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**HM COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Flats 3 & 4, 32 Greenhill, Evesham, WR11 4LR  
**Applicant** : Mr Dennis Philip Graham Butt  
**Respondents** : Mr Terence Cother and Mr Timothy Cother  
**Case number** : BIR/47UF/LIS/2011/0034  
**Date of Application** : 12th August 2011  
**Type of Application** : Determination of reasonableness and liability to pay Service Charges under s.27A of the Landlord & Tenant Act 1985 for years 2004 - 2011 inclusive  
**The Tribunal** : LD. Humphries B.Sc.(Est.Man.) FRICS (Chair)  
J.H. Dove (Lawyer)  
**Date of Decision** : 29th November 2011

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**DECISION**

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- 1 The Tribunal finds the following sums reasonable and payable in respect of the service charge years shown below as a combined figure for Flats 3 & 4:

2004	£ 589.88	(Five Hundred and Eighty Nine Pounds Eighty Eight Pence)
2005	£ 220.54	(Two Hundred and Twenty Pounds Fifty Four Pence)
2006	£ 123.04	(One Hundred and Twenty Three Pounds and Four Pence)
2007	£ 192.50	(One Hundred and Ninety Two Pounds Fifty Pence)
2008	£ 216.20	(Two Hundred and Sixteen Pounds Twenty Pence)
2009	£ 200.00	(Two Hundred Pounds)
2010	£ 200.00	(Two Hundred Pounds)
2011	Not determined as six months of service charge year to run	

**REASONS**

**Introduction**

- 2 This is an application by the Freeholder of a converted Edwardian house in Evesham for the Tribunal to determine the amount of service charge payable by the Lessees for the period 2nd February 2004 to 31st May 2012.

## **The Property**

- 3 32 Greenhill is a detached Edwardian house understood to date from around 1906. It is two storey brick and tile construction occupying a prominent corner plot at the junction of Victoria Avenue and Greenhill which is the main road leading into Evesham town centre from the north.
- 4 The house was converted into four flats in 1976. It has a central hall on the ground floor leading to Flat 1 on the ground floor left hand side, Flat 2 on the ground floor right, Flat 3 on the first floor left and Flat 4 on the first floor right. There is a garden to the front with lawn and shrubs to the road frontage, a path on the Victoria Avenue side with hedges and trees to the boundary and a car park for four cars at the back with brick boundary wall to Victoria Avenue. It also has a brick paved yard to the back of the house and some lean-to sheds used by the tenants for general storage.

## **The Leases**

- 5 The Applicant Mr Butt is the Freeholder but also owns the lease of Flat 1. Whether or not the Freehold and Leasehold have been merged is irrelevant for present purposes but he owns Flat 1 as an investment which is let to a tenant in occupation.
- 6 Flat 2 is let long leasehold to Mr Subu. We have not been provided with a copy of the lease but assume it to be on similar terms to Flats 3 & 4 for which we have been provided copies and where the leaseholders are the Respondents in this case.
- 7 Flats 3 and 4 are let long leasehold to Mr Terence Cother and Mr Timothy Cother as joint owners. They are held on 99 year leases from 1st July 1975 and unusually require the Lessees to maintain the 'roof foundations external and internal walls and timbers (including the timbers joints and beams of the floors and ceilings thereof) chimney stacks gutters and rainwater and soil pipes thereof ... well and substantially repaired' [clause 2.(8)].
- 8 The Lessor Mr Butt is required to maintain the 'passages landings staircases and other parts ...' [clause 5.(1)(a)] and 'boundary walls fences hedges and the gardens forecourts roadways pathways and drives' [clause 5.(1)(b)] subject to the lessees contributing 25% of the costs expenses and outgoings incurred in respect of each Flat [clause 3.(2)].
- 9 There is no formal mechanism for issuing service charge accounts or any requirement for independent audit and demands have been issued on an ad hoc basis since 2004. Even the service charge year is not specified, the first period was calculated from 2nd February 2004 to 31st May 2005 and subsequent years from 1st June each year to 31st May in the following year. It follows that the figures for 2011 are estimates as the service charge year has another six months to run.

## **The Relevant Law**

- 10 The relevant law for service charge disputes is contained in the Landlord & Tenant Act 1985.
- 11 Section 27A(1) provides that an application may be made to a Leasehold Valuation Tribunal for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 12 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 13 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where they are incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

## **Inspection and Hearing**

- 14 The Tribunal inspected the property at 10.15am 29th November 2011. We subsequently attended a Hearing in Evesham Town Hall where the Applicant Mr Butt appeared in person and the Respondent Mr Timothy Cother appeared on his own behalf and also represented his Father, Mr Terence Cother.

## **Items in Dispute**

- 15 Mr Cother accepted the cost of removing a tree in the 2004 accounts as fair and reasonable (£180) and the annual cost of providing electricity to the hallways and common parts for communal lighting at £50 per annum, on condition that Mr Butt supplied copies of all electric bills. He disputed all other claims.

## **The Parties' Submissions and LVT Determination**

- 16 The LVT read the parties' Submissions, heard evidence and determined the amount payable for each class of cost each year with a summary at para.44 post totalling the amount payable.

### **2004**

- 17 **Removal of Dead Tree**  
Amount Claimed on Application Form                     £180.00

Agreed by the parties.

- 18 **Replacement of Lead Water Main**  
Amount Claimed on Application Form                     £680.00

#### **Applicant:**

Mr Butt attended to the repair personally. He said it needed repair and the cost was fair and reasonable as he had obtained 2 quotes, one from contractors quoting £669.75 and another quoting £775.50. (Both quotes supplied). He then undertook the work and charged the leaseholders £680.

#### **Respondent:**

Mr Cother questioned whether the work was necessary and asked why the lower quote from specialist contractors had not been accepted.

#### **LVT:**

Bearing in mind that two contractors had quoted we find that on the balance of probability it was necessary. However, we also question why the lower quote was not accepted although accept that there is no general requirement for Freeholders to accept the lowest or indeed any quotation but since Mr Butt had obtained the quotes he must have been satisfied that the contractors were qualified to undertake the work. Accordingly we determine the lower quote of £669.75 as reasonable.

Determination:   £669.75

- 19 **Trim Leylandii**  
Amount Claimed on Application Form                     £     0  
Amount Claimed in detailed submission                 £180.00

#### **Applicant:**

Mr Butt advised that he had pruned the tree and supplied before and after photographs in evidence.

#### **Respondent:**

Mr Cother said the work was unnecessary

LVT:

We agree that leylandii trees need periodic pruning but do not accept Mr Butt's claim. We find a reasonable cost for average contractors to have been £100.00.

Determination: £100.00

20 **Gardening**

Amount Claimed on Application Form £180.00

Applicant:

Mr Butt advised that he had trimmed the hedge but only mown the lawn on limited visits.

Respondent:

Mr Cother said that he and his Father had mown the lawns. He was not resident at the property but had not seen Mr Butt cutting the grass.

LVT:

We accept that Mr Butt cut the hedge and may have mown the lawn but do not accept the amount claimed. We find a reasonable cost for average contractors to have been £100.00.

Determination: £100.00

21 **Repoint Wall Adjoining Car Park**

Amount Claimed on Application Form £160.00

Applicant:

Mr Butt advised that he had repointed the wall.

Respondent:

Mr Cother said the work was unnecessary

LVT:

We inspected the wall and a small area had been repointed. It would not have taken a skilled bricklayer more than 2 hours on site plus materials and accordingly we find the amount claimed excessive. We find a reasonable sum to have been £80.00.

Determination: £ 80.00

22 **Electricity to Light Hall and Common Parts**

Amount Claimed on Application Form £ 76.89

Applicant:

Mr Butt referred to two accounts from Npower, a bill for the period February to July 2004 and a statement dated 5th April 2005 with no indication of the charge period.

Respondent:

Mr Cother disputed the amount charged.

LVT:

We find the cost heading reasonable but the Npower accounts inconclusive as the April 2005 document is in the following service charge year and is a statement, not invoice. Mr Cother accepted that the hallways had been lit although questioned whether an external light was working. We find a reasonable annual sum to have been £50.00.

Determination: £ 50.00

23   **Landlord's Travel Cost**  
Amount Claimed on Application Form                £ 31.00

Applicant:  
Mr Butt advised that the cost had been incurred.

Respondent:  
Mr Cother said the cost was unnecessary and already included.

LVT:  
We find that it would be unreasonable for landlord's travel costs to be included when the cost would normally be included in contractor's estimates for specific works. To include it would be double counting.

Determination:    £     0

**2005**

24   **Gardening**  
Amount Claimed on Application Form                £366.30

Applicant:  
Mr Butt advised that he had undertaken gardening work on a sporadic basis.

Respondent:  
Mr Cother said that he and his Father had maintained the garden.

LVT:  
On a balance of probability we find that Mr Butt had carried out some work on an occasional basis. The fact that he had not attended at regular intervals throughout the year was perhaps due to the lessees having also cut the grass on occasions. Mr Butt suggested that he had attended on about 7 visits. We accept this and find a reasonable sum to have been £50.00 per visit for a full maintenance service.

Determination:    £350.00

25   **Yale Lock**  
Amount Claimed on Application Form                £ 21.10

Applicant:  
Mr Butt advised that he had replaced the front door lock at a cost of £21.10

Respondent:  
Mr Cother had no knowledge of this.

LVT:  
The amount is nominal but we accept it as reasonable.

Determination:    £ 21.10

26   **Notice on Fire Door and New Smoke Alarm**  
Amount Claimed on Application Form                £ 66.00  
Amount Claimed in detailed submission             £ 66.10

Applicant:  
Mr Butt advised that he had carried out the work.

Respondent:  
Mr Cother said the work was unnecessary

LVT:

We find the cost reasonably incurred but a reasonable amount to have been £20.00

Determination: £ 20.00

27 **Electricity to Light Hall and Common Parts**

Amount Claimed on Application Form £ 0

Amount Claimed in detailed submission £ 50.00

Applicant:

Mr Butt submitted that the cost was reasonable but had no invoices to support the claim.

Respondent:

Mr Cother said there were no invoices and accordingly the cost had not been justified although he accepted that the common parts had been lit.

LVT:

We find a reasonable cost to have been £50.00 per annum.

Determination: £ 50.00

**2006**

28 **Gardening**

Amount Claimed on Application Form £ 36.10

Applicant:

Mr Butt advised that he had undertaken gardening work on a sporadic basis.

Respondent:

Mr Cother said that he and his Father had maintained the garden.

LVT:

Mr Butt's input in 2006 appears to have been nominal and supports Mr Cother's claim that for at least part of the disputed period, he and other lessees were maintaining the garden. We accept the nominal amount claimed as reasonable.

Determination: £ 36.10

29 **Drain Repairs**

Amount Claimed on Application Form £324.90

Applicant:

Mr Butt advised that he had made 9 visits to repair a downpipe, construct a soakaway and repair a glazed drain.

Respondent:

Mr Cother said the work was unnecessary.

LVT:

We accept that on the balance of probability some work was required but the amount charged and number of visits was not justified. We consider a reasonably competent contractor could have undertaken this in less than a day and determine the cost including materials accordingly.

Determination: £160.00

30	<b><u>Electricity to Light Hall and Common Parts</u></b>	
	Amount Claimed on Application Form	£ 0
	Amount Claimed in detailed submission	£ 50.00

Applicant:

Mr Butt submitted that the cost was reasonable but had no invoices to support the claim.

Respondent:

Mr Cother said there were no invoices and accordingly the cost had not been justified although he accepted that the common parts had been lit.

LVT:

We find a reasonable cost to have been £50.00 per annum.

Determination: £ 50.00

## **2007**

31	<b><u>Gardening</u></b>	
	Amount Claimed on Application Form	£196.80
	Amount Claimed in detailed submission	£190.80

Applicant:

Mr Butt advised that he had undertaken gardening work on a sporadic basis.

Respondent:

Mr Cother said that he and his Father had maintained the garden.

LVT:

Mr Cother accepted that on occasions he had removed accumulated garden waste which suggested that Mr Butt had visited the site. We find that Mr Butt had carried out some work and accept £190.00 as reasonable.

Determination: £190.00

32	<b><u>Cleaning of Common Hall</u></b>	
	Amount Claimed on Application Form	£ 58.80

Applicant:

Mr Butt advised that he had on occasions removed domestic appliances left on site.

Respondent:

Mr Cother had no knowledge of this.

LVT:

We find that if appliances had been dumped as claimed, there would have been only a nominal cost to take them to the tip. We do not agree the amount charged and find a reasonable sum to have been £25.00.

Determination: £ 25.00

33	<b><u>Drain Repairs</u></b>	
	Amount Claimed on Application Form	£425.20
	Amount Claimed in detailed submission	£181.60(aggregated)

Applicant:

Mr Butt advised that he had undertaken the work and that it was necessary.

Respondent:  
Mr Cother had no knowledge of this.

LVT:  
Mr Butt advises that he attended on four separate occasions. The work is vague and unspecified but if a competent plumber had been asked to check the drains we would have expected an invoice of no more than £120.00 which we find reasonable.

Determination: £120.00

34 **Electricity to Light Hall and Common Parts**

Amount Claimed on Application Form	£ 0
Amount Claimed in detailed submission	£ 50.00

Applicant:  
Mr Butt submitted that the cost was reasonable but had no invoices to support the claim.

Respondent:  
Mr Cother said there were no invoices and accordingly the cost had not been justified although he accepted that the common parts had been lit.

LVT:  
We find a reasonable cost to have been £50.00 per annum.

Determination: £ 50.00

**2008**

35 **Gardening**

Amount Claimed on Application Form	£537.60
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Applicant:  
Mr Butt advised that he had undertaken gardening work on a sporadic basis.

Respondent:  
Mr Cother said that he and his Father had maintained the garden.

LVT:  
Mr Butt's detailed analysis listed only seven occasions when he had attended to carry out gardening. Based on this we find a reasonable sum to have been £50.00 per visit for a full gardening treatment of mowing the lawn, trimming the hedge and removing waste, i.e. 7 visits @ £50.00 each.

Determination: £350.00

36 **Cleaning Gutter to South West Corner**

Amount Claimed on Application Form	£ 32.40
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Applicant:  
Mr Butt advised that he had cleaned the gutter and removed weeds.

Respondent:  
Mr Cother said that he had cleaned gutters and had no knowledge of Mr Butt's visit but agreed that the photograph on file showed weeds in the gutter.

LVT:  
We find that Mr Butt attended on site and agree £32.40 as a reasonable sum.



Determination: £ 32.40

37 **Electricity to Light Hall and Common Parts**

Amount Claimed on Application Form £ 0  
Amount Claimed in detailed submission £ 50.00

Applicant:

Mr Butt submitted that the cost was reasonable but had no invoices to support the claim.

Respondent:

Mr Cother said there were no invoices and accordingly the cost had not been justified although he accepted that the common parts had been lit.

LVT:

We find a reasonable cost to have been £50.00 per annum.

Determination: £ 50.00

**2009**

38 **Gardening**

Amount Claimed on Application Form £355.20  
Amount Claimed in detailed submission £403.20

Applicant:

Mr Butt advised that he had undertaken gardening work on a sporadic basis.

Respondent:

Mr Cother said that he and his Father had maintained the garden.

LVT:

Mr Butt's detailed analysis listed only seven occasions when he had attended to carry out gardening. Based on this we find a reasonable sum to have been £50.00 per visit for a full gardening treatment of mowing the lawn, trimming the hedge and removing waste, i.e. 7 visits @ £50.00 each.

Determination: £350.00

39 **Electricity to Light Hall and Common Parts**

Amount Claimed on Application Form £ 0  
Amount Claimed in detailed submission £ 50.00

Applicant:

Mr Butt submitted that the cost was reasonable but had no invoices to support the claim.

Respondent:

Mr Cother said there were no invoices and accordingly the cost had not been justified although he accepted that the common parts had been lit.

LVT:

We find a reasonable cost to have been £50.00 per annum.

Determination: £ 50.00

## 2010

### 40 Gardening

Amount Claimed on Application Form	£355.20
Amount Claimed in detailed submission	£444.00

#### Applicant:

Mr Butt advised that he had undertaken gardening work on a sporadic basis.

#### Respondent:

Mr Cother said that he and his Father had maintained the garden.

#### LVT:

It is not clear exactly when Mr Butt attended on site. However, we find it probable that some visits were made and determine the sum as in 2009. Based on this we find a reasonable sum to have been £50.00 per visit for a full gardening treatment of mowing the lawn, trimming the hedge and removing waste, i.e. 7 visits @ £50.00 each.

Determination:	£350.00
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### 41 Electricity to Light Hall and Common Parts

Amount Claimed on Application Form	£ 0
Amount Claimed in detailed submission	£ 50.00

#### Applicant:

Mr Butt submitted that the cost was reasonable but had no invoices to support the claim.

#### Respondent:

Mr Cother said there were no invoices and accordingly the cost had not been justified although he accepted that the common parts had been lit.

#### LVT:

We find a reasonable cost to have been £50.00 per annum.

Determination:	£ 50.00
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## 2011

- 42 Mr Butt provided various estimates he had prepared himself including major works that would need to comply with statutory consultation requirements. There were no specifications, estimates from contractors or evidence of compliance with s.20 of the Landlord & Tenant Act 1985 (as amended) and accordingly we decline to assess the service charge for the current year at this stage. The 2011 costs will have to form the basis of a later application after the service charge year end.

### 43 Costs

Mr Butt advised the Tribunal that he had taken Solicitor's advice and incurred legal costs in connection with the service charge claim and that the Respondent lessees had made no service charge payments for the period 2004 to date. Mr Cother was unable to confirm or deny the position regarding payments to date and having seen no proof of payment we are unable to comment. However, we found no provision in the lease allowing Mr Butt to claim legal costs specifically for recovery of service charges in the lease of either Flat 3 or 4 and as no costs were claimed on either the original Application Form to the Tribunal or in the more detailed notes submitted later, we make no determination.

44 **LVT Summary Findings**

Year	Service	Amount £	Total £	Cost / Flat £
2004	Dead Tree removal	180.00		
	Water Main	669.75		
	Leylandii pruning	100.00		
	Gardening	100.00		
	Repoint wall	80.00		
	Electricity	50.00		
			1179.75	294.94
2005	Gardening	350.00		
	Yale lock	21.10		
	Notice & Smoke Alarm	20.00		
	Electricity	50.00		
			441.10	110.27
2006	Gardening	36.10		
	Drain repairs	160.00		
	Electricity	50.00		
			246.10	61.52
2007	Gardening	190.00		
	Hall Cleaning	25.00		
	Drain inspection	120.00		
	Electricity	50.00		
			385.00	96.25
2008	Gardening	350.00		
	Gutters	32.40		
	Electricity	50.00		
			432.40	108.10
2009	Gardening	350.00		
	Electricity	50.00		
			400.00	100.00
2010	Gardening	350.00		
	Electricity	50.00		
			400.00	100.00

45 LVT Determination

The Lessees jointly own the leasehold interests in Flats 3 and 4. The figures in the table above are for each Flat and we find the total amount payable for the combined Claim to be as follows:

2004	£ 589.88	(Five Hundred and Eighty Nine Pounds Eighty Eight Pence)
2005	£ 220.54	(Two Hundred and Twenty Pounds Fifty Four Pence)
2006	£ 123.04	(One Hundred and Twenty Three Pounds and Four Pence)
2007	£ 192.50	(One Hundred and Ninety Two Pounds Fifty Pence)
2008	£ 216.20	(Two Hundred and Sixteen Pounds Twenty Pence)
2009	£ 200.00	(Two Hundred Pounds)
2010	£ 200.00	(Two Hundred Pounds)
2011	Not determined as five months of service charge year to run	



I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Date - 7 DEC 2011