



FAO: Natalie Daniels
FirstPort
Marlborough House
Wigmore Lane
Luton
LU2 9EX

Date 15 January 2024

By email: Natalie Daniels Natalie.Daniels@firstport.co.uk

Dear Ms Daniels

Port Marine, Portishead

I write further to your recent correspondence with the residents of Port Marine, Portishead (**the Development**), including your letters to Mr Gabriel and Ms Flanagan of 21 February 2023 and to Mr and Mrs Hallam of 11 December 2023. I also refer to my earlier emails.

I have summarised Crest's understanding of the present position below:

- The development was constructed by Crest in or around 2000 and FirstPort was appointed as Manager under the various freehold transfers to residents.
- Pursuant to the terms of the various plot transfers on the Development (**the Plot Transfers**), the transferees granted to the Manager (FirstPort) the Rentcharges (as defined).
- The Rentcharges are made up of the Variable Rentcharge and the Fixed Rentcharge which are expressed to work as follows:
 - o The Variable Rentcharge operates like a service charge and is a variable sum to be calculated and paid under the terms of the Fifth Schedule of each plot transfer in exchange for the Manager providing the services to the Development set out in more detail in the Seventh Schedule to each Transfer.
 - o The Fixed Rentcharge is expressed to be a fixed rentcharge of £100 (and, I understand, in some cases £150) per annum to be payable to the Manager in perpetuity.
- In 2011 Crest asked FirstPort (then Peveral OM) to agree to change the Fixed Rentcharge to £1. This was agreed by FirstPort, and I understand that no Fixed Rentcharge has been demanded since 2011.
- I have not been able to determine why a decision was taken to change the Fixed Rentcharge in 2011 but it is distinctly possible that this was because the rentcharge mechanism in the Plot Transfers was void and unenforceable for the reasons explained below.
- I understand that Firstport has now sent letters to the residents of the Development indicating that it intends to revoke the 2011 agreement and will now start levying the Fixed Rentcharge (which it previously had not collected) at the original £100/£150 amount.
- I understand that FirstPort had initially tried to demand arrears of the Fixed Rentcharge (seemingly on the basis that any agreement reached in 2011 was not legally binding), but has now dropped that demand (no doubt because of the outrage it caused).
- A number of residents have contacted me at Crest Nicholson to ask Crest to become involved in this issue. They feel, quite understandably, that it is extremely unfair that FirstPort could

renege on its original promise and now seek to charge this sum for each property across the Development, particularly when they thought an agreement had been reached in 2012 not to do so.

I have now looked into the issue in some depth and have also taken advice from external solicitors.

Firstly, aside from the strict legal position, it is disappointing that FirstPort has sought to reinstate the Fixed Rentcharge during a cost-of-living crisis, when many residents will struggle to afford any increase in their annual outgoings.

I am still looking into the wider circumstances of the decision in 2011 to reduce the Fixed Rentcharge to £1, but it may well be that this decision was taken because it was felt the original fee was unfair and any purported entitlement to levy such a fee was void pursuant to s.2 Rentcharges Act 1977 (the **Act**).

S.2(1) of the Act provides that no rentcharge may be created after the coming into force of the Act (other than those permitted by that section). S.2(2) of the Act further provides that any instrument purporting to create a rentcharge will be void. S.2(3) includes the various exceptional circumstances in which a rentcharge may be created (which includes "estate rentcharges") and the s.2(4) sets out what is meant by an estate rentcharge for those purposes.

I understand that FirstPort have advised home owners that the Fixed Rentcharge's purpose is to provide consideration in order to enable FirstPort to enforce the covenants made by the property owners on the Development. Whilst that is indeed a permitted purpose for the creation of a rentcharge (as it is one of the limbs of an estate rentcharge) there is nothing in the Plot Transfers to suggest that was the purpose for the Fixed Rentcharge's creation. In stark contradiction to that suggestion, I note that the actual cost of any covenant enforcement action incurred by FirstPort is caught by the Variable Rentcharge (for example pursuant to paragraph 14.1 of the Seventh Schedule). As such, the Fixed Rentcharge did not need to be created for that purpose. Consequently, it is not at all clear to us on what basis FirstPort makes that claim and I suspect that it has been suggested to try to bring it within the definition of an estate rentcharge under the Act.

Secondly, even if the Fixed Rentcharge is caught by s.2(4)(a) of the Act, it will not be treated as an estate rentcharge (and thus fall within and relevant permitted exemption to the general prohibition of rentcharges under the Act) where the rentcharge is for more than a nominal amount. In practice rentcharges pursuant to s.2(4)(a) are, I understand, almost always a genuinely nominal amount of either £1 or a peppercorn. A rentcharge of £100 or £150 is not a nominal amount and the strength of reaction from the residents of the Development alone should make that point clear. If it is not a nominal amount, it cannot be an estate rentcharge and so, unless it is caught by any of the other exception as s.2(3) of the Act, it will not be permitted and the rentcharge provisions will be void and unenforceable pursuant to s.2(3).

Finally, I note that FirstPort has concluded that the "12 year rule" does not apply here and the Fixed Rentcharge has not therefore lapsed. I would also ask that you explain this conclusion, as it does seem quite possible that the Fixed Rentcharge has now lapsed.

In light of the contents of this letter, I would urge you to reconsider your decision and to write instead to the relevant proprietors to confirm that you will not be charging a rentcharge after all.

Yours sincerely

Peter Hoskins

Customer Service Director

Crest Nicholson Plc

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