:

x and w	the Property	1,133
y	the Blocks (the flats)	74,691
	The Cottages	10,071
W	the Blocks and the Cottages	84,762

And that the percentage of service charges demanded of him accord with this formulae.

17. As explained above, Mr Knight's complaint was not about the cost of the service charge expenditure challenged but that he should not have

to contribute to it because he does not and cannot benefit by those services.

18. At the hearing it was explained to Mr Knight that on the hearing of an application under s27A of the Act the Tribunal does not have power to vary the service charge percentages or to vary the lease to exclude a lessee's liability to contribute to the cost of specified services. In these circumstances the Tribunal would have no alternative but to dismiss that part of his application.
19. The Tribunal has sympathy with the argument put forward by Mr Knight. When the service charge regime was designed, it may well have been fairer if the Quadrant apartments were treated in a similar fashion to the Cottages. However, to effect a change now would require an application under Part IV of the Landlord and Tenant Act 1987 and also the consent of a good number of lessees. It has to be borne in mind that if the service charge contribution of Mr Knight is to go down there will have to a corresponding increase in that payable by the remaining lessees or some of them.
20. In these circumstances and as Mr Knight admits that the expenditure on the challenged items was reasonably incurred and is reasonable in amount the Tribunal has to find that Mr Knight is liable to contribute to it in the proportion specified in the lease.

### **The Sinking Fund**

21. The second limb of Mr Knight's case was that the amount proposed to be allocated to the sinking fund for the year 2006 was too great.

Relevant background detail was

	<b>2005</b>	<b>2006 (Budget)</b>
Estate	£15,000	£15,000
Cottages	£ 6,250	£ 6,400
Blocks	£80,000	£75,000
Stonework	£ 7,500	£ 7,500



22. Mr Sepkes produced a spreadsheet [64] which covered the period 2004-2012 and showed three components 1. The sum to be raised, 2. the anticipated spend and 3. the balance carried forward from one year to the next.
23. Mr Sepkes gave evidence and said that he had been chairman of the board of directors for two years. All directors are residents. He said it was policy, in January of each year, to have a budget setting meeting with residents at which a proposed budget is presented and discussed. Whilst responsibility for the final decision on the budget lay with the board, members of the board took account of issues and comments raised at the general meeting.
24. Mr Sepkes explained that in recent years significant stonework repairs had been carried out but this programme was now largely complete so that the remaining work to be done could almost be done as routine maintenance rather than as a special project.
25. Mr Sepkes accepted that the balance was high at the moment. This was because some expenditure has been rolled over from the current year to the next. He said the board has a five year plan. In addition to external paintwork, which is expensive, the estate roads and car parks which have been rather neglected need attention. The board has carefully considered proposed expenditure and the amount of funds needed to be flexible so that any urgent or unforeseen expenditure can be covered. He said that it would be unwise for the balance to dip below £50,000. Mr Sepkes also said that the programme of work and the anticipated cost is reviewed from time to time and the spreadsheet updated.
26. In cross-examination Mr Sepkes confirmed that £75,000 was not needed immediately for stonework but the board decided to retain it for another project rather than refund it to lessees. Mr Sepkes also gave a

detailed account of a project concerning a storage area to be created to free up a garage which could then be sold on a long lease for a premium and the proceeds applied to the general account.

27. Mr Knight gave evidence and said that the £75,000 should have been refunded to lessees. He said that now most of the stonework was done the reserves are too high. He accepted the wisdom of reserves but objected to the level of them and said that he would like to see them reduced by 10%.
28. In cross-examination Mr Knight was not prepared to say which components of the total reserves he considered to be too high, just that they were too high overall. Mr Knight was of the view that a projected balance of £54,000 in the reserve account in 2009 was too high and could be reduced by 10%.
29. In final submissions Mr Alty said that careful consideration has been given to what is a fair and reasonable reserve fund, the fund is carefully monitored reviewed and updated when required. Mr Knight said that he had said everything that was relevant and did not wish to add anything.
30. The Tribunal noted that the provisions in the lease for the sinking fund were widely drawn and expressed to be as the Company may decide and that its decision shall be final. These provisions are, of course, subject to the reasonable requirements of the Act.
31. The Tribunal accepted the evidence of Mr Sepkes. The Tribunal is satisfied that careful thought has gone into the five year plan and that it is kept under review. Overall the Tribunal finds that the strategy for major projects adopted by the board is within the range open to a reasonable and prudent landlord or management company and that it is not an unreasonable approach. The Tribunal does not consider that it would be appropriate to interfere with it.

32. The Tribunal does however comment that the sinking fund ought to be restricted to major projects and not used to fund routine maintenance. So, for example, if stonework repairs are now routine maintenance works, the sum of £7,500 ought to be taken out of the reserve for the sinking fund and added into the budget for General Repairs Blocks. Of course the overall figures will remain the same. Also the Tribunal reminds the Company of the need to keep the sinking fund separate and ring fenced and interest earned on the account, net of tax, should be credited to it.

### **Section 20C Application**

33. Mr Knight said that he did not wish to pursue his application under s20C of the Act. Accordingly, the Tribunal has not made any determination on it.

A handwritten signature in black ink, appearing to read 'John Hewitt', with a stylized, cursive script.

John Hewitt

14<sup>th</sup> December 2006