FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00AE/LSC/2023/0269**
Property	**:**	**Chamberlayne Avenue, Wembley, HA9 8SR**
Applicants	**:**	**Kailash Mistry (6 Chamberlayne Avenue)** **Kerry Nicol (130 Chamberlayne Avenue)** **Harrish Haria (143 Chamberlayne Avenue)** **and 63 other leaseholders**
Representative	**:**	**Noor Kapadia assisted by** **Craig Barlow (Counsel) instructed under the Bar Direct Access Scheme**
Respondent	**:**	**FirstPort Property Service Limited**
Representative	**:**	**Simon Allison (Counsel) instructed by JB Leitch (Solicitors)**
Tribunal members	**:**	**Judge Robert Latham** **Richard Waterhouse FRICS** **Alan Ring**
Date and Venue of Hearing	**:**	**10, 11 and 12 June 2024 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**1 July 2024**

DECISION

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(1) The Tribunal determines that "the Communal Areas and Facilities" in respect of which the "Part A" maintenance expenses are payable includes the areas shaded in yellow on the plan annexed to this decision.

(2) The Tribunal is satisfied that the service charges which have been challenged by the Applicants are payable pursuant to the terms of their leases and are reasonable.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the tribunal proceedings may be passed to these Applicants through any service charge.

(4) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicants.

Introduction

1. On 17 July 2023, the Tribunal received an application issued by Mr Noor Kapadia on behalf of 49 leaseholders at Chamberlayne Avenue seeking a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

2. Chamberlayne Walk ("the Development") is a residential development in Wembley, consisting of blocks of different sizes, freehold houses, various landscaped areas as well as parking (both open and individual garages). The roads have now been adopted by the local authority. In 1999, the Development was constructed by Barratt Homes Limited (now known as BDW Trading Limited). There are 98 leasehold flats and 104 freehold houses.

3. Mr Kapadia, an accountant, has acted on behalf of the Applicants. On 23 December 1999, he acquired the freehold interest in a house at 18 Chamberlayne Avenue. Since about 2009, he has been part of a residents' group concerned about how the Development has been managed and the service charges which have been levied. As a freehold owner of a house, he has no right to challenge the estate service charge which he is required to pay. Neither does he have the benefits of the protections provided by the 1985 Act. This will change when the Leasehold and Freehold Reform Act 2024 is implemented.

4. This Tribunal is rather concerned with the services charges payable by the leaseholders of the 98 flats who live in flats in the nine blocks of varying sizes, namely:

(i) Block A: Nos. 1–13 Chamberlayne Avenue;
(ii) Block B: Nos. 54-59 Chamberlayne Avenue;
(iii) Block C: Nos. 63-64 Chamberlayne Avenue;
(iv) Block D: Nos. 72-73 Chamberlayne Avenue;

(v) Block E: Nos. 76-91 Chamberlayne Avenue;
(vi) Block F: Nos. 94-95 Chamberlayne Avenue;
(vii) Block G: Nos. 114-134 Chamberlayne Avenue;
(viii) Block H: Nos. 135-155 Chamberlayne Avenue;
(ix) Block I: Nos. 170-190 Chamberlayne Avenue.

5. All the leaseholders occupy their flats pursuant to tripartite leases between:

(i) The Lessor: The leases were granted by Barratt Homes Limited; the interest is now held by Proxima Investments (previously known as Aztec Investments (9.11.11-24.3.11) and Peverel Investments (17.5.94-9.3.11)).

(ii) The Manager: OM Management Services Limited (now known FirstPort Property Service Limited), the Respondent. The Respondent does not own any part of the Development. It is rather a private company that provides the services on the Development. The Manager is independent of both Lessor and the Lessees.

(iii) The Lessee.

6. Pursuant to their leases, the tenants are required to pay three types of service charge:

(i) an estate charge, referred to in the leases as a "Part A" charge in respect of "communal areas and facilities costs". All 202 properties in the Development pay an equal proportion (0.495%). In 2021/22, the estate charge was £176 for the year.

(ii) a block charge, referred to in the leases as a "Part B" charge in respect of block costs. Separate accounts are kept for each of the nine blocks and the block charge is apportioned according to the size of the flat. In 2021/22, the block charge was some £1,500 for the year, depending upon the block and the size of the flat.

(iii) a car parking charge, referred to in the leases as a "Part C" charge in respect of "forecourts/accessway costs". This is apportioned between the 137 tenants who have car parking spaces. These charges are not challenged in these proceedings.

7. 43 leaseholders and three former leaseholders are parties to this application. There are a number of joint tenants, so there are a total of 66 applicants. The tenants of the following flats are parties to this application:

(i) Block A (Nos. 1–13): 2, 6, 11, 12 and 13. Kailash Mistry (No.6) is a Lead Applicant.

(ii) Block B (Nos. 54-59): 54 and 58.

(iii) Block C (Nos. 63-64): -

(iv) Block D (Nos. 72-73): -

(v) Block E (Nos. 76-91): 77, 78, 79, 83,87 and 91.

(vi) Block F (Nos. 94-95): 95 (former tenant).

(vii) Block G (Nos. 114-134): 115, 117, 120, 123, 124, 125, 126 (current and former tenants), 127, 128, 129, 130, 131, 132, 133 and 134. Kerry Nicol (No.130) is a Lead Applicant.

(viii) Block H (Nos. 135-155): 135, 137, 138, 139, 142, 143, 146 (current and former tenants), 147, 148, 149, 152,153 and 154. Harish Haria (No.143) is a Lead Applicant.

(ix) Block I (170-190): 181, 184, 189 and 190.

8. The Applicants have filed a Scott Schedule listing a total of 42 service charge items which they wish to challenge over the service charge years 2016/17 to 2021/22. A number of items have been raised in respect of each year. The Tribunal has identified the following issues that we are required to determine:

(i) Issue 1: The extent of the Development covered by the "Communal Areas and Facilities Costs". The leases do not include any plan delineating the Development. The lack of clarity has been an area of contention over the past twenty years.

(ii) Issue 2: External Decorations which were carried out in 2017/8 at a cost of £150,000. £142,109.96 of this was charged to the nine blocks and £7,890.04 as an estate charge. The Applicants contend that the Respondent failed to comply with its statutory duty to consult and that the quality of the works was inadequate.

(iii) Issue 3: £6,867 charged as an estate cost in 2017/8 in respect of an Asset Management Report (2017-2037).

(iv) Issue 4: Accountancy Fees charged for the years 2016/7 to 2021/2 as an estate charge. The Applicants contend that this was not a service charge expense as it was obtained by the Respondent for its own management purposes. The Applicants also contend that this should have been covered by the Respondent's basic management charge.

(v) Issue 5: Fence Repairs. The Applicants challenge an estate charge £3,288 included in the 2018/9 accounts for repairs to a fence. The Applicants contend that the repairs were rather carried out by the

London Borough of Brent ("Brent") at its expense. The cost was £16.38 per property.

(vi) Issue 6: Careline Monitoring costs were included as an estate charge for the years 2016/7 to 2021/2 at a cost ranging from £741.76 to £511.64 per annum. The maximum annual charge for each property for this out-of-hours service was £2.67 per property.

(vii) Issue 7: A Statutory Notice Charge of £1,460.16 charged as a block charge in 2017/8. The Applicants contend that the Service Charges (Consultation Requirements) (England) (Regulations 2003 ("the Consultation Regulations") do not permit such a charge.

(viii) Issue 8: The manner in which the Respondent has operated the Reserve Fund both in respect of both the estate and block charges. The Applicants contend that the reserve fund has been used to fund items of current expenditure which should rather funded from current expenditure for the year.

(ix) Issue 9: Repayment of Management Fees which had been wrongly demanded, the sum involved being £3,334.53. The lease restricts the Manager to an annual charge of £90 + VAT for each flat. The Respondent has conceded that it charged a sum in excess of this.

(x) The Applicants had challenged a sum of £24,618.06 charged in 2018/9 as an additional charge. However, Mr Kapadia confirmed at the hearing that this item is no longer in dispute.

The Application

9. Since about 2009, Mr Kapadia has been part of a residents group concerned about how the Development has been managed and the service charges which have been levied. In November 2016, he carried out a detailed analysis of the accounts and communicated with his estate manager and the Respondent's Chief Executive. The Respondent conceded that they had been overcharging the management fee since around 2005 (Issue 9).

10. Mr Kapadia raised other items of concern with the Ombudsman. On 13 July 2017, the Ombudsman required the Respondent to explain the manner in which the estate charges were being computed. In the absence of any satisfactory response, Mr Kapadia issued proceedings in the County Court (Case No. E61YJ879) in respect of sums which he contended he had been overcharged. In due course, the Respondent conceded his claim.

11. The residents subsequently contacted their Member of Parliament, Barry Gardiner, who wrote a number of letters on their behalf. This correspondence failed to resolve their concerns.

12. In 2021, Mr Kapadia assisted Mrs Lin Tai Wan, the tenant of 135 Chamberlayne Avenue, to issue an application to this Tribunal (LON/00AE/LAC/2021/0008) challenging the service charges payable for the years 2005-2019. On 16 January 2023, the application was listed for hearing before a Tribunal (Judge Abbey and Ms Krisko). On 13 January, the Respondent had written to Mrs Wan agreeing to credit the sum of £3,314.78 which was the total sum comprised in the dispute. The Respondent also agreed to refund the tribunal fees paid by the applicant and for an order to be made under section 20C of the 1985 Act. In the light of these concessions, the Tribunal recorded in its decision (at [8] as corrected on 17 February 2023) that it had "determined that the service charges of £3,314.78 was not reasonable and payable".

13. Prior to issuing the current application, Mr Kapadia sent a detailed Pre-action Letter (at p.419-425). On 3 March 2023, the Respondent's Solicitor responded (at p.426-432). Mr Kapadia replied on 3 March 2023 (at p.433434). The Respondent warned Mr Kapadia that it might seek to recover its costs of any proceedings through a service charge. The Respondent recognised that the extent of the Development covered by the "Communal Area and Facilities Costs" had been creating confusion for a number of years. It asserted that title number NGL777992 was registered in the name of BDW Trading Limited on 7 October 1999 before the leases were granted. The drafter of the leases did not attach the Title Plan from this registration to any of the leases. Neither has the Respondent been able to produce a copy of this Title Plan.

14. On 17 July 2023 (at p.1-9 of the Application Bundle), Mr Kapadia issued the current application on behalf of 49 leaseholders at Chamberlayne Avenue challenging the service charges payable for the years 2005 to 2022. The total value of the dispute was stated to be £522,515.41. At Section 5, Mr Kapadia referred to the decision of the Tribunal LON/00AE/LAC/2021/0008 and contended that it had "dealt with the issues in this application for the years 2005 to 2019".

15. On 11 October 2023 (at p.143), Judge Martynski set this matter down for a Case Management Hearing ("CMH"). He noted that in LON/00AE/LAC/2021/0008, the Respondent had conceded the case on commercial grounds. The Tribunal had not considered the relevant evidence or made any finding on the merits. Mr Kapadia initially challenged this, but now concedes that this decision has little persuasive value on the issues which we are now required to determine.

16. Judge Latham has given Directions on a number of occasions to ensure that this application should be determined in a proportionate and cost effective manner having regard to the Overriding Objective in rule 2 of

the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"), as a result of which:

(i) The leaseholders who are parties to this application are listed at p.50-51 of the Bundle, namely 66 leaseholders in respect of 46 flats. They have all confirmed their agreement to being parties to this application and being represented by Mr Kapadia.

(ii) The Applicants have identified three "Lead Applicants" to address the range of issues that the Tribunal is required to determine: (a) Kailash Mistry (6 Chamberlayne Avenue); (b) Kerry Nicol (130 Chamberlayne Avenue) and (c) Harish Haria (143 Chamberlayne Avenue).

(iii) The Applicants have produced a Scott Schedule (at p.365-379) setting out the 42 service charge items which they challenge over the service charge years 2016/7 to 2021/2. The Applicants had initially produced a more extensive Scott Schedule (at p.10-49) challenging a total of 106 items over the service charge years 2004/5 to 2021/2. On 18 January 2024 (at p.312), Judge Latham restricted the preliminary hearing of the application to the service charge years 2016/7 to 2021/2.

(iv) The Respondent has provided a response to the Scott Schedule at p.380-413.

(v) On 18 January 2024, each party was restricted to adducing evidence from a maximum of four witnesses:

> (a) The Applicants have served witness statements from: (a) Kailash Mistry (p.481-483); (b) Kerry Nicol (p.484-485); (c) Noor Kapadia; (p.486-489); and Rupel Shah (p.489-490)
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> (b) The Respondent has served witness statements from: Abdul Kalam, (p.2828-2884); Karen Mitchell (p.2885-2891); Andy Price (p.3076-3131) and Gabriela Janovicova (p.3132-3138).

(vi) Neither party has sought permission to adduce expert evidence.

(vii) The partiers have provided a Bundle of Documents, which extends to 3,651 pages, and to which reference is made in this decision.

17. This Tribunal deals with many litigants in person. It uses its case management powers to help the parties identify the issues in dispute and enable them to formulate their cases. However, it is for any party to identify the issues that it wishes a tribunal to determine and the evidence upon which they seek to rely. Any applicant seeking to challenge any service charge must establish a prima facie case that it is not payable or

is unreasonable. This imposes a heavy burden on a lay party seeking to represent a large number of lessees.

The Hearing

18. Mr Noor Kapadia appeared on behalf of the Applicants. He was assisted by Mr Craig Barlow (Counsel) who was instructed under the Bar Direct Access. Mr Barlow had been instructed shortly before the hearing and informed the Tribunal that his role was limited to cross-examining the Respondent's witnesses. In the event, Mr Kapadia conducted some of the cross-examination. Mr Kapadia provided a Skeleton Argument and a number of authorities.

19. Mr Simon Allison (Counsel), instructed by JB Leitch (Solicitors) appeared on behalf of the Respondent. He was accompanied by Ms Katie Edwards from his solicitors. He also provided a Skeleton Argument and a bundle of authorities.

20. The parties initially made brief opening statements. The Tribunal then asked both parties to address the terms of the lease. The witnesses formally proved their witness statements. The Tribunal then worked through the Scott Schedule and questions were put to any witness who dealt with the item in their witness statements.

21. During the hearing, it became apparent that the area in dispute in Issue 1 is a relatively small area shaded yellow on the plan annexed to this decision. The Tribunal gave an oral judgment on this issue at the beginning of the second day of the hearing. This resolved many of the items in dispute.

22. Mr Kapadia had applied for the Tribunal to inspect the Development. The Tribunal had suggested that they would carry out the inspection of the morning of the third day of the hearing. However, at 12.30 on the second day, Mr Kapadia informed the Tribunal that the Applicants no longer required the Tribunal to inspect the Development. The Tribunal did not consider it necessary to do so. There are a number of photographs in the Bundle, including those at p.3055-3069 which were taken in October 2016.

23. It was apparent that Mr Kapadia was concerned about the cost of the proceedings. He asked the Tribunal to hear closing submissions and conclude the hearing on Day 2. The Tribunal took the morning of Day 3 to review the numerous documents to which we had been referred during the course of the hearing. We discussed our decision on the afternoon of Day 3.

24. The Respondent raised a preliminary issue relating to a letter, dated 6 March 2024, from Barry Gardiner MP addressed to Judge Latham and

which the Applicants had included in the Bundle at p.491. Mr Allison referred the Tribunal to the Guidance issued by the Parliamentary Commissioner for Standards in May 2023 on "MPs Writing to Judges". The Tribunal only saw this letter when they perused the Bundle of Documents. We agreed that we should not have regard to the letter. We make no criticism of the Applicants. They had no reason to be aware of this guidance which addresses the fundamental constitutional principle of the separation of powers between the Executive and the Judiciary.

25. The Applicants adduced evidence from four witnesses:

(i) Mr Noor Kapadia (18 Chamberlayne Avenue): On 23 December 1999, he acquired his house. He provided the Tribunal with the original of his deeds. This included the A3 plan of the Development which has been annexed to the leases of the leasehold properties as "Plan 1". His statement catalogues the steps that he has taken to seek to address the issues raised in this application. It does not address the quality of the External Decorations Programme (Issue 2).

(ii) Mr Kailash Mistry (6 Chamberlayne Avenue): On 26 November 1999, Mr Mistry acquired his leasehold interest. He lives in Block A (Nos. 1-13). He complains about the unsatisfactory manner in which the estate has been managed, the high turnover of staff and the level of the service charges. He refers to specific complaints relating to the need for guttering and roofing repairs. On 18 July 2016, his flat was burgled. He complains of the insecure nature of the three entrance doors into the block. These are not items included in the Scott Schedule. Mr Mistry did not engage with the statutory consultation in respect of the External Decorations Programme (Issue 2). The Tribunal notes that when Mr Schwier prepared the Asset Plan in October 2016, he recorded (at p.2987) that the roofs and gutters to this block appeared to be in good condition. Albeit that the three entrance doors were in timber, these had been replaced in previous years and were more secure than in other blocks.

(iii) Ms Rupel Shah (38 Chamberlayne Avenue): Ms Shah acquired her property in April 2007. This is a house. From 2008, she was an active member of the residents' group that was seeking to address the management problems on the Development. She queried what part of the Development was being managed by the Respondent. She asked for her service charge account to be put on hold while this was resolved. The Respondent declined to do this. Ms Shah complains of an administration charge of £60 that was imposed. However, this is not part of the current claim.

(iv) Ms Kerry Nicol (103 Chamberlayne Avenue): In 2001, Ms Nicol acquired her flat. She lives in Block G (Nos. 114-134). Ms Nicol did not attend the hearing. However, Mr Allison had no objection to the Tribunal having regard to her statement. On 4 July 2016, both her flat and that of her neighbour (No.129) were burgled. Ms Nicol complains that the

contractor failed to carry out the works to the car parks as part of the External Decorations Programme (Issue 2). Mr Schwier recorded (at p.2990) that the doors and frames to this block were all quite degraded due to the spate of burglaries and recommended that these with upgraded.

26. The Respondent adduced evidence from four witnesses:

(i) Ms Karen Mitchell is employed as the Respondent's Senior Property Manager. She gave evidence in respect of Issues 3 and 6.

(ii) Gabriela Janovicova was the Respondent's Property Manager for Chamberlayne Avenue between September 2019 and October 2021. She therefore had no responsibility for the External Decorations Programme (Issue 2). She gave evidence on Issues 1 and 5.

(iii) Mr Andy Price is employed as the Respondent's Major Works Team Manager. He gave evidence on Issues 2 and 7. He was responsible for the service of the statutory notices in respect of the External Decoration Programme and for signing off the works. However, he did not visit the Development.

(iv) Abdul Kalam is the Respondent's Head of Service Charge Accounting. He took up this role in January 2022. However, he had previously held a number of other posts with the Respondent. He gave evidence in respect of Issues 4, 8 and 9.

The Law

27. Section 18 of the Landlord and Tenant Act 1985 ("the Act") defines the concepts of "service charge" and "relevant costs":

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

28. By section 30, a "landlord" includes "any person who has a right to enforce payment of a service charge".

29. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
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> (a) only to the extent that they are reasonably incurred, and
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> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
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> and the amount payable shall be limited accordingly."

30. The Supreme Court has recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord (or manager in this case) first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. A landlord is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the 1985 Act to determine whether the landlord acted reasonably (see [33]).

31. The Tribunal highlights the following passage from the judgment of Martin Rodger KC, the Deputy President, in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC);

> "28. Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach."

32. Section 20 of the Act requires a landlord to consult in respect of "qualifying works" where the relevant contribution of any lessee will exceed £250. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

> Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.
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> Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.
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> Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.
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> Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

33. Section 20C of the Act permits a tenant to seek an order that all or any costs incurred by a landlord in proceedings before the 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 tenant. The tribunal may make such order on the application as it considers just and equitable in the circumstances.

The Leases

34. All the leaseholders occupy their flats pursuant to tripartite leases between: (i) "The Lessor": The leases were granted by Barratt Homes Limited; (ii) "The Manager": OM Management Services Limited, the Respondent; and (iii) "The Lessee". The Lease for 135 Chamberlayne

Avenue is at p.102-138. The property being described as "Plot No 135 Chamberlayne Walk (formerly part of GEC Sportsground) Preston Road Wembley". The lease is granted for a term of 999 years from 1 May 1999.

35. It is agreed that all the leases are in a similar form. This is confirmed by the other leases included in the bundle: (i) 4 Chamberlayne Avenue (p.3397-3433); (ii) 115 Chamberlayne Avenue (p.3473-3509); (iii) 56 Chamberlayne Avenue (p.3511-3548); (iv) 193 Chamberlayne Avenue (p.3320-3357); (v) 73 Chamberlayne Avenue (p.3435-3471); and (vi) 86 Chamberlayne Walk (at p.3359-3395).

36. There is an important omission in that the relevant Title Number was not entered for the freehold interest which is used to define the Development. The parties agreed that this should be NGL777992. The Title Number was correctly inserted in a number of the leases. Had this point not been conceded, Mr Allison would have argued that this omission could be rectified by properly construing the lease and applying the principles identified by Lord Hoffman in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101 at [22].

37. The Lessor took little care about the drafting of the lease. Thus the ground rent could be either £150 or £225 per annum; as one figure is not deleted. The premium is not specified. The Lessor's contribution to the "Part A" estate charge is stated to be 0.50%. However, we were told that there are 202 residential properties and each owner is rather required to contribute 0.495%.

38. The Lessee is required to pay three types of service charge which are set out in the Sixth Schedule:

(i) an estate charge, referred to in the leases as a "Part A" charge in respect of "communal areas and facilities costs".

(ii) a block charge, referred to in the leases as a "Part B" charge in respect of block costs.

(iii) a car parking charge, referred to in the leases as a "Part C" charge in respect of "forecourts/accessway costs". These charges are not challenged in these proceedings.

39. Issue 1 requires the Tribunal to determine the extent of the Development covered by the "Communal Areas and Facilities Costs", namely the estate charge. We consider the terms of the lease relevant to this below.

40. By Clause 4, the Lessee covenants to observe and perform the obligations set out in Parts One and Two of the Eighth Schedule. This Schedule includes an obligation to pay the Manager the "Lessee's Proportion" at the times and the manner specified in the Schedule (Part 1, paragraph

2). "The Lessee's Proportion" is defined as "the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule".

41. By Clause 6, the Manager covenants to observe and perform the obligations set out in the Tenth Schedule. This Schedule includes an obligation to carry out the works and do the acts and things set out in the Sixth Schedule (paragraph 1).

42. The Sixth Schedule relates to the "Maintenance Expenses" which are defined as "the moneys actually expended or reserved for periodic expenditure by or on behalf of the Manager …. at all times during the Term in carrying out the obligations specified in the Sixth Schedule".

43. The Sixth Schedule sets out the types of expenditure that can form part of the 'Maintenance Expenses' (emphasis added):

(i) "Part A" costs (estate costs) include the cost of keeping the gardens and all other soft landscaped parts of "the Communal Areas and Facilities" generally in a neat and tidy condition, including reinstating any boundary fences 'on or relating to the Maintained Property' ("Part A", paragraph 1). Part A costs also cover all the accessways and hard landscaped areas.

(ii) "Part B" costs (block costs) include all the usual block related costs, including redecorating the Buildings and keeping them in good and substantial repair order and condition, as well as cleaning the refuse storage areas. Gardening and landscaping costs for areas exclusively enjoyed by particular buildings also fall under Part "B".

(iii) "Part D" costs are costs applicable to all of Parts A to C. They include a wide variety of costs in the usual way, including insurance, statutory compliance, and management. There is a fixed (subject to inflationary increases) management fee that is to incorporate a profit element (paragraph 12). In addition, the costs of enforcing compliance with covenants, valuing buildings, preparing accounts for audit and the cost of employing auditors can be included. There is provision for a reserve fund and a wide-ranging sweeper clause at paragraph 15.

44. Issue 2 relates to the External Decorations works. The Third Schedule defines "The Demised Premises". This is the flat edged red on Plan 2. The relevant plan is at p.137. The demise includes the doors and windows of the flat including the glass in the windows but not the external decorated surfaces thereof. Thus, the "Part B" block charge requires the Manager to redecorate the external parts of the Building, including all doors, door frames, windows and window frames. The Lessee is responsible for repairing and maintaining the windows of their flat, whilst the Manager is responsible for their external decoration. If external decorations are delayed, causing windows to rot, it is a moot point as to whether this is

the liability of the Lessee under the terms of the Lease, or the liability of the Manager arising from their failure to decorate the windows. A number of the lessees have replaced their wooden windows with UPVC units.

45. The Seventh Schedule provides for service charge accounts to be prepared for the year ending 31 April (sic). In practice, accounts have been kept to the year end 31 August. The Lease provides for interim service charges to be paid on 1 May and 1 November. There are demanded on 1 September and 1 March to reflect the accounting year that the Manager has elected to operate. No objection was taken to this.

Issue 1: The Extent of the Development

46. The Applicants challenge the following estate charges on the basis that part of the charge extends to the maintenance or insurance of land which falls outside the defined area of the Development:

(i) General Maintenance Estate Charges: 2016/7: £3,145.86; 2017/8: £10,277.40; 2018/9: £11,512.88; 2019/20: £8,002.16; 2020/21: £16,494.95; and 2021/22: £11,232.56. The Applicants contend that only 30% is payable.

(ii) Landscape Costs: 2016/7: £6,370.63; 2017/8: £7,954.44; 2018/9: £7,162.44; 2019/20: £5,937.50; 2020/21: £5,689.32; and 2021/22: 2,048.94. The Applicants contend that only 30% is payable.

(iii) Insurance: 2016/7: £502.73; 2017/8: £2,995.26; 2018/9: £1,338.69; 2019/20: £1,346.59; 2020/21: £3,964.44; 2021/22: £1,433.46. The Applicants contend that only 20% is payable.

(iv) Health and Safety: 2021/22: £1,148.40. The Applicants contend that only 30% is payable.

47. The Applicants suggest that part of this land is under the ownership of BDW Ltd, the London Borough of Brent, Walton Gardens Residents Ltd & private residents. At the hearing, it became apparent that only a small plot of land is in dispute, namely the area shaded in yellow on the attached plan ("the disputed area").

48. Our starting point is the Lease. The Maintenance Costs in respect of Part "A" relate to "Communal Area and Facility Costs". Clause 1 of the Lease defines "the Communal Areas and Facilities" as (emphasis added):

> "the following areas and facilities forming part of the Development (but not exclusively and not forming part or parts of the Building curtilages) which are intended to remain in private

ownership and which are to be used in common by the occupants of the Dwelling:

(i) all gardens grounds and other soft landscaped areas and any gardens and grounds substituted therefore

(ii) all lighting systems lighting columns and any installations ancillary thereto".

49. The First Schedule defines "The Development" as:

> "ALL THAT piece of land situate at Chamberlayne Walk Wembley now or formerly comprised in the Title Number together with any adjoining land which may be added thereto within the Perpetuity Period and together with any buildings or structured erected or to be erected thereon or on some part thereof."

50. The critical issue is the Title Number NGL777992 as at the date of the grant of the lease. The Respondent states (at p.427), that "on 7 October 1999, title number NGL777992 was registered in the name of BDW Trading Limited". All the leases were granted after this date. This statement is not strictly correct as Barratt Homes Limited did not change its name to BDW Trading Limited until 30 November 2007. The Respondent is unable to produce the Title Plan as at 7 October 1999. Neither is it attached to any of the leases. This is extremely unfortunate.

51. Mr Kapadia rather refers the Tribunal to the following provisions in the Lease:

(i) Paragraph 4 of the preamble to the lease provides: "The Lessor is to grant and the Manager has agreed to take a lease of all the Maintained Property as hereinafter defined following the sale and purchase of the last Dwelling of the Property".

(ii) "The Management Lease" is defined as "a Lease made between (1) the Lessor and (2) the Manager comprising the Maintained Property to be completed following the sale and purchase by the Lessor of the last Dwelling".

(iii) "The Maintained Property" is defined as "those parts of the Development which are more particularly described in the Second Schedule and the maintenance of which is the responsibility of the Manager".

52. Mr Kapadia also refers the Tribunal to "Plan 1" (at p.136). This is also annexed to the other leases in the Bundle. The purpose of annexing this Plan is not entirely clear. Indeed, it seems to have been a drafting cul-da-

sac. The Lease defines "the Properties" as "the flats and houses shown uncoloured on Plan No.1 other than the Demised Premises". None of the flats or houses on the various versions of Plan 1 appear to be coloured. This plan was produced in May 1999 by Derek Homer Associates. It shades various parts of the Development including (i) "land to be maintained by the local authority"; (ii) land to be maintained by the management company"; (iii) land to be transferred to Southern Electric; and (iv) land to be adopted by highways". The disputed area is shaded as "land to be maintained by the local authority".

53. For a number of years, Mr Kapadia has sought to clarify the extent of the Development managed by the Respondent. He referred us to a letter, dated 18 June 2002 (at p.1746), from Elliott Willis, the Respondent's Estate Manager (then trading as Peverel OM). He attached (at p.1747) what he described as "a definitive map highlighting all areas for which Peverel OM are responsible". A number of areas are shaded in yellow, orange and green. This does not include the disputed area.

54. On 9 September 2002 (at p.1328), Mr Willis sent a further letter seeking to clarify "the landscaping that was understood to be under the control of the local authority". It had become evident that the information provided was incorrect and that "Barratts as your developer remain responsible for the areas detailed for the present time". It was his understanding that these areas would be adopted in December. Lessees were requested to raise any queries with Barratts directly.

55. It is apparent that the Respondent was also uncertain of the areas for which it was responsible. When Mr Schwier prepared his Asset Management Plan on 27 October 2016, he stated (at p.2980):

> "The site was constructed in 1999. Due to the change in Property Managers and Chris Hodge subsequently leaving FirstPort, the exact responsibilities of the managing agent for the site, and the areas residents have to contribute towards is unknown. Best practice and common sense have been applied when dividing the areas up. We have attempted to advise on all of the managed areas, but this could still be open to further interpretation of leases. FirstPort are responsible for the management of common part areas."

56. Mr Schwier annexes a number of plans to his report (at p.3048-3053). All these plans have a boundary marked in red which "denotes boundary lines of responsibility – all common areas within the red lines are managed by FirstPort". These plans do not include the disputed area.

57. Mr Kapadia referred the Tribunal to an email, dated 5 July 2019 (at p.1484), from Leanne Cole, Head of Customer Care at Barratt London as to who was responsible for an area described as "Crown Green Mews".

She stated that Barratt West London were putting a maintenance regime in place until it could agree a long term solution.

58. Mr Kapadia also referred the Tribunal to an email, dated 7 October 2020 sent by James Wade, a principal surveyor with Barrett Corp & Harrington Ltd, to Ms Janovicova in respect of an insurance revaluation report. This incorporates the plan at p.424. The plan identifies sections of wooden fences which are owned respectively by Walton Garden Residents Limited and the owner of 125 Preston Road. It also identifies a small section of metal fencing on the boundary of the playing field which is the responsibility of Brent. However, the longer section of wooden fencing on the boundary of the playing field along Edison Drive is recorded as being the responsibility of the Respondent. Whilst his plan is relevant to Issue 5 (the fencing repair), it does not assist the Applicant's case. It records the disputed area as being owned by "BDW Ltd".

59. Mr Kapadia finally referred the Tribunal to an email dated 15 March 2024 from Jim Morrison, the Finance Director at Barratt West London. He confirmed that Barratt had no right to impose a service charge. Neither had Barratt engaged FirstPort to manage the Development.

60. The Tribunal agrees with Mr Allison that our starting point must be the terms of the Lease. The Landlord has not appointed the Respondent to manage the Development. The Lease rather imposes the management responsibilities on the Respondent, as "Manager". The Lease envisaged that the Lessor would grant a lease of the Maintained Property. It is apparent that this has not occurred. We were not told the reason for this.

61. Mr Allison asks the Tribunal to infer the land that would have been included in Title Number NGL777992 on 7 October 1999, from a transfer deed dated 29 June 2001 when Barratt Homes Limited transferred part of this freehold interest (including the leasehold flats on the Development) to Peverel Investments (at p.3193-3199). The Title Plan (at p.3199) uses the same layout plan which is annexed at Plan 1 to the leases. Barratt Homes Limited retained the freehold in the roads and pavements, albeit that it seems that the roads had been adopted by Brent and are now maintained at public expense.

62. The most conclusive evidence relating to disputed land is the Title Plan for NGL777992, recording the land included in this title on 8 February 2024. The Tribunal was provided with an A2 copy at the hearing. This clearly records the disputed areas as being within this title on that date. Thus, it would also have been included in this title on 7 October 1999 and subsequently when all the leases were granted.

63. The critical issue is Title Plan for NGL777992 at the time that the leases were granted. The Tribunal is satisfied at on 7 October 1999 and at all times thereafter, NGL777992 included the freehold of the disputed area

shaded yellow on the plan annexed to this decision. It is therefore part of "the Communal Areas and Facilities" in respect of which the "Part A" maintenance expenses are payable for all lessees.

64. Since October 1999, a number of freehold interests have been carved out of the freehold interest NGL777992:

(i) the freehold interests in respect of the 104 houses;

(ii) The freehold interests in nine leasehold blocks which are now owned by Proxima Investments (formerly known as Peverel Investments);

(iii) the freehold interest in the roads, pavements and surrounding areas. This was retained by BDW Trading Limited (formerly known as Barratt Homes Limited). It seems that they have now be transferred to C & D Broadway Investments Limited (see p.1307).

(iv) The roads have been adopted by Brent. However, we understand that Brent has not acquired the freehold to the subsoil.

(v) Despite what was contemplated in the Lease, the Respondent has not acquired any leasehold interest in the Maintained Property.

(vi) The current arrangements bear little resemblance to what was contemplated by Barratt Homes Limited in May 1999 and is reflected in Plan 1 annexed to the Leases. However, these aspirations were not incorporated as terms of the Lease. Plan 1 has merely generated, quite understandably, confusion.

65. The confusion that has arisen would have been avoided had an accurate plan been annexed to the leases delineating those parts of the Development which comprised "the areas and facilities" the repair and maintenance of which was to be included in the "Part A" estate charge. Had it done so, it would not have been necessary for the leaseholders to seek a determination from this Tribunal.

66. These leases have another 964 years to run. The Tribunal suggested that the Respondent should seek to obtain a copy of the Lease Plan for NGL777992 as at 7 October 1999 to avoid any confusion in the future. Alternatively, the parties should agree a clear plan reflecting those parts of the Development which are covered by the estate charge reflecting the decision of this Tribunal.

Issue 2: The External Decorations Programme (2017/8)

67. These works were executed by Formation Management Limited ("Formation") between September and November 2017 at a cost of £150k

(inclusive of VAT) and were funded from the reserve fund. £142,109.96 was charged to the nine blocks and £7,890.04 as an estate charge. The Applicants argue that some of the works charged to the estate charge related to works executed outside the Development. However, this issue has now been determined.

68. The Applicants contend that the Respondent failed to comply with the statutory duty to consult. Complaint is also made that the works were executed to a low standard and that some items are still outstanding. The Applicants suggest that the service charge should be capped at £250 for each tenant.

69. On 31 March 2016 (at p.3088), the Respondent served its Stage 1: Notice of Intention. The proposed internal and external decorations were described in some detail. This included white lining and numbering in the open car parks. The property manager was Hannah Dearing. The works were considered necessary to upkeep the aesthetics of the Development and to ensure the integrity of the structure. The lessees were invited to make observations on the proposed works by 27 April. They were also invited to propose a contractor from whom an estimate should be sought.

70. No lessee responded to this notice. The Applicants complain that their flats had been burgled and that the entrance doors should have been upgraded. This consultation afforded them with the opportunity to argue for this. They did not take up the opportunity to do so.

71. Thereafter, Ms Dearing drew up the document upon which the contractors would be required to tender (at p.3091-2). This is no more than a pro forma document with tick boxes to specify the works to be executed (i.e. “paint window frames”). No specification of works was prepared. The same pro forma was used for all the blocks. The blocks had wooden doors and windows. The Tribunal would have expected the Manager to have drawn up a detailed schedule of works, having inspected the Development and recorded where any wood rot was apparent. The property manager might also have applied her mind to upgrade the entrance doors, given the spate of burglaries on the Development.

72. On 28 April 2016 (at p.3104), Paul Earnshaw, the Project Coordinator, invited five contactors to tender for the works. All the contractors were accredited to the Respondent’s Safe Contractor Scheme. It was a requirement that they should have public liability insurance of at least £5m. Any tender should be returned within 2 weeks. The email noted that minor timber repairs were included in the tender price. If more extensive timber repairs were required, the contractor was asked to notify this at the time of the tender submission. The Tribunal would have expected the Manager, rather than the contractor, to identify such repairs.

73. Two tenders were returned. On 6 May 2016 (at p.1882-1883) Elite Contracts Division Ltd ("Elite") quoted £173,730. On 12 May 2016 (at p.1880-1), Formation quoted £125,000. Both tenders excluded VAT. Mr Kapadia suggested that the quote from Formation was "defective" because it did not specify when the contractor could start, how long the works would take or provide details of insurance. The Tribunal rejects this suggestion. Formation was on the Respondent's list of approved contractors. The Project Coordinator could have clarified these details. However, the Tribunal does accept that this reflects a lack of care as to how the tender was framed. The breakdown of the tender (at p.3104) confirms the casual manner in which the tender was priced. The price seemed to reflect no more than the size of the individual blocks. There was no attempt to identify any timber repairs that might be required or to access how many tenants had replaced their wooden windows with UPVC units which would not have required redecoration.

74. Mr Price gave evidence that no tender had been returned in the two week window and that on 23 May 2016, the Respondent chased up the five contractors and invited tenders to be returned by 6 June. He was clearly wrong, as two tenders had been returned by this date. However, it may be that the Project Coordinator had wanted a wider range of tenders.

75. On 31 August 2016 (p.3096-7), Ms Dearing sent the lessees the Stage 3: Notice about Estimates. This gave details of the two estimates that had been received. The quoted prices were stated to be net of VAT. There was also a supervision fee of 10%. The lessees were invited to make observations in respect of the estimates by 7 October.

76. Only one response was received. On 6 September 2016 (at p.3099), a lessee in Block H sought details of when the works would start, when they would be finished, and the proportion of the cost that would be allocate to their block. The Tribunal has not been provided with the response.

77. On 30 September 2016, Mr Schwier, a Building Surveyor, inspected the Development. On 27 October 2016, he completed his Asset Management Plan (at p.2978-3072). This was a thorough report. He seems to have been unaware of the redecoration works that were to be executed. He noted that all the blocks required external decorations within the next 12 months, and that there were rotten areas to some timber windows which needed to be filled. He also recommended that the entrance doors be upgraded with aluminium equivalents due to the spate of recent burglaries. The doors and frames were all quite degraded. He also noted that the bin stores needed to have their doors replaced. These doors had been abused and had not been correctly maintained. In the previous decoration rounds, the doors had not been repaired/filled prior to being decorated. He noted that in a number of blocks, lessees had replaced the wooden windows with UPVC units.

78. On 9 May 2017 (p.3101) Ms Dearing notified the lessees that Formation had been appointed to carry of the external decorations. Their contract price was £125,000 to which a supervision fee of 10% and VAT of 20% to be added making a total of £165,000. A provisional start date was 26 June 2017 and would take some 16 weeks.

79. Mr Kapadia complained that Formation should not have been appointed because of their poor track record on the Development. However, the lessees were given the opportunity to make this point in response to the Notice about Estimates. There is no evidence that any lessee or freeholder did so.

80. On 10 November 2017, the Respondent notified the lessees and the freeholders that the works had been completed. Formation submitted five invoices totalling £150,000 between 7 September and 10 November 2017 (see p.1187-1202). This included an invoice for the 10% retention. The Respondent invited the lessee and the freeholders to provide any observations about the works.

81. None of the witnesses called by the Applicants suggested that they had responded to this letter. However, on 15 March 2018 (at p.3112-3), Jasmine Trail, the Project Coordinator, notified Formation of a number of snagging items which had been identified by the Property Manager, now Emily Ruggieri, and some residents. The most significant item was that the parking bay numbers had not been painted. This should have been apparent to anyone who was supervising the works. It also seems that the windows to one elevation of Block A were not painted. On 22 June 2018 (at p.3109), Formation confirmed that the snagging items had been completed. However, Mr Price stated that it was not until 19 March 2019 that Ms Ruggieri confirmed that the works had been completed.

82. This does not seem to have been the end of the matter. On 7 August 2020 (at p.2394), Ms Lai Chu Mo, the lessee of 135 Chamberlayne Avenue, complained that the white lining and numbering in the open car parks had not been painted. On 25 June 2021 (at p.1175), the Respondent notified the lessees that FM Group Services Limited were to repaint all the white lines and bay numbers in the residential car parks. We were told that some adjustment was made to the service charge accounts in respect of this additional work.

83. Mr Kapadia complained about the quality of the work and referred the Tribunal to a range of photos at p.1212-1287. A number of these relate to the white lining and numbering in the open car parks. Others illustrate the unsatisfactory state of some entrance doors and the state of some windows including areas of wood rot. We were told that these were taken at various dates between 2017 and 2024. External decorations would normally be required every four or five years. The state of the windows in 2024 does not assist in assessing the quality of the works executed in 2017.

84. The Tribunal reaches the following decisions on this issue. First, we are satisfied that the Respondent complied with their statutory duty to consult. The lessees were given the opportunity to comment on the scope of the works. They did not take the opportunity to suggest that the works to the entrance doors to the flats should be upgraded. They were given a further opportunity to nominate a contractor and to comment on the contractor whom the Respondent proposed to appoint. The lessees did not seek to suggest that Formation should not be appointed. These consultation requirements are important elements of the statutory armoury to protect tenants from paying for unreasonable service charges. However, tenants must engage if these procedures are to be effective.

85. The Tribunal has some concerns about the manner in which this £150k external decorations programme was managed. We would have expected the Manager to prepare a detailed specification of works identifying areas of wood rot. Given the number of burglaries on the Development and the state of some of the entrance doors, consideration should have been given to upgrading the doors. It is not good practice to leave the contractor to identify what additional repairs may be required. There was a considerable delay between the tenders being submitted (May 2016) and the works being executed (June 2017). There was a real risk that the state of the woodwork would have deteriorated over this period. In October 2016, the Respondent obtained the Asset Management Plan from Mr Schwier. However, there seems to have been no connect between this thorough survey of the Development and the specification for the works to be executed. Had a proper specification of works been prepared, it would have been good practice to review this against the Asset Management Plan. We also have concerns about the supervision of the works. It should not have taken four months to identify that the windows on one elevation of a block had not been painted and that the white lining and numbering work had not been done.

86. The Tribunal is satisfied that the contract price was reasonable. The Manager took sufficient steps to test the market. We have considered whether we should make a reduction to reflect the poor quality of the works. We are satisfied that the Applicants have failed to adduce sufficient evidence to justify any such reduction. The white lining and numbering work to the open car parking areas have now been made good. The Respondent has suggested that Formation had been required to hand paint the original number and lines, rather than use stencils. The majority of the costs were allocated as block charges to the nine blocks. No sufficient evidence has adduced to justify any reduction to the service charge for any specific block. The Applicants have adduced no evidence of the complaints that they made in 2017 about the quality of the works.

Issue 3: The Asset Management Report (2017/8)

87. In 2017/8, £6,867 was charged as an estate cost in 2017/8 in respect of an Asset Management Report (2017-2037). The Applicants contend that this report was obtained for its own management purposes and is not payable pursuant to the terms of their leases. Mr Schwier was an employee of the Respondent. The cost had not been included in the budget for the year. It was the first time in 17 years that such a cost had appeared in the accounts. The cost was £34 per property.

88. Ms Mitchell deals with this in her witness statement at [17] – [28]. Mr Schwier's report (at p.2978-3072) was thorough, as we have discussed above. The Tribunal would expect any person managing an estate to periodically obtain such a report so that it can prepare a Planned Maintenance Programme. This report looks to the period of 2017-37 with tables at p.3005-3044.

89. The Tribunal is satisfied that this sum is payable pursuant to the terms of the Lease. The Manager's functions are set out in "Part D" of the Sixth Schedule and would recoverable under paragraphs 2, 7, 10, 11, 13 and 15. We reject the suggestion that this was obtained for the Manager's own benefit. The Manager has no legal interest in any part of the Development. Its role is to manage the Development. Its responsibilities are set out in "Part D". It is entitled to pass on the costs of fulfilling its responsibilities through the service charge. It was open to the Respondent to instruct Mr Schwier, a surveyor whom it employs. To conclude, we are satisfied that this charge is payable and is reasonable.

Issue 4: Accountancy Fees (2016/7 – 2021/2)

90. The Applicants challenge the following sums estate charges in respect of accountancy fees: 2016/7: £3,075; 2017/8: £3,228.75; 2018/9: £3,325.61; 2019/20: £3,167.04; 2020/21: £3,281.00; and 2021/22: £5,215.00. They contend that that these charges were incurred for the benefit of the Respondent and are not payable pursuant to the terms of their leases. Mr Kapadia further complains that up to 2010, only audit fees were included in the accounts. There are now separate fees for "accounts preparation" and "audit/accounts certification" (see p.839). He complains that the additional charge was introduced "stealthily". The Applicants do not dispute the audit costs.

91. Mr Kalam deals with this in his statement at [7] – [14]. He describes the work that is involved. The Tribunal is satisfied that these functions fall outside the basic management fee payable under paragraph 13 of "Part D". Paragraph 7.4 makes specific provision for the management costs involved "in the preparation for audit of the service charge accounts". The Tribunal is satisfied that this charge is payable and is reasonable.

Issue 5: Fence Repair: £3,288 (2018/9)

92. The Applicants challenge an estate charge of £3,288 included in the 2018/9 accounts for repairs to a fence. The Applicants contend that the repairs were rather carried out by Brent at its expense. There is also a suggestion that Respondent's bill was met under an insurance claim. The cost was £16.38 per property.

93. There are two invoices:

(i) At p.1523, there is an invoice, dated 19 October 2018, issued by Veolia to Brent in the sum of £1,034.88 "to install 8 posts and fencing panels at GEC Pellett Road". Brent paid for this and the cost has not been passed on the lessees through the service charge.

(ii) At p.1522, there is an invoice, dated 14 September 2018, issued by Offeld Services to the Respondent for £3,288 for "Chamberlayne Avenue – Replace Fence". This is the invoice disputed by the Applicants.

94. Ms Janovicova deals with this in her witness statement at [6] to [14]. This fence is adjacent to the playing field. At p.3173 is a Title Plan which shows a section if a wooden fence shaded in green which is the responsibility of the Respondent and a metal fence shaded in blue which is the responsibility of Brent. There are images from google maps showing damage to the wooden fence in March 2018 (at p.3168-3169) and the state of the metal fence (at 3171).

95. The Tribunal is satisfied that different repairs were executed by the two contractors. There is no evidence to support the suggestion that two contractors issued separate bills for the same work. The wooden fence has been in a bad state of repair. It is unclear whether Brent paid for work to the wooden fence which was rather the responsibility of the Respondent.

96. The Tribunal is satisfied that this fence fell within the Manager's liability to maintain the Development. The works were executed and the cost was not met by insurance. To conclude, we are satisfied that this charge is payable and is reasonable.

Issue 6: Careline Monitoring Costs (2016/7 to 2021/2)

97. The Applicants challenge an estate charge for Careline Monitoring costs for an out-of-hours service: 2016/7: £741.76; 2017/8: £645.87; 2018/9: £554.28; 2019/20: £511.64; 2020/21: £515.00; and 2021/22: £515.00. The annual cost of this service ranged from £2.53 to £2.67 per property.

98. Mr Kapadia argues that this cost should be included in the Respondents basic management charge. He refers to a document at p.1600 which states that the basic management fee covers "providing an out of hours duty Development/Property Manager, 365 days per year". He disputes that an out of hours has been provided or is necessary as an estate charge.

99. Ms Mitchell deals with this at [1] to [16] of her statement. She notes that this service is not provided by the Respondent. It was rather provided by Appello Careline Limited ("Appello"). Since October 2023, the service has been provided by Adiuvo. The agreement with Appello, dated 5 July 2019, is at p.2893-2946. Much of this is redacted as it extends to other estates managed by the Respondent. Ms Mitchell's understanding is that the scheme was set up in 2016 to afford peace of mind for residents who do not have a red pull cord for emergencies. Appello has provided a spreadsheet (at p.2973-2974) recording that there were 412 calls over a period of 16 months. This is an extension of a service originally provided for retirement homes.

100. The Tribunal is satisfied that this is a service that the Respondent is entitled to provide under paragraph 11 and/or 15 of "Part D" of the Lease. The cost is modest and manifestly reasonable to afford residents peace of mind. It ill beholds Mr Kapadia to suggest that this should be a block, rather than an estate, charge as the manner in which it has been charged benefits the lessees whom he is representing in these proceedings. We are satisfied that whether the charge is treated as an estate or block charge is a matter for the discretion of the Manager. To conclude, we are satisfied that this charge is payable and is reasonable.

Issue 7: Statutory Notice Charge: £1,460.16 (2017/8)

101. The Applicants challenge a Statutory Notice Charge of £1,460.16 (namely £1,216.88 + VAT of 20%) charged as a block charge split between the nine blocks in 2017/8. The Applicants contend that the Consultation Regulations do not permit such a charge.

102. Mr Price deals with this at [34] to [39] of his statement:

(i) On 18 March 2016 (at p.3116-7), the Respondent served a Stage 1 Notice of Intention to replace the carpets in the communal areas of the blocks. The works were described as

> "Carpet Replacement. This work will consist of mechanically uplifting the existing carpet from the communal areas, preparation of the sub-floor and fitting the new carpet. The carpet that will be used is Balsan Equinoxe and the colour is to be advised."

(ii) The tenants were invited to make any observations on the proposed works and to nominate any contractor from whom an estimate should be sought by 24 April 2016. None of the tenants responded to this notice.

(iii) On 6 December 2017 (at p.3118-21), the Respondent served the Notice about Estimates. Two estimates had been obtained in the sums of £20,488 and £23,658.

(iv) The tenants were invited to make observations on the proposed estimates. None of the tenants responded to this notice.

(v) On 27 February 2018 (at p.3122-3), the Respondent notified the lessees that the contract had been appointed to the contractor who had provided the lowest tender. The works would start in the week commencing 30 April. The Manager notified the tenants of the cost of the works. On top of the contract price (£20,488), this the Manager would also charge: (i) a contract supervision fee of 10% (£2,048.80) and a contract administration fee of £1,216.80 + VAT. The total cost of the project, including VAT, was £28,504.32. This was a block cost. The average cost for the 98 lessees was £291. We were told that the Contract Administration Charge related to the administration work relating to the statutory consultation.

(vi) On 5 June 2018 (p.3124), the Manager informed the tenants that the works had been deferred until 30 July. A decision had been made to defer the works until the redecoration programme had been completed.

103. The Applicants challenge the Contract Administration Fee of £1,460.16 (inc VAT). Mr Kapadia contends that this charge is not permitted by the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations". In particular, paragraph 4(5) of the relevant schedule required the landlord to serve the Notice of Estimates free of charge. This is an issue of statutory interpretation.

104. The relevant consultation procedures are set out in Part 2 of Schedule 4 of the Consultation Regulations which apply to "Consultation Requirements for Qualifying Works for which Public Notice is not Required.

105. Paragraph 1 provides for the Stage 1: Notice of Intention:

> "(1) The landlord shall to give notice in writing of his intention to carry out qualifying works-
>
> (a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall–

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works."

106. Paragraph 2 provides for "Inspection of description of Proposed Works" (emphasis added):

"(1) Where a notice under paragraph 1 specifies a place and hours for inspection–

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the

landlord shall provide to any tenant, on request and free of charge, a copy of the description."

107. The Consultation Regulation give the landlord two options: (i) to describe in general terms the works proposed to be carried out; or (ii) specify the place and hours at which a description of the proposed works may be inspected. The Manager described in general terms the works to be carried out, namely "Carpet Replacement". There is nothing in the Consultation Regulations to prevent the Manager for charging for the service of the notice. It is only if the Notice specifies a place and hours at which a description of the proposed works may be inspected, that the landlord is prevented from charging for this element of the statutory procedures.

108. The landlord must have regard to any observations made by the tenants. Stage 2 then provides for the landlord to seek estimates for the works, including from any nominee identified by the tenants or association.

109. Paragraph 4 (5) - (9) provides for the Stage 3: Notice about Estimates. The relevant sub-paragraphs provide:

> "(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–
>
> (a) obtain estimates for the carrying out of the proposed works;
>
> (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–
>
> (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
>
> (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
>
> (c) make all of the estimates available for inspection.
>
> (6), (7), (8) ……..
>
> (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–
>
> (a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)–

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph."

110. Mr Kapadia argued that paragraph 4(5)(b) requires the landlord to provide the Stage 3 Notice of Estimates "free of charge". This is a novel argument for the Tribunal. Neither counsel was able to assist us by providing any authority on the point. The Consultation Regulations are extremely complex. It is surprising that they should make specific provision that the Stage 3 Notice of Estimates should be provided free of charge, whilst no similar provision is made in respect of the Stage 1: Notice about Estimates.

111. The Tribunal's starting point on this issue is the RICS Service Charge Residential Management Code (3rd Edition). This provides (at [3.4]) that managing agents should normally charge an annual fee for carrying out basic services. Section 3.5 suggest that managing agents should have a "menu of charges" for additional services. This would include:

(i) preparing statutory notices and dealing with consultations where qualifying works are proposed; and

(ii) preparing specifications, obtaining tenders and supervising substantial repairs of works.

112. The RICS's Management Code is not strictly applicable in this case as the Manager manages the Development. However, we are satisfied that the carpet replacement programme would fall outside the basic management charge in paragraph 12 of Part D of the Sixth Schedule. The Manager would therefore be entitled to charge additional fees for:

> (i) preparing the statutory notices and dealing with statutory consultations. Paragraph 10 makes specific provision for complying with statutory requirements. The Applicants take issue with the Contract Administration Fee of £1,216.80 (exc VAT), namely an average of £12.30 per flat.
>
> (ii) preparing specifications, obtaining tenders and supervising substantial repairs of works. This would be covered by paragraph 7. The Applicants take no issue with the 10% supervision fee.

113. The Section 20 statutory consultation procedures involve much more than the service of the Stage 1: Notice of Intention and the Stage 3: Notice about Estimates. These are discussed at [32] above. The scope of the works must be identified. The Manager must respond to any observations about the works. Where any contractor is nominated by a tenant, an estimate must be sought and the Manager must satisfy itself that the contract meets their Safe Contractor Scheme. The Manger would need to consider any responses received in respect of the estimates.

114. We are satisfied that the Manager (and indeed, any managing agent), is entitled a reasonable fee for carrying out the statutory consultation. We are further satisfied that a fee of £1,216.80 is reasonable.

115. The Consultation Regulations make specific provision where no additional fee is payable. Thus no additional fee may be charged where the tenant wishes to inspect the works for the estimate. It is somewhat surprising that the Consultation Regulations for the Stage 3: Notice of Estimates to be supplied "free of charge", whereas there is no similar provision in respect of Stage 1: Notice of Intention. However, in the current case, the Manager has made no additional charge for the "supply" of the Stage 3: Notice of Estimates. The issue for us, is rather whether the charge for complying with the Section 20 statutory consultation procedures is reasonable. We are satisfied that it is and that it is payable pursuant to the terms of the leases.

Issue 8: The Operation of the Reserve Fund

116. The Applicants challenge the manner in which the Respondent has operated the Reserve Fund both in respect of both the estate and block charges. They take issue with the following transfers in the block charge accounts: 2018/19: £10,749.51; 1019/20: £21,212.83; and 2020/21: £5,286.00 and an estate transfer of £11,768.446 in the 2020/1 accounts.

The Applicants contend that the reserve fund has been used to fund items of current expenditure which should rather funded from current expenditure for the year.

117. Mr Kapadia argues that in contravention of the Lease, the Respondent has misapplied reserve funds to reduce deficits arising on current and unbudgeted expenditure for these years. He relies on section 7.5 of the RICS Service Charge Residential Management Code which highlights that the purpose of a reserve fund is to spread the costs of 'use and occupation' as evenly as possible throughout the life of the lease and to prevent penalising leaseholders who may happen to be in occupation at a particular moment in time. He further argues that the costs are not payable pursuant to section 20B of the 1985 Act.

118. Mr Kapadia's complaint appears to be that the Respondent has used reserve funds in these years to pay for expenditure in those years, rather than future years. As Mr Allison noted, this is a somewhat circular argument as the Manager would never be able to spend the reserve fund monies.

119. Mr Kalam addresses this issue at [15] – [30] of his statement. He has detailed all the expenditure in each of the years in question that has been funded from reserves.

120. Paragraph 13 of "Part D" provides that the management expenses include:

> "Such sums as shall be considered necessary by the Manager (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Maintained Property".

121. The Lease affords the Manager a wide discretion as to how it operates a reserve fund. It is common ground that it is good practice for the Respondent to maintain a reserve fund so that any expenditure can be spread more evenly over a number of years.

122. The Tribunal is satisfied that the Respondent has acted reasonably within its wide discretion as to how the reserve fund should be operated. The normal complaint is a landlord is seeking to collect excessive sums for a reserve fund. The real issue under the 1985 Act is whether services funded under a reserve fund are payable pursuant to the terms of the lease and are reasonable. The Applicants do not suggest that any of the items of expenditure funded through the reserve fund are not payable or are unreasonable.

Issue 9: Repayment of Management Fees

123. The Applicants challenge the manner in which the Respondent has treated a sum of £3,334.53 which the Respondent has set aside in respect of the repayment of management fees which had been wrongly demanded. The lease restricts the Manager to an annual charge of £90 + VAT for each flat. The Respondent has conceded that it has charged a sum in excess of this.

124. Paragraph 12 of "Part D" permits the Manager to charge a management fee of £90 + VAT per dwelling in respect of the costs and outgoings described in the Sixth Schedule "which incorporates a profit element". The sum is to be reviewed annually "in line with annual inflation figures as shall be issued by HM Government". It is agreed that RPI is an appropriate index to use.

125. It is agreed that the Respondent charged a sum in excess of this and this is reflected in the Table at p.1667-1670. This is a long running dispute which Ms Janovicova acknowledged in a letter, dated 21 October 2020 (at p.1666).

126. In its response to the Scott Schedule (at p.392), the Respondent acknowledge the error. Refunds have been issued to homeowners. If any homeowner believes that they have not received the correct credit, the Respondent invites them to provide details so that this can be fully analysed. Mr Kalam deals with this at [31] – [35] of his statement.

127. At the hearing, it became apparent that the Respondent is holding a sum of £3,334.53 for former homeowners who are entitled to a refund, but have not claimed it. Mr Kapadia suggests that this should be refunded to the current lessees and freeholders.

128. The Tribunal does not accept this. The Respondent hold these sums on trust for those homeowners who made the overpayments. This trust is imposed on the Respondent by section 42 of the Landlord and Tenant Act 1987.

Order under Section 20C of the 1985 Act

129. The Applicants seek an order under section 20C of the 1985 Act, so that none of the landlord's costs of the tribunal proceedings may be passed to these Applicants through any service charge. Section 20C (3) permits the Tribunal to make such order on this application "as it considers it just and equitable in the circumstances".

130. Despite the fact that we have found in favour of the Respondent on all issues, we are satisfied that it is appropriate to make such an order. First, we are satisfied that the main item in dispute in this application has been

Issue 1: The Extent of the Development. This issue has only arisen from the unfortunate manner in which these leases were drafted. This is yet another case in which no adequate care has been taken about the drafting of the leases, albeit that these were granting interests in land for terms of 999 years. A copy of the Title Plan for NGL777992, as at 7 October 1999, should have been annexed to the Leases. The Plan 1 which was annexed to the leases is a major cause for the confusion that has arisen. This seems to have been a drafting cul de sac. Both the Lessor and the Manager should have ensured that there was no ambiguity about the scope of the Development, before the leases were granted. The lessees are not responsible for the problems that have arisen.

131. A number of opportunities have been missed when this issue could have been resolved. The Manager and/or Lessor could have sought clarification at an earlier stage. After the Tribunal gave its preliminary ruling on this point, Mr Kapadia recognised that this had resolved a large number of the items in dispute and was asked for the case to be concluded on Day 2. We give him credit for this and for the responsible manner in which he has taken up this case on behalf of his neighbours.

132. Although the Applicants have failed on Issue 2, this was largely because of the quality of the evidence that the lessees were able to adduce. The Tribunal was not impressed by the manner in which this major works contract was handled by the Respondent. There was a lack of communication and this has fuelled the Applicants' dissatisfaction about the manner in which the Development has been managed. The major redecorations contract did not address a real concern of the tenants, namely the lack of security because of the insecure entrance doors.

133. We note that Issues 3 to 9 have all been relatively minor.

134. This is normally a no costs jurisdiction. The legal costs incurred in this case have been substantial. We are satisfied that this dispute could have been resolved at a much earlier stage, had the Manager sought a determination from the County Court or the Tribunal as to the scope of the Development. This is a matter that needed to be determined by an independent and impartial tribunal. It may have seemed to make commercial sense for the Manager to concede Mr Kapadia's County Court claim and Mrs Wan's Section 27A Tribunal application. However, this has merely fuelled the view of the Applicants that the Manager has not been managing the Development in accordance with their leases.

Refund of Fees

135. In the light of our assessment of the overall merits of the case, we are satisfied that the Respondent should refund to the Applicants 50% of the tribunal fees that they have paid, namely £150.

Notification of this Decision

136. The Tribunal will send a copy of this decision to Mr Kapadia and the Respondent. The Tribunal directs Mr Kapadia to serve a copy of this decision on all the Applicants whom he represents.

Judge Robert Latham
1 July 2024

Rights of Appeal

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

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

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

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

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

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

Appendix: Communal Areas and Facilities – area shaded in yellow