FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**CAM/22UG/LSC/2024/0011**
Property	:	**21-25 Eaglegate, East Hill, Colchester, Essex CO1 2PR**
Applicants	:	**Ray Harris, Heather Harris, David West, Vanessa West, Mark Patston, David Flavell and Jill Knight**
Representative	:	**Ray Harris**
Respondent	:	**Assethold Limited**
Representative	:	**Eagerstates Limited**
Type of application	:	**Liability to pay service charges (sections 27A and 20C Landlord and Tenant Act 1985)**
Tribunal members	:	**Judge Hunt** **Professional Member G. Smith MRICS**
Date of hearing	:	**5 March 2025 (remote hearing)**
Appearances at hearing	:	**Mr R. Harris and Mr D. Flavell (for the Applicants)** **Mr S. White (for the Respondent)**
Date of decision	:	**16 April 2025**

DECISION

1. Heather Harris, David West, Vanessa West, Mark Patston, David Flavell and Jill Knight are added as applicants to the proceedings.

2. 50% of the cost of the work undertaken in the first-floor utility cupboard of 21-25 Eaglegate in 2021 is payable by the Applicants, i.e. £870 (inclusive of VAT).

3. The Applicants must pay the costs of insurance in the sum demanded for 2023 and 2024, and in the sum estimated for 2025.

4. No part of the costs of emergency light testing in 2023 (£192) and of the fire health and safety risk assessment in 2024 (£480) are payable by the Applicants.

5. The cost of the handrails ordered in 2021 is not payable by the Applicants (£594).

6. The Applicants must pay the management fee in the sum demanded for 2023 and 2024, and in the sum estimated for 2025.

7. No part of the estimated costs of fire safety services for 2025 (£500) are payable by the Applicants.

8. No contribution towards the 2025 "repair fund" as demanded on 3 December 2024 is payable by the Applicants.

9. No part of the Respondent's costs in connection with these proceedings is to be charged to the Applicants, whether as a service or an administration charge.

10. The Respondent must pay to the Applicant the sum of £320 in reimbursement of Tribunal fees paid, within 28 days of the date of this decision.

REASONS

Introduction

1. The Respondent is the freehold owner (the "Owner") of the premises known as 21-25 Eaglegate (the "Property"). The Property is a building that contains 5 flats. The Applicants are the tenants of those flats. The flats arose out of a redevelopment that took place in or around 2004.

2. The Owner is the freeholder of a larger plot within which the flats are situated (title number EX890670), which was once the site of a brewery. The plot also includes a separate building, known as "Stopes House", which is connected to "Arch House" and number 75 East Hill. Stopes House and Arch House are within the freehold title, 75 East Hill is not. 73 East Hill is a separate building, adjacent to the Property and to Stopes House. The ownership of 73 and 75 East Hill is unknown and irrelevant, but the premises apparently formed some part of the original redevelopment as the tenants or owners of those premises appear to contribute to at least some of the costs of the estate, as will be explained below.

3. The Owner charges its tenants a "service charge" for services provided, including the provision of insurance, works and general management. The Applicants wished to challenge the amount of the service charges demanded for calendar years 2022, 2023 and 2024. At the time the application was made, the final service charges for both 2022 and 2023 were known. The service charges for 2024 were estimated and payment on account had been sought. By the time of the hearing, the final service charges for 2024 were known, so the Tribunal determined the application on the basis of the final service charges for all years. Additionally, the estimated service charges for 2025 had now been demanded. The Applicants wished the Tribunal to determine whether those payments on account were payable. The Respondent did not object to the Tribunal doing so, noting that they were only estimates and that the actual expenditure would be determined at the end of the year. The Tribunal determined it should do so.

4. The application was originally recorded as having been brought in the sole name of Ray Harris. The other tenants named above confirmed in writing that they wished to be added as applicants to the proceedings and for Mr Harris to represent them. The Tribunal so ordered in accordance with Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

5. The Applicants challenged only the amount of service charge demanded in relation to the following costs:
    a. fire safety works undertaken in a first-floor utility cupboard in 2021;
    b. insurance procured in 2023 and 2024 (and estimated for 2025);
    c. testing of emergency lights and/or other fire safety related testing in 2023 and 2024 (and estimated for 2025);
    d. the aborted replacement of handrails in 2021;
    e. management fees in 2023 and 2024 (and estimated for 2025); and
    f. the contribution towards a "repair fund" for 2025.

6. A similar application had been presented to the Tribunal previously relating to service charges demanded for the years 2017 to 2023. It was determined on 11 April 2024 (the "2024 Decision"). Although it may appear at first that there is a conflict between those proceedings and the current application, that is not so. In relation to the fire safety works undertaken in 2022, the 2024 Decision simply limited the amount of recovery to £250 per flat. That is because the requisite consultation under section 20 of the Landlord and Tenant 1985 had not taken place such as to permit any greater charge being imposed. No assessment of the standard of works or whether they had been reasonably incurred was made. The determination of 2023 service charges were on the basis of the estimates of costs to be incurred, not costs actually incurred, which is this Tribunal's role. In general terms, the quality of evidence and documentation available appears not to have been the same before both Tribunals. There may be some inconsistencies between the findings of this Tribunal and the 2024 Decision, but that is because decisions are based on the information available. The 2024 Decision has been fully considered in all of this Tribunal's findings.

7. The Tribunal heard from both parties and considered a very well-prepared file of documents provided by the Applicants. The Respondent took little active part in the proceedings, which was decidedly unhelpful to the Tribunal. The Applicants pursued their application with clarity and precision. The Tribunal was very grateful to the Applicants for their diligence.

Relevant Law

8. The Landlord and Tenant Act 1985 provides a statutory framework for the management of service charges imposed by a landlord on a tenant. Section 18 provides a broad definition of "service charge" and "relevant costs".

9. Section 19 limits the amount of "relevant costs" that can be recovered through a service charge, as follows.

> "***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*".

10. Section 27A explains how service charge disputes are to be resolved. It provides as follows, so far as is relevant.

> "***27A. Liability to pay services charges: jurisdiction***
>
> *(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*".

11. Section 20B provides that relevant costs that were incurred more than 18 months before any demand for payment are not payable by a tenant.

12. Section 20C provides that a landlord's costs in connection with legal proceedings, such as the application before this Tribunal, can be excluded from a service charge:

> "***20C. Limitation of service charges: costs of proceedings***
>
> *(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 a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, 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.*
>
> *…*
>
> *(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances*".

13. Although this case is not strictly about the "right to manage" outlined in the Commonhold and Leasehold Reform Act 2002, it is relevant as the Property is managed in accordance with the right. The Supreme Court clarified in *FirstPort Property Services Ltd v Settlers Court RTM Company Ltd and Others* [2022] UKSC 1 that the right to manage extends only to buildings and physical property over which occupants of that building have exclusive rights. In this case, that is the Property (and

possibly part of its immediate surroundings; there is reference to a locked rear garden area in the 2024 Tribunal decision, although this Tribunal makes no finding about this issue as it is not relevant to the application).

14. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the Tribunal to order a party to reimburse another party for any Tribunal fees paid.

The Lease

15. The Tribunal was provided with a copy of the lease relating to 24 Eaglegate, which was executed on 28 February 2005 for a term of 99 years from 1 January 2004. Its terms are relatively complex and need some explanation. It appears that the difficulty in interpreting it is, in part, what has resulted in both this, and the previous, application. The Tribunal felt that it may therefore be helpful to provide some clarity on the correct interpretation of the lease.

16. Various areas of the overall plot within which the Property is situated are defined. The plot itself is defined as "the Estate", under title reference "EX339357". According to the 2024 Decision, the previous Tribunal was informed that no such title entry existed. That appears to be incorrect. The entry relates to an area of land known as 75 East Hill, which is adjacent to the plot within which the Property is situated. The Land Registry records it as having been sold in 2020. As indicated in the introduction, it appears that it may previously have formed some part of the original redevelopment. It appears still to share access with the Property. Whatever the true position, the lease (alongside all, or most, of the others concerned by this application) has been extended. In all of the deeds of variation, the correct title number is recorded as "EX890670". As explained above, that entry is clearly the correct one.

17. The lease also defines the term "Block". Rather counter-intuitively, that description is not of any single "block" (for instance, as we have defined the Property in this decision). The definition of "Block" corresponds to a large area of land that makes up a large part of the Estate stretching significantly beyond the immediate surroundings of the Property. The plan appended to the lease shows that the "Block" includes the Property, its immediate surroundings, its car park, the access road not only to the Property but right up to the land to the rear of number 75 East Hill and the land right up to the walls of Stopes House and Arch House, including their respective car parks. The plan this Tribunal had been provided with appears to have been far clearer than the version referred to in the 2024 Decision. The lease also defines the "Access Road", which is the road falling entirely within the "Block". Parts of the lease appear to adopt a more logical interpretation, referring to the "Block" principally as a building (for example Schedule One), but there is no obvious conflict with the broader definition.

There is also a definition of "Common Parts", which are essentially all the shared areas, whether internal or external, within the "Block", including car parks and the bin store.

18. In summary, the "Estate" is the wider development including several buildings. The "Block" is all of the land in the Estate, save for Stopes House and Arch House (and including the Property). The "Access Road" and the "Common Parts" sit within the "Block". The Tribunal assumed that the leases for each flat within Stopes House and Arch House likely contained similar definitions, albeit with a different building being described as within the "Block" in each case. So, just as the Applicants' "Block" extends right up to the walls of Stopes House and Arch House, the tenants of those buildings' "Blocks" likely extend up to the Property.

19. The lease provides a definition of 2 service charges.

20. The first is defined as "the General Service Charge". This relates to charges referable to the "Block" and is to be charged to each tenant within the Block at a rate of 20% (referred to as the "General Service Charge Percentage", which makes sense, as there are 5 flats within the Property). Clearly, the Applicants might be bemused as to why their General Service Charge apparently contributes towards the upkeep of the grounds immediately outside Stopes House and Arch House. However, if the Tribunal's assumption is correct, their neighbours in Stopes House and Arch House will be "returning the favour" by contributing towards the upkeep of the grounds outside the Property. In reality, as will become clear, the majority (if not all) of the expenditure referrable to the General Service Charge will likely be on the buildings themselves rather than the external areas.

21. The second service charge is defined as the "Access Road Service Charge", which is chargeable to all tenants on the Estate, at a rate of 3.75% (certainly as far as the Applicants are concerned).

22. The Applicants' covenant to pay the service charges is included in paragraph 10.1 of the Fourth Schedule to the lease (the "Service Charge Covenant"). The Service Charge Covenant is to:

> "*pay … the General Service Charge Percentage* [i.e. 20%] *of all costs charges and expenses which the Landlord shall incur in complying with the obligations set out in Part 1 of the Sixth Schedule … and/or in the management of the Block and/or in doing any works or things to and/or for the maintenance and/or improvement of the Block and/or in respect of any expenditure incurred by the Landlord which shall be treated as a General*

Service Charge Item but if in the reasonable opinion of the Landlord it shall be undesirable or unreasonable to calculate the whole or any part of any such costs charges and expenses on the basis of the General Service Charge Percentage then the proportion shall be such part of the whole or any part of such costs charges and expenses determined at the reasonable discretion of the Landlord".

23. Although there is no reference to the Access Road Service Charge in this clause, there is no separate covenant in relation to it, save that it appears as a heading above the Owner's covenant to "*keep the Access Road in good and substantial repair and condition*". Both service charge definitions are broad. They refer simply to "*expenditure which is intended to be chargeable*" to the tenant (presumably in accordance with the Service Charge Covenant). The only distinction is whether that expenditure is intended to be borne by the tenants of the "Block" (the General Service Charge) or the "Estate" (the Access Road Service Charge).

24. The way the lease operates is that the Owner, in accordance with clause 9.4, decides whether any chargeable sum is to be designated as a "General Service Charge Item" or an "Access Road Service Charge Item" (neither of which phrases is defined, but the intention is clear enough). Although the default position in the Service Charge Covenant is that the Applicants are to pay 20% of all expenditure, the reality is that, in relation to all shared external areas, they will be asked to contribute only 3.75%. The Access Road Service Charge might be better understood as a "shared external area service charge", although the Access Road takes up a significant part of that space. The "shared external area" would include, as well as the Access Road, the external Common Parts. If more than 3.75% is charged to any tenant in relation to expenditure on the shared external areas, unless there is good reason, the Owner will likely face valid accusations of behaving unreasonably and having the service charges reduced. This is precisely what happened in the 2024 Decision, for instance in relation to "tree work" and the removal of rubbish from the bin store shared by all residents of the Estate. This expenditure had originally been charged to the Applicants at a rate of 20% each. The Tribunal reduced the contribution to 3.75%.

25. The reality, therefore, is that what the lease seeks to achieve (although rather unclearly) is for the tenants of each building to pay for the upkeep and management of their own buildings in a fair proportion, and that all tenants of the Estate should share between them the costs of upkeeping the shared external areas. This appears to be what happens in practice, as the Applicants stated that they pay 2 service charges. This is also demonstrated by the actual service charge demands in dispute, which all require the Applicants to contribute 3.75% of the applicable expenditure.

26. It is worth noting that the Applicants acquired the right to manage the Property in 2022, so it is only the Access Road Service Charge (or the "shared external areas" service charge) that is in dispute in these proceedings. Expenditure related to the Property itself is now the responsibility of the relevant RTM company.

27. The Applicants also covenant, in paragraph 10.2 of the Fourth Schedule to the lease, to pay for all costs, charges and expenses incurred by the Owner in insuring the "Block", at the rate of 20% each. This is referred to as the "Buildings Insurance Percentage". The Owner covenants to procure insurance in paragraph 7.1 of the Sixth Schedule. The covenant is to ensure the "Block" and to ensure against liability for personal injury, so is not strictly limited to "buildings" insurance. Although the Property is what is most likely to be the main object of the insurance, hence the reference to "buildings", the "Block" includes all external areas within the Estate.

28. Paragraph 10.3 of the Fourth Schedule permits the Owner, in circumstances where any expenditure chargeable to the tenants is contributed to by others outside the "Block", to reduce the sum charged to the tenants. This would include, for instance, insurance, such that the Applicants' liability to cover the cost of insuring the shared external areas need not be fixed at 20% if others also contribute to the cost of that insurance. As demonstrated by the service charge demands, the Applicants are asked to contribute 3.75% towards the insurance of the shared external areas. This is presumably because others also contribute, notably the tenants of Stopes House and Arch House.

29. It is helpful that the Tribunal had been provided with the Applicants' 2022 service charge demands. They clearly show that 2 insurance contributions had been sought from the Applicants at the time the Owner was responsible for both the Property and the external areas. What was presumably specific buildings insurance for the Property was charged to the Applicants in the sum of £4,157.84, at 20% each, in accordance with the Buildings Insurance Percentage. A contribution of 3.75% to separate insurance, with a premium of £3,046.80, was also sought, which was presumably for the external areas. At the time of the 2024 Decision, this was referred to as relating to the basement at Stopes House, but it is not clear where that information came from. In this case, the Tribunal was provided with a copy of the insurance policy towards which a contribution is sought. It clearly relates to all of the "*Common areas (basement, car park, archway, boundary walls, and landscaping)*" of "*Stopes House, Arch House, 21-25 Eaglegate, 26-27 Eaglegate and No.75 East Hill*".

30. Paragraph 11.1 of the Fourth Schedule requires the Applicants to pay the following year's estimated service charges in advance, including "*reasonable provision for anticipated expenditure*".

31. In accordance with clause 5 of the lease, the Owner is responsible for performing "*the obligations set out in the Sixth Schedule*". It employs an estate management company to assist it with doing so – currently Eagerstates Ltd. Clause 9.1 of the lease expressly entitles the Owner, in performing any of its obligations, to "*employ or retain the services of any employee agent consultant service company contractor engineer or other advisors of whatever nature as the Landlord may reasonably require*". The costs of doing so are to be borne by the tenants further to the Service Charge Covenant. Paragraph 10 of the Sixth Schedule makes similar provision.

32. The Sixth Schedule includes obligations to maintain common service conduits, to keep proper accounts, to procure insurance and to maintain the Common Parts (which, since the right to manage, would only refer to the external Common Parts).

33. The file of documents contained what appeared to be a breakdown of how service charge costs are apportioned at the estate (the "Apportionment"). It was not entirely clear where it came from, but it was entitled "2012 Estate Charges Allocation %ages review". It refers to the Applicants and all other tenants of the Estate being expected to contribute 3.75% of the service charge. The Tribunal concluded this clearly related to the Access Road Service Charge. It noted that 73 and 75 East Hill contribute also to this service charge, at a rate of 11.82% and 9.43% respectively. Access to the rear (and car park) of 75 East Hill is over the Access Road and its "Common/Shared Areas" are covered by the insurance policy referred to above. Its contribution is therefore logical. The status of 73 East Hill is unknown. Neither matters to these proceedings.

The 2022 Service Charge

34. In November 2021, the Owner was charged £1,740 by BML Group Ltd for installing a fire board, using fire-rated cement and sealant, in a first-floor utility cupboard in the Property. As explained above, the 2024 Decision limited what could be demanded by way of service charge from the Applicants to £250 per flat (£1,250 in total).

35. On acquiring the right to manage, the Applicants commissioned a "health safety and fire risk assessment" of the Property. The assessment report highlighted that an "*excessive amount of intumescent foam has been used to fire stop gaps*" in that utility cupboard. The issue was rectified at a cost of £1,400.40. This was somewhat

ironic as the 2021 invoice stated that the work done was to address "*extremely excessive amounts of expanding foam*" and that the operative had "*removed the excessive foam*". However, other work was completed also, namely fitting a fire board and replacing some wire cladding.

36. BML Group Ltd were apparently not convinced by the quality of the work, sending an email to the Owner as follows on 19 October 2021.

> "*My operative is confident the work was done as per regulation and should not fail due to excessive pink foam, however he has also advised that if for any reason this is picked up on in the next FRA we will return free of charge and make good*".

37. It is unfortunate that the Applicants were not made aware of this as they have incurred significant costs that might otherwise have been avoided.

38. The Tribunal were provided with photos of the work.

39. There was one point in dispute: whether the quality of work done in 2021 was of a reasonable standard.

40. In light of the above and its own expert knowledge, the Tribunal determined that the work done was not of a reasonable standard. The Tribunal accepted however that some work was completed and that fire risk had been adequately mitigated. On this basis, it determined that 50% of the cost of this work was payable by the Applicants, amounting to £870 (inclusive of VAT).

The 2023 Service Charge

Insurance

41. The Owner was charged an insurance premium of £3,781.91. The Applicants submitted that this related purely to the basement of Stopes House, which does not form part of the shared external areas. That argument was accepted in the 2024 Decision. The Tribunal had no evidence as to the location of the basement so adopted the finding in the 2024 Decision that it is entirely situated beneath the footprint of Stopes House. It is therefore outside the "Block".

42. There was no dispute as to the cost of the insurance itself. The dispute was that, as the basement is not part of the Block, the Applicants should not be required to contribute to the premium at all.

43. This Tribunal had the benefit of seeing a copy of the insurance policy schedule. The cover relates to the "*Common areas (basement, car park, archway, boundary walls, and landscaping)*" of "*Stopes House, Arch House, 21-25 Eaglegate, 26-27 Eaglegate and No.75 East Hill*". The Tribunal therefore could not accept, on this occasion, the Applicants' submission. Although the basement is covered under the policy, so are the common areas stipulated above. As to the common areas, they are all shared areas outside the walls of the Property. The Owner is obliged to insure them and the right to manage has no effect on this. The lease provides for the Applicants to contribute to the cost of this insurance.

44. It is clear that the Applicants are contributing to an insurance policy that covers risks to areas for which they are not responsible, including both the Stopes House basement and the area behind 75 East Hill (which does not form part of the Block, or indeed the Estate). However, in accordance with the Apportionment, they are only contributing 3.75% towards the cost. Assuming it is still applied, 75 East Hill contributes over twice as much (9.43%), and 73 East Hill over three times as much (11.82%), despite there being no obvious reason why. Whatever the true position, the Applicants' share of the cost has not increased.

45. There may be good business and/or financial reasons for the Owner taking out a single insurance policy covering a wider range of risks than a series of separate policies addressing specific risks relevant to certain tenants or groups of tenants. It is not for this Tribunal to interfere with that management discretion, so long as it is exercised reasonably and the proportion charged to the Applicants for their "share" of the benefit is reasonable. Paragraph 10.3 of the Fourth Schedule to the lease specifically addresses this eventuality.

46. The nature of the Estate is that different parts of the shared external areas are likely to be "used" or "passed over" more by certain tenants than others. For instance, much of the area immediately outside the Property, aside for some parking spaces, is likely to be accessed far more regularly by the Applicants. Some tenants of Stopes House or Arch House may never set foot there or have any concern if it were to become damaged in anyway. Some tenants on the Estate may not have a car but are still responsible for paying their share of the upkeep of the Access Road. Even if they do have a car, many will never use the part of the Access Road fronting the Property. Similarly, the Applicants are unlikely to use the parts of the Access Road behind Stopes House or Arch House. They all contribute to the upkeep and insurance of the whole area, however.

47. The Owner appears to submit that the basement contains conduits or utilities of some sort that serve the entire Estate. Even if it does, it is not clear that the

Applicants are under any obligation to contribute to its insurance. However, according to the Apportionment, Stopes House contains 11 flats (the tenants of which may be more directly responsible for the basement). The tenants each pay 3.75% towards the Access Road Service Charge. Their cumulative contribution towards the costs of the insurance of the shared external areas therefore greatly exceeds that of the Applicants (they pay over twice as much). In a similar way to with 75 East Hill, that differential suggests that the risks they are specifically responsible for (i.e. to the basement) are addressed by their payment of a greater share of the overall premium.

48. These sort of considerations or "trade-offs" are precisely why the Tribunal should exercise caution in relation to apportionment in a situation such as this. It concluded that there was nothing inherently unreasonable about how the Owner has arranged insurance or apportioned contributions towards the premium. The Applicants had provided no evidence that a significant cost of the premium related solely to the Stopes House basement, such that the apportionment of the costs would be manifestly unreasonable. Accordingly, there was no good basis to allow the application in this respect.

49. The Tribunal therefore determined that the cost of the insurance, as sought, was payable by the Applicants.

Emergency Light Testing

50. The Owner was charged £192 by JHB Fire Services on account of the testing of emergency lights. The Applicants submitted that this expenditure related purely to lighting within Stopes House, which does not form part of the shared external areas.

51. In the 2024 Decision, that argument was accepted. The Tribunal had no better evidence than previously, accordingly it adopted the findings of the previous Tribunal.

52. As this expenditure did not relate to the shared external areas of the "Block", but to the internal areas of Stopes House, the Tribunal determined that it was not payable by the Applicants.

Handrails

53. The Owner was charged £594 by BML Group Ltd for handrails on 30 November 2021. They were not fitted. The reason given on the invoice is as follows.

> "*Operative attended to install handrails to stairs however works were put on hold due to the fact that the client does not manage the area that the works took place in… Handrails will need to be charged as they could not be refunded*".

54. The first demand for payment was made to the Applicants on 6 December 2023. The Owner submits it did not receive the invoice until much later than 2021, but provided no further evidence of this. The Tribunal found that an invoice would likely be sent out on or around its stated date. There would be no good reason to delay. If delayed, it would likely be dated accordingly. Therefore, the Tribunal found the invoice was likely sent out in 2021. It was demanded as a service charge more than 18 months after the cost was incurred, so the Applicants are no longer liable to pay it.

55. In any event, the invoice is clear that the costs were incurred due purely to the Owner's rather fundamental error. Whilst errors can be made, and it may sometimes be that related costs are reasonably incurred nonetheless, the Tribunal concluded this was clearly not once of those occasions. The Respondent provided no (let alone a satisfactory) explanation why it should decide otherwise.

56. Furthermore, the Applicants' uncontested evidence was that the job must have related to an area in Stopes House or Arch House, or otherwise outside the Block, as there were no other stairs besides which to affix the handrails. This was another good reason for finding that the Applicants are not liable for this cost.

57. For all of these reasons, the Tribunal determined that the cost of the handrails was not payable by the Applicants.

Management Fee

58. The Owner was charged £3,805.20 by Eagerstates Ltd as an annual management fee. The Respondent submitted that this related purely to the management of the external shared areas. This chimed with the Applicants submitting that prior to acquiring the right to manage, they paid 2 sets of management fees to the Owner (one for the Property, another for the shared areas). The Applicants said that prior to 2012, under the ownership of a different freeholder, no such fee was ever charged and this was indicative of there being no entitlement to do so. The Applicants also queried the amount of the fee for the little work done.

59. The Tribunal accepted that the lease made provision for a management fee, including for the management of the external shared areas of the Block. That a management fee has not always been incurred was not especially relevant.

60. As to the level of the fee, the Tribunal had no evidence to show that it was excessive. The Owner has responsibilities in relation to the shared external areas of the Block, including to maintain common service conduits, to keep proper accounts, to procure insurance and to maintain the Common Parts (excluding those for which the RTM company is now responsible). The service charge demand shows that some

management has in fact taken place to arrange insurance, grounds maintenance, drain clearing, bin cleaning/replacement and accounts.

61. In the Tribunal's expert view, taking account of the Royal Institute of Chartered Surveyors' (RICS) guidance, the management fee is at the top end of what is reasonable for the work conducted, but reasonable nonetheless.

62. Accordingly, the Tribunal determined that the Applicants' share of the fee was payable.

The 2024 Service Charge

Insurance

63. For the same reasons as given above, the cost of insurance is payable by the Applicants.

Fire Health & Safety Risk Assessment

64. The Owner appears to have been charged £480 for a fire health and safety risk assessment. The Applicants submitted that this expenditure in fact related to the testing of emergency lights, as in 2023.

65. The Tribunal had very little evidence on this issue. However, it appears from the service charge demand that the fee was for a risk assessment rather than testing and the Tribunal accepted that.

66. Either way, the Tribunal accepted that this expenditure did not relate to the shared external areas of the Block, but to the internal areas of Stopes House. Accordingly, the Tribunal determined that it was not payable by the Applicants.

Management Fee

67. The Owner appears to have been charged £3,888 by Eagerstates Ltd as an annual management fee, which is marginally higher than in 2023.

68. For the same reasons as given above, this management fee is payable by the Applicants.

The 2025 Service Charge

Insurance

69. For the same reasons as given above, the estimated cost of insurance is payable by the Applicants.

Eastern Fire Ltd Services

70. The Owner estimates to be charged £500 from Eastern Fire Ltd for unspecified services. The Applicants submitted that this expenditure likely related to the testing of emergency lights, as in 2023.

71. The Tribunal determined, as in relation to previous years, that the services likely relate to the internal areas of Stopes House, rather than to the shared external areas of the Block. Accordingly, they would not be chargeable to the Applicants. The Tribunal determined that this service charge was therefore not payable by the Applicants.

Management Fee

72. The Owner estimates being charged £3,970.80 as an annual management fee, which is almost £100 higher than in 2024. Having found that the management fees charged for previous years were at the top end of what would be reasonable, the Tribunal hopes that this fee may end up somewhat lower. The Tribunal noted that there may be good reason for this increase and that further explanation may be provided at year end. It noted also that the projected fee is not entirely out of line with previous years and would result in an uplift of less than £3.75 for each Applicant. On this basis the Tribunal determined that the fee was payable.

Repair Fund

73. From the information available to the Tribunal, the Owner regularly seeks payment on account of potential repairs. In 2023 and 2024, it sought the sum of £2,000. The fund was not needed to be called upon in either year. The final accounts reflect this. It has demanded £2,500 for 2025, which equates to £93.75 per Applicant.

74. The lease permits the Owner to seek reasonable provision for anticipated expenditure. The Tribunal had no evidence of any anticipated repairs being required in the shared external areas. All it knows is that a contribution towards a repair fund has been sought for at least 2 years without being required. The sum demanded on account is not insignificant, amounting to almost £100 out of a total of around £600. The final service charge demanded for 2024 was only £146.97 per Applicant, and that will now be revised lower in light of the Tribunal's decision above.

75. Without some genuine expectation of the repairs being required, the Tribunal concluded that there was no good reason to seek a payment on account. At present, the payment is therefore unreasonable. Paragraph 11.2 of the Fourth Schedule to the lease allows the Owner to seek "top up" payments during the year if required. That appears to be a sufficient mechanism for providing for repairs at present.

76. Accordingly, the requested provision towards a repair fund is not payable by the Applicants.

77. Whilst considering this point, the Tribunal noted that the relevant costs sought on account amounted to a total of £16,017.60. A 3.75% share of this would be £600.66, not £605.47 as demanded. No doubt the Applicants will remind the Owner of this error should it not note and correct it itself. For the avoidance of doubt, the relevant costs now amount to £13,017.60. 3.75% of this is £488.16. That is the sum payable on account by each of the Applicants, in accordance with the usual payment schedule.

Costs

78. The Applicants have succeeded with their application in several significant respects. The Respondent provided limited assistance to both the Applicants and the Tribunal, so likely incurred minimal costs. In these circumstances, the Tribunal determined that it would be just and equitable to allow the Applicants' application under section 20C of the Landlord and Tenant Act 1985.

79. The Applicants also requested an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, which would be of similar effect. It would prevent the Respondent from seeking to impose an administration charge referrable to the costs of these proceedings. Although it did not consider the issue in any depth, the Tribunal did not consider that any provision of the lease would allow the Respondent to do so. Nevertheless, in case it is mistaken, for the same reasons as above the order is justified.

80. The Tribunal therefore orders that no part of the Respondent's costs in connection with these proceedings are to be charged to the Applicants.

81. For similar reasons the Tribunal orders that the Respondent must reimburse the Tribunal fees paid by the Applicants, in the sum of £320.

Judge Hunt

16 April 2025