FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00AW/LAM/2019/0004**
HMCTS code	**:**	**V:CVPREMOTE**
Property	**:**	**1 Palace Gate London W8 5LS**
Applicant	**:**	**Michael Maunder Taylor**
Respondent(s)		**1) Winchester Park Ltd (landlord/freeholder)** **2) Mr James Davies (joint LPA Receiver)** **3) Eperstein SARL (Flat 1)** **4) Mr. Iraj Zand (Flat 2)** **5) A Sehayek Esq (Flat 3)** **6) Mr. Pavel Teplukhin (Flat 4)** **7) Number One Group Capital Jersey (Unit 6)**
Respondents' Reresentatives		**1) Addleshaw Goddard (representing freeholder and LPA receivers)** **2) Northover Litigation (representing lessees of Flats 2, 3 and 4** **3) Alon Mahpud (representing tenant of Unit 6)**
Type of application	**:**	**Application by a manager under s24(4) of Part II of the Landlord and Tenant Act 1987, for directions.**
Tribunal	**:**	**Judge D Barlow; Judge A. Verduyn**
Date of hearing	**:**	**15 July 2020**

DECISION

Covid 19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal refer to are within a Bundle of 633 pages, the contents of which have been fully considered by the Tribunal. References to page numbers in square brackets are to the relevant page(s) within the Bundle.

DECISIONS OF THE TRIBUNAL

(1) The lease of the ground floor and basement unit known as Unit 6 Palace Gate London W8 5LS, dated 20 August 2014, should be interpreted as obliging the tenant of Unit 6 to pay a service charge in respect of the Service Costs, as defined in the lease, in accordance with the provisions of clause 8 of the lease.

(2) The proportion of service charge payable by the tenant of Unit 6 should be a fair proportion, calculated by reference to the net internal floor area of the premises demised by the lease of Unit 6, relative to the total net internal floor area of all flats and commercial units within the Property.

REASONS

APPLICATION

1. This is an application by Mr Maunder Taylor a Tribunal appointed Manager of 1 Palace Gate London, for directions under s24(4) of the Landlord and Tenant Act 1987. The two questions the Manager seeks directions on are:

> (1) Should the lease of Unit 6 be interpreted so as to oblige the tenant of Unit 6 to contribute towards the service charge in accordance with clause 8 of the lease?
>
> (2) In the event that the Tribunal direct the Manager to allocate a share of the service charge to Unit 6, what proportion of service charge should be allocated?

A "supplementary issue" has been raised by the lessees of Flats 2, 3 and 4 concerning the current use of Unit 6, which is addressed below.

BACKGROUND

2. 1 Palace Gate is a seven-storey building on the corner of Kensington High Street and Palace Gate. The entrance to the communal hall and stairs is on Palace Gate. The Property comprises 5 flats and 3 commercial units. The commercial units occupy the basement and ground floor with the flats on the ground floor and above.

3. A Management Order for 1 Palace Gate was granted on 26 July 2018, appointing Michael Maunder Taylor as Manager pursuant to Part II of the Landlord and Tenant Act 1987. The Order requires the Manager (inter alia) to manage the common parts and common facilities of the Property, to administer the service charge and prepare and distribute appropriate service charge accounts to the lessees of the Property in accordance with the terms of the leases.

4. During the hanDovar of management functions the Manager states that he was told by the previous manager that the tenant of Unit 6 did not contribute to the service charge payable by lessees of the building. However, on checking the terms of the lease with his solicitor the Manager concluded that clause 8 of the lease of Unit 6 obliges the tenant of Unit 6 to contribute to the cost incurred by the landlord in providing services.

5. In August 2019 the Manager raised the matter with Mr Alon Mahpud, who represents the tenant of Unit 6. Mr Mahpud said that the service charge contribution paid by the tenant of Unit D (adjoining Unit 6) accounted for the floor area of both Unit D and Unit 6. The Manager asked for a copy of any agreement or other document confirming this arrangement. Mr Mahpud did not provide evidence of any agreement with the tenant of Unit D confirming that, in addition to its own service charge contribution, it was paying the service charge contribution of Unit 6.

6. Having reached an impasse with Mr Mahpud, on 9 August 2019, the Manager applied to the Tribunal for directions on the two above questions. The second question addresses the absence of any express provision within the lease of Unit 6 concerning the due proportion of service charge payable by the tenant.

7. Directions were made on 27 January 2020 for a joint appointed expert to measure the internal floor area of Unit D and Unit 6. Thresholds Surveyors, the jointly appointed expert, inspected the Property on 20 February 2020 and provided a report dated 9 March 2020 [430-474] and an addendum report dated 16 March 2020 of the internal colour photographs taken during the inspection [475-488].

LAW

Landlord and Tenant Act 1987 Part II

S24(4) An order under this section may make provision with respect to –

(a) Such matters relating to the exercise by the manager of his functions under the order, and

(b) Such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

WRITTEN SUBMISSIONS

8. Written submissions were received from:
(a) Mr Mahpud on behalf of Unit 6, dated 25 November 2019 [111-288].
(b) Mr Maunder Taylor, dated 2 December 2019 [289-296].
(c) Addleshaw Goddard on behalf of the LPA Receivers, dated 29 October 2019 [8-12]; and 6 December 2019 [297-301].
(d) The Lessees of Flats 2, 3 and 4, dated 31 October 2019 [63-107]; and 9 December 2019 [357-393].

Submissions on behalf of Unit 6

9. Mr Mahpud submits that Unit 6 is not obliged to contribute to the service charge because in earlier proceedings the parties had agreed apportionments, based on the measurements in two floor survey reports (carried out in September/October 2013), that assumed the apportionment for Unit D also included Unit 6 (at that time referred to as Unit C). As a consequence, since 2014 Unit D has been charged a service charge apportionment that included payment for both Unit D and Unit 6. [112-113]

10. The proceedings Mr Mahpud relies on are:
(i) An appeal of a right to manage decision, under LRX/172/2012 (the Appeal), against a claim by 1 Palace Gate RTM Limited ("RTM Company") under case no. LON/00AW/LRM/2012/0021, for a decision that it had the right to manage the building under the Commonhold and Leasehold Reform Act 2002 ("The RTM claim"); and
(ii) A claim by the Landlord, Winchester Park Limited, against the lessees of Flats 2 and 3, for a determination of their liability to pay and reasonableness of, service charges, under case no. LON/00AW/LSC/201/0112-0115 (the s27A application).

11. Two floor survey reports were obtained by the parties to the RTM claim and the Appeal, to determine whether the net internal floor area of the commercial parts of the building exceeded 25% of the overall net internal floor area of the building. Mr Mahpud exhibited these reports to his submissions. The first from Clive Morley of Anderson Wilde and Harris ("the AWH Report") dated 24 September 2013 [121-141]; the second from Plowman and Craven ("the PC Report") dated October 2013 [142-160].

12. The RTM claim and Appeal failed because, although the measurements in the AWH Report and the PC Report differ, both reports concluded that the floor area of the commercial parts of the building exceeded 25% of the overall floor area. The floor area and use of Unit 6 being critical to this decision.

13. The reports were subsequently referred to in 2014, during negotiations between the lawyers representing the parties to the s27A application. The apportionment of the service charge was an issue in the case. Mr Mahpud exhibits a copy of a "without prejudice" schedule of proposed apportionments based on the measurements copied from the AWH Report and the PC Report and an email dated 16 October 2014 from Daniel Dovar, Counsel representing Flats 2 and 3, addressed to Darwin Law who represented the Winchester Park Limited. Daniel Dovar refers to the schedule in his email and confirms that he

has instructions to offer the apportionment as per the attached schedule. He states that "At the moment I think Unit D on the schedule may in fact be Unit C and D, but im not sure that makes much difference." [224-228].

14. Mr Mahpud states that the landlord, Winchester Park Limited, accepted the apportionment proposed by Danial Dovar and he quotes the Tribunal's decision, issued on 4 March 2015, at paragraph 27 which confirmed that "the parties had reached agreement that the service charges ought to be apportioned according to the relative area of each unit, and those measurements had been agreed, and thus the percentages to be applied was also agreed" [113 and 173].

15. In relation to the supplementary issue raised by the lessees of Flat's 2, 3 and 4, Mr Mahpud states that the use of Unit 6 is commercial, it has never had residential use. Planning permission to convert Unit D and Unit 6 to one residential unit had been refused in 2007, partly due to the absence of any natural light. Furthermore, the rooms are used as a staff room and office. The kitchen and shower are the same as those found in many offices. [113-114]. Mr Mahpud requested a tribunal inspection.

Mr Maunder Taylors submissions [1-3]

16. Mr Maunder Taylor refers to the floor allocation schedule which had been provided to him by the previous manager, and which he understood had been agreed by the parties in 2014 following the failed RTM claim. The floor areas did not include an allocation for Unit 6. He contacted Mr Mahpud concerning this in 2019. Mr Mahpud contended that Unit D paid a contribution that took account of the floor area of Unit D and Unit 6. Mr Maunder Taylor asked Mr Mahpud to provide a copy of any written agreement between the tenants of Unit D and Unit 6 confirming this agreement but none was provided.

17. Mr Maunder Taylor submits that clause 8 of the lease of Unit 6 obliges the tenant to contribute to the costs incurred by the landlord in providing the services set out in clause 8.1 of the lease. He acknowledges that Clause 8 does not assist with determining the proportion of service charge payable by the tenant, but bearing in mind the other units in the building pay a reasonable proportion based on floor area, he submits that it would be reasonable for the Tribunal to direct that each unit should pay a proportion based on the relative floor area of their unit. This would accommodate any changes to the physical layout of any unit where an appropriate adjustment could be made to the allocation schedule, without incurring unnecessary costs.

18. Mr Maunder Taylor made no comment on the supplementary issue raised by the lessees of Flats 2, 3 and 4. He did not seek an additional direction on their question.

Submissions on behalf of the LPA receivers

19. Addleshaw Goddard made detailed submissions on behalf of the LPA Receivers who contend first, that under general principles of contractual construction, Unit 6 should contribute the costs incurred by the landlord in

providing the services at the building in accordance with clause 8 of the lease of Unit 6; secondly, that the tenant of Unit 6 should be required to pay a proportion of the total costs that is "reasonable" and in line with clause 1.4 of the lease, that should be "a fair and reasonable proportion of the total amount payable.."; and thirdly that floor area is relevant to assessing the proportion payable. It was noted that as the other units in the building pay on the basis of floor area, it would be reasonable if the tenant of Unit 6 also pay on the basis of floor area [8-11].

20. In reply to Mr Mahpud's submissions concerning the parties' "agreement" that took place within negotiations on the 27A application, Addleshaw Goddard make the following submissions [297-298]:

21. The relevant question before the LVT and UT on the RTM claim and the Appeal was the relative proportion of the internal floor area of the commercial parts of the building to the overall floor area. As it was not a question for the tribunal or the experts, the reports did not determine:

(i) The area demised to the tenant of Unit 6 under the current lease which was granted after the reports were obtained.
(ii) The area demised to Unit D, that lease also having been granted after the reports were obtained.
(iii) The percentage of service charge payable by each of the tenants (or indeed any other tenant of the building).

22. With regard to the s27A application, Addleshaw Goddard make a number of submissions [298-300] that can be summarised as follows:

(i) The only matter in issue relevant to Mr Mahpud's submissions, was the proportion of service charge fairly payable by the lessees of Flats 2 and 3.
(ii) The FTT did not determine the service charge proportions for Flats 2 and 3 or any other unit because, as confirmed in paragraph 27 of the decision, the parties (namely the landlord and the lessees of Flats 2 and 3) had reached agreement on this point before the hearing.
(iii) It was not, in any event, necessary to calculate the floor space of individual commercial units to assess what was payable by Flats 2 and 3, just the overall percentage of commercial space, for the purpose of calculating the overall contribution of the commercial areas to the C schedule costs. That, it is suggested, is the likely reason for Daniel Dovar stating that "Unit D may in fact be Unit C [Unit 6] and Unit D" but he "was not sure it made much difference"
(iv) When agreeing the service charge proportions for Flats 2 and 3 within this claim, the landlord was not agreeing the proportions payable by the tenant of Unit 6 under the current lease.
(v) The expert reports do not determine that the service charge for Unit 6 would be included in the calculation of Unit D's service charge because that was not a question before the Tribunal.
(vi) The lessees of Unit 6 and Unit D were not parties to the s27A application; and the evidence provided by Mr Mahpud does not demonstrate any agreement between them that the tenant of Unit D would pay service charge on behalf of Unit 6.

23. In relation to the supplementary issue, Addleshaw Goddard note that in paragraph 19 of Mr Mahpud's statement he indicates that "the Unit 6 space has never had residential use" and confirm that the LPA receivers understanding is that, notwithstanding the submission of the lessees of Flats 2, 3 and 4, the current use of Unit 6 is commercial [300].

Submissions on behalf of Flats 2, 3 and 4 (the supplementary issue)

24. Northover Litigation made written submissions on behalf of the lessees of Flat's 2, 3 and 4. They confirm that they support the application but consider that there is a further issue that the FTT needed to address which is, whether Unit 6 is a "Dwelling" for the purpose of the Landlord and Tenant Act 1985 ("the 1985 Act"). This, they say matters, when considering whether ss18-30 of the 1985 Act applies, for instance when the Manager is assessing time limits in s20B applications. Also, it will assist the Manager in deciding which of the RICS service charge codes to apply when allocating service charges.

25. The submissions refer to the failed RTM claim which they say failed because the FTT determined that Unit 6 was a rather dingy non-residential space with ancillary amenities of a kitchen and shower installed for those that work there rather than as part of a self-contained flat.

26. The lessees submit that Unit 6 has undergone substantial remodelling and is now an attractive dwelling. Evidence attached to their submissions include a copy Assured Shorthold Tenancy agreement, dated 23 November 2018, granted for a term of 3 years to N Lauc and Z Pavlovski, for use by permitted occupants of Lime Street London. Attached to the lessees' Reply is an extract of a review on Trip Advisor showing a furnished flat described as Palace Gate Junior by Lime Street, for nightly rental, which appears from the photographs to be Unit 6.

27. The lessees of Flats 2, 3 and 4 ask that the Tribunal determine that Unit 6 is a "Dwelling" and that the leaseholder is a "tenant of a dwelling" for the purposes of the 1985 Act, also suggesting that the easiest way to determine the issue was for the Tribunal to inspect Unit 6.

The expert report

28. Following Directions made on 27 January 2020, Mr Maunder Taylor instructed Mr R. Spiro of Thresholds Surveyors as a single jointly appointed expert, to measure the floor areas of Unit 6 and Unit D – enclosing lease plans for both units [407-418]. Mr Spiro inspected the Property on 20 February 2020 and reported on 9 March 2020. On 16 March 2020 following a request from the parties Mr Spiro also provided an addendum report showing the internal colour photographs taken of Unit 6 and Unit D [475-484].

HEARING

29. On 5 May 2020, Directions were made for a remote video hearing to be listed, with a time estimate of three hours, confirming that due to the Covid-19 pandemic the Tribunal would not inspect the Property but may rely on photographs provided by the parties. Also, that the Tribunal did not consider that an inspection would assist in determining the two issues on which the

Manager had applied for directions under s24(4) of the 1987 Act, which were set out in full in the Directions [619-623].

30. Northover Litigation requested that a full day be allocated to allow for cross examination of Mr Mahpud on the lessees' supplementary issue. In response the Tribunal reminded the parties that this was an application for directions by the Manager on the two issues that he had raised; and asked for written submissions on the evidence Northover Litigation wished to present and its relevance to the two issues the Tribunal had been asked to determine. [625-629].

31. Northover's response suggests that the issue of whether or not Unit 6 is a "dwelling" impacts on both the interpretation of the lease and the directions the Manager is seeking. If the unit is a dwelling the 1985 Act applies; and if not, the RICS codes of guidance become more important, all of which is relevant to the proportion of service charge allocated to the unit.

32. On 28 May 2020 further Directions were issued confirming that the Tribunal would hear submissions from all parties as to any further directions under Rule 18(1)(c) in relation to issues and evidence at the outset of the hearing. The Tribunal had identified two issues for determination, namely "construction of clause 8 the Lease of Unit 6 and the service charge proportion payable in respect of Unit 6 (if any)." The Lessees of Flats 2, 3 and 4 were seeking to raise a third issue, namely, "is Unit 6 a dwelling for the purposes of the 1985 Act?" This issue had not been raised by the Manager in his application, however, the lessees of Flats 2, 3 and 4 were seeking to cross examine Mr Mahpud on this issue, who although closely connected with Unit 6, was not himself a party to these proceedings. Mr Mahpud was requested to consider his position in relation to giving evidence and consider seeking legal advice.

33. A remote video hearing took place on 15 July 2020. Mr Maunder Taylor represented himself. The LPA receivers were represented by Ms Frances Richardson of Addleshaw Goddard. The lessees of Flats 2, 3 and 4 were represented by Mr Justin Bates of Counsel. The lessee of Unit 6 was represented by Mr Alon Mahpud.

34. The parties and their representatives helpfully confirmed at the start of the hearing that there was no dispute that clause 8 of the lease of Unit 6 imposed a contractual obligation on the tenant to pay a due proportion of the service charge for the services carried out by the landlord; or that the due proportion payable should be based on the internal floor area of Unit 6. Mr Mahpud confirmed, in answer to the Tribunals questions, that he was not seeking to argue that clause 8 of the lease failed to impose an obligation to pay the service charge, only that the obligation had been assumed by the tenant of Unit D and the contractual obligation had therefore been displaced by this arrangement.

35. The parties also confirmed that was no dispute concerning the measurements contained in Thresholds Report.

36. Therefore, the only two issues the Tribunal needed to consider were:

(a) whether to hear evidence and make a determination on the supplementary issue; and
(b) whether the contractual liability of the tenant of Unit 6 under clause 8 of the lease to contribute to the service charge had been assumed by the tenant of Unit D, so as to extinguish that liability.

The supplementary issue

37. Mr Bates submitted that there was a third question that needed to be determined. It was not sufficient for the Tribunal to just determine whether service charge was payable and whether the proportion payable should be based on floor area. It was also necessary, for two related reasons, to determine what kind of service charge was payable – i.e. whether it was one regulated by the 1985 Act. The related reasons being, first, that Mr Maunder Taylor would otherwise be in difficulty determining whether he needed to apply the provisions of the 1985 Act in relation to matters such as consultation or the 18-month rule. Secondly, that the terms of the Management Order directed the manager to apply the RICS Residential Service Charge Code.

38. In response to the Tribunal asking why, consideration of the RICS codes was an issue, given that there were other commercial units within the service charge? Mr Bates submitted that it mattered because Unit 6 has had a transitory use. It was, at the time of the RTM claim, a grotty basement but is now a high-end Air bnb style apartment. So, in deciding if service charge is payable the Tribunal needed to determine what kind of service charge is payable.

39. The Tribunal asked why this wasn't a matter of discretion for the Manager? Apportionment of service charges is always a complex matter in a mixed-use building where not all services benefit occupiers to the same extent and it was not an issue that the Manager had asked to be determined. Mr Bates contended that it was not a matter of discretion, the 1985 Act either applied or it didn't. Furthermore, the lessees of Units 2, 3 and 4 wanted the issue determined today, because given the history of litigation between the parties it was likely that they would be back in six months to determine it. Mr Bates asked if Mr Maunder Taylor could give evidence as his understanding was that after reflecting on the supplementary issue, he now wanted to have it determined.

40. Mr Mahpud then made 2 submissions. First, that if the Tribunal's decision was to determine the supplementary issue, he would request an adjournment to seek legal advice and make further submissions. Secondly, the evidence submitted by Flats 2, 3 and 4 included photographs of Flat 1 which was a residential unit.

41. Mr Bates pointed out that the supplementary issue had been raised by Flats 2, 3 and 4 on 31 October 2019. Mr Mahpud had said in his statement, in terms, that Unit 6 does not have residential use. This was not a case of Mr Mahpud being ambushed at the final hearing.

42. The Tribunal pointed out that this was a dispute between two respondents. The supplementary issue was not part of the Manager's application and did

not require a response from Mr Mahpud. There had been ample opportunity for Mr Maunder Taylor to amend his application if he wished to have the issue determined, particularly when considering his instructions to the expert surveyor who inspected Unit 6, but he did not.

43. Mr Maunder Taylor confirmed that there had been a history of litigation and it had taken some time to get to this point. If the Tribunal was minded to adjourn the supplementary issue, he would find it helpful to have his two questions dealt with today. He was not a lawyer and as the issue had been raised by one of the parties, he hadn't thought he would also need to seek a direction. The Tribunal pointed out that Mr Maunder Taylor could make a separate application for determination of the supplementary issue.

44. On behalf of the LPA Receiver Ms Frances Richardson submitted that this was a building with commercial and residential tenants. The Manager was already dealing with two regimes. Although it may be useful in relation to ancillary matters for the use of Unit 6 to be determined, the LPA receivers were keen to see the two issues identified by the Managers application resolved today and not adjourned for what appears to be an ancillary issue.

Tribunals decision on the supplementary issue

45. The Tribunal retired briefly to consider the parties submissions. Their decision was not to determine the supplementary question for the following reasons:

(a) Under s 24(4) of the 1987 Act, the Manager can seek directions from the Tribunal. The Manager had asked 2 questions, neither of which require the Tribunal to make any finding on the supplementary issue to determine. The actual use of Unit 6 has no relevance to the first question. The parties agree that if service charge is payable by Unit 6, the proportion allocated should be based on internal floor area. That proportion is the basic allocation for Unit 6. Allocating specific services to the separate categories and apportioning costs to those lessees and tenants that receive the benefit, particularly where there are commercial units with fluctuating uses, is a matter for the Manager's discretion using his professional judgement when applying any relevant codes. Furthermore, any determination made by the Tribunal today could be rendered redundant on any future change of use.
(b) The Tribunal had insufficient evidence to determine the supplementary issue. The lessees of Flats 2, 3 and 4 had filed evidence that is consistent with Unit 6 having been listed for nightly rental as a residential flat in 2018, possibly by the tenant of the AST agreement. However, Mr Mahpud on behalf of the tenant of Unit 6 disputes that the use is residential, as does the LPA receiver. Furthermore, the colour photographs in Thresholds Addendum Report show Unit 6 as almost completely unfurnished when taken in February 2020. It is unclear whether the premises are currently occupied or on what basis. Unit 6 is held under a medium term commercial lease expiring in August 2030. The use is restricted to commercial offices. That use may, as Mr Bates suggests, have been transitory, which is not uncommon with commercial units, but without further evidence from the interested parties on the actual use and occupation of the unit, it

would not have been possible for the Tribunal to determine the question today even if the Manager was permitted to amend his application.

(c) The tenant of Unit 6 was not required to file submissions on the supplementary issue, which was raised, not by the Manager, but another lessee. Mr Mahpud's statement deals comprehensively with the Manager's application. It comments only briefly on the submissions of the lessees of Flats 2, 3 and 4. It would, as he submits, have been procedurally unfair to proceed on the supplementary issue without allowing the tenant of Unit 6 to seek legal advice and make detailed submissions.

(d) It is open to the Manager or any interested person to make an appropriate application to the Tribunal that would allow for the supplementary issue to be properly pleaded and for comprehensive directions to be made for the filing of evidence. This would be a more convenient way to proceed than splitting this hearing by allowing the Manager to amend his application to include the supplementary issue only to adjourn that part of the hearing.

(e) The parties were present and able to proceed on the Manager's application and it was the wish of Mr Mahpud on behalf of the tenant of Unit 6 and Ms Richardson for the LPA receivers, that the Tribunal do just that.

Has the tenant of Unit D assumed liability for Unit 6's service charge?

46. The parties all filed comprehensive statements on this point setting out the evidence and legal argument on which they rely, as referred to in paragraphs 8-27 above. They were invited to clarify or expand on any point.

47. Mr Maunder Taylor confirmed that following his appointment he had been handed a schedule of allocations by the previous manager who he believed had taken his instructions from both the landlord, Winchester Park Limited and Mr Mahpud. He had relied on that schedule and not independently got involved with any recalculation of floor areas. His understanding was that the schedule was the same as the one produced during negotiations in 2014, on the s27A application. However, he then came to consider whether Unit 6 should in fact be contributing to the service charge and following consideration of the lease with his solicitor concluded it should. The purpose of the application is to resolve that issue.

48. Mr Taylor also ran through the main points on the Thresholds report and the principles adopted by the expert in arriving at the net internal floor areas of Unit D and Unit 6, which he suggested should form the basis for allocation of the service charge. The net floor areas for each unit should be allocated as a fraction of the aggregate net floor areas of all units and expressed as a percentage.

49. Mr Mahpud ran over the historic situation. He explained that before the leases were regranted in 2014 Unit D and Unit 6 were connected and operated as one unit. That was the position when the two reports were obtained in

2013. The parties to the 2014 application did not make any representations concerning Unit 6 when they proposed the service charge apportionments that were agreed. As it was determined by the Tribunal that the service charge apportionments had been agreed by the parties he couldn't understand why the Manager had made this application.

50. In 2014 there were changes on the ground and layout of both Unit D and Unit 6 which required the leases to be redrawn to show Unit D as a separate unit. However, as they continue to share space and use space allocated to the other unit they should continue to be treated as one unit for the purposes of the service charge.

51. Mr Mahpud said that the lease plan of Unit D was incorrect. It did not reflect the full extent of the area occupied by that tenant which included two toilet blocks one of which had formerly been within Unit 6. That would not have been apparent to Thresholds when they measured the floor area because they would have measured to the physical wall, not the line on the lease plan.

52. Mr Mahpud also mentioned that as plans were afoot for Unit D and Unit 6 to be re-consolidated as one unit, it would be easier to leave the service charge proportions as they were.

53. Ms Richardson confirmed that LPA Receivers supported the Managers application and approach and had nothing to add to her detailed written submissions.

54. Mr Bates confirmed that although the lessees of Flats 2, 3 and 4 had not submitted positive evidence on the Managers application they supported it and he went on to make submissions on this issue. Mr Bates submitted that Clause 8 of the lease had not been displaced for two reasons. First there was no evidence of any written document to that effect between the necessary parties. No lease variation or inter-party agreement. Secondly, even if there was an evidential basis for some agreement existing, it would not bind Mr Taylor who was bound, as Manager, to collect the service charge according to the provisions of the lease.

TRIBUNAL'S DETERMINATION

55. The Tribunal finds that the tenant of Unit 6 is liable to contribute to the service charge for the Property in accordance with Clause 8 of the lease of Unit 6, dated 20 August 2013; and that liability has not been displaced or assumed by the tenant of Unit D so as to extinguish it.

Reasons

56. No evidence has been provided of any written or express agreement to that effect, between the tenants of Unit D and Unit 6 and/or the landlord.

57. The service charge proportions on the schedule agreed by the parties to the s27A application, only bind the parties to that application, and only in so far as relevant to the specific issues that were before the FTT in that case. The tenants of Unit 6 and Unit D were not parties to the application because the

allocation of service charge for Unit D and Unit 6 was not an issue in the case. No agreement or determination made within those proceedings is enforceable by, or binding on, non-parties.

58. Furthermore, the leases of Unit 6 and Unit D were re-granted in 2014 to take account of new extents, after the date of two expert reports on which the agreed schedule was based. The schedule has therefore been out of date and inaccurate since the grant of the new leases.

59. There is no evidence of any arrangement or understanding between the tenants of Unit D and Unit 6, that Unit D would bear or assume the service charge liability of Unit 6. Even if there was, an arrangement between tenants would not bind the Manager or fetter his right to collect service charge contributions in accordance with the terms of the leases.

60. It follows that Mr Maunder Taylor will now have to revise the service charge apportionments to include the proportion due from the tenant of Unit 6 based on the internal floor area of that unit. That exercise may involve an adjustment to the sums demanded from the tenant of Unit D. If the basis for calculating the proportions allocated to Unit 6 (and Unit D) is the Thresholds Report, Mr Taylor might first want to consider referring back to the expert on a small discrepancy identified by the Tribunal concerning the plans.

61. The extent of the area demised to the tenant of Unit D, as shown on the lease plan [310], Mr Maunder Taylor's instructions to Thresholds [414] and the HM Land Registry title plan for Unit D [551], differs from the current layout plan at appendix 6.3 to the Thresholds Report [444]. Thresholds layout plan includes an additional (former cellar) area. This may be the area Mr Mahpud referred to in his evidence (see paragraph 51 above).

Name: Judge D Barlow **Date: 27 August 2020**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.