FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/LSC/2024/0023**
Property	**:**	**Magnus Heights, Hampden Road, London, N8 0EL**
Applicants	**:**	**Various Applicants.** **Applicants in attendance at the hearing: Andrea Vogel, Dordhe Schmidt and Imrana Schneider**
Representative	**:**	**In person**
Respondent	**:**	**Sovereign Network Homes Limited**
Representatives	**:**	**Renee Clarke, Project Manager on behalf of the Respondent** **Micoy Musarurwa, Head of Leasehold on behalf of the Respondent**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Bernadette MacQueen** **Rachael Kershaw, BSc**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**20 August 2024**
Date of decision	**:**	**14 October 2024**

DECISION

Decisions of the Tribunal

(1) The Tribunal determined that the final service charge account for the year 2022/23 was payable and reasonable, with the exception of the sum of £2,004.00 for bulk refuse which the Tribunal did not find reasonable for the reasons set out in this Decision.

(2) The Tribunal found the estimates provided by the Respondent for the service charge years 2023/24 and 2024/25 were payable and reasonable for the reasons set out in this Decision; however, the Tribunal noted that this was not a final settled amount and final accounts would be sent to the Applicants by the Respondent.

(3) The Tribunal did not make an order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The Application

1. By application dated 30 January 2023, Andrea Vogel applied to the Tribunal for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of service charge year 2022/23 and future service charge year 2023/24. The Applicants later requested that the estimated service charge year 2024/25 be also included, and by order dated 23 April 2024 the Tribunal permitted this.

2. By order made on 19 February 2024 and 23 April 2024 various other applicants who lived at flats 1 to 23 of the Property were joined as Applicants.

The Hearing

3. The Applicants, Andrea Vogel, Dordhe Schmidt and Imrana Schneider, appeared in person at the hearing. The Respondent was represented at the hearing by Renee Clarke, Project Manager and Micoy Musarurwa, Head of Leasehold.

4. Neither party requested an inspection of the Property and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. Directions made by the Tribunal dated 13 February 2024 required both parties to provide to each other and the Tribunal with a bundle of relevant documents. The Applicants provided a bundle of documents consisting of 591 pages. The Respondent provided a bundle of documents consisting of 446 pages. The Applicants provided a final

response dated 9 July 2024, to which the Respondent was granted permission by the Tribunal to reply, and this reply was dated 31 July 2024. The Tribunal read and considered all of these documents in reaching its decision.

The Background

6. Magnus Heights, the Property which was the subject of this application, was one building which consisted of two blocks (Block D and E). The freehold of the estate was held by Fairview New Homes (Developments) Limited and the Respondent was the freeholder of the building (Blocks D and E). Block D was 6 storeys high and consisted of flats 1-23, whereas Block E was 10 storeys high and consisted of flats 24-55. The Respondent let flats 1-23 on a shared ownership basis, whereas flats 24-55 were rented on assured shorthold tenancy agreements.

7. The Applicants held a long lease of the Property which required the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Transfer Agreement

8. At pages 118 to 164 of the Respondent's bundle was the Transfer Agreement dated 7 August 2017. Under this agreement, Network Homes Ltd took ownership of the Property from Fairview New Homes (Development) Ltd, and assumed responsibility for providing services to the building, while Altitude Hampden Road Management Company Limited (the Management Company), was responsible for providing services to the estate.

9. On 1 October 2023, Network Homes Limited became a subsidiary known as Sovereign Network Homes, part of the Sovereign Network Group.

The Lease

10. The relevant leases were made between Network Homes Ltd (now Sovereign Network Homes) and the tenants. At pages 24 to 110 of the Applicants' bundle was a copy of the lease made between Network Homes Limited and Andrea Vogel, which was in broadly the same terms as all of the Applicants' leases.

11. Within the lease, the Applicants covenant with the Respondent to pay rents and interest (clauses 3.1 and 3.2) and under 3.3 to pay outgoings, which included amongst other items, service charges (clause 3.3.2). The Respondent as landlord covenanted under clause 5 to provide services to the Building, which was defined as the freehold land under title number

AGL422536, (which is Blocks D and E Hampden Road London). This was shown red on the Estate plan.

Apportionment of Service Charges for Blocks D and E

12. The Applicants asked the Tribunal to determine whether the service charges in relation to services which were exclusively provided to flats 24 to 55 Magnus Heights were payable by the Applicants. The Applicants submitted that as their block (flats 1-23) was an entirely separate building with separate facilities, separate entrances, refuse storge arrangement, and bike storage, the service charges for flats 24-55 should not be included in the service charges for flats 1-23. Further, the Applicants reiterated that a distinction should be made as one block was shared ownership and the other was affordable rented housing.

13. The Applicants therefore asked whether the blocks should be separated in the lease and costs incurred by each building charged to residents in their respective buildings. The Applicants maintained that whilst the lease covered both buildings, clause 7 of the lease (service charge provisions) did not specify that all costs incurred by both buildings should be charged across all flats given they were two different buildings.

14. The Applicants stated that under clause 1.2.17 the lease did not specify that costs may be distributed across all flats equally, but by the landlord doing this, it had meant that the tenants in flats 1-23 were incurring costs incurred only by flats 24-55.

15. Taking into account the Applicants' submissions, and following a Case Management Hearing, the Respondent looked at a different calculation method, which involved separating the blocks. However, the Respondent told the Tribunal that if this method of calculation were used, the service charge costs for flats 1-23 would actually increase and the amount payable by the Applicants would therefore be higher. The Respondent therefore took the view that it was not in the Applicants' best interest to revise the calculation method. This was explained to the Applicants by email dated 1 May 2024 which was found at Appendix 8 of the Respondent's bundle (pages 243-251). The Respondent therefore asked that the Tribunal determine the service charges in accordance with their original calculation.

Tribunal Findings on Apportionment of the Service Charge for Blocks D and E

16. As a preliminary issue, the Tribunal determined that the lease provided that the Respondents were entitled to combine Blocks D and E to calculate the service charge.

17. In terms of calculation methodology, the Tribunal accepted the evidence of the Respondent that the Respondent divided the building service charge as a proportional charge, based on square metres. The cost attributed to each flat was therefore calculated by dividing the total square metres of the flat by the total square metres of the building. The Tribunal accepted the evidence of the Respondent that the Management Company divided the estate service charge equally as 1/55th for each flat.

18. The Tribunal was satisfied that these calculation methods were in accordance with the lease and reached this decision by considering the terms of the lease, in which "Building" was defined as "all of the building of which the Premises form part and each and every part of the Building, constructed within the Estate and registered under title number AGL422536 [which is the Freehold land being both Blocks D and E, Hampden Road, London], including any accessways, footpaths, play areas or gardens".

19. Clause 7 of the lease contained the following definitions:

> "Building Specified Proportion means such fair and reasonable proportion as the Landlord shall determine calculated by reference to the number and/or floor space of the dwellings in the Building that benefit from the relevant services and heads of expenditure comprised in the Building Service Provision".
>
> "Estate Specified Proportion means such fair and reasonable proportion as the Landlord shall determine calculated by reference to the number and/or floor space of the dwellings on the Estate that benefit from the relevant services and heads of expenditure comprised in the Estate Service Provisions."

20. The Applicants as tenants covenanted with the Landlord to pay the service charges by equal instalments in advance. The account year was the year ending on 31 March. The calculation of the estimated service charge was set out in clause 7.3 and adjustment to the expenditure was set out in clause 7.4.

21. The Tribunal therefore found that the Applicants would need to seek an amendment to the terms of the lease if they wished to change the service charge apportionment to being solely related to flats 1-23.

Issues in Dispute

22. At the start of the hearing the parties identified the relevant issues for determination as the payability and/or reasonableness of service charges for the following years:

(i) 2022/23 – a final account was issued in September 2023

(ii) 2023/24 – estimated service charges

(iii) 2024/25 – estimated service charges

23. The final accounts for the service charge year 2022 were issued to the Applicants in September 2023. The final account for 2023/24 would be issued in September 2024 and the final account for 2024/25 would be issued in September 2025. For the avoidance of doubt, the Tribunal was considering the estimated service charge accounts for 2023/24 and 2024/25, and this would not prevent the Respondent from presenting final accounts to the Applicants for payment in accordance with their usual practice.

24. Both parties had completed a schedule setting out their comments to the issues in dispute. The Tribunal used this schedule to make its findings.

Service Charges 2022/23

25. The Applicants identified the following items as being in dispute for this service charge year namely:

(i) Fire - £12,350.58

(ii) Health and Safety - £7,142.30

(iii) Door entry - £550.85

(iv) Lift- £8,364.89

(v) Aerial Repairs - £898.81

(vi) Communal Gas & Electric Repairs - £10,687.16

(vii) Communal Electricity - £1,808.18

(viii) Managing Agent - £1,066.89

(ix) Management Fee - £117.16

(x) CCTV - £7,887.25

(xi) Bulk Refuse - £2,004.00

(xii) Reserve Fund - £23,027.93

26. In relation to fire, health and safety, door entry, lift, arial repairs, communal gas and electric repairs and communal electricity, the Applicants set out their position in the schedule and made the same objection using the same wording for each item as follows:

> "1) 2) 3)* These expenses are unreasonable, they are not chargeable under section 7 of the lease, and some items are disputed to have been received and attributed to the wrong Block of flats. (see Table A) No evidence of services provided, i.e there is no proof that these services were carried out at the property, no quotes or invoices of services were shared with the applicant, despite making a request under section 22 of the Landlord and Tenant Act 1985. Even if invoices are received, the applicant disputes that these services have been received. The landlord should provide photo evidence, and in fact consult on any works that is to be carried out, in advance and if not requested by a leaseholder. The landlord must ensure a mechanism by which the receipt of services is confirmed either by a managing agent on sire or one of the leaseholders. The leaseholder should not be charged for services not received. The sprinkler charge is excessive and unreasonable. (see Table A).
>
> *1) Chargeable under lease?
> 2) Reasonable in amount/standard?
> 3) Correctly demanded?"

27. For the avoidance of doubt, Table A is the draft revised final account which the Respondent sent to the Applicants on 1 May 2024 when they considered separating the charges for Blocks D and E.

28. In the Respondent's section of the schedule, the Respondent provided a response to the Applicants' comments as follows:

> "The Applicant offers no explanation why the cost is considered as unreasonable and offers no alternative quotes. The Respondent undertakes the work in compliance with its responsibilities set out in Clause 5.3 of the lease. The cost incurred for this is rechargeable under clause 7.4.1 of the lease. The Applicant provides no evidence of services not received and it is unclear what is in dispute. Table A is the draft revised final account which the Respondent sent to the Applicant on 1

May 2024. It is unclear which items the Applicant alleges have been incorrectly charged. The Respondent complied with the S22 request as explained in its Statement of Case, and included evidence of the cost incurred. There is no requirement in the lease or legislation to provide evidence in the manner expected by the Applicant. If applicable, the Respondent undertakes section 20 consultation as prescribed by legislation. The Applicant provides no evidence of being charged for services not received and it is unclear what is in dispute"

29. The Tribunal considered each item as follows:

Fire - £12,350.58

30. At the hearing the Applicants reiterated the comments as set out in their schedule (set out above) and summarised their position by saying that they did not know what the cost was for.

31. Within the certified summary of service charges, the Respondent provided an explanation of what was covered under this heading and confirmed that all applicable fire safety costs where they had been specifically identified within the tenants' scheme were covered. The Respondent confirmed that this included any costs incurred for servicing and maintenance of fire equipment, contract costs, safety checks, one-off maintenance and other costs incurred in meeting requirements (page 189 of the Respondent's bundle). The detailed spreadsheet provided for the Tribunal (found at page 384 of the Applicants' bundle) included a list of the specific items that were covered under the heading "fire equipment service and maintenance".

32. From this spreadsheet, the Applicant specifically took issue with the invoice for £35 to provide a "no smoking" sign in the common area, stating that this should already have been provided. Further the Applicant stated that the work required to look at sprinklers in individual flats could have happened by video and had been told by the contractor that this was possible, making the work quicker and cheaper to check. The Respondent confirmed that whilst they could look at this for future, the work had to be completed in accordance with the specification for the work.

Tribunal Decision – Fire £12,350.82

33. The Tribunal found that this cost was payable under the lease and in particular found that the Respondent had to undertake fire safety work in accordance with their obligations within clause 5.3 of the lease and the cost was rechargeable under 7.4.1 of the lease.

34. Further, the Tribunal found that the Respondent had provided details as to what this charge included. The Tribunal accepted the evidence of the

Respondent that the cost was reasonable. The Respondent had to meet their obligation to ensure that the building was safe, and the Tribunal found that the work undertaken by the Respondent was reasonable. The Tribunal did not accept the Applicants' position that the "no smoking" sign should have been provided and should not be charged to the tenants. Instead, the Tribunal found that this sign was not displayed and the Respondent was entitled to take action to ensure the sign was put up. Additionally, the Tribunal did not accept the evidence of the Applicants that the checks within individual flats could be undertaken remotely. It was for the Respondent to determine how they discharged their duties and the Tribunal did not find that the charge was unreasonable because a remote video system was not used.

35. The Applicants had not provided the Tribunal with any alternative quotations and had not provided the Tribunal with evidence that the services had not been provided.

36. The Tribunal therefore found that this charge was payable and reasonable and made no adjustment to the amount charged by the Respondent.

Health and Safety

37. The work completed under this heading was set out at page 385 of the Applicants' bundle.

38. In addition to the comments made on the schedule, the Applicants stated that they had seen no proof of this work and expressed concern that often contractors would arrive but because they did not have the correct keys would be unable to access areas to complete work.

39. The Respondent confirmed that the tenants were not charged for work if a contractor was unable to access the relevant area.

The Tribunal's Decision

40. The Tribunal determined that the work was payable under the lease as it fell within the Respondent's responsibility under clause 5.3 of the lease and that the charge was rechargeable as a service charge under clause 7.4.1 of the lease.

41. The Tribunal found that the charge was reasonable and noted that the Applicants did not provide any alternative quotations.

42. The Tribunal therefore found that this charge was payable and reasonable and made no alteration to the amount claimed by the Respondent.

Door Entry - £550.85

43. The work for this charge was set out at page 371 of the Applicants' bundle.

44. The Applicants told the Tribunal that the Respondent had not consulted as they were required to do under section 20 of the 1985 Act, as the amount was over £250. The amount was therefore not payable.

45. The Respondent told the Tribunal that there was no requirement to consult as the amount of £550.85 was made up of five different orders and did not exceed the threshold for the Property.

Tribunal's Decision and Reasons – Door Entry

46. The Tribunal found that work to the door entry was payable under the lease.

47. Regarding the work completed, the Tribunal accepted the evidence of the Respondent that the work fell below the threshold for each flat and therefore consultation under section 20 was not required.

48. The Tribunal determined that the work was payable under the lease as it fell within the Respondent's responsibility under clause 5.3 of the lease and that the charge was rechargeable as a service charge under clause 7.4.1 of the lease.

49. The Tribunal found that the charge was reasonable and noted that the Applicants had not provided the Tribunal with any alternative quotations.

50. The Tribunal therefore found that this charge was payable and reasonable and made no alteration to the amount charged by the Respondent.

Lift - £8,364.89

51. The items that made up this charge were set out at page 372 of the Applicants' bundle.

52. In addition to the comments made in the schedule, the Applicants stated that the amount was an annual contract cost, but it was not clear to them that the services had been carried out. The Applicants noted specifically that the invoice for £1,416.00 for removing an existing motor seemed high.

53. The Respondent confirmed that the work was for three lifts but it was not over the threshold of £250 across each flat and so consultation was not required. The Respondent confirmed that they had followed a tender process and believed the costs were reasonable.

Tribunal Decision - Lift

54. The Tribunal found that this service charge item was payable under the lease.

55. Regarding the work completed, the Tribunal accepted the evidence of the Respondent that the work fell below the threshold of section 20 and therefore did not require statutory consultation.

56. The Tribunal determined that the work was payable under the lease as it was within the Respondent's responsibility under clause 5.3 of the lease and that the charge was rechargeable as a service charge under clause 7.4.1 of the lease.

57. The Tribunal found that the charge was reasonable, and had particular regard to the Respondent's evidence that a tender process had been undertaken for the work and that the number of lifts and the amount of use they had was high. Additionally, the Applicants had not provided the Tribunal with any alternative quotations.

58. The Tribunal therefore found that this charge was payable and reasonable and made no alteration to the amount claimed by the Respondent.

Aerial Repairs

59. The work that made up this charge was at page 373 of the Applicants' bundle.

60. The parties made no additional submissions to the Tribunal but reiterated the comments made in their schedule.

Tribunal Decision – Aerial Repairs

61. The Tribunal found that this service charge item was payable under the lease.

62. Regarding the work completed, the Tribunal accepted the evidence of the Respondent that the work fell below the threshold of section 20 and therefore did not require statutory consultation.

63. The Tribunal determined that the work was payable under the lease as it was within the Respondent's responsibility under clause 5.3 of the lease and that the charge was rechargeable as a service charge under clause 7.4.1 of the lease.

64. The Tribunal found that the charge was reasonable and noted that the Applicant had not provided the Tribunal with any alternative quotations.

65. The Tribunal therefore found that this charge was payable and reasonable and made no alteration to the amount claimed by the Respondent.

Electrical and Gas Repairs

66. The amount charged under this heading was set out at page 373 of the Applicants' bundle. The Applicants stated that they believed that they had been double charged as there was an amount for £5,253.07 and £5,434.09.

67. The Respondent confirmed the description for this work and confirmed that it related to two separate invoices.

Tribunal Decision – Electric and Gas Repairs

68. Having considered the invoices, the Tribunal accepted the evidence of the Respondent that the amounts did not amount to a double charge; there was one charge for flats 1-23 and another for flats 24-55. The apportionment under the lease as set out above meant that the service charge was calculated across both blocks. The Tribunal therefore found that this service charge item was payable under the lease.

69. The Tribunal accepted the evidence of the Respondent that the work fell below the threshold of section 20 and therefore did not require statutory consultation.

70. The Tribunal determined that the charge was payable under the lease as it fell within the Respondent's responsibility under clause 5.3 of the lease and that the charge was rechargeable as a service charge under clause 7.4.1 of the lease.

71. The Tribunal found that the charge was reasonable and noted that the Applicant had not provided the Tribunal with any alternative quotations.

72. The Tribunal therefore found that this charge was payable and reasonable and made no alteration to the amount claimed by the Respondent.

Communal Electricity

73. The services provided for this charge were set out at page 373 of the Applicants' bundle.

74. The Applicants reiterated their comments within the schedule, and added that there was a lack of consultation and no breakdown provided so they could see what each item related to.

75. In reply, the Respondent confirmed that they had sent a breakdown of the amount payable via a link sent by email to the Applicants. The Respondents confirmed that they had matched the bills with the amount charged and were satisfied that the correct amount had been charged.

Tribunal Decision – Communal Electricity

76. The Tribunal accepted the evidence of the Respondent and was satisfied that the amount charged had been properly reconciled and charged to the Applicants. The Tribunal was satisfied that this charge was payable under the lease and had been correctly recharged to the Applicants.

77. The Tribunal had not been provided with any alternative quotations from the Applicants and was satisfied that the amount charged was reasonable.

Managing Agent Fee

78. The Tribunal clarified that this amount related to the estate services that were provided by the management company and not the Respondent. In reply the Respondents told the Tribunal that the Management Company was responsible for providing the estate services as listed in clauses 12.8 and 12.9 of the transfer agreement dated 7 August 2017. Under clause 12.8 (b), the management company provided an estimated service charge budget to the Respondent as soon as reasonably practicable after the first day in April and under clause 12.8 (c) of the lease the reconciled account was provided as soon as reasonably practicable after the end of the year. This charge was then passed to the tenants as a service charge.

79. The Applicants made the following comments in their schedule:

"*2) Amount is not reasonable, as it is a 445% increase compared to the last year. No evidence has been provided as to what services are being provided for this amount, and how/if services will improve in line with

the unreasonable increase. It was highlighted that this includes the invoices for 2022 and 2023, however the estimate paid for 2023 was not removed from the ongoing charges, which should have been done considering invoice covers 2023 as well. Even considered in isolation each year would be an increase of almost 200% which is not reasonable. There is significant lack of transparency and unnecessary burden put on the leaseholder to figure out how the landlord deducts already paid moneys against invoices from third partes. The landlord has shown no interest in questioning these charges from a third party and act in the leaseholders interest.

*2) Reasonable in amount/standard?"

80. In reply the Respondent told the Tribunal that the increase in the charge related to two key issues namely that the estimate given was too low as it was based on the managing agent charge for 2020/21 which did not take into account a full year's charge. Also, in the service charge year 2022/23, both the 2022 and 2023 invoices from the managing agent were received. A charge was incurred in the year in which the invoice was received and paid; therefore, in this year, the Respondent had had to recharge both of these invoices within the same financial year.

81. The Respondent confirmed that they do scrutinise and check the charges that they received from the managing agents, but they were limited in what they could do as they were not provided with quotations in advance and the amount they were charged was based on contractor costs.

Tribunal Decision - Managing Agent Fee

82. Whilst the Tribunal accepted that having two invoices within the same service charge year was less than satisfactory, the Tribunal accepted the evidence of the Respondent that this was not something they were able to control.

83. The Tribunal accepted the evidence of the Respondent that they had an obligation to pay the estate service charge under the transfer agreement. The Tribunal also accepted that the amount was payable under the lease. The Applicants did not provide any alternative quotations and there was no evidence before the Tribunal that the charges were unreasonable.

84. The Tribunal therefore found the charge payable and reasonable and made no alteration to the amount charged by the Respondent.

Management Fee - £117.16

85. In the schedule the Applicants stated as follows:

"*1) And *2) This item is not agreed, and it is unclear why the leaseholder is paying a managing agent fee and a management fee. The amount is not reasonable, and this appears to be a new charge with no justification provided and no clarity on what services are being received for this costs. This item needs to be removed.

*1) Chargeable under lease?
* 2) Reasonable in amount/standard?"

86. In reply the Respondent stated that this management fee was the Respondent's fee that covered the building management costs such as preparing service charges, responding to enquiries, paying staff, managing contractors and other administrative costs. This was therefore not the same as the managing agent fee which was paid to the management company.

87. The Respondent explained that the way this fee was calculated had recently changed and the Respondent further explained that a letter dated 28 June 2021 had been sent to all tenants explaining the management fee (a copy of this letter was at page 257 of the Respondent's bundle). The Respondent explained that previously the management fee had been based on a flat rate or as a percentage of overall service charge (page 257 of Respondent's bundle). However, when the Respondent compared this method to the way other housing associations worked as well as best practice, the Respondent found that a new way of calculating the fee based on the number and type of service provided at each property would be more effective. The Respondent stated that this method resulted in a more accurate way of determining what the costs actually were. The Respondent confirmed that services provided were broken into nine categories and classified as high or low depending on the level of management that was needed. The letter sent to tenants further explained that the yearly increase had been capped at £470 per home and additionally there was capping for the yearly increase. The Respondent further confirmed that this approach had been signed off by their Board and that they did not make a profit from it.

Tribunal Decision – Management Fee

88. The Tribunal accepted the evidence of the Respondent and found that this management fee was separate and distinct from the managing agent fee. The Tribunal also accepted that the new way in which the management fee was being calculated was fair and reasonable. In particular, there was a clear link between the level of service being provided and the amount that a tenant had to pay. The instigation of the capping process meant that the increases happened in a measured way, which the Tribunal found to be reasonable.

89. The Tribunal found that the amount charged for the management fee was payable under the lease and that the amount charged was reasonable and therefore made no alterations to the amount charged by the Respondent.

CCTV - £7,887.25

90. The Applicants made the following comments in the Schedule:

> "*1) And *3) This item is not chargeable under section 7 of the lease. These services were carried out in a different property (Block B) and as per our lease there is no stipulation that service charges are distributed across the two properties. (see Table A) Each property should only incur the cost for services they have received at their own property. This item needs to be removed.
>
> *1) Chargeable under lease?
> *3) Correctly demanded?"

91. The Applicants asked the Tribunal to determine whether the Respondent should have consulted regarding these additional charges, firstly because the CCTV did not benefit flats 1 to 23 Magnus Heights, and secondly as the CCTV total cost was said by the Applicants to be £7,887.25 and therefore fell under the section 20 consultation requirement.

92. Further the Applicants stated that, as the CCTV did not cover flats 1-23 and, the cost should be shared between flats 24-55 Magnus Heights and not passed on to them too.

93. In reply the Respondent stated that although the CCTV did not cover the Applicants' block, the lease allowed the Respondent to make this charge given the apportionment set out in the lease.

Tribunal's Decision - CCTV

94. Whilst the Tribunal could understand the frustration of the Applicants with regard to paying for this service, the Tribunal found that the charge was payable under the lease because of the way the lease operated across both blocks (as set out earlier in this Decision).

95. The Tribunal also accepted that there was no consultation required given the value was under £250 per flat.

Bulk Refuse – £2,004.00

96. The Applicants made the following comments in the schedule:

"*1) And *3) This item is not chargeable under section 7 of the lease. These services were carried out in a different property (see Table A and invoices), and as per our lease there is no stipulation that service charges are distributed across the two properties. (see Table A) Each property should only incur the cost for services they have received at their own property. (see Table A) This item needs to be removed. Block A leaseholders have a much larger refuse store, and for any bulky items the leasholders have always arranged and paid for any removal directly.

*1) Chargeable under lease?
*3) Correctly demanded?"

97. The Applicants' position was that this cost was for removal of refuse from outside flats 24-55. The Applicants therefore maintained that this was an additional service required by those flats and should not be a cost to the Applicants.

98. The Respondent confirmed that they undertook this work in compliance with their responsibilities under clause 5.3 of the lease. The cost incurred for this was rechargeable under clause 7.4.1 of the lease. The Respondent reiterated that the apportionment under the lease allowed for this charge to be made.

Tribunal's Decision – Bulk Refuse

99. Whilst the Tribunal accepted that this charge was payable under the lease and that the Respondent was entitled to apportion this charge in the way that it had, the Tribunal did not find this charge reasonable. This was because this charge was for clearing refuse that had been left within the estate. The Tribunal found that it was not reasonable for the Applicants to pay this charge for two reasons. Firstly, the Applicants had paid for CCTV and one of its stated purposes was to prevent unlawful bulk refuse being left. It was therefore not reasonable to expect the Applicants to pay for both CCTV and also the removal of bulk refuse. Secondly, the Applicants were paying a managing agent fee for the maintenance of the estate. As part of good estate management, the Tribunal did not find it reasonable for the Applicants to have to pay for removal of bulk refuse as this was below the standard that the Tribunal would expect for good estate management.

100. The Tribunal therefore did not find this charge reasonable and did not find it payable. This charge was therefore removed.

Reserve Fund - £23,027.93

101. The Applicants made the following comments in the schedule:

"*2) and *3) This item has not been used for its intended purpose. There is no transparency as to where this money is being held, how it is managed and what it is being used for, despite requesting more information under section 22 of the Landlord and Tenant Act. It has become apparent that this item is not being used for its' intended purpose, i.e to cover unexpected costs (instead of dipping into the reserve fund, the landlord issues invoices for additional work). The amount is unreasonable and unclear how this was established. There is building insurance and warranties on this new build property. This item needs to be removed from the service charge all together, and instead the landlord must consult on any additional work and issue invoices on agreed work.

* 2) Reasonable in amount/standard?
*3) Correctly demanded?"

102. The Applicants' position was that the reserve fund amount was high given that the building was new and installations were still under warranty. They also questioned whether all flats were contributing to the reserve fund. Additionally, their position was that some of the works such as the installation of CCTV should have been covered by the reserve fund rather than being charged separately.

103. In reply the Respondent confirmed that the reserve fund was an amount that the Respondent collected and held to pay for expensive works and items which may be required every few years, for example roof repairs/exterior painting/lift replacement etc. The Respondent contended that the Applicants had not provided any evidence that the money was not being used for its intended purposed.

Tribunal Decision – Reserve Fund

104. The Tribunal accepted that the reserve fund was payable under clause 7.3.1 of the lease. The Tribunal also accepted the evidence of the Respondent that they were administering a reserve fund to cover one off/unforeseen work.

105. The Tribunal therefore found that the reserve fund amount was payable and reasonable and made no alteration to the amount charged.

Estimated Service Charges 2023/24

106. The Applicants identified the following items of dispute within the schedule (pages 37 to 44 of the Respondent's bundle):

- Window Cleaning - £6,105.00

- Lift - £6,298.00
- Communal Water - £300
- Communal phone - £637.14
- Communal Maintenance - £1,859.00
- Health and Safety - £2,714.66
- Communal Electricity - £3,404.77
- Door Entry - £833
- Cleaning - £4,596
- Reserve Fund - £23,027.93
- Managing Agent - £216.48
- Management fee- £217.20

Estimated Service Charges 2024/25

107. The Applicants identified the following items of dispute within the schedule (pages 45 to 52 of the Respondent's bundle):

- Window Cleaning - £472.46
- Cleaning - £7,940.56
- Fire - £14,783.64
- Communal Gas and Electric Repairs - £500
- Lift - £9,828.75
- TV and Aerial - £1,075.88
- Reserve Fund - £23,027.93
- Managing Agent - £577.56
- Management fee- £317.16

Respondent's Methodology for Calculating Estimated Accounts

108. In reply, the Respondent explained that the 2024/25 estimated charges were based on the 2022/23 actual costs and the 2023/24 estimated costs. The Respondent used these figures as a base figure and then applied a contractual uplift if it was stipulated in the service contract, or if they were aware of specific uplift information. Where there was no uplift specified, the Respondent used interest rate increases to calculate the uplift. If the Respondent uplifted the estimated cost from the current financial year amount, they used the RPI for the preceding September plus 1%. If they uplifted the figure from the last known actual cost, they used compound interest rate increases over two years given that the final accounts were two years behind the estimate. Once the estimated figures had been calculated, they were validated and approved by the Housing Management teams using their local knowledge of the schemes. They may also have recommended a higher maintenance estimate if they were aware of any necessary or forthcoming repairs/maintenance requirements. Conversely, they may have reduced the amount if the previous year included one off high cost items.

109. The Tribunal accepted the evidence of the Respondent as to how they calculated the estimated amount.

Window Cleaning 2023/24 and 2024/25

110. The Applicants' position was that the year on year increase was not reasonable, and they had not seen quotations or invoices. Additionally, the Applicants stated that they had received a text message alerting them to the fact that the windows would be cleaned but it did not happen.

111. In reply, the Respondent reiterated that the amount was an estimate and if window cleaning had not taken place, the Applicants would not be charged. For the avoidance of doubt, the Respondent confirmed that this window cleaning related to communal windows and that windows for each flat were demised to each of the leaseholders, who were responsible for their cleaning.

112. Specifically related to 2024/25, the Applicants stated that the estimate for 2024/25 was significantly lower than for 2023/24 and asked that the Respondent improve their methodology for calculating estimated accounts.

Tribunal Decision – Estimated Accounts for Window Cleaning

113. The Tribunal was not able to consider the amount payable as the charges were only estimated. However, the Tribunal found that the Respondent's methodology for calculating the estimated amounts was practicable and had sufficient safeguards within it to ensure that the estimated accounts were reasonable.

Lift – 2023/24 and 2024/25

114. In addition to the comments made in the schedule (page 85 of the Respondent's bundle), the Applicants told the Tribunal that there was no consistency in the estimated amounts with over £3000 difference between the 2023/24 and 2024/25 amounts.

115. In reply the Respondent confirmed their methodology and confirmed that the amount charged in 2023/24 was in line with 2022/23.

Tribunal Decision - Estimated Accounts for Lift 2023/24 and 2024/25

116. The Tribunal found that the Respondent was responsible for the maintenance and repair of the lift under clause 5.3 of the lease and that the cost was rechargeable under clause 7.4.1 of the lease. The Tribunal

was satisfied that the estimated costs had been calculated appropriately, but that final accounts would be prepared.

Communal Water – 2023/24

117. The Applicants told the Tribunal that there was no charge for 2022/2023 and therefore they were unclear why it was charged in 2023/24. The Respondent confirmed that this item was not part of the 2022/23 estimate, however, an estimate had been provided as part of the 2023/24 charges.

Tribunal Decision – Communal Water 2023/24

118. The Tribunal was satisfied that this charge was payable under the lease. In their comments within the schedule (page 87 of the Respondent's bundle), the Applicants did not provide the Tribunal with any evidence of any alternative quotations and did not particularise why the amount was unreasonable, instead focusing on questioning whether the service had been provided and the lack of quotations or invoices. The Tribunal was satisfied that the estimated amount the Respondent had included was reasonable and, once final accounts were produced, the Applicants would be able to review the amount charged.

Communal Phone – 2023/24

119. The Applicants in their schedule commented that their objection was that there was no evidence of services being provided. In reply, the Respondent confirmed that the amount charged was an estimated amount and if for any reason there was no charge under this heading a refund would be made.

Tribunal Decision – Communal Phone 2023/24

120. Whilst not disputed by the Applicants, for completeness the Tribunal determined that it was satisfied that this charge was payable under the lease. The Tribunal was satisfied that the estimated amount the Respondent had included was reasonable and once final accounts were produced, the Applicants would be able to review the amount charged.

Communal Maintenance – 2023/24

121. The Applicants' objection was centred on whether the amount charged was the right amount (page 89 of the Respondent's bundle). The Applicants told that Tribunal that the increase in amount charged was an 80% increase and that this was unreasonable.

122. In reply, the Respondent told the Tribunal that the estimate had been based on the costs that the Respondent was aware of and based on 2022/23 amounts with an uplift applied. The Respondent reiterated that they had used the best known costs and that they had to try to provide as accurate an estimate as possible.

Tribunal Decision – Communal Maintenance

123. The Tribunal accepted the submissions of the Respondent that they had used the best available evidence to estimate the cost and that the Applicants would be sent final amounts which they would have the opportunity to consider in detail.

Health and Safety – 2023/24

124. The Applicants and Respondent had set out their comments within the schedule (page 91 of the Respondent's bundle). The amount for 2022/23 was £7,142.30, whereas the estimated amount for 2023/24 was £2,714.66. The Applicants told the Tribunal that given the level of fluctuation between the amounts, they were not able to rely on the estimated amount.

125. In reply, the Respondents explained that the amount for 2022/23 included work that had been completed. However, it was not expected that this work would be repeated in 2023/24 and therefore the estimate for that year aligned with previous years rather than a year that included works.

Tribunal Decision - Health and Safety – 2023/24

126. The Tribunal was satisfied that health and safety work was payable under clause 7.4.1 of the lease and also accepted the Respondent's evidence that they had produced an estimated amount in a reasonable way. Further, the Applicants did not provide the Tribunal with any evidence as to why the amount charged was not reasonable and did not provide the Tribunal with any alternative quotations. The Tribunal therefore made no amendment to the amount. The Applicants would be sent final accounts in due course.

Communal Electricity – 2023/24

127. The Applicants set out their comments in the schedule at page 92-93 and the Respondent replied. The Applicants explained that the final amount for 2022/23 was £1,808.18 whereas the estimated amount for 2023/24 was £3,404.77; the Applicants were not satisfied by the amount differential.

128. The Respondent confirmed that this was an estimated amount and that the final amount would accurately reflect the cost. The Respondent told the Tribunal that the utility market was volatile and so a higher cost base was assumed when making estimates. The calculation was based on the 2022/23 amount and then estimated using the Respondent's knowledge of the market and likely utility bill increases.

Tribunal Decision - Communal Electricity – 2023/24

129. The Applicant did not provide the Tribunal with any alternative quotations or evidence to justify why the amount estimated was unreasonable. The Tribunal accepted the evidence of the Respondent that they had used the best available evidence to estimate the amount payable. The Tribunal also accepted the evidence of the Respondent that final amounts would be sent to the Applicants in due course.

Door Entry – 2023/24

130. The Applicants and Respondent set out their comments in the schedule (page 94 of the Respondent's bundle). Additionally, the Applicants told the Tribunal that the amount for 2022/23 was £550.85, whereas the estimated amount for 2023/24 was £833.

131. The Respondent reiterated their position that the estimate was based on the best available evidence and included an uplift.

Tribunal Decision – Door Entry – 2023/24

132. The Tribunal accepted the Respondent's position that this charge was payable under the lease (clause 7.4.1) and that the Respondent had used the best available evidence to provide an estimated amount. The Applicant had not articulated why the charge was not payable and had not provided the Tribunal with any alternative quotations. The Respondent would send final amounts in due course.

Cleaning – 2023/24 and 2024/25

133. The Applicants and Respondent set out their comments on the schedule at pages 95-96 and 104-105.

134. The Applicants explained that in their opinion the standard of cleaning had reduced but the cost had increase. The Applicants told the Tribunal that there was mud and cobwebs that were not cleaned at the property and the 4th floor had not been cleaned. The Applicants therefore challenged the reasonableness of the cost.

135. The Respondent confirmed that they had estimated the costs in accordance with their methodology and that the Respondent's representatives would speak to relevant staff who oversaw the cleaning regarding the Applicants comments about the standard of cleaning. In relation to the estimated amount for 2024/25, the Respondent told the Tribunal that the figure for this was calculated by way of an uplift from the 2022/23 amount in line with their methodology.

Tribunal Decision - Cleaning – 2023/24 and 2024/25

136. The issue raised by the Applicants was the quality of the service and not the payability of the service under the lease. The Tribunal considered the estimated amount for 2023/24 and 2024/25 and noted that the Applicants had not provided the Tribunal with any alternative quotations. The Tribunal was therefore satisfied that the estimated amounts were reasonable, however the Tribunal noted that the Respondent's representatives would seek to address the issue of the poor standard of cleaning that the Applicants referred to. Once the amounts were finalised a final amount would be sent to the Applicants.

Reserve Fund – 2023/24 and 2024/25

137. The Applicants and Respondent provided their comments in the schedule at pages 97-98 and 112-113. The Applicants told the Tribunal that it was their view that the Respondent was not using the reserve fund for its intended purpose, and they would like to see better use of the reserve fund.

138. In reply the Respondent reiterated that the lease allowed them to maintain a reserve fund and noted that the Applicants had not provided any detail as to how they would like to see the reserve fund managed.

Tribunal Decision – Reserve Fund 2023/24 and 2024/25

139. The Tribunal accepted that the lease allowed for a reserve fund (clause 7.3.1) and therefore the Respondent was entitled to ask for a contribution for the reserve fund. Using its professional knowledge, the Tribunal found that the amount estimated by the Respondent was reasonable having regard to the size and nature of the property.

Management Fee 2023/24 and 2024/25 and Managing Agent Fee 2023/24 and 2024/25

140. The Applicants and Respondent set out their positions with regard to both the management fee and the managing agent fee within the schedule at pages 98 – 100 and 113-116. The Applicants told the Tribunal that the amount charged by way of a management fee and managing

agent fee were unreasonable, with the costs rising but no increase in the service provided.

141. With regard to the management fee, the Respondent stated that because the management company's costs were not known at the time when the Respondent sent notification to the Applicants, the Respondent relied on the previous year's cost and applied an uplift. When the cost was reconciled after the end of the financial year, the actual cost incurred during the year was reflected in the final amount that would be sent to the Applicants.

142. With regard to the management fee, the Respondent reiterated that a letter explaining the way that the management fee would be calculated had been sent to the Applicants.

Tribunal Decision - Management Fee 2023/24 and 2024/25 and Managing Agent Fee 2023/24 and 2024/25

143. The Tribunal accepted the evidence of the Respondent that they had used the best available evidence to estimate the amounts for these services. As set out in the decision for the service charge year 2022/23, the Tribunal found that both of these charges were payable under the lease. The Tribunal has already set out above that it found the way that the Respondent calculated their new management fee to be reasonable and noted in particular that the Respondent had capped the increase as set out in the Respondent's letter of 28 June 2021 sent to leaseholders (page 257 of the Respondent's bundle). With regard to the managing agent fee, the Tribunal understood that the amount that the management company charged was not within the control of the Respondent. Final amounts would be sent to the Applicants in due course.

Fire - 2024/25

144. The parties set out their comments on the schedule at page 105-106. The Respondent confirmed that the work in question did not fall under the Building Safety Act 2022. Further the Respondent confirmed that this charge was included in the 2024/25 estimate to make provision for possible repairs so as to avoid unforeseen costs being included in the final amounts. This was done to avoid the possibility of a significant shortfall.

Tribunal Decision – Fire 2024/25

145. The Applicants did not present the Tribunal with any evidence as to why the amount charged was unreasonable and did not provide any alternative quotations. The Tribunal accepted the evidence of the Respondent that the work was necessary and that the Respondent had

prepared estimates based on the best available evidence they had. Final amounts would be sent to the Applicants in due course.

Communal Gas and Electric Repairs - £500- 2024/25

146. The Applicants stated that there was no proof that any services were carried out at the Property (page 107 of the Respondent's bundle).

147. The Respondent confirmed that this service charge heading was part of the final accounts for 2022/23, but had not been included in the 2023/24 estimate. The Respondent stated that this heading was included in the 2024/25 estimates so as to make provision for any possible repairs.

Tribunal Decision - Communal Gas and Electric Repairs - £500- 2024/25

148. The Tribunal found that including this amount was reasonable so as to avoid any unforeseen costs. Final amounts would be sent to the Applicants in due course and they would have the opportunity to consider this.

TV and Aerial – 2024/25

149. The Applicants told the Tribunal that this charge had not been previously included. The Respondent confirmed that this charge had been omitted in error from the 2022/23 estimate but was included in the 2022/23 final account. This had resulted in an additional charge in the 2022/23 final account and so as to avoid this the Respondent had ensured it was included in future estimated charges. The Respondent confirmed that the cost had been incurred.

Tribunal Decision TV and Aerial – 2024/25

150. The Tribunal accepted the evidence of the Respondent that the charge had been incurred and therefore needed to be included within the estimated service charge. The Tribunal had no evidence from the Applicants that the amount estimated was not reasonable. Final amounts would be sent to the Applicants in due course.

Application under s.20C and 5A Schedule 11

151. In the application form the Applicants had applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the Tribunal did not find that it was just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act

or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to be made.

Name: Judge Bernadette MacQueen **Date:** 14 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).