FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EQ/LIS/2022/0006**
HMCTS code (audio,video,paper)	**:**	**P:PAPERREMOTE**
Property	**:**	**Lacey Court, Lacey Green, Wilmslow, Cheshire SK9 4BH**
Applicant	**:**	**Lacey Court Limited**
Applicant's Representative	**:**	**HML Group**
The Respondents	**:**	**Various Leaseholders (See Annex)**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A**
Tribunal Members	**:**	**Judge J.M.Going** **A.Davis MRICS**
Dates of Deliberations	**:**	**11 October 2022 and 27 January 2023**
Date of decision	**:**	**3 February 2023**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face to face hearing was not held because no one requested the same, it was not necessary nor practicable, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in the Application, those supplied with it, the Applicant's bundle and its responses, all of which the Tribunal noted and considered.

The Decision made by the Tribunal is set out below.

THE DECISION

The Tribunal found that:-

(1) each garage is the responsibility of its owner.

(2) the wording of the Lease, and the Deed Poll to which it refers, is not sufficient to include the costs of repairing the garages within the service charge provisions, and therefore

(3) the costs of major works to the garages are not payable as part of the service charges.

Preliminary

1. The Applicant ("the Management Company") applied on 26 May 2022 to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to whether if it incurred costs repairing and maintaining the garages at the development ("Lacey Court") such costs could be recovered through the service charge fund.

2. The Tribunal issued Directions on 11 July 2022, stating that the matter would be dealt with on the basis of the papers provided by the parties without holding a hearing, unless any of the parties requested a hearing. None did so.

3. The Tribunal initially convened on 11 October 2022 to decide the Application but had to delay confirming the same until after it had received a copy of a Deed plan which had been omitted from the papers. After issuing various further directions the missing plan was eventually supplied on 27 January 2023, whereafter the Tribunal was able to reconvene to complete its determination.

The factual background

4. Lacey Court includes three blocks of purpose-built flats constructed in the mid-1960s in brickwork with flat roofs. Each block has three floors and there are 31 flats in total. The site also includes some landscaped areas, access roads, car parking spaces and garages.

5. A 1968 Lease plan shows 21 garages, whereas the modern Land Registry site plans appear to show 26, in three separate lines along parts of each of the northerly, southerly and westerly boundaries. Only one garage is detached, with the rest being terraced. Each is brick built with its own door and a flat roof. Each of the roofs covering the three separate terraces appear to have been constructed as a single continuous structure.

6. The Management Company owns the freehold of Lacey Court, and it is understood that each flat owner owns a 999-year term lease of their flat together with, in the majority of cases, one the garages.

7. The Application arises because of uncertainty as to whether service charge funds can be used to repair the garages, where major works have been requested. The Tribunal has not been given the detail of such works or their likely cost.

The relevant terms of the Lease

8. A sample Lease ("the Lease") was provided to the Tribunal and it is believed that all the Leases contain comparable provisions. The documentation is somewhat unusual in that the Lease itself is relatively brief but refers to the provisions in a prior Deed Poll ("the Deed Poll") dated 12 May 1966 made by the Management Company before the development was completed.

9. The Deed Poll envisaged that the individual flats could be sold off either freehold or under long-term leases. The wording employed needs therefore to be read in that context. It specifically confirmed that references to a Conveyance could, where appropriate, also include a Lease. By the same token the references to rentcharges, which most commonly relate to freehold properties, are assumed to include service charges when applied to what in the event were decided would be leasehold properties.

10. The Lease described the extent of the property leased as being "ALL THAT the flat (hereinafter called "the Flat") numbered… and being on the second floor of Block.., of the Blocks including where applicable one half part in depth of the ceilings of the flats below and one half part of the internal and whole of the external walls AND ALSO THAT the garage number.. stores area dustbin unit and the positions of which said Block and of which said Garage area and unit are more particularly shown on plans annexed hereto and thereon edged red".

11. The Lease also contained covenants by the leaseholder in Clause 4: -

    "(iii) to keep the Flat and all party walls and sewers and drains pipes cables easements and the appurtenances thereto belonging in good and

tenantable repair and condition and in particular so as to support shelter and protect the parts of the Blocks other than the Flat

(iv) not to do or omit or suffer to be done or omitted any act or thing which would amount to a breach non-observance or non-performance of the provisions contained or referred to in the Deed Poll"

12. In the opening paragraphs of the Deed Poll it was confirmed that

"(a) …there are in the course of erection on the… land three blocks of flats known as Blocks A B and C respectively with garages therefor and it is intended that there shall eventually be 31 flats with garages stores areas and dustbin units therefor

(b) The Company is contemplating disposing of the said flats garages stores areas and dustbin units and has determined to settle and place on record certain rights that shall be conferred with exceptions and reservations which shall be made in and covenants and conditions provisos agreements and declarations which shall be entered into by the parties to all documents giving effect to such dispositions whereby the length of such documents may be reduced materially without altering in any way their legal effect."

13. The Deed Poll set out various definitions to be applied "in these presents and in any documents giving effect to any disposition whether by conveyance or lease".

14. Those definitions referred to the Applicant as "the Company", the development site as "the Court" and confirmed (inter alia) that:

"1(a)(iv) "the Block" shall mean each of them A B and C aforesaid as may be appropriate and in respect of which each of the flats hereinafter referred to shall be a party and the approximate position of each of which is represented by the areas shaded brown on the said plan *(being the plan annexed to the Deed Poll)*

(v) "the Flat" shall mean any flat which is the subject of a particular disposition by the Company to any person and unless the context otherwise admits shall include any garage stores area and dustbin unit allocated for the use of the Purchaser of a flat and conveyed with the same"

15. Clauses 2 and 3 of the Deed Poll referred to the rights to be granted to each flat and the rights reserved to which each would be subject. Specific mention was made of (inter alia) rights of access through entrances passages landings and staircases rights-of-way, rights to use of the forecourt and paths and garden and the lawns, parking areas, and common service installations, rights of support and protection, and rights of access for repair, maintenance, renewal, alteration or rebuilding parts giving support or protection and the service installations.

16. Clause 4 is that which sets out the provisions whereby service charges can be levied from the flat owners. It states: –

"In every Conveyance of a Flat which is expressed to be supplemental to these presents there shall be deemed to be reserved out of the Flat in fee simple in favour of the Company a perpetual yearly rent charge of £100 which shall be payable on the 31st day of December in each year without deduction… Provided that the Company shall be deemed to have been fully paid in full and satisfied in respect of the said yearly rent charge if within one calendar month of the 31st day of December there shall have been paid to the Company such a sum as shall amount to the proportion of the costs expenses outgoings and matters mentioned in the First Schedule to this Deed and incurred in each calendar year calculated to the 31st day of December thereof which is arrived at by dividing the whole of the said costs expenses outgoings and matters equally amongst the number of flats in the Block whether or not the same shall have been disposed of to the Purchasers by the Company provided that for the purposes of this reservation an estimate of the total of the said costs expenses outgoings and matters in respect of all the Blocks made and certified by the Company shall be final and conclusive evidence of the same shall not be questioned by the Purchaser."

17. The First Schedule in its heading refers to "Annual costs expenses costs outgoings and matters in respect of which the Purchasers contribute" and goes on to list (inter alia)

"(1) The expenses of maintaining repairing redecorating or renewing

(a) the main structures in particular the roofs chimney stacks gutters and rainwater pipes of the Blocks.

(b) the gas and water pipes drains electric cables wires and installations in under or upon the Court and the Blocks enjoyed or used by the Purchasers in common with the owners and lessees of the other Flats.

(c) the main entrance passages landings and staircases of the Blocks so enjoyed and used by the Purchasers in common as aforesaid.

(d) the boundary walls and fences of the Court.

(e) the service roads…paths and forecourt forming part of the Court.

(2) The cost of cleansing and lighting the main entrances passages landings staircases and other parts of the Blocks so enjoyed or used by the Purchasers in common as aforesaid and keeping the garden and the front entrance and the front rear and side approaches of the Blocks and (as to the garden) cultivated and in good condition.

(3) The cost of decorating the exterior of the Blocks.

(4) The cost of paying and discharging…. all rates taxes and outgoings (if any) payable in respect of the front entrances and front rear and side approaches to the Blocks and in respect of the provision of services to the Blocks and for which the Purchasers are not assessed direct or separately.

(5) The Company will insure the Blocks comprehensively and the Purchasers will pay proportionate parts of any premiums payable.

(6) The costs of the collection and administration of the sums payable by the Purchaser in respect of the costs expenses outgoings and matters hereinbefore specified in this Schedule including fees payable to an estate agent for the collection thereof and all correspondence relating thereto and the rendering of all accounts for the same…"

18. Clause 5 of the Deed Poll set out the various covenants binding individual flat owners for the benefit and protection of the other flats in the Block. These included various not unusual prohibitions as to the use of the flats, and the obligations in subclauses

"(a) To keep the Flat and all…appurtenances thereto belonging in good and tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the parts of Building other than the Flat.

(b) To pay to the Company the perpetual yearly rentcharge mentioned in Clause 4 hereof…

(e) To permit the Company and its surveyors or agents with or without workmen and others at all reasonable times on notice to enter into an upon the Flat or any part thereof to view and examine the state and condition thereof and make good all defects decays and wants of repair of which notice in writing shall be given by the Company to the Purchaser and for which the Purchaser may be liable hereunto within three months after giving such notice.

(f) To permit the Company and its surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Flat or any part thereof for the purpose of repairing any part of the Block and for the purpose of making repairing maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables watercourses gutters wires party structures or other conveniences belonging to or serving or used for the buildings…

(m) Not to decorate the exterior of the Flat otherwise than in the manner agreed by the Company…

(o) Not to park any vehicles other than a private motor car or private motor cycle in the garage…

(r) Not to keep any petrol or other inflammable substance nor use or allow to be used any machinery in or about the Flat…"

19. Clause 7 of the Deed Poll sets out various covenants and obligations to be observed by the Management Company which (inter alia) include in subclause: -

"(ii) Subject to contribution and payment as hereinbefore provided to maintain repair decorate and renew (a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the

Blocks (b) the gas water pipes drains electric cables wires and installations in under and upon the Blocks and enjoyed or used by the Purchaser in common with the owners and lessees of the other Flats (c) the main entrances passages landings and staircases to the Blocks so enjoyed or used by the Purchaser in common as aforesaid (d) the boundary walls and fences of the Blocks (e) the service roads and paths (apart from any taken over and adopted by the Local Authority) paths and forecourts forming parts of the Court.

(iii) … to keep clean and reasonably lighted and free from debris or rubbish the passages landings staircases and other parts of the Blocks so enjoyed or used by the Purchasers in common as aforesaid and so far as practicable to keep forecourt garden way and other parts of the Blocks shown on the plan annexed hereto and thereon coloured brown and yellow and green in good condition and (as to the garden) cultivation.

…. (v) … to decorate the exterior of the Blocks in such manner as shall be agreed by a majority of the owners or lessees of the Flats comprised in the Blocks or failing agreement in the manner in which the same was previously decorated or as near thereto as circumstances permit…

(vi) (a) At all times.. to insure and keep the Blocks insured….

(vii) To use its best endeavours to secure the continued observations and performance by the respective Purchasers of every Flat in the Blocks of the covenants and obligations… imposed upon them…

The Parties submissions

20. In the Application the Management Company's representative("HML") stated "… the garages are in need of major works. However from reviewing the Lease and Deed Poll, the Deed Poll states the garages were to be demolished which has never happened. The Deed Poll nor the Lease specifies whether the Management Company are responsible for maintaining the garages. The Leaseholders have asked for major works to be completed on the garages and we are seeking guidance from the Tribunal if service charge funds can be used". The same comments were repeated in the Management Company's statement of case, which also confirmed that the major works related "to the roofs due to rot and water leaks".

21. The Tribunal's Directions mandated that copies of the documents be sent and copied to each of the leaseholders, who were then given time to respond and make representations.

22. None of the Respondent leaseholders made any representations direct to Tribunal.

23. HML did however copy onto the Tribunal emails it had received from one of the flat owners, Mr Cole, questioning "where exactly in the Deed Poll is the reference to the demolishment of the garages" and stating "I am surprised that in your statement no mention is made of the fact that garage owners have

been paying an additional monthly service charge, which taken with the fact the garages are ringed red on the leases, is likely to have a bearing on the decision." In response HML said "…Your point…regarding already paying service charge towards the garages is valid and I would be happy to submit this information to the judge." Mr Cole then replied "Thank you for your prompt reply. Please could you make the point re the extra service charge before the Judge commences his deliberations. Also, if the lease submitted was a generic one would you please also point out that owners have, on their leases, both the flats AND the garages defined in red outline making it clear that the same terms apply to the garage as to the flats".

The relevant legislation

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

> "(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.

…..

25. Section 18 states that: –

> "(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
>
> (a) which is payable, directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
>
> (b) the whole or part of which varies or may vary according to the relevant costs.
>
> (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
>
> (3) For this purpose –
>
> (a) "costs" includes overheads, and
>
> (b) costs are relevant costs in relation to the service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or an earlier or later period."

26. Section 19 of the 1985 Act confirms that :-

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
>
> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
>
> and the amount payable shall be limited accordingly.
>
> (2) where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable, is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise."

The Tribunal's Reasons and Conclusions

27. The Tribunal began with a general review of the papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

28. None of the parties requested an oral hearing and having reviewed the papers the Tribunal was satisfied that this matter is suitable to be determined without a hearing, and that the issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.

29. The documentation is persuasive in that it is clear and obvious evidence of its contents. It has not been challenged and the Tribunal finds no reason to doubt the detail contained.

30. The Tribunal also considered carefully whether an inspection was necessary. Having reviewed the papers the Tribunal decided that an inspection is not necessary and will have done little, if anything, to assist with its decision-making. The Tribunal was assisted by Land Registry plans as well as satellite pictures and photographs of the site publicly available online on Google's Street view.

31. The recovery of costs payable by leaseholders is governed at the outset by the express or implied terms of the lease in question. The statutory definition of what is a service charge as set out in Section 18 of the 1985 Act begins with and limits the list of the potential items by the words "which is payable". Therefore, the first task for the Tribunal is to identify whether there is sufficient authority from the Lease or otherwise for any proposed expenditure to be payable. If there is, Section 19 thereafter imposes the further limitation that any relevant expenditure must also be reasonable i.e., reasonably incurred, and for works or services which have already taken place, to be of a reasonable standard.

32. The Tribunal turned to a detailed analysis of the Lease provisions.

33. The following principles, derived from decided cases, were helpful to the Tribunal in construing those provisions: -

- as the leading textbook Woodfall confirms in 11.007 "the object… in construing any contract is to ascertain what the mutual intentions of the parties were as to the legal obligations which each assumed by the contractual words in which they sought to express them… The intention of the parties is to be discovered from the words used in the document. Where ordinary words have been used they must be taken to and used according to the ordinary meaning of those words… If their meaning is clear and unambiguous, effect must be given to them because that is what the parties are taken to have agreed by their contract. Various rules may be invoked to assist interpretation in the event that there is an ambiguity…"

- service charge clauses are not subject to any special rule of interpretation. As the Supreme Court confirmed in the leading case of *Arnold v Britton (2015) UKSC 36* when interpreting a written contract, the court has to identify the parties' intentions by reference to what a reasonable person, having all the relevant background knowledge, would understand the terms to mean. It has to focus on the meaning of the words in their documentary, factual, and commercial context and in the light of the natural meaning of the clause; and any other relevant provisions of the lease; the overall purpose of the clause and the lease; the facts and circumstances known by the parties at the time; and commercial common sense, but disregarding subjective evidence of any party's intentions.

- There is no particular principle that covenants to pay service charges should be construed "restrictively". However, the Tribunal should not bring within the general words of a service charge clause anything which does not clearly belong there

- where there is doubt about the meaning of a grant the doubt will be resolved against the Grantor. In the case of a lease, this usually means that ambiguities are resolved against the landlord. See for example the case of *Spring House (Freehold) Ltd v Mount Cook Land Ltd (2001) EWCA Civ 1833*

- further, if a tenant's liability is uncertain from the wording of the Lease, even read as a whole, the construction of the service charge clause will be against the landlord. This approach was explained by Lord Justice Laws in *Gilje v Charlegrove Securities Ltd (2001) EWCA Civ 1777* where he stated "The Landlord seeks to recover money from the tenant. On ordinary principles there must be clear terms in the contractual provisions said to entitle him to do so. The Lease, moreover, was drafted or proffered by the landlord. It falls to be construed contra proferentum".

- express clauses within a lease will nevertheless override any presumptions which apply when a lease is silent.

- a term should not be implied into a contract merely because it appears fair or merely because one considers that the parties would have agreed it if it had been suggested to them.

- in the ordinary way the demise of a building will include the demise of the roof of the building *Tennant Radiant Heat v Warrington Development Corporation [1998]1 WLUK 534*

- where the building is a terraced building, a demise of it will include so much of the roof is lies immediately above it even where the roof is structurally a common roof *H Waites Ltd v Hambledon Court Ltd [2014] EWHC 651*

34. Whilst the provisions in the Lease (and the Deed Poll to which it refers), expressed in the somewhat arcane legal language of the time, may not always be easy to follow, and can be somewhat confusing where terms habitually used in a freehold context are also said to be apply in a leasehold context, the meanings are not necessarily unclear or ambiguous.

35. The Tribunal finds no evidence to support the contention stated in the Application that there was an intention expressed in the Deed Poll for the garages to be demolished. Possibly there has been some misunderstanding of the words stating that the Company was "contemplating disposing of the said flats garages…". The Tribunal is clear that disposal in this context was a reference to intended sales of the individual flats and garages once constructed, not their demolition.

36. The question that the Tribunal is asked is in effect whether the responsibility for repairing the garages or some parts of the same falls to be shared between the various flat owners and paid for through the service charge or whether the individual garage owners are responsible for such repairs.

37. The Tribunal carefully considered all of the documentation in the context of when and how it was created and the ordinary meanings of the words used. It particularly focused on firstly, those provisions setting out what was to be paid by the leaseholders for what had been decided should be shared costs and paid for through the rentcharge (which in the leasehold context could be equated to the service charges), secondly, those provisions describing and delineating the extent of the property leased or demised to the individual leaseholders and, thirdly, the covenants and obligations imposed on each party.

38. The costs and expenses to be paid for through the service charges are set out and limited to those items listed and referred to in the First Schedule to the Deed Poll which make no reference (and certainly no explicit reference) to the costs of repairing or maintaining the structure of the garages or their roofs. The Blocks are clearly defined in the Deed Poll as being restricted to the three blocks of flats identified as A B and C and and shown shaded brown on its

plan. The brown shading does not extend to the garages which are uncoloured on the plan. The Tribunal finds that the natural meaning of the words "the Blocks" in the context of the whole of the documentation, particularly having regard to the care taken in their definition, does not extend to or include the terraced garages.

39. The Tribunal is bolstered in this view by the application of the legal principles that have been previously referred to and in particular those which confirm that if there had been ambiguity then the matter would have been construed against imposing an additional service charge liability on the leaseholders without that liability having been made clearly or explicitly.

40. The Tribunal then carefully reviewed the descriptions and definitions of what was included in the exclusive ownership of the individual leaseholders.

41. The Tribunal, when considering the description of the demised premises, including having particular regard to the red edging on the Lease plan, and applying the principle which dictates that if the Management Company as landlord had intended to exclude parts the onus was on it to have made that explicit, concluded the draughtsman of the Lease intended those leaseholders who were also sold a garage would have sole ownership of the whole of that garage subject only to such covenants and reservations as were made explicit in the documentation.

42. It is specifically noted that the draughtsman employed markedly different wording when defining and describing the extent of a flat to that used to describe a garage, and for good reason. Each flat was part of a shared multi-storey block and could only be beneficially used and accessed through common entrances and common parts. Care was understandably taken to define the horizontal and vertical divisions between the individual flats, because of the nature of the block. The form of the construction of the garages was fundamentally different. There was no necessity to specify a horizontal dividing point for a single-storey structure with nothing above. The drafting was consistent with an intention that each garage should be sold as a self-contained unit, including its own roof. The Tribunal has concluded therefore that this is how the documentation should be understood.

43. As in *H Waites,* which concerned a very similar development and comparable wording, the Tribunal has concluded that each garage includes its floor, doors, roof timbers, roof and the walls which enclose the same, except for those walls separating one garage from another which should be regarded as party structures and with ownership extending to half of the width of the same.

44. The Tribunal then turned its attention to the different repairing covenants contained or referred to in the Lease. Such covenants confirm that it is the responsibility of individual owners to repair and maintain the property demised to them, including where appropriate the garage. Clause 5(a) of the Deed Poll obliges individual leaseholders "To keep the Flat and all…appurtenances thereto belonging good and tenantable repair and condition and in particular (without prejudice to the generality of the

foregoing) so as to support shelter and protect the parts of Building other than the Flat" with the same document having previously confirmed in Clause 1(a)(v) that references to "the Flat" shall "unless the context otherwise admits….include any garage stores area and dustbin unit allocated for the use of the Purchaser of a flat and conveyed with the same". The Company's repairing obligations set out in Clause 7(ii) are specifically restricted to "the Blocks" which as has previously been referred to were defined and restricted to the three blocks of flats. Both sets of provisions are compatible and consistent with each other, and lead to the same conclusion i.e.: – that the individual garage owners are obliged to keep in good repair their own particular garage.

45. It would have been possible, and now, with hindsight, may even seem prudent, for the documentation to have specified that the responsibility for the maintenance and repair of the common roofs of the terraced garages should remain with the Management Company with the relevant costs to be paid for jointly by the relevant garage owners, but that is not what the Lease stated.

46. Both *Tennant Radiant Heat* and *H Waites* make it clear that there is no rule which dictates that the Tribunal must imply a covenant for a landlord to have to repair what may be structurally a common roof. Such an obligation will only exist if the wording of the documentation includes it, and in this case the Tribunal has found that it does not.

47. The Tribunal is clear that the obligation to repair and maintain individual garages remains with their owners.

48. It may be that as a matter of convenience and in order to save money that some or all of the individual garage owners may want to act in concert as regards some future works, and whilst that is perfectly possible, there is no obligation for them to have to do so, nor any authority under the Lease that the general service charge funds should be used to pay for such works.

49. The Tribunal also carefully considered the emails between Mr Cole and HML referring to garage owners having paid "additional service charges" in respect of the garages. No details were submitted in respect of any such past payments and the reasons for the same were not made clear. In the absence of any substantive evidence to the contrary, the Tribunal assumed that that such payments may have been seen as a convenience or it may simply have been the parties inadvertently acting outside the terms of the Lease. There was certainly insufficient evidence of any formal variation of the terms of the Lease, which of course would have consequences for all the leaseholders and any lenders, and which must follow set procedures involving all relevant parties to be effective.

50. In conclusion, having carefully considered the clauses in the relevant documents describing the extent of the demised and retained property, and those detailing the obligation to contribute to shared costs, as well as the

respective repairing obligations of both the Management Company and the individual leaseholders the Tribunal was drawn to the same conclusions i.e.

- that the whole of each garage, including its roof, comes within the demised property and is the individual responsibility of its owner, and

- the garages are not shared facilities and the Management Company is not entitled to resort to the leaseholders' service charges to pay for their maintenance and repair.

51. Having concluded that the proposed service charge is not payable under the terms of the Lease, the Tribunal had no further need to consider the reasonableness of the same.

J M Going
Tribunal Judge
3 Fbruary 2023

Annex

Leaseholders

Tenant Name	Flat No
Mr M Hopwood	1
Mrs Oza	2
Mr Stephen R Feber	3
Mr Henry Keonig	4
Mark Lee Musselwhite	5
Mr Jason Ballard	6
Mark Andrew Potts	7
David R Wallace	8
Ms Jennifer D Sutton	9
Ms Wendy Bennett	10
Mrs Torr	11
Mrs Valerie Healey	12
Mr & Mrs RG & RP Hopton	13
Mr Richard Mann	14
Ian Alexander Hillhouse & Victoria Louise Hillhouse	15
Mr Mostafa Roberto Rajabi	16
Mr Galea	17
Mr Simon Chappell	18
Miss Laura R MacDonald	19
Mrs Rita Devaney	20
Mr John Nicholas Ashton	21
Stuart Robert Cant	22
Mr Kevin John Molloy	23
Elizabeth Anne Radcliffe	24
Miss Gillian Heather Hughes	25
Mr Lawrence John Cockburn	26
Grzegorz Marcin Borowski & Annamaria Ballova	27
Mr Barraclough	28
David W Fyfe Limited	29
Mr Morton John Grant & Mrs Gulseven Coles	30
Miss Ann Louise Dooling	31