FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/43UB/LSC/2022/0054
Property	**:**	12 Aspen Square, Weybridge, Surrey KT13 9ZA
Applicant	**:**	Ms. Sally Blake
Respondent	**:**	Grange Management (Southern) Limited
Type of Application	**:**	For the determination of the reasonableness of and the liability to pay service charges.: Section 27A of the Landlord and Tenant Act 1985, and for an Order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 reducing or extinguishing the Tenant's liability to pay any 'administration charge in respect of litigation costs' of these proceedings.
Tribunal Judge	**:**	Judge Tessa Hingston Barrister at Law
Date of Decision	:	18th October 2022

DECISION.

Summary of the Decision:

The Tribunal finds that the service charges for the years 2022 and 2023 are unreasonable because they are not 'reasonably incurred'. It is determined that the Applicant should only pay £2,400 for the year January 2022 - 31st December 2022 (i.e. £200 pm), and no more than £2,760 (i.e. £230 pm) for the year January 2023 - 31st December 2023.

An Order is made that the Respondent Management Company cannot recover from the Applicant by way of service charge any of their administration charges in respect of litigation costs of these proceedings.

The Tribunal invites representations from both parties, to be received by 1st November 2022, as whether an Order should be made limiting all or any of the costs of these proceedings which may be recovered by the Respondent landlord from the Applicant tenant by way of service charges. [It is noted that the Applicant omitted to tick either of the boxes – 'Yes' or 'No' – on the Application form.]

A. Applications.

1. By an Application dated 16th March 2022 the Applicant 'tenant' Ms. Sally Blake has applied for a determination under Section 27A of the Landlord and Tenant Act 1985, as to Reasonableness of Service Charges for the years 2022 and 2023.

2. Ms. Blake has also applied for an Order under Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 limiting or excluding the landlord's ability to recover administration charges in respect of litigation costs of these proceedings from the tenant.

B. Relevant Law and Jurisdiction.

Please see Appendix A attached herewith.

C. Brief Background and History of the case.

3. The property, 12 Aspen Square, is in a development of 24 leasehold houses built by Barratt (East Anglia) Limited. The leases were granted in 1994 and the freehold was acquired by the Respondent, Grange Management (Southern) Limited ('GMS' hereafter.)

4. The development has areas of 'communal' grounds which include driveways, paths, garages and parking areas.

5. There is a steep bank beyond the garage fencing, which slopes down away from Aspen Square towards the rear of gardens belonging to other housing developments. It is accepted by all parties that this bank is overgrown with trees and vegetation: it is unmaintained and effectively inaccessible.

6. From the time that the houses were built the bank has '*...always suffered from slippage…'* (statement of Richard Smith, Head of New Business and Compliance at GMS, Para. 13.)

7. Approximately '*20 years ago'* (stmt. of Richard Smith as above, Para. 13) timber sleepers were built into the bank to try and remedy the problems.

8. By 2017 (at the latest) the freeholders GMS were very much aware that there were particular issues with this 'bank', because complaints were received that it was either subsiding or encroaching upon the gardens and fencing of properties below.

7. Between 2017 and 2022 GMS then instructed various building and structural engineers, surveyors and other experts to assess the bank and make recommendations for dealing with it, but nothing has actually been done.

[Note: The latest conclusion appears to be that the cause of 'slippage' is still not clear. However, it is advised that the issues with the garage hardstandings may be linked to the issues with the bank, and that remedial works to one should not take place without works also being carried out to the other.]

8. Ms. Blake completed the purchase of her property on the 20th August 2021, having had her offer accepted in 2020. Her conveyancing solicitors made enquiries about proposed works and likely expenditure, and they were told that there was a healthy 'Reserve fund.' No mention was made of 'Bank works.' At the end of 2020 the balance in the Reserve fund was £51,726, but that figure was largely depleted by the cost of external decorations during 2021.

9. Ms. Blake is liable to pay one twenty-fourth (4. 1670%) of the landlord's costs and outgoings by way of service charges. When she purchased the property the service charge was £146.78 per month.

10. In 2021 the external redecorations were done at Aspen Square in accordance with the provisions of the Lease, and these were paid for with approximately £46,000 from the Reserve fund, leaving very little balance.

10. As of December 2021 GMS are seeking £3,788.77 per annum (£315.73 per month) by way of service charges from Ms. Blake for the period 1st January - 31st December 2022. This is said to be for regular landlord's outgoings and expenditure (as per the

‘Statement of anticipated Service Charge Expenditiure’) as well as for replenishing the Reserve Fund for planned works in the near future.

12. The ‘Reserve Fund Planned Replacement Schedule’ issued by GMS in October 2021 states (under the heading ‘Structure’) that the estimated costs of the ‘bank works and replacing fencing’ is £150,000.

11. Ms. Blake is challenging the reasonableness of the figures: are the costs ‘Reasonably incurred?

12. It appears that all parties agree that Ms. Blake has a liability to pay service charges under the Lease (a copy of which was provided to the Tribunal - see below), and that her proportion of the total costs is properly set at 4.1670%. The only issues are as to the **reasonableness** of the amount and the **reasonableness** of the tenants having to pay a contribution to the Bank works at all.

D. Applicant’s Representations.

13. Ms. Blake has submitted a number of emails, letters, documents and photographs in support of her application, in which she describes the background of the matter, sets out her case and essentially poses the following questions:

(a) Can the deeds of the property be amended so that the ‘bank’ area is not included as part of the ‘Communal grounds’ for the purposes of the Lease and the Service charges?

(b) Is the amount that is allocated by GMS for the bank works reasonable in all the circumstances?

(c) Have GMS ‘mismanaged’ the accounts to the extent that it is unreasonable to require Ms. Blake to pay such a substantial amount to replenish the reserve fund?

(d) Is it unreasonable for Ms. Blake to pay such an increase in service charges when her conveyancing solicitors at the time of purchase were not made aware of impending expenses on the bank? and

(e) Should Ms. Blake’s service charges for the years 2022 and 2023 be reduced or limited accordingly?

14. In her submissions to the Tribunal Ms. Blake points out that GMS have been aware of the ‘bank issue’ for many years. She states that considerable expenses have been incurred in consultations with experts but no remedial works have been done.

15. She argues that the bank has not been maintained by GMS and that if the recommendations had been acted on from the outset, the expenses would not be so great now.

16. Ms. Blake states that the bank is in fact dangerous and difficult (if not impossible) to access because of the vegetation growing there, and that because it is of no use to any of the (mainly elderly) residents of Aspen Square they should not be required to pay for it.

17. Ms. Blake's evidence is that when her solicitor made enquiries in 2020/2021 about likely expenditure in the future, GMS made no mention of the 'bank issue' even though at that time they were well aware of it and knew that remedial works were likely to cost more than they had in the reserve fund.

18. The Applicant further contends that the percentage increase in her annual service charge is unreasonable in all the circumstances. She states that GMS should have budgeted more responsibly over the last few years and they should have gradually increased the service charges rather than doing it suddenly. She proposes that the increase in her service charges should be limited to 10% and that the difference should be refunded to her from January 2022 onwards.

19. Ms. Blake is clear that, although she had paid some of the amounts demanded for 2022, she had done so '*Under protest*'. Therefore she cannot be taken to have 'agreed or admitted' the matter for the purposes of Section 27A(4) of the 1985 Act: she is not barred from challenging the amount before the Tribunal.

E. Respondent Landlord's Representations.

20. On behalf of GMS, Richard Smith has submitted his witness statement, a 'Timeline of events' and various other documents as per the 'Respondent List of documents' in the bundle. Many of these documents consist of expert assessments of - and reports on - the bank.

21. Mr. Smith states that the bank '*falls entirely within the 'communal areas' ...'* of Aspen Square.

22. As to the latest opinion on the bank, we are referred to the Southern Testing (ST) Geotechnical report dated 7th March 2022 (Page 73 in the Respondent's documents.)

At Page 6 section 14.1. of this report, it states as follows: -

'*Cause of Ground Failure - The gradient of the sloping ground to the east of the damaged parking area is likely to be less than the internal angle of friction of the granular made ground soils within the slope. Therefore, the cause of the damage is*

not anticipated to be associated with slope instability. Based on our site observations and developed ground model, it is possible that the failure mechanism relates to the ***settlement of the very loose granular near-surface made ground materials beneath the car-park and on the slope****. The self-weight consolidation settlement of granular made ground soils would be expected to be largely complete. However, inundation settlement may occur if the soils become saturated.'* [Our emphasis.]

23. It is noted that this ST report goes on to comment that the ground under the car-park (by its nature and construction) should not have become saturated, but that it might be sensible to investigate whether a broken drain under the concrete could have caused the problem.

24. Mr. Smith states that the Respondent's current intention is to put the project for this work on hold and to collect funds that will be put towards the Works over the next 2 to 5 years.

25. He goes on to say (Para. 9) that: '*Fortunately the Bank works are not deemed to be sufficiently urgent for them to commence immediately as there is no imminent danger of further slippage or collapse, but surveyor/structural engineers have confirmed beyond doubt that stabilisation work will be necessary in the future to prevent further ground movement…'*

26. At Para. 13 it is stated that: '*...unfortunately this land has always suffered from slippage from the time it was constructed by Barratt Homes…'.*

27. As to information provided to Ms. Blake prior to her purchase, Mr. Smith (Para. 15) refers to a note dated 15th February 2021 in which the applicant's solicitor specifically asked: " *Please confirm the anticipated section 20 works to be carried out. Please confirm what works are anticipated, when these are due to be undertaken and the costing of the same. Will the works be covered by the reserve fund?"*

28. Mr. Smith agrees that GMS told the solicitor that - '*There is a healthy reserve fund but it is too soon in the process to confirm whether all costs will be met from the same".*

29. At Para. 16 Mr. Smith comments that -

'It is important to understand that in answering the question that was raised, that question was specifically about the external redecoration project. The information provided to the applicant's solicitors was accurate at the time as there were no live Section 20 Notices relevant to the bank works when the enquiry was made.'

30. However, Mr. Smith concedes (Para. 17) that GMS had written to leaseholders in February 2021 to advise: "*Projects planned for 2021 are **external redecoration** and **Bank works** including fencing, pathways and hardstanding by the garages'.*[Our emphasis]

31. In terms of likely costs in the near future, Mr. Smith states at Para. 19 that the landlords propose to raise £56,000 over the next 2 years to pay for the bank works, and £14,200 over the next 2 years for '*Paths, hard-standings and garage areas.*'

32. On behalf of the Respondents Mr. Smith concludes by saying that there was no intentional misleading of Ms. Blake or her solicitors, and that the service charges for the years 2022 and 2023 are reasonable and payable in full.

F. The Lease of the Property, Number 12 Aspen Square – Relevant provisions.

Please see Appendix B.

REASONING AND DETERMINATION.

39. There is insufficient evidence to make any accurate finding as to the likely final cost of remedial works to the bank*. It is still not entirely clear what exactly caused the problems, or what is the best solution.

[*Note: The 'bank works' were always known to be a substantial expense. In Mr. Smith's statement, Para. 19, he refers to the '£120,000' budget for the next two years and states that £56,000 of that is allocated to the reserve fund for the bank works.]

40. In the circumstances the Tribunal has considered the 'reasonableness' of the service charges in the light of such information that we do have to date, with particular reference to the questions posed by Ms. Blake.

41. Firstly, can the deeds be amended to exclude the bank from the areas of 'Communal ground'?

a) **No**. The Tribunal has no jurisdiction to alter the title deeds. This is a matter on which both parties should take legal advice, starting perhaps with the HM Land Registry 'Practice Guide 68: amending deeds that effect dispositions of registered land.'

b) This Tribunal determination is made on the basis of the deeds as they currently stand.

42. Secondly, is the amount allocated to 'Bank works' by GMS 'Reasonable'?

It is noted that Mr. Smith states that GMS have themselves funded the expert reports up until now, without reclaiming the costs by way of service charges. This course of action is approved because it appears that the problems with the bank have not been well managed over the years. If it is correct that slippage has 'always' been a problem since Barratt developed the site, it is possible that any remedy should have been sought via Barratts from the outset. Either the bank was poorly constructed from the outset at too steep an angle, or the materials used to create it were inferior or improperly compacted. [As per the ST Environmental and Geotechnical 'Ground Investigation Report' of 07.03.22 (Respondent's Bundle (RB) Pages 73 onwards. Their conclusion was that it was '*unlikely that the damage to the car-park surface (was) associated with slope failure…'* and *'more likely that the cause of damage to the car-park (was) settlement of the made ground soils...'* and/or *'...**failure**...due to loose made ground materials beneath the car-park **and on the slope.'*** It is conceded that loading of vehicles etc. could also have contributed to the settlement, but the developers should have provided for such use when creating a garage area.]

There does not seem to have been any consideration of legal action against Barratt for the apparent poor construction of the site (and its landscaped area), despite the consequent losses and costs incurred by GMS.

Nevertheless, in determining the question of reasonableness the Tribunal has had particular regard to the 'Timeline of events' (Page 9 of the RB) and to the further 'Timeline' which was attached to the letter from Michelle Tabram of GMS to Ms. Blake dated 10th March 2022 [Applicant's documents], which focusses on correspondence between GMS and the leaseholders. In summary the history was as follows: -

a) In 2017 there was a Section 20 (Landlord and Tenant Act 1985) consultation on the **'bank works'**. Stiles Harold Williams, surveyors (SHW) were instructed and they in turn enlisted the expertise of Structural engineers Dixon Hurst Kemp, who reported [July 2017, RB Page 40] that the gradient of the bank was too steep. They proposed that the bank should be levelled out (or 're-graded') and supported by a retaining wall at the bottom.

b) In March 2019 residents were informed that SHW would hold a meeting to discuss tenders for the **bank works.**

c) In April 2019 the lowest estimate for the job (from Proclense – RB Page 45) was £14,985. GMS stated that they did not have sufficient funds to finance the works, and the project did not go ahead.

[Note: There does not seem to have been any attempt at this point to raise an additional sum by way of service charges to deal with the problem and prevent further 'slippage.']

d) From November 2019 onwards there were proposals for the **bank** works to proceed in early 2020, but in March 2020 [11 months after the original tender] Proclense advised that they could no longer hold their cost price. GMS reviewed the position.

e) On 28th August 2020 a letter was sent to all leaseholders attaching a survey from SHW which suggested that the **bank remedial works** could cost in the region of £30,000. The surveyor had classified the problem as *'serious, urgent action required.'* The letter extract (quoted by Ms. Tabram in her 'Timeline') read: '*We will be using the surveyor's projection to structure Aspen Square's reserve fund over the next few years.'* It was also noted in this letter that leaseholders wanted the 'bank stabilising works' to be kept to the absolute minimum because the land was of no value to them.

[Note: Despite the above point, service charges were apparently not increased significantly until December 2021].

f) In October 2020 a new tender was received from Woodland Construction & Maintenance, who quoted £27, 740 for the **bank works** but who suggested that the cost might be as low as £17,000 if gabion metal cage walling was used instead of blocks for the retaining wall at the bottom of the slope.

g) In November 2020 there was a letter to all leaseholders explaining that the **Section 20 'Notice of Intention' to carry out the bank works** (date unknown) was being retracted because of various delay factors. A proposed 4 -phase project was outlined.

h) SHW liaised with Dixon Hurst Kemp as to options, but by early 2021 things were no further forward and a letter was sent to the leaseholders stating that the '*Projects planned for 2021…*' were '*...external redecoration and **bank works** including fencing, pathways and hardstanding by the garages.*'

i) Leaseholders were told (January 2021) that there would be an update regarding the **bank works** by the mid-to-end of February, and that '*The service charges may have to be reviewed during the year to enable works to proceed, as we need to make sure that there are always funds in reserve to cover unforeseen expenditure.'*

[Note: as above, despite this letter service charges were not increased substantially until December 2021. It is also particularly relevant that on the 15th of February 2021,

one month after the letter, Ms. Blake's solicitor wrote to GMS asking about '*anticipated Section 20 works'* and likely costs of the same. The reply made no mention of any proposed '**bank works.**' (Para. 15 statement of Richard Smith)]

j) On the 11th of January 2021 a Section 20 Notice of Intention was issued with regard to the external decorations.

k) In March 2021 SHW instructed structural engineers Paul Gringley Associates to quote for reviewing the options for the **bank.**

l) In May 2021 the Gringley representative inspected the site, criticised the Dixon Hurst report and advised that a geotechnical soil survey should be undertaken.

m) On the 17th June 2021 leaseholders were sent a letter giving the start date for the external decorations.

n) Quotations were sought for the geotechnical survey of the **bank**, and it is noted that in June 2021 GMS were concerned that the costs of such a survey should go through the Section 20 consultation process, because it was more than £250 per residential unit.

o) On the 28th of July 2021 GMS (Ian Banham, Regional Manager) sent out to the leaseholders a letter (RB Page 63) about '*works that are required to the estate*', namely to the paths, **bank** and garage hardstanding. The letter stated that the works '*...will be paid for from the estate reserve fund…'* but it conceded that with the redecoration costs (approx £42,081) and other recent expenditure, the balance remaining in the reserve fund would be just over £7,000.

p) Mr. Banham confirmed that the 'budget' was for £20,000 income from service charges in that year (2021) but stated that, although the **bank works** were *'...not an immediate priority…' (*see below) '...it is likely that the reserve fund contributions will need to increase to cover the cost of the work required to the **bank'.*** He concluded with the comment that: '*It is important that the **bank works** should be undertaken before moving forwards with this...' (Hardstanding) '...project; we will however build the cost of this work into the budget and collect funds towards the work once we are in a position to progress this work.'*

[Note: *apparently the SHW surveyor was now saying that the **bank** was not an immediate priority, but that a 'retaining structure' should be installed within the next 2 -5 years ('Condition Inspection Report, RB Page 72.) GMS had been well aware from 2019 onwards that the issue would have to be dealt with at some point, and the

estimates had always been more than £14,000 and probably closer to £30,000. A reserve fund of £20,000 (plus £7,229 remaining) was clearly going to be insufficient to cover the geotechnical survey and the actual **bank works -** in addition to other expenditure on the car-park etc.]

q) At the same time as the above letter (28th July 2021), two Section 20 Notices of Intention were sent out, with regard to the works on the Pathways and the Geotechnical Survey.

r) Estimates were obtained.

[Note: in August 2021 the Applicant Ms. Blake completed her purchase of 12 Aspen Square.]

s) On 29th November 2021 a meeting was held between GMS and the leaseholders. ['Briefing Notes' are contained in the Applicant's documents.] Under the heading '**Bank works'** it is noted that residents felt the project had been allowed to go on for far too long, with no clear resolution in sight. However, it was also noted that there had been 'reluctance' to increase the reserve fund, with residents wanting the '… *minimum amount of work'* to be undertaken.

It was confirmed that GMS had contributed to the cost of **bank works** to a neighbour's property on the Aspen Sq. boundary in 2017.

It was generally agreed that the 'budget' should be increased (to be reviewed once the actual cost of **bank works** was known) rather than a 'one-off' payment being collected. [Note: Ms. Blake was present at this meeting.]

t) Following the consultation process, Southern Testing ('ST Consult') were instructed and they produced their geotechnical final report on the **bank** on 7th March 2022. [RB Page 73]. The recommendations were to: -

Undertake a drainage survey to identify any possible leaks,

Sheet pile fencing to be designed and installed at top of bank.

Concrete slabs to be lifted in car-park and the 'made up' ground in car-park and bank to be re-engineered.

w) There was further to-ing and fro-ing as to who could undertake which aspects of the works.

x) To date, there is no evidence that any bank works have begun.

In all the circumstances, it is found that the amount now allocated to the 'bank works' is not reasonable. The problem should have been tackled from the outset,

either by taking action against the developer for insufficient ground preparation, or by paying for early remedial works at a lesser cost.

43. Thirdly, have GMS mismanaged the accounts to the extent that it is unreasonable to require Ms. Blake to pay such a substantial amount to replenish the reserve fund?

The external decorations were (or should have been) a known essential expense well before the 2021 budget. The Lease provides (Schedule 5 Clause 4) for redecoration after the first 3 years and every 3 years thereafter, so the redecoration should have been done in 2018 and the reserve fund should have been sufficient to provide for it.

However, in her letter to Ms. Blake of 10th March 2022, in response to Ms. Blake's formal 'complaint', Michelle Tabram states at Para. 6. that '*...a visual inspection was undertaken by the Regional Manager in 2018, who concluded that at the time the redecoration could be carried over and undertaken at a later date'.*

It appears that GMS were thus in breach of the terms of the Lease, and Ms. Blake has indirectly borne the expense of works which should have been completed and paid for 3 years before she moved into her property.

In the light of all of the above history, the Tribunal is satisfied that it is unreasonable for Ms. Blake to be required to pay such a substantial amount. The external redecorations were wrongly delayed, the 'bank problems' have been known for many years, and the reluctance of both GMS and the residents to tackle the issues and budget accordingly has resulted in a heavier financial burden falling upon Ms. Blake.

44. Fourthly, is it unreasonable for Ms. Blake to pay such an increase in service charges given the correspondence with her conveyancing solicitors?

The Tribunal has not been provided with a full copy of the solicitor's letter of enquiry as to 'anticipated Section 20 works…', and therefore it is not possible to confirm whether Mr. Smith's assertion is correct that the enquiry *specifically* related to the 'external decorations'. However, in the context of a purchaser being in possession of all the facts, GMS could have been expected to make the solicitor aware of anticipated expenditure on works to the **bank** which had been under discussion for many years, which had recently been tendered for, and which had previously been the subject of a Section 20 Notice in any event. [See 'history' in 42. above, with all references to the **'bank'** in bold.]

GMS were well aware that the likely expenditure on the bank would be comparable to the substantial expenditure on external decorations, but they chose not to mention it.

It is arguable that the lack of information caused Ms. Blake to act to her detriment in purchasing the property, when she might have acted differently if she had been aware of inevitable increases in service charges.

For this reason it is unreasonable for Ms. Blake to pay such an increase in service charges.

45. Fifthly, Should Ms. Blake's service charges for the years 2022 and 2023 be limited accordingly?

In the light of all the above, the determination is that the service charges for the years 2022 and 2023 are not reasonable or reasonably incurred, and they should be limited accordingly.

For the year 1st January 2022 - 31st December 2022 the total charge payable is £200 per month or £2,400 p.a. For the year 1st January - 31st December 2023 it is capped at £250 per month or £3,000 p.a.

Tribunal Judge Tessa Hingston.

APPENDIX A. - THE LAW.

Landlord and Tenant Act 1985: -
Section 18. - Meaning of "service charge" and "relevant costs"
(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 a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of Service charges: Reasonableness

(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.

Section 27A – Liability to pay service charges: jurisdiction

(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) Subsection (1) applies whether or not any payment has been made.

(3) 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.

(4) 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 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.

APPENDIX B. - THE LEASE.

33. In the Fifth Schedule it is provided that 'The Association' (GMS) covenants to:

1. 'From time to time, as often as occasion shall require, well and substantially to repair uphold support maintain cleanse amend and keep in good and substantial repair and condition -

(a) the external walls and main structure of the Demised Premises (but excluding responsibility for the plaster and decoration of the internal surfaces thereof) the foundations of the Demised Premises and the roof thereof including the tiles battens felt and insulating materials forming part thereof and the structure of the roof,

(b) the enclosure for the deposit of refuse {if any)

(c) the water pipes conduits ducts sewers drains and all devices for conveying water to the Demised Premises…'

(d) the electric wires ducts and cables not exclusively serving the Demised Premises

(e) the fences or other boundary structures surrounding the Development.

2. (a) From time to time as often as occasion shall require well and substantially to renew repair uphold support maintc.ain cleanse amend and ***keep in good and substantial repair and condition those parts of the Development shown hatched black**** *on the plan annexed hereto which comprise the private roadways footpaths garage forecourts and visitors' parking spaces within the Development* [our emphasis]

(b) so far as practicable ho keep cleansed and in tidy condition and to keep reasonably lighted the passages paths forecourts driveways and all other parts of the Development enjoyed or used by the Tenant in common with the other tenants or occupiers of the Development and insofar as the land hatched black on the plan annexed shall consist, of landscaping or communal garden areas to keep the same in good order and condition.'

34. The Association also covenants to redecorate the exterior every 3 years. (Fifth Schedule Clause 4.)

(*Note: the '*parts of the development hatched black*' include the 'bank.')

THE SIXTH SCHEDULE

PART I - Maintenance Cost.

35. *'THE Maintenance Cost shall be the total of all sums actually expended by t!he Association in connection with the management and maintenance of the Development and in particular but without prejudice to the generality of the foregoing shall include the following:-*

1. The cost of complying with the Association's covenants contained in Clause 4 of this Lease and in the Fifth Schedule hereto

2. The cost of procuring or providing any sums required in connection wiuh the same where uhey exceed the moneys for the time being held by the Associattion as payments on account of the Maintenance Cost or as a Reserve Fund.'...

36. *'7. In addition to the items of costs and expenditure hereinbefore mentioned or referred to in this Schedule there shall be included in the Maintenance Cost such sums as the Association shall in its absolute discretion consider desirable to be retained by the Association by way of Reserve Fund as reasonable provision for future expenditure...'*

37. '*8. The Association will use its best endeavours to maintain the Maintenance Cost as the lowest, reasonable figure consistsent with the due performance and observance of its obligations herein as and where the Association for the time being shall consider such performance and observance to be reasonably necessary.'*

38. PART III provides that:

'The Tenant shall pay one twenty fourth part or such other proportion as may be determined by the Association of the Maintenance Cost in the following manner:-

1. The Tenant shall throughout the term of this Lease pay in advance to the Association as it may require and on days to be appointed by the Association one quarter or one half as the case may be of the Tenant's contribution as aforesaid of the estimated Maintenance cost…'