



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

Case Reference : CAM/38UE/LSC/2022/0053

Property : 13, 14, 16, 17 & 18 Phillips Court, Lombard Street,
Abingdon, Oxfordshire OX14 3EY

Applicants : (1) Belinda Hart (13)
(2) Elizabeth Baker (14)
(3) Joanna Barwick (16, 17 & 18)

Respondents : (1) Phillips Court Management Ltd
(2) Phillip James Barwick

Application : Application, pursuant to s27A of the Landlord & Tenant Act 1985, to
determine the liability to pay and reasonableness of service charges
and administration charges.

Tribunal Members : Judge Stephen Reeder
Mr Gerard Smith MRICS FAAV

Date of hearing : 12 October convened remotely by CVP platform
Date of Decision : 12 October 2023
Date Written : 29 October 2023

DECISION

DECISION

Repairs and maintenance

- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £417.18 for 2020.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £289.95 for 2021.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £543.99 for 2022, comprising £461.24 as a 1/6 the share of the phase 3 property costs plus £82.75 as a 1/20th share of the Phillips Court shared costs.

Cleaning

- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £21.23 for 2020.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £22.77 for 2021
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £23.84 for 2022.

Gardening

- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £12 for 2020.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £12.60 for 2021.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £13.20 for 2022.

Heating and lighting

- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £315.47 for 2020.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £176.88 for 2021.
- The tribunal determines that the service charge which is reasonable and payable by each of the applicants is £115.42 for 2022.
- These sums are subject to a reconciliation against and gas charges already recovered by separate invoice as is addressed in the reasons below.

Major repairs

- The tribunal determines that the service charge payable and reasonable by each of the applicants is £61.90 for 2020.
- The service charge payable and reasonable for by each of the applicants is £354.50 for 2021.
- The service charge payable and reasonable for each of the applicants is £73.53 for 2022.

Fees and costs

- The applicants have paid both an issue fee of £100 and a hearing fee of £200. Having regard to *Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*, to the tribunal's determinations and the outcome of the proceedings, the respondent is ordered to re-imburse those costs to the applicants.
- The Respondents confirmed in the hearing that they do not seek to recover any costs relating to the tribunal proceedings as a service or administration charge under the leases. No provision to recover such costs was identified in the leases. Were it necessary, having regard to the tribunal's determinations and the outcome of the proceedings, the tribunal would make an order pursuant to *s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002* to extinguish the lessees' liability to pay a service or administration charge in respect of litigation costs as contractual costs under the lease.
- In considering whether to exercise its power to make any party costs order the Tribunal has careful regard to *section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013* read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. Having regard to the tribunal's determinations, the outcome of the application and the conduct of the parties the tribunal does not make any party costs order.

REASONS

The application, the property & the parties

1. The application is brought pursuant to s27A of the Landlord & Tenant Act 1985 to determine the liability to pay and the reasonableness of service charges and administration charges demanded in the accounting years 2020-2023 in respect of 13, 14, 16, 17 & 18 Phillips Court, Lombard Street, Abingdon, Oxfordshire OX14 3EY ('the properties').
2. The application raises the following issues to be determined -
 - a. Whether the relevant charges are payable under the leases;
 - b. whether the relevant charges were reasonably incurred and are reasonable in sum;

- c. whether an order pursuant to s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should be granted to reduce or extinguish the lessee's liability to pay a service charge or an administration charge in respect of the costs of litigating these proceedings as contractual costs under the lease; and
 - d. whether an order should be made for the reimbursement of the issue fee of £100 and/or the hearing fee of £200 should be made pursuant to Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
3. The first applicant, Belinda Hart, is the lessee and occupier of 13 Phillips Court. This is a one bed flat on the ground floor. This is a development phase 3 property. The second applicant, Elizabeth Baker, is the lessee and occupier of 14 Phillips Court. It is a one bed flat on the first floor located above commercial premises currently let as a café. This is a development phase 3 property.
 4. The third applicant, Joanna Barwick, is the lessee of 16 Phillips Court. This is a 1 bed studio on the first floor. It is occupied by tenants under an assured shorthold tenancy. This is a development phase 3 property. Joanna Barwick is also the lessee of 17 Phillips Court. This is a 1 bed studio. It is occupied by tenants under an assured shorthold tenancy. This is a development phase 3 property. Joanna Barwick is also the lessee of 18 Phillips Court. This is a 1 bed studio. It is occupied by tenants under an assured shorthold tenancy. This is a development phase 3 property.
 5. Phillip James Barwick developed Phillips Court in 3 stages. He is the freeholder of the phase 1 and 2 properties. His wife Joanna Barwick is the freeholder of the phase 3 properties.
 6. Phillips Court was developed in 3 phases. Phase 1 was completed and occupied prior to the 2020 accounting year, and comprises 1, 2, 3, 4, 5, 6, 7, 9a and 9b Phillips Court. Phase 2 was completed and occupied prior to the 2020 accounting year, and comprises 8, 9, 10, 11 and 12 (in part) Phillips Court. Phase 3 was completed and occupied prior to the 2020 accounting year, and comprises 12 (in part), 13, 14, 15, 16, 17 and 18 Phillips Court.
 7. Phillips Court Management Limited is responsible for managing Phillips Court pursuant to the lease covenants. Phillips Court Management Limited have engaged managing agents for each of the relevant years. The agent was Messrs Brecon & Brecon between 2020 and 2022, and Messrs Peerless Properties since 1 January 2023.

The procedural history

8. The application was received by the tribunal in January 2023 and Judge David Wyatt made a directions order on 26 January 2023 which included the following –
 - a. Joining Phillip James Barwick as second respondent at his invitation
 - b. Joining Joanna Barwick as third respondent at her invitation.
 - c. Disclosure of service charge accounts, estimates and certificates.
 - d. The filing of a statement addressing service charge apportionment between properties.
 - e. The filing of any statements as to fact.
 - f. The filing of a completed Scott schedule.
 - g. The filing of an agreed hearing bundle.

9. That directions order struck out that part of the claim which sought anything other than a determination of the payability and reasonableness of service charges for the years 2020 to 2023.

The matters in issue

10. For the reasons set out in this Decision the tribunal determinations on this application will consider the accounting years 2020, 2021 and 2022.
11. Whilst it was not entirely clear from the parties' statements and other documents filed prior to that hearing, it has been established during the hearing, and by reference to the Scott schedule filed, that the following service charge disputes are pursued on this application.
12. The first and second applicants do not dispute liability under their respective leases to pay the demanded service charges. The challenges pursued are the same for each of the identified years and comprise -
 - a. The payability (in terms of whether they are relevant costs actually incurred) and reasonableness of the charges in respect of electricity for heating and lighting and for gas for the phase 3 properties.
 - b. The payability (in terms of whether they are relevant costs actually incurred) and reasonableness of the charges in respect of repairs and maintenance.
 - c. The payability (in terms of whether they are relevant costs actually incurred) and reasonableness of the charges in respect of cleaning and gardening.
 - d. The payability (in terms of whether they are relevant costs actually incurred) and reasonableness of the charges in respect of major repairs.
 - e. The correct apportionment of the service charges between the respective lessees.
13. The third applicant, who is also the freeholder of the phase 3 properties, does not dispute liability under her lease to pay the demanded service charges. The single challenge she raises is the same for each of the identified years and is the correct apportionment of the relevant costs incurred in respect of electricity for lighting and for electricity and gas for heating for the phase 3 properties.

The hearing

14. The tribunal convened a remote video hearing by CVP (cloud video platform) on 12 and 13 October 2023. Having regard to the issues raised and evidence and information filed on the application the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings. Further, the tribunal is satisfied that an inspection was not necessary in order to determine the issues raised in the application. The tribunal made its determinations on 12 October 2023.
15. The first and second applicant lessees, Belinda Hart and Elizabeth Baker, appeared in person and made clear and helpful arguments.
16. The third applicant lessee and freeholder of the phase 3 properties, Joanna Barwick, appeared in person and also made clear and helpful arguments. Her husband who is second respondent and freeholder of the phase 1 and 2 properties, Phillip James Barwick, appeared in person with her and also made clear and helpful arguments.

17. Tuela Bradshaw, the lessee and occupier of 12 Phillips Court, attended in her capacity as a director of the first respondent Phillips Court Management Limited and made clear and helpful arguments, very ably assisted by her husband Johnny Bradshaw.
18. Pat Hughes of Peerless Properties attended and, with the agreement of the parties, greatly assisted the tribunal. She has been the managing agent since 1 January 2023.
19. In response to Judge Wyatt's directions order dated 26 January 2023 the tribunal has been provided with two paginated hearing bundles providing 535 pages and 92 pages of documents respectively. The tribunal has had careful regard to the documents filed in those bundles and the core documents have been considered and analysed during the hearing, including leases, plans, photographs and relevant cost and service charge documentation.
20. The tribunal has also been provided with a copy of a mediation agreement reached on 19 May 2023. This records the parties' agreement on the future arrangements on the following issues –
 - a. The managing agent will be instructed to remedy or install a replacement gas metering system for the heating system to the 6 phase 3 properties to be funded by the phase 3 leaseholders in accordance with their obligations under lessee proportion A in the lease.
 - b. The managing agent will be instructed to secure adequate insurance for Phillips Court in accordance with the lease provisions and the cost apportioned relative to the square footage of individual demised properties, allowing for any differential between residential and commercial properties, and the cost of insurance of the communal areas to be apportioned equally between all demised properties.
 - c. The managing agent will be instructed to specify necessary (including frequency and quality) services to provide gardening, cleaning, and general maintenance, and tender for contractors to provide those services at market rates.
 - d. The managing agent will be instructed to specify necessary remedial works and ongoing works required by the lease or requested by the lessees and obtain estimated costs for the same.
 - e. Phillips Court Management will discuss the specified remedial and ongoing works at an EGM/AGM to agree the priority and timing of works, and how the costs will be met from the existing reserve, current service charge budget and future service charge demands.
 - f. The managing agent will be instructed to prepare and provide timely accurate and clear service charge accounts, budgets and reports for this and following years which apportion relevant costs against lessee proportion A by phase, and apportion lessee proportion B communally across all of the properties in Phillips Court, and which clearly identify accruals to the reserve funds for future works.
21. Phillips Court was developed to provide 18 residential properties and at least one commercial unit including by the conversion of existing buildings with historical character. It has provided courtyards and garden/amenity areas in an irregular layout due to the nature of the site. It was developed sequentially in 3 phases and demised by sequential leases which differ, seemingly to reflect the sequential nature and totality of the phases of the development. The result is anomaly of responsibility for relevant costs, a resulting sense of unfairness for the lessees, and a resulting substantive challenge for any managing agent to be able to schedule and fund necessary works and services.

22. It follows that this mediated agreement between Phillips Court Management and the Phillips Court lessees is a welcome development for the benefit of all involved with Phillips Court. A workable and agreed approach going forwards is essential if a managing agent is to be retained to ensure the ongoing management of Phillips Court. During the hearing before the tribunal, Pat Hughes of Peerless Properties showed that she has a good grasp of the issues and the work necessary to give effect to that agreement. Peerless Properties gave notice in September 2023 to end their engagement. Following her assistance during the hearing and the parties' collaborative approach it would be unfortunate if she does not continue as agent.
23. It follows from that mediated agreement, and as agreed by the parties during the hearing, the tribunal determinations on this application will consider the accounting years 2020, 2021 and 2022. The parties deserve credit for agreeing a way forward for 2023 and beyond. They were reminded that they may apply to the tribunal for any relevant necessary lease variations to reflect the agreements reached.

The lease

24. The Applicants' properties are all phase 3 properties. The tribunal is provided with a copy of the lease for Flat 13 in the hearing bundle. It is agreed that all phase 3 property leases are in this same form. Clause 4 is the Phillips Court Management Ltd covenant. The service charge is defined by clause 1(i). Clause 4(i) defines the outgoing. Clause 4(ii) requires the provision of adequate insurance of all buildings for the time being on the property. Clause 4(iv) imposes a repairing covenant for communal areas forming part of the estate and the maintained property and all fixtures and fitting thereto. Clause 4(vi) requires the cleaning and lighting etc of communal parts of maintained property and vaults and bin store and bike store. Clause 4(vii) provides that the management company may employ and engage and pay agents and contractors. Clause 4(viii) imposes the obligation to keep an annual year end account of the charges, costs and expenses of carrying out the covenants and obligations. Clause 5 is the lessees' covenant. Clause 5(i) imposes an obligation to pay monthly in advance on the 1st, the lessee's proportion of the estimated maintenance charges. Clause 5(ii) defines those maintenance charges. Clause 5(iii) provides that the management company shall provide certified maintenance charges and lessees proportions A & B by 3 months after year end. Clause 9 imposes the lessees covenant to pay the service charge so calculated.
25. Lessee's proportion A is defined as 'a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the maintained property'. The 'maintained property' is defined by clause 1(g) as –
- the entrance gate, entrance hall, passages, staircases, landings, and other parts of the building used in common with any two or more flats.
 - the main structural parts of the building forming part of the [lessees'] property
 - all washing machines, cisterns, tanks, sewers, drains, pipes, wires, ducts and conduits and ariels not used solely for the purpose of any one of the flats,
 - the garden wall shown on plan 1, and
 - the phase 3 communal area.
26. Lessee's proportion B is defined as 'a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the shared facilities'. The shared facilities are defined by clause 1(h) as the communal area, the bin store area and bicycle area, each of which are identified in plan 1 to the lease. The communal area marked is that for Phillips Court as a whole.

27. The leases issued in respect of the phase 1 and 2 properties respectively make different provision in relation to defining the lessees' proportion. The phase 1 lease provides for a single identified lessees' proportion of 10%. The phase 2 lease provides for a lessees' proportion A at 20% of the sums expended on the maintained property, and for a lessees' proportion B of 7.14% of the sums expended on the shared facilities.
28. The lease for 12 Phillips Court is an anomaly from that approach in relation to apportionment and as a result of its development 'straddling' phase 1 and 2. The lessees' proportion A is 11.1% of the relevant costs relating to the phase 1 properties and 20% of the relevant costs relating to the phase 2 properties. The lessees proportion B is 7.14% of the shared facilities.
29. During the hearing the valuer member Gerard Smith MRICS FAAV explored with the parties whether if each of the differing formulations for lessees' proportion A and B was applied to service charge demands the resulting arrangement can practicably deliver a service charge which covers 100% of the relevant costs and that challenge defeated all. The parties were reminded of the tribunal's power to vary lease covenants upon application where, as here, a mediated agreement has been reached on apportionment.
30. In interpreting the lease the tribunal has careful regard to the decision of the Upper Tribunal in *Arnold v Britton [2015] AC 1619* and so directs itself to the natural and ordinary meaning of lease clauses under consideration, the other relevant provisions in the lease, the overall purpose of the clause, the related provisions, the lease as a whole, and further has regard to the facts and circumstances known or assumed by the parties at the time the lease was executed, and to commercial common-sense (disregarding any subjective evidence of any party's intentions).

The law

31. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter 'the LTA 1985') sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which is payable.
32. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.
 33. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.
 34. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the

Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs.

35. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to--

- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
36. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

Discussion and determinations

37. During the hearing it has been established that no challenge is pursued in relation to the service charge, including liability to pay, reasonableness of relevant cost recharged, and apportionment between lessees, invoiced in respect of the relevant costs of insurance, water rates, security costs, accountancy costs, other professional charges, bank charges, general expenses, other charges, and the management fee. Those matters which are subject to challenge in relation to the years 2020, 2021 and 2022 respectively are considered individually as follows in this decision.

Repairs and maintenance

38. The first and second applicants challenge whether the costs recharged were all incurred on the basis that they have requested but have not been provided with sufficient documentary evidence to satisfy them of the full costs recharged. They highlight the lack of invoices, bank statements, contracts or other documentation. They visited the Peerless Properties office in May 2023 and were provided with the available documentation by Pat Hughes, whom they describe as well organised and helpful. They argue that the sum payable should be only that amount which is supported by contractor invoices or other documents they found when inspecting the available paperwork in May 2023. They further argue that the previous managing agent, Breckon & Breckon, had notified them that only essential works would be carried out during the Covid-19 pandemic restrictions and lockdowns between March 2020 and December 2021, and so the costs incurred might reasonably be expected to be low. Email correspondence in the hearing bundle confirms this indication from the previous agents.
39. Pat Hughes of Peerless Properties stated that they took handover from Breckon & Breckon in December 2022/January 2023 and the paper files were collected. She described them as document wallets stuffed with paper which were organised into years but otherwise "in disarray". She doubted the files included all relevant documents. She concluded that Breckon & Breckon had

provided the relevant documents to the accountant Cox Hinkins as the previous tribunal hearing in 2019 had identified the urgent need for certified accounts and there had been delays in that process so that the accounts for the years 2017 onwards were not provided until March/April 2023. During the hearing it became apparent that some but not all of the resulting certified and signed accounts for were in the hearing bundle, as some were unsigned and undated. During the luncheon adjournment on the first hearing day Pat Hughes contacted Cox Hinkins and a full set of signed certified accounts was provided including for the relevant years being considered by the tribunal. The tribunal took direct evidence from Ms Hughes about this process. She stated that she had contacted Cox Hinkins and been provided with these certified signed accounts. She further stated that Mr Hinkin has confirmed the accounts were based on the relevant cost documents provided and had been signed off as final. He stated that the unsigned copies in the hearing bundle were likely to be file copies supplied on demand. The parties were given the opportunity to challenge that evidence. None did so.

40. Having regard to the evidence and information before it the tribunal considers that the relevant costs for repairs and maintenance for each of the accounting years is the sum given in the signed and certificated account for each of those years. There was no challenge to the liability to pay the service charge in respect of the costs of repairs and maintenance under the lease, nor to the reasonableness of the actual costs recharged.
41. For the reasons set out later in this decision the tribunal determines that the 'fair proportion' for the purposes of 'Lessee proportion A' is to be achieved by identifying the relevant costs incurred in maintaining the phase 3 property which contains 6 demised units and apportioning those costs equally between the 6 demised units situated in the phase 3 property. This reflects the lease provision. The tribunal further determines that the 'fair proportion' for the purposes of 'Lessee proportion B' is to be achieved by identifying the relevant costs expended in relation to the facilities which are or can be shared or used by all of the Phillips Court lessees and apportioning those costs equally between the 20 demised units provided by all 3 phases of the Phillips Court development.
42. This determination supports the change in the service charge demand for 2022 which for the first time identifies the cost of repairs and maintenance to the phase 3 property, and separately identifies the cost of repairs and maintenance to the wider Phillips Court estate. The resulting difficulty posed in relation to the 2020 and 2021 service charge is that it is now impractical and disproportionate to spend time and so money revisiting the actual costs incurred in relation to the phase 3 property and separately in relation to the wider Phillips Court to re-apportion them. To do so would be an expense to all Phillips Court lessees including the applicants in these proceedings. Further, the tribunal considers that the 2020 and 2021 application of the lease was open to the lessor given that lessee proportion A is defined as 'a fair proportion to be determined by the lessor or its agent (emphasis added by the tribunal) of the sums expended by the company on the (phase 3) maintained property and lessee proportion B is defined as 'a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the shared facilities. That apportionment across all of the 20 Phillips Court was a permissible determination by the lessor having regard to the phase 3 lease. The following follows from that determination.
43. The service charge demanded for 2020 totals £8,343.60 and is apportioned between all 20 properties in Phillips Court to result in an individual demand for £417.18. The tribunal determines that relevant cost payable as service charge is the £8,343.60 demanded and that, having regard to the evidence and argument received, the fair proportion is achieved by apportionment between the 20 demised units in Phillips Court to result in an individual service charge of £417.18 for each applicant in these proceedings.
44. The service charge demanded for 2021 totals £5799.17 and is apportioned between all 20 properties in Phillips Court to result in an individual demand of £289.95. The tribunal determines

that relevant cost payable as service charge is the £5799.17 demanded and that, having regard to the evidence and argument received, the fair proportion is achieved by apportionment between the 20 demised units in Phillips Court to result in an individual service charge of £289.95 for each applicant in these proceedings.

45. The service charge demanded for 2022 comprises two component charges. The first is the phase 3 property charge which totals £2769.83 apportioned between the 6 phase 3 properties to result in an individual demand of £461.64. The second is the Phillips Court shared charge which totals £1654.99 and is apportioned between all 20 properties to result in an individual demand of £82.75.
46. This corresponds with the tribunal's determination that the 'fair proportion' for the purposes of 'Lessee proportion A' is to be achieved by identifying the relevant costs incurred in maintaining the phase 3 property which contains 6 demised units and apportioning those costs equally between the 6 demised units situated in the phase 3 property, and that the 'fair proportion' for the purposes of 'Lessee proportion B' is to be achieved by identifying the relevant costs expended in relation to the facilities which are or can be shared or used by all of the Phillips Court lessees and apportioning those costs equally between the 20 demised units provided by all 3 phases of the Phillips Court development.
47. It follows that the 2022 service charge which is payable and reasonable is as demanded in the two component charges comprising the phase 3 property charge which totals £2769.83 apportioned between the 6 phase 3 properties to result in an individual demand of £461.64 and in addition the Phillips Court shared charge which totals £1654.99 and is apportioned between all 20 properties to result in an individual demand of £82.75.

Cleaning

48. The cleaning relates to the common parts which serve the phase 3 properties. There are no common retained parts in Phillips Court other than in relation to the phase 3 properties.
49. The service charge demanded for 2020 totals £805 and is apportioned between all 20 properties in Phillips Court to result in an individual demand for £40.25.
50. The service charge demanded for 2021 totals £910 and is apportioned between all 20 properties in Phillips Court to result in an individual demand of £45.50.
51. The service charge demanded for 2022 totals £273 and is apportioned between the 6 phase 3 properties to result in an individual demand of £45.50. There is no wider Phillips Court charge as there are no common retained parts other than in relation to the phase 3 properties.
52. For the same reasons as are given in relation to repairs and maintenance the tribunal determines that relevant cost actually incurred for the purposes of the service charge are the sums given in the signed and certificated account for each of those years which are those same sums demanded.
53. The applicants contend that the service provided is not commensurate with the relevant cost incurred for each of the relevant years. Since 2020 and for each of the relevant years the cleaning has been provided by a contractor called City Maid. They clean every 8 weeks or so. The unchallenged evidence before the tribunal is that the resulting state of cleanliness is inadequate in relation to the charge. The tribunal considers that the unchallenged photographs in the hearing bundle graphically support that contention. It follows that the charge is unreasonable. During the hearing it became apparent that there is no management oversight by contract/specification detailing the service expected or inspection of the service delivered. The tribunal considers that such management oversight is essential if a reasonable service is to be achieved.

54. Having regard to the nature and extent of the 'site' being cleaned and the market rates achievable, and adopting a basic level of cleaning at frequency currently provided, the tribunal considers that a 1 hour visit every 8 weeks could be achieved at a cost of £20 per hour and so a total annual cost of £130 per year for 2020, and £136.50 for 2021 (allowing 5% cost inflation), and £143 for 2022 (allowing 5% cost inflation).
55. It is accepted that the cleaning costs fall within the scope of 'Lessee's Proportion A' which is defined as a fair proportion of the sums expended on the maintained property which is the phase 3 building structure, retained parts, communal areas and communal facilities. The tribunal determines that the fair proportion is achieved by the apportionment of the total annual cost between the 6 phase 3 properties. Only those properties have use of and/or benefit from the cleaning service.
56. The tribunal determines that the service charge which is payable for each of the applicants is £21.23 for 2020.
57. The tribunal determines that the service charge which is payable for each of the applicants is £22.77 for 2021
58. The tribunal determines that the service charge which is payable for each of the applicants is £23.84 for 2022.

Gardening

59. The gardening charges relates to the external communal grounds and areas of Phillips Court. It is accepted that the gardening costs fall within 'Lessee's proportion B' which is defined as a fair proportion of the sums on the shared facilities which are the communal areas for Phillips Court as a whole, the bin store area and the bicycle area
60. The service charge demanded for 2020 totals £360 and is apportioned between all 20 properties in Phillips Court to result in an individual demand for £18.
61. The service charge demanded for 2021 totals £378 and is apportioned between all 20 properties in Phillips Court to result in an individual demand of £18.90.
62. The service charge demanded for 2022 totals £445 and is apportioned between all 20 properties in Phillips Court charge to result in an individual demand for £22.25.
63. For the same reasons as are given in relation to repairs and maintenance the tribunal determines that relevant cost actually incurred for the purposes of the service charge are the sums given in the signed and certificated account for each of those years which are those same sums demanded.
64. The unchallenged evidence before the tribunal is that the gardening contractor do visit and carry out work but that the frequency is sporadic and around quarterly and usually in response to a complaint from the managing agent about the state of the communal grounds. The service is described as poor with only the very basic jobs done, with cuttings left on site and mulch left to accumulate and slippery ground not jet-washed. This level of service does appear to be accurately illustrated by the unchallenged photographs in the hearing bundle. The tribunal accepts the argument that the service delivered is not commensurate with the charge made, so that charge is unreasonable. During the hearing it became apparent that there is no management oversight by contract/specification detailing the service expected or inspection of the service delivered. The tribunal considers that such management oversight is essential if a reasonable service is to be achieved.

65. Having regard to the nature and extent of the communal grounds and areas being maintained by the gardening contractor and the market rates achievable and adopting a typical seasonal cycle of visits the tribunal considers that a 3 hour visit on four occasions each year could be achieved at a cost of £20 per hour and so a total annual cost of £240 per year for 2020, and £252 for 2021 (allowing 5% cost inflation), and £264 for 2022 (allowing 5% cost inflation).
66. 'Lessee's proportion B' is defined by the phase 3 lease as a fair proportion of the sums expended on the shared facilities which are the communal areas for Phillips Court as a whole, and the bin store area and the bicycle area which are for the use of Phillips Court as a whole. The tribunal determines that the fair proportion is achieved by the apportionment of the total annual cost between the 20 properties delivered by all 3 phases of Phillips Court.
67. The tribunal determines that the service charge which is payable for each of the applicants is £12 for 2020.
68. The tribunal determines that the service charge which is payable for each of the applicants is £12.60 for 2021
69. The tribunal determines that the service charge which is payable for each of the applicants is £13.20 for 2022.

Heating and lighting

70. This relevant cost incurred relates to the costs of the electricity and gas supplies to the heating and hot water system for the phase 3 property which includes lighting and heating to the common retained parts (including the services in the basement communal laundry room) and the space heating and hot water system for flats 1-6 located within that property. The challenge arises because the existing sub-metering system in the basement of the phase 3 property is admitted to have been defective in each of the years being considered by the tribunal so individual flat readings cannot be obtained. This is to be remedied as a priority as part of the mediated agreement. It follows that the current dispute before the tribunal on this application relates to the service charge demand for these costs for 2020, 2021 and 2022.
71. For the same reasons as are given in relation to repairs and maintenance the tribunal determines that relevant cost actually incurred for the purposes of the service charge are the sums given in the signed and certificated account for each of those years which are those same sums demanded.
72. The resulting difficulty posed in relation to the 2020 and 2021 service charge is that it is now impractical and disproportionate to spend time and so money revisiting the actual costs incurred in relation to the phase 3 property and separately in relation to the wider Phillips Court to re-apportion them. To do so would be an expense to all Phillips Court lessees including the applicants in these proceedings. Further, the tribunal considers that the 2020 and 2021 application of the lease was open to the lessor given that lessee proportion A is defined as 'a fair proportion to be determined by the lessor or its agent (emphasis added by the tribunal) of the sums expended by the company on the (phase 3) maintained property and lessee proportion B is defined as 'a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the shared facilities. That apportionment across all of the 20 Phillips Court was a permissible determination by the lessor having regard to the phase 3 lease. The determination dictate the following calculations of the service charge which is reasonable and payable for each of the relevant years.
73. The service charge demanded for 2020 totals £6309.51 and is apportioned between all 20 properties in Phillips Court to result in an individual demand for £315.47. In the circumstances it is determined that the service charge payable and reasonable for each of the applicants is £315.47.

74. The service charge demanded for 2021 totals £3537.57 and is apportioned between all 20 properties in Phillips Court to result in an individual demand of £176.88. In the circumstances it is determined that the service charge payable and reasonable for each of the applicants is £176.88.
75. The service charge demanded for 2022 totals £692.54 and is apportioned between the 6 phase 3 properties to result in an individual demand of £115.42. This change in apportionment was intended to reflect that the costs of heating and lighting (ie. electricity and gas) relate to the heating and hot water system and laundry room which serve only the phase 3 properties. This corresponds with the tribunal determination on proper apportionment where it can be practicably and proportionately be achieved. In the circumstances it is determined that the service charge payable and reasonable for each of the applicants is £115.42.
76. It became apparent during the hearing, illustrated by separately invoiced gas charges behind Tab L of the documents bundle, that some gas charges may have already been paid by this procedure. The tribunal directs that a reconciliation of these two procedures for recharging the cost of gas must be carried out to arrive at the precise sums due from/or credit owed to the applicants.

Major repairs

77. The service charge demanded for 2020 totals £1237.99 and is apportioned between all 20 properties in Phillips Court to result in an individual demand for £61.90.
78. The service charge demanded for 2021 totals £7290.02 and is apportioned between all 20 properties in Phillips Court to result in an individual demand of £354.50
79. The service charge demanded for 2022 totals £441.16 and is apportioned between all 20 properties in Phillips Court charge to result in an individual demand for £73.53.
80. For the same reasons as are given in relation to repairs and maintenance the tribunal determines that relevant cost actually incurred for the purposes of the service charge are the sums given in the signed and certificated account for each of those years which are those same sums demanded.
81. On the evidence and information before the tribunal it is impossible to ascertain which repairs relate to the phase 3 property and which relate to the phase 1 and/or 2 property. There is a degree to which the discharge of the lessor's repairing covenant across Phillips Court as a whole maintains the fabric and integrity and financial value of each of the demised units.
82. Again, the resulting difficulty posed in relation to the 2020 and 2021 and on this issue also the 2022 service charge is that it is now impractical and disproportionate to spend time and so money revisiting the actual costs incurred in relation to the phase 3 property and separately in relation to the wider Phillips Court to re-apportion them. To do so would be an expense to all Phillips Court lessees including the applicants in these proceedings. Further, the tribunal considers that the 2020 and 2021 application of the lease was open to the lessor given that lessee proportion A is defined as 'a fair proportion to be determined by the lessor or its agent (emphasis added by the tribunal) of the sums expended by the company on the (phase 3) maintained property and lessee proportion B is defined as 'a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the shared facilities. That apportionment across all of the 20 Phillips Court was a permissible determination by the lessor having regard to the phase 3 lease. The following follows from that determination.

83. The service charge payable and reasonable for 2020 totals £1237.99 and is apportioned between all 20 properties in Phillips Court to result in an individual demand for £61.90.
84. The service charge payable and reasonable for 2021 totals £7290.02 and is apportioned between all 20 properties in Phillips Court to result in an individual demand of £354.50
85. The service charge payable and reasonable for 2022 totals £441.16 and is apportioned between all 20 properties in Phillips Court charge to result in an individual demand for £73.53.

Apportionment

86. The apportionment dispute is helpfully addressed in the parties' written materials in the bundle and was considered at length during the hearing when all made useful contributions. The tribunal considers that the differential lease provisions between development phases result from an attempt to reflect the 'full' estate of Phillips Court as at the end of each of the three sequential phases of delivery, rather than to reflect the fully completed Phillips Court following the completion of phase 3. Phillips Court was developed to provide 18 residential properties and at least one commercial unit including by the conversion of existing buildings with historical character. It has provided courtyards and garden/amenity areas in an irregular layout due to the nature of the site. It was developed sequentially in 3 phases and demised by sequential leases which differ, seemingly to reflect the sequential nature and totality of the phases of the development. The result is anomaly of responsibility for relevant costs, a resulting sense of unfairness for the lessees, and a resulting substantive challenge for any managing agent to be able to schedule and fund necessary works and services.
87. This is reflected in the parties' differing initial submissions as to what "a fair proportion of the sums expended", and in their final positions when they were invited to take a final position on the second day of the hearing having the benefit of a full debate and discussion of the issue on the first day.
88. The first and second applicant lessees, Belinda Hart and Elizabeth Baker argued with clarity and concision that the shift from a 20th apportionment enjoyed up to and including the 2021 accounting year, to a 6th share of repairs and maintenance for phase 3 property relevant works plus a 20th share of repairs and maintenance for Phillips Court as a whole feels both unreasonable and not in accord with their understanding of their liabilities when they took their respective leasehold interests in their homes. As they pithily stated, they don't know whether it should be 1/20th or 1/6th under their phase 3 leases but the change to what appears to be a more expensive interpretation of the lease is unfair after some years. They accepted that the fairest way of apportioning the cost of gas to the phase 3 properties is to divide it equally between the 6 phase 3 units pending the reinstatement of individual property sub-metering as is intended under the mediation agreement.
89. The third applicant lessee and freeholder of the phase 3 properties, Joanna Barwick argued that whilst apportionment by the square footage of demised premises would benefit her (as she has studios) she accepted that a fair proportion can be achieved by a lessees proportion A at 1/6th and lessees proportion B at 1/20th. The valuer member Mr Smith led a short discussion on the costs of IPMS measurement of demises as a result of which no-one positively argued for it.
90. The second respondent and freeholder of the phase 1 and 2 properties, Phillip James Barwick agreed with the A at 1/6th (including the maintenance costs of the boilers serving the phase 3 properties only, and the gas costs on an interim basis pending the reinstatement of sub-meters) and B at 1/20th formulation, noting the force in Mr Smith identifying the importance of reaching a fair but also commercially common-sense formulation that ensures that all relevant costs incurred can be recovered, and the cost of IPMS measurement.

91. Tuela Bradshaw, the lessee and occupier of 12 Phillips Court, attending in her capacity as a director of the first respondent Phillips Court Management Limited, and her husband Johnny Bradshaw, agreed that a fair apportionment of the costs is best achieved “in the quickest and simplest way” by a lessees’ proportion at 1/6th for all phase 3 specific costs (those relating to the parts of the phases 3 buildings you do or could have use of or access to, and including the gas usage for those properties), and at 1/20th for all of the other costs which are generic to Phillips Court as a whole.
92. The tribunal starts with a careful consideration of the phase 3 lease relevant to each of the properties before it. The lessees’ proportion is divided between property costs (lessees’ proportion A’) and shared facilities’ costs (lessees’ proportion B).
93. Lessee’s proportion A is defined as ‘a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the maintained property’. The ‘maintained property’ is defined by clause 1(g) as the entrance gate, entrance hall, passages, staircases, landings, and other parts of the building used in common with any two or more flats, the main structural parts of the building forming part of the [lessees’] property, all washing machines, cisterns, tanks, sewers, drains, pipes, wires, ducts and conduits and ariels not used solely for the purpose of any one of the flats, the garden wall shown on plan 1, and the phase 3 communal area.
94. Lessee’s proportion B is defined as ‘a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the shared facilities’. The shared facilities are defined by clause 1(h) as the communal area, the bin store area and bicycle area, each of which are identified in plan 1 to the lease. The communal area marked is that for Phillips Court as a whole.
95. In interpreting these provisions, the tribunal considers the natural and ordinary meaning of those clauses under consideration and to the purposes of those clauses but does so within the context of the other relevant and related provisions in the lease, and within the context of the lease as a whole including the need for efficacy and commercial common-sense. Taking that approach the tribunal has considered the leases issued in respect of the phase 1 and 2 properties respectively. They make different provision in relation to defining the lessees’ proportion. The phase 1 lease provides for a single identified lessees’ proportion of 10%. The phase 2 lease provides for a lessees’ proportion A at 20% of the sums expended on the maintained property, and for a lessees’ proportion B of 7.14% of the sums expended on the shared facilities. The lease for 12 Phillips Court is an anomaly from that approach in relation to apportionment seemingly as a result of its development ‘straddling’ phase 1 and 2. The lessees’ proportion A is 11.1% of the relevant costs relating to the phase 1 properties and 20% of the relevant costs relating to the phase 2 properties. The lessees proportion B is 7.14% of the shared facilities.
96. The tribunal considers that the ‘fair proportion’ for the purposes of ‘Lessee proportion A’ is to be achieved by identifying the relevant costs incurred in maintaining the phase 3 property which contains 6 demised units and apportioning those costs equally between the 6 demised units situated in the phase 3 property. This reflects the lease provision.
97. The tribunal considers that the ‘fair proportion’ for the purposes of ‘Lessee proportion B’ is to be achieved by identifying the relevant costs expended in relation to the facilities which are or can be shared or used by all of the Phillips Court lessees and apportioning those costs equally between the 20 demised units provided by all 3 phases of the Phillips Court development.
98. This reflects the phase 3 the natural and ordinary meaning of the individual lease clauses under consideration within the context of the other provisions in the lease and the lease as a whole. The intention is to be able to recover relevant costs incurred as a service charge which is apportioned fairly between those lessees who do or may have the benefit of the maintenance or facilities which those costs relate to. This is supported by the facts and circumstances which will have been known

or assumed by the parties at the time the phase 3 leases were executed. The need to find a fair apportionment approach to maintenance and services to reflect the separate buildings of phases 1,2 and 3 respectively, and to reflect the facilities and amenities which serve all of the 20 properties of Phillips Court as a whole is the basis for the alteration from the earlier formulations of lessee proportion A and B found in the earlier phase 1 and phase 2 leases. That is objectively commercial common-sense.

99. The tribunal considers that this determination is supported by the attempts made by the parties during the hearing, led by the valuer member Gerard Smith MRICS FAAV, to explore whether if each of the differing formulations for lessee proportion A and B was applied to service charge demands the resulting arrangement can practicably deliver a service charge which covers 100% of the relevant costs. As noted earlier, that challenge defeated all.
100. The tribunal is re-assured that its determination provides a fair, efficacious and commercially practical outcome in that it is consistent with the mediated agreement reached on 19 May 2023 between Phillips Court Management and the Phillips Court lessees as a whole (ie. all 20 properties of all of the 3 phases) which provides that the managing agent will be instructed to apportion relevant costs recoverable as lessee proportion A between the properties contained in that development phase and apportion lessee proportion B communally across the 20 properties located in Phillips Court as a whole.
101. However, the resulting difficulty posed in relation to the 2020 and 2021 and on some issues also the 2022 service charge is that it is now impractical and disproportionate to spend time and so money revisiting the actual costs incurred in relation to the phase 3 property and separately in relation to the wider Phillips Court to re-apportion them. To do so would be an expense to all Phillips Court lessees including the applicants in these proceedings. Further, the tribunal considers that the 2020 and 2021 application of the lease was open to the lessor given that lessee proportion A is defined as ‘a fair proportion to be determined by the lessor or its agent (emphasis added by the tribunal) of the sums expended by the company on the (phase 3) maintained property and lessee proportion B is defined as ‘a fair proportion (to be determined by the lessor or its agent) of the sums expended by the company on the shared facilities. That apportionment across all of the 20 Phillips Court was a permissible determination by the lessor having regard to the phase 3 lease.

Reserve fund

102. During the hearing it became apparent that any surplus service charge income received between 2017 and 2020 was transferred into the reserve fund. Whilst all considered that it is appropriate to build up a reserve fund toward scheduled repairs, the payments into it should be clearly planned and accounted for toward an identified purpose in accordance with good management and the RICS guidance. This was highlighted by time taken during the hearing in analysing bank accounts to follow transfers in to and out of the reserve fund.
103. The tribunal noted that Pat Hughes of Peerless Properties was proactively cognisant of management guidance and good practice and identified how the fund needed to, and now was being built up toward funding major works identified as necessary relating to external painting of windows and works to walls, lintels and the bin stores. This reinforced the tribunal’s view that Ms Hughes may be a valuable resource for all going forward but that is a matter for all those with an interest in Phillips Court.
104. During the hearing it further became apparent that sums in the reserve fund have been used to pay supplier charges for gas and/or electricity to avoid disconnection. No-one contended that the lease can be read to permit such a step. All agreed that those sums must be credited back to the reserve fund when those relevant costs incurred are recovered by the service charge.

Fees and Costs

105. The applicants have paid both an issue fee of £100 and a hearing fee of £200. Having regard to *Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*, to the tribunal's determinations and the outcome of the proceedings, the respondent is ordered to reimburse those costs to the applicants.
106. The Respondents confirmed in the hearing that they do not seek to recover any costs relating to the tribunal proceedings as a service or administration charge under the leases. No provision to recover such costs was identified in the leases. Were it necessary then, having regard to the tribunal's determinations and the outcome of the proceedings, the tribunal would make an order pursuant to *s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002* to extinguish the lessees' liability to pay a service or administration charge in respect of litigation costs as contractual costs under the lease.
107. In considering whether to exercise its power to make any party costs order the Tribunal has careful regard to *section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013* read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. Having regard to the tribunal's determinations, the outcome of the application and the conduct of the parties the tribunal does not make any party costs order.

Delay in issuing written decision

108. There has been undue delay in issuing this Decision to the parties. This is entirely due to an administrative oversight on my part to send it to the tribunal office. No fault lies with my fellow tribunal member or with the tribunal administration. Apologies are offered to the parties for that oversight and the resulting delay.

Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

29 October 2023

Re dated for issue 3 January 2024

ANNEX - RIGHTS OF APPEAL

- a. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.*
- b. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.*
- c. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.*
- d. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.*