THE RESIDENTIAL PROPERTY TRUBUNAL SERVICE

THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE AND LEASEHOLD VALUATION TRIBUNAL

THE LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/24UP/LSC/2005/0019

BETWEEN:

Mr & Mrs W Teasdale	**(Flat 2)**
Mr John Tudor	**(Flat 3)**
Mr John Reid	**(Flat 7)**
Ms Dorothy Stock	**(Flat 8)**
Mr Richard Earlam	**(Flat 10)**

Applicants

- and -

M25 GROUP LTD

Respondent/Landlord

Property: **Brambridge House, Brambridge Park, Eastleigh, Hampshire, SO50 6HL**

Hearing: **25th July 2005**

Tribunal: **Mr D Agnew, LLB, LLM (Chairman)**
Mr P D Turner-Powell, FRICS
Mr C G Thompson

DETERMINATION AND REASONS

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1. The Application

1.1 On 4th March 2005 (but stated to be 2004) the Applicant, Mr Earlam, applied to the Tribunal to determine the reasonableness of the service charges levied on account in respect of Flats 2, 3, 7, 8 and 10 Brambridge House, Kiln Lane, Eastleigh, Hampshire ("the Property") for the year 24th June 2004 to 23rd June 2005.

1.2 At the Pre-Trial Review on 14th April 2005 it was agreed by the parties that the application would be amended to cover additionally the service charge year to 23rd June 2004.

2. Background

2.1 There is a history of hostility between the current freehold owner/landlord, M25 Group Ltd, and the five long leaseholders who are the Applicants in these proceedings. This hostility has resulted in several court actions and applications to the Leasehold Valuation Tribunal. It has caused the Applicants, rightly or wrongly, to be very suspicious of the motives of the Landlord in everything it does. These Applicants suspect that the Landlord's game plan is to make life difficult for them at Brambridge House so that they will give up their leases thus enabling the Landlord to obtain vacant possession, carry out a redevelopment as it so wishes and sell at a profit and move on. The Tribunal was not concerned with the Landlord's overall motives with regard to Brambridge House but the question as to whether the Landlord had deliberately engineered maters which adversely affected the amount the Applicants would be required to pay towards service charges did impinge on one aspect of the Tribunal's decision which is referred to in more detail hereafter.

2.2 A helpful account of the historical background is set out in Mr Earlam's Statement of Case. The important points are as follows:-

(a) Brambridge House was divided into 14 flats after World War II.

(b) The freehold was acquired by Brambridge House Estates Ltd in 1966. Six flats were let on long leases to shareholders of this company and they had a share in the remaining eight flats. One of these was occupied rent free by the resident gardener.

(c) Mr Earlam states that it was the intention of the shareholders that all the flats be sold. In the event only one was sold on a long lease (Flat 2) in 1971. Some, but not all of the other flats were rented out. The rental income from these flats paid for the maintenance and upkeep of the house and grounds and no contribution was sought from the long leaseholders. This was in accordance with Clause 4b in the leases of Flats 3, 7, 8 and 10. This will be referred to later herein.

(d) In 1998 the Residents' Association was formed and in 1999 they applied to the Tribunal for the appointment of a receiver/manager. Mr Lee was appointed and he took over in early 2000.

(e) Unfortunately, Mr Lee did not have the experience, knowledge and expertise to take on the role of manager of a building such as Brambridge House. He applied to be

discharged as manager but subsequently tried to withdraw his application. The Tribunal considered that it was in the best interests of all concerned if Mr Lee was discharged as manager. The M25 Group had purchased the freehold in August 2001 and the Tribunal considered that its Managing Agent, Labyrinth Properties Ltd, should be given the opportunity of showing that it could manage Brambridge House in the interests of all concerned.

(f) Mr Lee had not produced proper accounts for the four years he was the Tribunal appointed manager and there was a dearth of correspondence and records when Labyrinth took over. This has not helped with some of the issues to be decided by the Tribunal in the current application.

2.3 At the direction of the Tribunal the parties met on 20th July 2005 to see what, if anything, could be agreed and a measure of agreement was reached on that occasion. The Applicants very reluctantly accepted that it could be a large and expensive task for an accountant to check the financial records and account for the balances handed over by Mr Lee at the end of his period as manager. Consequently, the Applicants agreed that the service charge levied for 2003/2004 was reasonable save for three items to be determined by the Tribunal for that year's service charge account, namely:-

(a) an invoice for £235 including VAT for the professional fees of Messrs Hacker Young for assisting the Landlord in trying to sort out the accounts handed over by Mr Lee;

(b) whether or not Mr Earlam had paid his share of the insurance premium for the Property for that year;

(c) whether or not Mr Earlam should be reimbursed the sum of £1,060 which he had paid to a Mr Napper for repairs to a bridge over the River Itchen within the grounds of the Property.

2.4 It remained in dispute as to whether the Landlord was entitled under the lease to seek an interim payment on account of service charge as it had endeavoured to do for the year 2004/2005.

2.5 Although there are 14 flats to contribute to the service charge the Applicants insisted that they wanted their contributions to service charge to be 1/13th of the total expenditure, as required under their leases. Although the Landlord was prepared to reduce this to 1/14th as the Applicants did not want this the Landlord, not surprisingly, was prepared to agree this.

2.6 No agreement was reached at the meeting as to the correct construction of Clause 4b of the Applicants' leases as to whether income from lettings made by subsidiaries of the Landlord who had been granted long leases should be used to pay service charges before a contribution was sought from the Applicants.

3. The Property

3.1 The Property was inspected prior to the hearing on 25th July 2005. Brambridge House is an impressive Grade II* listed Georgian property set in very pleasant grounds with the River Itchen flowing through them in a rural setting but close to the town of Eastleigh.

3.2 The whole aura of the Property is one of somewhat faded glory. Substantial works of repair and refurbishment are necessary and indeed the Tribunal was told that the consultation process with regard to such works was well under way. In particular, work was required to waterproof the roof at the front of the building and vegetation growing from ledges and guttering needed to be cleared. A conservatory which had been erected without planning permission has been taken down but the site of this has been left in an unsightly condition. The Applicants complained that no gardening had been carried out over the winter months leaving the lawns, in particular, in a bad state. Damage to the driveway caused by the Landlord's contractors had remained in an unsatisfactory if not dangerous state for a considerable period. Mr Earlam had had to spend many hours in cleaning and clearing steps and a courtyard area at the rear and side of the Property.

4. The Leases

4.1 The leases of Flats 3, 7, 8 and 10 contain in Clause 1 a reservation for the payment by way of additional rent "a sum or sums equal to the amount which the Lessor may expend in effecting or maintaining the insurance of the Building and other parts of the Mansion against loss or damage by fire and such other risks (if any) as the Lessor thinks fit as hereafter mentioned".

By Clause 4 of the said leases the Lessees covenant with the Lessor and Lessees of the other flats comprised in the Mansion that the Lessee will at all times hereafter: ".....Contribute and pay one equal thirteenth part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto but in so far only as the income received by the Lessor from time to time as the rents of the other flats in the building which shall not have been sold shall be insufficient to cover such expenses and provide a reasonable reserve fund".

The Fourth Schedule sets out the costs and expenses recoverable by the Landlord. In short these are:

(a) the costs of maintaining the structure, etc;

(b) the cost of lighting the common parts;

(c) the cost of exterior decoration;

(d) rates, taxes and outgoings (if any) payable in respect of the forecourt garden way and other parts of the Mansion;

(e) insurance premiums;

(f) the gardener's wages, or any other servants employed in connection with the running and maintenance of the Mansion;

(g) 10% of the above for administration expenses.

The lease of Flat 2 is different as is referred to hereafter.

5. The Law

5.1 Under Section 27A of the Landlord and Tenant Act 1985 the Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

(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

(e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6. The Hearing

6.1 This took place at Wells Place Centre, Eastleigh, on Monday, 25th July 2005. Present were:-

Mr Earlam, Mr Tudor and Mr Teasdale for the Applicants

and

Mr Redpath-Stephens, Counsel for the M25 Group Ltd together with Mr Klahr (Director) and Mr Faulkner of Labyrinth Properties Ltd.

6.2 The issues which the Tribunal had to decide were as follows:

(1) Whether the grant of long leases by the freeholder to a wholly-owned subsidiary were "sales" for the purposes of Clause 4b of the Applicants' leases thereby taking the rental income from sub-lettings by the wholly-owned subsidiary out of account as a first contribution to service charge expenditure before the Applicants are called upon for a contribution. (Issue 1)

(2) Whether Clause 4b of the Applicants' leases can be construed as providing for payments on account of prospective expenditure to be sought from the Applicants and in particular whether the Landlord is entitled to seek payment from the Applicants of budgeted expenditure on account for the year 2004/2005. (Issue 2)

(3) Whether the three items referred to in paragraph 2.3 herein are claimable by the Landlord as part of the service charge account for 2003/2004 and, if so, whether the amounts are reasonable. (Issue 3)

(4) Depending upon the outcome of the above, what is the amount claimable from each Applicant for the years 2003/2004 and 2004/2005? (Issue 4)

7. The Parties Cases

7.1 Issue 1

(1) The Applicants accepted that their leases contained nothing preventing the sale of flats on long leases by the Respondent to a genuine third party purchaser for full consideration. They also accepted that they had no control over whether or not any of the flats where subsidiaries of the Respondent have long leases are let out and therefore whether or not they generate any rental income. They contended, however, that the sale of flats to wholly-owned subsidiaries was a sham or a device intended to defeat the requirement of the leases that rental income should be used first to pay service charges before the long leaseholders were required to contribute. They submitted that clause 4b of the lease had to be construed in the

light of the factual matrix which existed at the time when the leases were entered into in 1966 (for four of them) and in 1971 (for Flat 2) and quoted passages from the judgment of Blackburne J in the case of *Joint London Holdings v. Mount Cook Ltd* [2005] E WHC 507 (Ch). At that time, they said, it was not intended that these flats could be sold on long leases purely to avoid rental income falling into the hands of the freeholder and therefore putting this income beyond the reach of the other long leaseholders to defray the service charges. The subsidiaries were bound by the covenants in the long leases just as the Respondents were bound. The Tribunal appointed manager, Mr Lee, had protested to the Leasehold Valuation Tribunal that he had not approved of the sales of the flats to wholly-owned subsidiaries but nothing had come of that protest. The Respondents relied on the case of *Belvedere Court Management Ltd v. Frogmore Developments Ltd* [1996] 1 All ER 312 but this was a case concerning qualifying tenants under the right of first refusal legislation under the Landlord & Tenant Act 1987 and was therefore different from their case which involved the construction of a clause in a lease. The Applicants also considered that the terms of Mr Lee's appointment as manager gave him the right to veto sales by the freeholder.

(2) The Respondent's case on this issue was that the motive behind the sales of the flats to wholly-owned subsidiaries of the freeholder was irrelevant. There was nothing to prevent this from happening. The leases contemplated sales of all the flats. There was nothing to compel the Landlord to let any of the flats. In either case there would be no rental income to put towards maintenance fees. As the Applicants had acknowledged, the Respondent's predecessor in title had sold one flat and it was the intention that all be sold. Some flats had been let out at this time but not others. The sales to the subsidiaries were for full valuable consideration and titles had been registered at HM Land Registry. Tax is paid on the rent received by the subsidiary companies. The subsidiaries were separate legal entitles from the freeholder. In the Belvedere Management case Bingham MR had said, "I am not for my part satisfied that in the field of real property the court may simply ... ignore or override apparently effective transactions which on their face confer an interest in land on the transferee". Also in *Jones v. Wrotham Park Settled Estates* [1979] 4 All ER 286 Lord Russell of Killowen had said, "a man is entitled to avoid a claim against his prima facie legal rights by adoption of a genuine disposition of those rights". In that case the disposition was to a connected company and in Belvedere Ltd a subsidiary company had been deliberately set up. There has been no breach of covenant. The covenant in Clause 4b imposes an obligation on the leaseholders to pay 1/13th of the Landlord's costs of repair and maintenance of the Property. The obligation to repair and maintain the Property remains with the M25 Group Ltd. Clause 4b of the lease has not been changed in any way: it remains intact and operates unchanged. What has changed is that there is now no rental income to use up for service charges first.

7.2 **Issue 2**

(1) The Applicant's case was that clause 4b of the leases did not give the Landlord a right to collect moneys on account of service charges not yet incurred. The words "and provide a reasonable reserve fund" they submitted referred to any surplus accumulated from rent received from those flats let at a rack rent and did not refer to the obligation on the long leaseholders to "contribute and pay one equal thirteenth part".

(2) The Respondent's case was that Clause 4b should be read as if there were brackets round the sub-clause which starts with the words "but so far only" and ends with the words "such expenses". This would then read that the lessees were to contribute one-thirteenth of the costs, expenses, etc, and provide a reasonable reserve fund.

7.3 **Issue 3**

(a) The invoice of £235 from Messrs Hacker Young was agreed by the Applicants as being reasonable and was therefore no longer in issue.

(b) The payment by Mr Earlam of his share of the insurance premium for 2003/2004. This was complicated but basically Mr Earlam said that he had paid it by Mr Lee having deducted the amount due from him for this from monies that he was reimbursed at the end of Mr Lee's managership from a levy paid by the tenants for repair works which had not been carried out. There was a question as to whether the repayment to Mr Earlam at the reduced rate was because he had paid a lower contribution to this levy in the first place. Mr Earlam's explanation for this was that it was lower because he reimbursed himself moneys that were due to him from the Landlord for water damage to his flat caused by blocked guttering, a Landlord's responsibility. He had received the compensation paid by the insurance company but the Landlord was obliged to make up the difference.

(c) Bridge repairs. Mr Earlam conceded that he had not sought listed buildings consent for the works done. He had not sought estimates but the work had been done by a good local builder at a good rate. There was no evidence that he had formally notified the Landlord or obtained Mr Lee's approval to incur the cost in advance of the works being done. The Respondent said that these were not works that the Landlord had carried out. They might need to be re-done if the local authority found that the work had not been carried out to listed buildings criteria.

(d) Issue 4 depended upon the outcome of the other issues as determined by the Tribunal. The Respondents were not looking to the Tribunal to determine the liability of individuals for a specific amount. They would do the calculations once the principles were determined.

8. The Determination

8.1 Issue 1

The Tribunal found that there was nothing to prevent the Respondent from selling various flats on long leases to their wholly-owned subsidiaries. Nor was there anything to prevent them from leaving any flat unlet if they so wished. The Tribunal had been told that these flats had been sold for valuable consideration and that money was transferred from the subsidiary to the parent company. The leases had been registered in the names of the subsidiaries which were separate legal entities from the parent. These were therefore true sales in law and the effect of this was to put the rental income from sub-lettings out of the reach of the long leaseholders as far as service charges were concerned.

The Tribunal considered that those "sales" may well have been a device (not a scam or a sham) to enable the M25 Group of companies to take and retain the rental income from the sub-lettings but any advantage in so doing was reduced to an extent by the fact that the subsidiaries would have to pay a contribution to the service charge of $1/13^{th}$ per flat. If the intention by doing this was to upset the long leaseholders it certainly had that effect although whether or not the more sinister motives attached to the action by the long leaseholders is justified or not was not a matter for the Tribunal. In this regard the Tribunal noted the dictum of Bingham MR in the Belvedere Management case already set out in paragraph 7.1(2) hereof.

As for the Applicant's case and the authority cited of Blackburne J in *Joint London Holdings v. Mount Cook Ltd*, this is a classic exposition of the law with regard to the construction of leases. However, this issue does not involve a construction of the words of Clause 4b. The wording of the clause in respect of this issue is clear and that wording must be given its ordinary meaning, in the absence of technical words of which there are none in this clause. If the parties to the long leases had intended there to have been some restriction on the landlord's ability to sell flats to its own wholly-owned subsidiaries then this should have been provided for in the leases. The lessees could not have guaranteed that the situation as it existed in 1966 would necessarily appertain throughout the 99 years of the subsistence of the leases.

Further, it must have been contemplated by the parties at the time the leases were created that there would not necessarily be rental income available to help defray the cost of repairs and maintenance. Sales were evidently expected to occur and one did in 1971 (Flat 2). Also, the then freeholder declined to let certain flats which could have brought in rental income.

Whilst the Tribunal can understand the Applicants' concern that rental income which could be used to help defray repair and maintenance costs is being retained by the subsidiary companies, particularly if this was a deliberate device on the part of the Landlord, for the reasons given the Tribunal considers that this does not mean that service charges levied on the basis that this rental income is not available to be paid to the service charge account are per se unreasonable.

Finally, the terms of Mr Lee's appointment as manager only gave him power to consent or decline to give consent to dealings where the Landlord's consent is required. This does not apply to the freeholder granting long leases and is not therefore a good point for the Applicants.

8.2 Issue 2 - Whether the Landlord can require payments on account of service charges.

The Tribunal considered that it was possible to read Clause 4b of the four original 1966 leases in the way contended by both parties. The Tribunal decided, however, that the correct construction was that the words "and provide a reasonable reserve fund" refer to the accumulated surplus of rental income from flats not sold and do not refer to the contribution of the long leaseholders. The Tribunal considered that if the latter had been intended then the draughtsman would have placed the words "and provide a reasonable reserve fund" after the words "in the Fourth Schedule hereto".

The lease of Flat 2 entered into in 1971, five years after the initial leases, is different in several respects. First, it provides for a minimum payment of £50 per annum which the other leases do not; secondly, there is no requirement for any rental income of other flats to be paid towards the service charge before the lessee's contribution is required, and thirdly, the wording clearly provides for the lessee to contribute towards a reserve fund. It cannot be assumed that the intention of the parties to that lease was necessarily the same as when the parties entered into the other long leases as there is a fundamental difference in the repairing obligation and contribution towards costs. The costs to which Flat 2 is to contribute under Clause 4 of its lease are more restricted than under the other long leases because this lessee is responsible for its own repairs to the structure and roof.

The Tribunal decided therefore that the four leases of Flats 3, 7, 8 and 10 did not give the Landlord a right to seek a payment in advance of expenditure as set out in Schedule 4 of the leases. An advance payment could be sought from the tenants of Flat 2 under the terms of their lease. The Tribunal decided that the budget figures for 2004/2005 were reasonable and in line with previous years' expenditure and the Landlord was therefore entitled to seek payment of $1/13^{th}$ of £28,440 from Kanara Ltd on account for 2004/2005. However, if and when a future Leasehold Valuation Tribunal comes to decide whether or not the service

charge demanded of Flat 2 for expenditure actually incurred when the service charge account is drawn up at the end of the year, that Tribunal will need to consider carefully whether or not the lessees of Flat 2 are being asked to contribute to the cost of matters for which they, as opposed to other lessees, are not liable to contribute under their lease (for example, repairs to their roof for which they are responsible under their lease). There is also an issue over Management fees. The Tribunal, on 25th July 2005, did not hear argument on the point but it could be said that none of the Applicants' leases enable the Landlord to recover the cost of a managing agent. It can recover under Schedule 4 the cost of employing "servants" in connection with the running of the Mansion but it is at least arguable that Labyrinth Properties Ltd are not servants but the agents of the Landlord (ie not an employee but an independent contractor). The landlord itself can charge 10% of the costs expenses and outgoings set out in the Fourth Schedule to the lease but the leases do not provide for the landlord's costs of employing managing agents. Unless the parties can agree this point it may be necessary for this to be determined when the matter comes before a future Leasehold Valuation Tribunal to decide upon the reasonableness of the actual expenditure claimed in the service charge for 2004/2005. The budget figures were considered reasonable only on the basis that the contribution sought from Flat 2 for repairs/maintenance of the building could be a proper charge to Flat 2 and the management fees sought could refer to those of a "servant" employed by the Landlord. Once the expenditure has been made a proper investigation as to what those costs covered can be undertaken.

Regrettably all these problems stem from the fact that both the 1996 and 1971 leases are very poorly drafted.

The Tribunal recognises that it is usually beneficial for the Landlord to be able to seek a payment in advance to cover expenditure as it is incurred during a service charge year and that the Tribunal's decision with regard to the interpretation of this clause of the lease could be inconvenient to say the least. How is the Landlord expected to provide, for example, gardening services which the tenants are keen to have done when there is no fund out of which to pay for those services? If it has to pay out of its own pocket and only subsequently recoup the expenditure from the lessees it is not unnaturally going to be reluctant to incur that expenditure which the tenants would wish it to incur. The Tribunal considers that it would be in the Applicants' interests to agree voluntarily to pay a sum on account of reasonably anticipated expenditure as this is likely to be in their own interests. The Tribunal has no power, however, to make any order to this effect; it would be up to the Applicants as to whether or not they will co-operate in this regard. There would be nothing to prevent the Landlord from invoicing a long leaseholder for 1/13th of the cost of every item of expenditure as it occurs under the lease as construed by the Tribunal. It is suggested that this would be a more costly and inefficient way of proceeding and in so far as it can do, the Tribunal would

encourage the Applicants to agree with the Landlord to pay a reasonable sum on account of anticipated service charges each year instead.

8.3 **Issue 3**

(a) £235 to Hacker Young.

This was agreed by the Applicants and so will form part of the service charge account for 2003/2004.

(b) Mr Earlam's insurance premium - £940.75.

The parties and the Tribunal were hampered by a lack of documentary evidence which could have been expected to be obtained from Mr Lee's files. Mr Earlam claimed that payment had been made due to the refund of contribution towards the cost of major works being less than it should have been due to the deduction of this premium. Unfortunately, however, it had not been possible for either Mr Earlam or the Respondent to reconcile all the figures. The Tribunal had no doubt that Mr Earlam was genuine in what he was saying to the Tribunal and the Respondent was not in a position positively to refute what he was saying. A letter from Mr Lee to Mr Klahr of 17th May 2004 indicated that he thought Mr Earlam owed £1,195 for "Maintenance work money withheld" but it is not clear what was meant by this. It is certainly not likely to refer to insurance premium. On a balance of probabilities the Tribunal considered that Mr Earlam was correct in his assertion that the insurance premium had been paid by deduction from moneys owed to him. Consequently, this item should not be included in the service charge account for 2003/2004 still to be paid by Mr Earlam.

(c) Bridge Repairs - £1,060.

This was not a payment made by the Landlord and sought to be recovered under the service charge. It is a matter between Mr Earlam and the Landlord as to whether the Landlord is liable to refund Mr Earlam that money and collect 1/13th of it from every leaseholder. If Mr Earlam wishes to pursue this and the Landlord or its managing agent does not agree that it is liable to pay it then the matter is properly one for the Small Claims Court to determine and not for the Leasehold Valuation Tribunal. The Tribunal can only deal with matters properly within its jurisdiction as laid down by statute.

8.4 **Issue 4**

8.4.1 Having determined that the rental income from the sub-lettings is not available for payment towards the service charge the Tribunal determines that the following items are reasonable and are payable by the tenants under the service charge for 2003/2004:

	£
Cleaning	992.00
Electricity	241.00
Fire Extinguisher Maintenance	595.00
Gardening	6,893.00
Insurance	10,944.00
Maintenance/repairs	2,660.00
Management fees	1,262.00
Hacker Young's fees	235.00
Total:	£23,822.00

Each leaseholder's liability for this service charge year will therefore be:

$$\frac{23822}{13} = £1,832.46$$

less any payments made which, apart from the issue of Mr Earlam's insurance premium the Tribunal was not asked to adjudicate upon.

8.4.2 It follows from paragraph 8.2 above that no payment on account of future expenditure for 2004/2005 can be sought from the Applicants other than Kanara Ltd (owner of Flat 2 occupied by Mr and Mrs Teasdale) in the absence of agreement from the leaseholders. Kanara Ltd will be liable to pay 1/13th of the interim service charge sought on account for 2004/2005 as asked.

9. Order under Section 20(c) of the 1985 Act

9.1 The Applicants applied for an order under Section 20(c) of the 1985 Act to the effect that the Landlord should not be allowed to add the cost of these proceedings before the Tribunal to future service charge accounts. The Respondent said that they were put in a position of having to respond to the Application much of which was agreed before the hearing. They had not received any submissions on the legal aspects of the case until the last moment prior to the hearing which left them with no option but to instruct counsel to deal with the matter. Had they been able to have more notice of the legal arguments they may have been able to have

avoided that cost. They reminded the Tribunal that the subsidiary companies would be footing 8/13ths of the bill and so it was not in their interests to incur costs unnecessarily. The Tribunal decided, however, that the lease does not entitle the Landlord to recover its costs from the tenants under the service charge. Schedule 4 contains no provision which would authorise the landlord to recover the costs of the Tribunal proceedings. In the absence of any authority to charge the said costs, they cannot be included in the service charge account. Accordingly, an Order under Section 20(C) of the 1985 Act would be made.

Dated this 1st **day of** August **2005**

Signed: .....

Donald Agnew

Chairman