FIRST - TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UB/LSC/2024/0005**
Property	**:**	**12 & 12A High Street, Dereham, Norfolk**
Applicants	**:**	**(1) Martin David Smith; (2) Andrew John Rice; (3) Stephen Geoffrey Christopher Gordon; (4) Denise Jean Gordon; (5) Kirsty Ireland**
Represented by	**:**	**Mr Stevenson (solicitor)**
First Respondent	**:**	**Stephen James Banham and Michael and Samuel Edmund Fleming**
Represented by	**:**	**Mr Banham**
Second Respondent	**:**	**K Gray Plumbing & Heating Engineers Ltd**
Represented by	**:**	**Miss Cunningham (Counsel)**
Type of Application	**:**	**Application for the determination of the reasonableness and payability of service charges**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mrs Sarah Redmond MRICS**
Date and venue of Hearing	**:**	**9 April 2025, by video**
Date of Decision	**:**	**6 May 2025**

DECISION

DECISION

1. **The Application is dismissed.**

2. **The Tribunal determines that all the costs challenged by the Applicants at the hearing were reasonably incurred and reasonable in amount.**

3. **The Tribunal declines to make either a s.20C or a paragraph 5A CLARA order in favour of the Applicants.**

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of relevant costs incurred by way of service charges pursuant to an Application made under s.27A of the Landlord and Tenant Act 1985.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

Parties

3. The First and Second Applicants are the non-occupying leaseholders of Flat 3, on the first and second floors of the building (12 and 12A High Street, Dereham, Norfolk).

4. The Third and Fourth Applicants are the non occupying leaseholders of Flat 2, 12 High Street on the first floor of the building.

5. The Fifth Applicant is the occupying leaseholder of Flat 1, 12 High Street, on the first floor of the building.

6. The First Respondent holds a 999 year headlease of the building registered under title number NK 124221.

7. The Second Respondent is the freeholder of Aldiss Court, High Street Dereham (the Development) which includes the building in which the Flats are situated, under title number NK 22355.

8. The Development consists of several commercial and mixed-use buildings, and there are at least 17 Flats spread over the site.

Background

9. The headlease is dated 6 March 1992, and the First Respondent acquired it on 22 August 2003. At this time unit 12 and 12A High Street was in fact a single retail unit.

10. In or about 2004/2005, the First Respondent converted 12 and 12A High Street into 2 retail units on the ground floor and the 3 residential Flats now owned by the Applicants on the upper floors.

11. The First and Second Applicants became registered with leasehold title to Flat 3 on 30 May 2005.

12. On 18 July 2005, the Fifth Applicant was registered with leasehold title to Flat 5.

13. On 17 November 2021, the Third and Fourth Applicants purchased the leasehold interest in Flat 2, and became registered with leasehold title on 1 October 2022.

14. On 21 September 2023 a claim notice was served seeking to acquire the right to manage 12 and 12A High Street, Dereham, Norfolk, NR19 1DR pursuant to the Commonhold and Leasehold Reform Act 2002, by The Flats 12 High Street RTM Company Limited, in relation to which all the Applicants were declared as both qualifying tenants and members of the company.

15. The date stated on the notice as being the date on which the right to manage would be acquired was 1 February 2024.

16. Each Respondent was served with this claim notice, on its face. It appears to be accepted that neither Respondent replied to the claim notice, and in its s.20C submissions post hearing, the First Respondent has questioned the validity of right to manage, given what it alleges to be the percentage of the building which comprises commercial premises.

The Application

17. On 20 August 2024 the Applicants made the instant application for a determination of the payability and reasonableness of service charges.

18. On 25 November 2024 directions were given by the procedural judge, later amended on 17 December 2024.

19. On 23 January 2025 the Applicants prepared their statement of case, supported by witness statements from the Fifth Applicant, the Third Applicant and the Second Applicant, in terms verifying the statement of case.

20. On 13 February 2025 the First Respondent filed its statement of case.

21. On 14 February 2025 the Second Respondent filed its statement of case, together with a witness statement from Ms Ocetek-Gromski of its managing agents.

22. A supplemental statement of case was prepared by the Applicants on 21 February 2025.

The Leases

The Headlease

23. The headlease requires the First Respondent to pay a service charge by way of further and additional rent, pursuant to clauses 4 (a) and 5(1)(b) thereof. The service charge is said to be a proportionate part of the following:

(i) the landlord's and agents' costs of general administration and supervision of the Development (the whole of Aldiss Court) in respect of or incidental to the performance and exercise of the obligations and powers in clause 6 in the Fifth Schedule (excluding the covenant to give quiet enjoyment) only main heads of expenditure set out in Schedule 5, Part 1;

(ii) The cost of other works carried out or services provided for the benefit of the Development etc (i.e. a sweeper clause)

(iii) Any reserves considered necessary.

24. By clause 4(b) the proportionate part of the service charge expenditure payable by the First Respondent is calculated and to be paid in accordance with the provisions of the Fifth Schedule, Part 2.

25. There is then written at clause 4(c):

"ALWAYS PROVIDED but if the Development should cease to exist or its composition should be substantially altered during the term of this lease so that the services provided by the landlord under clause 6 hereof are no longer provided then the service charge payable hereunder shall cease to be payable or shall be abated in such manner as shall be fair and reasonable having regard to the services being provided."

26. Schedule 5, Part 2 provides the service charge mechanism for the preparation of an account showing the amount of the service charge expenditure, and a true summary of the relevant details and figures forming the basis thereof sufficient to ascertain the total amount of the service charge payable by the tenant; and that it shall have attached to it certificates signed by the auditors or accountants certifying the amount of the service charge payable by the tenants for the accounting period.

27. Then it is provided, at paragraph 3:

"The amount of the service charge payable by the tenant in respect of each and every accounting period as herein provided shall be SEVENTEEN POINT ONE EIGHT PER CENTUM (17.18%) of the total expenditure as herein calculated or such other fair and proper proportion as may from time to time be specified by the landlord in consequence of any change in the number or size of the units or Flats comprised in the Development."

The Underleases

28. On 20 May 2005 a long underlease was granted in respect of Flat 3.

29. The parties agree that all the Flat leases are in similar written terms.

30. Clause 1(1)(a) defines the building as the land and building (i.e. unit 12 and 12A) of which the Premises (i.e. the Flat) forms part registered under title NK 124221 (i.e. the freehold land of Aldiss Court).

31. Clause 1(1)(d) defines the Premises as the land and buildings demised by the lease and defined in the Second Schedule (i.e. the Flat including certain express parts, but excluding the remainder of the building including the roof and the roof space the foundations and all external structural load bearing walls columns beams and supports)

32. By clause 2 the leaseholders are to pay (by way of further rent) 20.33% of the cost of insurance for the building.

33. Clause 3 contains the lessees covenants. Clause 3(6) is in these terms:

    "(6) The lessee will pay as additional rent within 14 days of written demand therefor from the lessor twenty point three three percent (20.33%) of the expense incurred (or to be properly incurred to the intent that advanced payments thereof may be demanded) by the lessor (a) in compliance with its obligations pursuant to clause 5(3) hereof and (b) in managing the building whether it undertakes such management itself or employs external managing agents and (c) in respect of all service charges or payment for which the lessor is responsible pursuant to the superior lease [defined in clause 1(1)(g) as the headlease dated 6 March 1992]"

34. The landlord's covenants under clause 5 include insuring the building (sub-paragraph 2(a)) and repairing cleaning maintaining and decorating the remainder of the building (sub paragraph (3)).

35. By clause 8.1 the lessee covenants with the lessor to observe the obligations of the tenant contained in the superior lease so far as they relate to the premises (but not those expressly assumed by the lessor in the underlease) and to indemnify the lessor against all losses arising directly or indirectly from any breach.

36. By clause 8.2.1 the lessor covenants with the lessee to pay the rent reserved by the superior lease and comply with the terms of it unless the lessee is obliged to comply with them by virtue of the underlease.

37. The first plan to the underlease is an architect's drawing dated December 2003 showing "Proposed plans 3No. Flats".

The hearing

38. This was conducted by video. Mr Stevenson, a solicitor, represented the Applicants. All bar Mrs Gordon were present in the room beside him.

39. The First Respondent was unable to join by video, but had a clear telephone line to the tribunal hearing. Mr Banham spoke for the First Respondent and was content to proceed by telephone only from his end.

40. Miss Robyn Cunningham of Counsel represented the Second Respondent, and was joined by Miss Joanna Hill, her instructing solicitor, and Ms Ocetek-Gromski, witness.

41. The Tribunal had a very full bundle of over 1400 pages.

42. By way of opening, the First Respondent explained that despite the leasehold percentage in the underleases of 20.33, it had applied a new lower percentage on the advice of managing agent Yates shortly after 2005, by the application of weighting in respect of the commercial premises, and that these revised percentages had been applied for the best part of 20 years, as follows:

    - Flat 1; 16.57%;
    - Flat 2: 14.94%;
    - Flat 3: 17.73%.

43. Mr Stevenson of behalf of the Applicants invited the Tribunal to apply those percentages in respect of any determination that we were to make in their favour.

44. Mr Stevenson also accepted that in respect of the Flat 2, because the relevant Applicants had only acquired their interest on 17 November 2021, they were unable to challenge any service charges demanded before that date.

45. Mr Stevenson explained that in relation to the year ending March 2024, the Applicants were only seeking to challenge service charges up to 1 February 2024, the date they considered the right to manage company had acquired the management of the premises as a matter of statutory process. Mr Banham explained that he did not accept that position.

46. The parties accepted that the accounts for the year ending 2024 in the bundle were only draft unsigned accounts, but during the course of the hearing the Second Respondent shared the signed accounts; and so the Tribunal now proceeds to determine service charges on the basis of actual figures for that year, rather than estimated figures.

47. The parties also accepted that the items for each year on the Scott Schedule were essentially the same, such that the year 2019 challenges where in effect representative of all later years.

Discussion and Determination

48. Taking the Scott Schedule items in turn:

2019: Insurance (£2930)

49. This item was no longer pursued by the Applicants.

2019: Water rates (£1857)

50. The Applicants contended that none of the sum demanded of £157.09 is payable - being 49.24% (their combined percentages, above) of 17.18% of £1857.

51. They contended that nil is payable, for the following reasons:

52. By granting the underleases the First Respondent effectively conceded that certain services would no longer be supplied. For example, the underleases gave the Applicants no car parking rights, no rights to use toilets (despite a service charge being payable for these under the headlease) and the Applicants have always paid their own water and sewerage charges. That, Mr Stevenson argued, was a substantial change of composition of the Development such that the service charges should be reapportioned. Units 12 and 12A were effectively independent of the rest of the Development, from 2005 onwards. He argued that the lease at clause 4(c) should be interpreted as if the words "under this headlease" were inserted after the word "provided" and before "then".

53. Mr Stevenson accepted that the alterations to the internal parts of Units 12 and 12A occurred before the signing of the underleases, but contended that this was still a change in composition during the term of the intermediate lease.

54. In particular, he relied on the fact, which the Applicants confirmed, that the pipes in the Flats had been individually connected to separate water meters before the leases were signed; the freeholder therefore does not have to pay for the water supplied to each Flat. Accordingly, they contended there should be an abatement of all charges for water charges, notwithstanding that clause 4(a)(i), in conjunction with clause 6(5)/Schedule 5 Part 1, might otherwise make them payable. The essence of Mr Stevenson's complaint was that the Applicants were effectively being charged twice: for their own water, and for the water on the rest of the Development (to which they should not have to contribute).

55. Mr Stevenson also relied on the wording in paragraph 3 of Part 2 of Schedule 5 to the Headlease, but when asked whether the Applicants were challenging the 17.18 percentage, he expressly stated they were not.

56. In answer to questions, he said he could not comment on whether the percentage agreed by his clients in 2005 did or did not take account of the alterations which had been made in respect of the Flats.

57. Mr Banham on behalf of the First Respondent contended that unit 12/12A is part of a larger Development and the First Respondent has to abide by the terms of the headlease, including paying, by way of example, 17.18% of all the rates incurred in respect of the whole of the Development, not just unit 12/12A.

58. Miss Cunningham on behalf of the Second Respondent, in her helpful written and oral submissions, noted that the Applicants' contention appears to be that they no longer wish to pay for services which relate to the Development of the whole, despite having contracted to do so per the terms of the underleases. The Second Respondent's position is that the service charges charged under the head lease are outside the jurisdiction of the tribunal; and that clause 3(6) expressly includes a covenant by the Applicants to pay a percentage in respect of all service charges and other payments for which the First Respondent is

responsible pursuant to the headlease. Moreover, the Upper Tribunal (Lands Chamber) and the Court of Appeal have held that the fact that a tenant derives no benefit from the service is irrelevant to whether they are contractually bound to pay for it: see *Solarbeta Management Co Ltd v Akindele* [2014] UKUT 416 (LC) per HHJ Gerald at para 19, and *Billson v Tristem* [2000] L&TR 220, CA, per Rattee J at p.231.

59. The Tribunal prefers the Respondents' submissions and finds against the Applicants, for the following reasons:

60. The relevant principles concerning construction of leases were summarised by the Supreme Court in *Arnold v Britton* [2015] UKSC 36, [2015] AC 1619. In that case, Lord Neuberger (with whom Lords Sumption and Hughes agreed) said this (in paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean', to quote Lord Hoffmann in Chartbook Ltd v Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

61. Amongst the points that Lord Neuberger went on to emphasise were these:

> "the reliance placed in some cases on commercial common sense and surrounding circumstances … should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision" (paragraph 17);
>
> "when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning" (paragraph 18);

"while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed" (paragraph 20).

62. In the Tribunal's determination, objectively the Applicants and the First Respondent had agreed, pursuant to clause 3(6)(c), that the Applicants were to be liable to pay their due proportion of the First Respondent's payments under the headlease, which are 17.18% of the freeholder's expenses in respect of the whole Development. The Tribunal can find no relevant ambiguity in the terms of the underleases or in the headlease. The Tribunal is not prepared to read into clause 4(c) of the headlease the words which the Applicants invite the Tribunal to do. Clause 4(c) contains no ambiguity. It is not necessary to read words into it. The natural reading of clause 4(c) is this: that if the Development ceases to exist (which it has not) or if its composition substantially alters, so that the services provided by the First Respondent under clause 6 (which are plainly owed in respect of the whole Development) are no longer provided, then the First Respondent's service charge shall cease to be payable (in the event the Development ceases to exist) or shall be abated (in the event there is a substantial alteration to its composition).

63. The Tribunal does not agree that the creation of the Flats in 2003-2005 resulted in a substantial alteration to the composition of the Development. The service charges have always been calculated on square footage. Unit 12/12A did not change in size. No unit has been removed or added.

64. But even if the change from commercial to residential in the upper parts of the building were to be considered a substantial alteration to the composition of the Development, in the Tribunal's determination the Applicants fail to satisfy the remainder of clause 4(c), i.e. "so that the services provided by the Landlord under clause 6 hereof are no longer provided…" The freeholder has continued to provide services to other units in the Development, which include 14 other Flats. That is what the Landlord is contractually obliged to do under clause 6 of the headlease. And pursuant to the underleases, the Applicants must pay 20.33% each of the First Respondents service charge of 17.18%. (The First Respondent has lowered those percentages of 20.33% in practice, we note).

65. As for the Applicants' purported reliance on para 3 of Schedule 5, Part 2 to the headlease, the Tribunal has difficulty understanding their position. They do not contend there should be another "fair and proper proportion" in substitution to 17.18%. Nor has the Second Respondent specified a proportion other than 17.18% on the grounds that there has been a change in the number or size of the units or Flats comprised in the Development.

66. The Tribunal does not lose sight of the fact that 3 of the Applicants came to the terms of these headleases and signed them as expressly drafted. Mr Stevenson could not comment on why the Applicants were taking these points for the first time, many years on. Nor could he point the Tribunal to any document in the

bundle evidencing prior complaint by them. He entirely accepted it was not enough for the Applicants merely to prove that they do not benefit from services provided to others.

67. If the Applicants did not appreciate, or were not properly advised, that they would have to pay for services in respect of which they derived no benefit, and for services such as water in respect of which they already had to pay a third party in respect of their own consumption, that is unfortunate. But the fact that the contract may have turned out a bad bargain for them is not enough: see *Arnold v Britton*, per Lord Hodge JSC at para. 77.

68. The Tribunal therefore determines that the sum of £1857 was reasonably incurred and reasonable in amount, and the Applicants are liable to pay the proportion which has been demanded of them (£157.09).

2019: Communal lighting (£958)

69. This item was no longer pursued by the Applicants.

2019: Repairs and Renewals (£24,880)

70. The Applicants repeated their submissions in respect of clause 4(c), save that they accepted there were invoices in the bundle relating to unit 12/12A alone, amounting to £1149.58, in respect of which they were liable to pay their due share.

71. The Applicants did not contend that the invoices in the 1493 page bundle failed to evidence the relevant costs sought. They did not have any alternative quotations of their own.

72. The Respondents repeated their submissions, with Mr Banham adding that they had accepted this figure and others of Yates's figures, which were signed off by the accountants.

73. For these and the same reasons as already given in relation to the interpretation of clause 4(c), the Tribunal determines that the sum of £24,880 was reasonably incurred and reasonable in amount, and that the Applicants are liable to pay the proportion which has been demanded of them (£2101.32).

2019: Rubbish clearance (£4792)

74. The Applicants contended that the council collects their residential rubbish; that they pay council tax for that service, and that they should not have to pay for rubbish collection costs incurred by the Respondents. Again they relied on their interpretation of clause 4(c) of the headlease.

75. The Respondents repeated their submissions based on the headlease, Mr Banham adding that it was only a year or two after selling the Flats to the Applicants that the First Respondent applied a weighting to the commercial premises in order to lower the Applicates' percentage from 20.33 to what they are now, because the commercial premises were making more use of the

services. But he still relied on the First Respondent's contractual entitlement to claim under the headlease terms.

76. He added that it could be seen from the documentation provided at Appendix 2 of the First Respondent's statement of case, that the majority of the Flats are each paying over 2% of the Development costs, with several paying nearer to 3%. Of the 17.18% payable by it to the freeholder, the 2 commercial units in 12/12A were paying more than half of that (8.71%), with the Applicants therefore paying the remainder (8.47%), an average of 2.82% for each Flat. The Applicants' are therefore not paying proportionately more than many of the residential units elsewhere in the Development.

77. The Second Respondent's Counsel represented she did not have much further to add, save that the cost of rubbish removal was expressly covered in the lease by Schedule 5, part 1, paragraph 7:

    "Removal of refuse from the Development (including the cost of maintaining repairing renewing and running any refuse compactors or paper baler)".

78. We agree that the cost of rubbish removal is recoverable under the above headlease provision. For the same reasons as already given in relation to the interpretation of clause 4(c), the Tribunal determines that the sum of £4792 was reasonably incurred and reasonable in amount, and the Applicants are liable to pay the proportion which has been demanded of them (£405.37).

2019: Health & Safety (£2555)

79. The Applicants advanced the same arguments as before, based on clause 4(c) of the headlease. They argued nil was payable. Mr Stevenson contended there was no invoice in the sum of £2555 which bore the address of 12 and 12A High Street on it.

80. The Applicants accepted that the only access to the Flat was via Aldiss Court, and not via the road.

81. The Respondents relied on their earlier submissions as to clause 4(c) and the invoices. Miss Cunningham added that the sweeper clause would cover this item: see Schedule 5, Part 1, para 17:

    "Carrying out all other works and providing other services of any kind whatsoever for the purpose of maintaining and improving the Development for the benefit of the tenants thereof as a whole and the members of the public visiting it."

82. The Tribunal is generally anxious not to accede to the use of a sweeper clause to cover a service charge item unless it is truly justified; however, we agree that a health and safety cost would properly fall within the above lease paragraph.

83. Accordingly, for the same reasons as already given in relation to the interpretation of clause 4(c), the Tribunal determines that the sum of £2555 was reasonably incurred and reasonable in amount, and the Applicants are liable to pay the proportion which has been demanded of them (£216.13).

2019: Management Fees (£16300)

84. The Applicants contended that only £300 is payable by them in total (average £100 each), because the Second Respondent is only supplying management services to the Applicants in respect of insurance and 5 lights.

85. Mr Stevenson accepted that he had no evidence to support this alternative figure of £300.

86. Mr Banham on behalf of the First Respondent said that it had to contribute to all the services; that there are 30 odd individual units, which take the freeholder a considerable amount of management time; that the First Respondent is duty bound to pay its share; and it could see no reason to reduce the figure.

87. Miss Cunningham on behalf of the Second Respondent contended that this item stands or falls in relation to the primary argument concerning clause 4(c); if the First Respondent can legitimately claim for all the other heads which are challenged, the Applicants' argument on this one also fails.

88. The Tribunal prefers the Respondents' arguments. Given that the Applicants have not been successful in relation to their interpretation of clause 4(c) of the headlease, it follows that there can be no reduction in relation to this item.

89. The Tribunal determines that the sum of £16300 was reasonably incurred and reasonable in amount, and the Applicants are liable to pay the proportion which has been demanded of them (£1378.88).

2019: Accountancy (£1440)

90. The Applicants contended that only £100 is payable by them in total, because the Second Respondent is only supplying management services to the Applicants in respect of building insurance and 5 communal lights.

91. Mr Stevenson accepted that he had no evidence to support this alternative figure of £100.

92. Miss Cunningham, on behalf of the Second Respondent, repeated her contention that this item stands or falls in relation to the argument concerning clause 4(c); if the First Respondent can legitimately claim for all the other heads which are challenged, the Applicants' argument fails.

93. The Tribunal prefers the Respondents' arguments. Given that the Applicants have not been successful in relation to their interpretation of the headlease, it follows that there can be no reduction in relation to this item. The Tribunal determines that the sum of £11440 was reasonably incurred and reasonable in amount, and the Applicants are liable to pay the proportion which has been demanded of them (£121.81).

2020: Water rates (£2838) ; repairs and renewals (£30,088); rubbish clearance (£4941); health & Safety (£992); management fees (£16,300); accountancy (£1380).

94. The parties advanced the same arguments in relation to the above items as they did for 2019, the Applicants having similarly withdrawn their challenge to insurance and communal lighting.

95. The Applicants were prepared to accept their due proportion of costs in relation to repairs and health & safety where invoices expressly related to Unit 12/12A. For this year, they had identified invoices in the sum of £983.40 and £234 respectively.

96. However, for the same reasons as under 2019, the Tribunal finds all relevant costs were reasonably incurred and reasonable in amount.

2021: Water rates (£1754) ; repairs and renewals (£19408); rubbish clearance (£4809); health & Safety (£702); management fees (£16,300); accountancy (£1470).

97. The parties advanced the same arguments in relation to the above items as they did for 2019, the Applicants having similarly withdrawn their challenge to insurance and communal lighting.

98. The Applicants were prepared to accept their due proportion of costs in relation to repairs where invoices expressly related to Unit 12/12A. For this year, they had identified invoices in the sum of £2502.44.

99. However, for the same reasons as under 2019, the Tribunal finds all relevant costs were reasonably incurred and reasonable in amount.

2022: Water rates (£3060) ; repairs and renewals (£35,217); rubbish clearance (£4236); management fees (£16,300); accountancy (£1470).

100. The parties advanced the same arguments in relation to the above items as they did for 2019, the Applicants having similarly withdrawn their challenge to insurance and communal lighting.

101. The Applicants were prepared to accept their due proportion of costs in relation to repairs where invoices expressly related to Unit 12/12A. For this year, they had identified invoices in the sum of £492.

102. However, for the same reasons as under 2019, the Tribunal finds the relevant costs were reasonably incurred and reasonable in amount.

2023: Water rates (£3053) ; repairs and renewals (£3930); rubbish clearance (£2103); management fees (£18500); accountancy (£1470).

103. The parties advanced the same arguments in relation to the above items as they did for 2019, the Applicants having similarly withdrawn their challenge to insurance and communal lighting.

104. For the same reasons as under 2019, the Tribunal finds the relevant costs were reasonably incurred and reasonable in amount.

2023: Gardening services (£4868)

105. The Applicants also challenged this item, saying nil is payable; in so far as they are aware, the Applicants have received no benefit for any service in this respect from the Respondents and should not therefore have to contribute.

106. The Tribunal has already determined that the fact that a tenant derives no benefit from a service they are contractually required to pay for does not provide a ground to challenge the resulting service charge.

107. The Tribunal finds the relevant costs were reasonably incurred and reasonable in amount.

2024: Water rates (£3760) ; repairs and renewals (£26849); rubbish clearance (£2576); health & safety/ fire (£1422); management fees (£17,950); accountancy (£1584).

108. The parties advanced the same arguments in relation to the above items as they did for 2019, the Applicants having similarly withdrawn their challenge to insurance and communal lighting.

109. For the same reasons as under 2019, the Tribunal finds the relevant costs were reasonably incurred and reasonable in amount.

2024: Insurance and management fees

110. The Applicants contended that, since the RTM Co had taken over from 1 February 2024 and had insured the building from that date, there should be a reduction for the months of February 2024 and March 2024 of the sums paid in respect of the insurance premium, and in relation to management fees.

111. Mr Stevenson had asked for 20% reduction in his written materials, but orally accepted that 2 months would equate to a 1/6 deduction.

112. The Applicants accepted the RTM Co had not informed the Respondents that they had insured the building from 1 February 2024, nor could the Applicants point to other management or other functions in fact exercised by the RTM Co after that date.

113. Management fees and insurance were not payable on a monthly basis. The cost of each was incurred before 1 February 2024.

114. In all these circumstances, the application for a reduction is refused.

Section 20C/paragraph 5A

115. The UT has held that the only principle is to have regard to what is just and equitable, including the conduct and circumstances of the parties, as well as the outcome of the proceedings. The purpose of s20C is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where although costs have been recently incurred by the landlord, it would be unjust that the tenant should have to pay them: *Tenants of Langford Court v Doren Ltd* (LRX/37/2000) per HHJ Rich.

116. Judge Rich QC further remarked in *Schilling v Canary Riverside Development PTE Limited*, LRX/26/2005:

"so far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour".

117. At the conclusion of the hearing, the parties were directed to make s.20C/para 5A submissions in writing, given the issue of the RTM's involvement.

118. The Applicants' submissions contend that as a matter of contract the Second Respondent cannot recover the costs of these proceedings through the service charges demanded to the First Respondent. They rely on the excepting words in paragraph 11(c) of Schedule 5, Part 1 to the headlease ("other than a claim for rent alone"), and the fact that service charges are reserved as rent under the leases.

119. The Tribunal rejects that argument. These proceedings were initiated by the Applicants, for a determination of payability and reasonableness of service charges, and they are not a claim for rent alone.

120. However, the Applicants also contend that sections 96(2)(4) and (5) of CLARA 2002, as set out in Appendix 1 to this decision, have the effect that no order can be made under s.20C, now that the RTM company has taken over the First Respondent's management functions pursuant to statute since 1 February 2024; and all the Respondent's costs were incurred after that date, given that the s.27A application was only made in August 2024.

121. The First Respondent contends:

"As First Respondent we will not be seeking to recover any legal costs from the Applicants unless the Second Respondent seeks to charge ourselves. Given the retail area of the two shops is 41% of the total of the building we do not believe the property qualifies for RTM as the legislation dictates the retail area should be 25% or less. Our contention is that the RTM is null and void…"

122. The Second Respondent also provides written submissions, which include:

(1) Paragraph 4, Schedule 7, CRLA 2002 amends ss 18 – 30 LTA 1985 where the right to manage has been acquired:

"Sections 18 to 30 of the 1985 Act (service charges) have effect with the modifications provided by this paragraph."

"References to the landlord are to the RTM company."

(2) Section 20C(1) LTA 1985 should therefore now read:

"A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the [RTM Company]…"

(3) There is no difficulty in the FTT/UT making a s. 20C order against an RTM Company as respondent (see for example *Boukadida v Priory Place (Abbey Wood) RTM Co Ltd* [2021] UKUT 160 (LC) at [54]);

(4) It must be right that the FTT can make a s. 20C application in circumstances where the lessees of the block have acquired the right to manage, because:

(a) The only purpose of Section 20C LTA 1985 is to protect the tenant (who is legally distinct from the RTM Company and may not have participated in the claim).

(b) That is the effect of Paragraph 4(2), Schedule 7, CRLA 2002.

(5) For the reasons given in oral submissions, it is the Second Respondent's position that it is not "just and equitable" (s. 20C(3) LTA 1985) for the Tribunal to make a s. 20C order, but the Tribunal does have jurisdiction.

123. The Tribunal notes that the Applicants no longer appear to be seeking a s.20C/paragraph 5A order, given their submissions in paragraph 117 above.

124. In any event, lest there be a misunderstanding, the Tribunal declines to make an order in favour of the Applicants, as a matter of exercise of judgment, given the Applicants have not been successful on this application, and there is no conduct alleged on the part of the Respondents during these proceedings which might influence the Tribunal otherwise, nor other unusual circumstance identifiable.

Conclusions

125. The Tribunal concludes by thanking the parties for their concise and measured submissions, which has made the Tribunal's task that much easier.

Judge:

S J Evans

Date:

6/5/25

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.
4. 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.

Appendix 1

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as Part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or Part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

(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 provisions 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.

Section 27A

(1) An Application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

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

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

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

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

(c) the amount which would be payable,

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

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

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

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

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

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

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

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

CLARA 2002

96Management functions under leases

(1)This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.

(2)Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.

(3)And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.

(4)Accordingly, any provisions of the lease making provision about the relationship of—

(a)a person who is landlord under the lease, and

(b)a person who is party to the lease otherwise than as landlord or tenant,

in relation to such functions do not have effect.

(5)“Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.

(6)But this section does not apply in relation to—

(a)functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or

(b)functions relating to re-entry or forfeiture.