FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/23UC/LSC/2021/0073**
Property	:	Spring Lake, Station Road, South Cerney, Gloucestershire GL7 5TH
Applicant	:	Various Lessees as set out in the attached Schedule
Representative	:	Elodie Gibbons, instructed by direct access and Alastair Rudd
Respondent	:	PUF GLF Nominee A Limited and PUF GLF Nominee B Limited
Representative	:	James Fieldsend instructed by Osborne Clarke LLP
Type of Application	:	Determination of service charges – Section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge D Whitney Mr M J F Donaldson FRICS Mrs A Clist MRICS
Date of hearing	:	27, 28 February 2,3, 8,9 March 2023
Date of determination	:	14th July 2023

DECISION

Background

1. The Applicant seeks determination of service charges in the years 2014-2021.

2. Various sets of directions were given culminating in a hearing which was listed for 7 days at Havant Justice Centre.

3. The Applicants all own what are termed lodges around Spring Lake. Spring Lakes has 80 lodges and certain commercial interests. The lodges are all leased as second homes. This is one of a number of lakes (Spring, Isis, Windrush and The Landings) the freehold of which is owned by the freeholder Respondents and forms part of what is known as the Watermark Estate. The Respondents do not own all the freehold of the whole of the Watermark Estate. However Mainstay Group also manage the two other lakes being Summer Lake and Peninsula which together with the 4 lakes owned by the Respondent make up the totality of the Watermark Estate.

4. Each lake has a number of residential lodges together with certain commercial parts. For the relevant period the managing agent was Mainstay Group which is now a part of Firstport plc. A more complete description can be found at Vol 1[40] of the electronic bundles.

5. The Applicants were represented by Mr Rudd, the husband of one of the lodge owners. He is heavily involved in a residents' association (not recognised) on the Water Parks as a whole.

6. The Respondents' solicitors prepared electronic bundles and also supplied a paper version for the hearing. The bundles were labelled Volumes 1 to 13, a Supplemental Bundle and 7 Scott Schedules for each of the years in dispute. The Tribunal was also supplied with an opening statement on behalf of the Applicant and a skeleton argument on behalf of the Respondent. The bundle references are provided, giving the Volume and then the page number as VolX[ ].

7. The hearing also dealt with an application for dispensation made by the Respondent to this claim under reference CHI/23UC/LDC/2022/0054. A sperate decision has been issued for that application.

Hearing

8. The hearing was recorded.

9. The Applicants had prior to the hearing been represented by Mr Rudd. For the hearing Miss Elodie Gibbons of Counsel was instructed on a direct access basis. Mr Fieldsend of Counsel appeared for the Respondent, instructed by Osborne Clarke LLP. Mr Fieldsend had appeared for the Respondent at each of the case management hearings which had taken place.

10. The hearing took place over 6 days during the fortnight commencing upon 27th February 2023. In fact 7 days had been allowed for the hearing but the final day was not required.

11. Although the hearing was listed in person it was agreed that certain witnesses would appear remotely.

12. At the start of the hearing Mr Fieldsend explained the position relating to various witnesses:

- Jonathan Hamill Vol 8[76-79] would not be attending to give evidence;
- Max Leslie: Vol 8[63-70] some doubt whether he could attend in person or via CVP
- Mr Matthew Johnston Vol 10[2-26], civil engineer re lake banks would not be attending to give oral evidence but his report was relied upon

13. The Applicants confirmed that only Mr Rudd would give oral evidence of fact. The other statements provided would be relied upon but it was not intended that those witnesses (being other leaseholders) would attend and given oral evidence.

14. The Tribunal noted that the parties had agreed in advance of the hearing a number of issues with various concessions having been made by the Respondents thereby reducing the service charges and narrowing the issues for determination. The Tribunal proceeded on the basis of the parties being bound by such concessions and agreements reached.

15. The agreed list of issues was:

- Intra and inter lake apportionments;
- Security services
- Grounds maintenance
- Major works to install gabions to the lake bank
- Cost of refuse collection
- Sinking fund
- Certain specific invoices
- Management costs

16. The Tribunal records below the timeline of events at the hearing and certain matters. It is not a transcript but a precis of the matters

which this Tribunal considered most relevant and important in determining the application.

17. Miss Gibbons briefly made her opening. She confirmed as part of this that the terms of the leases, referred to as the Original and New Lease Vol5[30-62 & 84-121] effectively allowed the Respondent to recover the various charges and there was no dispute over the terms of the lease as such. The issue related to whether costs were fairly apportioned and for intra lake charges across the Water Park estate as a whole whether such costs were reasonably incurred. Miss Gibbons also explained an issue existed as to the use of the lake pursuant to a lease to the Watermark Club which allowed use of the lake for certain specified motorised water sports. It was suggested that the use being made of the lake exceeded the user covenant under the Watermark Clubs lease.

18. Miss Gibbons suggested that under the terms of the Watermark Clubs lease it was they who should be responsible for the damage to the banks of the lease and not the Applicants.

19. Miss Gibbons called Mr Rudd. He confirmed the original application Vol 1[39], his first statement Vol 6[2], his statement in respect of the S20ZA dispensation application Vol 11[96] and further statement Vol12[3] were all true and accurate. Mr Rudd also produced a blown up and laminated title plan which was affixed to the wall.

20. Mr Fieldsend cross examined Mr Rudd.

21. Mr Rudd explained he had calculated the sizes of units he adopted for calculating the allocation of service charges having regard to sales particulars. He had not undertaken a measured survey or obtained costs for the same. In his view the size of the lodges should be known to the management and if not this should be a management cost to be borne by the landlord.

22. In his opinion it was a "normal approach" for service charges to be allocated by reference to size and square meterage of units.

23. Mr Rudd explained that the properties at the Landings were larger and this will lead to a greater proportionate use of the expenses.

24. This would, he believed lead to a reduction to the overarching estate costs paid by Spring Lakes. He was referred to his statement Vol 8[46 and 47]. He agreed that the table at paragraph 210 relating to site managers costs would produce a saving of about £40 per lodge. In respect of estate office costs at paragraph 214 this would equate to £4 per lodge.

25. Mr Rudd accepted the reductions when looked at individually are small but they mount up.

26. Mr Rudd was questioned as to the ratios he said should be applied. He explained that the Brasserie is a two-storey building with the Watermark club along the front, opening on to the lake with additional land to the side; consideration for which should be undertaken. He explained to calculate the areas he relied upon he had used a product called ACME Plan online.

27. Mr Rudd explained the Watermark Club contributes nothing towards costs and he feels they should.

28. Mr Fieldsend moved on to the question of security.

29. Mr Rudd explained there were 3 tag points on the Spring Lakes site where the security had to "check in" and he pointed these out on the plan.

30. Mr Rudd explained that the Spring Lakes residents did not respond to the informal consultation (see Vol 9[643]) undertaken as the Spring Lakes residents had already supplied a report on the provision of security. It was his position that no security was required at Spring Lakes. He understood that all the Applicant lodge owners agreed this was the correct approach.

31. He was questioned as to other nearby lakes and their security provision which he relied upon. Ultimately, he felt at best the value to Spring Lakes of the security provision in place totalled £1,800.

32. Mr Rudd explained the Head Groundsman is responsible for 7 lakes and for a period of time was also the Estate Manager.

33. He was referred to Volume 4 [12] and a schedule of site areas. Mr Rudd reiterated he used the ACME plan online tool to calculate the areas. This purely looked at the size of the site and not the areas of landscaping specifically. Mr Rudd did accept the time spent on each site may be relevant.

34. Mr Rudd accepted that certain people let their lodges on a commercial basis and do not pay business rates. All the bins are in the same area and he does not recall ever seeing them full.

35. Mr Rudd indicated he had asked for a schedule of all equipment purchased using service charge funds for the estate as a whole but had not been provided with the same.

36. Mr Rudd was taken through various of the invoices within Volume 3 the bundle of Scott Schedules.

37. Mr Rudd disputed that fencing was required around the Nutriox dosing station (Volume 3 [80]). His view was if this is a requirement of Summer Lake they should pay the costs.

38. Mr Rudd was critical of the fact that (he suggested) in the past 10 years there had been 8 managers on site and he did not believe any of them had read the leases properly. He accepted that the current managers inherited problems from the previous managing agents but if they had undertaken proper due-diligence they would have identified these issues. As a result, he believed no management fee was reasonable or payable.

39. Mr Rudd accepted on one occasion when his roses were cut down he used intemperate language.

40. He accepted leaseholders had forthright discussions with onsite managers on occasions. He accepted some communication was good but not always. He had wanted structured meetings which he did not believe they were offered and if this had happened they would have met to discuss.

41. He explained re the Watermark Club his issue was that the managing agent collected the fees from other units (not Spring Lakes) on behalf of the Watermark Club. This incurs costs which are not charged to the Watermark Club and who do not contribute towards the managing agent's costs. In his view this was unreasonable.

42. The hearing adjourned for lunch. Upon resumption it was agreed the Tribunal would adjourn until the following day as the parties were discussing the Scott Schedules and were hopeful further narrowing of the issues could take place.

43. The hearing resumed the following day.

44. At the start of the day the Tribunal watched various videos embedded as exhibits within the Applicants evidence within Volume 7 and Volume 12. Mr Rudd offered some commentary upon the same. These included:

- Vol 7[483] Day video of security patrol
- Vol 7[484] Night video of security patrol
- Vol 7[787]Before and after videos of gabion installations and showing lake use
- Vol 12[16] Digger working on edge of lake
- Vol 12[19] Securitas driver conducting inspection and "tapping in"

45. The Tribunal observed the lake being used for water skiing, wake boarding and wake surfing, all of which created waves which were seen to crest the banks of the lake. We were asked to note the difference between wake boarding and wake surfing. The later being said to create more significant wash, damaging the lake banks. We saw the security guard undertaking his inspection.

46. Mr Fieldsend then continued his cross examination of Mr Rudd.

47. Mr Rudd agreed the security guards inspected 3 times during the night and 3 times during the day.

48. Mr Rudd stated he believed certain of the videos were sent to Mainstay Group, the managing agent but he could not be certain as to which.

49. In respect of the size attributed to the Lakeside Brasserie Bar and Gym (Volume 6[22]) by himself, Mr Rudd could not recall if this measurement included the decking.

50. Mr Rudd believed in respect of water usage the Brasserie was the biggest user and therefore he challenges whether the allocation currently adopted is fair and reasonable.

51. On questioning by the Tribunal Mr Rudd confirmed the sizes in his table for non-contributing parties was calculated using ACME plan referred to previously. He confirmed he has not verified the sizes by comparison with the lodges.

52. Mr Rudd explained the figures for the lodges were historic figures from when owners had acquired them. He understood 4 different builders had been involved in the construction of the lodges and certain lodges were slightly larger. The sizes he adopted were from sales particulars and EPCs.

53. Mr Rudd said that during lockdown he had been at the lodge owned by his wife for the whole period. Normally however he would spend 3 to 5 weeks at the lodge spread throughout the year. He said he normally achieves a 70% occupancy with high use in the Summer and less in the Winter, as would be expected.

54. Mr Rudd confirmed the costs of the coir system for the banks had been refunded in about September 2022 when various other agreed refunds had been made.

55. Mr Rudd confirmed he was present to speak for the whole group of Applicants whom he represented. He was a Chartered Surveyor dealing generally with commercial property rather than residential property.

56. Upon re-examination Mr Rudd confirmed he had been told by Mr Moss personally that he was going through a disciplinary process due to his cancer via occupational health.

57. At this point the Tribunal adjourned for lunch on the second day. Upon resumption Mr Fieldsend called Ms Neelam Samra.

58. Ms Samra confirmed her statements (Volume 8[2-53], [54-62] and Volume 11[277-290] were true and accurate to the best of her belief.

59. Mr Fieldsend asked with the agreement of Miss Gibbons a number of supplementary questions.

60. Ms Samra stated Mr Moss had not been subject to disciplinary proceedings. Mr Max Leslie had been the interim manager between October and December 2019. No charge was levied for the Head Groundsman whilst Mr Leslie had fulfilled this role. It was a trial period to see if he could fulfil this role.

61. Ms Samra confirmed that Mainstay Group collected the fees due under the leases to the Watermark Club (see Volume 8[6]). She agreed that only 3 lodges on Spring Lakes pay this charge.

62. Miss Gibbons then cross examined Ms Samra.

63. Ms Samra confirmed she was not a chartered surveyor. Mainstay Group took over the management of the Property in 2014. She confirmed it was correct there was no written contract entered into when they took over.

64. Ms Samra confirmed that the RICS Service Charge Residential Management Code recommends a written contract should be in place.

65. Ms Samra said that she had been looking to determine the agreement for security services with Securitas when it was discovered an earlier estate manager had entered into a contract. She confirmed he should not have done so and did not have authority to do so. She agreed that a consultation should have taken place.

66. Ms Samra explained she was not employed when these issues occurred. She agreed some aspects of due diligence clearly did not take place. She became directly involved in the issues in March/April 2021 and at that point started to understand the issues more fully.

67. Ms Samra agreed certain commercial leaseholders did not contribute to expenses. She accepted the apportionment was not correct. She explained that Mainstay looked to appoint a Chartered Surveyor who was instructed to consider the leases and make assessments as to how the service charges should be properly apportioned. She accepted that this had not been undertaken properly in the past. She accepted that this exercise should have been undertaken when Mainstay were appointed in place of Savills.

68. As a result, the Respondents had suggested a new matrix for the apportionments. An example was that the Brasserie should

contribute an increased amount equivalent to 5 units and each lodge contributing one unit.

69. She confirmed she had not considered apportionment by Rateable Value. She relied on the advice from the surveyors. She pointed out the challenge was that whilst the Brasserie was larger, and when in use has greater demand, it does shut down for part of the year. The Brasserie is open March to October i.e. 8 months.

70. Ms Samra accepted in the future she might look at the installation of water meters to accurately bill the same

71. Ms Samra agreed that historically Summer Lake had not been charged for costs relating to sewage and they should have been. Her understanding is that the costs which should be charged to Summer Lake are repairs and maintenance. In her opinion Summer Lake cannot be charged for the cost of electricity.

72. Ms Samra explained re paragraph 15 of Volume 8[56] that changes were made to reflect the practice on the ground. She explained that Mainstay have received compliments as to the grounds maintenance.

73. She said that they had assessed that a full-time individual is required for Spring Lakes to undertake the grounds maintenance. In her view this is reasonable.

74. Turning to the Estate Manager in 2019/2020 the position was messy. Jonathan Ritchie was manager until September 2019. Then Max Leslie stepped up for October to December 2019. Max Leslie realised the job was not for him and Tom Tracy was appointed.

75. Ms Samra explained that the security officers are based on Windrush and Isis Lakes. The service has changed over time. Part of the purpose is to provide a visual deterrent. Also, to provide call outs and a responsive service. She believed it takes about 3 or 4 minutes to reach Spring Lakes. This is the same time it would take to reach some parts of Isis Lake.

76. Ms Samra explained she understood that the gate to Spring Lake had been removed some years ago.

77. Isis/Windrush is significantly larger having 182 lodges. Windrush on its own is 82 lodges. Windrush and Isis combined have 5 cctv cameras and there are 2 cameras on Spring Lake on a post.

78. Ms Samra explained that there have been more call outs to Spring Lake than elsewhere often due to people swimming in the lake which is not allowed. Lodge owners are not allowed to swim in the lake.

79. Ms Samra explained she had not been aware wake surfing was taking place at the lake. She explained that she was concerned and would

be looking at taking action. She confirmed they had given no consent for wake surfing and had asked the club to cease this activity.

80. Turning to refuse disposal and Volume 8[31] paragraph 142, Ms Samra stated there has been only one instance of a stop on the account imposed by the contractor.

81. Originally all waste collection was commercial. This only changed when some lodges became registered for domestic Council Tax. The managing agent has to ensure all waste is collected and dealt with in a proper manner.

82. Mr Fieldsend re-examined on various points and then the hearing adjourned.

83. The hearing resumed on the morning of 2nd March 2023. The parties requested an adjournment as progress was being made on narrowing the issues to be determined. It was agreed that Mr Rudd and Ms Samra would be recalled upon resumption to give evidence on the remaining items in dispute within the Scott Schedules.

84. Mr Rudd was recalled.

85. Mr Rudd explained that all the car parks along the roads were made up of shingle. He stated this becomes compacted over time but in his opinion it could be raked and did not require fresh shingle to be added. Further he also challenged the amount of shingle purchased which he believed was excessive. The purchase of further shingle was unnecessary in his opinion.

86. Questioned about Volume 4[214], all the invoices from R & R Tools & Fixings Ltd were used to fence off the "sump pump" area and have now been removed. The area is used to provide parking for the Watermark Club.

87. Volume 4[303]: Mr Rudd stated there are 3 screens each showing 4 images for CCTV monitoring. These screens are used to cover 15 feeds and given Spring Lakes only has 2 in his opinion they should only contribute 2/15th.

88. He did not believe that a contractor should have been called out for supposed issues with cameras. In his opinion this is due to the BT lines dropping out and coming back without need for any interference. In his view a call out was unnecessary.

89. Volume 4 [325]: Mr Rudd challenges the Pam Puig Gardening invoices. In his opinion they were employed to undertake electrical work and the invoices are very short on details. He believes that NIEIC Certificate should have been provided. This lack of certification makes it difficult to determine what works have been undertaken.

90. Volume 4 [366]: In respect of the Drain Master invoice, Mr Rudd does not believe this is relates to anything within Spring Lakes. He states he is only aware of one culvert which is a drainage ditch only.

91. Volume 3[80] Item 20: Mr Rudd does not believe there is any justification for the fencing around the dosing station. He does not believe the residents were consulted or requested the same and it is not required.

92. Volume 4[314]: Mr Rudd suggests that all the Grounds Maintenance invoices are within the competence of the ground staff. He also has concerns over the quality of the work. He believes that Landcraft Management Ltd are no longer allowed to undertake works on other lakes within the Watermark Estate. Mr Rudd understood that Val Moss (one of the employed groundsmen) had a plant operators licence and so could undertake these tasks.

93. Mr Fieldsend then cross examined Mr Rudd again.

94. Mr Rudd accepted in respect of Volume 6 [77] that he was not aware whether or not it was mandatory under ICAEW Tech release 03/11 for an audit to take place.

95. In respect of the works undertaken by Pam Puig Gardening Mr Rudd accepted he was not sufficiently familiar with NIEAC to be certain whether the works undertaken were covered by the same. He relied on the opinion given to him by anther lodge owner. He accepted if not required then his point does fall away.

96. Mr Fieldsend then recalled Ms Samra.

97. Ms Samara was referred to Scott Schedule v2 2019-2020 [56]. This was an invoice from Drain Master (Wiltshire) Ltd. She confirmed that "PZWSP" was an internal reference to Spring Lakes.

98. Ms Samra explained the chain fencing at the entrance to the treatment plant was less to protect and more to keep people away including children. She understood it could provide a chemical and electrical risk and as a result it was felt best to fence the same off. She accepted it had now been removed as following a risk assessment she was told it could be a trip hazard.

99. Ms Samra explained that in assessing whether an external contractor was required for any grounds maintenance it was necessary to ensure it would not detract from day-to-day activities such as grass cutting. Also, it was necessary to consider any health and safety aspects such as use of machinery and working at height often means not less than 2 people are required.

100. Ms Samra explained that the play area which was replaced was mainly timber with bark. It was necessary to replace the timber frame and bark and this took 3 days for 2 men.

101. Miss Gibbons cross examined Ms Samra.

102. Ms Samra was referred to v2 2018-2019 [18]. She explained this was a large project involving the removal of willow trees. She was not sure why it was undertaken at that time.

103. Ms Samra confirmed she had looked at all orders and checked all the corresponding invoices.

104. Ms Samra explained that Mainstay Facilities Management ("MFM") charge 11% fee for dealing with staffing costs and the like (see Volume 8 [48]). MFM provide a back-office team and charge for the same. In her opinion this cost is similar to the cost if these services were outsourced and that such costs are not typically included within a managing agents standard management fee.

105. Ms Samra accepted Watersedge, when managed by Mainstay, benefitted from the on-site office. Watersedge did not have a grounds team of its own. Watersedge paid a nominal amount towards the time of Jonathan Ritchie.

106. Ms Samra agreed there had been episodes when the delivery of the service was not the best. There have been errors along the way. She has tried to be transparent. Ms Samra did believe there had been good work as well.

107. Ms Samra was further questioned by the Tribunal. She explained that the measurements they relied upon were recent, initially undertaken by an in house surveyor, Mr Boulter, and then Clem Dobson Surveyors. It is understood Mr Rudd had met the surveyors on site and she then amended further the apportionment matrix.

108. She confirmed that the capital asset register was not up to date but Max Leslie and the now manager were in the process of doing so.

109. It was confirmed by Mr Fieldsend that the parties agree the ratio between lodges and the Brasserie is 1:5. The issue is over the question of additional land and what if any allowance should be made for the same.

110. Mr Fieldsend then called Mr Max Leslie who appeared remotely by video.

111. Mr Leslie confirmed the contents of his statement were true (Volume 8 [63-70]) and he had re-read his statement recently.

112. He confirmed he was the Estate Manager between October and December 2019. He worked 37.5 hours as Head Groundsman. He allocated one day a week to working on Spring Lake.

113. He stated on some weeks this would be an entire day and on other weeks made up of multiple visits to Spring Lakes.

114. Mr Leslie explained he had been involved in the project to re-shingle the car parking areas. Every bay was re-shingled as was the vehicular access to lodges 77, 78 and 79. There were approximately 100 parking bays. He felt about 1 ton of shingle was needed per bay. The shingle was required since whilst it does compact it is also breaks down into dust and so typically only lasts 5 to 8 years before requiring a refurbishment.

115. Miss Gibbons cross examined.

116. Mr Leslie stated he currently is dealing with tidying the bin store on Spring Lakes. He stated items of rubbish are still left and dumped, mainly larger bulkier items. Some fly tipping occurring. He stated if anything is not within the bin it is left and not collected. The commercial bins are emptied once a week and the council bins once a fortnight.

117. Mr Leslie confirmed that Val Moss did have a plant operator's licence. He did not recall the willow tree removal, but was not involved with Spring Lakes at that time as he was the Groundsman on Windrush. It would however be necessary to consider the proximity to the Lake edge in undertaking such works and whether more individuals were required on site from a health and safety perspective.

118. In respect of Volume 4[314] this related to a laurel hedge which was about 12 feet tall. As a result two people would be required to undertake works to the same. Val Moss was a lone worker and hence why other contractors would be used for certain works. It may also depend upon the time of year and amount of normal day to day work being undertaken by the groundman on site.

119. Mr Leslie confirmed he was the Head Groundsman in July 2019. One test gabion was laid to the lake edge by the team of groundsmen. Previously there had been a coir roll which he thought was installed by Watercraft. He was told by Val Moss this was failing.

120. Mr Leslie confirmed that the photograph at Volume 7[676] showed root build up and sludge, the third picture in the sequence at [677] shows the cover and excavation. As originally installed, the pipework meant it could not be properly jetted. Metrorod excavated and undertook the clearance works. He explained he did not have plans of the services and the like on the lake and agreed these would have been helpful.

121. Mr Leslie stated that the estate as a whole is unique with lots of unusual features and in that way it is very different from a block of flats. He explained that he had no additional training when he stood in as Estate Manager and no one explained the leases to him. He went over the role with the previous incumbent so knew what issues and recurring jobs there were.

122. Mr Leslie confirmed that every 6 months they had to clear the culvert and balancing ditch. When a blockage was discovered beyond the fence line, which he understood was the boundary, he reported this to his line manager to deal with.

123. Mr Leslie stated he had not heard anyone say they were concerned about structural damage to the lodges from the level of the lake rising. He knew the level had risen but in the 17 years he had worked at the Lakes he had not seen a dangerous height of water.

124. He confirmed the level was high in November and it took until January to get Drainmaster on site. He understood part of the reason for the delay was due to a payment issues.

125. In answer to a question whether he was aware the lodge owners had purchased drain rods, Mr Leslie responded that the Groundsmen had their own rods. He also understood there were some other drain rods at the culvert and balancing ditch which were not the groundsmen's.

126. Mr Leslie confirmed the only thing he would call a storm gully is the drain at the front entrance to Spring Lakes. In respect of V2 2019-2020 [56] the only time he could recollect Drainmaster attending was the culvert.

127. The Tribunal had no questions for Mr Leslie. Mr Fieldsend re-examined.

128. Mr Leslie confirmed he understood that Gloucester County Council had done a full excavation of the drain under the road and repaired the damage culvert. Evidence he believed had been given to the current manager. Save for a small blockage recently it had flowed satisfactorily.

129. Upon completion of Mr Leslie's evidence the Tribunal adjourned for the day.

130. Day 4 commenced with Mr Fieldsend calling Martin Nicoll who was a previous Senior Property Manager for the Watermark Estate and was now an Associate Director of Mainstay. He confirmed his statement (Volume 8[71-75]) was true and accurate.

131. Mr Nicoll was cross examined by Miss Gibbons.

132. He explained he would not have been responsible for preparing agreements when Mainstay took over the site. The Chief Operating Officer and Chief Executive Officer would have negotiated any operating agreement with the client.

133. Mr Nicoll accepted he personally did not read the leases but continued charging in the way the previous agent had done so. His role was to enact the services on site and to ensure that on the ground things were functioning properly.

134. Mr Nicoll explained he struggled to remember all conversations from when he was the manager. He recalled that he knew the banks of the lake were something he had to keep an eye on. The estate manager was on site 5 days a week with an overview from him every 2 weeks.

135. Mr Nicoll stated he was not an expert in Lake Management. His background was in building management.

136. Mr Nicoll was questioned by the Tribunal.

137. The agreement with the Landlord for this site was part of an agreement for a larger portfolio held by the Respondents. He confirmed that the agreement was they inherited the fee charged by the previous agent with an uplift to allow for inflation. He would then meet with the client quarterly to review each property.

138. He recalled walking around the estate with the then manager. He had a couple of meetings with the outgoing manager, Savills. He recalled this was an intense period as there was a lot of resentment and resistance to Savills losing the management. In retrospect Mr Nicoll accepted it might have been more prudent to look at the leases and to review the methods previously adopted by Savills.

139. Upon conclusion of his evidence the Tribunal adjourned for the day.

140. The Tribunal continued on 8th March 2023.

141. Counsel for the parties confirmed it was agreed that the size of the Brasserie compared to the Lodge resulted in a ratio of 5:1 but this does not include the additional land which the brasserie has.

142. Miss Gibbons called Mr Atkinson, the Applicants expert in respect of security at the site. He confirmed he prepared the G4S report Volume 10[105-166]. He confirmed this report was true and he had seen the report of Mr G Dow (the Respondent's expert Volume 10[27-104]).

143. Mr Atkinson was cross examined by Mr Fieldsend.

144. He confirmed he produced the report with G4S and a Mr Marcus Griffiths. He explained he was given very little information but had conducted risk assessments before as a consultant to G4S via his company. He was asked at very short notice to undertake an assessment of the security at 4 lakes including Spring Lakes.

145. He confirmed he was working for G4S and he was the person who attended on site on 8th and 9th September 2022. He prepared the risk assessment matrix Volume10[146].

146. Mr Atkinson accepted section 5. "Security Threat Assessment" Vol 10[118] was prepared by Mr Griffiths. He stated this was added after he had submitted the draft report. The report went backwards and forwards several times he stated due to formatting issues.

147. Mr Atkinson stated he did not prepare Appendix F Vol 10 [166]. He assumed Mr Griffiths had prepared it

148. Mr Atkinson stated he was not aware the report was being prepared for use at the Tribunal. He did not prepare the table at Vol 10[112]. He accepted there were possibly other parts of the report he not prepared. He has been asked to undertake a threat and risk assessment of the site. He understood he was here before the Tribunal to discuss his risk assessment. He had not previously ever prepared an expert witness report and had never given evidence as an expert witness before.

149. He explained his experience was in investigating serious crime and protecting large venues, individuals, Government meetings and people and premises under threat. He had been involved in providing security for sites of political party conferences. In risk assessing such events it was a question of proportionality. The threat assessment is compared to risk but does not look at cost. He did not accept that the site was attractive to petty criminals.

150. Mr Atkinson did accept you could have too much security. Too much is expensive and ineffective. He would consider technical security for the site such as intruder activated CCTV. These would use geo fencing.

151. Mr Atkinson was asked various questions by the Tribunal and was re-examined by Miss Gibbons.

152. Mr Fieldsend then called Mr Dow.

153. He confirmed his report, Vol 10[27-58] was true and he personally wrote the same.

154. Miss Gibbons cross examined.

155. He confirmed Spring Lakes is open access, Isis/Windrush had a gate and Summer/Landings had controlled access.

156. Mr Dow confirmed as described by Mr Atkinson there were 3 screens in the gatehouse guard room. He was not aware of exactly what the cameras were covering.

157. Mr Dow suggested that it was a requirement of SIA accreditation, which guards must hold, that they attend a three day training programme. He accepted that the guards were not lifeguards. There were buoyancy aids around the various lakes.

158. Mr Dow suggested the role of the security was to mitigate risks. As part of the risk assessment you are looking at what might happen. Mr Dow stated that Mr Atkinson also placed safety as high risk at the site.

159. He accepted there was no evidence of a large fire. In his experience he does not know anyone who has had a fire but by analogy one insures for fire to mitigate for risk. G4S agree it is a risk. The lodges are wooden homes in a terrace.

160. Mr Dow explained the guard he met on site was a temp. As far as he could tell they were accepting parcels and held keys. Whilst he accepted part of this may not be security, it is in his opinion a benefit for the site as a whole.

161. In his opinion the patrols act as a deterrent and reassurance to occupants of the lodges. The guards have the ability to be on site quickly. He accepts ideally the patrols should be at random times.

162. He did not agree the CCTV cameras at Spring Lakes are positioned so that they are too high to be effective. They are ok but do not provide full facial recognition. He agrees the CCTV system needed attention. He does however feel what is present acts as a deterrent.

163. In his view geo fencing would be hugely expensive and would provide limited benefit. Generally, he would be looking to prevent petty crime. He believes 24-hour manned security would be better and provides a benefit for the community as a whole. The majority of incidents he is aware of which require attendance by the guards are at Spring Lakes.

164. The Tribunal had no questions for Mr Dow and Mr Fieldsend re-examined on a number of points.

165. Upon conclusion of this evidence the Tribunal adjourned until 9th March 2023. Upon resumption Counsel made their closing speeches. Both Counsel initially addressed the Tribunal as to the separate application for dispensation from consultation in respect of

works to the lake banks. A separate decision has been issued in respect of the same.

166. Mr Fieldsend made his submissions.

167. Mr Fieldsend suggested that any method of apportionment may be criticised upon forensic enquiry but that does not mean the method used is wrong.

168. In respect of the Intra Lake apportionment he submitted that there is no correlation to size and benefit for these services. He accepts that calculating the square footage of the units and apportioning may be a method but it is not the only way. In his submission each and every lodge benefits equally from the intra lake services. He submitted the apportionment is reasonable.

169. He suggests on the Applicants figures Spring Lakes would save about 7% which if you apply that to the figures would equate to a saving of about £45 per year per lodge. Such a saving is modest and does not reveal an unreasonable outcome.

170. Looking at calculating the size may be contentious. In his view if the Tribunal determine that size is the method to be adopted the Tribunal must give directions as to how this method should be calculated.

171. In respect of the Inter lake apportionment in his submission it is a fair contribution. It is in his submission for the Applicants to show that the method adopted is unfair and not simply that another method may be fairer.

172. The estate is mixed use and everyone purchased on that basis. It is accepted by the Respondent that the previous method was unfair and required consideration. That has been done and the Respondents now accept there are 88 units. This approach as set out in the new matrix is fair.

173. Mr Fieldsend submitted if not accepted consideration would need to be had as to occupation rates not least since the water sports operator does not operate all year around.

174. In respect of the security he suggests we should focus on the benefit. Both experts suggest some security is required and if the manned patrol is reduced, one should invest in capital expenditure. Mr Fieldsend suggested the evidence shows that the security provides a "comfort factor". He suggests the police accepted the security provides reassurance to the residents (Volume 12[11]).

175. In his submission both experts identified risks which are factors to be taken account of. The cost of the services is less than if the

services are obtained on a lake only basis. There is clear evidence of economies of scale Volume 10[112].

176. Finally, Mr Fieldsend submitted the cost on a day rate for the security is £1.26 per day per lodge.

177. In respect of the head groundsmen the full salary was properly charged due to back filling the roles.

178. In respect of FHM the 11% charge covers the agency costs. He submits there is nothing unusual in the costs of employing staff being charged and he suggested the G4S report talking about staffing supported such charges (Volume 10[110-112]) which shows the difference between cost and what is charged to the client.

179. Mr Fieldsend suggests no evidence has been adduced that 11% is an unreasonable cost and no evidence that the standard of the service is unreasonable.

180. Turning to the invoices of works undertaken by Watermark/Landcraft as contractors, these relate to works in the Years ending 2019 and 2020. There is no challenge to the quantum of the costs simply that subsequently there had been complaints. The complaints do not relate to the works covered by the invoices in dispute.

181. Mr Filedsend suggests in respect of the installation of the gabions the operation of the boats on the lake is not a relevant.

182. In respect of the gabion works to the banks Mr Fieldsend referred to the cases of *Daejan Properties Ltd v. Griffin [2014] UKUT 0207 (LC)* and *Continental Ventures v. White [2006] 1 EGLR 85 (LT).* He suggests it is not at issue that the Respondents needed to do the works, it is that the works should have been undertaken sooner. The issue is whether the costs should be recovered. He suggests the work was not unfair and the tenants benefit from the works. The Respondent is looking at what action it will take against the commercial leaseholder and will credit any monies which are recovered. Mr Fieldsend confirmed that the Respondent is intending to take action, but there is no certainty as to the outcome.

183. Next Mr Fieldsend addressed the collection of the rubbish. The local authority undertake a fortnightly collection for those lodge owners who are deemed to be residential owners of their units. The commercial collection takes place weekly. Mr Fieldsend stated a weekly collection is required due to the high footfall and turnover of occupants at the lodges.

184. The amount collected towards the sinking fund is, Mr Fieldsend suggests, modest and so reasonable.

185. In respect of the sewage pump and recoverability of the cost of electric supply, Mr Fieldsends suggests the deeds relating to Summer Lake (Volume 5[299]) are unclear as to whether this cost can be recovered. As a result he says it is fair to recover such cost in full from the lodge owners at Spring Lakes.

186. Looking at the accounts Mr Fieldsend suggests the leases do not require an audit. ICAEW 03/11 provides guidance on the accounts and in his submission the accounts comply with the same.

187. In respect of the communal water charges Mr Fieldsend submitted that there was no challenge to the previous practice as set out in the 2015 accounts Volume 9[353]. He pointed out that the watersports facility and the brasserie are both shut for part of the year.

188. Turning to the management fee Mr Fieldsend stated that Ms Samra said "the service was not perfect but point me to a business that has not erred." He suggested that the complaints of poor service save as regards to initial due diligence undertaken were in very broad terms. He accepts there are some inescapable failings but even Mr Rudd conceded that there was no affect on delivery of services.

189. The Tribunal then adjourned for lunch.

190. Immediately the Hearing resumed, Miss Gibbons advised the Tribunal she had been told that Mr Atkinson had not seen the final version of the G4S report until yesterday. He believed he had been speaking to the report he had provided.

191. Mr Fieldsend indicated he would wish to reserve his position as to whether or not he needed to make application for Mr Atkinson to be recalled.

192. Miss Gibbons then made her submissions.

193. As to estate wide costs she suggests question to be determined is whether the apportioned costs are reasonably incurred. She suggests Mainstay gave no consideration and simply continued as Savills had before them.

194. Miss Gibbons referred to Volume 6[16] and paragraph 18 of Mr Rudd's statement. He had undertaken a rough calculation of the sizes of the lodges which showed a large differential in the sizes of the same. She suggested that there is the same principle as in a block of flats that increased size produces a greater demand on the services. In her submission simply looking at the number of lodges is too arbitrary and simplistic.

195. Further she suggested that no consideration was given to the additional land and decking surrounding the brasserie. Whilst she

accepts the use may be seasonal that is equally true of the lodges. She suggested there is no justification for the method used.

196. Turning to security she accepts she must be careful in respect of Mr Atkinson and the fact he spoke to a report he had not authored. She did suggest he made more detailed enquiries than Mr Dow having spoken to a guard on site. Spring Lake currently has 2 cameras on the same mast. She suggests the lake operator should have their own procedure in place for dealing with swimmers in the lake. She suggested there was no evidence of the things that Mr Dow saw as a risk. She accepted patrols did seem to be carried out but they were very short in length and offer limited reassurance.

197. Further Miss Gibbons suggested that the apportionment to Spring Lakes was excessive. She referred to Volume 12 [6 & 9] and suggested it was not reasonable for Windrush to pay the same as Spring Lakes.

198. As to the Head Groundsmen again in her submission the allocation is arbitrary and too high.

199. Looking at the costs paid to MFM (Volume 8[48]) in her submission this is a management fee on top of management fees already charged.

200. As to the cost of the gabions she submitted the costs have been incurred due to issues caused by the Watermark Club and the costs should be recoverable from them. In her submission it was the Watermark Clubs use of the lake, including wake surfing which goes beyond the allowed use, which has caused the bank erosion requiring the gabions to be installed. In her submission the costs should not be recovered as a service charge item. She suggests it is a matter for the Respondents as to whether or not they can recover. The landlords receive dynamic ground rents which is a significant benefit and the situation can be distinguished from *Daejan v Griffin.*

201. Refuse collection is viewed as adequate by the Applicants. The challenge is to the cost of collection and whether all should pay for the commercial collection or whether this should be simply charged to those who do not pay Council Tax. She suggested the Respondent could find this information and apply a charge accoridingly.

202. As to use of communal electric supply in her submission given the residents of Summer Lake derive a benefit it is unfair that the leaseholders pay 100% of the cost. Simply because the Respondent may not be entitled to recover a proportion does not make it fair that Spring Lakes pays 100%.

203. Miss Gibbons submitted that it was the standard of management which gives rise to the challenge. There was a failure of due diligence when Mainstay succeeded Savills and no management agreement

entered into. Failure to identify all the interests on the estate or to take proper account of matters as now accepted by the acknowledgment that a new apportionment matrix is required. Other evidence such as lack of knowledge of the security contract.

204. Miss Gibbons accepted that many concessions had been made leading to a narrowing of the issues requiring to be determined. She submitted however that the issues, including those now conceded were due to the failures of management.

205. At the conclusion of the hearing the Tribunal directed that the Respondents were to make any application in respect of Mr Atkinson and his evidence by 5pm on 15th March 2023.

Decision

206. Firstly we wish to thank both Counsel, Miss Gibbons and Mr Fieldsend, the parties and their advisers for the helpful way in which the hearing was conducted. We are under no doubt this assisted in ensuring that the hearing was completed without the need for all 8 days to be used. We also wish to record in this decision our thanks to Osborne Clarke for the bundle preparation. The electronic bundle produced was exemplary and assisted all throughout the hearing.

207. We record that various concessions and agreements were reached between the parties prior to the hearing. This led to a narrowing of the issues to be determined and our decision is on the basis that all such concessions and agreements are binding upon the parties. Within this decision we only determine those matters not agreed by the parties and upon which counsel addressed us.

208. The bundle contained a decision relating to the Landings (Volume 2[10-49]) being another lake within the Cotswold Water Park Estate. Whilst this decision made findings and determinations as to services some of which are subject to this decision, we are not bound by the same. We had the benefit of hearing oral evidence and detailed submissions and make our decision based on that evidence and the submissions.

209. We have in reaching our decision had regard to the various bundles submitted and the documents contained therein. We have carefully considered the written submissions made by Counsel and list of issues prepared. Simply because we do not refer to a specific document does not mean we have not considered the same.

210. All parties accepted the general construction of the leases. For that reason we do not rehearse the lease terms which are well known to all the parties.

211. The Respondents did not make any application in respect of Mr Atkinson and his evidence save that they ask us to take account of

the submissions Mr Fieldsend made as to the wight we should place upon his evidence.

212. We record that we place less weight upon the evidence of Mr Atkinson. Whilst put forward as an expert it seems clear Mr Atkinson had little if any understanding of his duties to this Tribunal. To be fair to Mr Atkinson in inspecting the Watermark Estate and assisting in compiling the G4S report it appears he understood it was for a risk and threat analysis rather than for presentation to a Tribunal such as this. Save where his evidence is broadly in agreement with Mr Dow's we have preferred the evidence of Mr Dow.

213. Whilst we accept that the Applicants were acting as Litigants in Person the funding for this report followed the dispensation granted in respect of the security contract for the Lakes as a whole (case reference CHI/23UC/LDC/2022/0006). The leaseholders in that application (which included the Applicants in this application) did have solicitors acting whom could, we have no doubt, have made clear that such report as G4S were to provide might be used in Tribunal proceedings over the provision of security to the estate as a whole as well as individual lakes.

214. Looking at the other witnesses we were satisfied all were honest and truthful. Mr Rudd and Ms Samra in particular were both helpful witnesses, willing to make concessions when necessary. Both impressed us in the way they presented their evidence. It is on this basis that we approach making our findings.

215. We have seen various photos and videos which give us a flavour of the estate as well as looking at pictures available on the internet including some hyperlinked within documents, notably within Mr Rudds statements. Due to the large number we do not specifically list the same. Spring Lakes is one of a number of lakes making up the Watermark Estate. Originally managed by Savills Management, it was transferred by the Respondent's to Mainstay Group. The issues before this Tribunal relate to their period of management. We record for completeness that Mainstay Group we are told, is now part of the Firstport Group.

216. The Watermark Estate is a complex and unusual estate with many challenges for those manging. The lodges which exist around the various lakes are typically used as holiday accommodation with many owners letting the same. The lodge styles and sizes are differ between the lakes. There are also numerous commercial interests and we are told many of these have connections to the original developer of the site.

217. Spring Lakes itself has 80 lodges around Spring Lake. The site also has a building known as the Lakeside Brasserie and additional land. The lake is used for mechanised water sports and there is a gas

station to re-fuel boats used on the lake. It is also worth noting that Summer Lake utilises the sewage system at Spring Lake.

218. As originally set out the application included many other issues. The issues were narrowed by the parties and Counsel helpfully prepared an agreed list of issues. Within this decision we will adopt the order within that document and address each in turn.

Apportionment

219. It was accepted by the Respondents that apportionment in the past had not been undertaken in a fair manner. Ms Samra in her evidence explained what steps were undertaken by the managing agent in the past and to look at producing what she and the Respondents considered a fair method. It was suggested by the Respondents if we were not with them on their matrix the Tribunal should give clear directions as to how the costs should be apportioned to avoid any issues arising.

220. Ms Samra explained how surveyors had been instructed to consider the relative sizes of the units and the like to create a suitable matrix although a complete measured survey was not undertaken.

221. Mr Rudd suggested that the apportionment should be on size. He had undertaken his own calculations and explained in his evidence how he arrived at the figures.

222. We find that whilst size may be a method often adopted in determining how to apportion service charges it is not, in our judgment, the "normal" or only method. The Tribunal sees many differing methods. In reaching our decision we remind ourselves that it is not for us to determine what we might do but whether or not the method the Respondent proposes is reasonable. In so doing we accept that more than one reasonable method of apportionment may be possible.

223. We look first at the intra lake apportionment which applies to costs such as the estate manager and estate office. The Respondents suggest this should be calculated simply on the basis of the number of units on Spring Lake relative to the total number of units on the Watermark Estate.

224. Mr Rudd suggests that this is not correct and any apportionment should be on the basis of size of units. He suggests units on some lakes are substantially larger than on Spring Lakes and proportionately they will receive a greater benefit. He refers to the location of the office and the manager as also being relevant.

225. It appears to be accepted by both parties that if we accept Mr Rudd's method then a detailed measurement exercise may be required.

226. Mr Rudd produced measurements using various sources for lodges primarily at Spring Lakes. He used sales particulars, EPCs and online measuring software. These were used to produce internal measurements. Mr Rudd suggests the Respondents should be able to readily undertake such a task and produce a matrix for the same at its own expense. He contends they ought to have the necessary documents available to allow it to conduct such an exercise.

227. Mainstay have tried to produce what may be said to be a simplistic formula relative to the number of units across the Watermark Estate and on Spring Lakes itself. It is for the managing agents and the Respondent to exercise their skill and judgment to reach a reasonable apportionment methodology. We can see the sense that it can be said each lodge or unit in the Watermark Estate does effectively receive an equal benefit from these services and size can be said to be irrelevant to this calculation. That is a matter of judgment and opinion.

228. We are satisfied and find that this is a reasonable approach to adopt on the evidence presented to us by the parties. We can see the logic that each and every unit benefits from these intra lake costs across the whole of the Estate. Further we take account of the use made of the lodges as second homes with a large number also let as holiday lettings. Taking account of all the evidence and our findings we record that in this instance the size of the units relative to the use of the services is less clear than it may be in a typical residential leasehold service charge case.

229. We are satisfied it is for the Respondent to adopt a method which is fair and reasonable. As we have said often more than one method will exist. We have not been persuaded by the Applicants evidence that this method is unreasonable. We find that calculating the costs by reference to the number of units on each lake relative to the total is a reasonable method of apportioning these service charges.

230. In respect of the inter lake charges again the Applicant suggests the size of the various units should be taken account of. In particular, it is suggested that the weighting given to the Lakeside Brasserie and additional land should be greater than proposed by the Respondent. Mr Rudd in his evidence expanded upon this and explained the various exercises he had undertaken to demonstrate the extent of the additional land and the use made of it by the various commercial interests.

231. The Respondent proposes that each lodge counts as one unit. The Brasserie and additional land should count as 6 units, the Gas Station as one unit and where required to contribute to costs one unit for the Fishing Lease.

232. We accept that the question of inter lake apportionment may differ from the intra lake.

233. There is force in what Mr Rudd says. It is clear the Brasserie and additional land is heavily utilised. However, Ms Samra and the Respondents have had regard to this argument in producing the increased weighting which is now proposed by the Respondents. Plainly the brasserie and other services do not operate year round and consideration needs to be given to the fairness and reasonableness of charges to these units. Any method is a balance.

234. We find the Respondent has had regard to the arguments advanced by the Applicants. We note each Applicant has external areas and decks as part of their lodges. These did not appear to be taken account of by Mr Rudd in his calculations. We can understand why but raise this as an indication as to why measuring size is perhaps not as straight forward as might be suggested, unless an identical approach is followed.

235. We were told the lodges themselves may differ in size. As set out in paragraph 227 above size of unit in this instance case may not properly reflect the benefit gained from the services provide. Each unit requires the services and receives a benefit.

236. We are satisfied that by weighting the Brasserie and additional land as 6 units, this fairly and properly reflects the increased size of the same and the benefits that it received from the supply of services. We are satisfied that adopting a relatively clear and simple method assists all parties in understanding how the apportionment is applied, there is a clear logic to this. This method does in our judgment provide certainty and enable all lodge owners to ascertain what they are paying. The Applicants did not persuade us that the approach proposed by Ms Samra is not a fair and reasonable method of apportionment. We find the Respondents proposed method will result in service charges which are payable and reasonable.

Security Services

237. We record that dispensation was previously granted to the Respondents in this application in respect of the security contract. The dispensation included a condition that the Respondents would fund the obtaining of an expert security report. The dispensation application was for the Watermark Estate including Spring Lakes.

238. It was the Applicants position that no security services are required for Spring Lakes or required by the Applicants. Mr Rudd suggests in his evidence that Spring Lakes gain no discernible benefit.

239. The security provided is manned patrols which we are told take place 3 times during the day and three times at night. The guards are then generally within the gatehouse situated on another lake a short drive

away. There is a mast close to the main entrance to Spring Lakes upon which is mounted two cctv cameras monitored from the gatehouse although it appears the monitoring may not be of all the camera across the whole Estate at the same time due to the limited number of screen space. We also heard how the guards also appear to provide a concierge service to residents although this appeared to be more for the benefit of the owners and occupiers on Windrush and Isis.

240. It appears in the past the entrance to Spring Lakes may have had a gate or barrier but this seems to have been removed by agreement.

241. We saw videos showing the patrols. Various statements were included from lodge owner Applicants indicating they had never seen a foot patrol taking place.

242. We find that typically the patrols do take place via vehicle and that the patrol will generally only leave the vehicle when they use one of the "tap in" points to prove the patrol has taken place. We do record that we are satisfied if the patrol saw anything unusual they would exit the vehicle. It is however clear that the patrol around the perimeter road which was pointed out to us on the blown up and laminated plan produced by Mr Rudd does not take very long to be undertaken. The time actually spent on Spring Lakes we are satisfied is a very modest part of a day.

243. We note both security experts accepted that in assessing security needs one should look at the potential risks, even where such risk is unlikely. Both made clear this would be the starting point for preparing a plan of what might be required on the site. We also note both experts appeared to accept some form of security would be beneficial. Each suggested technological solutions being the main method they felt should be adopted. Mr Atkinson referred to geo fencing and Mr Dow improved CCTV. Both accepted their proposed solutions would require capital expenditure. Both seemed to accept some form of manned security patrol would be recommended.

244. The Applicants suggest the negligible benefit they obtain means they should not contribute towards the costs. We have also considered whether a different apportionment should apply taking account of the method adopted relating to the number of units relative to the Estate as a whole.

245. We do not accept Mr Rudd's evidence that there is no benefit to Spring Lakes lodge owners from the security supplied. We are satisfied that both lodge owners and potential holiday makers gain some comfort from knowing that there is a CCTV presence as well as regular security patrols. The benefit may be intangible but we are satisfied it is a benefit.

246. Both experts suggest considerable upgrading of the technological security which would lead to large one-off capital costs. This has to be weighed up against what is provided. Mr Atkinson suggested that the question of proportionality is a factor to take account of.

247. We must then consider the value of the same. It is correct the guards are not permanently on Spring Lakes. However, if they were it is clear from the experts evidence the cost would be substantially higher. From the figures and evidence given, including that of the experts (see for example Volume 10[49] Mr Dow), that the cost, if security was only contracted for Spring Lakes, could be much higher.

248. We acknowledge it is for the Respondent and their managing agent to determine what level of security is required. The Respondents have endeavoured to obtain the views of owners via a survey undertaken. We are satisfied that it is reasonable for them to adopt an estate wide approach over the Estate to ensure savings are provided to all lakes as a result of the economies of scale this provides. This also provides a consistent standard for the benefit of all. We are satisfied that a consistent service such as provided will help deter petty criminals.

249. Certain limited challenges seems to be made as to whether the service provided was to a reasonable standard. This seemed linked particularly to the suggestion that the patrols took place via vehicle and not on foot. We were not persuaded by the evidence we heard that the service was provided at anything less than a reasonable standard. Certainly we accept regular checks should be undertaken but it seems patrols were taking place and we viewed videos of a number. The various statements submitted by and on behalf of the Applicants highlighting that foot patrols have not been seen are likely to be true. This does not however enable us in our judgment to determine the service level is not reasonable for the cost. We are obligated to have regard to the actual cost in assessing whether or not the same is reasonable.

250. We have looked at the overall cost. The challenge to this was limited. We saw little to suggest the cost was unreasonably high. Neither expert appeared to challenge this. We are satisfied the total cost is reasonable on the evidence presented to us.

251. Turning to the apportionment we have found there is a benefit to Spring Lakes. Miss Gibbons suggested in her submissions we should not be swayed by suggestions the daily cost is relatively small in determining whether the apportionment is correct.

252. However, we find that the apportionment by reference to the number of units does properly reflect the benefit to Spring Lakes. There are 6 patrols in each 24 hours, a guard is available to be called out and to attend Spring Lakes within a modest timeframe and there is CCTV which is monitored by a guard on duty at the gatehouse. We were

told Spring Lakes has required a number of attendances by the guard, principally to the lake. All of these are items which provide a benefit. Finally, we looked at the cost to satisfy ourselves that the cost for each unit is reasonable as a check and balance on our findings and we are satisfied that a modest daily cost for the benefit is in our judgment on all the evidence reasonable.

Grounds maintenance-staff costs

253. We looked first at the costs of the Head Groundsmen and Designated Groundsmen. We heard evidence from Mr Max Leslie who is now the Head Groundsmen. Ms Samra also addressed the points made.

254. It is suggested by the Applicant that Spring Lakes contribute too much to the cost of the Head Groundsman given the relative size of Spring Lakes to the other Lakes (see Volume 4[12]). The Landlord apportions by reference to the number of units.

255. We heard what work Mr Leslie undertakes. We are satisfied that each of the lakes is different. The estate as a whole is complex to manage and certainly the maintenance of the communal grounds is a very important function. From the videos and photographs we saw we are satisfied that they are maintained to a high standard. We are satisfied that there are many variables to the works undertaken and overseen by the Heads Groundsman.

256. We acknowledge that apportionment by site area may be a reasonable method. However, equally we are satisfied that apportionment by reference to the number of units is also a reasonable method to adopt. It is this later method which the Respondents adopt and we find that this is reasonable taking account of the oral evidence given by Mr Leslie and Ms Samra in particular.

257. A distinct issue arose as to the period of time when Mr Leslie was also acting as the Estate Manager and whether effectively the Applicants were charged for both positions when only one person was in post. Ms Samra dealt with this in her evidence to the Tribunal. She explained the accounting exercise undertaken and that the position was backfilled during this period. We are satisfied by this evidence and that no reduction should be made.

258. In respect of the period 2016/2017 when the Designated Groundsmen also undertook work on the Landings. We accept the evidence given by Ms Samra and Mr Leslie as to the arrangements in place and that there was no reduction in the service provided to Spring Lakes. We are satisfied that no reduction to the cost is reasonable for this period.

259. Finally, the Applicants challenge the charge of 11% made by MFM. The challenge is whether the standard of service is reasonable and as to the level of fee.

260. Little or no evidence was adduced to an alternative fee. It is plain that the Watermark Estate has a number of employed staff. Certain staff have specific functions relative to Spring Lakes as acknowledged by the Applicants. We are satisfied that the employment of staff generates additional costs that go above and beyond a standard management fee. We are satisfied that an additional fee can be charged in principle.

261. We have considered carefully Mr Rudds evidence (see Volume 6[82-88]). We are not satisfied he had shown that the service provided by MFM in respect of dealing with the employment of staff and the like has been undertaken to less than a reasonable standard. Certainly within his statement he raises very legitimate concerns but these appear to relate to the supply of other service and not that provided by MFM.

262. We have little evidence adduced as to consider whether the price itself is reasonable. We accept a percentage method may be reasonable and in the absence of any alternative quotes or the like we accept that this charge is reasonable and payable.

Grounds maintenance -contractors

263. The challenge made by the Applicants refers to various invoices set out within the Scott Schedules. We do not list these as the challenge to all is essentially the same: was it reasonable for external contactors to be appointed?

264. It is suggested by the Applicants the works could and should have been undertaken by the employed staff.

265. We saw a video of a digger being operated close to the edge of Spring Lakes removing willows. Mr Leslie and Ms Samra dealt with these points within their evidence given to the Tribunal. It was explained that on occasion third party contractors are required due to health and safety reasons as more than one person may be required to attend and undertake a job whereas generally Spring Lakes has one designated groundsmen only. Mr Leslie explained whilst on occasion the groundsmen at the Estate would work together to undertake tasks, it may depend upon the season and what other works they have to undertake. This can mean the time they each have available for other jobs is more limited. Also whilst groundsmen may have appropriate licences and skills it is not always appropriate to have them undertake certain tasks which have a greater risk.

266. We accept the evidence given by the Respondents and their witnesses. It appears the Applicants have certain unspecified

complaints about the contractor employed by the Respondents. We were told this contractor no longer works on other Lakes at the request of residents. This appears to relate to matters post the periods in question within this decision.

267. We find that these costs are reasonable and payable on the evidence presented to us.

Gabions

268. The question of dispensation for these works was agreed by the parties subject to determination as to the question of conditions. We have issued a separate decision in respect of that application but it should be read together with this decision to provide the full context.

269. Works were undertaken to the banks to install gabions to prevent ongoing erosion. At Vol 10 [2-26] was an expert report of Mr Matthew Johnston as to the works to the banks of Spring Lakes. Mr Johnston did not give oral evidence but we have read and had regard to the same.

270. We also record that we watched various videos showing motorboats operating on Spring Lakes. We saw water skiing, wake boarding and also what we are told is wake surfing. It is suggested by the Applicants this latter sport is different from wake boarding and causes significantly greater wash causing erosion to the banks.

271. The use of motorised boats on the lake to provide such commercial water sport activities is undertaken pursuant to a lease to the Watermark Club Volume 5 [202-246]. It is suggested that Part 2 of Schedule 1 of that lease does not allow wake surfing, only wake boarding and certain other specified uses.

272. From our perspective we see no need to make any huge distinction for the purposes of our decision as to the use made of the lake. We observed that all of the uses led to wash from the motor boat and the attendant use behind the same breaching the banks of the lake. The expert report acknowledges that this will cause erosion of the banks of Spring Lakes and it is this that has led to the need for the installation of gabions.

273. We are told the Respondent is looking to take action to recover the costs from the current leaseholder as they are liable under their lease for such damage caused. It is suggested in the first instance that the costs should be included within the service charge and any recoveries will be credited to the same.

274. We do not accept this submission on the part of the Respondent.

275. It is clear from the evidence we saw, notably the videos and the expert report that the damage is being caused by the leaseholder of the lake and their use of the same. Whilst we have no expertise in this area having viewed the videos we wonder whether the lake is sufficiently wide to allow a motor boat to conduct such activities without it causing significant damage to the banks. Whilst it may not be the Respondent who granted the lease, they now own the site and are in our judgment responsible for ensuring the leaseholder complies with the same and pays the costs incurred as in this instance. They must take this responsibility.

276. In our view the Respondent must pursue the leaseholder of the commercial lease which allows use of the lake. It appears the Respondent's accept they should pursue the Watermark Club. Until such time as they have done so we are not satisfied that any of the sums incurred should be recovered from the Applicants. We find taking account of the expert report that currently none of the costs are recoverable or reasonable. We find that the costs have been required due to the activities of the lake leaseholder and that lease allows recovery from that party, not the Applicants.

277. In so finding we do make clear that we accept the Applicants may be responsible for bank works which are not caused by the use of the lake. Natural erosion and other factors may lead to works now or in the future to which the Applicants could and should properly contribute. However these gabion installation works do not fall into that category in our judgment.

Refuse

278. As originally arranged, no Applicants benefitted from having waste collection provided by the local authority. All lodges were deemed commercial units and so a commercial waste collection was required. Over time a large number of lodges have become classed as residential units by the local authority and so pay council tax and receive what we are told is a fortnightly refuse collection from bins provided by the local authority.

279. The Applicants contend that the cost of the commercial supply organised by the Respondent should only be charged to those who are commercial rates payers. It is suggested that such information can be ascertained from the council records.

280. Ms Samra explained in her evidence how from time to time the bins are overflowing and items are not always left in the bins. The commercial collection is weekly and this assists in ensuring that there is effective refuse collection.

281. Further we heard how most units are let or used by persons who are not the owner. There is a high turnover of occupants with the suggestion this may on occasion lead to increase in refuse.

282. We are not satisfied it is reasonable to expect the managing agent or the Respondent to have to check to see who is a commercial rates payer and who a council tax payer. The site was designed and let on the basis that the lodges would be holiday homes and utilised in that way. We are satisfied that all parties including the Applicants understood that to be the position. That some now benefit from alternative arrangements with the local authority does not change the requirement for the Respondent to ensure there is effective refuse collection for all. Plainly this is a benefit to all lodges although we accept a greater benefit to those who do not have local authority collections.

283. We accept that there is a benefit to all lodge owners in having a commercial collection to ensure that refuse is properly and adequately dealt with. A sensible method has to be applied by the Respondents to reach a reasonable result. As we have identified in this decision earlier, reasonable does not always only have one outcome. In our view it is reasonable for the Respondents to supply such service which is open to all lodge owners to use and we are satisfied that the cost of providing such a service is reasonable and payable.

Sinking fund

284. We remind all, our jurisdiction is simply whether the cost is payable and reasonable. Issues as to accounting in relation to the same are not a matter for this Tribunal and we make no comment as to the same.

285. A specific issue is made over the cost of providing a fence around the Nutriox station. The Applicants say the fence serves no purpose. The Respondents say in their opinion it is required to ensure people keep away from what could cause a hazard. It is a modest cost item but one we are asked to determine.

286. We prefer the evidence of the Respondent. It is for the Respondent to determine what such works are required and we are satisfied that it is reasonable to determine that a fence should be erected around this structure. We are satisfied that the cost is reasonable and payable.

287. Turning to the amounts claimed for the reserve funds we heard evidence from Mr Rudd and also from Mr Nichols. We are satisfied that a prudent manager would build up a reserve, this is considered good practice. It may be a more forensic consideration could be given to the amounts being collected rather than simply maintaining the status quo from previous years. Certainly, it may be prudent for the manager and Respondent moving forward to look at these sums and consider what is required. The amounts being collected are for, what

is a complex site, in our judgment modest. We are satisfied that a reserve fund contribution is payable and the amounts which have been demanded are reasonable.

Communal electricity-sewage pump

288. The issue here is whether or not the Respondent can recover the full cost of the communal electric supply. The supply is for lighting to the communal areas and also for the sewage pump.

289. The Applicants accept they should pay the costs of the communal lighting. What is in dispute is whether or not the costs of the sewage pump should be paid in full. The sewage pump is also used by Summer Lake subject to two deeds of easement contained within Volume 5. The Respondent suggest that whilst certain costs can be recovered under these deeds from Summer Lake at a rate of 50% they do not allow the cost of recovery of the electric and so all costs should be paid by the lodge owners on Spring Lakes.

290. The Applicants suggest they should only pay 50% of the cost for the sewage pump.

291. The situation is complicated as there is only a single meter. However, the parties have agreed a formula for calculation of the amounts if we do not accept the Respondents argument.

292. We prefer the submission of the Applicant. Given the sewage pump is used by another lake, Summer, we are satisfied that not all of the costs should be borne by the Applicants. It was for the Respondent (or their predecessor) to ensure in drafting the deed of easement that such costs were covered and if they are not then these are costs the Respondent must bear.

293. We determine that the Applicants are only liable for 50% of the costs of the sewage meter. Such sum to be calculated in accordance with the following agreed formula:

"The Ts propose the estimation is carried out as follows: (1) meter separately the supply to each of the two matters ((1) pump and (2) communal lighting); (2) analyse the relative cost of the two supplies over a 12 month period; (3) apply the cost relativity to the historic costs to obtain an estimated cost of the supply to the pump for each of the years in issue.

- *The LL agrees with that approach, if a fair contribution is determined to be a contribution to anything less than the entire cost of the supply to the pump."*

Sewage pump

294. The issue is similar to the issue dealt with above as to whether full costs are recoverable from leaseholders of Spring Lakes.

295. We are satisfied the intention of the deed of easement was that Summer Lake would contribute 50% towards the costs of the sewage pump. We are satisfied that the Applicants are only liable to pay 50% of such costs to be then apportioned between the Applicants.

Accounts' fees

296. The Applicant looks to challenge accountancy fees suggesting there is no benefit for themselves. The Respondent suggests that there is a benefit in having accounts properly prepared as is good practice.

297. We prefer the arguments of the Respondent. We are satisfied that the costs of the preparation of year end accounts is a proper cost payable under the terms of the leases. We are not satisfied that there is a requirement for an audit, simply that an accountant in preparing the accounts should have regard to the ICAEW Guidance. We are satisfied that it is good practice for a managing agent and the Respondent to have such accounts prepared by an accountant and the fee charged is reasonable.

Communal water

298. Currently save for lodges 77-79 inclusive, the water charge is simply apportioned between all lodges save that the landlord proposes to apportion the costs 10% to the Brasserie and 90% to the lodges.

299. Whilst we can see that consideration should be given to the installation of meters to properly ascertain costs, it is clear all currently benefit from the water supply. We heard evidence that the brasserie is not open all year around although we accept whilst open its usage is likely to be a substantially larger user than the lodges.

300. The Respondents in their methodology recognise this. We accept that the methodology proposed by the Respondent is reasonable and we are satisfied if applied will create a cost which is payable and reasonable. Again in our judgment having a straight forward and simple methodology is appropriate and of benefit to all.

Challenge to specific invoices

301. The first invoices relate to the supply of shingle. The Applicant suggests only half the amount was required.

302. Mr Leslie explained how in his view at least 1 ton was used per parking bay. He explained how the shingle was required as raking alone would not be sufficient as the shingle breaks down over time and needs to be replaced. He explained how this was for repair of the existing surface. Further we saw in the various videos we watched

the areas covered by shingle and had them pointed out on the plan prepared by Mr Rudd.

303. We prefer the Respondents case. We are satisfied that such shingle was required and used in re-surfacing those shingle areas and to do so was reasonable. We accept the evidence of Mr Leslie as to the amounts of shingle used and find the costs are payable and reasonable.

304. The second invoice relates to the provision of a chain fence for the area in front of the sewage pump. The Applicant suggests that such fence was unnecessary and this is supported by the fact that it has now been removed. The Respondents say it was reasonable to incur the cost to ensure that people did not park in this area thereby impeding access to the same. Ms Samra explained the fence was removed following a health and safety inspection which concluded this chain fence could be a trip hazard. No alternative solution has been identified.

305. We prefer the case of the Respondent. We are satisfied it was reasonable to incur this cost to install this fence and the cost is payable.

306. The next invoices challenged relate to costs relating to the CCTV. (2018/2019 Scott Schedule [6]). The Applicants suggest that costs relating to this item should be apportioned relative to the number of feeds or are not payable as a call out was not required.

307. The Respondents suggest the apportionment applied and call outs were reasonable.

308. Again, we prefer the Respondents case as to apportionment and are satisfied that a call out to check the system was proportionate. It is reasonable for the Respondent to ensure as far as they are able that the CCTV system is properly functioning. We note the cost is modest. We are satisfied that this cost is payable and reasonable.

309. The final invoices challenged relate to works undertaken by Drainmaster.

310. During the course of the hearing the Respondents obtained vehicle tracing data showing the vehicle did attend on site. Having seen the same, the Applicants contend the works were to the sewage pump and so should be shared with Summer Lake. The Respondents say the works were not to the sewage pump (2019/2020 Scott Schedule [4 & 56]).

311. We are satisfied the works were undertaken at Spring Lakes and given the wording as to what works were undertaken we are satisfied

that these were not works to the sewage pump. We find the sums are payable by the Applicants and are reasonable.

Cost of management

312. The Applicant looks to challenge whether the costs of the Estate Manager, Estate Office and management fees of Mainstay are reasonable and payable.

313. It is contended the management has not been undertaken to a reasonable standard with particular regard to the lack of due diligence undertaken when Mainstay took over management from Savills. As a result Mr Rudd contends nothing is payable.

314. In respect of the Estate Manager and Estate Office the particular concern is that Waters Edge (a totally separate development) was also "managed" for a short period by the estate manager.

315. Dealing with this last point we heard the evidence put forward by the Respondents that separate arrangements were put in place including increasing the estate managers hours to cover the work undertaken on behalf of Waters Edge and this was funded by Waters Edge. This arrangement continued for a short period of time.

316. Overall, we are satisfied that no reduction in the service or cost saving was made for the limited time Waters Edge was also managed by Mainstay.

317. Looking at the management fee we note Ms Samra in her evidence (and also Mr Nichol) accepted that there had been failings. She suggested what business does not have failings? However, she suggested that Mainstay and its staff plainly did manage and she suggested they had received compliments from people particularly over the grounds maintenance. She explained as part of her role since taking over and becoming involved in this dispute she had looked into matters and tried where it as appropriate to make concessions including over the apportionment of costs.

318. We cannot accept the Applicants submission that nothing should be paid. As we have said a number of times before this is a complicated estate to manage with various challenging features not least of which is the lake itself. The Estate and Spring Lake are unlike most other developments. It was built as holiday accommodation and continues to be used as such. Many properties are actively let as commercial holiday investments, others used by their owners exclusively. There are commercial interests at Spring Lake. We have heard much of the works which are required as to maintenance including as to culverts, ditches and sewage pumps. All of these require management.

319. Substantial concessions have been made by the Respondents. Ms Samra on behalf of Mainstay was honest in her assessment of matters, acknowledging failures. We do accept that often looking back it is easier to see the same than at the time.

320. No alternatives were put forward by the Applicant save allowing none of the fee. We considered carefully whether some reduction would be justified but overall we are satisfied the fees charged are payable and reasonable.

Section 20C and Paragraph 5A

321. Applications were made by the Applicant for orders pursuant to Section 20c of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

322. Such applications are always determined at the discretion of the Tribunal.

323. We have in this case heard 7 days of evidence and submissions, received many 1000s of pages of documents. Both sides have approached the litigation in a sensible way, working together to narrow the issues. It is however clear to this Tribunal that the Applicants were justified in bringing their challenge. The Respondents to their credit have acknowledged and made concessions but issues of real substance remained.

324. It may be said that at the hearing, out of the remaining issues, the most significant have been determined in favour of the Respondent landlord. However, looking for a "win or lose" perspective may be in our judgement too simplistic.

325. We are satisfied that all of the items challenged were reasonable. Even throughout the hearing new evidence or explanations were coming to light. We have also taken account of the very real issues with Mr Atkinson's evidence. Mr Fieldsend quite rightly was concerned when his failure to understand even his most basic duty to the Tribunal was raised.

326. We note that the Respondents have conceded that administration charges are not payable. We are told that any such charges are being credited back although there was some discussion as to whether or not this had taken place.

327. However, weighing up all matters we are satisfied that the bringing of the application was proportionate and identified a large number of issues as to the running of the service charges, not least of which being the apportionment which required determination. Weighing up all we heard and our findings, we are satisfied that it would be just and equitable for us to exercise our discretion and make orders pursuant to Section 20C and for the avoidance of doubt Paragraph

5A in favour of the Applicants thereby preventing the Respondent recovering the costs they have incurred in these proceedings.

Conclusion

328. We have set out above our findings and judgements on the issues.

329. We sincerely hope the parties can work together for the benefit of all.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/23UC/LSC/2021/0073**
Property	**:**	Spring Lake, Station Road, South Cerney, Gloucestershire GL7 5TH
Applicant	**:**	Various Lessees as set out in the Schedule attached to the Decision
Representative	**:**	Elodie Gibbons, instructed via direct access and Alastair Rudd
Respondent	**:**	PUF GLF Nominee A Limited and PUF GLF Nominee B Limited
Representative	**:**	James Fieldsend instructed by Osborne Clarke LLP
Type of Application	**:**	Determination of service charges – Section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge D Whitney Mr M J F Donaldson FRICS Mrs A Clist MRICS
Date of hearing	**:**	27, 28 February 2,3, 8,9 March 2023
Date of decision	**:**	13 December 2023

DECISION ON SECTION 20C

BACKGROUND

1. The Tribunal issued its substantive decision on 14th July 2023. Following the issue of the same it granted an extension for the parties to seek leave to appeal.
2. The Respondents made an application for leave to appeal seeking to appeal the making of an order pursuant to Section 20C of the Landlord and Tenant Act 1985. We determined that the appeal had prospects of success and as a result determined we would review our decision and issued further directions dated 26th September 2023 in respect of the same.
3. The parties have complied with those directions and in reaching this decision we have considered both the original application for leave to appeal and each parties submissions. We are of course the panel that heard the original substantive hearing and have had in mind all that took place and the decisions we made.

DECISION

4. This is our reviewed decision as to whether or not we should make an order pursuant to Section 20C of the Landlord and Tenant Act 1985.

5. Both parties broadly agree that the Respondent correctly identified the principles we should have regard to in making our decision. Essentially the making of such an order is a matter of the exercise of our discretion. Whilst whether or not we make an order is binary, the order itself may be more nuanced and should have regard to all the circumstances. The final principle is that such orders should not be made lightly or as a matter of course.

6. It is against this background we must now consider the application.

7. This was a substantial piece of service charge litigation which ultimately required a multi day hearing following a number of earlier case management hearings and sets of directions being issued. We are satisfied that all parties acted in a reasonable and appropriate manner in conducting the litigation throughout. This was equally true at the hearing and the conduct of the parties and their advocates in ensuring all matters were dealt with within the time available.

8. However it is the case that substantial concessions were made to the Applicants throughout the conduct of the case. These we were told amounted to significant sums of money. At the hearing itself we heard argument about various heads which had not been resolved between the parties.

9. We accept the question of "win or lose" is not the only factor. We are satisfied it was right and proper for the service charge application to be made.

10. The Respondent in its concessions accepted that a relatively wide number of matters had not been dealt with properly in terms of the lease and general expectations. This was true of the apportionment of service charges both intra and inter lake notwithstanding our final decision. It is equally true that it was only when the Applicants challenged the security arrangements that the Respondents became aware that the contract was a qualifying long term agreement necessitating a separate application for dispensation. We set these out by way of examples of why the application was made.

11. We do accept that the Respondents engaged in a proactive way to make concessions.

12. The Respondents accept some order should be made but suggest that this should be expressed as a percentage as explained at paragraph 13 of the Respondents application for leave to appeal.

13. We can see that it may be said some analysis could be made of our final decision to produce such a result.

14. We are not satisfied that such an order would be appropriate in the circumstances of this case.

15. It is true that the Applicants did not succeed on all points they raised. It is our finding that generally in respect of almost all matters raised by the Applicants they achieved some saving or concession. This in our view demonstrates the need that existed for the Applicants to make their service charge application. We heard all the oral evidence and even the Respondent's own witness Ms Samra acknowledged things had not been undertaken by the Respondent as they should (see for example paragraph 66 and 67 of the Decision).

16. We think to simply apply a percentage based effectively on the savings derived from the application does not take account of the overall tenet of the application. This being that the Applicants had a general view that their part of the Watermark Estate was not being properly managed in accordance with their leases and general good practice. We found in our decision essentially that this was made out given the findings we made and the concessions granted.

17. Taking account of this we are not satisfied that simply applying a numerical calculation on the facts of this case would be just and equitable or a proper exercise of our discretion.

18. We are satisfied that on the facts of this case we should exercise our discretion to make a section 20C Order preventing the Respondent from recovering their costs of this application.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

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