FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UN/LAM/2022/0002**
HMCTS code (audio, video, paper)	**:**	**F2F/V: CVPREMOTE**
Property	**:**	**Brannam Court High Street, Dedham Colchester, Essex CO7 6DE**
Applicant	**:**	**Katherine Fenton (Brannam 2)**
Representative	**:**	**Miss Amanda Gourlay**
Respondent	**:**	**Mary Nicolette Mann (Dr Nicky Hart)**
Type of application	**:**	**(1) Appointment of a manager (2) Liability to pay service charges for the periods from 2015 to 2021**
Tribunal members	**:**	**Judge David Wyatt Mr G F Smith MRICS FAAV REV**
Date of decision	**:**	**23 December 2022**

DECISION

Description of hearing

This was a face to face hearing on the first day and a remote video hearing on the second. The documents we were referred to are described in paragraphs 21 and 22 below. We noted the contents.

Decisions of the tribunal

(1) In view of the findings made below, the tribunal may appoint a manager in relation to all the land and buildings in title number EX528852 for about three years to plan and carry out pressing structural and repair work (see paragraph 75 below).

(2) On or after **2 February 2023** the tribunal will make its decision on whether to appoint a manager and, if so, on what terms (without a further hearing, unless it decides a further hearing is necessary) taking into account any further documents produced by the parties under the following directions:

a. by **11 January 2023** the Respondent shall send to the tribunal and the Applicant confirmation that the buildings insurance for the Property has been renewed, with basic evidence of the relevant cover (such as a cover note and policy schedule, showing the total premium paid);

b. by **20 January 2023** the Applicant may send to the tribunal and the Respondent a full management plan from the Applicant's proposed manager, which may address the matters described in paragraphs 85-86 below, with copies of any new supporting documents; and

c. by **1 February 2023** the Respondent may send to the tribunal and the Applicant written submissions in relation to anything new in the documents from the Applicant, with copies of any new supporting documents.

(3) The service charges which are (or were) payable by the Applicant for the years from 2015/16 to 2021 are those set out in Schedules 1 to 7 to this decision. These leave a balance of £3,307.16 payable by the Applicant to the Respondent within a reasonable time.

(4) The tribunal hereby orders that all 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 Applicant.

(5) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and does not order the Respondent to reimburse the tribunal fees paid by the Applicant.

Reasons

Basic details

1. The freehold title is registered at the Land Registry under title number EX528852. The Grade II* listed Brannam Court building is at the front of the land in this title, on Dedham High Street, opposite St Mary's Church. The Brannam Court building has a basement and two to three storeys above ground level. It accommodates two commercial and two residential units, all let on 999-year leases granted in the early 1990s:

a) a larger commercial unit on the ground floor and basement levels, originally known as Spearings and now the Dedham Pharmacy. The Respondent confirmed the current leaseholder

was Jayesh Kotecha, who had sub-let to the operator of the pharmacy business, Mandeep Sidhu;

b) a smaller commercial unit on the ground floor, originally known as The Boutique and now The Salon. The parties confirmed that Linda Barrett is the leaseholder;

c) a residential unit on ground, first and second floor levels, known as Brannam 1. This unit has its own entrance door from the High Street between the commercial units. It includes the area above the larger commercial unit. The Respondent's daughter, Louise Hart, is (and has since 15 September 2020 been) the leaseholder of Brannam 1; and

d) another residential unit on ground, first and second floor levels, known as Brannam 2. This unit sits above and extends behind the smaller commercial unit, running along and with a door in the western elevation behind the chimney stack and another door in the elevation at the rear. The Applicant is (and has since 11 September 2015 been) the leaseholder of Brannam 2.

2. The Property includes a passageway from the High Street running along the west side of the Brannam Court building, and a long courtyard area extending back from the passageway and the rear of the building. Houses with walled gardens on either side of the courtyard (The Tallow Factory to the west, and Brannam Cottage to the east) were transferred out of the title in 1993. The back of the courtyard is the parking area for those houses and most of the leaseholders of the Brannam Court building.

3. The Respondent is (and has been since the early 1990s been) the freeholder of the Property, with no mortgage, and remains the owner of The Tallow Factory (her daughter, Louise Hart, lives there and visiting members of the family stay there). Her married name, as registered in the title entries at the Land Registry, is Mary Nicolette Mann. She is based in California and a professor, known as Dr Nicky Hart. Brannam Cottage is (and has since 2018 been) owned by Joe and Elizabeth Costa.

Leases

4. The lease of Brannam 1 defines the demised "*Premises*" to include doors, door frames and windows and window frames in the walls bounding the Premises, internal plastered coverings, the surfaces and boards of the floors, any non-load-bearing walls which are not party structures, but (generally) not any parts lying above the surfaces of ceilings or below the boards of any floor, structural parts or any conduits which do not serve the Premises exclusively. Although structural parts are excluded, the lease includes the standard covenant not to injure any structural parts of the Premises or make any other

alterations or additions of a structural nature without the landlord's prior written consent.

5. The lease includes rights set out in the Second Schedule, including rights to use the drains, conduits and other facilities in the Building or the Estate (para. 2), rights of way on foot over the Common Parts and with vehicles over parts of the Common Parts as designated (para. 3) and the right to use two of the parking spaces shown hatched blue on the plan as designated (para. 4). It appears from the freehold title entries that similar rights were granted in favour of The Tallow Factory and Brannam Cottage.

6. "*Building Expenses*" are set out in Part II of the Fourth Schedule to the lease. These include repair and cleaning of the Building and conduits, insurance and proper fees of the Landlord's agents for the general management of the Building (but not for rent collection), excluding any expenditure in respect of the non-structural parts of the Remaining Parts of the Building, any conduits which are in and exclusively serve the demised Premises and any conduits which are used solely by the Remaining Parts of the Building.

7. "*Common Parts*" means the part of the Estate coloured brown on the site plan annexed to the leases. The copy plan provided for Brannam 1 is unclear, but that for Brannam 2 shows the open areas, including the passageway and parking area, coloured brown. This appears to correspond with all the land remaining in the freehold title other than the Building.

8. "*Estate Expenses*" are those set out in Part III of the Fourth Schedule. They include repair of all conduits, pumps and other facilities in respect of which rights are granted under paragraph 2 of the Second Schedule, repair and cleaning all open areas of the Common Parts, repair of any entrance gates to the Common Parts, insurance of the Common Parts against any public or occupiers' liability and all electricity, drainage costs and metering charges incurred in connection with such matters, other expenses in connection with the proper maintenance and improvement of the Common Parts/facilities/Estate and the proper and reasonable fees of the Landlord's agents for the general management of the Estate.

9. "*Remaining Parts*" means those parts of the Building (other than the demised "*Premises*") which at the date of the lease were used or intended for use for residential purposes and/or as the shops on the ground floor.

10. In clause 3(11), the tenant covenants to pay the Interim Charge and the Service Charge as set out in the Fourth Schedule. As explained in the 2019 Decision (described below), paragraphs appear to have been omitted from that schedule, but in the Fourth Schedule the definition of

Interim Charge requires that it be a fair and reasonable interim payment. The definition of *Service Charge* includes: "*…the aggregate of such fair and reasonable proportion of the Building Expenses and of the Estate Expenses … to the intent that the Building Expenses shall be fully paid for in fair proportion by the occupiers of the Building and that the Estate Expenses shall be fully paid for in fair proportion by the various parties entitled to use and enjoy the Common Parts and the services ancillary to the use and enjoyment of the Estate.*"

11. The lease of Brannam 2 is in substantially similar terms, with different numbering. The commercial leases are in similar terms, demising the shop fronts in addition, but the lease of the larger commercial unit includes the paragraphs in the Fourth Schedule which appear to have been omitted from the residential leases and the lease of the smaller commercial unit. These provide that the Interim Charge is to be paid quarterly in advance, provide that the landlord is after each accounting period to serve a certificate of expenses, payments, service charge and any excess or deficiency, and confirm that any surplus is to be credited.

Inspection and basic background

12. The Brannam Court building is not straightforward. It has brick elevations around an older timber-framed structure and adjoins a large National Trust property to the east. The front elevation on the High Street appears to be composed of harder bricks, which had previously been painted. The part of this front elevation which is outside Brannam 1 has recently been stripped of paint and repointed, giving it a much better appearance than the part outside and above the smaller commercial unit and Brannam 2. The western and other exposed elevations appear to be composed of softer bricks, which have been cheaply rendered in the past.

13. Among other structural concerns, the western elevation has a long vertical crack along the rear of the brick wall behind the chimney stack, where it has moved relative to the inset wall extending behind it. The crack has been present since 2014, or earlier. It extends through the exterior wall and is visible from the interior of Brannam 2. The parapet wall behind the chimney is leaning. Among other potential repair concerns, the gutter brackets on the western elevation have broken, causing the gutter to swing in. As a result, rainwater is likely to overshoot the gutter and run down the wall. This, possibly together with narrow downpipes on the ground and upper levels, and possibly the chimney itself if it has been sealed, is likely to have caused or contributed to the damp problems on the western elevation (a small area of render has fallen away from the brickwork, for example). The timber upright on the western corner is partially covered but may have been affected by the damp and may be in need of attention.

14. In 2007, a very negative report on the building was produced by surveyors instructed by the then managing agents (Boydens). This report advised that the ties between the brick elevations and the older structure had deteriorated. It suggested that the front elevation in particular, which had moved, would have to be taken down and rebuilt. Inevitably, the Grade II* listing makes repair work more difficult and expensive. When no leaseholders attended a meeting to discuss how to deal with the problems, Boydens resigned and it was difficult to find any managing agents willing to take on the Property.

15. Ultimately, the Respondent appointed Whybrow as her managing agents. They appear to have begun sensibly and their surveyors were useful, arranging urgent repairs in 2011 and, working with structural engineers (MLM), reporting on the need for urgent roof works. However, their accounting and demands were or became inadequate and from 2012 they stopped producing service charge certificates. In 2014, the Respondent wrote to Whybrow expressing concerns about the condition of the building and in particular the crack on the western elevation. Whybrow reported again in 2016 on the need for roof works and consulted leaseholders. Ultimately, the roof began leaking and on 20 August 2018 a tribunal dispensed with the remaining statutory consultation requirements in respect of urgent works to repair the relevant part of the roof to prevent further water ingress (CAM/22UN/LDC/2018/ 0014).

16. On 3 July 2019, dealing with an application under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") by the Respondent against the Applicant and the then leaseholder of Brannam 1, a different tribunal noted apportionments and other matters which had been agreed and, in relation to matters in dispute, determined what service charges would be payable for 2017 to 2019 if valid demands were made (CAM/22UN/LSC/2018/0078 & 79, the "**2019 Decision**"). It observed the residential leaseholder(s) appeared to have been disputatious but noted that it had proved possible to agree many of the disputed items during the hearing.

17. The parties responded positively to that decision, which was followed by constructive correspondence between them, a great deal of time spent by the Respondent on endeavouring to identify and arrange for John Greenwood, the structural engineer from MLM, to specify manageable works to deal with the most urgent structural problems and liaise with potential contractors. Mr Greenwood advised on a list of essential structural works, numbered items 1 to 10, which included new ties for the front elevation, strapping the crack on the western elevation and (subject to listed building consent) reducing the height of the parapet wall noted above. The Applicant advanced funds for works on trust rather than waiting for compliant demands from the Respondent or insisting on compliance with the consultation requirements on condition that (as advised by Mr Greenwood) the preferred local contractors (Rose) were used. Rose had a good

reputation for quality work on listed buildings and reasonable costs, not exploiting a lack of updated market-testing or the like.

18. However, sadly, it did not take very long for the parties to fall out again. Since everyone was dissatisfied with Whybrow, their appointment had been terminated and in 2019 the parties had agreed in principle to appointment of a new firm of managing agents. However, the Respondent ultimately did not engage the new proposed firm, saying at the time that "the arrears" were too high. At the hearing, the Respondent could not tell us who had been in arrears, or how much had been owed. She added that the prospective agents had been concerned that the leases were defective (she had understood that, despite the 2019 Decision, the leases did not reliably provide for payments on account). The Respondent decided to manage the Property herself. She spent a great deal of time attempting to extract information from Whybrow and from suppliers to "reconstruct" service charge accounts around incorrect or missing information from Whybrow. The Respondent then prepared documents setting out her calculations and sent them to the Applicant, effectively seeking in July 2020 to demand the service charges payable from 2015 onwards. By about the same time, the Respondent began publishing information about the building on the website described below. This was followed by lengthy and rather confusing correspondence from the Respondent for 2020, 2021 and early 2022 about the works, service charges and other matters with proposed calculations and different methods of apportionment. These and other relevant matters are summarised later in this decision.

Procedural history

19. In March 2022, the Applicant applied for: (a) an order appointing Robert Clubb (of Dunwell Property Management Company Ltd, based in East Bergholt) as a manager under section 24 of the Landlord and Tenant Act 1987 (the "**1987 Act**"); and (b) for determinations under section 27A of the 1985 Act in respect of payability of service charges for 2015 to 2021. The Applicant also sought: (a) an order for the limitation of the Respondent's costs in the proceedings, under section 20C of the 1985 Act; and (b) an order to reduce or extinguish their liability to pay any administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

20. On 13 May 2022, the judge gave case management directions requiring the Applicant to give notice of the application to the Respondent's daughter (the leaseholder of Brannam 1), the leaseholders and occupiers of the commercial units and the owners of Brannam Cottage. The Applicant confirmed she had done so, providing copies of the notifications. There was no request to be joined to the proceedings. On 11 June 2022, the Applicant explained that Mr Clubb was unwell and

that Lucy Pembroke, another director of Dunwell, was being proposed as manager in his place.

21. The directions required the Respondent to send all general service charge documents (including any accounts and estimates and all demands for payment and details of any payments made) to the Applicant by 1 June 2022. The Applicant was to produce their case documents, the Respondent was to produce their case documents in response and the Applicant produced a reply as permitted. Pursuant to the directions, the Applicant produced the hearing bundle of these documents (which included a bound bundle from the Respondent with two insert pages). Shortly before the hearing listed for September 2022, for reasons personal to the Respondent, this was adjourned to 17 and 18 November 2022. The Respondent then produced a single-page statement of truth dated 25 August 2022 in relation to her documents and a brief expert report from Mr Greenwood, the structural engineer, which was provided on 20 October 2022. The tribunal gave permission to rely on the expert evidence in that report.

22. The tribunal inspected the Property at 10am and the hearing started at Ipswich Magistrates Court at about 11:30am on 17 November 2022, continuing by video (CVP) on 18 November 2022. The Applicant was represented by Miss Amanda Gourlay of counsel and gave evidence. Her partner, James Brown, also gave evidence. By agreement, Mr Greenwood gave expert evidence first to minimise costs. The proposed manager, Ms Pembroke, attended to answer questions. The Respondent represented herself and gave evidence. Her husband, Mr Mann, and her daughter, Louise Hart, attended the hearing to assist the Respondent. The Respondent brought further documents to the first day of the hearing (better-quality copies of documents in the bundles) and sent overnight by e-mail a copy of the contract with the last managing agents, Whybrow. During the second day of the hearing, the Respondent sent various further documents by e-mail, as discussed with the parties at the hearing.

Service charges

23. The following examination of the disputed charges and payments for each year refers to the schedules attached to this decision and notes or determines the relevant costs and the payments made. The schedules use the service charge proportions determined in the next section of this decision to calculate the service charges payable.

2015/16 – schedule 1

24. The Applicant said she had made payments of £598 and £180 (£778) for whatever had been sought by Whybrow in relation to this period. The total payments of £778 are acknowledged in the

demand/certificate served by the Respondent for the 2016/17 service charge year.

25. The demand/certificate served by the Respondent on 30 July 2020 for the service charge year from 1 April 2015 to 31 March 2016 acknowledged a credit of £368 carried forward from the previous year and payments of £275. The Respondent said this had been wrong, because over £1,000 in unpaid service charges had been owed by the previous leaseholder. When this had been raised, Mr Brown had made enquiries and passed on to the Respondent the explanation from their conveyancer that they had been informed these outstanding service charges had been paid, so the money which would otherwise have been retained from the purchase price to ensure payment of any such arrears had been released to the seller's conveyancer.

26. On the very limited information provided by the parties, we consider that any such liability for service charges for periods up to 31 March 2015 was owed by the previous leaseholder (the breach of the payment obligation probably having been complete before the assignment of the lease on 15 September 2015). Accordingly, Mr Brown was right to say that the Respondent should pursue the previous leaseholder for this. Although that might sound unhelpful, the failure from about 2012 by the Respondent's managing agents (Whybrow) to keep adequate records is likely to have been the cause of the problem. Further, the arrears now said to have been owed by the previous leaseholder had not been raised within a reasonable time. Even the Respondent's own demands/certificates in 2020, based on her investigations after she had taken over direct management, made no reference to any such arrears and on the contrary suggested a credit balance of £368. In our assessment, there was no credit or debit balance from the previous year (if £368 had been paid by the previous leaseholder, it applies to reduce the debt owed by the previous leaseholder), and the total funds paid for this year were the £778 asserted by the Applicant, which probably included the £275 referred to in the Respondent's certificate.

27. The Respondent's certificate/demand for 2015/16 set out the sums summarised in the second column of the table at Schedule 1 to this decision. Initially, the Applicant had asked whether any of the charges for this or the following year survived Section 20B of the 1985 Act, but Miss Gourlay confirmed that in view of the 2019 Decision about interim payments and the payments made this point was not being taken. Accordingly, the only disputed charge for this year was the £1,500 management fee. The Applicant said this was not payable because no works, repairs or inspections were carried out and the 2019 Decision had decided no management fees were payable in relation to a later year because proper demands were not served [44(e)]. The Respondent said inspections and other work had been carried out, referring to the documents, but acknowledged (in effect) that Whybrow had otherwise been incompetent and she had struggled to get information from them.

28. On the material produced, we are satisfied that £750 was reasonably incurred for the services provided by Whybrow in arranging the buildings insurance and inspecting and providing initial advice and assistance in relation to the condition of the building and preparatory matters in relation to the works. The balance is not payable because the parties agree that Whybrow's other services were not of a reasonable standard.

2016/17 – schedule 2

29. The Respondent's certificate/demand set out the sums summarised in the second column of the table at Schedule 2 to this decision for the year from 1 April 2016 to 31 March 2017. It also acknowledges receipt of the £1,877 payment said by the Applicant to have been made by 1 April 2017.

30. The Applicant disputed the £1,500 management fee. We accept the Respondent's evidence that Whybrow had dealt with a large amount of correspondence from leaseholders challenging the consultation process, although Whybrow had been paid a separate fee for their work on the schedule of works/tender. In our assessment, taking account the similar matters for the same charge in the previous year, £750 was reasonably incurred on their management fee for this year.

31. The Applicant had disputed the £420 charge for gutters and drainage. The Respondent agreed this was not payable.

32. The Applicant had also disputed the £2,232 survey fees from MLM. Having seen the invoice, we are satisfied this cost was incurred. The Applicant asked whether this was a qualifying long-term agreement, saying it would have been clear that the project would continue for more than a year and Mr Greenwood had been asked to review the entire building. She had asked to see a copy of the contract with MLM, but none had been provided. The Respondent told us that the original instruction would have come from or through Whybrow. We accept Mr Greenwood's evidence that he (for MLM) was instructed at some points on a time and expenses basis and at some points for specific items of work. We accept the Respondent's evidence that MLM were instructed for specific jobs and the engagement could have been terminated at any time on reasonable notice. There was no real minimum commitment, no contract for a term which must exceed 12 months. MLM were providing structural engineering advice and drawings to find manageable solutions to stabilise the building, dealing with the most important structural problems identified. They were not supervising surveyors or architects engaged for a fixed project. In our assessment, the £2,232 was reasonably incurred and is payable.

2017/18 – schedule 3

33. The year from 1 April 2017 to 31 March 2018 is simple because the relevant amounts were all undisputed or determined in the previous tribunal decision. The Respondent had mistakenly included the £1,500 management fee in her first certificate/demand for this year but agreed this was wrong (that fee having been disallowed in the 2019 Decision). We accept the Applicant's evidence (which, although the Respondent did not seem willing to admit what payments had been made, was not seriously challenged at the hearing) that she had paid £8,874 on 29 August 2020, following production of the first certificate/demand from the Respondent for this year. The details are set out in Schedule 3 to this decision.

1 April 2018 to 31 December 2018 – schedule 4

34. The Respondent changed the accounting period to calendar years, making this a short year. The Applicant had already agreed that all the costs for this period, except the gutter and drainage costs of £192, were agreed or determined in the previous decision. After we were taken to the (difficult to read but just legible) document in the bundle indicating a payment of this amount had been made to Whybrow on 16 May 2018 [A368], the Applicant agreed it. The details are set out in Schedule 4 to this decision.

2019 – schedule 5

35. The Respondent's certificate/demand set out the sums summarised in the second column of the table at Schedule 5 to this decision for the year 2019. The items which were disputed or commented on at the hearing are described below.

36. The item of £19,947 for roof repairs was supported by an invoice for slightly more than that from Maguire Roofing Limited dated 29 March 2019. It appears this is for the emergency roof repairs (to the area shown pink at E41-2 in the Respondent's documents) for which dispensation was given and which was discussed in the 2019 Decision. The Applicant pointed out that this work dealt with the roof above Brannam 1, she did not dispute it and she had sought to calculate her £8,874 payment on 29 August 2020 to ensure it covered her share of this cost. There were references to previous poor workmanship, but the Respondent said that in the past Mr Kotecha had a tendency to call in his own roofers to patch things up. There was no real dispute that these repair costs as certified/demanded in July 2020 had been reasonably incurred and we are satisfied that they were.

37. The Applicant had disputed £550 of the £590 cost which had been described as being for "gutters/drains", saying this work had been done

by Mr Liggins (then Louise Hart's partner) and no evidence had been produced that he was a suitable tradesman to work on this building, or insured, and photographs showed vegetation in the gutters. In our assessment, the full cost was reasonably incurred. We accept the Respondent's evidence that this was an economical way to clear the gutters and replace some broken tiles, checking the condition of the roof at the same time. There was no evidence to show that the work was not of a reasonable standard and the photographs show there was vegetation in the gutter in September 2018. The work was probably done after that; the e-mail invoice in the bundle for this work is dated December 2018 and was probably paid in 2019, in this service charge year.

38. The Applicant disputed the total of £1,187 on MLM surveys, on essentially the same grounds as those disputed for 2016/17. For the same reasons as those given above, we are satisfied that the full cost was reasonably incurred and is payable.

39. The Applicant disputed the £700 for FTT costs (which had appeared likely to include other fees but which the Respondent said was made up entirely of tribunal fees), the £247 for "admin copy post" and £234 for certifying the accounts. The Respondent appeared to concede that the £247 for postage to/from the Respondent in the US was not payable. We are satisfied that, as the Applicant contended, none of these costs are recoverable under the terms of the lease. As with similar such costs below, the Respondent referred to wording from different parts of the lease (particularly the part of the definition of Service Charge which refers to the intent that the Building Expenses shall be *fully paid for in fair proportion* by the occupiers of the building), but could not point us to anything in the definitions of Building Expenses (or Estate Expenses) which could include any such costs. That does seem strict, at least in relation to the costs of certifying the accounts, but the Respondent's accounting would make most of these costs difficult to justify even if such costs were payable under the limited service charge wording in this lease.

2020 – schedule 6

40. On 4 February 2022, the Respondent sent a service charge certificate setting out the amount summarised in the second column of the table at Schedule 6 to this decision for 2020. The Applicant did not deny this was sufficient as a demand under the lease, but said it did not comply with section 47 of the 1987 Act.

41. The Applicant disputed the certified cost of £2,849 for three surveys by MLM. The bundles include Mr Greenwood's breakdowns of his work (£580 plus VAT for investigations, advising and liaising with Rose, £658.75 plus VAT for an attic survey and related work and £1,035 plus VAT for a repair programme, drawings and correspondence liaising

with the Respondent and Rose). The final invoices for this work were for £816, £790.50 and £1,242 (£2,848.50). Mr Greenwood had advised that items 1-4 in his schedule of work were the most urgent and had worked with Rose and the Respondent to accommodate such matters as saving substantial costs by arranging for Rose to subcontract part of the roof works (which would have been more expensive if Rose had carried them out themselves) to Maguire. Mr Greenwood did spend a substantial amount of time on some matters, but he had not charged for some of the time he had spent. The Respondent's correspondence was lengthy but her questions and comments generally appear to have been reasonable. Mr Greenwood did spend some time on general assistance, but in our assessment that work needed to be done and the cost for his work during this period was reasonably incurred. For these reasons, and the same reasons as given above in relation to the other disputed MLM fees, we are satisfied that the cost was reasonably incurred and is payable.

42. The other disputed item for this year was £850 for office expenses. The invoice for this was from Louise Hart under the name Dedham Properties and claimed 30 hours at £28 per hour for "*Administration Services as Agent to the Freeholder*". We were told that Louise Hart lives at the Tallow Factory, so helps with inspections, organising gardening services and tradespeople and general administration. We were told the amount charged reflects only a fraction of what Louise Hart has been doing. We can see that some such work has some value and could be recoverable under the service charge wording in the lease. However, we were also told that Louise Hart created the Respondent's website for the Property and these costs included her time on maintaining it. We comment on the website later in this decision; any cost for time spent on it was not reasonably incurred. We allow £100 for reasonable assistance with contractors. We disallow the remainder; in our assessment, this was not reasonably incurred.

2021 – schedule 7

43. On 22 March 2022, the Respondent served a service charge demand for 2021. We accept the Applicant's evidence that she had paid £10,007 on 7 April 2021 (without a demand, but to seek to progress the works), £934.94 on 7 March 2022 and £3,230.02 on 24 April 2022, the total sum of £14,171.96.

44. The Respondent certified £50,253 under the general heading: "*Urgent Structural Repair Items 1-4*", but this sum included the following items:

    a) £42,070 for Rose Builders for those works. The actual invoice was for £42,016.16. The Applicant did not dispute that amount and agreed it was payable without further consultation having been carried out;

b) £715 had been sought for weatherproofing the faux window outside Brannam 1 and £967 had been sought for a poultice trial (to test chemical stripping of the paint from the front elevation, after the conservation officer advised against sand blasting). These costs had been disputed and after discussion at the hearing the Respondent agreed not to charge them as service charge items;

c) £864 and £70 had been sought for, respectively, scaffolding and a skip. In our assessment, these sums were reasonably incurred and are payable; and

d) £1,920 had been sought for "Brannam 1 reimbursements". The Respondent argued these should be paid because Louise Hart had lost rental income while the works were being carried out through Brannam 1, it had been necessary to move out to allow the structural repairs and building materials had been kept in Brannam 1, all over more than two months. The Respondent confirmed she would expect to pay such costs to the Applicant if she had to move out to allow such repair works. We have decided that such costs are not recoverable as service charge items under the terms of the lease.

45. The Applicant disputed a claimed cost of £3,646 for MLM fees. The relevant breakdowns were for £787.50 plus VAT (£945) and £2,700, the sum of £3,645. We are satisfied that £3,000 of this cost was reasonably incurred and is payable. More time does appear to have been spent (and charged for) during this period than is reasonable for the actual work involved (taking into account the work covered by the previous invoices). In this period there is more force to the Applicant's argument that part of the costs were spent on excessive correspondence with, or caused by, the Respondent. Our reduction to £3,000 deals with that.

46. Next, the Applicant disputed a cost of £1,000 (£1,080 in the invoice dated 31 March 2021) for what the Respondent had said was an "*Exterior walls Survey*" but appears to have been for a floor survey by Anglia Land Surveys, arranged by the Respondent when she wished to consider changing the apportionments of service charges. The Respondent said she needed empirical data to deal with apportionments fairly. The Applicant said this sum is not recoverable under the lease and we are satisfied that it is not. Even if it were, given our decision below that the apportionments agreed in 2019 should not be changed, or at least that what has been produced to us does not justify a change, we agree with the Applicant that this cost was not reasonably incurred.

47. The next disputed item was £215 for management expenses for Louise Hart, similar to those considered for the previous year. The

Respondent said this did not include any cost in relation to the website because the Applicant had been unhappy about that. They said that it also included journeys to get samples for the poultice trial, organising parking and access for contractors, and similar work. In our assessment, for the same reasons as in the previous year, £100 was reasonably incurred and is payable.

48. The last disputed item was £3,473 for the façade refurbishment work carried out by Mark Liggins as "Love of Restoration". In our assessment, this cost was reasonably incurred and (subject to the following point) would be payable. It is supported by the relevant invoices. We can see why the Applicant might be concerned about who would carry out such work on other elevations, which appear to have softer bricks and are rendered, or more substantial work. But these invoices are for the simple work carried out by Mr Liggins to strip the paint from the harder bricks on the part of the front elevation outside Brannam 1, raking the brickwork and repointing. Mr Greenwood had been happy with the quality of the work carried out, having himself suggested that a small tradesman be considered for this work to save cost. No problems with it were apparent on our inspection. The Applicant produced no evidence to show that the work was not of a reasonable standard or any quotation to challenge the cost.

49. However, as the Applicant said, the Respondent had simply failed to comply with the statutory consultation requirements (or seek dispensation) in relation to these works. We consider (and it was not suggested otherwise) that this was one set of works, carried out in around July and August 2021. Accordingly, by section 20 of the 1985 Act, £250 is the maximum the Respondent can recover in respect of these costs and that is the amount we determine to be payable.

Service charge proportions

50. It was not disputed that (save for those periods for which proportions had been agreed by the parties) it is for us to determine the proportion of the recoverable expenses payable by the Applicant under the "Service Charge" definition noted above. The 2019 Decision notes that the apportionments then sought by the Respondent, which had been assessed by Whybrow based on internal floor area (Building Expenses) and by the Respondent based on allocated parking spaces (Estate Expenses), had been agreed. These were:

    a) for Building Expenses, 9.8% for the smaller commercial unit, 29.6% for the larger commercial unit, 31% for Brannam 1 and 29.6% for Brannam 2; and

    b) for Estate Expenses, 20% for each of Brannam 1 and Brannam 2, 10% for the smaller commercial unit, generally nothing for the larger commercial unit (at the hearing before us, the Respondent

suggested that unit should pay a proportion of any resurfacing works in the future, since they used the courtyard for deliveries), 30% for The Tallow Factory and 20% for Brannam Cottage.

51. We are satisfied that the proportions for Brannam 2 were agreed or in any event are appropriate at least for the years to and including 2020. From 2021, the Respondent began to propose and seek various different apportionments, as summarised below. She told us that as long ago as 2015 she had talked about increasing the proportion paid by the pharmacy as occupier of the larger commercial unit, saying she had become aware that they used the basement for storage possibly for both of the pharmacies operated by the same business. After her daughter purchased the lease of Brannam 1 at auction in 2020, she also became aware that the actual layout of Brannam 1 was substantially different to what was shown in the lease plans.

52. The Respondent sought 25% or similar proportions from the Applicant in some correspondence and certificates from 2021. She said this was based on the floor survey she had arranged in April 2021 to include the basement of the pharmacy, but exclude the roof void area and any area less than 1.5 metres high. That survey had not previously been provided, but was disclosed in these proceedings. But the Respondent also proposed that the Applicant pay over 31% of anticipated works costs based on the Respondent's division of estimated costs. In June 2021, the Respondent indicated that she intended to adopt a different apportionment method proposed by her daughter so that each leaseholder paid the costs of refurbishing the external areas outside their demise. She produced sketches and described potential measurements of external elevations. On 1 March 2022, the Respondent wrote with a range of different apportionments she had devised for different areas and types of work. In her documents in these proceedings, the Respondent suggested that roof repairs might be apportioned by a measurement of roof areas using a drone, weighted by floor areas. The Respondent said she was regularly given anti-discrimination training for her academic position and was endeavouring throughout to ensure apportionments were fair.

53. On the evidence provided and for the reasons explained below, we are satisfied that the fair and reasonable proportions for Brannam 2 remain 29.6% of Building Expenses and 20% of Estate Expenses. The material produced by the Respondent does not justify any change to the agreed apportionments described in paragraph 50 above for the purposes of any management order we might make.

54. The Respondent said the totals from the 2021 floor survey would result in apportionments of 45.6% for the larger commercial unit, 5.9% for the smaller unit, 23.7% for Brannam 1 and 24.6% for Brannam 2. However, it is not appropriate to include anything substantial in the apportionments for the basement level. It has no windows or natural

light and can only really be used for storage. As to the other proportions, for this building we are dubious about excluding stairwell areas demised to leaseholders. For example, the substantial front door and entrance area for Brannam 1 is treated in the survey as a stair/stairwell to be disregarded. Nor is it clear that for the residential units it would be appropriate to exclude the areas under 1.5 metres in height. Simply taking the total floor areas shown in the survey from ground floor above would suggest something in the region of 35% and 6.3% for the commercial units and about 29% for each of Brannam 1 and 2. However, the leaseholder of the larger commercial unit is responsible for repairing the entire shop front, as part of their demise, and appears to have done so. Further, the residential flats probably gain more benefit from the complex roof structures (with exposed beams inside) and the external elevations.

55. The Respondent's proposals for different apportionments based on external wall/roof areas are not appropriate. They appear partly to be based on a mistaken understanding that each demise includes the exterior faces of the structural exterior walls. In some cases, it can be appropriate to charge different proportions of different types of expenditure. But, as shown above, differences in apparent benefit of the type described by the Respondent tend to be balanced out by other factors. It is important that apportionment methods are capable of efficient administration and give the parties a reasonable prospect of predicting their share of potential expenses. The proportions agreed in 2019 have been charged for many years. This is not a straightforward building, but it is not so unusual, has few occupiers and should be managed without unnecessary complication and confusion in future. Further, the effect of the approach suggested by the Respondent appears unfair. The Applicant paid her usual 29.6% share of the cost of the roof works to the area over Brannam 1. She has paid (or should pay) the same proportion of the costs of stabilising (and refurbishing) the front elevation outside Brannam 1. These works benefitted all leaseholders in protecting the basic integrity of the building. It appears that it would be fair and reasonable for the other leaseholders to pay their usual proportions of the costs of repairing the remainder of the front elevation, stabilising and repairing the western elevation and any similar repair works, which benefit all leaseholders.

Preliminary notice and basic grounds under s.24(2)

56. Before an application is made for a management order under section 24 of the 1987 Act, section 22 requires the service of a preliminary notice which must (amongst other things) set out: (a) the grounds on which the tribunal would be asked to make the order; and (b) steps for remedying any matters relied upon which are capable of remedy, giving a reasonable period for those steps to be taken.

57. The Applicant had served a preliminary notice under section 22 of the 1987 Act dated 27 September 2021. It alleged the Respondent was in breach of obligation(s) owed to tenants under leases, the Respondent had made/proposed unreasonable service charges, the Respondent was in breach of the RICS Service Charge Residential Management Code of Practice (the "**Code**") and/or that other circumstances exist which make it just and equitable to appoint a manager (setting out a detailed table). It was not disputed, and we are satisfied, that the preliminary notice complied with section 22. Accordingly, the tribunal may make a management order in the circumstances set out in section 24(2) of the 1987 Act. We explain the key matters below.

Disrepair

58. We are satisfied that the Respondent is in breach of the repairing obligations owed by the Respondent to the Applicant under her lease, which relate to the management of the Property (section 24(2)(a)(i) of the 1987 Act). In clause 4.3.1 of the lease, the landlord covenanted to keep the Building (other than the parts included in the demised Premises) in good and substantial repair and condition. The covenant is expressed to be subject to payment by the Tenant of the Service Charge, but as a matter of interpretation we do not consider that this operates as a condition precedent. Even if it did, we consider that the Applicant had satisfied this by paying the Service Charge so far as it could reasonably be ascertained from what had been provided to her at the relevant times.

59. The Respondent did arrange the most urgent structural works (items 1-4 in the list prepared by Mr Greenwood) and those were carried out successfully. Mr Greenwood's evidence that these were the most urgent works, with the front wall having moved and the tie beam(s) having lost integrity, was not disputed. However, even the other urgent structural stabilisation works (items 5-10 in that list, which should have been completed by now) remain outstanding. The western elevation, in particular, is in substantial disrepair as alleged by the Applicant in the preliminary notice and noted above. At the end of the hearing, the Respondent accepted that the repair of the structure of the building was a fundamental duty. She said she was sorry the crack remained unrepaired and, fairly, was willing to admit she should have done more about this. In addition to the external wall repairs and the guttering problems noted above, she said that she believed the roof valley gutter would also need to be "reconstructed" in the near future. She suggested that it should be lined with lead; such matters would be for suitable professionals to specify depending on the needs and strength of the relevant parts of the roof.

60. For the same reasons, we are satisfied that the Respondent failed to comply with paragraphs 9.1 and/or 9.2 of the Code (section 24(2)(ac)(i)). Even now, Brannam 2 remains exposed to the weather

through the crack in the exterior wall and the western elevation is damp (or damper than it would be) because basic gutter and other exterior repair works have not been carried out.

61. We do not make findings about the alleged disrepair of the other elevation(s) or a beam in the attic of Brannam 2 because that is unnecessary for this decision. We cannot specify what work needs to be done urgently and we do not wish to limit any appropriate survey or specification of urgent repair works. However, it may help if we confirm we are satisfied that the Respondent's interpretation of the lease is wrong; a structural beam is not included in the "Premises" demised to the Applicant in her lease. As a structural part, it is one of the areas the landlord is responsible for repairing.

General management

62. We are satisfied that the Respondent failed to comply with paragraph 7.10 of the Code (section 24(2)(ac)(i)) in that she did not provide adequate service charge accounts, despite requests and, in particular, failed to acknowledge receipt of or otherwise provide statements of account in respect of substantial service charge payments made by the Applicant. Even at the hearing, the Respondent was reluctant to admit what payments had been made by the Applicant and took the approach that since she was not intending to make a penny out of her management she need not stand by the various service charge certificates she had given over the years and if they were shown to be wrong she could simply "correct" them.

63. Many other matters were said to be failures to comply with the Code (section 24(2)(ac)(i)) and/or circumstances which make it just and convenient to appoint a manager (section 24(2)(b)). We do not need to examine each of these. We are satisfied that the following matters, in particular, were other failures to comply with the Code or (subject to the suitability of the proposed manager and the terms of the proposed order) such circumstances.

64. The Respondent said she took professional advice where appropriate, but insisted in correspondence and in these proceedings on interpretations of the lease which were plainly wrong (seeking to charge service charges which were not recoverable under the lease as service charge costs, such as loss of rent for her daughter, and insisting the Applicant must be responsible for repair of the structural beam in Brannam 2, for example). She also sought to impose impractical apportionment mechanisms for different types of cost which, the Respondent should have realised, would have benefitted her daughter at the expense of the other leaseholders (paragraphs 2.3 and/or 13.3 of the Code).

65. Other actions taken by the Respondent have also made it more difficult to expect leaseholders to trust her with substantial funds. She engaged Mr Liggins, when he was her daughter's partner, to carry out refurbishment works without mentioning the relationship to leaseholders and without complying with the statutory consultation requirements (paragraphs 2.3, 9.10, 9.12 and/or 13.3 of the Code). When the Applicant wrote to the Respondent's daughter about parking and building materials left in the courtyard, the Respondent promptly wrote to the Applicant contesting this and arranging to move the bin storage area so that it was outside the Applicant's kitchen window (where it still was when we inspected). Particularly in view of the timing, we are not satisfied that the reasons given by the Respondent for moving the bin storage justified this. The Respondent should have appreciated that it would seem retaliatory.

66. Further, since July 2020 or earlier (and whether or not her daughter was doing or assisting with this on her behalf), the Respondent has been publishing unhelpful material about Brannam Court on a dedicated public website set up for the purpose. This website published the Respondent's views about what had happened over time, partially redacted financial information, assertions about service charge arrears and the negative survey from 2007 which the Respondent has not followed (taking advice from the structural engineer to find manageable solutions to the structural issues instead, as noted above). This was being published from the time the previous leaseholder of Brannam 1 was seeking to sell their lease, or earlier. The Respondent insisted that it was important any prospective purchaser had all the available information, so they knew what they were getting into. However, this was not the type of information which would be published by a responsible landlord or managing agent. The Respondent should have appreciated that the content of the website was unnecessarily harmful.

67. We do not base our decision on the unfortunate debate between the parties about the Applicant's boiler flue, because this potential issue does not appear to have been identified in the detailed preliminary notice. However, it may help for the future if we confirm that we believe the Respondent's concerns about this were misplaced. On the evidence produced, we accept the Applicant's evidence that her new condensing boiler and flue were professionally installed in about 2018, with the new flue (terminating with a modest outlet in the western elevation, beside the passageway) in the same location as the previous flue from the 1990s. It faces the private passageway, not a public space.

Just and convenient

68. In each case, the ground(s) for appointment are not made out unless we are satisfied that it is just and convenient to make a management order in all the circumstances.

69. The Respondent lives mainly in the US and manages remotely, with assistance from her daughter. The Respondent's daughter had not put in her own response to the application for appointment of a manager, but we assume she opposes this. As noted above, she lives in The Tallow Factory and other members of the family stay there. She rents out Brannam 1.

70. The parties agreed that the Applicant and her partner, Mr Brown, are the only owner-occupier residential leaseholders of Brannam Court, living at Brannam 2. This was their first home purchase. They had been cautious and had taken many points on service charge liability in the previous proceedings and these proceedings. However, the matters identified above gave them reasonable cause for concern and, at least since the 2019 Decision, despite the failure by the Respondent to produce adequate demands or accounts and the deterioration in relations at least from 2020, they had paid substantial sums to the Respondent on account. We expect the Applicant is right to say that, particularly now the Respondent's daughter is the only other leaseholder of a residential flat, there is no prospect of seeking the no-fault right to manage or enfranchising. The Applicant confirmed that she and Mr Brown had set aside substantial funds for the anticipated repair works when they purchased their lease and would be ready to meet their share of major works costs.

71. The other leaseholders did not attend the hearing. The bundle includes an e-mail of 28 February 2022 from Jayesh Kotecha (the leaseholder of the larger commercial unit) confirming they would welcome the appointment of an independent manager to: "*look after the affairs of Brannam Court in place of Nicky Hart*", saying: "*…Despite numerous reminders we have yet to receive a simple Statement of Account since 2017; nor any proper Invoices that relate to deductions and charges to our account. Her amateur style of accounting can best be described as 'cavalier' and follows her own set of whims*." It also includes a copy e-mail of 21 June 2022 from Linda Barrett of The Salon saying: "*I fully support the appointment of a new manager to oversee the work*." Another e-mail on 21 June 2022, from Elizabeth Costa of Brannam Cottage, said there had been no active management of the courtyard and there needed to be a "*go-to management company to oversee the problems in area* [sic]."

72. Mr Greenwood confirmed that the remaining items 5-10 in his list of essential structural works had a similar level of priority and should if possible be carried out together. They included strapping the west flank and propping the ground floor in the pharmacy. He confirmed he would be willing to work with a tribunal-appointed manager, providing documents, liaising with contractors and advising as necessary, if they wish. He is planning to retire, but would be willing to help get these works done. The earlier works had been rather investigatory, but he felt the remaining works were now largely specified and again should be carried out by Rose builders. The Respondent believed the basic cost of

these works excluding professional fees would be something in the region of £25,000; looking only at the historic estimates, we expect the costs may be higher than that. Mr Greenwood estimated his fees for such work would probably be less than £5,000 in addition. These are of course not actual estimates, only potential figures mentioned during the hearing.

73. However, as Mr Greenwood explained, he can only advise on structural engineering matters and would wish to retire when items 5-10 have been carried out. Further repair works (which might include the guttering, downpipes, the timber upright on the western corner and any refurbishment of the western and other elevations and any work to the structural beam in the Applicant's flat) would need to be arranged with a suitable architect and surveyor, with a structural engineer giving any input as needed.

74. Helpfully, the Respondent confirmed at the hearing that she would now not oppose appointment of a manager, subject to the identity of the proposed manager and the issue of whether a manager should be appointed in respect of the entire Property (i.e. including the parking spaces, courtyard and passageway) or only the Brannam Court building. The Respondent objects to management of anything more than the building; she feels she has managed the estate well and wished to keep control of the parking area, since her family have the use of the parking spaces there.

Conclusions

75. In the circumstances, we are satisfied that (subject to the suitability of the proposed manager and the terms of the proposed order) it may be just and convenient to appoint a manager over the entire Property for about three years to plan and carry out pressing structural and other repair work, preparing to hand back the Property to the Respondent after such work has been completed.

76. The Respondent appears accustomed to intellectual debate, but understandably seems to find it difficult to be objective. Her allegations in the documents that the Applicant had been "dishonest" were baseless; she conceded at the hearing that such comments were unhelpful and said she had "no grudge". She told us her management had been better than three firms of surveyors, but with the possible exception of Whybrow we doubt that; property management can be difficult, particularly without specialism, templates and the like to assist with compliance. Her confidence was often misplaced; she knows the Property well, but not as a construction professional, lawyer or property manager. Some of her knowledge and views will be well-founded or based on good professional advice but many are mistaken. The Respondent had been aggrieved that she had not been given

enough credit for arranging the most urgent works, but the Applicant had recognised that.

77. The fundamental problems are that the Respondent has owned the Property since the early 1990s, has had the warnings in the 2007 report for 15 years and has been troubled by the crack in the western elevation for at least eight years, but has taken too long to do too little. She achieved some of the urgent structural work and then moved on to refurbish the front of the building, spending time on overcomplicated proposals and correspondence. The remaining urgent structural work is still outstanding, let alone general repair work which is all outstanding. Even apart from the structural concerns, leaving some repair work is likely to be a false economy because more damage may be caused over time by water ingress or other problems. The Respondent is right to say that all possible repair work is likely to cost more than anyone currently realises or can easily afford. There may be difficult decisions to make about what to prioritise depending on what funding is available in the short term. Nonetheless, it is imperative to plan and arrange the remaining urgent structural work and any urgent repair work which can sensibly carried out as part of the same project without further delay.

78. The Respondent has over the years paid for some substantial costs before leaseholders have advanced funds. However, on the evidence produced to us about the demands/certificates and correspondence from the Respondent, the leaseholders had probably paid as much as was reasonable to expect them to pay. Given the problems over the years, it is not realistic to expect that the independent leaseholders will have the requisite confidence to advance substantial sums to the Respondent or that the Respondent will be able to step back and let the professionals get on with such work independently. The leaseholder of the larger commercial unit may have been influenced by the proposal to charge them a greater proportion of service charges, but their description of the Respondent's management (quoted above) does not seem unfair.

79. The Respondent's failure to acknowledge receipt of substantial payments or give adequate statements of account, insisting that leaseholders were in arrears without giving particulars, and the Respondent's website about Brannam Court, are all particular negative factors. Her accounting was so unclear that it has taken a surprising amount of time to determine what service charges are payable despite the relative simplicity of the costs involved. Further, as Miss Gourlay submitted, if the Respondent is right that leaseholders could seek to delay payment of interim service charges by arguing the leases did not adequately provide for these, we could include appropriate provision in a management order to give powers to a manager to collect reasonable payments on account of anticipated costs to ensure urgent works are not delayed.

80. We understand why the Respondent would prefer to keep control of the areas outside the Brannam Court building. Miss Gourlay had already referred to Cawsand Fort Management Co v Stafford [2007] EWCA Civ 1187, which confirmed a management order can extend to other land if there is a sufficient link between the functions to be carried out by the manager and the premises in which the Applicant's flat is contained. Generally, a management order would need to be proportionate to the tasks leaseholders are entitled to look to their landlord to perform, focussing here on resolving the immediate practical problems with the Property.

81. If we make a management order, it needs to provide for a coherent scheme of management for substantial proposed works to be carried out as soon as possible. The correspondence shows that the Respondent has firm but changing ideas about how the courtyard should be managed even for day to day matters. When works are carried out, and particularly if/when scaffolding is needed for the western elevation, access and parking will be difficult. The relevant arrangements should be arranged professionally, consulting those who will be affected. There is an unacceptable risk that, if a manager has to seek licence from the Respondent for such matters, the works will be delayed or frustrated. The owners of Brannam Cottage support independent professional management of the courtyard, as noted above. Apart from management of the works themselves, general management of the courtyard should be minimal. The Respondent confirmed that the pump situated in the courtyard and referred to in the documents serves all properties and is now the responsibility of Thames Water, so is not an additional concern for management purposes.

Proposed manager and management plan

82. The Respondent did not make any comments on the terms of the Applicant's draft management order. Her only objections were about the area over which a manager would be appointed (addressed above) and the identity of the proposed manager. The Respondent said she would not support appointment of the current proposed manager, Lucy Pembroke, because she was too inexperienced.

83. Ms Pembroke is based locally and appeared conscientious. She is independent, having been recommended because Dunwell managed another property in Dedham. Dunwell is a small firm, managing 17 properties with between three and 75 units. Mr Clubb was the senior director, but has died. She and a consultant (who works as a builder) are the sole directors. She works full time for Dunwell and she is assisted by one part-time member of staff. She has not been appointed by a tribunal before. The firm has dealt with two "difficult" properties, with a missing fire system and a leaking roof. She did not have property management qualifications, but had trained for ARMA in the

past. She produced evidence of PI cover but it is not clear whether this would cover appointment in her own name and it is limited to £0.5m. When we asked, she proposed that any appointment be for at least two and preferably three years.

84. It seems to us that it could be appropriate to appoint Ms Pembroke; a suitable manager at a small firm may have the flexibility needed for a property of this type when some large volume firms might not. But a less experienced manager would need to produce a particularly thorough management plan. Alternatively, the Applicant may wish to propose a more senior manager. That would make it more likely that a further (short, remote) hearing would be required so that the tribunal can ask questions of a new proposed manager, although the tribunal may direct such hearing in any event if it wishes to ask questions about any further management plan which is provided.

85. In any event, a proper management plan would need to be provided to show what the manager proposed to do and how they intended to achieve it if they were appointed. Generally, this would need to be a self-sufficient plan, not something which depends on working out what to do depending on what is handed over by the Respondent or applying to the tribunal for further directions save in exceptional circumstances. We recognise that given the disputes between the parties about apportionments and other practical matters it would have been difficult to finalise a management plan before we have given this decision determining such matters. Accordingly, as discussed at the hearing, we will allow a further opportunity for a full management plan and documents from the parties (as set out at the start of this decision) before we make our final decision on whether to appoint a manager and, if so, on what terms.

86. We cannot advise and these comments do not fetter our discretion, but as discussed at the hearing it seems to us that a management plan may need to deal with the following matters in particular:

    a) a specification (at least in summary terms) of the proposed works to this Grade II* listed building in a sensitive location. It appears these could include items 5-10 from Mr Greenwood (the proposed manager may wish to liaise with him in advance to seek to obtain any necessary documents, whether or not they propose to engage him or a different structural engineer) and any other urgent repair items which can sensibly carried out at the same time or otherwise, which might (for example) include the undersized gutter pipes and broken gutter brackets noted above. The plan should explain how these would be carried out (identifying any surveyor or architect who would be engaged to specify the works, organise the building contract and supervise, work with a structural engineer and ensure compliance with listed building requirements). The plan could explain how the works would be

procured (whether Rose are again proposed and whether the manager would conduct a statutory consultation exercise or apply to the tribunal to dispense with the consultation requirements), and the estimated costs inclusive of access equipment, professional fees and VAT;

b) if not dealt with under (a), details of realistic fees proposed by the manager to give sufficient remuneration for the amount of work and responsibility likely to be involved, whether by the manager directly or an architect or surveyor engaged by them (as discussed at the hearing, management for £180 plus VAT per unit and 5% plus VAT of works costs appears very low);

c) whether the manager proposes to start with a clean slate, responsible for collecting all service charges needed for the period of their appointment but not responsible for seeking to recover any historic service charges (which would be a matter for the Respondent) except potentially for buildings insurance costs for 2023, since the renewal would have been arranged by the Respondent for early January but the Respondent may not have recovered the cost from leaseholders (the proposed manager may wish to discuss such matters with the Respondent);

d) a service charge budget, including the costs of the proposed works and the manager's fees, and whether having discussed these matters with all the leaseholders they are ready and able to advance their share of the budgeted cost (adopting the proportions described in paragraph 50 above) and give internal access where required (this may be particularly important for the propping works in the pharmacy, for example);

e) basic proposals about management of the courtyard and how those who would be affected by the works and scaffolding would be consulted;

f) evidence of professional indemnity insurance cover for the manager personally as a tribunal appointed manager, with a limit of indemnity which would normally be not less than £2m;

g) if someone other than Ms Pembroke of Dunwell is being proposed as manager, full details of their experience, suitability and firm, bearing in mind the matters described in the Practice Statement provided to the parties with the first case management directions; and

h) arrangements to hand management back to the Respondent (or, preferably, professional property managers appointed by the Respondent) at the end of the period of appointment.

Costs applications

87. We are satisfied that, whether or not we ultimately decide to appoint a manager, we should make an order under section 20C of the 1985 Act. As with the other such charges sought for previous service charge years, the costs of these proceedings are not recoverable under the terms of the lease and it is better to ensure there is no dispute between the parties about this in future. Even if it were, given the findings we have made each party should bear their own costs of these proceedings. For the same reasons, we do not order the Respondent to reimburse the tribunal application and hearing fees paid by the Applicant.

88. We do not make an order under paragraph 5A of Schedule 11 to the 2002 Act because no particular administration charge has been identified as having been sought or threatened in relation to any litigation costs in relation to these proceedings. This does not preclude the Applicant from making a fresh application under paragraph 5A if the Respondent seeks to make any such charge in future.

Name: Judge David Wyatt **Date:** 23 December 2022

Schedule 1 – 2015/16

Items	**Amount certified (£)**	**Agreed/ determined (£)**
Building Expenses		
Undisputed items (insurance)	2,023	2,023
Management fee	1,500	750
Total cost reasonably incurred		2,773
29.6%		820.81
Estate Expenses		
Undisputed (gutters/drains)	340	340
20%		68
Total service charge for Building and Estate Expenses		888.81
Account		
From previous year(s)	Nil	
Payments	778	
Balance		110.81 payable

Schedule 2 – 2016/17

Items	**Amount certified (£)**	**Agreed/ determined (£)**
Building Expenses		
Undisputed items (insurance £2,076, Whybrow fees for schedule of works/tender £720)	2,796	2,796
Management fee	1,500	750
Gutters/drains	420	0
MLM survey fees	2,232	2,232
Total cost reasonably incurred		5,778
29.6%		1,710.29
Estate Expenses		
Nil		
20%		
Total service charge for Building and Estate Expenses		1,710.29
Account		
From previous year(s)	110.81 debit	
Payments	1,877	
Balance		55.90 credit

Schedule 3 – 2017/18

Items	**Amount certified (£)**	**Agreed/ determined (£)**
Building Expenses		
Undisputed items (insurance £2,215, Whybrow schedule of works/tender £900, MLM advice £576 and local authority fees of £264)	3,955	3,955
Fees for services relating to the works	1,152	1,152
Management fee	1,500	Nil (determined in previous decision)
Total cost reasonably incurred		5,107
29.6%		1,511.67
Estate Expenses		
Undisputed (gutters/drains)	800	800
20%		160
Total service charge for Building and Estate Expenses		1,671.67
Account		
From previous year(s)	55.90 credit	
Payments	8,874	
Balance		7,258.23 credit

Schedule 4 – April to December 2018

Items	**Amount certified (£)**	**Agreed/ determined (£)**
Building Expenses		
Undisputed items (insurance)	2,332	2,332
Management fee	1,500	1,500
Gutters/drains	192	192
Total cost reasonably incurred		4,024
29.6%		1,191.10
Estate Expenses		
Nil		
20%		
Total service charge for Building and Estate Expenses		1,191.10
Account		
From previous year(s)	7,258.23 credit	
Payments	Nil	
Balance		6,067.13 credit

Schedule 5 – 2019

Items	**Amount certified (£)**	**Agreed/ determined (£)**
Building Expenses		
Undisputed items (insurance)	2,343	2,343
Roof repairs	19,947	19,947
Gutters/drains	590	590
MLM roof inspection (£259) and advice to re-launch 2017 repairs (£928)	1,187	1,187
Fees	700	Nil
Admin copy/post	247	Nil
Certify	234	Nil
Total cost reasonably incurred		24,067
29.6%		7,123.83
Estate Expenses		
Undisputed (grounds maintenance)	440	440
20%		88
Total service charge for Building and Estate Expenses		7,211.83
Account		
From previous year(s)	6,067.13 credit	
Payments	Nil	
Balance		1,144.70 debit

Schedule 6 – 2020

Items	**Amount certified (£)**	**Agreed/ determined (£)**
<u>Building Expenses</u>		
Undisputed items (insurance £2,451, gutter clearing £140)	2,591	2,591
MLM fees	2,849	2,848.50
Dedham office expenses	840	100
Total cost reasonably incurred		5,539.50
29.6%		1,639.69
<u>Estate Expenses</u>		
Undisputed (grounds maintenance/gardening)	840	840
20%		168
Total service charge for Building and Estate Expenses (if duly demanded)		1,807.69
<u>Account</u>		
From previous year(s)	1,144.70 debit	
Payments	Nil	
Balance		2,952.39 debit (if duly demanded)

Schedule 7 – 2021

Items	**Amount sought (£)**	**Agreed/ determined (£)**
<u>Building Expenses</u>		
Undisputed items (insurance)	2,655	2,655
Rose*	42,070	42,016.16
MLM*	3,646	3,000
Faux-window weatherproofing*	715	Nil
Brannam 1 reimbursements*	1,920	Nil
Poultice trial*	967	Nil
Scaffold (£864) and skip (£70)*	934	934
Survey	1,080	Nil
Management expenses	215	100
Love of Restoration work to exterior outside Brannam 1	3,473	250
Total cost reasonably incurred		48,955.16
29.6%		14,490.73
<u>Estate Expenses</u>		
Undisputed (unspecified)		
20%		36
Total service charge for Building and Estate Expenses (if duly demanded)		14,526.73
<u>Account</u>		
From previous year(s)	2,952.39 debit	
Payments	14,171.96	
Balance		3,307.16 debit

* £50,253 was demanded for "*Urgent Structural Repair Items 1-4*" to include these amounts

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).