FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/00KB/HTA/2023/0035**
Property	:	**The Heights, 25 St John's Street, Bedford, MK42 0FW**
Applicant	:	**Leaseholders of the Heights**
Respondent	:	**Samsons Limited**
Type of application	:	**An application under section 27A Landlord and Tenant Act 1985**
Tribunal	:	**Judge Shepherd** **Gerard Smith MRICS FAAV**
Date of Decision	:	**3rd April 2025 2025**

DETERMINATION as amended under the slip rule

1. This matter originates from an application made by a number of residents of The Heights, 25 St John's Street, Bedford, MK42 OFW. There are 46leaseholders in total involved. Hereafter they will be referred to as "The Applicants". The Respondent is Samsons Limited.

2. The Heights is a block of apartments, converted in 2013 from the former British Telecom high rise office building in Bedford town centre. It has 13 floors and 109 apartments including two on the ground floor. Floors 1 to 6 contain 51 apartments owned by Notting Hill Genesis as a corporate let who rent the flats as social housing. The remaining 58 apartments are owned by individuals as residential leaseholders on floors 7 to 13 as well as two on the ground floor.

3. Samsons Limited acquired the freehold of the premises in December 2017, and retained the incumbent managing agent Mainstay until November 2018 when they were replaced by SDL Property Management. In July 2019 Samsons Limited replaced SDL with Samsons Properties Limited, a company owned by Samsons Limited and run by the same members of the family as those under SDL.

4. The Applicants challenge service charges going back to 2018. The parties prepared a useful Scott Schedule of issues which we have used to define the issues we were required to decide. The matter took up a considerable amount of Tribunal time. There were a total of four days of hearing time. These included an inspection and virtual hearings. The last of which took place on 9th and 10th December 2024.

5. Mohammed Saleem, the director of Samsons Limited gave evidence on behalf of the Respondents and was in the witness box for an extended period of time. He was challenged at length about the absence of invoices for some of the relevant years, in particular 2019. He said that he had sought to obtain the relevant invoices from SDL the former managing agents. He provided documentation showing this. He also said that he had searched everywhere for the invoices. Some of the invoices provided appeared to relate to a different development.

6. In his evidence Mr Saleem was defensive and appeared to be lacking in real knowledge of the day to day management of the development. He provided expenditure reports for the relevant years which were of some assistance but there was no statement from an accountant to confirm their validity. There was also no indication as to who prepared the reports. His evidence in relation to the caretaking charges was particularly weak. He said the cleaner acted as the caretaker but could not identify which duties she carried out. He was only able to say that she looked after the building. In support of the repairs to the

common areas he relied on photos of damage to the building but these were undated. He accepted he did not check the work done by contractors. Much of the work was carried out by his own contractors, NPSL who invoiced him. He was not able to offer a proper explanation of what had happened to the reserve fund and what he had done to chase this. No legal action had been taken against the previous managing agents. He had owned the franchise for SDL and ought to be able to control the transfer of the reserve fund.

7. The Applicants did not submit any witness statements other than a late statement and report from the current managing agent which we did not admit because they were submitted too late and this was considered unfair to the Respondent.

8. The relevant lease terms were the following:

9. Clause 1 contains the following definitions:

13.1 "*Building*" means "*the tower block of Apartments built or to be built on the Development"*

13.2 "*Common Parts*" means *"the parts of the Development not demised or intended to be demised that are provided by the landlord from time to time for the common use and enjoyment of the owners and occupiers of the Apartments including the boundaries, play area, bin stores, gardens and grounds of the Development and (where the context so required) the Accessway and Car Parking Area and the hallways lightwells entrances lobbies landings passages lifts staircases fire escapes storage cupboards service ducts vents plant and equipment in the Building"*

13.3 "*Development Expenditure*" means *"the aggregate of all proper costs and expenses incurred by the Landlord (and/or the Receivers where they are appointed) in and incidental to providing the Development Services including any VAT (to the extent that the Landlord cannot recover the same as input tax) incurred by the Landlord (and.ir the Receivers where they are appointed) in relation to the Development Services"*

13.4 "*Development Services*" are "*the services facilities and works listed in the Sixth Schedule"*

13.5 "*Service Charge*" is "*the proportion specified in paragraph B.2 of the Particulars (or such other proportion as shall become payable pursuant to the provisions of this Lease) of the Development Expenditure incurred by the landlord (and/or the Receivers where appointed) in a Financial Year such proportion to be payable in accordance with the provisions contained in the Ninth Schedule"*

13.6 "*Service Charge Payment Days*" means "*1 January, 1 April, 1 July and 1 October in each Financial Year or such other dates as the Landlord may from time to time determine"*

10. By clause 3.1 of the Leases, the tenant covenants "*to observe and perform the obligations set out in Part I of the Fourth Schedule"*. Those covenants include:

    To pay to the Landlord on demand as additional rent a fair proportion of all sums (including the proper costs of valuations for insurance purposes) plus VAT thereon (if any) which the Landlord or the Receivers shall from time to time pay in the performance of its covenants contained in clause 5 of the Fifth Schedule to this Lease

11. Further, at clause 3.2, the tenant covenants to observe the covenants in Part II of the Fourth Schedule, which includes, at paragraph 1, "*To pay to the Landlord or the Receivers the Service Charge in accordance with the provisions contained in the Ninth Schedule"*. By the Ninth Schedule, the Service Charge is payable on the Service Charge Payment Days quarterly in advance the Landlord's estimate of the Service Charge for the financial year, with payment of any balancing charge forthwith upon the Landlord furnishing an account of the Service Charge (to be provided as soon as practicable after signature of the Certificate), or credit being given where the actual costs are less than the estimate (or transferred to the reserves on account of future expenditure).

12. By paragraph 5 of the Fifth Schedule of the Lease, the Landlord covenants to keep the Development insured.

13. The Landlord's Service Covenants are contained in Part I and Part II of the Sixth Schedule and includes (but is not limited to):

    Keeping in good repair and decoration the main structure of the Building, the Services in under and upon the Development, security equipment and plant and machinery, door entry systems, communal fire, burglar or entry alarm

systems, windows and external window farms and the gardens and grounds (paragraph 1.1, Part I)

Keeping in good repair, clean, tidy and reasonably lit the Common Parts (paragraph 3, Part I);

Decoration of the exterior parts of the Building (paragraph 4, Part I);

Clean the windows and exterior to the window frames of the Common Parts and the Apartments (paragraph 5, Part I)

Maintain, alter, repair, operate, inspect, clean, renew and replace all lifts, security equipment, communal boilers, pumps and all other plant and machinery, door telephone in the Common Parts and communal fire, burglar or entry alarm systems and complying with all recommendation of the appropriate authority in relation to fire precautions and any requirements of the insurers (paragraph 6, Part I)

Keep clean, properly lit and I good repair and decoration the Car Parking area (paragraph 8, Part I)

Employ managing agents, servants, agents, managers, staff, contractors, solicitors, surveyors and accountants (paragraph 3, Part II)

To pay all proper legal and other costs incurred by the Landlord (paragraph 4, Part II)

To cause to be prepared annual audited or certified accounts of the expenditure

(paragraph 5, Part II)

To accumulate a reserve fund (paragraph 6, Part II)

The law

14. The Landlord and Tenant Act 1985,s.19 states the following:

> *19.— Limitation of service charges: reasonableness.*
>
> *(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.*

15. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

> *27A Liability to pay service charges: jurisdiction*
>
> *1. An application may be made to [the appropriate tribunal]2 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]2 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.

16. In *Waaler v Hounslow* [2017] EWCA Civ 45 the Court of Appeal held the following:

Whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of "service charge" in section 18 of the 1985 Act, as inserted, there was a real

difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations.

Determination

17. The parties were able to agree some if the items on the Scott Schedule of issues but numerous issues remained. These are taken in turn below:

Reserves

18. This was a repeated item for the years in issue covering sub-categories including *reserves car park, reserves building* and *reserves owned apartment*. The repeated criticism was that reserves had disappeared without explanation. Mr Saleem said that the reserves were held by SDL central office, not the franchise and SDL had refused to release the funds. Mr Saleem had bought into the franchise. There was no evidence to support the fact that SDL were holding the reserve or that they would not release the sums. We remain surprised by Mr Saleem's account. Unfortunately, however we don't have jurisdiction to deal with this issue. The appropriate course is through the County Court. The reserves ought to be held on trust. If they are used for anything other than what they were intended for this constitutes a potential breach of trust.

Cleaning owned apartment

19. This item was repeated for the years in question (2018- 2023). The charges were challenged by the Applicants as being excessively high. There were no invoices provided for 2018 and few for 2019.The expenditure accounts were of limited assistance but we are concerned that most of the work was carried out by Mr Saleem's company and not at arms-length. The Shires managing agents who manage the premises estimate a cost of £17,000 for the cleaning of the whole building. This compares with the charges for the owned apartment area sought by the Respondents of £21,132 in 2018, £23,094 in 2019 £24,748 in 2020. £56,296 in 2021, £30,000 in 2022 and 2023. We inspected the building but this was at a time when Shires were manging the premises, so it was of limited use in assessing the cleaning in prior years. We consider the charges for cleaning owned apartment areas/floors are excessive and allow £10,000 per

annum for this item for each of the years in question. This is a fair proportion of the amount quoted by Shires for the whole building.

Cleaning – car park (2020, 2021),

20. The Applicants suggested that no cleaning had taken place. We consider that some cleaning was done but the charges were not justified. There was no proper evidence of jet washing for example. We allow 50% of the sought sums - £3,666.50 for 2020 and £2,102.50 for 2021.

Cleaning building (2020)

21. The sum charged was £2,310. There were invoices to justify the fact that cleaning had taken place. We allow this charge in full.

Lift costs Owned apartment (2018, 2019,2021, 2022, 2023)

22. This involved a third party company called Chaney for some of the years. The sum for 2018 was reasonable at £5,956. After that there was some concern that invoices from other estates had been included by mistake. Although there have been repeated vandalism and trespass into the lifts some of this originated from the social housing. Claims should have been made of Notting Hill Genesis. NSPL, Mr Saleem's company were undertaking the call outs for soft re-setting; its not clear if they were qualified to do so and no evidence was provided to suggest they were. We consider that a sum of £10,000 is appropriate each of the years in question i.e. for 2019, 2021 and 2022. In 2023 the budget should be set at £10,000 also.

Utilities, Electricity Owned apartment (2018, 2019,2020,2021, 2022, 2023)

23. The main concern of the Applicants was the fact that the Respondents had not paid the communal electricity charges. This does not affect the reasonableness of those charges. We were told the amounts due and they appeared reasonable. All of these charges should be allowed. The budgeted amount for 2023 is excessive and £25,000 should be allowed.

Utilities Communal electricity car park (2019, 2021, 2022)

23. Here the Applicants had assessed the reasonable sum based on RPI increases. This is not an appropriate measure. Invoices were provided and the sums that were due appeared reasonable. Therefore, the sums are allowed in full.

Utilities landlords water supply (2021, 2022, 2023)

24. These sums are allowed for the same reasons as above.

Cleaning- jet wash car park (2019, 2020, 2021,2022, 2023)

25. There was no real evidence of jet washing. The photos in the bundle did not support this. In order to jet wash the car park properly the cars would need to be removed which had not happened. These sums are disallowed in full.

Common area repairs car park (2019, 2022,2023)

26. The Applicants said the amounts were excessive but there was no real basis given for this objection. The photographs in the bundle demonstrated damage had been caused. When we inspected there was not the level of damage demonstrated in the photographs which supported the fact that the repairs had been done and invoices paid. The sums are allowed in full.

Common area repairs building (2020,2021, 2022,2023).

27. Here the sums for 2019 were agreed by the parties. They were of a similar amount to these years save for 2022 which was exceptionally high without any real explanation for this. We allow the sums save for 2022 for which we allow £26,000.

Common area repairs owned apartment (2019,2020, 2021, 2022,2023)

28. The sums seemed to vary considerably from year to year without any proper explanation. There is some concern that much of the work was said to have been done by Mr Saleem's own company. In addition it was repeatedly said by Mr Saleem that damage had been caused or originated from the Notting Hill Genesis tenants in the building but there was no proper evidence of him trying to recover these sums from Notting Hill Genesis or taking adequate security steps to prevent further damage in the future. We allow the sum for 2019. In 2020 and 2021 we allow £15,000. The figures for 2022 and 2023 are allowed.

Window cleaning building (2019, 2022,2023)

29. A sum of £5,000 was agreed for 2020 and 2021. Accordingly, we allow £5000 for these years as well as there is nothing to justify a departure from the agreed sums.

Water tank maintenance (2019)

30. This sum is allowed in full. The maintenance is essential and prudent. It is unlikely the leaseholders would be aware if work had taken place.

Sprinkler system maintenance (2019, 2022)

31. These sums are allowed in full. The work is essential for fire safety.

Management fees building (2019, 2020, 2021, 2022, 2023, 2024)

32. The Applicants had a number of justified criticisms of the management carried out by the Respondents. Accounts had not been provided for the last two years despite orders made by the Tribunal, sales and lettings had been deliberately obstructed, reserves had been apparently mislaid. Mr Saleem was evasive and defensive in his evidence. On occasions he was unable to provide a clear answer as he was not the person carrying out the management duties. We consider a

reasonable sum in light of all of these failings would be £15,000 per annum for all of the years in question.

Caretaking owned apartment (2020,2021, 2022,2023)

33. We consider that there was no real evidence of there being a caretaking service. Mr Saleem was vague on the subject; he said that the work was carried out by a cleaner but he was unsure of what her duties entailed. We disallow this sum in full.

Heating system /leak repairs (2020, 2021, 2022,2023)

34. This is expected expenditure which we allow in full.

Access control gates – car park (2020, 2022)

35. There was evidence that the gates were left open to facilitate the 3rd party parking agreement. The Respondents had entered into an agreement with a parking company and was using the parking spaces for a pay as you go tap and park scheme without the agreement of leaseholders. This appears to have been a commercial agreement which Mr Saleem did not dispute, but could not explain where the proceeds went. We disallow these sums in full.

Gates common area repairs (2020, 2022)

36. This sum is disallowed for the same reasons.

Communal boiler maintenance (2020, 2021, 2022, 2023)

37. These sums are allowed for 2021 and 2022. The budget for 2022 and 2023 should be £6,000 which better reflects previous years' expenditure.

Accountancy fees building (2020,2021)

38. The evidence we heard suggested that the fees had been inflated because the Respondents had failed to provide the accountant with appropriate information when requested. We allow £5,000 for both years.

Buildings insurance building (2021)

39. This sum is allowed in full. No comparators were provided by the Applicants.

s.20 C Landlord and Tenant Act 1985

40. There has been a catalogue of poor practice and negligence by the Respondents. Unfortunately, we did not have the jurisdiction to deal with the extremely worrying issues about the reserve fund depletion. It was absolutely right for the Applicants to bring the case and they were successful in many areas. We exercise our discretion and make an order under s.20C Landlord and Tenant Act 1985 which prevents the Respondents from recovering their legal fees from the service charge. We also order the Respondents to pay the Applicants' application fee and hearing fee – namely the sum of £320.

Judge Shepherd

3rd April 2025 2025

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).