

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL LEASEHOLD VALUATION  
TRIBUNAL**

**IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A**

**Case No: CHI/24UF/LIS/2007/0023**

**BETWEEN:**

**TRADEWINDS (GOSPORT) MANAGEMENT LIMITED**

**Applicant**

**- and -**

**NEIL GIBSON AND TRACEY JOYCE WILLIAMS**

**Respondent/Lessee**

**PREMISES:** 111 Cornwell Close  
Gosport  
Hampshire  
PO13 9QL ("the Premises")

**TRIBUNAL:** MR D AGNEW LLB, LLM (Chairman)  
MRS H C BOWERS MRICS  
MR R T DUMONT

**HEARING:** 9<sup>th</sup> OCTOBER 2007

**DETERMINATION AND REASONS**

**1. Background**

- 1.1 On 19<sup>th</sup> March 2006 the Applicant issued proceedings against the Defendant in the Portsmouth County Court claiming arrears of service charge payable by the Respondents to the Applicant in the sum of £1,439.00, and £355.17 by way of legal costs and expenses and for a declaration that failure to pay the aforesaid sums rendered the Respondents in breach of their covenants under the Lease of the residential premises they occupied at 111 Cornwell Close, Rowner, Gosport, Hampshire (hereinafter referred to as the premises). On 11<sup>th</sup> August 2006 Deputy District Judge Codlin-Tate ordered that the matter be transferred to the Leasehold Valuation Tribunal for determination as to the reasonableness of the service charges. Although the Applicant appealed that decision the appeal was refused by His Honour Judge Ian Hughes QC on 25<sup>th</sup> October 2006.

**2. Directions**

2.1 Directions were given by the Tribunal on 20<sup>th</sup> June 2007. A statement of case and copy documents in support were received by the Tribunal from the Applicant but the Respondents made no submissions.

**3. Inspection**

3.1 The Tribunal inspected the premises immediately preceding the hearing on 9<sup>th</sup> October 2007.

3.2 The service charge relates only to the maintenance of the common areas of the estate of 124 houses and flats, including the roads, drains, landscaped areas, wooden barriers and lighting. All appeared to be well-maintained. The area was litter-free, the grass cut and everything was in a neat and tidy state.

**4. The lease**

4.1 By Clause 2a of the lease dated 25<sup>th</sup> August 1988 made between Blue Boar Property & Investment Company Limited (1) and Tradewinds (Gosport) Management Limited (2) and Jonathan James Pounsett (3) the tenant covenanted to observe and perform the obligations contained in the Fifth Schedule to the lease.

4.2 By paragraph 3 of the Fifth Schedule the tenant covenant to pay to the Company (i.e. Tradewinds (Gosport) Management Limited) the Estate Service Charge which shall be the Estate Due Proportion applied to the Annual Estate Cost being reasonably and properly incurred by the Company in each Accounting Period.

4.3 The "Annual Estate Cost" is defined in paragraph F of the First Schedule to the lease as meaning, "the expenditure incurred by the Company in any Accounting Period in carrying out the Estate Service Charge Works....."

4.4 By paragraph O of the First Schedule "the Estate Due Proportion" means 1/124<sup>th</sup> part of the Annual Estate Cost.

4.5 By paragraph S of the First Schedule "the Estate Service Charge Works" is stated to mean "such services specified in Part A of the Ninth Schedule as the Company shall from time to time in its discretion provide".

4.6 Part A of the Ninth Schedule to the lease provides that the Company is entitled to charge to the Estate Service Charge, amongst other things:-

(i) the costs and expenses reasonably and properly incurred in inspecting, maintaining, repairing, renewing, decorating, furnishing, soft furnishing, heating, lighting and cleaning:-

(a) the common access ways

(b) the conduits

(c) the parking areas

(d) any other parts of the Estate to which the public the tenant and other tenants have lawful access

(e) .....

- (ii) Contributing to the repair and maintenance of any road or footpath giving access to the Estate
- (iii) Contributing to the cost of disposal of refuse
- (iv) Cultivating planting and maintaining any garden or recreation in landscaped areas on the Estate
- (v) Insuring the Estate
- (vi) Making payments to the reserve fund for anticipated expenditure as the Company deems desirable
- (vii) Paying the fees and expenses of amongst other professionals, lawyers providing services to the Company and paying the costs of complying with the Landlord and Tenant Act 1985 in seeking declaration as to the reasonableness of the service charge.

**5. The evidence**

- 5.1 Mr Faulkner of Labyrinth Properties Ltd who manage the Estate on behalf of the Management Company gave evidence to the Tribunal as to the amount of service charges said to be owed by the Respondent for the service charge years 2003, 2004, 2005 and 2006. There was no appearance by the Respondents or anyone on their behalf.
- 5.2 The Tribunal went through every item of expenditure incurred by the Management Company for the years in question. These were as follows:-

For the year 2003:-

	£
Annual return	15.00
Audit	685.43
Company Secretarial fees	411.25
Drains	2,853.96
Bank Charges	44.35
Ground Maintenance	6,685.71
Insurance	10,301.54
Insurance Directors and Officers	915.68
Management fees	9,470.48
Repairs and maintenance	53.80
Street lighting	665.69
Sundries	596.53
	32,699.42

Following a payment to reserves this resulted in a service charge demand per unit of £339.00.

For the year 2004:-

	£
Annual return	15.00
Accountancy	680.91
Company Secretarial fees	470.00
Drains	5,120.65
Grounds maintenance	7,429.53
Insurance	11,046.38
Insurance Directors and Officers	1,004.85
Management fees	9,761.88
Repairs and maintenance	662.00
Street lighting	938.05
Sundry expenses	379.11
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	37,508.36

Following a payment to reserves of £1,620.00 this resulted in a service charge demand per unit of £360.00.

For the year 2005:-

	£
Annual return	15.00
Accounting and certification	423.00
Company Secretarial fees	528.75
Drains	5,750.00
Grounds maintenance	5,598.88
Insurance	13,588.24
Insurance Directors and Officers	1,004.85
Management fees	10,927.48
Repairs and maintenance	305.00
Lighting, electricity and repairs	656.45
Sundry expenses	823.00
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	39,621.72

There was transferred to reserve £1,620.00, making a total of £41,241.72 or a charge per unit of £360.00.

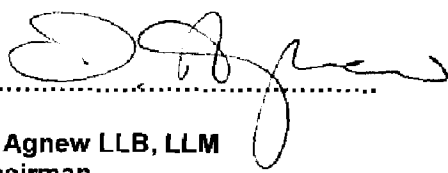
6.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

**7. The determination**

7.1 The Tribunal, having carefully scrutinised the expenditure for the years 2005 and 2006 found that all items were reasonably incurred and all services had been carried out to a satisfactory standard.

7.2 Consequently, the Tribunal determines that the Respondents are in breach of covenant under their lease to pay the service charges demanded and that they are liable to pay the Applicant the sum of £1,439.00 in respect of those outstanding service charges. This figure does not include any amount for the Applicant's costs of the County Court proceedings (other than the unsuccessful appeal costs) as this is an item which the Applicant is seeking from the Respondents alone in the course of those Court proceedings, rather than as a service charge item, and it is not therefore a matter within the jurisdiction of the Tribunal but is a matter for the Applicant to pursue through the Country Court. The interest claimed is also a matter for the Court to consider when the Applicant seeks to enter judgment.

Dated this 16<sup>th</sup> day of November 2007



D. Agnew LLB, LLM  
Chairman

For the year 2006:-

	£
Annual return	30.00
Accounting and certification	423.00
Company Secretarial fees	528.00
Drains	3,238.90
Grounds maintenance	5,898.51
Insurance	17,032.22
Insurance Directors and Officers	858.44
Legal fees	1,050.55
Management fees	11,656.00
Repairs and maintenance	3,460.58
Lighting, electricity and repairs	1,031.37
Sundry expenses	433.75
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	45,642.07

Transfer to reserve £1,620.00 making a total of £47,262.07 making the service charge demanded per unit of £380.00.

- 5.3 Mr Faulkner explained that the drains were problematical. They were old and there was tree root infestation and interference from children, hence the expense each year on this item. The grassed areas were cut at least fortnightly in the growing season and the cost included litter picking three times per week. The insurance commission is split with the tenants. The item for legal costs in 2006 included the cost of the appeal from the District Judge's order referring the matter to the Tribunal. The Tribunal considered that it was reasonable for the Applicant to seek to recover this sum under the service charge rather than as against the Respondent solely, as it was the Company's decision to pursue the appeal which was unsuccessful.

## **6. The Law**

- 6.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

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.

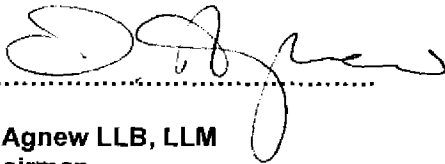
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Dated this 16<sup>th</sup> day of November 2007

A handwritten signature in black ink, appearing to read 'D. Agnew', is written over a horizontal dotted line. The signature is fluid and cursive.

**D. Agnew LLB, LLM  
Chairman**