



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

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**Case Reference** : CAM/00KG/LIS/2021/0018

**Property** : 78 Marine Court, Centurian Way, Purfleet on Thames RM19 1ZX

**Applicant** : Barbara Czajika

**Represented by** : In person

**Respondents** : Thurrock Borough Council

**Represented by** : Iris Ferber of counsel

**Application** : Application, pursuant to s27A of the Landlord & Tenant Act 1985, to determine the liability to pay and reasonableness of service charges and administration charges.

**Tribunal Members** : Judge Stephen Reeder  
Roland Thomas MRICS

**Date of hearing** : 11 November 2021  
Remotely by CVP platform

**Date of Decision** : 11 November 2021

**Date Written** : 21 January 2022

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**DECISION**

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# DECISION

## **Door entry system and lift service to the Applicant's building**

1. The final service charge account for 1 April 2018 to 31 March 2019 includes £4.95 in respect of the door entry system and £10.38 in respect of lift maintenance. The final service charge account for 1 April 2019 to 31 March 2020 includes £4.76 in respect of the door entry system and £8.57 in respect of lift maintenance. The estimated service charge account for 1 April 2020 to 31 March 2021 includes £4.76 in respect of the door entry system and £8.57 in respect of lift maintenance. The tribunal determines that the Applicant is not liable to pay such charges.

## **Caretaking**

2. The final service charge account for 1 April 2018 to 31 March 2019 includes £603.24 in respect of caretaking. The final service charge account for 1 April 2019 to 31 March 2020 includes £624.04 in respect of caretaking. The estimated service charge account for 1 April 2020 to 31 March 2021 includes £790.76 in respect of caretaking. The tribunal determines that these sums are unreasonably high in that the caretaking costs of the common areas of the Applicant's building (43-62 Marine Court) should be 'stripped out'. The Respondent should recalculate the demands accordingly.

## **Management fee**

3. The annual management fee charged of £232.21 for each of the accounting years 1 April 2018 – 31 March (with the Applicant being charged pro rata for 1 June 2018 - 31 March 2019), 1 April 2019 - 31 March 2020, and 1 April 2020 - 31 March 2021 is reasonable and is payable in the sum demanded.

# REASONS

## **The property and the parties**

4. The application relates to 78 Marine Court, Centurion Way Purfleet on Thames, Essex RM19 1ZX ('the property') which is a flat situated on the ground floor of a four-storey building ('the building') comprising 42 properties (Nos 63-104 Marine Court).
5. Barbara Czajika ('the Applicant') is the lessee of the property which she occupies as her home.
6. Thurrock Borough Council ('the Respondent') is the freehold owner of the building and the lessor in respect of the applicant's lease. It is the freehold owner of the Garrison Estate on which the building is located.

## **The procedural history**

7. The application was made received by the tribunal on 15 July 2021. Judge Wayte made a directions order of 13 August 2021. The matter was heard by remote video (CVP) hearing on 11 November 2022. The tribunal made its determination on 11 November 2022.

### **The application, scope and issues**

8. The Applicant took her lease by assignment on 1 June 2018. It follows that the application (despite making reference to earlier periods) challenges the service charges for the accounting years period 1 June 2018 - 31 March 2019, 1 April 2019 - 31 March 2020, and 1 April 2020 - 31 March 2021.
9. The application challenges those service charges relating to the caretaking of communal areas, the block door entry system, electricity costs for the block communal areas and door entry system, maintenance costs for the communal lift, repairs to the communal areas, and the management fee. The application expressly does not challenge the ground rent or service charges relating to buildings insurance and grounds maintenance.

### **The hearing**

10. The tribunal has convened a remote video hearing by CVP (cloud video platform) on 11 November 2021. Neither party has requested an in-person hearing in response to the directions order. Having regard to the issues raised and evidence and information filed on the application, and to the current ongoing Covid-19 related public health emergency, the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings.
11. The Applicant has attended in person and presented the application herself. She has been supported by her friend and neighbour Sally Lovelock who accompanied her throughout the hearing. The Respondent has been represented by Iris Ferber of counsel. Mohammed Haque (paralegal) and Rasheed Said (home ownership services manager) attended from the Respondent council.

### **The documentary evidence and materials considered**

12. Judge Wayte made a directions order of 13 August 2021. Paragraphs 3 & 4 directed each party to file with the court an agreed bundle of documents which is indexed, paginated, chronological and arranged with section dividers. The tribunal has received one bundle from each party. Neither bundle complies with the directions. The failure to do so has made it more difficult and more time consuming for the tribunal to navigate the documents during the hearing, during deliberations and determinations and for the purpose of preparing the written decision. The tribunal has imposed no sanction on this occasion but instead has stressed the importance of complying with directions on any future occasion.
13. The tribunal has considered the documents bundle filed by the Applicant and the separate documents bundle filed by the Respondent. The tribunal has read with particular care the application, the lease, the statement of case and evidence filed by the Applicant, the statement of case and evidence filed by the Respondent, and the service charge accounts and supporting documents.

## The lease

14. The tribunal is provided with a copy of the lease dated 12 May 2014. The parties have confirmed that this is the relevant lease. That lease includes the following provisions of particular relevance to the issues before the tribunal.
15. The lease (clause 1.1) defines “the landlord” as Thurrock Borough Council and the tenant as the lessee with title (clause 1.2).
16. Clause 4.2 imposes an obligation on the tenant to pay the landlord the specified proportion of the service charge calculated in accordance with the 4<sup>th</sup> Schedule. The lease defines “the specified proportion” as the proportion of the service charge in any relevant year by the tenant in accordance with the 4<sup>th</sup> Schedule.
17. Clause 4 of the 4<sup>th</sup> Schedule provides that the annual service charge payable by the tenant shall be calculated either by (4.1) dividing the aggregate of the expenses and outgoings incurred in respect of the items of expenditure in respect of the building by the number of flats in the building, or (4.2) in the case of those items for which the landlord’s expenses extend to the Estate or other Estates then a fair and reasonable proportion of the costs of such expenses attributable to the Premises such proportion to be determined by the Finance Officer whose decision shall be final and binding, or (4.3) such other method as the Landlord shall specify acting fairly and reasonably in the circumstances and from time to time and at any time (including but without prejudice to the generality of the above any combination of methods).
18. Clause 1.28 defines “the service charge” as all those costs and expenses incurred or to be incurred by the landlord in connection with the management and maintenance of the estate and the carrying out of the landlord’s obligations and duties and providing all such services as are required to be provided by the landlord under the terms of this lease including **where relevant** (*emphasis added by the tribunal*) the category A services, category B services, and category C improvements and all such matters as are set out in the 5<sup>th</sup> Schedule.
19. Clause 1.29 provides that items of expenditure are all those items in the 5<sup>th</sup> Schedule the costs of which form the basis of the service charge. The 5<sup>th</sup> Schedule defines (paragraph 1) the items of expenditure to include the expenses of maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the estate and all parts of it and all appurtenances apparatus and other things belonging to the estate including those items described in clauses 6.2 and 6.3, and (paragraph 3) the cost of electric current for operating the passenger lifts, and (paragraph 4) the cost of insuring the estate and all parts of it and landlords fixtures and fittings and all the appurtenances apparatus and other things belonging to the estate, and (paragraph 6) the cost of cleaning collecting and removing refuse decorating and lighting the passages landings staircases and other parts of the estate **enjoyed or used by the tenant in common with others** (*emphasis added by the tribunal*), and of keeping the **other parts of the estate used by the tenant in common with others** (*emphasis added by the tribunal*), and not otherwise specifically referred to in this schedule in good repair and condition and (paragraph 9) the cost of the expenses of making repairing maintaining rebuilding cleansing and lighting all ways roads pavements sewers drains pipes watercourses party walls party structures party fence walls or other conveniences which may belong or be used for the estate in common with other estates near or adjoining it, and (paragraph 11) the upkeep of the gardens forecourts roadways pathways (if any) used in connection with the estate or adjoining or adjacent to it.
20. Clause 1.23 provides that category A services includes all matters concerning the management and maintenance of the estate for which the landlord is responsible or for which expenditure has been properly incurred by the landlord under the terms of the lease including

(1.23.1)...lifts.....(1.23.2)...communal heating lighting cleaning refuse collection and removal...(1.23.3) caretaker facilities...(1.23.6)...management.

21. Clause 1.24 provides that ‘category B repairs’ includes all matters concerning the management and maintenance of the estate...being in the nature of general repairs.
22. Clause 1.5 defines “the premises” as the ground floor flat known as 78 Marine Court (edged in red on the accompanying plan).
23. Clause 1.9 defines “the building” as the building consisting solely of physically linked flats within the estate and including the flat described in the premises and the common parts of the building.
24. Clause 1.20 defines “the estate” as the property of which the building forms part as edged in red on the accompanying plan.
25. Clause 1.21 defines “the managed buildings” as the building and all other buildings and structures if any erected or to be erected within the estate (if any).
26. Clause 1.22 defines “the common parts” as the entrance porch corridors hallways buildings lifts and staircases (if any) and any other parts within the managed buildings and vehicular and pedestrian ways forecourts or drives refuse bins stores gardens (if any) and any other areas **inside or outside the managed buildings but within the estate which are not intended to remain private and which are to be enjoyed or used by the tenant and occupiers of the premises in common with the occupiers of others flats in the managed buildings** (*emphasis added by the tribunal*) but excluding the roads and pathways (if any) which are or which become public roads.
27. The landlord’s covenant in paragraph 6 of the lease requires it to (clause 6.2) maintain repair redecorate renew clean repoint paint grain varnish whiten and colour as applicable the structure of the managed buildings (as further defined in 6.2.1), passenger lifts and machinery landings and staircases and other parts of the managed buildings and common parts **enjoyed or used by the tenant in common with others** (*emphasis added by the tribunal*) (as further defined in 6.2.3), and requires it to (6.3.1) keep reasonable clean and lighted the passages landings staircases and other parts of the managed buildings **enjoyed or used by the tenant in common with others** (*emphasis added by the tribunal*) and to (6.3.2) keep clean and tidy and generally maintain the gardens (excluding private gardens) forecourts roadways and pathways on the estate.

## **The law**

28. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter ‘the LTA 1985’) sets out the Tribunal’s jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (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 is payable.

29. Section 18 sets out the meanings of ‘service charge’ and ‘relevant costs’.
30. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.
31. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an order to reduce or extinguish the tenant’s liability to pay an administration charge in respect of litigation costs.
32. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter ‘CLARA 2002’) sets out the Tribunal’s jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to--

- (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.
33. Section 1 provides a definition of ‘administration charge’. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

### **The service charge accounts and explanatory notes to the demands**

34. The application relates to the service charges for the accounting years 1 June 2018 - 31 March 2019 (part year as the Applicant acquired her lease on 1 June 2018), 1 April 2019 - 31 March 2020, and 1 April 2020 - 31 March 2021.
35. The final service charge accounts itemise the services (and associated component apportioned charges) as ‘caretaking’, ‘door entry system’, ‘electricity’, ‘grounds maintenance’, ‘insurance’, ‘lift maintenance’, ‘repairs’, and ‘management fee’.
36. The explanatory note to the service charge demands states in terms that –

‘*Caretaking*’ charges are for the caretaking service delivered to a number of standards, being bronze, silver, silver enhanced, gold and gold enhanced. Gold enhanced provides 5 visits every 7 days including weekends and a health and safety service. The service is responsive rather

than to a strict schedule. Time spent is as much as required to maintain a good standard. Regular unannounced inspections are made to ensure standards are maintained.

‘*Communal electricity*’ charges are a proportion of the cost of electricity to provide lighting to entrances, staircases, lifts, door entry systems and communal areas of the tenant’s block/estate.

‘*Communal repairs*’ charges are for the cost of day-to-day repairs and maintenance of the structure and communal parts of “your building and of the estate”.

‘*Door entry maintenance and lift maintenance*’ charges are for the costs of regular servicing and maintenance.

‘*Management fee*’ covers the costs of delivering the management services provided to leaseholders, such as maintaining and updating customer information, production and notification of service charge estimates and accounts, income recovery, consultation, monitoring and checking repairs, commissioning and monitoring other services and dealing with leaseholder enquiries.

### **Discussion and determinations**

37. The Applicant is the lessee and occupier of 78 Marine Court which is a flat situated on the ground floor of a four-storey building, 63-104 Marine Court (‘the building’), which for the purposes of apportionment of costs comprises 42 flats. The Applicant took an assignment of her lease on 1 June 2018. The service charges demanded of her pursuant to that lease comprise communal building charges (insurance, communal entry door and intercom, lift, lighting, caretaking and repairs), estate charges (caretaking and grounds maintenance), and a management fee.

#### **The building (43-62 Marine Court) related charges**

38. The building related charges challenged by the Applicant are the costs relating to the communal entry door and intercom and relating to the lift service. The building caretaking charge is also challenged, but as it is levied with the estate caretaking charge it is dealt with below in that section of this Decision.
39. The Applicant argues that she is not liable to pay a service charge toward the costs of caretaking of the communal areas of the building, the costs associated with the door entry system for the building, the electricity costs for the lighting of internal communal areas to the building, the maintenance costs for the communal passenger lift within the building, and the cost of repairs to the communal areas within the building. The basis for this is simple. She has no access to those internal communal areas and services and has no need for such access.
40. It is accepted by the Respondent that the Applicant’s property has its own entrance door providing direct access from the street. It is accepted that the Applicant has no need to use the communal entry doors to the building, the communal areas within the building or the communal lift service. In fact, the Applicant is not permitted such access and use as it is agreed that the Respondent has not issued the Applicant with the security fob needed to use the communal entry doors and so gain access to the communal areas and communal lift service.
41. In letter dated 28 February 2020 letter the Respondent stated that the charges for “entry door and lift services” for 43-62 Marine Court are currently apportioned equally across all properties in the block”, and confirmed to the Applicant that following a “review” as from 1 April 2020 those properties which have no access to “the entry door or the lift [within the block 43-62 Marine

Court] will not be charged for “entry door or lift services” but that “all other services will continue to be apportioned and charged. The Applicant’s property is one such property. The concession was also given to the other 12 properties on the ground floor of the building in the same situation.

42. No similar post-review concession was made for charges pre-dating 1 April 2020. It follows that the Respondent has demanded a service charge for block entry door and lift services in the accounting years 1 June 2018 - 31 March 2019 and 1 April 2019 - 31 March 2020.
43. No similar concession was made in respect of the costs of the electricity supply for the lift, the costs of the electricity supply for the lighting of internal communal areas to the building, the costs of caretaking of the communal areas within the building, and the cost of repairs to the communal areas within the building.
44. The tribunal is provided with a letter from the Respondent to the Applicant dated 8 January 2019 which informs her that the cost of refurbishment works to “lift 3” have been apportioned equally across all of the properties in the block such that her apportioned share demanded as a service charge is £181.32. Further, it is apparent from a letter dated 23 March 2021 from the Respondent to the Applicant that the 2021-22 service charge demands failed to implement this review decision and so later corrections had to be made by credits to the Applicant’s service charge account.
45. The Respondent contends that, notwithstanding the concession made from 1 April 2020, the Applicant was and remains liable to pay a service charge contribution in respect of block entry door and lift services for the accounting years 1 June 2018 - 31 March 2019 and 1 April 2019 - 31 March 2020 as the Respondent is obliged by the lease to maintain that entry door and lift service. The Respondent argues that these are category A services.
46. In interpreting the lease the tribunal has careful regard to the decision of the Upper Tribunal in *Arnold v Britton [2015] AC 1619* and so has directed itself to the natural and ordinary meaning of the clause under consideration, the other relevant provisions in the lease, the overall purpose of the clause, related provisions and lease as a whole, to the facts and circumstances known or assumed by the parties at the time the lease was executed, and to commercial common-sense (disregarding any subjective evidence of any party’s intentions).
47. The tribunal notes that clause 1.23 provides that category A services includes all matters concerning the management and maintenance of the estate for which the landlord is responsible or for which expenditure has been properly incurred by the landlord under the terms of the lease including (1.23.1)...lifts....(1.23.2)...communal heating lighting cleaning refuse collection and removal...(1.23.3) caretaker facilities...(1.23.6)...management.
48. The tribunal notes that clause 1.28 defines “the service charge” as all those costs and expenses incurred or to be incurred by the landlord in connection with the management and maintenance of the estate and the carrying out of the landlord’s obligations and duties and providing all such services as are required to be provided by the landlord under the terms of this lease including **where relevant** (*emphasis added by the tribunal*) the category A services, category B services, and category C improvements and all such matters as are set out in the 5<sup>th</sup> Schedule.
49. The tribunal notes that the 5<sup>th</sup> Schedule defines (paragraph 1) the items of expenditure to include the expenses of maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the estate and all parts of it and all appurtenances apparatus and other things belonging to the estate including those items described in clauses 6.2 and 6.3, and (paragraph 3) the cost of electric current for operating the passenger lifts, and (paragraph 4) the cost of insuring the estate and all parts of it and landlords fixtures and fittings and all the appurtenances apparatus and other things belonging to the estate, and (paragraph 6) the cost of cleaning collecting and removing refuse decorating and lighting the



passages landings staircases and other parts of the estate **enjoyed or used by the tenant in common with others** (*emphasis added by the tribunal*), and of keeping the **other parts of the estate used by the tenant in common with others** (*emphasis added by the tribunal*), and not otherwise specifically referred to in this schedule in good repair and condition and (paragraph 9) the cost of the expenses of making repairing maintaining rebuilding cleansing and lighting all ways roads pavements sewers drains pipes watercourses party walls party structures party fence walls or other conveniences which may belong or be used for the estate in common with other estates near or adjoining it, and (paragraph 11) the upkeep of the gardens forecourts roadways pathways (if any) used in connection with the estate or adjoining or adjacent to it.

50. The Tribunal considers that the lease operates so that the Applicant is liable, as a service charge, for the costs and expenses of category A services “where relevant”, which is those category A services which are used or enjoyed by her in common with others. The Tribunal considers that the lease operates so that the Applicant is liable, as a service charge, for the costs and expenses of all such matters as are set out in the 5<sup>th</sup> Schedule which are the costs and expenses of maintaining those parts of the estate which are used or enjoyed by her in common with others. The tribunal considers that the Applicant is not therefore liable under the lease in respect of costs and expenses incurred in relation to the “entry door and lift services” in the common areas of her building at 43-62 Marine Court in respect of which she has no exercisable right of access and so cannot enjoy or use them regardless of whether she would wish to.
51. The final service charge account for 1 April 2018 to 31 March 2019 includes £4.95 in respect of the door entry system and £10.38 in respect of lift maintenance. The final service charge account for 1 April 2019 to 31 March 2020 includes £4.76 in respect of the door entry system and £8.57 in respect of lift maintenance. The estimated service charge account for 1 April 2020 to 31 March 2021 includes £4.76 in respect of the door entry system and £8.57 in respect of lift maintenance. The tribunal determines that the Applicant is not liable to pay such charges.

### **The estate charges**

52. The estate charges comprise caretaking and grounds maintenance. The application does not challenge the costs of grounds maintenance.
53. The charge in respect of caretaking comprises the specified proportion of the costs of the caretaking service to both the building in which the Applicant’s flat is situated and the estate on which that building is located. This is clear from the evidence before the tribunal and stated in the explanatory notes to the service charge demands.
54. The caretaking service provided to the Applicant is titled ‘Gold Enhanced’ which provides a service on 5 out of 7 days each week including weekends including any additional health and safety services. The specification for the service has been provided in the hearing bundle and is a comprehensive summary of core cleaning tasks (internal retained parts and external estate areas), caretaker general duties (inspections, assessments, resident relations, on site estate management and security, and responsive assistance etc), mobile caretaker duties (fly tipping clearance, bulky rubbish collection etc), seasonal duties (weeds, leaves, fruit and fallen debris, ice, snow and salt spreading etc) and standby duties (in and out of hours urgent and emergency requests and tasks etc). It is provided by the Respondent’s ‘Caretaking Service’ which is a direct labour force of 59 full time staff managed by its ‘Estate Services’ team. The cost incorporates the wages of staff and the materials, equipment and vehicles used by them to deliver the service. The Caretaking Service is provided borough-wide to 4,300 properties which are occupied by a mixture of long lease lessees and council tenants. The Respondent has explained in evidence that for the purposes of

apportionment council tenants are treated as being liable for an apportioned contribution on the same basis as the long lessees when calculating the service charge liability of those long lessees.

55. The Applicant argues that her service charge is unreasonable in two ways. Firstly, it should not include the costs of caretaking to the internal parts of her block to which she has no access. Secondly, there has been no adequate explanation as to how the overall estate costs have been apportioned between the properties including in particular those held by the Respondent's tenants (whether secure, assured or introductory etc) rather than held on leasehold.
56. In respect of the costs and expenses of the caretaking to the internal communal parts of the Applicant's building (43-62 Marine Court) the tribunal determines that the Applicant is not liable to pay a contribution to the same by service charge for the same reasons as are referable to the building costs issue set out earlier in this Decision.
57. The tribunal determines that the Applicant is liable to pay a contribution by service charge in respect of the costs and expenses of caretaking to the estate. Indeed, the Applicant does not dispute that she is so liable. The 'equal' apportionment between long lessees and the Respondent's tenants as confirmed by the Respondent in evidence is obviously permissible under the lease and is clearly reasonable.
58. The final service charge account for 1 April 2018 to 31 March 2019 includes £603.24 in respect of caretaking. The final service charge account for 1 April 2019 to 31 March 2020 includes £624.04 in respect of caretaking. The estimated service charge account for 1 April 2020 to 31 March 2021 includes £790.76 in respect of caretaking. The tribunal determines that these sums are unreasonably high in that the caretaking costs of the common areas of the Applicant's building (43-62 Marine Court) should be 'stripped out'. The Respondent should recalculate the demands accordingly.

### **The management fee**

59. The Applicant accepts that she is liable to pay a service charge. This is unsurprising given the obligation clearly imposed by clauses 1.16, 1.20 1.23.6, 1.28, together with clauses 4.2 and 4.3 of the Fourth Schedule which provide that the specified proportion where the expenses extend to the estate or other estates is to be a fair and reasonable proportion attributable to the premises to be determined by the decision of the Finance Officer or by such other method as the landlord shall specify acting fairly and reasonably.
60. The annual fee charged was £232.21 for each of the accounting years 1 April 2018 – 31 March (with the Applicant being charged pro rata for 1 June 2018 - 31 March 2019), 1 April 2019 - 31 March 2020, and 1 April 2020 - 31 March 2021.
61. The Applicant argues that the management fee is excessive for the management provided and otherwise not reasonable on the basis that it should be apportioned to reflect that 13 ground floor properties in the building have no communal areas requiring management whilst those on upper floors do and should bear a higher specified proportion of the management costs.
62. The lease provisions expressly state that the management fee relates to management of not just the premises and the building, but also the managed buildings and the common parts of the managed buildings and the estate (including vehicular and pedestrian ways, forecourts, drives, refuse bins, bin stores, gardens) which are to be enjoyed or used by the tenant and occupiers of the premises in common with other occupiers.

63. The Respondent states that the management fee is a flat fee to each leaseholder within the borough arrived at following a review in 2017/18 and results from the management of approximately 9903 properties across the borough of which 904 are leasehold (including within and beyond the estate) by the direct labour service Homeownership Services team. The local Homeownership Services office manages approximately 300 properties and provides a local management officer (a 'Ms.Loveloek'). The management service includes all and any management required including property management, dealing with anti-social behaviour and estate-related complaints, responsive repairs, stock state assessment, major repair and improvement programmes (including consultation and invoicing), health and safety assessments and planning and fire risk assessment and planning. It also includes the indirect costs of customer services, finance, debt management, complaints, asset management and ICT. The Respondent argued that the adoption of this substantial borough-wide property management service provides economies of scale resulting in value for money.
64. The Tribunal determines that the provisions of the lease both require the Respondent to manage the estate and permit the Respondent to adopt such a borough-wide management service to do so. The lease requires the specified proportion of the service charge for the same to be a fair and reasonable proportion attributable to the premises to be determined by the decision of the Finance Officer or by such other method as the landlord shall specify acting fairly and reasonably. The tribunal considers that the borough-wide arrangement deploying a comprehensive in-house service with no additions at all clearly provides benefit by economies of scale resulting in an annual charge of £232.21 for the management service provided is reasonable both when considered against a wide 'benchmark' against the number of properties under management, and when considered against a narrower 'benchmark' of the number of properties in the Applicant's building on this estate (which equates to an annual charge of £9,744 for 42 properties situated in this building located on this estate).

### Costs

65. The Applicant seeks its costs in relation to this application. The tribunal invited argument as to liability to meet such costs as a service charge pursuant to the lease. We were addressed in relation to clauses 4.7 and 1.28.
66. Clause 4.7 relates to 'landlord's costs' but is expressly restricted to costs, charges and expenses incurred in respect of contemplated or actual forfeiture proceedings or incurred in respect of actions for want of repair or dealing with application for consent. The tribunal determines that the costs of these proceedings do not fall within the scope of that clause.
67. Clause 1.28 defines "the service charge" as all those costs and expenses incurred or to be incurred by the landlord in connection with the management and maintenance of the estate and the carrying out of the landlord's obligations and duties and providing all such services as are required to be provided by the landlord under the terms of this lease including where relevant the category A services, category B services, and category C improvements and all such matters as are set out in the 5<sup>th</sup> Schedule. The tribunal determines that costs of these proceedings do not fall within the scope of that clause when the clear language of the same is considered within the context of the lease as a whole.
68. The 5<sup>th</sup> Schedule comprises 13 clauses. Clauses 1-11 cannot conceivably be said to impose liability for costs of tribunal proceedings. Clause 12 relates to steps taken concerning town planning, public health, highways streets and drainage or other matters relating to the estate for which the tenant is not liable under the lease. Clause 13 relates to costs and expenses incurred by the landlord in the observance and performance of the landlord's obligations and duties to be observed and performed under the terms of the lease. The tribunal determines that costs of these proceedings do not fall

within the scope of either clause when the clear language of the same is considered within the context of the lease as a whole.

69. The Applicant raised perfectly understandable issues about liability in relation to her building and of divisibility and apportionment in respect of services which the Respondent has elected to provide on a borough-wide service. She contends that it was reasonable to pursue these proceedings. The Respondent contends that the Applicant's failure to properly consider explanations in correspondence or avail herself of the offers of a meeting to resolve matters prior to the hearing is unreasonable. The tribunal considers that the Applicant's conduct as described is not unreasonable in the circumstances, including having regard to the less than full explanatory note to the service charge demands, and to the less than detailed explanatory narrative in the Respondent's statement of case and supporting statement filed in the proceedings.
70. In considering whether to exercise its power to award costs the Tribunal had careful regard to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules. The Tribunal was also mindful of the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. The Tribunal considers that neither party has acted unreasonably in bringing, defending or conducting the proceedings and so makes no costs shifting order. Accordingly, both parties bear their own costs.

#### **Delay in providing this written Decision**

71. Judge Reeder offers an apology for the delay in issuing this decision. This is due to an episode of Covid-19 infection requiring self-isolation and a period of recuperation, followed by an immediate and uninterrupted period of judicial sittings and court commitment

**Stephen Reeder**  
**Judge of the First Tier Tribunal, Property Chamber**

**21 January 2022**

## ANNEX - RIGHTS OF APPEAL

- a. **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.**
- b. **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.**
- c. **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.**
- d. **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.**