FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EC/LSC/2021/0036**
Property	**:**	**51 & 57 Roseberry Mews** **Guisborough Road** **Nunthorpe** **TS7 0PP**
Applicant	**:**	**Eric Cook & Nancy Lennie**
Representative	**:**	**Newtons Solicitors**
Respondent	**:**	**Landmark (Bolton) Limited &** **Plantview Limited**
Representative	**:**	**Residential Management Group Ltd.**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s27A** **Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A** **Landlord and Tenant Act 1985 – s20C**
Tribunal	**:**	**Valuer Chair J Fraser FRICS** **Judge J Holbrook** **Regional Surveyor N Walsh**
Date and venue of Hearing	**:**	**17th May 2022** **(Video Hearing)**
Date of Decision	**:**	**5th August 2022**

DECISION

DECISION

A. In accordance with the service charge fraction set out at 1.10 of the lease, the leaseholders are liable to pay their respective shares, equating to 3/127 or 2.3622% of the total service charge determined as set out below.

B. For the service charge year 1st March 2018 – 28th February 2019, the Applicants are liable to pay the relevant proportion of service charges amounting to £111.07 for Council Tax for Staff Accommodation.

C. For the service charge year 1st March 2019 – 29th February 2020, the Applicants are liable to pay the relevant proportion of service charges as follows:

Item	Amount
Fire equipment maintenance	£261.02
Legal and Professional Fees	£1,932
Staff Wages	£21,699.32

D. For the service charge year 1st March 2020 – 15th March 2020, the Applicants are liable to pay the relevant proportion of service charges as follows:

Item	Amount
Legal and Professional Fees	£500
Communal Telephone Line	£122
Staff Wages	£808.19
Buildings Insurance	£3,218

E. For the service charge periods 2018/19 and 2019/20 the Tribunal finds that the Charges for Staff accommodation are not recoverable under the lease.

F. For the service charge periods 1st March 2019 – 29th February 2020 and 1st March 2020 – 15th March 2020 the Tribunal finds that, in principle, the water charges are recoverable, however the Tribunal was not able to make a decision based upon the information and explanations provided and the amount will need to be determined separately at a later date unless the parties are now able to reach agreement on quantum.

G. The costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

REASONS

Background

1. On the 5th May 2021, the Tribunal received an application from the Applicant's representative, Newtons Solicitors for the determination of liability to pay and reasonableness of service charges, under section 27A of the Landlord and Tenant Act 1985 ("the Act"). The Applicants, Eric Cook & Nancy Lennie, are the long-leaseholders of flats 57 & 51 Roseberry Mews respectively.

2. Roseberry Mews comprises a relatively modern block of 57 retirement apartments, arranged over three storeys and located in Nunthorpe, adjacent to the train line. The Tribunal did not inspect the building.

3. The Tribunal is required to make a determination as to whether service charges in respect of Flats 51 & 57 Roseberry Mews are payable and/or reasonable. The Respondents are Landmark (Bolton) Ltd and Plantview Ltd (the past and present landlords of the development). The periods in respect of which a determination is being sought are the service charge years 2018/19; 2019/20 and 2020/21.

4. The leaseholders of the block have formed a Right to Manage (RTM) Company and it is understood that the RTM Company have taken over management of the block as of the 16th March 2020.

5. Directions were issued by Judge Holbrook dated 19th May 2021, further Directions were issued by Judge Bennett, dated 24th September 2021 following a case management conference and consequently the Respondent to the application was amended to Plantview Ltd.

6. A bundle extending to 699 pages was provided for the hearing, further Counsel for the applicant prepared a Skeleton Argument, provided to the Tribunal on the day prior to the hearing, dealing only with the issue of Ground Rent / Staff Accommodation.

7. A video hearing was conducted on the 17th May 2022. The hearing was attended by the Applicants, their representative, Ms Noone of Newtons Solicitors and Counsel for the Applicants, Mr Patterson-Whitaker of Parklane Plowden. The Respondents were represented by Mr Amodeo and Mr Irving of Residential Management Group Ltd (RMG).

Issues in dispute

8. There are a number of issues in dispute, some of which span multiple service charge years, they are:

    a. Charge for staff accommodation (years 2018/19, 2019/20)
    b. Staff wages (years 2019/20, 2020/21)
    c. Water charges (years 2019/20, 2020/21)
    d. Buildings Insurance (year 2020/2021)
    e. Legal and professional fees (years 2019/20, 2020/21)
    f. Council Tax for staff accommodation (year 2018/19)
    g. Fire equipment maintenance (year 2019/20)
    h. Communal telephone line (year 2020/21)

9. During the hearing the Applicants challenged two further items of expenditure being sums paid from the contingency fund for internal and external decoration and LED communal lighting upgrade.

10. A further matter as to the amount of contingency fund to be paid from RMG to the RTM company following change of the block management on the 16th March 2020 was also raised by the applicants.

11. The Tribunal is asked to consider costs under the Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A and the Landlord and Tenant Act 1985 – s20C.

The Law

12. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

> *An application may be made to the appropriate 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 it is payable.*

13. Section 27A(3) provides:

> An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would as to –
>
> (a) the person by whom it would be payable;
> (b) the person to whom it would be payable

(c) the amount which would be payable;
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

14. Section 27A(4) provides:

> No application under subsection (1) or (3) may be made in respect of a matter which-
>
> (a) has been agreed or admitted by the tenant
> (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
> (c) has been the subject of determination by a court, or
> (d) has been the subject of a determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement

15. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

16. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

17. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, which provides:

> *(1) Relevant costs shall be taken into account in determining the amount of a 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.*
>
> *(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

18. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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.*

19. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

20. Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by a party in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

21. Schedule 11 paragraph 5A of the Commonhold and Leasehold Reform Act 2002 provides:

> (1) An application may be made to [the appropriate 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.
>
> (2) Sub-paragraph (1) applies whether or not any payment has been made.
>
> (3) The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
>
> (4) No application under sub-paragraph (1) may be made in respect of a matter which-
>
> (a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c)has been the subject of determination by a court, or
(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or

(b)on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).

The Lease

22. The leases for each flat are in materially identical terms.

23. The lease sets out the services to be provided by the Landlord to the development and the cost of the services to be recovered proportionally from the Leaseholders, the mechanism for service charge calculation and collection is set out at the Fourth Schedule of the lease, the Landlord Covenants are set out at the Sixth Schedule of the Lease.

24. The service charge fraction for a two-bedroom flat is set out at 1.10 of the lease as 3/127, i.e. the leaseholder of a two bedroom flat is liable to pay a proportion of the annual service charge equal to 3/127, or 2.3622%. 51 and 57 Roseberry Mews are each two-bedroom flats.

25. For all amounts determined by the Tribunal, the amount is the global amount to be charged to the service charge account for the entire building for that year, the leaseholder applicants will pay only their respective shares of the global determined amount.

26. As an example, the overall amount determined as payable for the Service Charge year 2018/19 for Council Tax is £111.07. This equates to a respective charge of £2.62 each for flats 51 & 57 for the service charge year, being 2.3622% of the overall amount.

Preliminary issues

27. At the commencement of the hearing, three preliminary issues were considered by the Tribunal:

    a. Which entity is the correct Respondent
    b. Whether proceedings issued in the County Court precluded an application under s.27
    c. Whether late submissions from the Applicant should be included within the hearing bundle

Correct Respondent

28. The Respondent was amended, by the further directions dated 24th September 2021, from Landmark (Bolton) Limited to Plantview Ltd. At the hearing it was submitted by the Respondent that Plantview Ltd acquired the freehold interest in Roseberry Mews around June 2020 and was the Freeholder at the time of the application to the Tribunal. The Applicants submitted that Landmark (Bolton) Limited was shown at Land Registry as the proprietor as late as May 2021.

29. It is not disputed between the parties that Landmark (Bolton) Limited was the freeholder for a significant part, if not all, of the service charge period in dispute, the Tribunal therefore considered it necessary for Landmark (Bolton) Limited to be added to the proceedings as Respondent.

30. Mr Amodeo for the Respondent confirmed that he had the authority to represent both entities, they being connected companies, and that he agreed to Landmark (Bolton) Limited being added to the proceedings.

County Court Proceedings

31. Within the hearing bundle, it was stated that proceedings had been commenced in the County Court by the Respondent against all leaseholders who refused to pay the service charge demand sent under cover of the letter dated 24th June 2020. S.27A (4) (c) of "The Act" precludes an application under "The Act" where the matter has been the subject of determination by a court. Mr Patterson-Whitaker for the Applicants confirmed that Mr Cook was not involved in the proceedings but that Ms Lennie was. Mr Amodeo confirmed that the County Court proceedings had been stayed pending the determination of the Tribunal and therefore, as no determination has been given by the County Court, the Tribunal was able to proceed with the hearing.

Late Submissions

32. On the 9th May 2022, the Tribunal received a case management application from the Applicant's representative for permission to rely on the Witness Statement of the Applicant Eric Cook, which was not filed within 14 days of the hearing, as per the directions dated 24th

September 2021. Attached to the witness statement was Exhibit EC1 with a number of attachments. At the hearing and after hearing submissions from both parties, the parties agreed that the witness statement and exhibits could be included within the bundle.

Determination of issues in dispute

Staff accommodation charges

33. The Applicants challenge the amounts which have been included in the service charge in respect of staff accommodation, both for the 2018 – 19 service charge year, and also for 2019 – 20. The amounts in dispute are £11,985 for 2018 – 19, and £12,282 for 2019 – 20. The Applicants say that these charges are not payable under their Leases. Alternatively, they say that the charges are not reasonable in amount.

34. The landlord employs a full-time estate manager who resides rent-free in a two-bedroom flat immediately adjacent to the development's main entrance. The charges in dispute concern the notional cost to the landlord of providing the estate manager with that accommodation. We note that the relevant invoices issued in respect of these charges refer to the payment of "Ground Rent". However, it is clear that this was merely a label used for accounting purposes and that the charges in question do not concern ground rent as such, but are instead intended to represent a notional market rent for the estate manager's flat.

35. The Respondents' case is that these charges are recoverable in principle under the Leases. As far as quantum is concerned, the Respondents say that a notional half-yearly rent of £5,992.50 for the estate manager's flat was set by the original landlord/developer (Golden Living Limited) in 2010. The current landlord has continued to use this 'base figure' following its acquisition of the development in 2018, but has since applied year-on-year increases to reflect the general rate of inflation.

36. The Leases (which are in materially identical terms) contain provisions, in the Fourth Schedule, which require the tenant to contribute a proportionate part of the costs incurred by the landlord in providing services to the development. The landlord is obliged, for example, to repair, maintain and decorate the main structure and common parts of the building, to keep it clean and tidy, heated and lighted, and to insure it. The costs of doing all these things are recoverable via the service charge.

37. The Leases do not oblige the landlord to employ or provide a resident estate manager, but they contemplate this as a possibility, and it is clear that the direct costs of employing such a manager are also recoverable. "Estate Manager" is defined in the Leases as:

> "The person or persons employed by the Landlord or its agent for the purposes of being available to the tenants in the Building during reasonable hours of the daytime to render such

assistance in cases of emergency as may reasonably be expected of a person in such position possessing no medical or other special qualification or skill and to monitor on a day-to-day basis the provision of services in the Building and on the Estate"

38. It is also clear that, where an estate manager is provided, the landlord is primarily responsible for paying the costs of heating, lighting and cleaning the flat provided to them, and for paying any taxes, charges or outgoings in respect of it (see paragraphs 3 and 4 of the Sixth Schedule). However, it follows from the fact that the landlord is obliged to pay these costs that it also has the right to recover them from the tenants via the service charge.

39. But the landlord is not *obliged* to provide an estate manager's flat, and so the question arises as to what costs are recoverable via the service charge if it nevertheless decides to do so? The answer is to be found in the definition of "Annual Service Cost" in the Fourth Schedule to the Leases – because it is to this cost which the tenants are obliged to contribute.

40. According to paragraph 1.2 of the Fourth Schedule:

> " "Annual Service Cost" means the total payments charges loss and outgoings behalf of the Landlord in any Year in connection with the repair maintenance decoration renewal and management of the Estate and the Building and the provision of all services in the performance of its covenants in respect thereof herein contained together with such Value Added Tax or similar tax as may from time to time by law be required or may properly be added to any of the foregoing and (without prejudice to the generality of the foregoing) the same shall include:-
> ...
> 1.2.6 The costs of and incidental to the provision by the Landlord of all services provided in or in connection with the Estate and any part or parts thereof (including without prejudice to the generality of the foregoing any Council Tax or other similar local tax or rate from time to time charged on or raised by reference to any part or parts of the Estate not included in this demise or any Other Lease including any such Charge tax or rate payable by the Estate Manager(s))
> ...
> 1.2.8 The cost of employing staff directly or indirectly ...
> ...
> 1.2.11 The costs of providing and maintaining in repair and good decorative order accommodation for the Estate Manager(s) together with rent(s) in respect thereof"

41. "Services" are broadly defined for these purposes (by clause 1.14 of the Leases) as:

> "The services rendered works undertaken and obligations assumed by the Landlord pursuant to the covenants by the Landlord contained in the Sixth Schedule and under the provisions of the Fourth Schedule and any other services provided by the Landlord to the Estate or for the general benefit of the tenants thereof"

42. This expanded definition of "services" is such that – subject, of course, to the test of reasonableness – the landlord may add to the services it provides, and its rights to recover costs are not limited to the costs of services which it is obliged to provide. As we have already noted, the landlord may recover the direct costs of providing an estate manager. Where the estate manager is provided with accommodation, the actual costs of providing that accommodation may also be recovered via the service charge: this includes any rental costs actually incurred by the landlord in respect of that accommodation, as well as costs relating to things like council tax and utilities charges.

43. In the present case, however, the landlord has not actually incurred any rental costs in relation to the estate manager's flat. It owns that flat outright and what it is seeking to charge the tenants for is the notional cost (or the opportunity cost) of not being able to let the flat to someone else at a market rent. The Applicants argue that the Leases do not permit the landlord to include such notional costs in the service charge, and we agree.

44. During the hearing we were referred to the decision of the Upper Tribunal (Lands Chamber) in *Retirement Lease Housing Association Ltd v Schellerup* [2020] UKUT 232 (LC) in which consideration was given to the factors which should be taken into account in determining whether a lease permits a landlord to include 'income foregone' as a recoverable service charge cost. The Upper Tribunal made it clear that the recoverability of a notional rent will depend upon the proper construction of the lease in question, and that each lease must be considered on the basis of its own specific terms, read as a whole and in their relevant context. Nevertheless, *Schellerup* illustrates that, if the parties to a lease intend that the use of one flat to accommodate a resident manager should give rise to a notional cost recoverable via the service charge, it is likely that they will appreciate the need to make this reasonably clear on the face of the lease. They might also be reasonably expected to identify how that notional cost is to be calculated, by whom, or by what yardstick it is to be measured.

45. Having considered the terms of the Leases with these factors in mind, we find that they do not provide for a notional rent for the estate manager's flat to be recoverable via the service charge. The mention of "rent(s)" in paragraph 1.2.11 of the Fourth Schedule is insufficient, in our view, to encompass a *notional* rent for this purpose. Nor do the Leases provide any guidance about how, or by whom, such a notional rent would be ascertained. The fact that this is not a straightforward

matter is amply illustrated by the present facts. Whilst the Respondents argue that the amount recoverable should equate to the market rent for manager's flat, it is far from clear that the amount actually claimed bears any correlation to a market rent: it was acknowledged that the amount claimed by the original landlord 12 years ago has simply been carried forward from year to year without critical analysis, and it is not known how the original amount was ascertained anyway. The Respondents do not have evidence of present comparable market values and such evidence may be difficult to come by anyway – the Respondents' own stated position being that "[t]his accommodation can only be used for one purpose and is not impacted by the local market conditions.".

46. The fact that the Leases do not make express provision for such matters is in contrast to the fact that they *do* make clear provision for the recovery of certain other types of expenditure incurred by the landlord in respect of the estate manager's flat: not only are the costs of utilities and other outgoings recoverable (see paragraph 38 above), but so is the cost of council tax (paragraph 1.2.6 of the Fourth Schedule) and of repairs and decoration (paragraph 1.2.11). In common with the position in *Schellerup*, therefore, the inclusion of such ancillary expenses in the service charge recovery provisions makes it all the more surprising that, if the original parties to the Leases intended to provide for recovery of a notional rent, they made no express provision for it. We find that they did not intend to make such provision.

47. For these reasons, we conclude that the amounts claimed by the Respondents for staff accommodation are not recoverable as service charges under the Leases and that nothing is payable by the Applicants in this regard for either of the years in dispute.

Staff wages

48. The Applicants challenge the amounts which have been included within the service charge in respect of Staff Wages for the service charge years 2019/20 and 2020/21. For the year 2019/20 the Applicants submit that the actual cost of £28,230 against a budgeted cost of £23,435 was not reasonably incurred and that within that cost the provision of a replacement manager for the period of eight weeks (due to sick leave) was unnecessary.

49. The Respondent employs an Estate Manager, the provision of which has been considered above at Paragraphs 34 and 37.

50. During the year 2019/20, the Estate Manager was on a period of sick leave for around eight weeks. During this time, the Respondent arranged for a temporary Estate Manager, the Applicants say that a temporary manager was not required, there being an emergency call system in place.

51. The Respondent submits that at Clause 7 of the Sixth Schedule of the Lease, the Landlord is to use best endeavours to provide and maintain the services of an Estate Manager and that the sickness of the Estate Manager was, being for a period of eight weeks, not short term and therefore the emergency call system was not a suitable substitute for a period of eight weeks. They further submit that clause 1.2.8 of the Fourth Schedule allows for sickness pay to be recovered through the service charge.

52. The Tribunal were provided in the hearing bundle with supporting documentation to consider, including a Schedule of Expenditure which shows Staff Wages, totalling £28,230 albeit including a charge for council tax of £1,429, therefore a net charge of £26,801. The account shows regular payments of around £2,053.07 per month and there are amounts for "Temporary Staff" totalling £2,033.48. Also included with the bundle was a Statement of Written Particulars relating to the Development Manager and stating an annual salary of £14,250.60 per annum for 35 hours work per week. The contract is dated 20.11.2018. Clause 10 of the employment contract sets out that sick pay will be paid in accordance with RMG's Attendance Policy, which was not provided to the Tribunal. The Respondent was unable to disclose the salary of the Development Manager during the relevant service charge periods, submitting that GDPR would prohibit them from doing so.

53. At the hearing it was accepted by the Applicants that the provision of an Estate Manager was recoverable under the lease and that the management company where required to charge VAT on the cost of services provided by the management company in respect of the Estates Manager. The issues that remained in dispute were the amount, and the charge for a temporary manager during the eight-week period of sick leave.

54. The routine monthly *net of vat* amount charged for the Estate Manager to the service charge account is £1,710.89, this amount is assumed to include usual employer's on costs being employer's pension and national insurance contributions.

55. The annual salary stated within the contract of employment states a salary of £14,250.60 per annum, equating to a monthly payment of £1,187.55. Allowing 15% for usual employer on-costs, results in a monthly charge of £1,365.68. The discrepancy between this amount and the amount charged of £1,710.89 is not explained by the Respondent.

56. Given that the period of employment began on the 20th June 2018, less than one year before the commencement of the service charge period, the difference in the monthly amount charged of £1,710.89 and the amount arrived at by the Tribunal of £1,365.68 does not seem consistent with routine salary increases. On this basis, the Tribunal allows £1,365.68 per month, with VAT at 20% added to arrive at a

monthly amount of £1,638.82. This gives an annual amount of £19,665.84 for the provision of the Estates Manager.

57. Paragraph 7 of the Sixth Schedule of the lease sets out:

> "So far as practicable (and subject to Clause 4.2 of Part 11 of the Second Schedule) to use its best endeavours to provide and maintain the services of a Estate Manager (and Deputy Estate Manager, if appropriate) for the purpose of being available to the tenants in the Building during reasonable hours of the daytime to render such assistance in cases of emergency as may reasonably be expected of a person in such position possessing no medical or other special qualification or skill and to supervise the provision of services in the Building and on the Estate and to perform such other duties as the Landlord may in its discretion stipulate together with an emergency call system connected to a central control for the purpose of providing assistance in cases of emergency and in the short term or temporary absence of an Estate Manager and whilst the Estate Manager is off-duty.:

58. Having considered the terms of the lease, specifically that "*the emergency call system is to be provided in the cases of an emergency and in the short term or temporary absence of an Estate Manager and whilst the Estate Manager is off – duty'* the Tribunal finds that it was reasonable to provide a temporary Estates Manager for the period of sick leave of eight weeks.

59. The Tribunal was provided invoices for the provision of the Temporary Estates Manager totalling £2,033.48 (including VAT) and show an hourly rate of £14.95 including VAT. The Tribunal accepts this amount. Added to the amount from Paragraph 56 above, the Tribunal determines a total Staff Wages figure payable for the service charge year 2019/20 of £21,699.32.

60. For the year 2020/2021, the amount for staff wages charged to the service charge account is £1,087, including VAT.

61. The supporting statement of charges for staff wages shows a date of 1st March 2020 – 31st March 2020, however the service charge period ends on the 15th March 2020. The Respondent submitted that this was how the statement was produced by the accounting software, however it related only to the relevant period, i.e. 1st March – 15th March 2020 and pointed out that the charge equated to roughly 50% of the regular monthly charge in the prior service charge year.

62. The Tribunal accept that the amount shown relates only to the relevant period, however in accordance with the calculation set out at paragraphs 55 & 56 find that the reasonable monthly charge for staff wages is £1638.82 including VAT and therefore allow the pro-rated amount of £808.19 for the 15 day period. The amount payable for the year 2021/21 for staff wages is £808.19.

Water charges

63. The Applicants challenge the amounts included in the service charge in respect of water charges raised by Northumbrian Water, both for the 2019/20 service charge year and also for the 2020/21 service charge year. The amounts in dispute are £16,045 for 2019/20 and £3,408 for 2020/21. The Applicants do not dispute that water charges are payable, however they say that the amounts are not reasonable.

64. The water supply to the building for all flats is charged to the management company and the cost of providing water is subsequently charged to each flat through the service charge.

65. At the hearing the Respondent referred the Tribunal to various water bills included with the bundle and further explained that a refund of £2,678.91 had been received from Northumbrian Water and that it was due to be transferred to the RTM company imminently.

66. Paragraph 1.2.6 of the Fourth Schedule of the lease (Service charge calculation and collection) sets out:

> "The costs of and incidental to the provision by the landlord of all services provided in or in connection with the Estate and any part or parts thereof (including without prejudice to the generality of the foregoing any Council Tax or other similar local tax or rate from time to time charged on or raised by reference to any part or parts of the Estate not included in this demise or any Other Lease including any such Charge tax or rate payable by the Estate Manager(s))"

And paragraph 4 of the Sixth Schedule (Landlord Covenants) sets out:

> "To pay and discharge all rates and taxes and water and sewage charges and all assessments and outgoings whatsoever (whether or not of an annual or recurring nature) which now are or may hereafter be assessed, charged or payable in respect of any part of the Estate enjoyed or used by the Tenant in common with the other tenants or occupiers or in respect of the Estate Managers· flat(s)"

67. The Tribunal was not provided with an acceptable explanation and reconciliation of the water charges to make a determination, however in principle find that the lease provides for recovery of the water charges.

68. The parties are now encouraged to enter into further discussions as to the actual amount payable in respect of the water charges for the years in dispute. In the event that those discussions do not lead to a resolution, however, either party may apply to the Tribunal for a further determination of the issue. Additional case management directions would then be issued and those directions would no doubt

include a requirement for the Respondents to provide additional evidence to support the amounts claimed. We would encourage the Respondents to assemble that evidence at an early stage and to make it available to the Applicants in the interests of reaching a mutually acceptable outcome without the need for further recourse to the Tribunal.

Buildings Insurance

69. The Applicants challenge the amounts included in the service charge in respect of Buildings Insurance for the 2020/21 service charge year. The amount in dispute is £6,859.

70. The matter was agreed between the parties during the hearing. The Tribunal noted that the amount payable for the service charge year 2020/21 is agreed at £ 3,218.

Legal and Professional fees

71. The Applicants challenge the amounts which have been included in the service charge in respect of Legal and Professional fees for the service charge years 2019/20 and 2020/21. The amounts in dispute are £1,932 for 2019/20 and £500 for 2020/21.

72. The Respondent explained that the legal and professional fees incurred in both years relate to taking legal advice following receipt of an application from the Leaseholders of the block to form an Right to Manage (RTM) company. The Applicants submit that it was not appropriate to charge costs relating to this advice to the service charge account.

73. Paragraph 1.2.5 of the Fourth Schedule of the lease (Service charge calculation and collection) sets out:

> "All fees charges and expenses payable to any professional or other adviser agent or body whom the Landlord may from time to time reasonably instruct or employ in connection with the management and/or maintenance of the Estate and in or in connection with the enforcement of the performance and observance by any tenant or tenants including the Tenant of flats in the Building of their obligations and liabilities"

74. The Tribunal finds that clause 1.2.5 allows the Respondent to charge the associated legal fees to the service charge account, it being in connection with the management of the Estate, and that charging professional fees incurred by taking advice in regard to the RTM application was an appropriate charge. The amount payable for the service charge year 2019/20 is £1,932 and £500 for the year 2020/21.

Council Tax

75. For the service charge year 2018/2019 the Applicants dispute a charge to the service charge account of an amount of £111.07 for Council Tax for Staff Accommodation.

76. The Applicants submitted to the Tribunal that this was as a result of incorrectly applied accruals and pre-payments, and that therefore the charge was not payable.

77. The Respondent similarly submitted that the inconsistency was as a result of accruals and pre-payments but that the overall amount outstanding is in-fact correct.

78. The Tribunal finds that the amount is not out of line with the Council Tax Charges for Staff Accommodation at the building and is supported by the invoices provided. There is no dispute between the parties that the lease allows for Council Tax for Staff Accommodation to be recovered and the Tribunal determine that the amount is reasonable and £111.07 is payable for the 2018/19 service charge year.

Fire equipment maintenance

79. For the service charge year 2019/20, the Applicants dispute an amount of £261.02 for fire equipment maintenance. This amount was agreed between the parties at the hearing and the amount payable for the service charge year 2019/20 is £261.02.

Communal telephone line

80. For the service charge year 2020/2021, the Applicants dispute an amount of £122 for the communal telephone line. This amount was agreed between the parties at the hearing and the amount payable for the service charge year 2020/21 is £122.

Contributions to the Contingency Fund and expenditure therefrom

81. It is not disputed that the Leases permit the landlord to establish a reserve (or 'contingency') fund to make reasonable provision for anticipated service charge capital expenditure in future years. Nor do the Applicants challenge the reasonableness of the amounts they have been asked to contribute towards the contingency fund for the two service charge years in dispute. Nevertheless, they have challenged the reasonableness of certain expenditure paid out of the contingency fund during this period. In particular, at the hearing the Applicants highlighted that, during 2018 – 19, £25,500 was paid out for internal and external re-decoration, and £7,291 was spent on an LED communal lighting upgrade. This expenditure was said to be "too high", but no further argument was provided as to why any of it was not reasonably incurred. The Applicants also asserted that there had been a

failure to follow the statutory consultation requirements in relation to these works. In response, the Respondents asserted that the works were both necessary and reasonable and referred us to relevant invoices in the hearing bundle. They also pointed out that, notwithstanding the provision of copious written representations throughout the course of these proceedings, the Applicants had not, prior to the hearing itself, challenged these particular items of expenditure or raised non-compliance with the consultation requirements as an issue. We do not consider that the Applicants case is sufficient to cast doubt on the reasonableness of the expenditure in question. Nor is it legitimate to raise the issue of consultation at such a late stage in the proceedings.

82. It is relevant to note that there is a separate underlying dispute which has coloured the parties' arguments in this case about the contingency fund. That dispute arises from the fact that residents of the development (including the present Applicants) have formed an RTM company which has acquired the right to manage the premises (under the Commonhold and Leasehold Reform Act 2002). In the wake of the acquisition of that right, there is now a dispute between the RTM company and the landlord as to the amount of any accrued uncommitted service charges which the landlord must pay to the RTM company pursuant to section 94(1) of the 2002 Act. What became apparent to us – for the first time – during the hearing was that the Applicants hoped that the Tribunal would resolve that underlying dispute as part of the current proceedings. We explained that it would not be appropriate to do so: the parties had not formulated their cases in a way which would have enabled that issue to be determined and, in any event, the RTM company itself is not a party to the proceedings. No application has been made to the Tribunal under section 94(3) of the 2002 Act for a determination of the amount (if any) which the landlord must pay, but the RTM company, or the landlord, remain free to make such application, if required.

Costs Applications

83. Mr Amodeo, on behalf of the respondent, confirmed to the Tribunal during the hearing, that it was not the intention of the Respondent to seek to recover by way of service charges or administration charges the costs incurred by the Respondent in the context of this application. For the avoidance of doubt the Tribunal makes orders to the effect that no such costs shall be recoverable as service charges from any of the long leaseholders of Roseberry Mews or as administration charges from the Applicants in this case.

J Fraser
Tribunal Judge
Date: 5th August 2022