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**HM COURTS AND TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/21UF/LVT/2011/0003**

**REASONS AND FURTHER DIRECTIONS**

**Application :** Section 35 of the Landlord and Tenant Act 1987 as amended ("The 1987 Act")

**Applicant/Landlord :** Eagle Estates Limited

**Respondent/Leaseholders :** the leaseholders listed in Appendix 1 to these reasons

**Buildings :** Corsica Hall, College Road, Seaford, East Sussex, BN25 1JX

**Flats :** The residential Flats in the Buildings

**Premises :** The Flats listed in Appendix 1 to these reasons

**Date of Application :** 11 May 2011

**Date of Directions :** 1 June 2011

**Date of Order Granting extended Time to Comply with Directions :** 6 July 2011

**Date of Hearing :** considered by the Tribunal on 14 October 2011 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with the directions given by the Tribunal on 1 June 2011

**Member of the Tribunal :** Mr P R Boardman JP MA LLB (Chairman)

**Date of Tribunal's Reasons and Further Directions :** 15 October 2011

**Introduction**

1. This an application by the Applicant/Landlord to vary the service charge proportions in the leases of the Premises
2. Attached to the application are copies of the lease for each of the Flats comprised in the Premises

**Applicant/Landlord's statement of case submitted 6 July 2011**

3. The Applicant/Landlord stated that the Buildings comprised three buildings, Corsica Hall itself, The Annexe, and The Lodge, comprising 29 Flats in all. The Premises comprised 25 Flats in Corsica Hall and The Annexe, of which 14 Flats were sold by the Applicant/Landlord between December 2006 and August 2007, and the remaining 11 Flats had been retained by the

Applicant/Landlord because of the poor market conditions. The other 4 of the 29 Flats were in The Lodge, which was a separate building, and which was not completed until 2 June 2009

4. Each lease of the Premises contained, in clauses 2.2 and 3.2.1, obligations by the lessee to pay the "Lessee's Proportion" of certain outgoings and expenditure, as defined in clause D6, which, except in the case of the lease of Flat 11, provided as follows :

*D6 The Lessee's Proportion referred to in Clauses 2.2 and 3.2.1 is [percentage listed for each Flat comprised in the Premises in Appendix 2 to these reasons] as to the insurance, general maintenance and the reserve fund and 1/29 in respect of all other items of service expenditure*

5. In the lease of Flat 11, clause D6 provided as follows :

*D6 The Lessee's Proportion referred to in Clauses 2.2 and 3.2.1 is [percentage listed for Flat 11 in Appendix 2 to these reasons]*

6. It appeared that the percentage referred to in each case was intended to relate to service charge items for Corsica Hall and The Annexe, and the fraction referred to in each case was intended to relate to service charge items for the common areas surrounding the Buildings, whereas clause D6 as drafted was ambiguous

7. Four problems had been identified:

- a. the percentage for Flat 26 should have been 3.8% and not 4.3%
- b. there should have been a fraction specified in clause D6 in the lease of Flat 11
- c. the fraction referred to in clause D6 of each lease should have been 1/25 up to 2 June 2009, and 1/29 only after that date
- d. the service charge items to which the percentage and the fraction respectively related should have been more carefully defined

8. The Applicant/Landlord wished to vary Clause D6 of each lease of the Premises by replacing the existing wording in each case with the following wording :

*The Lessee's proportion referred to in Clauses 2.2 and 3.2.1 is [the respective percentages listed in Appendix 2 to these reasons] of the expense incurred in the area outlined in blue for Corsica Hall and The Annexe exclusively, including insurance, general and major maintenance, decoration and the reserve fund. In addition, the Lessees contribute 1/29 of the common expenses of the maintenance of grounds, services and security of the buildings and grounds, together with all the associated cost of the area outlined in blue on the attached plan. The contribution will be one 1/25 until 2 June 2009*

9. The Applicant/Landlord also wished to vary the percentage specified in clause D6 in the lease of Flat 26 by substituting 3.8% for the existing 4.3%

#### **The Tribunal's findings**

10. The Tribunal finds that :

- a. the grounds upon which the Applicant/Landlord's application to vary each lease have been made under section 35 of the 1987 Act have been established to the satisfaction of the Tribunal, and in making that finding the Tribunal has taken into account the fact, as the Tribunal finds, that none of the Respondent/Leaseholders have given notice to the Tribunal of any objection to the application
- b. in clause D6 in the lease of Flat 26 the percentage shall be varied by substituting 3.8% for the existing 4.3%
- c. in clause D6 of the lease of Flat 11, there shall be added a fraction of 1/25 until 2 June 2009, and 1/29 thereafter
- d. clause D6 in the lease of each Flat comprised in the Premises (including the lease of Flat 11 and the lease of Flat 26) shall be varied by replacing the existing wording in each case with new wording to reflect the Applicant/Landlord's evidence that the percentage referred to in clause D6 was intended to relate to service charge items for Corsica Hall and The Annexe, and the fraction referred to in clause D6 was intended to relate to service charge items for the common areas surrounding the Buildings
- e. however, the precise wording of the variation of each lease to give effect to the parties' wishes will need to be considered in more detail, because the wording proposed in the Applicant/Landlord's statement of case refers to :
  - "the area outlined in blue" in relation to the percentage for Corsica Hall and The Annexe, whereas clause D3 of each lease comprised in the Premises defines the area "surrounded by a blue line on the Plan" as a wider area, namely "the freehold property at present consisting of twenty-five Flats hereinafter called "The Building" together with the gardens and grounds ("Exterior Areas")"
  - "Corsica Hall" and "The Annexe", whereas those expressions are not defined in any of the leases comprised in the Premises and the words "The Annexe" do not appear on the plans attached to the leases; the parties may wish to consider a variation of the definitions in clause D3 in that respect
  - "the Lessees contribute 1/29", whereas that expression, with respect, does not follow the structure of the rest of the clause
  - "grounds", in respect of which it is not clear whether that expression is intended to mean the gardens and grounds defined in clause D3 as "Exterior Areas", and, if so, the parties may in fact wish to have consistency of drafting, in the light of that existing definition
  - "buildings", in respect of which the parties may in fact wish to have consistency of drafting, in that the expression "The Building", has already been defined in clause D3, but in respect of which, as already indicated, the parties may in fact wish to consider a variation of the definitions in Clause D3 in that respect
  - "all the associated cost of the area", in respect of which presumably there was intended to be a reference to the cost of *maintenance* of the area
  - "outlined in blue on the attached plan", in respect of which the parties may in fact wish to have consistency of drafting, in that the expression "the Plan" has already been defined in clause D2.2
  - "the contribution will be 1/25", whereas that expression, with respect, does not follow the structure of the rest of the clause
  - the fraction of 1/25 until 2 June 2009 and the fraction of 1/29 thereafter : the parties may well wish to draft the new clause so that the respective fractions appear in that chronological order

11. The Tribunal therefore makes the following further directions

- a. the Applicant/Landlord shall, by 14 November 2011, send to the each of the Respondent/Leaseholders, and to the Tribunal, a fresh draft of the proposed variations of each lease, to take account of the Tribunal's findings in these Reasons, and, before doing so, the Applicant/Landlord may well wish to take legal advice
- b. the Respondent/Leaseholders shall, by 12 December 2011, send to the Applicant/Landlord and to the Tribunal, such comments as they may have, if any, on the Applicant/Landlord's fresh draft, and giving details of such claim as they may wish to make, if any, for compensation under section 38(10) of the 1987 Act
- c. the Tribunal intends to reconvene to consider its decision, again, by a Chairman sitting alone rather than by a full tribunal of three members, after 12 December 2011, without an oral hearing unless by that date either party has make a written request for an oral hearing

Dated 15 October 2011



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor

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**Case No. CHI/21UF/LVT/2011/0003**

**Corsica Hall, College Road, Seaford, East Sussex, BN25 1JX**

**Appendix 1**

**List of Respondent/Leaseholders and Flats comprised in the Premises**

## DETAILS OF RESPONDENTS

FLAT 1	Mr & Mrs R White
FLAT 2	Miss M Orriss
FLAT 3	Mr E Fitzgerald and Ms L Evans
FLAT 4	Mr & Mrs A Deen
FLAT 9	Mr J Mitchell
FLAT 11	Mr N C Lade
FLAT 14	Mr B Spiby and Mr J Brown
FLAT 15	Mr R W Warans
FLAT 16	Mr & Mrs J Smith
FLAT 17	Mr M A Gorman
FLAT 19	Mr M A Rose
FLAT 20	Mr M Glynn
FLAT 21	Mrs J Fannon
FLAT 23	Mrs E Polkinhorn
FLAT 25	Mr & Mrs P Stanley
FLAT 26	Mr & Mrs W Charles

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FLATS 27,28, 28 AND 39

Waterside Estates Ltd  
c/o Coastal Management Ltd  
99 Western Road  
Hove  
East Sussex BN3 1FA

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**Appendix 2**

**List of Existing Service Charge Percentages for the Premises**

FLAT 1	4%
FLAT 2	4%
FLAT 3	4.7%
FLAT 4	5.4%
FLAT 9	3.2%
FLAT 14	5.6%
FLAT 15	4.5%
FLAT 16	4.2%
FLAT 17	3.6%
FLAT 19	3.6%
FLAT 20	2.5%
FLAT 21	2.4%
FLAT 23	3.1%
FLAT 25	3.1%
FLAT 11	4.3%
FLAT 26	4.3%



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**Case No. CHI/21UF/LVT/2011/0003**

**SUPPLEMENTAL REASONS**

**Application :** Section 35 of the Landlord and Tenant Act 1987 as amended ("The 1987 Act")

**Applicant/Landlord :** Eagle Estates Limited

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**Member of the Tribunal :** Mr P R Boardman JP MA LLB (Chairman)

**Date of Tribunal's Reasons and Further Directions :** 15 October 2011

**Date of Tribunal's Supplemental Reasons :** 6 January 2012

**Introduction**

1. These reasons are supplemental to, and are intended to be read with, the Tribunal's reasons and further directions dated 15 October 2011
2. Following those reasons dated 15 October 2011 the Tribunal has received further submissions from the Applicant/Landlord dated 11 November 2011, but has received no submissions from any of the Respondent/Leaseholders

**Applicant/Landlord's further submissions dated 11 November 2011**

3. The Applicant/Landlord suggested the following variations to each lease of the Premises :

- a. the plan : alter the words on the location plan by deleting the words “Corsica Mansions” and substituting the words “Corsica Hall”, and by deleting the words “Corsica Hall” and substituting the words “The Annexe”, so that the new location plan will be as appears at Appendix 3 to these supplemental reasons
- b. clause D3 : delete the existing wording and substitute the following wording :

*D3 The Lessor is the owner of the freehold property known as Corsica Hall and The Annexe as shown on the Plan at present consisting of 25 flats in total hereinafter called “The Building” together with the gardens and grounds surrounding the Building hereinafter called “Exterior Areas” the overall extent of the freehold property as shown by a blue line on the Plan*

- c. clause D6 : delete the existing wording and substitute the following wording :

*D6 The Lessee's proportion referred to in Clauses 2.2 and 3.2.1 is [the respective percentages listed in Appendix 2 to the reasons dated 15 October 2011] of the expense incurred in the management of the Building being the 25 flats comprising Corsica Hall and The Annexe, including insurance, general and major maintenance, decoration and the reserve fund. In addition, the Lessees contribute the fraction of 1/25 until 2 June 2009 (and the fraction of 1/29 from 3 June 2009) of the common expenses of the maintenance of grounds, services and security of the buildings and grounds comprising the Exterior Areas*

**The Tribunal's findings (incorporating, for ease of reference, the findings in the reasons dated 15 October 2011)**

4. The Tribunal finds that :
  - a. the grounds upon which the Applicant/Landlord’s application to vary each lease have been made under section 35 of the 1987 Act have been established to the satisfaction of the Tribunal, and in making that finding the Tribunal has taken into account the fact, as the Tribunal finds, that none of the Respondent/Leaseholders have given notice to the Tribunal of any objection to the application
  - b. the location plan at Appendix 3 to these supplemental reasons shall be substituted for the location plan in the lease of each Flat comprised in the Premises
  - c. clause D3 in the lease of each Flat comprised in the Premises shall be varied by replacing the existing wording with the following wording proposed by the Applicant/Landlord :
 

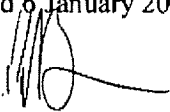
*D3 The Lessor is the owner of the freehold property known as Corsica Hall and The Annexe as shown on the Plan at present consisting of 25 flats in total hereinafter called “The Building” together with the gardens and grounds surrounding the Building hereinafter called “Exterior Areas” the overall extent of the freehold property as shown by a blue line on the Plan*
  - d. in clause D6 in the lease of Flat 26 the percentage shall be varied by substituting 3.8% for the existing 4.3%
  - e. in clause D6 of the lease of Flat 11, there shall be added a fraction of 1/25 until 2 June 2009, and 1/29 thereafter

- f. clause D6 in the lease of each Flat comprised in the Premises (including the lease of Flat 11 and the lease of Flat 26) shall be varied by replacing the existing wording with the following wording proposed by the Applicant/Landlord :

*D6 The Lessee's proportion referred to in Clauses 2.2 and 3.2.1 is [the respective percentages listed in Appendix 2 to the reasons dated 15 October 2011] of the expense incurred in the management of the Building being the 25 flats comprising Corsica Hall and The Annexe, including insurance, general and major maintenance, decoration and the reserve fund. In addition, the Lessees contribute the fraction of 1/25 until 2 June 2009 (and the fraction of 1/29 from 3 June 2009) of the common expenses of the maintenance of grounds, services and security of the buildings and grounds comprising the Exterior Areas*

- g. in making those findings the Tribunal has taken account of the fact that none of the Respondent/Leaseholders has notified the Tribunal of any comments on the further submissions from the Applicant/Landlord dated 11 November 2011, despite being given the opportunity to do so by the directions at the end of the Tribunal's reasons dated 15 October 2011
- h. the Tribunal makes no order for compensation under section 38(10) of the 1987 Act in this case, and, in making that finding, the Tribunal has taken account of the fact that none of the Respondent/Leaseholders has made a claim in that respect, despite being given the opportunity to do so by the directions at the end of the Tribunal's reasons dated 15 October 2011

Dated 6 January 2012



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor

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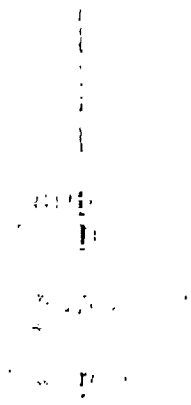
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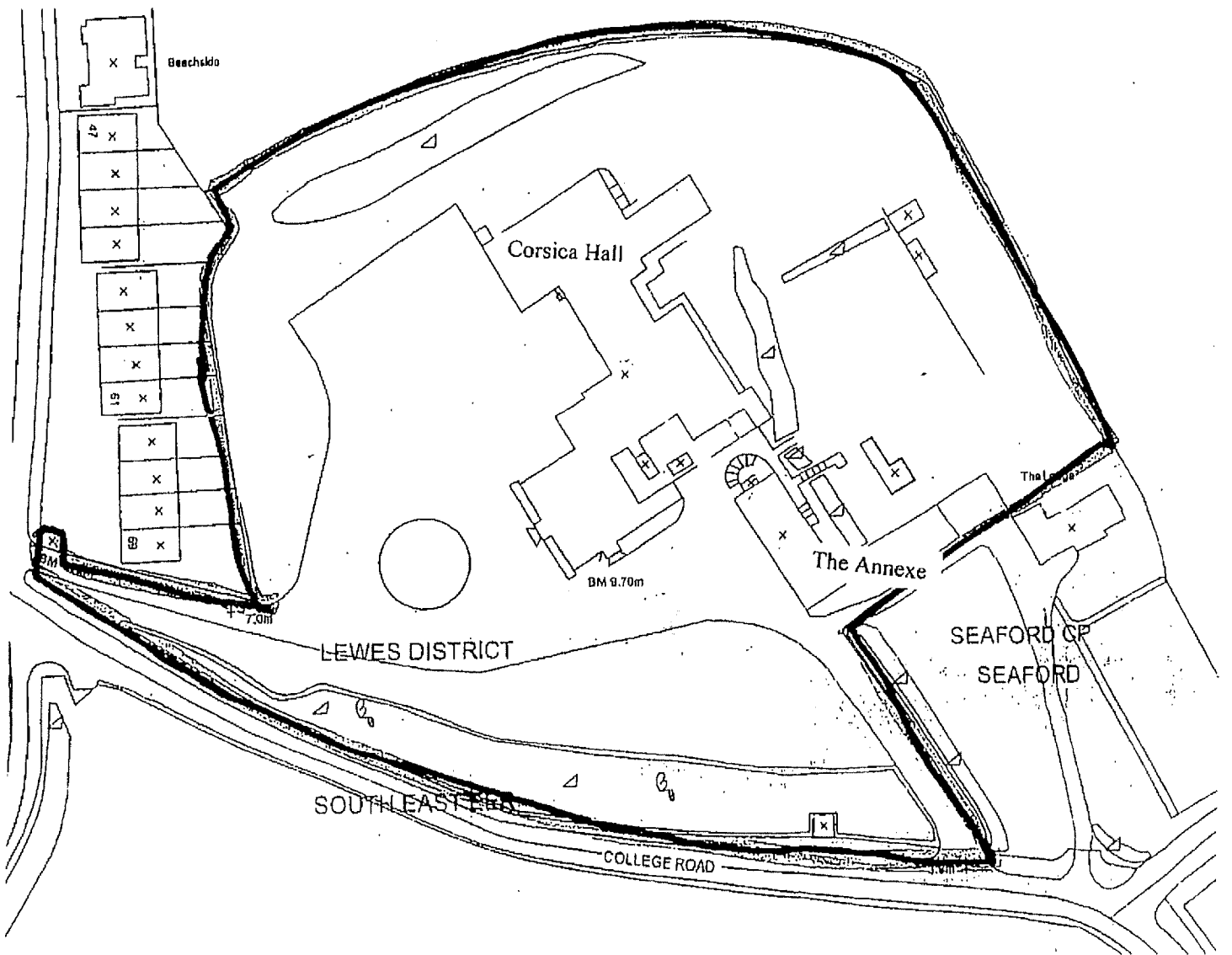
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**Appendix 3**

**New Location Plan**





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## Location Plan (1:1250)

