



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

Case Reference : **MAN/00CK/LSC/2021/0010**

**HMCTS code
(audio,video,paper)** : **V:FVHREMOTE**

Property : **40 Belvedere Gardens Benton
Newcastle upon Tyne NE12 9PG**

Applicant : **Mr C.Robinson**

**Applicant's
representative** : **Mr A.Robinson**

Respondent : **Gala Unity Ltd**

**Respondent's
representative** : **Kingston Property Services**

Type of Application : **Landlord and Tenant Act 1985 – s 27A
Landlord and Tenant Act 1985 – s 20C
Commonhold and Leasehold Reform
Act 2002-Schedule 11 Paragraph 5A**

Tribunal Members : **Judge J.M.Going
J.Faulkner FRICS**

Date of Hearing : **27 September 2021**

Date of decision : **17 October 2021**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote Full Video Hearing which has been consented to by the parties. The form of remote hearing was V.FVHREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to were in a series of electronic document bundles, statements, photographs and submissions as described below, the contents of which were noted.

THE DECISION

The Tribunal found and orders that:-

(1) the service charges that had been demanded by the Respondent for:-

(a) the management charges for each of the years from 2016 to and including 2020 shall be reduced by 5% (i.e., meaning that the figure charged for 2016 be limited to £13566.50, that for 2017 limited to £13827.50, that for 2018 to £14174, for 2019 to £14882.70, and that for 2020 to £15181) and

(b) the landscaping costs for 2017, 2018, and 2020 shall be limited to £11,000 for each of those years, but with

(c) the landscaping costs for 2019 remaining as demanded, and

(d) the costs for external painting in 2018 also remaining as demanded,

(2) a determination of amounts of service charges for 2021 should not be made part way through the service charge year,

(3) the Respondent be precluded from including the costs of the present proceedings within the service charges or as an administration charge, and

(4) there be no further order for costs.

Preliminary and background matters

1. The Applicant applied on 5 January 2021 to the First-Tier Tribunal Property Chamber (Residential Property) “the Tribunal” under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination as to whether particular service charges in respect of the property are payable and/or reasonable. The application concerned 6 separate years, being each of the 2016-2021 service charge years.

2. The application also included separate applications for orders under section 20C of the 1985 Act to prevent the costs incurred in connection with these proceedings from being recovered as part of the service charge, and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) to reduce or extinguish an administration charge in respect of litigation costs.
3. The Tribunal issued Directions on 16 March 2021.
4. The Tribunal was supplied with a wealth of paperwork with the final bundle extending to over 2045 pages. These included the Applicant’s and Respondent’s statements of case, the lease, the Respondent’s registered title to the freehold, service charge accounts, demands and budgets, emails, letters, minutes of meetings, photographs, a witness statement, a copy of the management agreement between the Respondent and its managing agent, extracts from the RICS code, and ARMA advice.
5. All of the written evidence was carefully considered by the Tribunal - before, during and after the hearing. The oral evidence at the hearing was also carefully considered.
6. Because of the extent of the paperwork, which is on record and which the parties have access to, it would be superfluous and, in the Tribunal’s opinion, particularly because of some entrenched positions, counter-productive to attempt to relate its full detail in this decision.
7. The Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.
8. A Full Video Hearing was held on 27 September 2021. The Applicant was represented by his son (“Mr Robinson”). The Respondent (“Gala”) was represented by Lloyd Williams the legal services manager of its Managing Agents Kingston Property Services (“Kingston”).
9. The Tribunal did not inspect the development of which the property forms part (“Belvedere Gardens”) but was assisted by the various exhibited photographs and detailed reports. It has also been able to view various aspects of Belvedere Gardens via Google Street view.
10. Belvedere Gardens, which was developed by Barratts in the late 1990s, is described in the Applicant’s statement of case as “comprising fifteen, 3-storey blocks each containing six-, 1- or 2-bedroom apartments, the site is also home to two bungalows and five blocks of garages. Of the residential blocks two stand-alone whilst the remainder are aggregated into twos, threes and a four. The site is centred around a small tree-lined square with the fountain. The site is located within the Benton Conservation Area and has a number of mature trees, many of the trees are subject to group preservation orders and lend character to the site”.

11. The Applicant is the owner of one of the 90 apartments, and Gala has owned the freehold since 2005. It is believed that the leases of all of the apartments within the development contain comparable terms.

The Lease

12. A copy of the Applicant's lease ("the Lease") was included in the papers.

13. The Lease defines the Services as those described in the Sixth Schedule. The Lessee is obliged to pay the Service Charge (defined as meaning as a 1/92 share of the Part I Service Costs which relate to the estate, plus a 1/90 share of the Part II Service Costs which relate to the apartments, in accordance with the provisions set out in the Ninth Schedule. The Part I Service Costs are referred to in Gala's service charge accounts and budgets as "the estate charges" and the Part II Service Costs are referred to as the "apartments charges".

14. The freeholder is obliged under clause 3 of the Sixth Schedule:-
"to keep the Reserved Property and all fixtures and fittings therein and additions thereto in good and substantial state of repair and condition and decoration including the renewal and replacement of worn and damaged parts including (without prejudice to the generality of such provision):
(a) the main structure and exterior of the buildings of which the apartments form part including the foundations and the roof thereof with its gutters rainwater and soil pipes canopies the exterior window frames and all the exterior load-bearing walls of the Premises
(b) all such water pipes sewer drains and electric cables and another conducting media aerials wires and other servicesin under and upon the said building as are from time to time enjoyed or used by the Lessee in common with the owners and lessees of other apartments
(c) roads paths access ways parking areas landscaped areas open spaces and gardens on the Development and any buildings or structures from time to time erected thereon and intended by the Lessor to be enjoyed by the Lessee in common with the owners and lessees of other dwellings and the boundary walls gates and doors bounding the Reserved Property so far as the obligation for maintenance and repair thereof rests upon the Lessor
(g) all other parts of the Development not included in the foregoing subparagraphs and not included in the dwellings..."

15. Clause 5 the Sixth Schedule refers to the freeholder's covenant to "So far as reasonably practicable... to keep the roads paths accessways grounds gardens and open spaces forming part of the Reserved Property in good and tidy repair order and condition and so far as the Lessor may deem appropriate cultivated furnished and lighted..."

16. Clause 7 of the same Schedule sets out the obligation "so often as reasonably necessary (but at least once in every fifth year of the Term) to decorate the exterior (and any part of the interior as is not included in the apartments) of the building of which the Premises forms part in the manner in which the same is at the time of this demise decorated or as near thereto as

circumstances permit or such other manner as the Lessor may at its absolute discretion from time to time determine”.

17. Clause 11 confirms “That (if the Lessor in its sole discretion deems it necessary or desirable) the Lessor will employ such staff as the Lessor shall deem reasonably necessary for the better performance of its obligations...”

18. It is confirmed in the Seventh Schedule setting out the expenses and outgoings included within the service costs payable by the Lessees by way of the service charge that (inter-alia) the Part I Service Costs include: –

“2. All costs expenses and outgoings whatsoever incurred by the Lessors in and about the discharge the obligations on its part in particular (but without limiting the generality of such provision) those set out specifically in the Sixth Schedule hereto...

9. All fees charges expenses or commissions payable to any Managing Agent Solicitor Accountant Architect Surveyor or other professional person whom the Lessor may from time to time employ or engage in connection with the management and/or maintenance of the Development...”

The Applicant’s Case

19. The Applicant submitted that the Management Fees within each of the years in question were not reasonable, on the basis that Kingston had not discharged their role in a reasonable manner, in accordance with the RICS Code of practice or under the terms of the Lease and specifically “issues... raised in 2007/8 regarding the failure to maintain rainwater goods have continued to the current day, we have seen three cycles of external decoration in this time all of which are been substandard, the failure to proactively manage the site and the various contracts and contractors has led to a material deterioration. As an organisation KPS have consistently failed to meet reasonable expectations, frequently lacked transparency, have breached their own standards of service and, despite being offered the benefit of doubt on numerous occasions, fail to honour their promises and commitments, as well as their obligations. Residents of Belvedere Gardens have made great efforts to assist the managing agent however there has been a consistent gulf between the reasonable expectations of residents and the performance of the agent, notably in key areas such as inspection and contract management, Overall there appears to be a lack of familiarity with the needs of the site, there appears to be no system of ensuring cyclical maintenance is carried out, and little sense of forward planning or direction for the site.... I have requested, but never received, information on plans and budgets for capital works, apparently because they do not exist. Overall the management style appears to be disorderly...Kingston Property Services operate without effective systems of inspecting and monitoring the site, consequently proactive measures are largely absent and the resultant reactive approach leads to work which is poorly specified, often poor value, and detracts from the condition of the site. There appears to be a culture of complacency in the specifying of works and in obtaining competitive quotes, this is further compounded by a failure to establish effective systems to monitor the performance of contractors and inspect works on completion. To compound these failings communication with residents is all too often dismissive, frequently evasive

and on occasions deliberately misleading. The net result is the poor standards of work, often far below the requirements of the terms of the contract, are being signed off and paid for with money from the service charge, with little opportunity for residents to make effective challenge as reasonable complaint is dismissed or suppressed. Consequently, residents and leaseholders endure a multilayered cost, the overpayment for substandard works, but also the loss of amenity, the loss of capital value and the erosion of their consumer rights."

20. In response to the Directions the Applicant provided a Schedule ("the Scott Schedule") setting out the disputed items, the costs as demanded, why they are disputed, the amount he is willing to pay, and leaving a space for Gala's comments. That indicated that the Applicant was willing to pay 30 percent of the charges made for management in each of the disputed years, and between 30 and 70 percent of the charges for landscaping in 2017 to 2020. The column setting out what he was prepared to pay in respect of the external decoration in 2018 was marked as "TBC".

21. The Applicant stated on the Scott Schedule that the landscaping charges (between 2017 and 2020) were disputed because of failure "to discharge contracted duties" and the external painting charges were disputed because of failure "to meet specification".

22. The Applicant also supplied copies of numerous (over 850) photographs, together with correspondence and emails.

The Respondent's Reply

23. The response to the Applicant's statement of case was provided by Kingston and began by referring to various clauses within the Lease, highlighting those which allow Gala to employ such staff as it shall deem reasonably necessary for the better performance of its obligations, and which allow the costs of the same to be recovered through the service charge provisions.

24. It was confirmed that Gala had employed Kingston as its managing agents for Belvedere Gardens since 21 April 2009.

25. In response to the disputed management fees, it was stated that they were "in line with the industry standard and we consider this to be reasonable in relation to the size of the development. Regular site inspections were carried out and as a mandatory part of the inspections, all services provided were routinely (a minimum of four times per year) observed and any issues raised were dealt with immediately following that visit with the contractor responsible. There have been no other leaseholder concerns or complaints raised.. The Applicant also makes reference to a failure to respond to their complaint however it is evident this complaint was responded to in detail by Kingston."

26. In response to landscaping charges it was said that in 2017 "a copy of the specification of works was available upon request should this be requested by any leaseholder. The Applicant has stated that Kingston failed to discharge

contracted duties; In 2017 we were made aware of some concerns relating to the service provided by the landscaper at that time and as a result of this, the contract was duly re-tendered. At this point Kingston along with the residents Association reviewed the landscaping specification prior to re-tendering. This indicates the contract was observed and managed in line with our obligations as managing agents for the development." In respect of the subsequent year it was noted "following a review of the specification, revisions were made in the contract... (with) the instruction of new landscaper in 2018... and by working with the Residents Association, the contract was awarded to the contractor that we collectively felt would provide best value to the site. The landscaper appointed in 2018 remains in place to date".

27. It was confirmed that the external redecoration in 2018 was carried out "at a contract cost of £21,480 including VAT... by Dunningham Decorators and regular inspections of their works took place whilst being undertaken by the Property Manager for Belvedere Gardens, the Kingston Maintenance Surveyor as well as Dulux/Axoneme attending midway through the works to ensure the specified products (as per the tender) were being used. The works were subject final inspection by our Maintenance Surveyor and were deemed to meet the specification of works upon which the contractor tendered and so was signed off at this final inspection. Therefore, the works that took place met the specification provided as part of a robust tendering exercise."

28. Kingston referred to its management agreement with Gala and stated that it had met its inspection obligations. The management agreement which was exhibited includes in paragraph 10 of the Schedule of Services "Viewing, without the use of inspection equipment, the common parts of the Property to check condition and deal with any necessary repairs other than major repairs" and sets the required frequency as "on a quarterly basis, repairs as and when required". Paragraph 12 referring to periodic health and safety checks also refers to being on a quarterly basis. The Schedule refers to 22 separate services being included. Paragraph 6 refers to providing reasonable management information to residents upon reasonable request, and paragraph 8 to liaising with any recognised Residents Association when required.

29. Tim Richardson made a witness statement confirming that he is a director of Gala, that he had read the application and the Applicant's statement of case and stated (inter alia) "Gala.. has employed Kingston.. as managing agents at Belvedere Gardens from April 2009 to the present day. Gala.. has a good relationship with Kingston and has been fully satisfied with Kingston's performance as managing agents during this period. The fact that the company has retained Kingston as managing agents throughout this period is testament to this. I do not recognise the general characterisation of Kingston contained in the Applicant's statement of case. Gala.. has always been satisfied with Kingston's performance.. and I have found them to be efficient in their dealings with Gala.. and the leaseholders at Belvedere Gardens... My view is that quarterly site inspections are adequate. I understand that this is augmented by handyman visits and other site visits as and when necessary. In my view, the current inspection regime is satisfactory and this is agreed as part of the management agreement. With regard to the

management fee that Kingston charges, in my experience this is in line with the industry standard and I consider this to be reasonable in relation to the size of the development. ... It is difficult to comment on the landscaping charges.. I am not aware of any complaints about the standard of landscaping works. From the photographs I have seen of the development, the landscaped areas appear to be in a tidy and well-maintained condition. There are 92 leaseholders at Belvedere Gardens in total. I am not aware of any other leaseholder at Belvedere Gardens that has complained about the service that Kingston has provided... I do not recognise the characterisation of Kingston presented in the application. Gala is likely to retain Kingston for management of Belvedere Gardens.. in the longer term.”

The Hearing

30. Mr Robinson explained that he is the Applicant’s son and has resided in the property, originally owned by his grandmother, since 2005.

31. He described his involvement with the Belvedere Gardens Residents Association (“BGRA”) over a number of years and that he had at various times been its chairman. It was confirmed that whilst it was not a recognised Residents Association within the meaning of the 1987 Act, it was a fairly democratic body with an AGM and regular minuted quarterly meetings, except between 2016 and 2018. In an email in the papers it was said that in the early years these were frequently attended by Kingston’s property manager.

32. Mr Robinson, who runs his own landscape gardening business, described stepping back at around the time when the garden maintenance contract was to be relet in approximately 2011, because of neither wanting the job nor wanting to risk it being felt that he might have a conflict-of-interest.

33. He later came back as chairman of BGRA after a meeting which he called in December 2018 being frustrated that there had been no public meetings for over three years. A copy of the minutes of that meeting in the papers refers to it having been attended by 14 leaseholders.

34. Mr Robinson expanded on various matters referred to in the papers. It was suggested that the various disputed items should be reviewed and grouped together by reference to topic and subject matter, starting first with the charges for landscaping and painting before moving to consideration of the management charges, because it was clear from an analysis of the papers that the history of the first two matters fed into Mr Robinson’s submissions as to whether there had been failings in management.

35. When discussing landscaping, Mr Williams noted that the service charge figure for 2016 had not been disputed.

36. Mr Robinson confirmed that Halls, a small concern run by Mr Hall were appointed in approximately 2011 and were initially diligent. Mr Hall would typically drop off one or two employees, who he employed as casual labour for grass cutting, tidying and weeding, in the morning, do some

pruning himself before leaving, and returning later in the day to collect his men. Mr Robinson said that Mr Hall's hours were not consistent. He described subsequently becoming increasingly depressed as it became apparent that standards tailed off. Pernicious and perennial weeds, such as mare's tails, were established and it was clear from seedlings in the borders that necessary weeding had been neglected, the grounds maintenance was not satisfactory and not being properly managed. He calculated that by the end of Halls contract they were effectively charging £1000 per day.

37. In 2017, when it was decided that Halls' contract should be terminated, Mr Robinson was asked to tender along with other gardeners. Correspondence was exhibited which clearly showed that he had questioned exactly what the specification required because of its general imprecise nature. His own quotation had been £11,000 for annual maintenance plus a one-off cost of £2500 for initial work and materials to restore the soil and bring the gardens back up. His own fees were without VAT. He understood that Greenbox tendered a figure of initially £6000 but raised that to £7000. He also understood that there had been a third tender from a firm called Envirocare of £14,400 (i.e. £12,000 plus VAT). Mr Robinson later said that his own daily rate ranged between £120 and £160 depending on how technical the work was.

38. Mr Robinson questioned and objected to the final payments made to Halls. Mr Williams confirmed that such payments were signed off properly.

39. Mr Robinson also objected to the service costs paid to Greenbox between 2017 and 2020 on the basis that they were not meeting the specification, not fulfilling their contract, with the focus being on "grass cutting and bits of hedge clipping".

40. When Mr Williams said that Greenbox were making 42 visits a year (having originally quoted 20 visits at £350 per visit), Mr Robinson highlighted that "visits" were not defined or timed, and that more time was taken grass cutting simply because of the use of a very small lawnmower. He also drew specific attention to emails within the papers from various long-standing residents complaining as to the landscaping.

41. Mr Robinson said that he had never seen Greenbox's proprietor on site but that he had employed a good man, who Mr Robinson talked to and who he considered "could have been more than capable if given a bit of direction". The problem was he had no idea what the specification for the job was.

42. As the discussion continued, Mr Robinson mentioned that he now understood Greenbox's contract was to be terminated. Mr Williams did not know about this and was asked to check the position in the lunch break. (It was unfortunate that Ms Nixon who at various points had been the property manager specifically assigned to Belvedere Gardens and who had intended to be at the hearing was absent because of illness). When the Hearing resumed after lunch, Mr Williams confirmed that Greenbox's contract was to be terminated in October and that they were then to be replaced by Envirocare. He believed that the change was as a reaction to the residents' concerns.

43. Mr Robinson felt that Greenbox's dismissal was another indication of poor management, stating that rather than wait until the end of the year "to fire the gardener" they should have been actively engaged in managing and asking can we get help to get on top of the problem in order to avoid it spiralling.

44. Mr Robinson highlighted various deficiencies in the external paintwork by reference to several photographs, some of which were taken before the 2018 external decoration works, some of which were taken afterwards, and the majority which were taken in April 2021. The photographs were not date stamped, but Mr Robinson confirmed that the dates had been recorded from his computer records.

45. Mr Williams explained that before the painting contract had been agreed, a firm called AkzoNobel were engaged to draw up the specification, and in accordance with Kingston's usual practice quotations were sought and obtained from 3 separate contractors, before the contract was awarded to Dunningham, a firm which had previously been engaged on other sites managed by Kingston. He also confirmed that whilst the works were underway he personally remembered the property manager arranging for AkzoNobel to be called back to Belvedere Gardens to inspect.

46. Mr Robinson referred to video evidence being provided at that time by a resident, a property manager, said to show that the painters had not always adequately prepared all the surfaces before applying paint. It was Mr Robinson's contention was it was only after, and because of, that video had been produced that some of the painting was redone.

47. Mr Williams emphasised that there had been ongoing inspections whilst the works were underway, including by AkzoNobel, before Kingston's property surveyor made a final inspection and signed off the works. In answer to questions from Mr Robinson, he said that he could not comment on the cause of problems in the paintwork shown in photographs taken some years after the event.

48. Numerous photographs were taken pointing to problems with gutters and gullies over various years.

49. When discussing management, which had already been repeatedly referred to, Mr Williams made the point that Belvedere Gardens did not have a recognised Residents Association meaning that Kingston's statutory obligations were limited, but that of course it did seek to liaise with and react to residents' concerns. It was apparent, both from the papers and what was said at the hearing, that Kingston was also in contact with the immediate past chair of BGRA and that there were differences of views as to how residents' concerns should best be reported. Mr Robinson after a meeting of various residents (during the pandemic and around the fountain) said that his approach could be described as more forthright and that of the past chair as more emollient.

50. Mr Robinson confirmed that his father had never sought to withhold any service charge payments.

51. Mr Williams disputed Mr Robinson's assertion of past general mismanagement and stated that the picture painted by Mr Robinson was not one recognised either by Kingston or Gala. He noted that Application was made by one owner, and other owners had not joined in. He said that Kingston managed approximately 23000 units and had only made small inflationary increases in its fees over the years. It was part of a charitable social housing provider not driven by profit for its own sake. He did not agree with assertions that poor management had led to a fall in property prices and said that looking at Rightmove today it was clear that prices had increased, and that of 6 apartments now on the market, 3 were shown as having been sold quickly, subject to contract.

52. In his concluding comments Mr Robinson reiterated his heartfelt frustrations and belief that over many years that the property had not been properly managed, that the evidence was in the bundles, that Belvedere Gardens should have been better maintained, and that it was wrong for the leaseholders to bear the costs of works that not been carried out properly. He said that Kingston were "not bad people" but there was no recognition of fault.

The Law

53. Section 27A of the 1985 Act provides that:-

"(1) 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.

(2) Sub-section 1 applies whether or not any payment has been made.....

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

54. Section 18 states that: –

"(1) In the following provisions of this Act "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.

(3) For this purpose –

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to the service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or an earlier or later period."

55. Section 19 of the 1985 Act confirms that :-
“(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.”

56. Section 20C states that: –
“(1) a tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceedings before... the First-tier 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 tenant or any other person or persons specified in the application.
... (3) the court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.”

57. Paragraph 5A of Schedule 11 to the 2002 Act states that: –
“(1) A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs.
(2) the relevant court or Tribunal may make whatever order on the application it considers just and equitable.”

The Tribunal’s Reasons and Conclusions

58. The Tribunal has determined the position on the basis of all of the evidence before it.

59. The Tribunal considered whether there was a need to inspect Belvedere Gardens. The covid-19 epidemic had made an inspection impracticable and inadvisable for many months. Whilst now possible, the Tribunal concluded that it was not necessary. Having had careful regard to the parties’ extensive written and oral submissions and the testimony given at the Hearing, it was content it had sufficient evidence to be able to make the necessary findings of fact in respect of matters which were in large part historical.

60. The following principles, derived from decided cases, were helpful to the Tribunal in making its decision as to what is reasonable: –

- The Tribunal must take into account all relevant circumstances as they exist at the date of the decision in a broad, common sense way giving weight as it thinks right to various factors in the situation in order to determine whether a charge is reasonable. *London Borough of Havering v MacDonald (2012) 3 E.G.L.R. 49.*

- It is often argued that the particular charges have not been reasonably incurred because the landlord's delay has exacerbated the problem and rendered the cost of remedying it more expensive. This particularly arises with repairs. However, in section 19 what is under scrutiny is whether the actual incurring of the cost was reasonable and that must depend on whether the landlord's response, at the point in time when the decision was made to act, was a reasonable one. The question of reasonableness must be considered by reference to the circumstances when the costs are incurred and not by reference to how the need for such costs arose. Accordingly, the fact that repair works may only be necessary because of neglect or breach of a landlord's repairing covenant does not prevent the cost of such works from being reasonably incurred. *Continental Property Ventures v. White (2006) 1 E.G.L.R. 85.*
- Whether costs are reasonably incurred is not simply a question of the landlord's decision-making process. It is also a question of outcome. The requirement that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give a landlord a licence to charge a figure that is out of line with the market norm. The fact that the landlord may have adopted appropriate procedures in incurring the costs does not mean that such costs are reasonably incurred if they are in excess of the appropriate market rate. *Forcelux v Sweetman (2001) 2 E.G.L.R. 173.*
- If works are not of a reasonable standard, only the costs which could have been charged for the substandard works will be recoverable. *Yorkbrook Investments Ltd v Batten(1986) 18 H.L.R. 25 CA*
- There is no presumption for or against the reasonableness of the standard...and the decision will be made on all the evidence made available. *Havering v MacDonald*
- The phrase "good and substantial repair" does not require premises to be in perfect repair or pristine condition, and the age, character and locality of the premises as well as the state of repair when the leases were granted must be taken into account when considering if a lease covenant has been breached. *Blue Manchester Ltd v North West Ground Rents Ltd [2019] EWHC 142 (TCC)*
- In the absence of a contractual price for management, the usual principles for determining the reasonableness of the relevant costs apply. It will, therefore, be appropriate to compare the management fees with those been charged by other managing agents of similar blocks.
- If a managing agent's services are found to have been provided in accordance with the RICS Service Charge Residential Management Code then they will invariably be found to be of a reasonable standard.
- Where it is found that managing agents have failed to manage a building properly, for example, by failing to respond the leaseholders concerns it is common to make a deduction from the fees claimed on the basis that the service was not a reasonable standard. In *Kullar and Priory Place Residents Association v Kingsoak Homes Ltd [2013] UKUT 15(LC)* a deduction of 10% was made from the managing agents fees due to their failure to deal with problems of the block properly.

61. Section 19 of the 1985 Act imposes a general requirement of reasonableness in relation to service charge expenditure.

62. The questions to be asked are whether a landlord's actions in incurring relevant costs and the amount of those costs are both reasonable, and whether the works are of a reasonable standard.

63. The Tribunal found that it was both reasonable, and that the Lease contained the requisite authority, for Gala to incur costs, to be paid for by the apartment owners through the service charges, in employing managing agents, painting the exterior, and landscaping Belvedere Gardens.

64. The Tribunal dealt with each of the matters in dispute separately.

Landscaping costs from 2017 to the end of 2020

65. It is clear that the grounds form a significant and important part of the development.

66. The name, *Belvedere Gardens*, chosen by Barratts when developing the property is probably indicative. The site centres on an ornamental fountain, and is enclosed by mature trees, many of which have apparently been designated as being worthy of preservation. Being within a conservation area means that work on any tree within Belvedere Gardens, over a certain size, needs to be notified to the local authority.

67. It is not surprising therefore that the proper maintenance of the grounds has an important role to play in good estate management and is understandably valued by the residents not just in relation to the ongoing and long-term enjoyment of their homes but also in preserving value of the same.

68. Sadly, the evidence is that the grounds' maintenance and landscaping has fallen short of the residents' reasonable expectations over a number of years.

69. The complaints have not come just from Mr Robinson. He and other long-standing residents voiced their concerns that the grounds have not been maintained to reasonable or past standards. As an example, an email from Alison Keenan to Kingston on 4 June 2018 states "we have a huge problem which needs to be addressed immediately. The gardens are shocking and not up to acceptable standards as promised... Grass has been cut far too short so chunks have been taken out of it, the hedges have not been trimmed and no weeding appears to be carried out. The main entrance especially and the area next to Gibside House are absolutely appalling. We have a problem with moss too!... We had a number of complaints (including one below) so need to sort this out without further delay...". The email which was referred to, from a long-standing resident said "the estate is probably the worst I've seen it – Gardens – roads – flaking paintwork on doors – garages..." Another flat owner wrote to BGRA later that year "... The prices are falling rapidly on Belvedere... No one wants to buy for a decent sum (a) because of the shabby neglected state of the place and (b) we are paying too much in maintenance fees.."

70. The Tribunal accepts that many living at Belvedere Gardens were consistently concerned about a deterioration in the grounds' maintenance.

71. Photographs taken at various different time show examples of poor pruning, the advance of some pernicious weeds, a deterioration in lawns, and ivy growing up the sides of some of the blocks.

72. Halls' contract was brought to an end because of dissatisfaction with standards, and as became apparent at the Hearing Greenbox's tenure is also now to be brought to an end ultimately for the same reason.

73. Having particular regard to the evidence of landscaping works not being of a reasonable standard and the amounts tendered by different contractors prior to the appointment of Greenbox, the Tribunal concluded that for each of the years in question ie, from 2017-2020 the gardening and landscaping costs must be limited to and not exceed £11,000. The charges for 2019 did not exceed that figure, and should thus remain, whereas the charges for 2017,2018 and 2020 are to all be reduced.

The costs of external painting in 2018

74. The lease specifically refers to an obligation to repaint as often as may be necessary, and at least every 5 years.

75. The Tribunal found that there had been a competitive tendering process before the contract was agreed, and that there was evidence of ongoing monitoring as the works were undertaken, both reactively and proactively. It was noted that the painters were specifically required to redo, at the time, certain parts of their work which were identified as being substandard, and that they then did so. The works were also inspected and evaluated on completion and signed off after then having been found to be satisfactory.

76. Mr Robinson provided various photographs, including videos, which he contended showed that some of the preparation work was inadequate. The Tribunal accepts that there are examples of over painting of tendrils left on the woodwork after removal of ivy, and of subsequent problems particularly with parts of soffit boards. However, it is possible that some bubbling or flaking at the soffit ends may have been caused by decay or other problems that either predated or were not the result of the 2018 painting, such as gutters not being routinely cleaned out. The Tribunal is also fully aware that different sides of a building may well need to be repainted more frequently than others due to nothing more than their different aspects and the prevailing weather conditions.

77. As has been referred to, the obligation to maintain the premises in a good and substantial repair and decoration does not mean pristine or perfect.

78. The Tribunal was not ultimately persuaded, after having carefully weighed the evidence, that the 2018 decoration works were completed other

than to a reasonable standard, and the Tribunal also concluded that the amounts payable under the service charges for the external painting were not unreasonable.

Management and management fees from 2016 to the end of 2020

79. The Tribunal did however find, and again after having regard to all of the evidence, that there had been some repeated failings in management over the years in question, particularly in regard to the planning and control of regular maintenance work.

80. The Tribunal accepts that legitimate concerns about a deterioration in the grounds' maintenance were not met in the most appropriate way. The Tribunal found Mr Robinson made telling points about the inadequacies and lack of clarity and precision in the specification of the tender requirements prior to Greenbox's appointment in 2018. Those inadequacies meant it was subsequently difficult to test how far that specification was being met. That an uplift in the hours needed was soon agreed, albeit with costs also being increased, is evidence of the same point, but also draws into question how even handed the particular tender process was.

81. The repeated problems, over a number of years, of the gutters overflowing and downspouts being blocked because of a buildup of leaves, despite complaints and warnings, as evidenced by letters, videos and multiple photographs, points to inadequate systems for dealing with predictable events.

82. Mr Robinson complained that requests for information had been disregarded or avoided and the Tribunal found evidence to uphold that complaint. Mr Robinson asked for evidence of proper monitoring, but Kingston's replies were often general rather than specific. The same could be said about the lack of any specific evidence in rebuttal produced to the Tribunal. There appeared to be very little attempt either within the written submissions or at the hearing to provide robust evidence that there had been a clear proactive strategy or adequate systems for dealing with the proper control of maintenance work, particularly after repeated complaints had been made about underperformance and reasonable standards not being met.

83. The Tribunal does not accept the implication from the witness statement and the comments made at the hearing that Mr Robinson was simply a lone voice out of tune with the feelings of the other residents. He clearly was quite often focus for the concerns of a number of those living within Belvedere Gardens. Others may have been kinder and less acerbic in delivering the message but there is evidence of failings in the delivery of certain services.

84. The Tribunal found, particularly as his frustrations grew, that the tone of some of Mr Robinson's emails could be seen as hectoring, but his comments often carried with them very valid points, which it seemed Kingston did not always have an answer to, such as being able to demonstrate that there had

always been clear and adequate specifications of work and different staff roles, which were then properly monitored.

85. It should however be emphasised that the Tribunal always found Kingston to be polite and measured in its written responses.

86. The Tribunal is also conscious that all have a part play in the good management of premises,- and was disappointed by the stance taken by Mr Robinson on those occasions in 2018/19 when having identified concerns he consistently refused to take up offers to meet on site, stating that his role was to point out failings and not be a substitute for the managing agents having adequate inspection regimes whereby problems should be self-evident. The Tribunal accepts that inevitably a managing agent cannot be on site all the time and must on occasions rely on those who are, to be their eyes and ears. Two-way communication between managing agents and residents is surely a vital tool in achieving good management.

87. It is also a shame that, as Mr Robinson mentioned at the Hearing, the schemes for individual block representatives, and gardening clubs, had all fallen by the wayside as the years had gone by. Possibly this was due to demographic changes and an increase in the percentage of residents being shorthold tenants, rather than owner occupiers, which he also mentioned.

88. The Tribunal was also conscious that managing agents ultimately take their instructions from the landlord/freeholder and not individual leaseholders.

89. Nevertheless, as ARMA has stated “a good managing agent will always be aware of the requirements and wishes of the flat owners, in order to ensure that service charge money is spent wisely,” and the Tribunal did find shortcomings in properly reacting to legitimate concerns and, on occasions, a lack of proactive steps to address ongoing issues.

90. Despite having found that there were some management failings, the Tribunal is also conscious that a managing agent’s duties are multi-faceted, and that in many respects Kingston have been able to demonstrate a professional approach and commitments to best practice. The accounts for example showed little problems with service charge arrears and that there was a provision for building up and having reserves for cyclical needs. Mr Richardson of Gala was able to attest to being satisfied with Kingston’s services over a number of years and in respect of various sites.

91. The Tribunal from its own knowledge and experience was also able to agree with the submission that Kingston’s annual fees were in line with the market and industry standards. It was somewhat surprised that the management agreement having referred to an annual flat fee did not also incorporate a clearly specified hourly rate when dealing with additional services for which there could be an additional charge, such as “regular visits to supervise staff” and “preparing and supervising major building works” and did wonder whether this militated against a proper recognition of the need for possibly considerable amounts of additional time to be allocated when dealing

with matters requiring more management. Nevertheless, the Tribunal was clear that it would be wrong to say that Kingston's standard annual fees were initially set at too higher a rate.

92. The concern however was that failings had been identified showing Belvedere Gardens had not always been managed to ensure its reasonable upkeep and did require more intensive management. The Tribunal, taking an overall view of all of the relevant evidence and weighing in the round the failings that it had found (being that some services had not been of a reasonable standard) in the context of Kingston's discharge of its various other duties, concluded that the management fees charged for each of the 2016 – 2020 service charges should be reduced by 5%.

Management charges for 2021

93. The Tribunal concluded that it would not be appropriate to attempt to review or determine service charges for 2021 partway through the year.

The Section 20(c) and Paragraph 5A Applications and costs

94. The Tribunal went on to consider the Applicant's separate applications, that the Tribunal make orders both under section 20(c) of the 1985 Act so that the Respondent be precluded from including within the service charges the costs incurred by the Respondent in connection with the present proceedings, and under Paragraph 5A of Schedule 11 of the 2002 Act to reduce or extinguish any liability that he might have in respect of any contractual costs in the Lease relating to the same matter.

95. Mr Williams kindly confirmed at the hearing that Gala and Kingston had already spoken on the point, and that he could confirm on Gala's behalf that it had no intention of rendering additional charges to the leaseholders as part of the service charges in respect of these proceedings.

96. The Tribunal, having regard both to that confirmation and as to what is just and equitable in all the circumstances, decided that the applications as regards Section 20C and paragraph 5A should both be granted and, therefore orders that Gala be precluded from including any part of the costs of the present proceedings within future service charges or as an administration charge.

97. The Tribunal also, in pursuance of its powers under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and having found that neither party had acted unreasonably in bringing, defending or conducting the proceedings, decided that there should be no order for costs under that Rule.