FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2020/0270V:CVP**
Property	**:**	**37 Eaton Mews South, London, SW1W 9HR**
Applicant	**:**	**Mr G Donath**
Respondent	**:**	**The Trustees of the 2nd Duke of Westminster's Will Trust – the Grosvenor Estate**
Type of application	**:**	**Pursuant to section 159 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal	**:**	**Ms H C Bowers BSc MSc MRICS** **Mr D Jagger MRICS**
Date of Decision	**:**	**19 February 2021**

DECISION

The Tribunal determines that in relation to 37, Eaton Mews South, London, SW1w 9HR, the Annual Mews Charges for 2017/8 of £211.84 plus VAT, 2018/9 of £239.29 pls VAT and 2019/2020 of £258.25 plus VAT are reasonable and payable.

Remote Hearing Arrangements:

(A) This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVP. A face-to-face hearing was not held because it was not practicable, and no request was made for a face-to-face hearing. The documents that the Tribunal was referred to were in a bundle of 319 pages plus an index of four pages. The Tribunal also had a three page, skeleton argument from Mr Donath. All documents have been noted by the Tribunal.

(B) The remote video hearing took place on 25 January 2021. In attendance were the Applicant, Mr G Donath; the Respondent was represented by Ms C Crampin of counsel and her instructing solicitor Ms Dyce was also in attendance. There was evidence on behalf of the Respondent from Mr T Gibson and Mr S Mantle. Ms Paterson, the secretary of the Belgravia Residents' Association, was also in attendance as an interested party, but took no part in the proceedings.

The Application

(1) By an application dated 19 September 2020, the Applicant seeks a determination under section 159 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to whether a variable estate charge is reasonable and therefore payable. The Tribunal issued Directions on 7 October 2020 and there were subsequent cases management Directions. The Tribunal is grateful to the parties in their assistance in their preparation of this case for the hearing.

The Background:

(2) Mr Donath and his wife hold the freehold interest in 37 Eaton Mews South, London, SW1W 9HR (the subject property). The property has previously been enfranchised under the terms of the Leasehold Reform Act 1967 (the 1967 Act). The property is subject to an Estate Management Scheme for the Grosvenor Belgravia Estate that was approved by the High Court on 5 December 1973.

(3) Under the terms of the Estate Management Scheme (the Scheme) the Applicant makes two types of payment that are relevant in this case. Under Clause 29, the Applicant pays an Annual Freehold Management Fee. This fee is for a calendar year and in the relevant years the figures charged were £113.12 for 2018, £115.50 for 2019 and a figure in the region of £217.00 for 2020. The fee for 2020 has not currently been invoiced. Mr Donath does not dispute the Annual Freehold Management Fee.

(4) The second payment is an Annual Mews Charge and comes within the scope of paragraph 2, Part 2 of the First Schedule to the Scheme. The period of the Annual Mews Charge runs from 1 July to 30 June for each year.

(5) Mr Donath disputes the Property Management element of the Annual Mews Charge. For the years in dispute the charges and the disputed amounts are set out in the following table:

	Annual Mews Charge	**Mews Charge without Property Manager Cost**	**Difference - attributable to the Property Manager**
2017/18	£211.84 + VAT	£198.73 + VAT	£13.11 + VAT
2018/19	£239.29 + VAT	£82.03 + VAT	£157.26 + VAT
2019/20	£258.25 + VAT	£97.14 + VAT	£161.11 + VAT
			£331.48

(6) As the Scheme does not have a mechanism for recovery of budget sums in advance, there is currently no charge for the 2020/21 year.

(7) Mr Donath seeks a determination that the charges sought comply with the terms of the Scheme and whether they are reasonable; that the Property Managers cannot be employed to replace traffic wardens; that the management costs are covered by Clause 29 of the Scheme; that it is unreasonable to withhold details about the expenditure; that it is unreasonable to delay the request for payment for over eleven months from the end of the year and that if the sums are regarded as service charges then the two previous issues become 'statutory'.

The Scheme:

(8) As detailed above, the Scheme was approved by the High Court on 5 December 1973. The Scheme applies to properties within the Grosvenor Belgravia Estate (the Estate). The 'Landlords' are defined as the Grosvenor Estate, the Respondent in this case and the 'Owners' are the various freeholders of properties that have been enfranchised within the Estate. From consideration of the whole document, there appears to be three categories of properties envisaged in the Scheme. These are all the properties and then the sub-categories of the Mews properties and the properties that have rights over Common Gardens. The subject property is a Mews Property.

(9) Of particular relevance in this case are the following terms:

- Management Charge - Clause 29(1) - *The Owner shall pay to the Landlords on the 31 December in every year (being not less than one complete year after the date of the Original Transfer) in respect of the year ending on that date the sum of Ten pounds (or such greater sum as hereinafter provided) towards the provision or maintenance by the Landlords of services and amenities in the Estate and the administration of this Scheme.*
- Paragraph 2 of Part 2 of the First Schedule – *The Owner shall on receipt of the Landlords' written demand forthwith pay and contribute to the Landlords a fair proportion (such proportion if in dispute to be determined by the Estate Surveyor whose determination shall be final and binding on the Owner) of the costs and expenses of*

- *(i) maintaining repairing re-surfacing cleansing and keeping in good order and condition the paving of the Mews;*
- *(ii) the lighting of the Mews; and*
- *(iii) keeping the roadway of the Mews free from obstruction and maintaining the same as a private way including (if considered necessary or desirable by the Landlord) the employment of a commissionaire or traffic warden for that purpose.*

(10) There are further provisions in Clause 29 for a mechanism to increase the Annual Freehold Management Fee in relation to the Retail Price Index.

(11) At Clause 30, there are provisions that allow the Respondent to recover costs from individual Owners in circumstances where there has been a default on the part of the owner.

The Hearing, Evidence and Submissions:

(12) The hearing took place on 25 January 2021 by the CVP video platform. In attendance were the Applicant, Mr G Donath; the Respondent was represented by Ms C Crampin of counsel and her instructing solicitor Ms Dyce was also in attendance. There was evidence on behalf of the Respondent from Mr T Gibson and Mr S Mantle. Ms Paterson, the secretary of the Residents' Association, was also in attendance as an interested party, but took no part in the proceedings.

(13) The Tribunal had the benefit of a bundle and has considered all the documents provided in the bundle. The following is a brief summary of the submissions and evidence from the bundle and the oral evidence and submissions made at the hearing. Not all issues have been addressed as some evidence and submissions are not relevant to the issues before the Tribunal. For clarity, in this decision a reference to the Mews Costs means the costs covered by Paragraph 2 of Part 2 of the First Schedule and the Clause 29 Fee is the Annual Freehold Management Fee and the costs set out in Clause 29 of the Scheme.

(14) At the start of the hearing, Ms Crampin indicated that she had not seen the skeleton argument presented by Mr Donath. Mr Donth confirmed that he had sent a copy, as requested, to Mr Gibson. However, the Tribunal's Case Officer sent a further copy of the skeleton to Ms Crampin by email and the Tribunal took a short break to allow her to consider the contents.

(15) It is undisputed that in 2018 the Respondent took steps to re-organise how the administration of the Scheme. Prior to this time the traffic management had been undertaken by three traffic wardens and a supervisor. Following the reorganisation, the traffic wardens had been replaced by Property Managers.

Applicant's Case:

(16) In respect of the scope of the dispute, the initial difference between the inclusion and exclusion of the Property Manager element in the Mews Charge for the three years was £331.48. However, in his skeleton argument, Mr Donath proposed a revised figure of £306.13. Mr Donath also provided calculations to aggregate these sums across the Grosvenor Belgravia Estate. It is his position that the Property Manager's role does not include any traffic management duties and he refers to an email at P53 in which Mr Gibson lists the services provided. It should be noted that email does caveat the position that the list of services is not inclusive. Mr Donath notes that the Respondent had appointed a company to carry out traffic management and that company's sign is still in situ.

(17) In his oral evidence Mr Donath stated that he had not experienced any problems with parking in the Mews during the 42 years he had lived at the subject property. He suggested that he understood the Respondent's position in the dispensing of the services of the traffic wardens. He acknowledged that there had been no deterioration of the traffic management arrangements since 2018. He was aware of the occasional issue, but in the main there was co-operation in respect of parking issues.

(18) Mr Donath submitted that the role of Property Manager was a recently created role and had not existed prior to 2018. He questioned the need for a Property Manager if there were four Building Surveyors. He thought there was no justification to employ Property Managers and that they added an additional layer in carrying out inspections. The job description of the Property Manager was far wider that the tasks envisaged under Paragraph 2. He suggests that if all of the Building Surveyor's costs dealing with defaulting owners are not fully recoverable by Clause 30, then there must be an issue about the competency of the Building Surveyors.

(19) Mr Donath submits that transparency is the same as reasonableness. If he was provided with the information, he could judge himself whether the figures are reasonable. The Scheme does not allow for a profit and the support costs and overheads should be included in the Clause 29. The 2018 re-organisation has resulted in savings for the Respondent. By recovering both the Clause 29 fee and the Mews Costs, there was an element of duplication. Mr Donath had been unsuccessful in obtaining alternative quotations due to the perceived monopoly that the Respondent has in the area. In respect of the £250 quoted by Mr Mantle, the Mews houses are smaller than other houses on the estate and that should be reflected in the management figure. In considering the comparator suggested by Mr Mantle, Mr Donath noted that the total charge for the Annual Freehold Management Fee and the Annual Mews Charge was over £417 for the previous year. Mr Donath commented on the fact that Mr Mantle did not know whether GEML was a profit centre and Mr Donath suggested that it most likely would be.

Respondent's Case:

(20) The Tribunal heard evidence from Mr Thomas Gibson, the current Property Manager for an area that includes Eaton Mews South. He explained the arrangements in relation to parking issues, which was a two-stage process. In most cases, Mr Gibson would put a sticker/notice on a vehicle that was causing an obstruction, and this would usually resolve a problem. He issued several of these initial notices each week. If there was a continuing problem, then under the second stage, Mr Gibson would take a photograph using a special phone App and this would be sent to a parking company, which had the authority to issue a parking ticket. He confirmed that he had never resorted to this second stage. Mr Gibson confirmed that parking issues took up quite a bit of time.

(21) Mr Gibson explained that he did not find his role onerous. He made regular daily inspections of the area for which he had responsibility. There was some contradictory oral evidence from Mr Gibson about how much time he allocated to Eaton Mews South. In response to questions from Mr Donath he stated he spent on average 37 minutes each day on issues relating to Eaton Mews South, but that time also included some office-based activities. In response to the Tribunal, he stated that he spent between a half and one day a week on activities related to Eaton Mews South. He would check on the parking issues and that was the main part of his role, but he would also check the condition of the roadways and the need for any works including weeding, that he would note obstructions such as bins and would identify potential issues relating to covenants under the Scheme. However, that final aspect was an activity that was overseen by the Building Surveyors.

(22) Mr Simon Mantle also gave evidence and explained that he was employed by Grosvenor Estate Management Limited (GEML), a company used by the Respondent to carry out the various property management activities. He explained that there was a team of four Building Surveyors who ensured there was general compliance with the Estate Scheme and their roles also included approvals for various works and communicating with freeholders and leaseholders regarding issues such as maintenance.

(23) In respect of the previous arrangements for traffic wardens, there had been some huts provided for the wardens, but all welfare matters would have been in the offices. The inspections and management of the Mews properties had previously been undertaken by the Mews Wardens, but these were now replaced by Property Managers. He considered the change had resulted in a more robust team being in place and allowed flexibility during absences. He stated that some of the Mews Wardens had taken on the new Property Manager roles. Although the salary of the Property Managers was higher than the traffic wardens, they had wider responsibilities, but those additional tasks were not included in the Mews Charge. He suggested that the Respondent did not make a profit from the Scheme and it was a matter of covering costs. Some

of the money recovered from hoarding schemes, was allocated to community projects. He explained how GEML set about calculating any charging arrangements for third party properties and assessed the fees in relation to the costs but being mindful that the company was bidding against other suppliers. In respect of the 4.8 hours each week, attributable to the Eaton Mews South, he considered that the split was 40% on site with inspections and 60% on follow up work.

(24) Mr Mantle suggested that Clause 29 was in relation to the management of the whole scheme and to ensure that standards in the whole Estate are maintained. The work under that clause was overseen by the Building Surveyors. Some of the charges arising from the Building Surveyors would be recoverable from the individual Owners, but there were some aspects of the work that related to the overall management of the scheme and was not recoverable under Clause 30. He considered that there was no duplication between the Clause 29 fees and the Mews Charges. He also thought that the benchmark rate of £40 per hour was correct. That any work that Mr Gibson undertook to ensure compliance of the Scheme, was as a communication point with the Building Surveyors, who would then pursue compliance issues.

(25) Mr Mantle explained that there will be some properties that are not in the scope of the Scheme, such as those retained by the Respondent. To ensure a fair apportionment, the Owners are only responsible for their proportion of costs in relation to size of frontages of the property within the Estate. The costs in respect of those other properties not in the Scheme will be borne by the Respondent.

(26) It was explained that although GEML is linked to the Respondent, the charge out rate of £40 per hour is the figure charged by GEML to the Respondent and then passed onto the Applicant. The Building Surveyors are also not employed directly by the Respondent. The Scheme contains several clauses that puts various obligations on the Owners. Clause 29 is the mechanism to allow the Respondent to recover the costs in ensuring compliance of those main obligations from all the Owners. There are other clauses that allow some costs to be recovered directly from individual Owners, such as Clause 30. But there will always be a residual cost that will need to be recovered and that is via Clause 29.

(27) In response to Mr Donath's suggestion that services under the scheme fall under Clause 29, Ms Crampin suggests that this would be against the principle of redundancy in the interpretation of the Scheme. If the costs associated with the Mews are within Clause 29 then the provisions in Paragraph 2 of the First Schedule would be redundant. The general Scheme is wider than the Mews element and it is those costs associated with the wider part that are captured by Clause 29. The way the Scheme is designed is to ensure that any costs associated by the Mews elements should only be recoverable from those that benefit and not from all the Owners covered by the Scheme. The Scheme was

designed in a way that allows the First Schedule to deal with the Mews properties and the associated covenants and with the ability to recover those costs from those Owners within Mews properties. As a general principle the costs of any works covered in the wording of a clause must cover the costs of identification and organisation of any works. The costs of having a Property Manager who identifies that works are need in Para (i) and (iii) and in organising those works should be recoverable under those provisions. The title of the individuals who carry out the various duties is irrelevant, what matters is whether the duties have been undertaken. The same applies to whether those individuals who are undertaking the tasks are wearing a uniform or not. Mr Donath suggested that the removal of the traffic wardens provided a saving to the Respondent that was not passed onto the Applicant. The Respondent's position was that some of the Mews Wardens had become Property Managers, so there had not been a saving and the employment of staff to carry out the duties was fluid. Even if Mr Gibson stated that his job was not very onerous, that did not mean that he was not doing a good job. Mr Donath had confirmed that there were few problems with traffic management.

(28) Next was the issue whether the overheads should be a part of Mr Gibson's charge out rate or be covered with Clause 29. In this case GEML is charging the Respondent for Mr Gibson's' activities and part of that charge out rate will be the overheads associated with his employment. Non-Mews Owners should not have to bear the costs covered by Paragraph 2. They should only have to bear their costs under Clause 29.

(29) The Respondent's statement of case set out an explanation for a benchmark charging rate. This was based on the salary and direct costs of employing a Property Manager and then overhead costs relating to the provision of support costs (including IT, HR and payroll) and overhead costs for items such as office accommodation. Based on 1755 working hours in a year, a charge out rate of £40 per hour was calculated

(30) As to transparency, the Scheme made no provision for the production of service charge budgets and accounts and there was no condition precedent. There had been a change to how information was disseminated. Originally more information was made available and in the future the Respondent was hoping to be able to provide more information to improve transparency.

(31) As to whether the charges are reasonable, it is submitted that the wording in section 159 was more akin to the in advance charges found in section 19. So, reasonableness is judged by objective standards. Mr Donath had not provided any comparable evidence. However, Mr Mantle had set out several comparator rates including a figure of £250 as a starting point for a leasehold property (P229).

(32) To give context to this case, it was suggested that the total increase in cost in the last three years including 2020/21 over the 2018/9 charges was £18.14

The Tribunal's Deliberations and Decision:

(33) As a background to this case, the Tribunal would comment that the charges under the Scheme are subject to the provisions of section 159 of the 2002 Act. Whilst some of those provisions mirror the provisions of the Landlord and Tenant Act 1985 (the 1985 Act), this is a distinct jurisdiction. The charges claimed are not service charge within the full meaning of the 1985 Act and as such is not subject to the additional requirements/obligations as set out in the 1985 Act.

(34) The Tribunal has noted Mr Donath's calculation of the costs that he disputes, extrapolated over the whole Estate. However, the current application is only in respect of his property and it is this issue that the Tribunal needs to determine.

(35) It seems logical to the Tribunal that there is a division in the Scheme that allows specific costs to be allocated to the different types of Owners in the Scheme. So that costs for the Mews Properties should be borne by those Owners that benefit from those costs. Just in the same way that those who benefit from the Common Gardens, should bear the costs associated with those elements, rather than to spread the costs to all those in the Scheme but derive no benefit. The Scheme is designed in a way that allows such a division of costs.

(36) We agree with the submission that the title of the person who carries out the various duties is irrelevant. What is important is that the duties have been undertaken and what those duties are and whether they come within the scope of the various parts of the Scheme. The evidence from Mr Gibson was that his role included 4.8 hours every week in duties that involved the identification of any tasks under paragraph 2 of the First Schedule, the organisation of those works and to some extent carrying out those tasks. This included the stage one of the parking management issues and some role in the second stage by taking photographs on the phone App.

(37) The Tribunal accepts that the works that are identified in paragraph 2 are not those works in isolation. In practice there needs to be some methodology or an individual who can identify the need for the works and who organises the works to be carried out. In this case Mr Gibson's activities involves the identification and organisation of works. In addition, we are satisfied from Mr Gibson's evidence, that he carried out some of the task in relation to parking management, by undertaking the first stage of the parking process and ensuring the Eaton Mews South is kept clear of obstructions. We are satisfied that the roles of the Property Manager and the Building Surveyors are different. Whilst the Building Surveyors have an overview of the whole Scheme, it is the Property Manager who has the Responsibility of the Mews.

(38) Taking all these points into account, we determine that the costs of a Property Manager, undertaking the tasks described above, are Mews Costs that come within the scope of Paragraph 2 of Part 2 of the First Schedule.

(39) These Mews Costs are distinct from costs relating to the overall management of the Scheme. The Tribunal accepts that the Respondent would be entitled to uses the sums recovered as the Annual Freehold Management Fee under Clause 29 for the overall management of the Scheme. Whilst we accept Mr Donath's comments that the Respondent could recover costs from individual defaulting Owners under Clause 30, in our view not all of those costs could be so recovered. There will be some costs for overseeing the Scheme and associated overheads, that will benefit the whole of the Scheme and therefore should be recovered from all the Owners via Clause 29.

(40) As to the issue of transparency, the Tribunal acknowledges that there was no obligation in the Scheme for the production of accounts. However, to ensure confidence in the Scheme and that the charges are reasonable, there should be a greater transparency provided to the Owners. It is noted that the Respondent is now taking steps to ensure that transparency is restored.

(41) The final aspect for the Tribunal is the issue of whether the Mews Costs are reasonableness. The combined level of fees from the two headings in the Scheme is set out below:

Year	**Annual Freehold Management Fee**	**Annual Mews Charge**	**Total**
2017/18	£113.12	£211.84 + VAT	£324.84 + VAT
2018/19	£115.50	£239.29 + VAT	£354.79 + VAT
2019/20	£117.00 (estimated)	£258.25 + VAT	£375.25 + VAT

(42) There is no specific evidence from Mr Donath on the issue of what is a reasonable level of an Annual Freehold Management Fee and we accept his evidence that he had been unable to obtain alternative figures due to the level of monopoly that the Respondent has in the area. The evidence of the Respondent is that they charge a leasehold management fee of £250 per unit. This property is in Prime Central London (PCL). The general level of leasehold management fees in PCL are usually quite high and certainly the combined level of fees shown in the table above, are relatively modest when considered in the context of PCL leasehold management fees. It could be argued that leasehold management may be more onerous that the estate management activities envisaged under the scheme. However, in this case the total level of fees includes activities going beyond the actual management role and does include an element for traffic management and ensuring the Eaton Mews South remains free from obstructions. Overall, we find the total level of fees sought are reasonable and determine that the Annual Mews Charge is reasonable and payable.

Name: Helen Bowers **Date:** 19 February 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).