SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/18UE/LIS/2008/0013

Applications under Section 20C and 27A of the Landlord and Tenant Act 1985

Re: Chalets 2 & 19, Europa Park, Woolacombe, Devon

First Applicant	Barbara Louise Middleton – Chalet 2
Second Applicants	Andrew Doughty & Heather Wigley – Chalet 19
Respondent	Graham Toms
Date of Application	5th March 2008
Date of Inspection	11th July 2008
Date of Hearing	11th July 2008
Venue	Landmark Theatre, Ilfracombe
Appearances for the Applicants	Miss D Brown, Solicitor
Appearances for the Respondent	Mr R James of Counsel
Also in attendance	Ms Middleton – Applicant
	Mr Toms – Respondent
	Ms J Middleton, Mr & Mrs Leslie (Chalet 12), Mr Bowani (Chalet 20), Mr & Mrs Capstick (Chalet 8)

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
M J Wright FRICS	Valuer Member
P Groves	Lay Member

Date 18th July 2008

Decision

1. In this Decision and Reasons:
    a. "leases" means the leases of Chalets 2 and 19
    b. "chalet owners" means the owners of Chalets 2 and 19
    c. "service charge" refers to charges recoverable under the leases only
2. Preliminary issue. That Section 18 of the Landlord and Tenant Act 1985 applies only such items of service charge as are payable by virtue of the leases of the Chalets the subject of the applications and the Tribunal's jurisdiction is limited accordingly
3. The reasonable sums recoverable by the Respondent as service charge under each of the leases are as follows:

	Item	Specific sum
2005/06	Penfold invoice	250.00
	Refuse collection	52.00
	General	250.00
2006/07	Refuse collection	52.00
	General	250.00
2007/08	Refuse collection	52.00
	General	250.00
2008/09	Refuse collection	52.00
	General	250.00

4. The Tribunal made no decision as to any reasonable limit to be imposed on future charges or as to sums alleged to be overpaid.
5. The Tribunal made no Order under Section 20C of the Landlord and Tenant Act 1985

Reasons

Introduction

6. This was an application made by the First Applicant under Section 20C and 27A of the Landlord and Tenant Act 1985 (the Act) to determine, in respect of Chalet 2, Europa Park, Woolacombe,
    a. whether certain service charges for the accounting years 2005/06, 2006/07, 2007/08 and 2008/09 are reasonable.
    b. "To place a reasonable limit to ensure the landlord does not exceed and if it does exceed must be provided with evidence to affect the same".

c. To determine that sums overpaid for previous years should be carried forward and applied against future service charges.

d. To determine under Section 20C of the Act that the Respondent should not be allowed his costs incurred in respect of these proceedings.

7. The Second Applicants applied to be joined as Applicants to the proceedings. The Tribunal granted that application, but other than submitting a letter dated 29th June 2008, took no part in the proceedings.

8. It is understood that the leases of the two chalets are in the same terms so far as relevant to the issues in the case.

Inspection

9. On 11th July 2008 the Tribunal inspected the Property in the presence of the First Applicant, the Respondent and their respective representatives.

10. Europa Park as a whole is situated on a hillside in a rural setting. It consists of 21 Chalets, touring pitches, tent sites, static caravans, cabins and lodges with blocks containing shower, toilet, laundrette and other facilities. In the middle of the site is a building containing leisure facilities for Park users.

11. The Chalets are laid out in four blocks towards the lower part of the Park. Between them runs an access road for the chalets and, at the eastern end a waste disposal area with commercial sized wheelie bins. The roads are tarmaced and lit. The areas surrounding the chalets are grassed.

Hearing

12. The hearing of the matter took place on 11th July 2008 and was attended by those set out above.

Preliminary Issue

13. The First Applicant contended that Section 18 of the Act applied not only to items of service charge payable under the leases but also other charges that the Respondent charged under any other terms agreed beyond the scope of the leases. The Respondent submitted to the contrary. Neither party was able to produce any authorities on the matter.

14. At the request of the parties the Tribunal determined that issue. The Tribunal was satisfied that the purpose of Section 18 and the subsequent provisions of the Act was to enable tenants to determine rights and obligations arising by virtue of the tenant's status as tenant under a lease or tenancy agreement; that it does not extend to any additional rights or obligations which the tenant might enter into with the Landlord or indeed any third party outside the terms of the lease.

15. So the Tribunal would have to determine what items of charge claimed by the Respondent fell within the service charge provisions of the leases and those which did not and therefore those over which it had jurisdiction to consider under Section 27A of the Act.

Summary of relevant evidence given by the parties on substantive issues.

16. The First Applicant read her undated statement.

a. She said that when she took her leases in 1994, the rest of the present total Park site was not in use – it was essentially just grassland, but the clubhouse did exist.

b. By reference to the provisions of her lease and by reference to the heads of charge set out in the Respondent's budget document for April 2004 to March 2005, she contended that all the following items existed and were paid for by her service charge when she took here lease in 1994. The service charge therefore covered: walkway maintenance, highway maintenance, walks kerbs and steps, general ground maintenance, drains and sewers, surface water and land drains, refuse collection, maintenance of water supply, public liability insurance, electric supply system, lighting system and annual service connection.

c. She also referred to the percentage rates of increase over the years and the Respondent's interpretation of the previous Tribunal's decisions in 2006.

d. She had never received any accounts from the Respondent until she had started the present proceedings.

e. There had never been any consultation on any expenditure, but she accepted she had received letters from the Respondent about the intention to surface the chalet access road.

f. On specific matters she submitted as follows:

    i. Refuse collection. She paid for this through her Council Tax, so should not have to pay a charge for this to the Respondent. If the Respondent is charging for emptying bins and taking it to the waste area, £240 per year is a lot; he should allocate man hours to the job and show his costings.

    ii. Buildings Insurance. She had no evidence that the Respondent had actually taken out cover to include her chalet.

    iii. Brian Huxtable invoice 19th April 2005. She did not know to what it related but thought it was incurred because of additional development since she took her lease in 1994.

    iv. J Penfold invoice dated 5th July 2005 relating to tarmac work. She did not know whether it related only to the access road between the chalets or what else was covered, such as the car park at the clubhouse, because of the amount of the invoice. There had been no consultation or estimates or quotations received before the work was done. She did however accept she knew it was going to be done. She said the work benefitted the Park as a whole.

    v. Squirrel Development Co Ltd – 4 invoices from 26th September 2005 to 20th March 2006 totalling about £37,000. She had no idea to what they related but they did not relate to her chalet.

    vi. Western Power Distribution invoice for 12 months to February 2006. She had no idea to what it related.

    vii. Street lighting costs. This had been carried out but at the request of the Respondent's insurers. It should therefore not be recoverable as service charge but in any event there were no invoices for it.

viii. Water and sewerage costs. These facilities were in existence in 1994 and she paid her own water and sewerage rates to the local water authority so there should be no additional charge for usage from the Respondent.

ix. Electricity. She purchases this from the Respondent by buying cards so there should be no additional standing charge costs. The electrical installation itself is covered by service charge.

x. Public liability insurance. She accepted this is provided for in her leases and therefore covered by service charge provisions.

xi. She agreed the Park is kept neat and tidy, but the items charged related to the entire Park and she did not benefit from areas other than those surrounding the chalets.

xii. She said that overall service charges for the Willingcott Valley site, which is similar to Europa Park, were about £600 per year.

17. The Respondent submitted his amended written statement dated 12th June 2008. In addition he said:

a. In his letter to all chalet owners dated 15th March 2007 he had indicated to owners that service charges were limited to those defined in the decision notice of the 2006 Tribunal i.e. "limited to keeping the park and the roads footpaths and services in good condition and repair and the lawns and grounds properly trimmed and in a neat and tidy condition".

b. He prepared a work schedule for the work to be done through the year and relied on the last Tribunal decision as to a reasonable charge per chalet and increased it by the Retail Prices Index. He had not sat down and worked it out: it was a token gesture. His employees are busy and he does not keep timesheets.

c. He was not aware of the RICS Management Code so did not comply with it.

d. Of the letter dated 3rd July 2008 from the company accountant to his solicitors setting out expenditure for the four years to 2008, he agreed these figures were not specific to the chalets; that they showed the increasing cost to him. He questioned the charges made on other sites.

e. He said the Huxtable invoice was to fit switching gear which separated the chalets from the rest of the Park. This was because they had been having power cuts because the system was overloaded and they had had to upgrade.

f. The Squirrels invoices related only to drainage work in the chalet area. It had been incurred because the road had got substantially damaged by surface water running from higher land on the site. He had not obtained estimates, but the work was paid for on a day rate basis.

g. Penfold invoice. The surfacing and the street lighting had been carried out at the request of his insurers for health and safety reasons. The invoice only covered the chalet access road and the turning area at the eastern end: the area by the clubhouse had been done at another time and was not included in these invoices. Because of use by heavy lorries of the tarmac at the waste disposal area, the turning area had had to be carried out with heavy duty material and increased the cost.. He had not considered it might be apportioned across the entire site, but accepted that would be appropriate.

h. Western Power. This is for a standing charge which resulted in the tenants paying a reduced cost for their cards, so he was entitled to charge.

i. Water and sewerage. This is chargeable because it is a consumer item and did not relate to the pipes themselves.

j. Refuse collection. He submitted this was not covered by the service charge provisions of the leases.

k. Street lighting. This benefitted the chalets and dealt with safety issues but it did not fall within the service charge.

l. Public liability insurance. While it is in the leases, he can bill it separately as it is not in the service charge section of the leases. He would apportion to the chalets according to his assessment of the risks.

m. Consultation. He said that on two occasions he had discussed issues. He thought there were other letters (in addition to those relating to road surfacing of the chalet access road) but could not produce them.

n. Surface water disposal. This is a consumer item and is not subject to the service charge provisions.

Consideration

The Law

o. The Act provides that service charges payable under the leases are recoverable to the extent that they are reasonable in amount and reasonably incurred.

p. To determine what is payable under the leases, the Tribunal first had to interpret the leases, the relevant provisions of which are as follows:

   i. Clause 1 provides "...the right to use the drains and sewers now in use in the said plot ... together with the right of passage and running of water and other services now in use in the Bungalows contained in the estate.

   ii. Clause 1 further provides: "To pay 1/20th of the Landlord's reasonable cost and expenses and outgoings in consideration of the Landlords covenants hereinafter contained payable annually in advance...".

   iii. Clause 5.3: the Landlord covenants (inter alia) "to insure and keep insured the demised premises against" (usual risks) ..."and such other risks as the Lessor shall from time to time think fit...".

   iv. Clause 5.5; the landlord covenants "to keep the Europa Park Estate (other than the demised premises) and every part thereof and the road footpaths and the said services therein in good condition and repair and the lawns and grounds thereof properly trimmed and in a neat and tidy condition".

q. These provisions are imprecise, but other than specific items referred to the services included in the leases, there are services which were "in use" in 1994. The Tribunal had the First Applicant's evidence about that and noted the Respondent's perhaps understandable reliance on the 2006 Tribunal's decision. This present Tribunal is not, as a matter of law, bound by the decisions of another Tribunal and does not accept that, on a proper construction of the lease, it is limited in that way. The Tribunal accepted the evidence of the First

Applicant as to what was in use in 1994, so that the Tribunal found that the service charge therefore covered: walkway maintenance, highway maintenance, walks kerbs and steps, general ground maintenance, drains and sewers, surface water and land drains, refuse collection, maintenance of water supply, public liability and buildings insurance, electric supply system, lighting system and annual service connection. In respect of highway maintenance, the Tribunal found that this should properly be construed so as to include road drainage, surfacing and lighting.

r. It is clear from the lease that the First Applicant has to pay 1/20th of the cost to the landlord of complying with his covenants. They include the provision of the services specifically mentioned, the "in use" services and the cost of the insurance premiums he incurs under Clause 5.3. In respect of those premiums, the Tribunal therefore does not accept that the Respondent, as he suggests, can bill those separately so as to fall outside the service charge provisions and the provisions of the Act.

18. It is also pertinent to bear in mind the state of development of the site in 1994 as described by the First Applicant. It was effectively undeveloped other than the clubhouse and the 21 chalets. Bearing that in mind and also that the service charges were to be split in only 20 parts, the service charge provisions were plainly intended only to apply to the chalets area, including the access road." This was borne out by the plan attached to the lease." But recognising that the chalet owners might also benefit partly from expenses incurred on other parts of the Park, the whole charge should be apportioned partly to the chalet owners as a whole and that proportion then divided between them in 20 parts. The Tribunal adds a proviso that any such charges which relate to work from which the chalet area benefits but which are incurred by reason of the development of the Park from its 1994 state, would not necessarily be payable by the chalets either alone or in part.

19. Before dealing with individual items of charge, the Tribunal needs to mention its view of the approach taken by the Respondent to charges.

20. The Respondent told the Tribunal that he was in business in relation to Europa Park, he had his staff who were kept busy carrying out routine maintenance tasks and also "troubleshooting" all sorts of issues that arose from time to time. He paid his employees and had no need to keep records of jobs done or the time spent on them. As a result he did not keep records of specific charges which might be payable by the chalets nor did he keep separate accounts.

21. The Tribunal has some sympathy for his taking that approach, but in so doing he does not fulfil his additional legal obligations under the Act or the Management Code which apply in the landlord and tenant situation which exists in relation to Chalets 2 and 19 (and perhaps others). Unless and until he does so, he is likely to find himself out-of-pocket if, as a result, he is unable to recover his reasonable costs under the Act as it applies to service charge.

22. The Tribunal's findings on specific items of charge:

    a. Administration Charges. The Tribunal is unable to interpret the leases in a way which would include the right to recover administration charges. The Tribunal was referred to the letter of 3rd July 2008 mentioned above which shows heads of charge applying to the whole site of: postage, advertising and promotion,

stationery, consumables, professional fees and sundry expenses. Even if the leases did cover such administration charges, the Tribunal doubted that much if any of these charges applied to the chalet area, bearing in mind the nature of the business he runs on the rest of the Park. Administration charges are not recoverable in any event under the leases.

b. Penfold invoice – tarmacing the chalet access road. The invoice dated 5th July 2005 totals £19,975.00. The Tribunal considered that a very substantial part of the usage of the road was attributable to its use for refuse disposal from the entire site; further that, as Mr Toms mentioned, part of the road at the waste disposal end had had to be made with specially heavy duty material. The Tribunal found that the resulting additional cost was very largely attributable to usage of the rest of the site for Mr Toms' business. The Tribunal concluded that two-thirds of the cost was reasonably attributable to the rest of the site so that, in principle, only £6,658.33. However, the Respondent had failed to comply with the consultation requirements of Section 20 of the Act such that the maximum he is now entitled to recover from each chalet is limited to £250 in the service charge year 2005/06.

c. Refuse collection. The Tribunal accepted the First Applicant's case that she paid for refuse collection through her Council Tax. However, that covers collection from the waste disposal area at the east end of the chalet access road; the Tribunal did not accept it covered collection from individual chalets. The Tribunal found that the Respondent was entitled to make a charge for that service and further the charge should also cover the reasonable cost of keeping the chalet area free of litter. For each year in question, the Tribunal found that a reasonable charge per chalet for this item was £52 per year.

d. Water and sewerage. The Tribunal accepted the First Applicant's case that she paid for this usage through the water authority. Under the leases the Respondent would be entitled to recover service charge for the cost of repair and maintenance of these facilities but there are no identifiable costs incurred in any of the years in question. The Tribunal therefore found that no sums were recoverable in those years under this heading.

e. Public liability insurance. If this is taken out, the Respondent is entitled to recover his costs under the service charge provisions of the leases. it is not open to him instead to charge outside those provisions as he seeks to do. Although it is recoverable as service charge, there is no evidence of expenditure on this item and the Tribunal found that no sums were therefore due in the years in question.

f. Western Power. The Tribunal accepted the Respondent's argument that payment of this charge resulted in a reduced cost of cards to the chalet owners; accordingly that this relates to electricity costs properly payable by chalet owners as a running cost of the chalets. As such it does not come within the service charge provisions of the leases and it is not recoverable as such but may be recoverable in another way which does not come within the jurisdiction of the Tribunal.

g. Street lighting. The Tribunal found that the cost of the installation of street lighting is recoverable as service charge under the leases, not only because of the interpretation referred to above, but also if the work had not been carried

out, the insurance premium payable would almost certainly have increased resulting in higher ~~any~~ service charge. However, no invoices had been produced so the Tribunal found that no sum was payable as service charge for this item in any of the years in question.

h. Huxtable invoice. The Tribunal found that the electrical installation had originally be sufficient to provide supplies to the chalets; that the installation ceased to be adequate because of development and use of the rest of the site and it was this that resulted in the need for the electrical work covered by this invoice. As it does not therefore arise from use by the chalets, it is inappropriate for the chalets to bear any part of the cost. The Tribunal therefore found that no part of this invoice was chargeable to chalet owners under their leases.

i. Squirrels invoices. While the First Applicant says that this did not relate to her chalet and she did not know what they covered, the Tribunal accepted the Respondent's evidence that they had been incurred because the road had been substantially damaged by surface water from higher land on the site and drains had to be installed in the chalet area. While this resulted in benefit to the chalet owners, it only resulted because of development and use of the site further uphill from them. The Tribunal found there was no reason why the chalet owners should be penalised because of that development so that it was unreasonable to charge any part of it to service charge under the leases at all.

   NB. If it had found that the chalet owners should contribute under service charge, the Tribunal notes that no consultation had taken place under the Act and the amount recoverable under the leases would therefore have been limited to £250 per chalet.

j. Buildings Insurance. The Tribunal had no evidence that this cover was in place and could not make any allowance for it in favour of the Respondent.

23. The result of the above is that the leases cover almost all potential charges, but the Tribunal found for the reasons stated that the only items specifically chargeable to and recoverable as service charges under the leases are those specified in respect of the Penfold invoice and refuse collection.

24. That may result in significant expense to the Respondent which he is unable to recover, but it is incumbent on him to comply with the law so that he is in future able to justify reasonable charges under the leases.

25. However, the Tribunal reviewed the case as a whole and using its own expert knowledge and experience considered that on any view the Respondent could reasonably be expected to be incurring expenses per unit in addition to those allowed above by the Tribunal. The Tribunal found that such expenses would be not less than £250 per year for each chalet and therefore that this additional sum should be recoverable as service charge under the leases for each of the years in question.

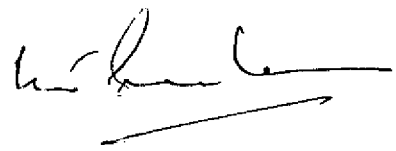
26. The First Applicant asked the Tribunal to impose a reasonable limit on service charge which could not be exceeded without evidence. This Tribunal does not have power to do so as each year's expenditure must be considered on its merits in the light of expenditure incurred and compliance with the Act and it would be for another Tribunal to consider on any application made.

27. The First Applicant also asked the Tribunal to determine that sums overpaid for previous years should be carried forward and applied against future service charges.

This is a matter of contract over which the Tribunal does not have jurisdiction. save to the extent that it may be relevant if a Tribunal is asked to consider whether service charge payments demanded in advance in any year are reasonable.

28. Finally the First Applicant asks the Tribunal to determine under Section 20C of the Act that the Respondent should not be allowed his costs incurred in respect of these proceedings. The Respondent might be entitled in principle to recover such costs if there was specific provision in the leases enabling him to do so. There is plainly no such provision so no Order under Section 20C is needed. Had there been such a provision, the Tribunal would have made an Order preventing the recovery of any such costs.

29. The Tribunal made its decisions accordingly.



M J Greenleaves
Chairman

A member of the Southern
Rent Assessment Panel
appointed by the Lord Chancellor

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

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Applications under Section 20C and 27A of the Landlord and Tenant Act 1985

Re: Chalets 2 & 19, Europa Park, Woolacombe, Devon

First Applicant	Barbara Louise Middleton – Chalet 2
Second Applicants	Andrew Doughty & Heather Wigley – Chalet 19
Respondent	Graham Toms

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
M J Wright FRICS	Valuer Member
P Groves	Lay Member

Date of Original Decision 18th July 2008

Decision of the Tribunal on the Respondent's application for leave to appeal the decision dated 18th July 2008.

Decision

1. The Tribunal refuses leave to appeal on Grounds 1 to 4 inclusive.
2. The Tribunal grants leave to appeal on grounds 5 and 6 only.

Reasons

By letter dated 8th August 2008 the Respondent applied for leave to appeal on the following grounds (using the Respondent's numbering). The Tribunal's replies are noted against each ground.

1.

   a. Ground: The Tribunal failed to take into account a relevant factor/consideration namely Ms Middleton's acceptance of the previous Tribunal's award as to a reasonable sum for the chalets.

   b. Reply. The Tribunal had to weigh up all the evidence and decide whether, in the absence of little documentary or oral evidence from the Respondent as to actual costs incurred, any unvouched sum should be allowed as a relevant cost

reasonably incurred. The Tribunal did not have any cogent evidence but decided to rely on its knowledge and experience to find at least some contribution to what expenses it thought the Respondent was likely to have incurred for this site. It noted the previous Tribunal's decision but that did not give a basis for coming to the figures quoted by the Respondent in the grounds. Ms Middleton's view was taken into account but the Tribunal did not feel that was sufficient on which to make a decision. While the Tribunal accepted the evidence of Ms Middleton as to what service charge items were covered by the lease, they did so because she had knowledge of the point. She did not have such knowledge as to amounts.

a. Grounds. The Tribunal reached a decision which was inconsistent with the evidence and/or that was unreasonable outside the generous ambit of decisions available to the Tribunal, and/or that was irrational, and/or that failed to take into account relevant factors/considerations, when it concluded that £250 for general services and £52 for refuse was a reasonable service charge.

b. Reply. The Tribunal could not discern from the previous Tribunal decision on what basis it came to to decisions, save that it did so for want of any evidence as to what had actually been spent. The present Tribunal was not bound by the previous decision and there was no basis on the face of that decision why it should be persuaded to follow it. The problem that that Tribunal and this Tribunal has been faced with is essentially that the Respondent has failed to keep much in the way of records and has evidently not complied with the Management Code (of which he was unaware). The Tribunal had no evidence as to the circumstances prevailing at the other sites mentioned. It had could only make an estimate to assist the Respondent to some extent. It is and has always been open to the Respondent to record and justify service charge expenditure to avoid a Tribunal having to rely on its knowledge and experience, but as yet he has not chosen to do so. The Tribunal felt its determination in all the circumstances was reasonable.

a. Grounds. Alternatively, the Tribunal failed to give reasons for its assessment of the [the above figures] and/or adopting a different figure to the previous Tribunal.

b. Reply. The Tribunal was left to use its own knowledge and experience in the absence of any significant evidence from the Respondent. The Tribunal accepts that consistency would help but it is open to the Respondent to comply with his obligations and deduce evidence. He did not do so.

a. Grounds. The Tribunal failed to take into account a relevant consideration/ relevant evidence on the street lighting issues.

b. Reply. The Tribunal does not think it has seen a letter dated 7th March 2008 from the Respondent. It may be the reference is intended to be to his letter and enclosures of 3rd July 2008. The Tribunal noted all the rounded figures used and bearing in mind his evidence that he does not keep records and his general failure to comply with his legal obligations as a landlord in respect of accounting and records, the Tribunal was unimpressed with this "evidence".

5.

a. Grounds. The Tribunal misinterpreted the lease in respect of the definition of "service charges" when it concluded that it had jurisdiction to deal with street lighting as part of the service charge.

b. Reply. The Tribunal accepts that the lease may be open to interpretation in a manner contrary to that found by the Tribunal.

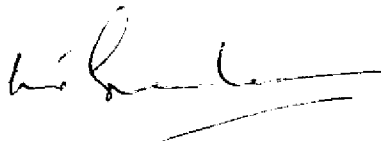
6.

a. Grounds. The Tribunal misinterpreted the lease and/or misdirected itself in respect of the definition of "service charges" when it concluded that it had jurisdiction to deal with sewerage charges, the units of water consumed, the rental of electricity meters, the electricity for the street lighting and/or the refuse collection as part of the service charge.

b. Reply. The Tribunal replies in the same way as set out at paragraph 5b above.

7. The Tribunal made its decisions accordingly.

20th August 2008.



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