



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

**Case Reference** : **CHI/OOHB/LSC/2020/0108**

**Property** : **Cask Store, East Tucker Street,  
Bristol BS1 6WF.**

**Applicant** : **Various leaseholders at Cask  
Store**

**Respondent** : **FREML (Residential) Ltd.**

**Type of Application** : **The Landlord and Tenant Act 1985,  
section 27A**

**The Landlord and Tenant Act 1985,  
section 20C**

**Paragraph 5A of Schedule 11 to the  
Commonhold and Leasehold  
Reform Act 2002 (Respondents)**

**Tribunal Member** : **Judge M Davey**

**Date of Decision  
with reasons** : **26 July 2021**

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## DECISION

The Tribunal determines that the disputed Service Charges are recoverable or irrecoverable as set out in the following Reasons.

## REASONS

### The Application

1. By an application dated 19 October 2020 (“the Application”), the Applicants applied to the First-tier Tribunal (Property Chamber) (“the Tribunal”), under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination as to the payability of the Service Charge, under their leases of apartments at The Cask Store, East Tucker Street, Bristol, BS1 6WF (“the Property”), for the Service Charge Years 1 January to 31 December 2018 and 2019.
2. The Applicants, listed in the Annex to these Reasons, are the long leaseholders of 11 of the Apartments at the Property.
3. In their Application the Applicants asked the Tribunal to determine the following matters:
4. Whether the Respondent Landlord is failing in its obligation to provide reliable and timely accounts for 2018 and 2019 and to decide if the Landlord is failing in its obligation to provide supporting information and to verify that credits will be due where there is evidence that:
  - Budgeted costs and actual underspend have not been reconciled.
  - Services provided to manage the Landlord’s further development of the Estate are included in the Estate Service Budget and charged to the Leaseholders.
  - Defects in the heating network may have resulted in overcharging for gas. <sup>[L]</sup><sub>SEP</sub>
  - Defects in the Cask Store Building that should have been dealt with in a timely manner and repaired at the Landlords expense during the warranty period are charged to Leaseholders.
  - Defects in the estate and undercroft (legacy works), that existed prior to completion, or as a consequence of damage during construction works were charged to the Leaseholders.
  - Utility billing is based on unreliable/unverified usage data.
  - Services have been procured via inadequately managed contracts

### Case Management Hearing and Directions

5. The initial Application challenged Service Charges demanded of the Applicants in respect of the years 2018 and 2019 and the subsequent position statements of 4 December 2020 (Applicants) and 5 January 2021

(Respondent) provided by the parties were directed to those two years. At a case management hearing held by a Tribunal Member, Mr D Banfield FRICS (Regional Surveyor), on 11 January 2021, the parties agreed that the Service Charges for 2017 and 2020 could be included in the Tribunal's determination and the Member so directed.

6. Mr Banfield further directed that the Tribunal would also determine applications in respect of (1) an order under section 20C of the 1985 Act preventing the Landlord from recovering the costs of the proceedings from a tenant through the service charge and (2) an order under Para 5A of Schedule 11 to the 2002 Act preventing the Landlord from recovering litigation costs in respect of the proceedings from a tenant.
7. In his Directions of 11 January 2021 Mr Banfield, directed that it was likely that the Application could be determined on the papers, without an oral hearing, in accordance with Rule 31 of the First Tier Tribunal Property Chamber Procedure Rules 2013, and set out a timetable to enable the matter to be determined. Mr Banfield also directed that the Tribunal would not inspect the property unless a party or parties requested an external inspection. No such request was made. The Tribunal has therefore determined the matter on the basis of the written submissions of the parties. The Applicant provided a statement of case dated 27 February 2021 and the Respondent provided a statement of case dated 30 March 2021. The Applicants provided a reply, dated 4 April 2021, to the Respondent's statement of case and subsequently provided a bundle of documents in accordance with Directions.
8. The Applicants also sent a supplemental 465 page bundle to the Tribunal at the request of the Respondent's agent (Savills). Tribunal Judge, Jonathan Dobson (Deputy Regional Judge), determined that the initial bundle contained all the materials relevant to the disputed matters and therefore directed, on 17 May 2021, that the supplemental bundle should not be included unless either party made a specific application to the Tribunal no later than 24 May 2021 identifying a reason why any pages in that bundle should be considered by the Tribunal. No such request was made.
9. The Application was subsequently set down for determination by Tribunal Judge Martin Davey sitting alone.

### **The Case for the Applicants**

10. Mr William Jones (leaseholder of apartment 25) prepared the case for the Applicants. In his statement Mr Jones explained that the Applicants hold leases in similar form of apartments in a building, the Cask Store Building, containing 38 apartments. He provided a copy of the lease of Flat 34 as a sample lease ("the Lease"). The Building is part of a larger development in central Bristol, Finzels Reach ("the Estate") that comprises residential, office and retail buildings and a hotel. There is an underground car park ("the Car Park") with specific parking spaces allocated to users, including residents of the Cask Store.

11. The Lease is a tripartite lease granted on 24 May 2017 and was made between the Landlord, Finzels Reach Property LLP, the Tenant, Martin Keogh and Charlotte Kerr and the Estate Manager, FREML (Residential) Ltd. The Lease was granted for a term of 250 years less ten days from 1 January 2015. The Estate Manager is now also the Landlord and has appointed Savills (UK) Ltd to manage the Cask Store and the rest of the Estate as well as the Car Park. We were not told when the transfer took place.
12. The Landlord's responsibilities and obligations are contained in Schedules 4, 7 and 9 to the Lease and include carrying out and providing the Building Services and insuring the Building.
13. The Estate Manager's responsibilities are to carry out and provide the Estate Services and Car Park Services.
14. The Service Charge comprises, the Building Service Charge Percentage of the Annual Building Expenditure, The Car Park Service Charge Percentage of the Annual Car Park Expenditure and the Estate Service Charge Percentage of the Annual Estate Expenditure.
15. The Lease provides that the Building Service Charge Percentage is a fair and reasonable percentage of the Building Service Charge payable by the Tenant as provided for in the budget or estimate provided by or on behalf of the Residents Manager for the current year or a fair and proper proportion in respect of the property if no proportion has been provided. The Estate Service Charge Percentage is a fair and reasonable percentage of the Estate Service Charge payable by the Tenant as provided for in the budget or estimate provided by or on behalf of the Residents Manager for the current year or a fair and proper proportion in respect of the property if no proportion has been provided. The Residents Manager is FREML (Residential) Limited.
16. Paragraph 4.1 of Part 1 of Schedule 9 to the Lease provides that "The Landlord shall within 6 months after the end of each Service Charge Year prepare and submit to the Tenant a statement of the Annual Building Expenditure incurred by the Landlord and any Annual Estate Expenditure and the Annual Car Park Expenditure incurred by the Estate Manager.
17. Paragraph 4.3 of that Schedule provides that the Landlord/Estate Manager may include with the statement referred to in paragraph 4.1 such provision for expenditure in any subsequent year as the Landlord or Estate Manager shall consider appropriate.
18. The annual statements are delivered in the form of a year-end audit pack. Provision for expenditure is referred to as a budget.
19. The Applicants allege the following in their case:

- No budgets or statements were provided for 2017; [L] [SEP]
  - 2018 Cask Store statement was issued on 25 October 2019; [L] [SEP]
  - 2019 Cask Store statement was issued on 12 November 2020 with invoice for balancing payment; [L] [SEP]
  - No budgets or statements for the Estate have been provided for any year; [L] [SEP]
  - 2018 Car Park budget was issued in November 2018, which was the first notification Leaseholders [L] [SEP] received that there was a separate service charge for the car park; [L] [SEP]
  - 2017 Car Park statement (and invoice) was issued on 3 December 2020; [L] [SEP]
  - 2018 Car Park statement has never been issued; [L] [SEP]
  - 2019 Car Park statement was issued on 3 December 2020 with invoice for balancing payment; [L] [SEP]
  - To date 2021 budgets for the Estate and Car Park have not been issued, but 2021 invoice for Car Park [L] [SEP] was issued on 1 December 2020; [L] [SEP]
  - Concerns about budgets and issuing of accounts were raised by Leaseholders at a meeting with Savills in [L] [SEP] November 2019. Commitments given by Savills to provide budgets in advance and accounts within timescales defined in the Lease have not been met.
20. The Applicants state that Service Charge costs have escalated since 2017, rising by 31% in 2018, 62% in 2019 and 45% in 2020 (compared with the 2017 Service Charge) and seek to identify inaccurate invoicing of Tenants by Savills.
21. Finally, the Applicants seek orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing the Landlord from recovering its costs in connection with the present proceedings by way of service charge or an administration charge respectively. They argue that the dispute has only arisen because of inadequacy of the service provided by the managing agents and frequent and persistent errors and omissions in the accounting and management processes.

### **The case for the Respondent**

22. The Respondent's case was prepared by Mr Rupert Ward BSc (Hons) MRICS of Savills (UK) Ltd, Embassy House, Queens Avenue, Bristol BS8 1SB, who is employed as a Director at Savills at the above address. Savills are duly appointed as the Managing Agent on behalf of the Respondent in respect of the Cask Store, Finzels Reach Estate and Finzels Reach Car Park.
23. Mr Ward explained that Finzels Reach is a 5-acre mixed-use development in the centre of Bristol, comprising 13 different plots (including residential, office, leisure, retail and hotel uses). The Cask Store is one of these plots.

24. Mr Ward states that The Building Service Charge relates specifically to expenditure within the Cask Store Building and is apportioned to the 38 leaseholders on a floor area basis.
25. The Estate Service Charge relates to the public realm / common areas of the Finzels Reach Estate and is apportioned to the 13 properties on the Estate on a floor area basis. Cask Store is apportioned 5.53% of the total Estate Service Charge expenditure. This is subsequently recovered from the leaseholders as part of the Building Service Charge as stated above, which Mr Ward says is clearly stated within the budgets.
26. The Car Park Service Charge relates specifically to the basement car park beneath the public realm area (“the Car Park”). Mr Ward says that expenditure is apportioned on a per space basis across two Schedules and is charged independently to leaseholders, who have an obligation to contribute under the terms of their leases.
27. Mr Ward says that each of the above Service Charges has an accounting period of 12 months, which runs from 01 January to 31 December. In accordance with the residential leases, the invoices are issued 6-monthly in advance and the Service Charges operate on an on account basis. An independent accountant conducts an external review of the annual reconciliations before the final Service Charge is demanded if the actual cost of services exceeds the advanced charges paid.
28. The Respondent refutes the assertion that Savills have consistently failed to fulfill their obligations within the leases and referred back to their Position Statement, which sets out the details for each period in question. With specific regard to the 2017 budgets, Mr Ward says that these would have been available to the Applicants from their solicitor in the enquiries before contract.
29. Mr Ward says that the 2020 year-end reconciliations for the three Service Charges in question are yet to be completed and are currently with their independent accountant.
30. With regard to the contested costs, Mr Ward says that the annual expenditure is clearly stated in the Service Charge reconciliations that have been provided.
31. Mr Ward states that Savills have maintained regular and frequent communications with the Applicants and spent a considerable amount of time, both in meetings and correspondence, to explain the rationale for the expenditure and means of apportionment.
32. Mr Ward stated that the Applicants have raised a significant number of questions across the three Service Charges over three annual periods, which has required the disclosure of a very large number of documents. Savills have completed the two Scott Schedules submitted by the Applicants and subsequently identified £7,334.61 of expenditure that they believe was either in error or, in the case of the £5,000 sinking fund, can be returned on

request.

33. Savills also accept that further work on the electricity apportionment in relation to the Car Park Service Charge is required and will endeavour to work with the Applicants on this matter.
34. Mr Ward says that the lack of clarity in the way the contested figures have been presented has also made it difficult to understand the actual sums in dispute. However, by Savill's calculation, the total amount in dispute by the Applicants across the three Service Charges for the three (sic) years in question is £13,528.33 including VAT.
35. Mr Ward says that the Respondents refute the comments about the "frequent and persistent errors and omissions in the accounting and management processes", alleged by the Applicants, and argues that the documents submitted have provided clear evidence as to the efficacy and transparency of the Service Charge accounts.
36. Mr Ward says that a substantial number of hours have been spent going through archive audits, preparing the relevant information, considering the various cases made by the Applicant and providing appropriate responses. He says that in essence, only two headings of expenditure in relation to the Cask Store Service Charge actually now remain in dispute, with the other items being in relation to the Estate Service Charge and Car Park Service Charge.
37. Mr Ward submitted that the Respondent's reasonable costs in relation to this matter should therefore be recoverable through the Service Charges in question.

### **The Applicants' Response**

38. The Applicants state that although Savills refute the assertion that the Landlord has consistently failed to fulfill its obligations under the Lease, and refer to their position statement of 5 January 2021, Savills' position statement demonstrates that they did not fulfill their obligations as none of the accounts for the Cask Store or Car Park were issued within the timescales specified in the Lease. They also state that the Estate accounts have not been provided for any of the years in question.
39. The Applicants also maintain that, although Savills refute the Applicants' comments about the "frequent and persistent errors and omissions in the accounting and management processes", errors are frequent, particularly in relation to billing, and are only corrected once the errors are highlighted by the Leaseholders. They state that there are many examples and a sample of these was enclosed. <sup>[1]</sup><sub>[SEP]</sub>
40. The Applicants say that they have not been able to determine how the contested sums attributed to the Applicants have been adjusted by Savills, in the absence of their calculations. The Applicants presented the total cost of the relevant item in the accounts as these costs (and any subsequent

adjustments) apply to all Leaseholders and stakeholders in the Estate, not only the 11 Applicants. [SEP]

41. With respect to Savills' claim that the action has resulted in additional work, the Applicants state that they formed a group to facilitate more efficient communication because individual leaseholders were expending many hours communicating with Savills on similar issues. They acknowledge that some improvements were made by Jenny Doherty, of Savills, in general administration but say that many of the costs in question predate Ms Doherty's time with the Company. They say that significant issues remain and have not been adequately addressed by Savills. [SEP] They also assert that the Applicants have incurred costs in time and legal expenses in their attempts to achieve a satisfactory response from the Landlord. [SEP]
42. With regard to the section 20C and paragraph 5A applications, the Applicants repeat the submission made in their statement of case and dispute Savills' claim for reimbursement of its costs via the Service Charge or by way of administration charge. They say that the claim has been brought about because of the inadequacy of the service provided by Savills and multiple errors and omissions in the related accounting and management processes. The Applicants state that even before the claim is determined by the Tribunal, Savills have conceded elements of the claim contended by the Applicants and it is doubtful they would have done so had this claim not been brought. They say that to allow Savills to recover its costs in relation to a claim instigated due to their mistakes and inefficiency would be unfair. Additionally, Savills have not identified any provision in the Lease that enables them to claim their costs in these circumstances.
43. The specific Service Charge issues raised by the Applicants and the response of the Respondent are as follows.

### **Cask Store: M&E Repairs: 2018.**

#### **Applicants**

44. The expenditure was £4,116 as against a budget of £500. The Applicants state that the information provided by Savills confirms that elements of the work carried out in 2018 were to correct construction defects, which they submit should have been covered by the developer's warranty. The Applicants also argue that they have been charged for items relating to other buildings in the development and for items that they believe were the responsibility of the developer, being related to construction activity. The invoices challenged amount to £2,426.03.

#### **Respondent**

45. The Respondent argues that save for two invoices (totalling £381.84 in cost) the expenditure incurred was all in order and required to undertake routine and reactive repairs to the M&E plant and machinery in the property.



46. The Respondent says that completion of the development took place on 1 August 2017 and the developer's warranty was for 12 months expiring on the 31 July 2018, after which time repairs became a service charge cost. Savills say that for the sake of completeness they were not instructed to deal with snagging items, which were the responsibility of the project manager.

### **Cask Store: M & E Repairs: 2019**

#### **Applicants**

47. The expenditure was £15,662.00 as against a budget of £1,500. The Applicants state that costs were mostly relating to repairs to the boilers, which they believe should have been covered by the developer's warranty obligation, the system having been faulty from the outset. As in the case of the 2018 accounts, the Applicants also argue that they have been charged for items relating to other buildings in the development and for items related to construction activity that they believe were the responsibility of the developer. The sums challenged amount to £12,183.90.

#### **Respondent**

48. The Respondent says that the expenditure incurred was all in order and required to undertake routine and reactive repairs to the M&E plant and machinery in the property. The developer's warranty was for 12 months expiring on the 31 July 2018, after which time repairs became a service charge cost. The Respondent states that they could not identify any invoices within the documents for this period that relate to another property and there are none identified within the additional schedule prepared by the Applicants.

### **Cask Store: Sinking fund: 2018**

#### **Applicants**

49. The Applicants argue that the budgeted Cask Store Service Charge costs for 2018 exceeded the total Service Charge costs by £5,091, which was not returned to leaseholders. Indeed a sum of £5,000 was allocated to reserves in the 2018 accounts, no provision having been made for the same in the budget for 2018. Furthermore, the sinking fund was not used in 2019 to defray unexpected costs of £26,088 in that year.

#### **Respondent**

50. The Respondent states that the sinking fund was set up with a view to building up a sufficient sum of money to deal with any significant future repairs on behalf of the leaseholders as would be considered good practice for a property of this type. They state that the fund has since been held on behalf of the leaseholders but the Respondent has no reservations

whatsoever in returning it to the residents, together with any interest that has since accrued.

### **Cask Store: Website/E-Strategy: 2019**

#### **Applicants**

51. The 2019 budget made provision of £1,070 for a new online portal for the residents of Finzel's Reach. The actual cost under this head was £1,284. The Applicants argue that because this cost is also in the Estate accounts it has been double counted and should not be charged again to the Cask Store.

#### **Respondent**

52. The Respondent states that they could not identify the two invoices that make up the £1070 (*sic*) within the Applicants schedule and therefore cannot verify as to whether they have been double counted.

### **Estate: Audit fees: 2019**

#### **Applicants**

53. The fees for this year were £4,500 as against a budget of £2,500. The Applicants say that the auditors have justified the additional cost as being caused by extra work they had to carry out as a result of invoices being incorrectly posted to or from other properties. The Applicants argue that they should not have to bear a cost that is attributable to errors by Savills.

#### **Respondent**

54. The Respondent says that the Estate has a complex Service Charge that requires the Managing Agent to recharge over 30 different sub-metered electricity supplies, 14 sub-metered water supplies and seven sub-metered gas supplies to the 13 different entities/ plots that benefit from the services. They say that this undoubtedly places a greater burden on the accountants and in their opinion the £2,000 additional cost is therefore reasonable. They also say that the Applicants have only identified one invoice that has been accidentally mis-posted to another property.

### **Estate: Marketing and Promotions 2019**

#### **Applicants**

55. The total estate expenditure on marketing consultants (the Creation Partner) was £1,293.48, whilst expenditure on the website /e strategy was £7,956. The Applicants believe that it is unreasonable to charge the residential leaseholders for marketing consultancy costs and the provision

of a public wi-fi network for the whole Estate. They consider that such a network does not benefit the residential leaseholders and furthermore is a major capital project on which leaseholders were not consulted. They dispute £6,252 of the costs involved including £4,428 relating to the public wifi network.

### **Respondent**

56. The Respondent states that in their opinion Cask Stores' annual contribution of £331.54 towards site wide Wi-Fi is fair and reasonable, in that the residents enjoy the benefits of this service throughout the public realm areas of the Estate.

### **Estate: other professional fees 2018**

#### **Applicants**

57. The Applicants state that a fee of £3,900 to the Creative Partner for marketing is unreasonable in amount.

#### **Respondent**

58. The Respondent states that this cost relates to the advice provided by the Creative Partnership for the initial setup and development of the occupier portal with the service provider, Locale and is a reasonable expense.

### **Estate: income 2019**

#### **Applicants**

59. The Applicants argue that the Respondent has not accounted for income from the food market and filming that has taken place on the public areas of the site.

#### **Respondent**

60. The Respondent says that the space is not (as alleged by the Applicants) sub-let to the market company, Sophie Bowden Events Ltd, which provides the service on a cost neutral basis. They say it was always the developer's intention to utilise the public realm space to enhance and enliven the Estate and the Respondent does not derive any income or profit from this activity.

### **Car Park: Service Charge: 2017**

#### **Applicants**

61. The Applicants state that the balancing charges for 2017 (£182.70 per leaseholder) were not issued until December 2020 and are therefore irrecoverable by virtue of Section 20B of the Landlord and Tenant Act 1985.

## **Respondent**

62. The Respondent says that there were delays in issuing 2017 year end balancing charges, but all the costs were properly incurred and certified accordingly. The Respondent therefore remains of the opinion that the charges should be paid in full.

## **M&E Repairs: Car Park: 2018**

### **Applicants**

63. The Applicants state that expenditure was £20,350 as against a budget of £3,000. They argue that some of these costs, included in the 2018 accounts, were incurred in 2017 before the leaseholders took ownership of their apartments and as such should be irrecoverable.
64. The Applicants state that Car Park users have also been charged in error for items relating to specific buildings in the development that should be charged to relevant leaseholders.

## **2019: M&E Repairs Car Park**

65. The costs of £4,828.00 exceeded the budgeted sum of £3,000. As in the case of 2018, the Applicants state that Car Park users have also been charged in error for items relating to specific buildings in the development that should be charged to relevant leaseholders.

## **Respondent**

66. The Respondent commented on a number of detailed disputed costs for 2018 arguing that most of them were properly charged to the Service Charge accounts. They state that there is an excess of £250 on the Car Park insurance policy and, unless there is clear evidence as to who has actually caused the damage, they take a view not to submit a claim unless the sum involved is significant enough to warrant a claim.
67. With regard to 2019 the Respondent says that the Applicants' case makes no specific reference to any invoices or sums, so no direct response can be provided other than that it remains their opinion that all costs allocated to this expenditure heading were properly incurred.

## **Car Park: Electricity: 2019**

### **Applicants**

68. The Applicants consider the electricity charge to residents to be unreasonably apportioned as between residents and commercial users and to be overcharged by £1,861.77. They also challenge a specific balancing invoice in respect of electricity.

## **Respondent**

69. The Respondent states that the basement Car Park is served by two incoming electricity supplies, which in turn are served by 13 sub-meters. Nine of the sub-meters exclusively serve the residential parking areas of the Car Park and the other four serve both the residential and commercial areas of the Car Park. Those shared sub-meters are currently apportioned on a 30/70 basis. In 2018 the Car Park was extended to incorporate 122 new spaces, principally for the new commercial developments. At this time, it was necessary to adjust the apportionment of the Car Park expenditure to include the additional spaces. The apportionment of the four shared sub-meters should have been changed to 53/47 and the Respondent agrees with the Applicant's calculation in this regard.
70. The Respondent says that the balancing invoice referred to by the Applicants relates to the balancing charge in the 2019 year-end reconciliation and whilst the Respondent accepts that the electricity figure will change (see above) the Respondent cannot agree to this duplicated cost which is covered by the adjustment referred to in paragraph 69 above.

## **Car Park: Service Charge: 2020**

### **Applicants**

71. Although the total budget has increased by 17.5% from the previous year there has been an increase of 41% in the amount payable by the residential car park users due to the apportionment referred to above.

### **Respondent**

72. As noted above, the Respondent agrees that the apportionment needs to be amended to reflect the revised apportionment for the four shared sub-meters and says that this figure will be included in the 2020 year end reconciliation, but this is subject to the actual consumption figures. They say that if agreeable with the Applicants they will send their agreement to this calculation when the figures become available.

## **Car Park stackers: 2020**

### **Applicants**

73. The Applicants argue that a charge in the budget for the cost of maintenance of new stackers in the Car Park should be allocated to specific space owners and not all space owners because the maintenance of the stackers relates to those specific spaces.

## **Respondent**

74. The Respondent says that the stackers are considered part of the integral plant and machinery within the Car Park and therefore the cost is properly charged.

## **Car Park: Soft and hard surfaces: 2019 and 2020**

### **Applicants**

75. The Applicants argue that costs of waste management, pest control, lift maintenance and lift repairs are services applicable to all tenants and should not be borne solely by Car Park space owners.

### **Respondent**

76. The Respondent says that the Car Park costs referred to here are specific to the Car Park and have therefore been allocated as such. They say that it is necessary for the residential leaseholders to use the Car Park to put their household waste in the shared residential bins. In addition to this, bike storage is also provided in the Car Park, which is open to all residents with a bike.
77. The Respondent says that the waste management is a weekly service provided by Solutions FM, purely for waste generated from cleaning in the Car Park itself. This was a nil cost in 2019. The other costs relate purely to the Car Park area and are therefore properly charged as such. The Respondent believes that the use of the Car Park by the residents without an allocated space is minimal and those with a parking space derive the most part of the services due to their far more frequent usage.

## **Estate, Cask Store, Car Park on-going contracts (all years)**

78. The Applicants argue that several on-going maintenance and consultancy contracts have contributed to the escalation of Service Charge costs and question whether the services are being provided at competitive rates.

### **Respondent**

79. The Respondent says that all contracts are at a competitive rate for the services, as per the information provided. They say that all expenditure details have been disclosed in the audited accounts for the various Service Charges. The Respondent accepts that the Landlord has an obligation to ensure competitive service pricing and are confident that they deliver this.

## **Discussion and determination**

80. As stated above, the development at Finzels Reach is an extensive 5-acre mixed development in the centre of Bristol constructed over a period of time ending in late 2019. It comprises 13 plots used as apartments, offices, retail buildings and a hotel. The Cask Store is a residential building

on the development completed on 1 August 2017. It contains 38 one and two bedroom apartments, which have been sold on long leases. The leaseholder Applicants all own leases of Apartments in the Cask Store.

81. The dispute between the parties stems from a combination of factors. The first is that the Cask Store was completed, and the apartments therein sold on long leases, at a time when the wider Estate, including the Car Park, was in a state of on-going development with all the inconveniences that inevitably accompany such a state of affairs.
82. The second factor is that, by virtue of the nature of the development, the Apartment leases at the Cask Store provide for a complex Service Charge composed of three elements.
83. The Service Charge provided for by the Lease is structured as follows. It comprises three heads of expenditure being that on the Building, the Estate and the Car Park. The leaseholders pay a percentage proportion of each head of expenditure. Each apartment leaseholder in Cask Store pays a proportion of the Service Charge expenditure on the Building on a floor area basis. The Estate Charge expenditure, which relates to the public realm/common areas of the Finzel Reach Estate, is apportioned to the 14 plots on the Estate on a floor area basis. Cask Store is apportioned 5.53% of the total Estate Charge expenditure and that proportion of the costs is recovered from individual leaseholders through their Service Charges on a floor area basis.
84. Paragraph 2.2 of the 9<sup>th</sup> Schedule to the Lease provides that “In respect of the Car Park Services the costs shall where appropriate be separated into services provided to the respective areas of use of the basement floor and then divided equally between the number of Parking Spaces and Motorcycle Spaces as appropriate or the Annual Car Park Expenditure shall be divided between the number of Parking Spaces and Motorcycle Spaces using a weighting appropriate to level of user of the Car Park Services.” In practice the expenditure is apportioned on a per space basis across two schedules and is charged independently to leaseholders.
85. The scheme of payment of the Service charge contained in the lease is that the Landlord is required to estimate the Service Charge for the Service Year in question. The Tenant is then required to pay the advance Estimated Charge in instalments during that year. The Lease provides for two instalments on 1 January and 1 July each year (unless a quarterly payment scheme is chosen by the Landlord, which it was not). Within 6 months after the end of the Service Year the Landlord is obliged to prepare and submit to the Tenant a certified statement of the three heads of expenditure (i.e. the Building, the Estate and the Car Park expenditure) in that year and the Service Charge payable. If the Service Charge exceeds the Estimated Charge paid, the Tenant is obliged to pay the balance. If the Service Charge is less than the Estimated Charge the difference is to be credited against future rents.

86. Because the Leases of apartments in the Cask Store were first granted during 2017, following completion of the Building, the Lease provides, in paragraph 5.3 of Schedule 9, that “on the date hereof the Tenant shall pay to the Landlord the Initial Service Charge being one half of the Estimated Service Charge and as set out in paragraph E of the Additional Particulars.” The Tribunal has not seen the Estimated Service Charge for 2017 but the said paragraph E in the case of Apartment 34 provides that the Initial Service Charge is to be £2,569.13 payable on 24 May 2017.
87. The third factor is that the Applicants have taken issue with how the Service Charge machinery in the Lease has been operated by the Respondent’s Managing Agent, Savills. More specifically, the Applicants challenge the payability and reasonableness of certain elements of the charges made in respect of the years 2017, 2018, 2019 and 2020.
88. The Applicants were particularly concerned that the actual Cask Store Service Charge costs for 2019 (£128,957) exceeded the budgeted sum of £102,902 by £26,055 and they have focussed on some of those heads of expenditure that have exceeded the budget sums by a wide margin.
89. The starting point for the Tribunal is section 27A(1) of the Landlord and Tenant Act 1985 which gives the Tribunal jurisdiction to determine whether a service charge is payable and, if it is, (a) the person by whom it is payable, (b) the person to whom it is payable, (c) the amount which is payable, (d) the date at or by which it is payable, and (e) the manner in which it is payable. For this purpose service charge is defined in section 18 of that Act.
90. Section 18 provides that
- (1).....“service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.”
- (2) “The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.”
91. Section 19(1) of the Act provides that relevant costs shall be taken into account in determining the amount of service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard and the amount payable shall be limited accordingly.



92. With regard to the timeliness of the provision by the Landlord of budgets and certified end of year statements the Applicants say concerns about budgets and issuing of accounts were raised by the leaseholders at a meeting with Savills in November 2019 and that commitments were given by Savills to provide budgets in advance and accounts within timescales defined in the Lease. It is however clear that the certified statements were not issued within the six-month timescale provided for by the Lease. The Cask Store Statement for 2018 was not issued until 24 October 2019 and the Statement for 2019 was not issued until 26 November 2020 with an invoice for the balancing payment. We do not know when the 2017 statement was issued. However, although, in their Statement of Case, dated 27 February 2021, the Applicants stated that no budgets or statements had been provided for 2017, it would appear that the statement has since been provided by the Respondent.
93. The Applicants also state that no budgets or statements for the Estate have been provided for any year. However, the Respondents point out that the Estate Service Charge contribution is recovered as part of the Building Service Charge and is clearly stated within the budgets.
94. Whilst it is clearly the case that late issue of budgets and final accounts by Savills is a matter to be deprecated, that lateness cannot invalidate the leaseholders' obligation to pay the interim charge or the service charge, as the case may be, when the demand is eventually made, unless precluded by section 20B of the 1985 Act (as to which see below).

This brings us to the specific matters raised by the Applicants.

### **Service charge year 2017**

#### **1. Cask Store – Estate contribution**

95. The Applicants requested the 2017 accounts in order to ascertain whether they had been correctly charged for the Estate contribution given that the budgeted sums in 2018 and 2019 had been more than the actual amount. However, the accounts having now been supplied, this no longer appears to be a disputed sum. (Indeed it transpired that there had been an under-spend on the Estate, which the Respondent says has been credited to the Cask Store Service Charge).

#### **2. Car Park Service Charge invoice**

96. The Service Charge provided for by the Lease contains three elements, being the Building Costs, the Estate Costs contribution and the Car Park Service charge. Nevertheless, it is clear from the Service Charge accounts for 2019 that the Service Charge demands issued by Savills do not include the Car Park Service Charge element of the Service Charge. The Car Park Service Charge is clearly charged and accounted for separately from the Building Costs and the Estate Costs.

97. Thus in respect of the Service Charge year 2018, the Cask Store Service Charge audit pack was issued on 24 October 2019 whilst a Car Park Service Charge balancing credit for 2018 was issued to leaseholders on 16 December 2019. In respect of Service Charge Year 2019, the year-end Cask Store pack was sent to leaseholders on 26 November 2020 (a section 20B 1985 Act notice having been issued on 26 June 2020). The Car Park Service Charge audit pack and certificate for 2019 were sent to leaseholders on 3 December 2020.
98. The Applicants state that the first time they learned of a Car Park Service Charge was when Savills wrote to leaseholders on 19 November 2018 in the following terms.

“You will have recently received invoices relating to service charge for the use of the underground car park at Finzels Reach, Bristol. I appreciate that you may not have received invoices relating to this before and it may have come as a surprise. I am writing to provide some additional clarity on the situation.

The underground car park has been in use at Finzels Reach since the development's initial construction. We have consulted each lease and noted that your lease demises you the use of one space within the car park since the beginning of your tenancy.

The original landlords operated a service charge for the underground car park which the new landlord, and consequently Savills, inherited when the property was sold. This service charge is separate to the building service charge that you already pay and focuses on services that exclusively serve the car park. These include but are not limited to:

Mechanical and electrical maintenance & repairs for the gates, entry system, fire alarm etc.; Health & safety risk assessments;<sup>[1]</sup>Annual planned preventative maintenance;<sup>[SEP]</sup>Electricity; Cleaning; Pest control.”

Due to the ongoing development in the commercial elements of Finzels Reach, spaces have been added and re-allocated over several months. This has had an impact on how much is owed by the residential tenants. We wanted to ensure these issues were ironed out, and the car park plans were finalised, to prevent having to issue several different demands in the year so as to be accurate with the invoices. We are still working on the year-end 2017 accounts to ensure everything is as accurate as possible - I appreciate your continued patience on this matter.

Please find enclosed a full budget pack outlining the service charge costs in detail as well as all invoices that are due for payment. Please also note that the service charge reconciliation for the year-end 2018 accounts will be carried out in early 2019 and there may be additional balances or credits due after this exercise has been completed, dependent on actual expenditure during the service charge period.

I would be grateful if you could arrange for payment of the enclosed invoice as soon as possible. Should you have any further queries, please do not hesitate to contact me.”

As noted above it subsequently transpired that there was an under-spend in 2018 and balancing credits were issued, although not in early 2019.

99. This leaves the matter of the Car Park Service Charge for 2017. The Applicants state that no sums were demanded until 3 December 2020 when the Respondent issued a Car Park Service Charge Statement and invoice for 2017 for Car Park Service Charge of £182.70 per leaseholder with no accompanying letter or explanation. The Applicants argue that because this was three years after the costs were incurred the sums claimed are irrecoverable, no notice having been served under section 20B of the Landlord and Tenant Act 1985.

100. The Respondents simply state in their Statement of Case that,

“With specific regard to the 2017 budgets, these would have been available to the Respondent from their solicitor in the enquiries before contract.”

This comment does not of course sit happily alongside the letter of 19 November 2018. In their comment in the Scott Schedule the Respondent states that

“There were delays in issuing 2017 year end balancing charges, but all the costs were properly incurred and certified accordingly.”

This does not of course answer the point about section 20B, which provides

(1) “if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge was served on the tenant then subject to subsection (2) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred (2) Subsection (1) shall not apply if within the period of 18 months beginning with the date when the relevant costs in question were incurred the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.”

101. The demand of 3 December 2020 refers to a balancing charge for 2017. However, the Tribunal does not have evidence of any interim 2017 charge having been demanded before 3 December 2020 or that a section 20B notice had been served in time (i.e. within 18 months of the cost having been incurred) in respect of the same. This is despite the fact that the accountants had certified the expenditure by a certificate dated 27 February 2019. That certificate relates to costs incurred between 3 August 2017 and 31 December 2017 and states that the actual charge and the “balancing charge” were identical at £182.70.

102. The Tribunal accordingly determines that the 2017 Car Park Service Charge for 2017 is not payable by virtue of section 20B of the 1985 Act.

### **Service Charge year 2018**

#### **1. Cask Store: M& E Repairs (£2,426.03)**

103. This disputed sum mainly concerns the assertion by the Applicants that they were being charged for items of repair that should have been covered by the

developer's warranty since they amounted to the remedying of construction defects. The Respondents argue that the warranty expired on 31 July 2018 and therefore costs incurred after that date fell within the service charge. They also state that no construction defects have been remedied with service charge funds.

104. The 2019 charges for M& E Repairs were £4,116. The Applicants challenge 5 invoices totaling £2,426.03. The Respondents accept that two of the invoices totaling £381.83 were wrongly charged. The main dispute relates to a charge of £1,683 for remedial work on the communal heating system. The work was carried out on 3 April 2018 and the invoice is dated 16 August 2018. In the absence of evidence as to the terms of the developer's warranty it is not sufficiently clear whether the repairs that occurred before the warranty expired but were invoiced afterwards were covered by that warranty and as such not chargeable to the Service Charge. If they were not covered by the warranty they are clearly recoverable under the Service Charge. If they were covered by a warranty then it would have been unreasonable for the landlord to incur those costs and recover them by way of the Service Charge.

## **2. Cask Store: Sinking Fund (£5,000)**

105. The 2018 Budget did not make provision for a sinking fund contribution. However, the 2018 accounts made provision for a sum of £5,000. The Applicants query why this was not offset against the deficit in 2019. The Respondent says that the sinking fund was set up to deal with significant future repairs. The Lease is somewhat opaque on the matter of a sinking fund, although paragraph 7 of Part 1 of Schedule 9 to the Lease is headed "Retained Sums" and provides that

"Any sums retained by the Landlord or the Estate Manager by way of provision for expenditure in any subsequent year or earned by the Landlord or the Estate Manager or forming income by any other method shall be held by the Landlord and the Estate Manager upon trust for the persons who from time to time shall be the Owners to apply the same and any interest accruing thereto for the purposes set out in this Schedule and any such sums expended when such trust shall end shall be paid to the persons who shall then be the Owners in shares equal to their respective interests in the Buildings and the Car Park..."

106. There is no other provision in the Lease dealing with the retention of such sums. Thus the matter remains unclear. However, the Landlord has conceded in the present case that any sums retained can be returned at the request of the Applicants.

## **3. Estate: Marketing Fees (£3,900).**

107. This refers to an invoice dated 30 November 2018 from The Creation Partnership for advice in setting up of the occupier portal with the service provider, Locale. There is no evidence that the sum is unreasonable or was unreasonably incurred and the Tribunal therefore allows this as a legitimate service charge cost.

#### **4. Car Park: M&E repairs (£8998.48)**

108. The Applicants challenge a number of invoices from the M&E contractor on the grounds that they relate to matters including construction works, the developer's warranty and insurance, which should not have been charged to the service charge. They also argue that some of the invoices relate to a period before the Leases began.
109. The Respondent states that no cost relating to construction defects, either within the Car Park or the public realm have been paid from Service Charge monies. The Tribunal finds that in so far as these costs are attributable to matters of maintenance and repair of the items set out in Part 3 of Schedule 9 to the Lease they are recoverable by way of Service Charge. This includes key fobs for access to the Car Park. In the absence of evidence as to the warranty it is not sufficiently clear whether the repairs that occurred before the developer's warranty expired were covered by that warranty and as such not chargeable to the Service Charge. It is however troubling that there should have been so many maintenance faults at such an early stage of a new development. The Tribunal agrees that in so far as a cost was incurred before a lease was granted it should not be recoverable from the leaseholder in question.

#### **Service Charge year 2019**

##### **1. Cask Store: M&E Repairs (£12,183.90)**

110. The budgeted sum for this head of expenditure was £1,500 whereas the actual expenditure proved to be £15,662. The Applicants challenge eleven specific invoices relating to works in the service charge year 2019 totalling £12,183.90. Most relate to repairs to the boilers. The Applicants assert that these were covered by a warranty obligation, although the Tribunal has not seen any warranty that would cover the works in question. Other works are alleged by the Applicants to be the developer's obligation, being related to incomplete construction works although this is not obvious on the face of the invoices. The Applicants also state that some invoices related to other buildings although this has not been established. The Tribunal finds that costs of repairs to the boilers are a recoverable service charge cost, save in so far as the costs would have been recoverable under any applicable warranty, as to which the Tribunal does not have sufficient evidence to decide.

##### **2. Cask Store: Website/E-Strategy Strategy (£1,284)**

111. The Applicants argue that the sum of £1,284 (according to the end of year statement) expended in 2019 was incorrectly demanded because the Estate accounts also included the costs of the wifi portal as a resource for the whole Estate and therefore the former was a duplicated charge. The Respondent says that it cannot identify the two invoices that make up the £1,070 within the Applicant's Schedule 2.2 and so cannot verify whether they have been double counted.
112. The Respondent's reference to invoices totalling £1,070 refers to the

budgeted sum rather than the actual sum of £1,284 in the end of year accounts. The Tribunal agrees with the Applicants that this sum must relate to the residents' portal which is otherwise accounted for in the Estate accounts (see below) and therefore the charge in the Cask Store Service Charge is a duplicate charge and irrecoverable as such

### **3. Estate: Audit fee**

113. The audit fee was budgeted for the sum of £2,000 but the actual charge was £4,500. The Respondent's explanation was that the accountants had to carry out more work than in previous years mainly because invoices were incorrectly posted to/from other properties and a full reconciliation of electricity had to be carried out.
114. The Applicants argue that they should not have to pay for the consequences of incorrect invoice posting. The Tribunal finds that although the gap between the budgeted and actual Estate audit sums is substantial it does not have sufficient evidence to establish whether the sum charged for the work involved was unreasonable.

### **4. Estate: Income**

115. The Applicants ask whether Savills has the right to sub-let common areas on the Estate for filming and other commercial purposes without accounting for the cost. The Respondent says that the space is not sub-let to the Market Company which provides the service on a cost neutral basis. The Respondent says that the developer's intention was always to utilise the public realm space to enhance and enliven the estate and that they do not derive any income from this activity.
116. The Tribunal finds that it does not have any evidence of unaccounted for profits from such activities to be able to make a determination on this claim.

### **4. Estate: Marketing and Promotions**

117. The disputed sums relate to (1) Marketing consultancy costs and (2) the costs of a public Estate wide wifi network provided for the Respondent by Inkspot wifi.
118. Expenditure on the Estate website/e strategy in 2019 was £7,956.00. This mainly falls into two parts. The first is the cost of the occupier portal for residents provided by the service provider, Locale Ltd. This involves an annual licence fee. The fee for August 2019 to July 2020 (charged by The Creation Partner) was £1,584, which the Applicants do not dispute. The Applicants also accept the portal cost of £684 charged by Locale Ltd. Similarly the Applicants accept an email and software licence fee of £627.48 charged by the Creation Partner.
119. However, the Applicants do not accept a consultant charge of £666 by the Creation Partner to the extent that it includes a fee of £300 for "general advice" and a fee of £84 for Welcome Packs for Castle Wharf (another building on the Estate). They say that neither of these sums benefits the

Applicants and argue that it is unreasonable to charge residents for marketing consultancy costs. The Applicants also challenge a fee of £360 from the Creation Partner for web page artwork relating to the portal, a and an accrual of £900 relating to a Creation Partner invoice, which the Applicants have not seen.

120. Under the separate Estate charge head of other professional fees the Applicants also challenged a sum of £3,900 for an invoice raised by the Creation Partner. The Respondent subsequently produced the invoice, which was for advice provided by the Creation Partner for the initial set up of the portal.
121. The second part of the costs under this service charge head relates to the costs of the public wifi network at Finzel's Reach provided by Inkspot wifi amounting to £4,428 in 2019. The Applicants argue that this 3 year contract (at a total cost of £18,570) is a major capital project for which there was no consultation with residential leaseholders. They also argue that it is unreasonable to charge residential leaseholders for the provision of a public wifi network for the Estate, for which they have no need given that they have their own domestic wifi. The Applicants argue that the cost should fall on the commercial and retail leaseholders who will derive a benefit from the system.
122. The Respondent argues that in its opinion the Cask Store's annual contribution of £331.54 towards site wide Wi-Fi is fair and reasonable in that the residents enjoy the benefits of the service throughout the public realm areas of the Estate.
123. The issues raised by this head of expenditure are as follows. (1) Are all of the costs relating to the setting up and running of the occupier portal recoverable? (2) Is the provision and maintenance of a public wifi network a recoverable Estate Service Charge cost under the Lease?
124. The Estate Services, for which a service charge may be raised, are set out in Part 4 of the 9<sup>th</sup> Schedule to the Lease, which lists 33 services. They include:
  11. Providing equipment and operating amenities for persons visiting the Estate including main reception facilities.
  28. Providing such other services as may from time to time be consistent with the principles of good estate management and or preserving the amenities of the Estate.
  32. Any other reasonable and proper expenses incurred by the Estate Manager in respect of the Estate.
125. The Applicants do not dispute that it is reasonable to set up and charge for the portal. The Tribunal accordingly finds that the expenses in question are reasonable and proper expenses having regard to the nature of the Estate. This includes the web page artwork fee and the "general advice" fee, which has not shown to be dissociated from the portal charge. The Tribunal does not have sufficient evidence to say that the £900 accrual was unreasonably

incurred. More generally, the Tribunal agrees that the costs of general Estate Marketing Promotion services would not be recoverable in the absence of a specific head of service in the Lease (Estate Services list).

126. The public wifi network is more problematic. It is arguable that the residents gain little benefit from this amenity. However, the Tribunal finds that it was reasonable and proper for the Respondent to provide a public wifi network on an Estate of this size and nature and as such it is legitimate to require a contribution from the Cask Store Account of 5.53% of the costs reasonably incurred in accordance with the Lease. The structure of the Service Charge is that Estate expenses as defined in the Lease relate to the whole Estate of which the Cask Store is a part. The Lease does not provide for costs of a service to be allocated to specific units on the Estate according to whether individual units require that service. The test is whether the cost is a legitimate Estate Service cost and whether the expense in question was reasonably incurred. If so, the Lease obliges the Cask Store residents to contribute the appropriate amount (i.e. 5.53% apportioned to all residents), which, as the Respondent submits, is a modest charge. The Tribunal considers that it would have been fairer for the Lease to have provided for a schedule charging system whereby charges for specific services could have been more accurately targeted on those units that benefit from the service, but this Lease has not adopted that approach.

## **5. Car Park M&E Repairs**

127. The Applicants challenge four invoices. They argue that they relate to matters that are not service charge costs within the terms of the Lease not within the relevant Service Charge costs. The first invoice related to electrical works within the Car Park and as such is properly chargeable. The bulk of the invoice related to repairing damage caused to the gates by a forklift truck. The Applicants argue that this cost should not be recharged to leaseholders because it was caused by a contractor's vehicle.

Whilst it is of obvious concern to leaseholders that the repairs were apparently necessary because of the actions of contractors working on the site that does not prevent the costs being service charge costs. However, the Respondent will quite separately owe a duty of care to residents to pursue any claims against a third party for such damage or to make an insurance claim where that is reasonable.

The other invoices all relate to, replacement of key fobs, electrical faults and work on the fire detection system, which are all properly charged to the Service Charge.

## **6. Car Park Electricity**

128. The electricity supply to the basement car park is complicated. There are two supplies which are served by 13 sub-meters 9 of which exclusively serve the residential parking area of the car park. The other four serve both the residential and the commercial areas of the car park. The apportionment used for the four sub-meters is 30:70. Because the car park was extended in 2018 to incorporate 122 new spaces, principally for the new commercial



developments, it was necessary to reapportion the charges. The Respondent accepts that the apportionment should have been 53:47 and they agree with the Applicants' calculation that the leaseholder's have been overcharged by £1,861.77.

129. A similar adjustment will be necessary when the 2020 final charges are known.

### **Service charge year: 2020**

1. **Car Park Stackers 2020**
130. The Applicants argue that the cost of maintaining stackers included in the 2020 budget should be attributable to the specific car spaces to which they are allocated and not to all car park space owners. The Respondent considers that the stackers are part of the integral plant and machinery within the Car Park and as such are properly charged. The Tribunal finds that charges are properly made for the reason advanced by the Respondent.

### **2. Car park soft and hard surfaces: 2019 and 2020**

#### **Applicants**

131. The Applicants argue that costs of waste management, pest control, lift maintenance and lift repairs are services applicable to all tenants and should not be borne solely by car park space owners. The Respondent says that the car park costs referred to here are specific to the Car Park and have therefore been allocated as such. The Tribunal agrees that these costs are properly charged. It is true that residential leaseholders use the Car Park to put their household waste in the shared residential bins but it appears to be the case, from the Respondent's submission, that the use of the car park by the residents without an allocated space is minimal and those with a parking space derive the most part of the services due to their far more frequent usage.

### **3. Estate, Cask Store, Car Park on-going contracts**

132. The Applicants argue that several on-going maintenance and consultancy contracts have contributed to the escalation of service charge costs and question whether the services are being provided at competitive rates. It is quite true that the services in question come at a considerable cost but it has not been established that the charges are excessive or otherwise improperly incurred or that a proper procurement process has not been followed by the Respondent.

### **Section 20C and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

133. The participating Applicants in this Application, indicated in Annex 1 to these Reasons, have made applications to the Tribunal for an order under Section 20C of the 1985 Act preventing the Landlord from

recovering its costs incurred or to be incurred in connection with the present proceedings in the Tribunal by way of any future service charge demand. Section 20C(3) provides that the Tribunal may make such order as it considers just and equitable in the circumstances. The Respondents also seek an order under paragraph 5A of Schedule 11 to the 2002 Act extinguishing any liability, for payment, by way of an administration charge, that might arise under the Lease in respect of litigation costs incurred by the Landlord in connection with these proceedings.

### **The Applicants' case**

134. The Applicants submit that they should not be liable for the Landlord's costs relating to the dispute, on the basis that the dispute has only arisen due to the inadequacy of the service provided by Savills and frequent and persistent errors and omissions in the accounting and management processes.

### **The Respondent's case**

135. The Respondent refutes the comments about "the frequent and persistent errors and omissions in the accounting and management processes" and trust that the documents submitted have provided clear evidence as the efficacy and transparency of the service charge accounts. They state that a substantial number of hours have been spent going through archive audits, preparing the relevant information, considering the various cases made by the Applicants and providing appropriate responses. They state that in essence, only two headings of expenditure in relation to the Cask Store service charge actually now remain in dispute, with the other items being in relation to the Estate Charge and Car Park Service Charge. They therefore submit that their reasonable costs in relation to the matter should be recoverable from the Service Charges in question.

### **Discussion and determination**

136. The first matter to consider is whether the Lease would permit the recovery of the Landlord's costs by way of service charge or administration charge . Paragraph 26 of Part 2 of the 9<sup>th</sup> Schedule to the Lease includes the following service,

"employing or retaining any solicitor accountant surveyor valuer architect engineer managing agent or management company or other professional consultant or advisor in connection with the management administration repair and maintenance of the Building and the Development including the preparation of any accounts certificates and statements relating to the Annual Building Expenditure and the collection of the Service Charge."

Parts 3 and 4 of the 9<sup>th</sup> Schedule contain identical provisions relating to the Estate and Car Park Services.

137. This provision enables the Landlord to recover the cost of engaging a Managing Agent in connection with the matters identified. Savills manage

the Cask Store and the Landlord is able to recover the Management fee under the lease. That fee was £11,400 in each of 2018 and 2019. One of the tasks of the Managing Agent is to respond to Tribunal proceedings. Thus the fee already covers the Agent's costs.

138. There is no evidence that the Landlord or Savills has incurred legal costs in employing solicitors or other professionals in connection with the Tribunal proceedings. However, even if this were to be the case the Tribunal finds that paragraph 26 of Part 2 of the 9<sup>th</sup> Schedule to the Lease would not permit recovery of those costs by way of service charge. That provision is insufficiently clear that it extends to such expenditure as opposed to expenditure on the matters explicitly identified therein. It follows that a section 20C order is not necessary even if it were just and equitable for the Tribunal to make such an order.
139. The Tribunal also finds that the Lease does not contain any provision whereby costs incurred in connection with the Tribunal proceedings are recoverable from any leaseholder by way of an administration charge and therefore an order under the 2002 Act is not necessary in relation to these proceedings.

### **Right to 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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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, that 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.

### **Annex        The Applicants**

Apartment 11	Mustafa Dol
Apartment 14	Shantini Kunhamboo
Apartment 15	SK Lee

Apartment 17	Alan Whitehorn
Apartment 19	James Hughes
Apartment 20	Steph Wilson and Rob Murley
Apartment 25	William Jones
Apartment 27	David Whitaker
Apartment 33	Jane Hunter
Apartment 34	Charlotte Kerr and Martin Keogh
Apartment 37	Bryan Thomas