



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00BF/LSC/2018/0147**

**Property** : **Village Court, 25 Park Road, Cheam,  
Sutton SM3 8PY**

**Applicant (1)  
Head Tenant** : **Finnan Developments Ltd**

**Representative** : **Mr S Watson, director of Vectis  
Property Ltd (managing agents)**

**Applicants (2)  
Lessees** : **(a) Mr G Hall and Ms D Marshall  
(b) Mr and Mrs Carruthers  
(c) Mr and Mrs A Leszczak  
(d) Mr J Roskrow  
(e) Mrs L Bridges  
(f) Mr and Mrs Bruce  
(g) Dr R Meeajan  
(g) Mr T Takle and Ms K Skudal  
(i) Mr S Diel  
(j) Mr C Hammond and Ms Dale**

**Representative** : **Mr J Roskrow**

**Respondent  
Freeholder** : **Ivory Management Ltd**

**Representative** : **Mr J Dillon of counsel**

**Type of application** : **For the determination of the  
reasonableness of and the liability to  
pay a service charge**

**Tribunal members** : **Judge S Brilliant  
Mr P Casey MRICS  
Mr L Packer**

**Date and venue of  
hearing** : **27 and 28 March 2019  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **8 May 2019**

## **Decision of the Tribunal**

The Tribunal determines that the first applicant is to pay 24.07% of each of the following sums<sup>1</sup> in respect of passed on charges due to the respondent for the following periods:

01 January 2012 – 31 December 2012	£20,916.92.
01 January 2013 – 31 December 2013	£13,313.44.
01 January 2014 - 31 December 2014	£3,892.44.
01 January 2015 – 31 December 2015	£11,310.56.
01 January 2016 – 31 December 2016	£11,797.38.
01 January 2017 - 31 December 2017	£11,426.55.
01 January 2018 – 31 December 2018	£11,611.97 (estimated).

In addition, the first applicant is to pay 3.3717% of the respondent's expenditure on insurance in each service charge year.

## **Introduction**

1. The respondent, Ivory Management Ltd ("Ivory"), is the freehold owner of two adjacent titles bounded by Cheam High Street and Park Road, Sutton.
2. Together, the two titles contain a development consisting of the following:
  - (1) Village Court, a modern block of 11 flats situated on four floors. Village Court is registered under title number SGL97104.
  - (2) The remainder of the development, registered under title number SGL2242, which comprises:
    - (a) a large area of hardstanding providing common access on foot and for the parking of cars,
    - (b) an underground car park,
    - (c) three commercial units facing onto Cheam High Street with the

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<sup>1</sup> This is subject to any of the water charges being less than the maximum £100 we have provided for.

hardstanding to the rear and

(d) a number of flats situated on top of the commercial units.

3. There are controlled gates on Park Road permitting vehicular access into the development. There is a controlled gate on Cheam High Street permitting pedestrian access into the development.

4. By a head lease, dated 27 October 2006, Ivory demised Village Court to Larnport Properties Ltd for a term of 999 years from 27 October 2006 [1/157-176]. The residue of the term of the head lease is now vested in the first applicant, Finnan Developments Ltd (“Finnan”).

5. The head lease distinguishes between:

(1) Village Court (described as “the Premises” in clause 1.1 [1/158] and Part I of the First Schedule [1/163] and shown edged and hatched red on Plan 1 [1/175]); and

(2) the remainder of the development as described in paragraph 2(2) above (described as “the Property” in clause 1.1 [1/159], and comprising the two registered titles set out above and shown edged in blue on Plan 1 [1/175]). This remainder of the development will be referred to as “the blue land”. Finnan has no interest (in the legal sense) in the blue land.

6. The second applicants (“the lessees”) are the tenants of their respective flats in Village Court under long underleases.

7. Under the underleases, Finnan is entitled to charge the lessees service charges of two different kinds. Firstly, it can charge in the usual way for the services it provides under the lease. We shall refer to this first type of service charge as “the direct charges”. Secondly, it can recoup certain service charges which are payable by it to Ivory under the head lease. We shall refer to this second type of service charge as “the passed on charges”.

8. These proceedings at one time included:

(1) A dispute between the long lessees and Finnan about both the direct charges and the passed on charges.

(2) A dispute between Finnan and Ivory about the passed on charges.

9. However, at a case management conference it was decided that the two disputes should be separated. In our decision which is dated 17 December 2008 (LON/00BF/LSC/0060-0062, 0064-0065, 0067, 0071, 0075, 0077 and 0100) we dealt with the direct charges. At this hearing we are concerned with the passed on charges.

10. The application concerns the service charge years 01 January 2012 through to 31 December 2018. The lessees, as opposed to Finnan, are only concerned with the service charge years 01 January 2015 through to 31 December 2018, because their leases commenced on 01 January 2015.

### **The head lease**

11. The head lease provides that the service charge year runs from 01 January to 31 December: see the definition of “the Maintenance Year” in clause 1.1 [1/158]. “The Service Charge” is defined in clause 1.1 as a sum equal to a fair proportion of the total cost of the matters contained or referred to in the Fifth Schedule [1/159]. It is common ground that this sum is 24.07% of these total costs, except for insurance where the sum is 3.3717%.

12. The relevant parts of the Fifth Schedule are as follows [1/170-171]:

#### *Purposes for which the Service Charge is to be applied*

1. *Decoration, repair and maintenance of the Basement Car Park*

*(a) As often as may in the opinion of the Lessor be necessary to prepare and decorate in appropriate colours with good quality materials and in a workmanlike manner all the outside rendering wood and metal work of the Basement Car Park and ramps leading thereto*

*(b) To keep the interior and exterior walls and ceilings and floors of the Basement Car Park and the ramps leading thereto and the roadways and footpaths within the Property the use of which is common in good repair and condition*

*(c) Properly to cultivate maintain and preserve in good order and condition the common parts external to the Property and to keep the Basement Car Park forecourt and footpaths of the Property and all paths fences screens and walls properly maintained and surfaced and (where appropriate) lighted*

*(d) To keep the car park, vehicular entrances and ways comprising part of the Property properly surfaced, repaired, laid out, painted, clean and tidy and (at the Lessor’s discretion) lighted*

*(e) To keep maintained and repaired any vehicular security systems including entrance barriers within the Property*

13. It will be apparent that sub paragraphs (a)-(e) relate to the blue land, rather than to Village Court. It is also apparent that the scope of paragraph 1 goes far beyond decorating, repairing and maintaining the basement car park. The marginal heading

to paragraph 1 is therefore misleading and erroneous, but does not affect the matters in issue.

14. Paragraph 3(b) of the Fifth Schedule entitles Ivory to be reimbursed for its expenditure in maintaining a common supply of water to the blue land or to the common parts thereof. Paragraphs 4 and 5 of the Fifth Schedule entitles Ivory to be reimbursed for the cost of employing staff and managing the blue land. Paragraph 7 of the Fifth Schedule entitles Ivory to be reimbursed for the cost of insuring the blue land.

15. The machinery for collecting the service charges is to be found in Part II of the Fourth Schedule, which is as follows [1/169-170]:

*1. The Annual Maintenance Provision in respect of each Maintenance Year shall be computed not later than the beginning of September immediately preceding the commencement of the Maintenance Year ... and shall be computed in accordance with paragraph 2 hereof*

*2. The Annual Maintenance Provision shall consist of the sum comprising:*

*2.1 the expenditure estimated as likely to be incurred in the Maintenance Year by the Lessor for the purposes mentioned in the Fifth Schedule together with*

*2.2 [a reserve]*

*2.3 a reasonable sum to remunerate the Lessor for its administrative and management expenses in respect of the Property (including a profit element) such sum if challenged by any lessee to be referred for determination by a Chartered or Certified Accountant appointed by the Lessor acting as an expert*

*3.1 After the end of each Maintenance Year the Lessor shall determine the Maintenance Adjustment calculated as set out in the next following subparagraph*

*3.2 the Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2.2 above [this must be an error for paragraph 2.1] shall have exceeded or fallen short of the actual expenditure in the Maintenance Year ...*

*4. Subject to the provisions of paragraph 2.3 of this part of this Schedule a certificate signed by the Lessor and purporting to show the amount of the Annual Maintenance Provision or the amount of the Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount*

16. Clause 3.2 provides [1/160]:

*In respect of every Maintenance Year to pay the Service Charge to the Lessor by four equal instalments in advance on the Rent Payment Days.*

17. “Rent Payment days” is defined in clause 1.1 as being 24 December in each year. Clearly this is a mistake, but nothing turns on this.

18. Clause 3.3 provides [1/160]:

*To pay to the Lessor a due proportion of any Maintenance Adjustment pursuant to paragraph 3 of Part II of the Fourth Schedule ...*

### **The issues**

19. There are a number of generic issues, and also some issues about particular charges.

20. We begin with the generic issues.

#### *Certification*

21. Mr Watson argues that none of the service charges are recoverable by Ivory because the accounts have never been certified.

22. We accept Mr Dillon’s submission that this argument is misconceived.

23. There is no requirement in the head lease for accounts to be certified as a condition of the service charges becoming payable. The references to certification in paragraphs 2.3 and 4 of Part II of the Fourth Schedule relate to challenges by Finnan to the amounts being claimed by way of service charges. Certification is not a precondition of the service charges becoming payable.

#### *s.47 Landlord and Tenant Act 1987*

24. Mr Watson argues that the service charges cannot be recovered because Ivory’s address provided was not in England or Wales as required by s.47. It is accepted that the demands did not comply with s.47. However, Ivory is entitled correct position by the service of a valid demands: Johnson v County Bideford [2012] UKUT 457 (LC) .

#### *s.20B Landlord and Tenant Act 1985*

25. Mr Watson argues that demands have been made in breach of the 18 month rule contained in s.20B. This point falls away because the demands for advanced service charges were significantly more than the amounts which are now claimed.

*What land in the development is within the service charge*

26. Mr Watson argues that certain common part charges should not be paid by Finnan. In particular, he challenges the cleaning of the corridors outside the residential units above the shops and the supply of electricity for lighting the corridors. This is because neither Finnan nor the lessees have any access to these corridors. In such cases Mr Watson argues the proportion payable by Finnan should be reduced from 24.07%.

27. This argument is not consistent with the lease, which provides that all the common parts in question fall within the blue land, and the costs relating to all the common parts accordingly fall within the service charges payable by Finnan.

*Service of s.20 notices*

28. It is accepted by Ivory that the s.20 notice dated 12 April 2016 was served on Finnan only and not on the lessees. The notice was served before the decision in Leaseholders of Founding Court v London Borough of Camden [2016] UKUT 366 (LC). The lessees have been able fully to participate in these proceedings, and we do not find that any prejudice suffered by them. Accordingly, as asked to by Mr Dillon, we give dispensation under s.27ZA of the Act to the extent that there was non-compliance with the requirements of s.20.

*Concessions by Ivory*

29. The demands and years end accounts sent to Finnan included demands such as “Schedule B-Flats Only” and “Flats & commercial units”/”Commercial Units”. Ivory now accepts that these demands should not have been made. It is regrettable that these demands were made. Serving unwarranted demands is hardly conducive to a good relationship between the parties.

30. We now turn to the specific items. Where we refer to items being challenged by Mr Watson, it can be taken that these challenges were adopted where appropriate by Mr Roskrow on behalf the lessees. The tables below are derived from Ivory’s note of closing, which in turn were taken from each year’s final account. The exception is for the year 2018 which concerns anticipated costs, although the year has ended. We adopt Mr Dillon’s suggestion of taking the mean figure of the two previous years.

**01 January 2012–31 December 2012**

31. The following table relates to the year 2012. We discuss below the items left in dispute or needing an explanation. All figures relate to the total expenditure, not those apportioned to Finnan.

Item	Ivory’s demands	Ivory’s case at hearing	Finnan/ lessees’ position at hearing	Finding
Cleaning	£1,158.04	£1,158.04	Challenged	£1,158.04

Gritting	£569.70	£569.70	Challenged	£569.70
Health & Safety	£6,247.70	£6,247.70	£6,247.70	£6,247.70
Audit & Accountancy	£1,080.00	£480.00	Challenged	£480.00
Facilities Management	£3,500.00	£3,946.92	Challenged	£3,946.92
Pest Control	£3,378.98	£3,378.98	Challenged	£3,378.98
Security	£4,145.54	£1,103.95	£1,103.95	£1,103.95
Electricity	£537.23	£537.23	Challenged	£537.23
Refuse	£1,158.00	£1,158.00	£1,158.00	£1,158.00
External Repairs	£2,000.40	£2,000.40	£2,000.40	£2,000.40
Management Fee	£1,845.00	0	0	0
Drainage	£336.00	£336.00	Challenged	£336.00
<b>Total</b>	<b>£25,957.69</b>	<b>£20,916.92</b>		<b>£20,916.92</b>

### *Cleaning and Electricity*

32. The full amounts claimed for cleaning and electricity are allowed. Ivory was successful on the fourth generic issue. Accordingly, the full cost of cleaning forms part of the service charge.

### *Gritting*

33. The full amount is allowed. Gritting is part of the maintenance of the common parts.

### *Audit & Accountancy*

34. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [8 x 25] + (b) [200] x (c) 1.2 VAT]. This produces a figure of £480.00 before apportionment.

### *Facilities Management*

35. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [10% x £25,957.69] + (b) [52/6 x 2 x 40] x (c) 1.2 VAT]. This produces a figure of £3,946.91 before apportionment. No management charges are allowed on top of this.

### *Pest Control*

36. The full amount is allowed. Mr Watson has obtained an estimate [1113], which is for an amount significantly cheaper than that paid by Ivory. Nevertheless, the work required by Ivory to be undertaken was reasonable, and from the Tribunal's expert knowledge and experience the costs claimed are reasonable.

### *Drainage*



37. The dispute is whether part of the drainage charges relate to Sainsbury's and not to the common parts. In our view, the drainage lies within the blue land and there is no evidence that the managing agents were wrong to pay these charges.

### **01 January 2013-31 December 2013**

38. The following table relates to the year 2013. We discuss below the items left in dispute. All figures relate to the total expenditure, not those apportioned to Finnan.

Item	Ivory's demands	Ivory's case at hearing	Finnan/lessees' position at hearing	Finding
Cleaning	£1,103.44	£1,103.44	Challenged	£1,103.44
Gritting and Salt Spreading	£324.00	£324.00	£324.00	£324.00
Health & Safety	£548.00	£548.00	£548.00	£548.00
Audit & Accountancy	£1,140.00	£510.00	Challenged	£510.00
Facilities Management	£3,500.00	£5,643.36	Challenged	£5,643.36
Pest Control	£2,080.06	£2,080.06	Challenged	£2,080.06
Security	£4,966.37	£259.53	£259.53	£259.53
Electricity	£995.79	£995.79	£995.79	£995.79
Heating/Plumbing	£983.40	0	0	0
Refuse	£468.00	£468.00	£468.00	£468.00
External Repairs	£20,928.02	£1,381.26	£1,381.26	£1,381.26
Management Fee	£1,845.02	0	0	0
Drainage	£1,113.06	0	0	0
<b>Total</b>	<b>£40,095.70</b>	<b>£13,313.44</b>		<b>£13,313.44</b>

#### *Cleaning and Electricity*

39. Again, the full amounts claimed for cleaning and electricity are allowed.

#### *Audit & Accountancy*

40. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [9 x 25] + (b) [200] x (c) 1.2 VAT]. This produces a figure of £510.00 before apportionment.

#### *Facilities Management*

41. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [10% x £40,095.70] + (b) [52/6 x 2 x 40] x (c) 1.2 VAT]. This produces a figure of £5,643.36 before apportionment. No management charges are allowed on top of this.

### *Pest Control*

42. Again, the full amount is allowed. We are satisfied that the work required by Ivory to be undertaken was reasonable, and that the costs are reasonable.

### **01 January 2014-31 December 2014**

43. The following table relates to the year 2014. We discuss below the items left in dispute. All figures relate to the total expenditure, not those apportioned to Finnan.

Item	Ivory's demands	Ivory's case at hearing	Finnan/lessees' position at hearing	Finding
Cleaning	£1,135.16	£1,135.16	Challenged	£1,135.16
Gritting and Salt Spreading	£450.00	£450.00	£450.00	£450.00
Audit & Accountancy	£1,165.00	£540.00	Challenged	£540.00
Facilities Management	£3,500.00	£1,505.05	Challenged	£1,505.05
Pest Control	£581.40	£581.40	Challenged	£581.40
Security	£159.04	£159.04	£159.04	£159.04
Electricity	£1,921.75	£1,921.75	Challenged	£1,921.75
Refuse	£353.58	£353.58	£353.58	£353.58
External Repairs	(£7,048.32)	(£2,753.54)	(£2,753.54)	(£2,753.54)
Management Fee	£1,844.98	0	0	0
<b>Total</b>	<b>£4,062.57</b>	<b>£3,892.44</b>		<b>£3,892.44</b>

### *Cleaning and Electricity*

43. Again, the full amounts claimed for cleaning and electricity are allowed.

### *Audit & Accountancy*

44. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [10 x 25] + (b) [200] x (c) 1.2 VAT]. This produces a figure of £540.00 before apportionment.

### *Facilities Management*

45. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [10% x £8,117.16] + (b) [52/6 x 2 x 40] x (c) 1.2 VAT]. This produces a figure of £1,505.05 before apportionment. No management charges are allowed on top of this.

### *Pest Control*

46. Again, the full amount is allowed. We are satisfied that the work required by Ivory to be undertaken was reasonable, and that the costs are reasonable.

### **01 January 2015-31 December 2015**

47. The following table relates to the year 2015. We discuss below the items left in dispute. All figures relate to the total expenditure, not those apportioned to Finnan.

Item	Ivory's demands	Ivory's case at hearing	Finnan/ lessees' position at hearing	Finding
Grounds Maintenance	£316.80	£316.80	Challenged	£316.80
Pest Control	£1,066.02	£1,066.02	Challenged	£1,066.02
Waste & Recycling	£726.00	£726.00	Challenged	£726.00
Gutter maintenance	£2,096.00	0	0	0
Cleaning	£2,142.98	£2,142.98	Challenged	£2,142.98
Drainage	£2,907.20	£2,907.20	Challenged	£2,907.20
Electricity	£1,258.04	£1,258.04	Challenged	£1,258.04
External Water	£1,092.59	£1,092.59	Challenged	£100.00
Repairs & Renewals	£964.00	£691.20	Challenged	£691.20
Door Entry System	£2,467.03	0	0	0
Health & Safety	£960.00	£960.00	Challenged	£960.00
Audit & Accountancy	£744.00	£744.00	£744.00	£744.00
Bank charges	£60.00	£60.00	£60.00	£60.00
Postage	£108.00	£108.00	£108.00	£108.00
Land at Rear Management	£230.32	£230.32	Challenged	£230.32
<b>Total</b>	<b>£17,138.98</b>	<b>£12,303.15</b>		<b>£11,310.56</b>

#### *Cleaning and Electricity*

48. Again, the full amounts claimed for cleaning and electricity are allowed.

#### *Audit & Accountancy*

49. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [10 x 25] + (b) [200] x (c) 1.2 VAT]. This produces a figure of £540.00 before apportionment.

#### *Facilities Management*

50. The original figure claimed did not include VAT. An agreed capping formula was adopted with VAT added. The formula was 24.07% of [(a) [10% x £8,117.16] + (b) [52/6 x 2 x 40] x (c) 1.2 VAT]. This produces a figure of £1,505.05 before apportionment. No management charges are allowed on top of this.

### *Pest Control*

51. Again, the full amount is allowed. We are satisfied that the work required by Ivory to be undertaken was reasonable, and that the costs are reasonable

### *Grounds Maintenance*

52. Mr Watson objected on the grounds that it was an associated company of Ivory which carried out the maintenance. There is no evidence before us that that the charges were unreasonable, we allow this sum.

### *Waste & Recycling*

53. Mr Watson objected to these charges, on the basis that the local authority is responsible for collecting and moving waste. However, we are satisfied that these charges relate to waste which the local authority will not collect, such as dumped items.

### *Drainage*

54. The dispute is whether part of the drainage charges relate to Costa and not to the common parts. In our view, the drainage lies within the blue land and there is no evidence that the managing agents were wrong to pay these charges.

### *External Water*

55. The evidence before us at the hearing was that the only water tap on the blue land was high up inside the basement car park and, not surprisingly, was seldom if ever used by anyone. Questioned by the Tribunal why he had not queried the seemingly high water bill, Ivory's managing agent said that he had not because it was consistent every year. We reject that explanation. After the hearing Mr Roskrow sent an email to the Tribunal suggesting that the water that was being charged for was in fact being supplied to Costa Coffee. This may well be the case. However, this is not evidence we take into account, as with reasonable diligence it could have been provided at the hearing.

56. We are critical of Ivory's managing agent for not having so far challenged the water bill. He undertook to us that he would investigate the situation, and make an appropriate adjustment to the service charge. Whatever the outcome of the agent's investigation, we will only allow a maximum of £100 for this item.

### *Repairs & Renewals*

57. The charge relates to the cost of repainting the lines in the basement car park [1/353]. We allow this.

### *Health & Safety*

58. We consider the charges per unit reasonable and we allow them.

*Land at Rear Management*

59. This is the administrative cost of providing the passed on costs to Finnan. Ivory is entitled to recover this cost.

*Insurance*

60. In addition to the service charge claim, the accounts include the expenditure of £5,292.20 on insurance. There is no evidence before us that the cost of insurance was excessive. Finnan is liable to pay this. The appropriate percentage is 3.3717%.

**1 January 2016-31 December 2016**

61. The following table relates to the year 2016. We discuss below the items left in dispute. All figures relate to the total expenditure, not those apportioned to Finnan.

Item	Ivory's demands	Ivory's case at hearing	Finnan/lessees' position at hearing	Finding
Pest Control	£538.35	£538.35	Challenged	£538.35
Waste & Recycling	£642.00	£642.00	£642.00	£642.00
Gutter maintenance	£1,998.00	0	0	0
Cleaning	£2,059.20	£2,059.20	Challenged	£2,059.20
Drainage	£354.00	0	0	0
Major Works	£1,910.40	0	0	0
Electricity	£897.62	£897.62	Challenged	£897.62
External Water	£1,378.62	£1,378.62	Challenged	£100.00
Repairs & Renewals	£6,292.82	£4,264.00	Challenged	£4,264.00
Door Entry System	£3,299.98	0	0	0
Health & Safety	£960.00	£960.00	Challenged	£960.00
Management Fee	£1,159.00	£1,159.00	£1,159.00	£1,159.00
Audit & Accountancy	£762.00	£762.00	£762.00	£762.00
Bank charges	£60.00	£60.00	£60.00	£60.00
Postage	£108.00	£108.00	£108.00	£108.00
Land at Rear Management	£247.21	£247.21	Challenged	£247.21
<b>Total</b>	<b>£22,667.20</b>	<b>£13,076.00</b>		<b>£11,797.38</b>

*Cleaning and Electricity*

62. Again, the full amounts claimed for cleaning and electricity are allowed.

*Pest Control*

63. Again, the full amount is allowed. We are satisfied that the work required by Ivory to be undertaken was reasonable, and that the costs are reasonable

*External Water*

64. Again, we will only allow a maximum of £100.00 for this item.

*Repairs & Renewal*

65. The full amount, including the costs regarding the entrance barrier, are properly recoverable under the head lease.

*Health & Safety*

66. Again, we consider the charges per unit reasonable and we allow them.

*Land at Rear Management*

67. Again, this is the administrative cost of providing the passed on costs to Finnan. Ivory is entitled to recover this cost.

*Insurance*

68. In addition, there is a claim described as 'legal costs' is but which is actually an insurance cost. The amount totals £167.18 which we allow. The appropriate percentage is 3.3717%.

**1 January 2017-31 December 2017**

69. The following table relates to the year 2017. We discuss below the items left in dispute. All figures relate to the total expenditure, not those apportioned to Finnan.

Item	Ivory's demands	Ivory's case at hearing	Finnan/ lessees' position at hearing	Finding
Property Set Up Fee	£216.00	£216.00	Challenged	£216.00
Pest Control	£1,132.88	£1,132.88	Challenged	£1,132.88
Waste & Recycling	£30.00	£30.00	£30.00	£30.00
Cleaning	£2,295.00	£2,059.20	Challenged	£2,059.20
Water	£792.67	£792.67	Challenged	0
Electricity	£830.74	£830.74	Challenged	£830.74
External Water	£816.43	£816.43	Challenged	£100.00
Repairs & Renewals	£3,428.54	£3,428.54	Challenged	£3,428.54
Door Entry System	£3,283.81	0	0	0

Health & Safety	£960.00	£960.00	Challenged	£960.00
Management Fee	£1,194.00	£1,194.00	£1,194.00	£1,194.00
Audit & Accountancy	£781.20	£781.20	£781.20	£781.20
Bank charges	£96.00	£96.00	£96.00	£96.00
Postage	£108.00	£108.00	£108.00	£108.00
Land at Rear Management	£254.19	£254.19	Challenged	£254.19
<b>Total</b>	<b>£16,219.46</b>	<b>£12,935.65</b>		<b>£11,426.55</b>

#### *Property Set Up Fee*

70. This was the cost of transferring data on the change managing agents. We consider it a reasonable charge and is allowed.

#### *Cleaning and Electricity*

71. Again, the full amounts claimed for cleaning and electricity are allowed.

#### *Pest Control*

72. Again, the full amount is allowed. We are satisfied that the work required by Ivory to be undertaken was reasonable, and that the costs are reasonable

#### *External Water*

73. Again, we will only allow a maximum £100.00 for this item.

#### *Repairs & Renewal*

74. The full amount, including the costs of the gateway, are properly recoverable under the head lease.

#### *Health & Safety*

75. Again, we consider the charges per unit reasonable and we allow them.

#### *Land at Rear Management*

76. Again, this is the administrative cost of providing the passed on costs to Finnan. Ivory is entitled to recover this cost.

#### **1 January 2018-31 December 2018 Budget**

77. As we have said, we propose to take the mean figure of the two earlier years as the budgeted provision. This amounts to £11,611.97.

## **s.20C and fees refund**

78. The amounts recovered by Ivory were considerably less the sums originally demanded. Many concessions were made. In particular, demands were made which were only payable by the flats or the commercial units (see paragraph 29 above). This amounted to a reduction payable by Finnan of £13,314.94 In the circumstances of this case, we are of the view that it would be just and reasonable to make an order that the costs incurred by Finnan in these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable, and that the applicants are entitled to repayment of the Tribunal's fees.

**Name:** Simon Brilliant

**Date:** 8 May 2019

### **ANNEX - RIGHTS OF APPEAL**

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.