



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

Case reference : LON/00AP/LSC/2024/0188

Property : Flat 53 Lea Court, 143 Broad Lane,
London, N15 4QH

Applicant : Jonathan Laybourn

Representative : In person

Respondent : Notting Hill Genesis

Representative : Mr. Booker – Service Charge Business
Partner

Type of application : An application under sections 27A and
20C Landlord and Tenant Act 1985 –
reasonableness of Service Charges

**Tribunal
member(s)** : Judge Sarah McKeown
Mrs. A. Flynn MA MRICS

Date and Venue : 2 October 2024 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 8 October 2024

DECISION

Decisions of the tribunal

(1) The Tribunal finds as follow:

- (a) In respect of 2024-2025, the following service charges
(so far as they have been invoiced to date) are not due:**
- (i) Bulk Refuse Disposals (Estate costs) - £27.75;**
 - (ii) Communal Pump Maintenance (Estate costs) -
£89.73;**
 - (iii) Estate Maintenance (Estate costs) - £37;**

- (iv) Gardening (Estate costs) - £88.80;**
- (v) Gate Maintenance (Estate costs) - £64.75;**
- (vi) Transfer to Cyclical I&E (Block costs) - £249.98;**
- (vii) Transfer to cyclical I&E (Core charges) - £250.01;**
- (viii) DTD Repairs (Core charges) - £166.67;**
- (ix) Water hygiene maintenance - £18.50;**
- (x) Cleaning - £131.63;**
- (xi) Electricity - £102.68 (estate costs) and £102.84 (core charges);**
- (xii) Mansafe systems maintenance contract - £50;**
- (xiii) TV aerial/licence - £45.45;**
- (xiv) Window cleaning - £41.67.**

Total: £1,457.46.

- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.**
- (3) The Tribunal makes an order in respect of the Applicant for a refund of the tribunal fees of £320 to paid by the Applicant on or before 1 November 2024.**

References are to page numbers in the bundle provided for the hearing.

The Application

1. The Applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are reasonable. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
2. Flat 53, Lea Court, 143 Broad Lane ("the Property") is a one-bedroom flat in a purpose-built block of flats. The Respondent is the freeholder.
3. The application states that service charges for the years 01 April 2024-31 March 2024-31 March 2025 are challenged. It also states that an application pursuant to para. 5A of Sch. 11 Commonhold and Leasehold Reform 2002 Act is made.

4. On 9 April 2024 the Tribunal gave directions (p,2). It was noted that:
 - (i) The amount in disputed was approximately £947.69;
 - (ii) The application referred to the budgeted costs for years 2024-2025;
 - (iii) The application disputed the reasonableness of service charges during the forthcoming year and in particular the dispute related to the availability of documents and information during the previous year.
5. Directions were then given for the progression of the case.

Documentation

6. The Tribunal has been provided with a bundle of documents, comprising a total of 102 pages. This includes a Scott Schedule (p.10), Applicant's statement (p.17), Respondent's statement (p.18), service charge expenditure from 1 April 2022-31 March 2023 (p.22), Service Charge Accounts for Year Ended 31 March 2023 (p.40), service charge demand for 2024-2025 (p.83).
7. The bundle contains some "without prejudice" correspondence. The Tribunal explained at the start of the hearing that it had not looked at these parts of the bundle. When it came to costs, submissions, the Respondent said that it relied upon that correspondence, so the Tribunal said it would look at the "without prejudice" correspondence only when it came to making its decision on costs.

The Hearing

8. The Applicant attended the hearing, accompanied by Ms. Humphrey, who largely asked questions and made submissions on his behalf. Mr. Booker attended on behalf of the Respondent, accompanied by Mr. Von Sitter (Property Manager since 1 July 2024).
9. It was clarified at the outset that the application related only to service charge items (27A Landlord and Tenant Act 1985) and not to any administration charges (para. 5A of Sch. 11 2002 Commonhold and Leasehold Reform Act 2002).

10. The Applicant stated that he bought his flat in July 2022.
11. It was established that the Applicant's "share" of the total service charges was 1.85% of the applicable total. The Applicant agreed with this.
12. At the start of the hearing, the Tribunal asked the Respondent to identify the relevant clauses of the Lease, particularly in relation to the mechanism by which Service Charges were calculated and demands raised. The submissions made are set out below under the relevant headings. Having done this, the Tribunal established that the Applicant had no issues in this regard.
13. The Tribunal then asked the Respondent to go through each of the disputed charges, and the Applicant then had the opportunity to ask the Respondent questions and/or to make any comments. Again, the evidence and/or submissions made are set out below under the relevant headings.
14. Once this had been done, the Applicant was asked if he had any other comments he wished to make. Ms. Humphry relied on the letter of 16 August 2024 (p.30). It was established that some of these issues/queries related to previous years and/or actual spent costs rather than the estimate for 2024-2025 and/or that many of the issues raised in that letter would have to be brought by way of a challenge to any final service charge demand(s) in respect of actual expenditure. Some of the issues raised had been covered in the hearing. It did appear, however, that the issues/queries raised in the third main paragraph did relate to the estimate for 2024-2025 (i.e. the service charge demand in issue). Some of these were not issues set out in the Scott Schedule, but the Applicant informed the Tribunal that he had only received the document at p.40 on 2 August 2024 (the Respondent said that it had been sent earlier, in September 2023) and the document at p.42 (in relation to 2024-2025) in September 2024. In light of this, the Tribunal asked the Respondent if it had any issue with the matters raised in the letter of 16 August 2024 being dealt with by the Tribunal and the Respondent said that it had no issue with that. The Tribunal then went through those matters and asked the Respondent for comment in relation to any that had not already been dealt with. Again, the evidence or submissions made are set out below in respect of the relevant charge.
15. Mr. Booker confirmed that the last accounts which had been audited were those for 2019-2020. When asked why they had not been done since, he said that in 2023-2024 the Respondent moved to a different computer system, which limited its ability to make audited required changes. He said that this was why the Respondent had issued a notice pursuant to s.20B(2) on or about 25 September 2023 (p.22). He told the Tribunal that the historical accounts (for 2021-2022, 2022-2023 and 2023-2024) were with the Beever and Struthers and they were expected

in a few months, and, in respect of the accounts for 2023-2024, audit changes were required.

16. Overall, the Applicant said that the figures (in the service charge demand, and in the schedules provided by the Respondent) were not verified. His position was that he was happy to pay service charges, but the current charges represented an increase of 79% and the communal parts is only small. It was said that, despite requests for invoices, there was still no evidence of any of the charges.

The Lease – p.47

17. The Lease is dated 9 November 2007 and is between the Paddington Churches Housing Association Limited (Landlord) and Ms. Leonard (the Tenant). There was not issue that Paddington Churches Housing Association Limited was a “previous incarnation” of the Respondent and that the Applicant had purchased the leasehold interest in the Property in July 2022.
18. The “Estate” is defined as the land now or formerly comprised in the above mentioned Title.
19. The “Building” is defined as the block of flats constructed on the Estate in which the flat is situate.
20. The “Premises” are defined as 53, Lea Court, 143 Broad Lane, Tottenham Hale, London, N15 4QH on the second floor of the Building as the same is shown edged in red on the attached Plan and including the fixtures and fittings therein.
21. The Lease provides that the “Specified Proportion of Service Provision (Clause 7)” is a “fair and reasonable proportion (to be assessed from time to time by the Landlord’s Surveyor”.
22. The Lease defines Common parts (at cl.1(2)(b)) as the “entrance landings staircases any communal aerials or entry-phones bin store lift and other parts (if any) of the Building and any garden landscaped areas walls hedges fences gates access areas steps pedestrian ways footpaths Estate road accessways forecourts lighting cycle parking areas on the Estate or appurtenant to it which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the occupiers of the other flats in the Building.
23. By cl. 2, the leaseholder covenanted to pay the Specified Rent and any variation thereof in accordance with the provisions of the Fourth

Schedule hereto by equal monthly payments in advance on the first day of each month in each year of the term, the first payment to be made on the date hereof and the Relevant Percentage (as defined in the Fifth Schedule) of the Ground Rent by equal quarterly payments in advance on the usual quarter days in each year the first payment apportioned from the date hereof to the next quarter day.

24. By cl. 3(1) the leaseholder covenanted to pay the Specified Ground Rent and all other monies due under Lease at the times and in the manner mentioned, without deduction.
25. By cl. 3(2)(b) the leaseholder covenanted to pay the Service Charge in accordance with Clause 7.
26. By cl. 5(3) and on the terms set out, the freeholder covenanted to maintain repair redecorate improve and renew or shall procure the maintenance repair redecoration improvement and renewal of:
 - (a) the roof foundations and main structure of the Building and all external parts thereof including all external and load-bearing walls the windows and doors on the outside of the flats within the Building... and all parts of the Building which are not the responsibility of the Leaseholder under this Lease or of any other leaseholder under a similar lease of other premises in the Building PROVIDED ALWAYS the Landlord shall redecorate as necessary the outside doors of the Premises;
 - (b) the pipes sewers drains wires cisterns and tanks and other gas electrical drainage ventilation and water and lift apparatus and machinery in under and upon the Building and the Estate...;
 - (c) the Common Parts.
27. By cl. 4(4) the landlord covenanted to, so far as practicable, keep the Common Parts of the Building adequately cleaned and lighted.
28. The Lease (cl. 7) offers the following definitions:
 - (a) Accounts Year – year ending 31 March or such other date as the Landlord may from time to time reasonably designate;
 - (b) Specified Proportion – proportion specified in the Particulars;
 - (c) Service Provision – the sum computed in accordance with sub-clauses (4), (5) and (6) of this clause;

(d) Service Charge – the Specified Proportion of the Service Provision.

29. By cl. 7(2) the leaseholder covenanted to pay the Service Charge by equal payments in advance at the times at which and in the manner in which rent is payable, and all sums paid to the Landlord in respect of that part of the Service Provision as relates to the reserve referred to in sub-clause 7(4)(b) shall be held by the Landlord in trust for the Leaseholder until applied towards the matters referred to in Clause 7(5) and all such sums shall only be so applied.
30. Clause 7(3) states that the Service Provision in respect of any Account Year shall be computed before the beginning of the Account Year and shall be computed in accordance with sub-clause 4 of this clause.
31. Clause 7(4) states that the Service Provision shall consist of a sum comprising:
 - (a) the expenditure estimated by the Surveyor as likely to be incurred in the Account Year by the Landlord upon the matters specified in sub-clause (5) of this clause together with
 - (b) an appropriate amount as a reserve for or towards such of the matters specified in sub-clause (5) as are likely to give rise to expenditure after such Account Year before matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year including (without prejudice to the generality of the foregoing) such matters as the decoration of the exterior of the Building (the said amount to be computed in such matter as to ensure as far as it reasonably foreseeable that the Service Provision shall not fluctuate unduly from year to year) but
 - (c) reduced by any unexpended reserve already made pursuant to paragraph (b) of this sub-clause in respect of any such expenditure as aforesaid.
32. Clause 7(5) states that the relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services for the Building and the Common Parts and shall include, among other things, the cost of and incidental to the performance of the Landlord's covenants contained in Clauses 5(2) and 5(3) and 5(4) including the cost of the relevant excess (if any) on any claim under the insurance policy effected in accordance with Clause 5(2) in the event of damage to the Premises by an insured risk.

33. Clause 7(6) states that, as soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in paragraph (a) of sub-clause (4) of this clause shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the certificate and the Leaseholder shall be allowed or as the case may be shall pay forthwith upon receipt of the certificate the Specified Proportion of the excess or the deficiency. Omission by the Landlord from a certificate or any expenditure in the financial year to which the certificate relates is not to preclude the inclusion of that expenditure in any subsequent certificate.

The Law

34. Section 18 of the Landlord and Tenant Act 1985 provides:

“(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 –

- (i) Which is payable, directly or indirectly, for service, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
- (ii) The whole or part of which varies or may vary according to the relevant costs.

(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 the matters for which the service charge is payable.

(3) For this purpose –

(a) ‘costs’ includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

35. Section 19 of the 1985 Act provides:

“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise”

36. Section 27A provides:

“(1) An application may be made to the appropriate 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 it is payable

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment

37. In *Waalder v Hounslow LBC* [2017] EWCA Civ 45 the Court of Appeal said that “reasonableness” has to be determined by reference to an objective standard, not the lower standard of rationality.

38. In *OM Property Management Ltd v Burr* [2013] EWCA Civ 479, the Master of the Rolls said:

“On the other hand, as section 19(2) makes clear, there is a different regime in relation to estimated costs before they are incurred. The landlord or management company is entitled to reflect reasonable estimated costs in the service charge and the status makes no provision for adjustment of estimated costs”.

39. In *Carey Morgan v De Walden* [2013] UKUT 134 (LC) the Upper Tribunal set out a two-stage approach to determining an application challenging the reasonableness of interim service charges:

- The contractual entitlement must be established; and
- The Tribunal must consider whether the s.19(2) filter prevents the landlord from including any part of the amount demanded on the basis that it is greater than reasonable.

40. “Service Charges and Management” (5th ed.) states at 12-29 that the “amount must be objectively reasonable, and the onus is on the landlord to satisfy the relevant tribunal that that is so. In *Avon Ground Rents v Cowley* [2018] UKUT 92 (LC) it was said that whether an amount is

reasonable as a payment in advance is not generally to be determined by the application of rigid rules but must be assessed in the light of the specific facts of the particular case”.

41. “Service Charges and Management” states at 12-31, in relation to sinking charges and reserve funds, that the limitation imposed by s.19(2) means that “the landlord will usually need to be able to point to some rational basis for the amount demanded as a contribution to such a fund”.

Service Charges

2024-2025

42. The Applicant says that the Respondent set out a service charge proposal for 2024-2025 on 14 December 2023 and the Applicant sent feedback identifying a number of specific concerns, in addition to a concern that the charge had increased by 74% compared to 2023-2024. It is said that the Respondent promised a collective response by 31 January 2024, but it was not received. On 4 March 2024, the Respondent confirmed the service charge for 2024-2025, which was 79% more than 2023-2024. It is said that the consultation on the proposed 2024-2025 service charge was meaningless as the Respondent did not acknowledge/respond/act upon the comments. It is said that on 28 March 2024, the Applicant made a request to inspect supporting accounts/invoices/receipts from 2023-2024 but no inspection had been given.
43. The Tribunal has seen the service charge demand dated 4 March 2024 (p.84) which sets out the charges due in advance for the service charge year 2024-2025, starting on 1 April 2024. The estimate service charges are said to be £2,352.26, payable by £196.13 per month.
44. The document says (p.93) that the service charges are reviewed and the Respondent estimates the likely spend. The financial year determines at which point in 12-month period they can vary the rent and service charges. At beginning of service charge year, the Respondent will send an estimated service charge. When estimating, they consider the previous year’s expenditure, any changes in contractual costs and the rate of inflation. Page 95 sets out the difference between block, core and estate services.
45. It was confirmed that the document at p.42 was prepared for these proceedings and was not sent out to leaseholders. It was said that a s.20B(2) notice had been sent out on 23 September 2024 (for the year ending 31 March 2024) which just had the top line of expenditure.

Bulk Refuse Disposals (Estate costs) - £27.75 – p.87

46. The application states that the Respondent had not explained how it had estimated the cost for 2024-2025 (how many times and at what cost per visit).
47. The Respondent's response in the Scott Schedule states that bulk items had been continuously disposed of in the communal bins and they had to be removed. The figure set was a budget and any over or under spent would be served to the residents as a surplus or deficit. The budget was set in accordance with the expenditure for the previous years: the 2020-2021 accounts were the last audited accounts and the expenditure for bulk refuse was £1,567.70.
48. The total estimated service charges (p.87) are £1,500. In 2022-2023, the estimate was £1,606.54 and the expenditure was £3,045.83 (p.40) and in 2023-2024, the estimate was £200 and the expenditure was £2,069.22.
49. The service charge demand (p.92) states that these are contractors' costs for removing rubbish and bulk refuse left in bins storage areas and around estates.
50. Mr. Booker submitted that this item falls under cl. 4(4) of the Lease and that by cl. 1(2)(b) the Common Parts includes the bin store.
51. Mr. Booker said that the estimated figure (£1,500) was based on historical accounts. It was admitted that since the Applicant had moved into the Property, they Respondent had not been able to provide him with accounts. It was said that the Respondent had issued a notice pursuant to s.20B(2) which attached the document at p.40 (see above as to when the Respondent said it was sent and the Applicant says it was received). Mr. Booker said that he was not the person who set the previous budget (that person had left the Respondent).
52. Ms. Humphrey (on behalf of the Applicant) said that until August this year, they had not seen the documents concerning the previous years. It was said that in 2023-2024, the budget was £200 in total, so the amount sought in 2024-2025 was a significant increase. In so far as the Respondent said that the current estimate was based on previous years, the Applicant had asked for invoices for previous years, but not received them, so he was left in the position of having to take the Respondent's "word" for the amounts. Having received the document at p.40 in August 2024, the Applicant took the view that the actual expenditure given was high and so he asked to see the invoices relating to 2022-2023 but none had been provided. It was said that this item only related to rubbish collection in excess of the council collection and the Applicant thought that the charge was too high. It was said that the collection by or on

behalf of the Respondent was not very often and so he wanted to see the invoices to know what was paid.

53. Mr. Booker said that he was unable to provide a final figure for 2022-2023, which is why the s.20B(2) notice had been issued. He said that the Respondent had invoices, but they had not been provided as the Respondent had not issued the final accounts. He said that there was a Qualifying Long-Term Agreement with Mears which covered the bulk refuse disposal, and this was under tender at the moment.
54. *Determination:* The Applicant had clearly put the reasonableness of the service charges into account in this application. Despite, this, no invoices had been provided. The Respondent had not provided any accounts, and no accounts had been audited since 2019-2020. No application was made by either side to adjourn to await the audited accounts, and in any event, the Respondent said that it would be months before they would be ready.
55. The Applicant has been left in the position of only ever having been provided with estimated service charges – no “reckoning” has been done, to determine whether the amount he had paid was more than the actual costs or was insufficient. Under the terms of the Lease (cl. 7(6)) the Respondent is obliged, as soon as practicable after the end of each Account Year, to determine and certify the amount by which the estimate had exceeded or fallen short of the actual expenditure and to supply the Leaseholder with a copy of the certificate. This had not been done.
56. In so far as the Respondent had provided figures, Mr. Booker said that he could not provide the invoices they were based upon. This is despite the fact that the Applicant has previously requested invoices, and pursuant to s.22 Landlord and Tenant Act 1985, leaseholders have a right to inspect documents relating to their service charges within a period of six months from receipt of the summary.
57. The estimates are, therefore, based on previous estimates and unverified figures. In relation to the figures given as to expenditure, looking at them as a whole, it is clear that some of them are unreliable as the figures for cleaning, electricity and Mansafe systems maintenance contract (see below for all). Some had no budgets in previous years (e.g. estate maintenance, gate maintenance), but were budgeted for in this year. Some charges (such as Transfer to Cyclical I&E (Block costs) had not been claimed before (at least in the time that the Applicant had owned the Property), such as Transfer to Cyclical I&E (Block costs) and Transfer to Cyclical I&E (Core Charges). In relation to gate maintenance, the Respondent accepted that the estimate was too generous. For the TV aerial/licence and window cleaning, there had previously been figures but no expenditure.

58. Mr. Booker, beyond looking at the previous budgets and expenditure and confirming some of the expenditure already for the material year, could not explain the budget as it was not him who set the budget. As he acknowledged, in relation to water hygiene maintenance (dealt with below) he could not say where there had been the increase in the budget set for 2024-2025. Further, as he said in relation to cleaning (also dealt with below) it not clear why there was such variation in the figures.
59. Taking all of this into account, the Tribunal cannot be satisfied that these charges are reasonable.

Communal Pump Maintenance (Estate costs) - £89.73 – p.87

60. The application states that the Respondent had not shared the 2023-2024 invoices.
61. The Respondent's response in the Scott Schedule states that the budget was set in accordance with the expenditure for the previous years: as per the last audited accounts (2020/2021) there was an expenditure of £5,732.40. When the budget was drafted, the most recent expenditure data suggested pump maintenance had cost £4,223.84 in the year to 31 March 2023. For 2024/2025, the Respondent had set an estimated budget of £4,850 which included an allowance for inflation and some additional repairs. The Respondent could not provide the requested invoices until the accounts were finalised. The accounts (it was said in the Respondent's written response) would be issued in September 2024 (differing and updated information was given by Mr. Booker in relation to this at the hearing – see herein).
62. The service charge demand (p.92) states that this covers the regular maintenance of equipment to ensure the safety features are functioning correctly to prevent failures.
63. Mr. Booker submitted that this falls within the Respondent's obligations pursuant to cl. 5(3)(b).
64. The total estimated figure is £4,850. Mr. Booker said that the budget was set, taking account of inflation, which was about 11% for 2023 and it was similar for year before.
65. In 2022-2023 there was no budget for this item, but the actual expenditure was £4,223.84. In 2023-2024, the budget was £4,500 and the actual expenditure was £3,498.07.

66. Ms. Humphry said that there had been an overall increase of about 70% in terms of 2024-2025 compared to 2023-2024 and this was one of higher value figures. Again, it was said that there were no invoices or finalised accounts.
67. Determination: For the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

Estate Maintenance (Estate costs) - £37 – p.87

68. The application states that the Respondent has not explained or itemised what the costs are for. It is also said that if repairs such as gate and communal pump maintenance were itemised, it is not clear what this charge is.
69. The Respondent's response in the Scott Schedule states that the estate maintenance costs could be a variety of things, such as electrical faults on the estate or replacing the wooden garden gate. When the accounts were audited, a formal request could be made to obtain the invoices.
70. The service charge demand (p.96) states that estate charges apply to services to the communal areas of an estate such as repairs, maintenance and upkeep of the grass area or play equipment. It is said that these costs will be shared by all properties on the estate.
71. The Respondent states that this falls within the Respondent's obligations pursuant to cl. 5(3)(b) or, alternatively cl. 4(4).
72. The total estimated charges are £2,000. In 2022-2023 (p.40) the estimate was £511.58 and the actual cost was £500. In 2023-2024 (p.42) there was no budget for this item but the actual costs was £2,994.77.
73. Mr. Booker stated that these are typically *ah hoc* costs to repair or maintain the estate, replacing lights, lampposts in the car park, the repair or maintenance of the exterior of the building and/or the reactive costs of managing the estate. The Respondent said that it could not say what money had been spent on so far, but it did know that £1,933.80 had been spent in this year to date. It had not been able to check what the invoices were for, but it was said that there were some invoices.
74. Ms. Humphry said at the hearing that it was not clear what these costs were and that they seemed to be a high estimated amount for communal areas. It was said that it was not clear what charges fell within day-to-day charges, what fell into maintenance and what fell into cyclical E&I

charges – the gate maintenance would fall within the separate charges for the gate. It was said that no invoices had been seen, so it was not clear what the charges were for. It was also submitted that an estimate of £2,000 which quite large.

75. *Determination:* If under £1,933.80 has been spent so far this year (i.e. since April) then the budget of £2,000 did not seem to be excessive, but there is no evidence as to the types of items that have been charged under this head in either this year or previous years. For the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

Gardening (Estate costs) - £88.80 – p.87

76. The application states that the Applicant is of the view that it is an extortionate cost for the garden size, that the Respondent had not shared the invoices for gardening in 2023-2024 and had not confirmed how often the gardeners attend or how recently the latest tender occurred.
77. The Respondent's response in the Scott Schedule states that Mears were contracted to attend fortnightly from April to October and monthly from November to March. When the accounts for 2023-2024 were audited, a request could be made to obtain the invoices. The most recent gardening expenditure data available when the budget was set indicates an expenditure on gardening of £4,066.38. The current year's estimate of £4,800 reflected the compounding of 8.5% inflation, which was comparable to the RPI data available in autumn 2023. The Respondent is re-tendering the cleaning and gardening services.
78. The service charge demand (p.92) states where there is a shared garden or lawned areas, the Respondent provides a service to maintain these areas, it uses a contractor and their responsibilities can include cutting the grass, trimming hedges and bushes, clearing leaves, weeding and removing litter.
79. The Respondent stated that this falls within the Respondent's obligations under the lease, pursuant to cl. 5(3).
80. The total estimate is £4,800. In 2022-2023, the estimate was £3,775.08, and the actual cost was £4,066.38. In 2023-2024, the estimate was £4,100 and the actual cost was £3,451.21.
81. Mr. Booker said that, when preparing the estimate, the Respondent had looked at the 2022-2023 figures. It was said that the charges covered the contract from Mears and that the contract was out for tender at the moment. It was said that, typically, during the warmer months, the

gardeners would attend fortnightly and in the cooler they would attend monthly. They cut the grass, ensured it was presentable, maintained the shrubs and ensured generic garden maintenance. Mr. Sitter was on site on a monthly basis and if there was an issue, the gardeners would be called back.

82. Mr. Booker was asked about the current tender process. It said that Notices of Intention had been sent and Notices of Estimates were about to be sent out. Each tender process was individual to the region it was in.
83. Ms. Humphry said that this estimate had increased from £4,100 in 2023-2024 to £4,800 and the Applicant was just asking for the invoices for last year of for confirmation as to what the charges were. It was said that there was only a small patch of grass (which did get mowed) and he wanted to know why it had increase and to see confirmation of the invoices for previous years. It was not clear why this year's estimate had increased by about £1,350.
84. *Determination:* The Tribunal understands that the gardening contract is out for tender and so the cost of that contract is not yet known, but the budget shows a considerable increase from the £3,451.21 that was spent in 2023-2024. Taking this into account, and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

Gate Maintenance (Estate costs) - £64.75 – p.87

85. The application states that the gate was repaired in 2023-2024 and is fully functioning. The Applicant asked to see the invoices for gate maintenance in 2023-2024 but they were not sent. It is said that the Respondent has not explained how the gate maintenance fee will be spent.
86. The Respondent's response in the Scott Schedule states that the expenditure for gate maintenance as per the last audited accounts was £3,706.94 and the budget set for 2024 was £3,500. A monthly charge is based on an estimate, and this is then reconciled with the actual expenditure, resulting in a deficit bill or a credit.
87. The service charge demand (p.92) states that this is the cost for any works required to main the gates at the Property.
88. Mr. Booker submitted that this falls under the Respondent's obligations pursuant to cl. 5(3) of the Lease.

89. The total estimate was £3,500. In 2022-2023 there was no budget for this and the actual cost was £1,872.45. In 2023-2024 the budget was £2,000 and the expenditure was £2,568.35.
90. Mr. Sitter said that there is an electric vehicle gate and this includes the motors etc.
91. The Tribunal asked the Respondent why the estimate had increased to £3,500. The Respondent said that the expenditure of £2,568.35 in 2023-2024 was just the cost of the maintenance contract, and additionally there would be *ah hoc* repairs.
92. Mr. Sitter said that in his short time with the Respondent, he had seen that the gate was in problematic – there were repairs and issues with the vehicle gate fobs, and they had to instruct contractors to investigate. He said that this did not fall under the contract.
93. The Tribunal asked if the repair was faultily done. Mr. Booker said that he was not sure what the repairs were, but the Respondent made sure that the contracts had recall so there would be no charge for that.
94. Mr. Booker was asked about the invoice at p.38 and whether this was a charge that would be passed on in the service charges. He said that he would need to check whether the repair fell within the contract or had been passed on, but it was said that the contract did cover gate servicing.
95. Ms, Humphry said that this was one of the most “alarming” charges. It was said that the contract seemed expensive and the estimate had “jumped” to £3,500, which seemed like a lot for gate maintenance. It was acknowledged that the gate was faulty last year and it was repaired but Ms. Humphry asked why then that raised the Respondent expected the gate to break down again so quickly. It was said that the repair should have been under warranty, and it should have been fixed the first time. The invoice at p.38 was for £492 and, as we are not halfway through the year, it was not clear why the estimate was expended to be so much more.
96. Mr. Booker said that the estimate was too generous but that there had been additional expenditure. He said that the total amount spent this year was £1,617.60, but he did not know what it was for. He said that it might be for repairs or it might be the contract cost.
97. Determination: It is not clear to the Tribunal what the estimated charges are for and how this relates to the contract for the gate. The only invoice seen was for something which appeared to fall within the contract. It was not clear whether the money said to have already been spent this year was for *ad hoc* repairs (and if so why they did not fall within the contract for maintenance) or for the maintenance contract. In light of this and

for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

Transfer to Cyclical I&E (Block costs) - £249.98 – p.88

98. The application states that the Respondent had not explained why a cyclical fund was being developed and no consultation had taken place in respect of this fund. It is said that the Respondent had not explained why £4,250 was being added to the reserve for 2024-2025 and there was no cyclical fund schedule (it is said that the Respondent had not said what it was being used for). It is also said that if repairs such as gate and communal pump maintenance were itemised, it is not clear what this charge is.
99. The Respondent's response in the Scott Schedule states that on the proposed estimated service charge letter dated 8 December 2023, the transfer to cyclical was outlined. This was the payment made for the year into the pot of money set aside for regular works, which builds up year on year. The funds are held in trust and separate from service charges. The cyclical fund had always been in place and the contribution had increased as there had been expenditure from the reserve funds over the past two years (this is not the evidence as given by Mr. Booker, please see below, at least in respect of Block costs). The current contributions help bring the funds back to level.
100. Mr. Booker submitted that this falls within the Respondent's obligations under the Lease, cl. 7(4)(b).
101. The service charge demand (p.91) states that this is the payment that the Applicant makes for the relevant year into the pot of money set aside for regular works that need to be undertaken but not on a yearly basis. It builds up year on year and including items such as redecoration and maintenance of the communal areas. Cyclical funds are held in trust and separate from the service charges.
102. The total estimate is £2,750. There is no charge (budgeted or expended) for this item in 2022-2023 nor in 2023-2024.
103. Mr. Booker said that in the past few years (including 2022-2023 and 2023-2024) there had been an oversight and the Respondent had not collected any funds for a cyclical fund.
104. Ms. Humphry said that this was the first time (as far as the Applicant was aware) this charge had been raised. It was said that he didn't know what this charge covered. It was queried how this charge differed from the

charge for maintenance. It was said that the Respondent had been asked what the charge was for, but the Applicant had only been given a very vague response. Mr. Humphry said that, as far as the Applicant was aware, there had been no and were not “big” works.

105. Mr. Booker said that, in relation to the Estate Sinking Fund, he was not sure what the actual expenditure was in 2022-2023 but in 2023-2024 opening sinking fund balance was £78,000. There was then £2,000 of interest, so the closing balance at 2023-2024 was £80,000. He said that there was no money in the block sinking fund or core sinking fund. He did not know why that was. He said that there was a plan for future estate costs. He said that the estimate was done on an assumption: Advice provided to property manager as to what works were planned by the investment team over next 30 years.
106. Determination: In light of the fact that no charges had previously been made, the fact that there is no evidence as to what the planned/expected works are and on what basis the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

Transfer to cyclical I&E (Core charges) - £250.01 – p.88

107. The service charge demand (p.91) states that this is the payment that the Applicant makes for the relevant year into the pot of money set aside for regular works that need to be undertaken but not on a yearly basis. It builds up year on year and including items such as redecoration and maintenance of the communal areas. Cyclical funds are held in trust and separate from the service charges.
108. The Respondent’s response in the Scott Schedule states that these charges were for the “core” which, in this case, was specifically for flats 49-54 (there were two separate areas within the Building).
109. The Respondent said that these charges fall under cl. 7(4)(b) of the Lease.
110. The total estimate is £1,500. There is no charge (budgeted or expended) for this item in 2022-2023 nor in 2023-2024.
111. The Applicant said that he did not know what these charges were for.
112. Determination: For the reasons given in relation to Transfer to Cyclical I&E (Block costs), the Tribunal cannot be satisfied that these charges are reasonable.

DTD Repairs (Core charges) - £166.67 - p.88

113. The application states that the Respondent had not explained or itemised what the costs are for. It is also said that if repairs such as gate and communal pump maintenance were itemised, it is not clear what this charge is.
114. The Respondent's response in the Scott Schedule states that the DTD repair costs could be a variety of things, such as plaster moulding, door hanging, patch repairs, carpet fitting and more. As per the last audited accounts, the expenditure for the repairs was £3,620.77, and the budget for 2024-2025 was £1,000. When the accounts were audited, a formal request could be made to obtain the invoices.
115. The service charge demand (p.91) says that these charges are the cost for completing day to day repairs in communal areas.
116. Mr. Booker submitted that these charges fall under cl. 5(3) of the Lease
117. The total estimate was £1,000. In 2022-2023, there was no estimate but an expenditure of £288.42. In 2023-2024, there was no budget and the expenditure was said to be -£375.
118. Ms. Humphry wanted to know what these charges covered and why the estimate was £1,000. It was said that the Respondent had been asked for invoices for previous years, but none had been provided.
119. Mr. Booker said that this charge was for reactive repair works in the core, e.g. at moment, a repair was being done to fix a crack in glass in back of door. Ms. Humphry said that this was "fair enough" but the Applicant wanted to see what the money was being spend on.
120. *Determination:* In light of the fact that there did not appear to be budget for core costs previously, the fact that the expenditure was a "minus" figure in 2023-2024, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

Other challenges

121. The Applicant was asked if there was anything else he (or Ms. Humphrey) wanted to see. She referred to the letter at p.30 (dated 16

August 2024) and the issues and queries raised therein. Please refer above for how this was dealt with, procedurally.

122. *Water hygiene maintenance - £18.50*: the total estimate is £1,000. In 2022-2023 the budget was £1,176.90 and the expenditure was £342.93. In 2023-2024, the budget was £1,000 and the cost was £336.39. The Respondent said that that included the contract cost, but Mr. Booker said that he was not sure how the estimate of £1,000 had been reached. He said that it covered water hygiene checks on any communal pipe system for which the Respondent was responsible, the cold-water booster systems (which puts pressure into the pipes to get into flats), it covered checks on the system as well as communal taps in network. Ms. Humphry said that the Applicant wanted to see invoices and neither of them could see why there had been such an increase from the previous year(s). Mr. Booker confirmed that it was a colleague who had set the budget (who had since left the Respondent) and so he could not say where there had been the increase. Determination: Taking account of the previous figures, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.
123. *Cleaning - £131.63*: the total estimate is £7,115. In 2023-2023, the budget was £0 and the expenditure was £6,559.50. In 2023-2024, the budget was £13,000 and the expenditure was £0. The Respondent said that the 2023-2024 expenditure (which was £0) was not available at the time the estimate for 2024-2025 was done. When asked about the figure of £0, Mr. Booker said that the invoices would have to be paid and allocated to the correct scheme. He said that in 2022-2023, the expenditure was £6,559.50. The Applicant asked why there was such variation, given the cleaning would relate to the same space? Mr. Booker agreed that it should not vary, and he was not sure why it did, but it appeared that there were invoices missing from the 2023-2024 accounts, and that they may have been “miscoded”. Determination: In light of this uncertainty as to the previous figures, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.
124. *Electricity - £102.68 (estate costs) and £102.84 (core charges)*: the total estimate is £5,500 (in terms of the estate) and £617 in terms of the core charges. In 2023-2024, the estimate was £8,500 but the expenditure was £0 (estate) and £2,582.27 (core). Mr. Booker said that in 2022-2023, the estate cost expenditure was £20,691.17. Mr. Humphry was asked why it was so high? Mr. Booker said that it appears that within the figures for 2022-2023, the electricity was all on the estate, and it needed to be apportioned correctly as per invoices and meter readings. The Respondent has energy provision scheme work with electricity brokers, who looked at meter readings and looked at the current market, including inflation (which was high) and took this into account when

setting the budget. *Determination:* In light of this uncertainty as to the previous figures, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.

125. *Mansafe systems maintenance contract - £50:* the total estimate was £550. In 2022-2023 there was an estimate of £534.22 but no expenditure. In 2023-2024, there was an estimate of £500 but not expenditure. The Respondent said that there was a contract in place, and when it had provided documentation to the Applicant on 6 September 2024, it included a copy of the certificate for the system (which did not have a price figure on). It was said that it was a system on the flat roof, a metal wire structural system, which allowed contractors to be secure. Mr. Booker said that he assumed the charge had been incorrectly coded in previous years. *Determination:* In light of this uncertainty as to the previous figures, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.
126. *TV aerial/licence - £45.45:* the total estimate is £500. In 2022-2023, there was a budget of £249.98 but no expenditure. In 2023-2024, there was no budget and no expenditure. Mr. Booker said that these were *ad hoc* works and he did not know why they were not budgeted in previous years. *Determination:* In light of this uncertainty as to the previous figures, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.
127. *Window cleaning - £41.67:* the total estimate (core charges) is £250. In 2022-2023, £459.83 was spent, and the budget was £338.93 but this was only in relation to flats 1-43. In 2023-2024, the estimate for estate window cleaning was £1,650 and there was no expenditure. The core charges for window cleaning were £141.48 but there was no budget for this. Mr. Booker said that he believed that this was part of the Mears contract but he may be wrong. *Determination:* In light of this uncertainty as to the previous figures, the fact that there is no evidence as to the basis on which the budget has been set and for the same reasons as set out in relation to Bulk Refuse Disposals (Estate Costs) above, the Tribunal cannot be satisfied that these charges are reasonable.
128. This decision relates to the service charge demand at p.83, which relates to estimate service charges. It is not binding in relation to any service charge service demand served in relation to the final charges for the above matters.

Costs

129. The Applicant said that he was pursuing the application pursuant to S.20C. The Respondent said that it would not pass the costs on as service charges.
130. Section 20C of the Landlord and Tenant Act 1985 provides as follows:

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before.... the First-tier 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 or any other person or persons specified in the application”.
131. When faced with such an application, the Tribunal may make such order as it considers just and equitable in the circumstances.
132. The Tribunal notes that the Respondent said that it was not planning to pass the costs of this application on to leaseholders by way of service charges. Taking everything into account, the circumstances of the parties, the impact and the outcome of the Application, it is just or equitable to make the order sought by the Applicant.
133. The Applicant also asked for a refund of Tribunal fees paid: he had paid £320 (£100 issue fee and £120 hearing fee).
134. The Respondent relied on the without prejudice correspondence. On 29 July 2024 (p.19) the Respondent wrote to the Applicant stating, among other things, that they would be happy to provide the accounts (it is also said that the final accounts would be published in the coming months) and make arrangements for him to view the invoices for 2023-2024. It was said that if there had been more responsive communication from the Respondent, this application may have been avoided. An offer was made to reduce the “year-on-year service charge estimate increase from 2023-2024 to the current year” by 50%, i.e. a £520.92 credit would be applied to the Applicant’s account. There would also be a further credit of £100 to cover the Tribunal fees.
135. Ms. Humphry said that the Applicant relied on his response at p.32. This is a letter dated 16 August 2024 which states, among other things, as follows. He has still not seen the final accounts and invoices – if they were provided, the application would not be further pursued. The Respondent had not explained why £4,250 was being added to the cyclical reserve for 2024-2025. The Applicant has no issue with contributing an appropriate amount to a reserve for future

repairs/maintenance if he knew what the repairs/maintenance were, but the Respondent had not specified what they were and the Applicant had never seen a cyclical fund schedule. The Respondent is asked what expenditure from the reserve fund had been made over the last 2 years. The Respondent's offer would not be accepted without seeing the accounts and supporting information/invoices and the cyclical fund schedule and consultation in relation to this. The Applicant was willing to have the hearing adjourned for up to two months if the 2023-2024 were published by the end of September.

136. On 29 August 2024, the Respondent wrote to the Applicant, again "without prejudice", in response to the Applicant's letter.
137. Ms. Humphry submitted that whilst the Respondent had offered to reduce the estimated service charges for this year, but that this would not get to the bottom of the bigger issue. The Applicant had still not seen any invoices and it seemed that the Respondent was just "making numbers up". It was also said that the offer to reduce the Applicant's charges made no sense as the Respondent would have a set of expenses and invoices and it was queried how the Applicant's charges could be reduced but nobody else's? The Applicant also said that he would have the same issue next year, with another estimate based off numbers for which there was no evidence.
138. The Tribunal has regard to the matters set out herein and has had regard to the success of the Applicant: *Cannon v 38 Lambs Conduit LLP* [2016] UKUT 371 (LC). The Applicant has succeeded in his application. The Tribunal agrees with the submissions made on his behalf: the Applicant has still not seen any invoices or accounts, despite requesting the same. Since buying the Property, the Applicant had not been provided with any final accounts or invoices. The Tribunal notes the obligation pursuant to cl. 7(6) of the Lease as set out above and the provisions of s.22 Landlord and Tenant Act 1985.
139. Taking all of this into account, the Tribunal does make an order for refund of the fees that he had paid in respect of his application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Sarah McKeown
8 October 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)