FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2024/0329**
Property	:	**Apartment 301 Beck House, 3 New Lion Way, London, SE17 1GR**
Applicant	:	**Peter Wilks**
Respondents	:	**(1) London & Quadrant Housing Trust** **(2) H4 Residents Management Co Ltd**
Representative	:	**(1) Mr Evans, counsel** **Mr Shaw, Head of Homeowner and Leasehold Support** **(2) Mr Castle, counsel**
Type of application	:	**Payability of service charge under s27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Tueje** **Mr K Ridgeway MRICS**
Date of hearing	:	**3rd and 4th April 2025**
Hearing venue	:	**10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**2nd September 2025**

AMENDED DECISION
Amended on 9th October 2025

The Tribunal exercised its powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to amend its decision dated 2nd September 2025 to address the points raised in Mr Wilks' e-mail sent on 4th September 2025 and the Second Respondent's letter dated XXX. The Tribunal's substantive decision is unchanged. Amendments that insert additional text is in red type, and deleted text has been struck through.

In this determination, unless otherwise stated, statutory references relate to the Landlord and Tenant Act 1985, and page references relate to the hearing bundle

Decisions of the Tribunal

(1) The Tribunal makes the determinations set out at paragraphs 38 to 206 below.

(2) The applications for reimbursement of the Tribunal fees, and for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are dealt with at paragraphs 207 to 207.4 below.

Ownership and Legal Interests

1. The London Borough of Southwark is the freehold owner of the development known as Elephant Park.

2. Plot H4 is part of the Elephant Park development, and consists of the following:

   2.1 Eight commercial units.
   2.2 354 build-to-rent flats rented out by Living by Lendlease.
   2.3 Beck House, 48 purpose built flats let by L&Q on shared ownership leases as affordable housing. In plans and some other documentation, Beck House is referred to as Core F.
   2.4 Carney House, 43 purpose built flats rented out by L&Q as affordable housing.

3. Beck House and Carney House occupy 20.26% of the H4 plot, with Beck House occupying 9.46% of the H4 plot.

4. H4 includes two roof terraces, a gym, games room, residents' room, a cinema/screening room and shared workspaces. These areas are not available to L&Q residents. There is also a concierge serving H4, which again is not available to L&Q residents.

5. Beck House and Carney House are collectively referred to in this determination as L&Q properties.

6. The Applicant holds a "shared-ownership" lease of the subject property from the First Respondent, L&Q. The shared ownership lease is dated 11th December 2020, and is granted for a term of 250 years less 5 days commencing 11th December 2020.

7. The London Borough of Southwark is the freeholder. In between Southwark and the First Respondent are 3 entities from the same corporate group, each with their own lease:

   7.1 Lend Lease (Elephant & Castle) Ltd holds a lease from Southwark;
   7.2 LRIP E&C H4 LP holds a lease from Lend Lease (Elephant & Castle) Ltd; and
   7.3 The Second Respondent, H4 Residents Management Co Ltd, in turn holds a lease from LRIP E&C H4 LP.

8. Finally, as regards parties to the various leases, the Second Respondent is named in the First Respondent's lease as a management company and they employ Lend Lease (Elephant & Castle) Ltd as their agents.

The Leases

9. The relevant service charge provisions in Mr Wilks' shared ownership lease are at clauses 7.1 to 7.5. It requires he pays to L&Q the estimated annual service charge costs notified to him prior to the start of the accounting year. These are payable monthly in advance on the first day of each month. As soon as practicable after the end of the accounting year Mr Wilks receives certification of the actual costs, and any deficit is payable immediately following receipt of the certificate.

10. The service charges Mr Wilks pays to L&Q are essentially the costs claimed by the Second Respondent, which L&Q pass to Mr Wilks for payment.

11. Therefore, the service charge provisions contained in the headlease between L&Q and the Second Respondent are more detailed.

12. There are 7 service charges categories detailed in the Second Schedule to the lease which comprise the following:

    12.1 Courtyard Service Charge (Parts I and II);
    12.2 Elephant Park Service Charge (Part III);
    12.3 Building Service Charge (Parts IV and V);
    12.4 Apartment Service Charge (Parts VI and VII);
    12.5 Servicing Area Service Charge (Parts VIII and IX);
    12.6 Concierge Service Charge (Parts X and XI); and
    12.7 Leisure Facilities Charge (Parts XII and XIII).

13. Mr Wilks does not benefit from the leisure facilities or the concierge and so is not supposed to pay anything in relation to those 2 categories.

14. The provisions for each service charge category are mostly set out in a similar way. They set out the services covered by the service charge category, which in some cases may be overlapping. They set out when the service charge is payable, how any balancing charge is dealt with, and allow for the Second Respondent to vary the proportion payable.

15. The parties have used the Building Services and the Building Service Charge as an example. Building is defined in the lease as follows:

    the land and premises situate at and the buildings and other structures for the time being erected upon part of title number TGL418288 the extent of which land and premises is shown edged red on Plan [4] subject to variation from time to time by the addition of any other land which the Landlord or the Superior Landlord declare to be part of the Building and the removal of any land or lands by the Landlord which may include without prejudice to the generality of the foregoing land to be dedicated as public open space

16. By schedule 9 of the Shared Ownership lease, the definition of the "Building" is the same.

17. It is common ground that the area edged in red referred to in the above extract from the lease is the Elephant Park Estate, and not the "Building". It is also common ground that this definition was intended to relate to Plan 3, which shows Plot H4 edged in red.

18. The provisions relevant to The Building Services at Part IV of the Second Schedule are as follows:

    1. *The repair, decoration, maintenance, renewal, replacement, rebuilding, cleaning and upkeep of the Building Structural Parts, floors, walls, main drains, foundations, exterior and roof of the Building, the Utility Service Installations, the Landlord's Fixtures and Fittings and plant, equipment and tools serving or used in the Building including without prejudice to the foregoing lightning conductor maintenance and dry riser maintenance.*

    2. *The cost of any gas, electricity, oil or other fuel, water and telephone used in providing services to the Building but not to individual apartments in the Building.*

    ...

    7. *Insurance of the Building and other insurances maintained pursuant to clause 6.7 of this Lease.*

19. The provisions relevant to the Building Service Charge at Part V of the Second Schedule are as follows:

    3. *As soon as convenient after the expiry of each Accounting Year commencing with the Accounting Year now current there shall be prepared and submitted to the Tenant a written summary ("the Statement") setting out the Building Service Charge for that Accounting Year. The Statement will be certified by a qualified accountant as being in his opinion a fair summary and sufficiently supported by the accounts receipts and other documents produced to him SAVE THAT in the first year of the Term the same shall be an estimate only and shall not be required to be certified.*

    4. *...*

    5. *The Landlord may vary the proportion payable by the Tenant to ensure that the costs of providing the Building Services are apportioned fairly and reasonably between the Tenant and any other tenants and occupiers of the Building. In making that apportionment the Landlord:*

    5.1 *may allocate to the Tenant or to any other person the whole or any reasonable proportion of the costs of providing the Building Services where it is reasonable to do so or operate different proportions in respect of particular Building Services; and*

    5.2 *is not to increase the proportion payable by the Tenant by reason only that any apartment in such building are let on terms which do not require the*

tenant or other occupier to pay a service charge or by reason only that any apartment remains unlet.

6. *Any omissions by the Landlord to include in the Building Service Charge in any Accounting Year a sum expended or a liability incurred in that Accounting Year shall not preclude the Landlord including such sum on the amount of that liability in the Building Service Charge in any subsequent Accounting Year that the Landlord determines.*

The Application

20. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. He is also considering whether to apply for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 but there is no formal application for a manager within these current proceedings.

21. The Applicant also seeks an order for the limitation of the Respondents' costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the Applicant's liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. That order is sought in relation to those individuals listed in Appendix 1.

22. Directions were originally drafted on the papers and issued on 23rd August 2024. However, there were issues about who should be a respondent and so the Tribunal set aside those directions and arranged a case management hearing held on 1st October 2024.

23. The Final hearing took place on 3rd and 4th April 2025, with the Tribunal (only) reconvening for deliberations on 7th May 2025.

24. At the hearing Mr Wilks was not legally represented. L&Q was represented by Mr Evans, counsel, on 3rd April 2025, and on 4th April 2025 by Mr Shaw, who is L&Q's Group Head of Homeowner and Leasehold Support. The Second Respondent was represented by Mr Castle, counsel.

25. We heard evidence from Mr Wilks in support of the application.

26. There was no evidence on behalf of L&Q.

27. On behalf of the Second Respondent, we heard evidence from the following:

    27.1 Mr Liam Side, asset manager at Lendlease; and
    27.2 Ms Stephanie Barbabosa, Head of Build to Rent, International Operations, at Lendlease and a director of the Second Respondent, who joined the hearing remotely.

28. We acknowledge the time that has elapsed, and we apologise for the delay in issuing this determination. We would like to thank the parties for their patience.

29. We were provided with the following documents for the hearing:

    29.1 A hearing bundle comprising 4,112 pages;
    29.2 Skeleton argument from Mr Wilks;
    29.3 Skeleton argument from Mr Castle;
    29.4 The Second Respondent proposed refunds to Mr Wilks; and
    29.5 A breakdown of Item 1A refunds (for the roof terraces accessed by Core C).

30. In his Written Legal Argument, Mr Wilks poses a series of questions. It is for the Tribunal to identify the issues for determination, therefore, where it is proportionate to do so, we have taken Mr Wilks' questions into account when providing this determination, but not otherwise.

The Legal Framework

31. Section 18 of the Landlord and Tenant Act 1985 defines service charges or relevant costs. By section 19, where a landlord is seeking to recover actual service charge costs, those costs are payable only to the extent that the costs are reasonably incurred for works or services that are of a reasonable standard. Where the costs relate to on account service charges, no greater amount that is reasonable is payable.

32. By section 21 of the Act, a tenant may request a written summary of service charge costs, and by section 21A, where a landlord fails to comply with a request made under section 21, the leaseholder may withhold the relevant service charge payments.

33. Where a leaseholder has obtained a summary under section 21, they have a right to request information supporting the accounts from the landlord or superior landlord under sections 23 and 24 respectively.

34. The relevant legislation is set out in full in Appendix 2.

35. In Wallace-Jarvis v (1) Optima (Cambridge) Ltd (2) Khazai *[2013] UKUT 328 (LC)* the Upper Tribunal held that where there is prima facie evidence that service charge costs are unreasonably high, it is for the landlord to show that the costs claimed are reasonably incurred.

36. The Second Respondent relied on Waaler v Hounslow London Borough Council [2017] 1 W.L.R. 2817. In that case the Court of Appeal noted the following (see paragraph 20):

    … where a contract, in this case a lease, empowers one party to it to make discretionary decisions which affect the rights of both parties, the law recognises that the exercise of that discretion gives rise to a potential conflict of interest. That is all the more so where the discretionary decision of one party to the contract imposes a financial liability on the other. The solution which the law has devised in those circumstances is to restrict the exercise of the discretion to what is rational. The Supreme Court gave extensive consideration to this question in Braganza v BP Shipping Ltd [2015] 1 WLR 1661 . It was, I believe, agreed by all members of the court that the exercise of a contractual discretion is constrained by an implied term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its

contractual purpose; and that the result is not so outrageous that no reasonable decision-maker could have reached it: para 30 (Baroness Hale of Richmond DSPC); para 53 (Lord Hodge JSC) and para 103 (Lord Neuberger of Abbotsbury PSC). However, as Lord Hodge pointed out this is a rationality review, not the application of an objective test of reasonableness.

37. The Court continued (see paragraph 22):

Lord Sumption JSC explored the same theme in Hayes v Willoughby [2013] 1 WLR 935 where the question was whether a course of conduct was for the purpose of detecting crime. At para 14, he said:

> *"Rationality is not the same as reasonableness. Reasonableness is an external, objective standard applied to the outcome of a person's thoughts or intentions. … A test of rationality, by comparison, applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse."*

Concierge and Leisure Facilities Exclusion

The Tribunal's Decision

38. The Second Respondent's proposal to calculate the square footage apportionment for L&Q properties as 19.95% with an additional allowance of 750 ft² is reasonable.

Reasons for the Tribunal's Decision

39. Where service charge costs are apportioned according to the square footage of Plot H4, Mr Wilks objected to the Second Respondent's apportionment calculated as 20.26% because that calculation meant that the concierge and leisure areas were factored in, even though under Mr Wilks' Shared Ownership lease payment for those services is excluded.

40. The Second Respondent agreed to reduce L&Q's square footage apportionment to 19.95% to reflect these areas which measure 5,242ft².

41. Mr Wilks also objected to one of the two roof terraces being included in the square footage calculation. As a result, the Second Respondent has agreed to a further reduction by 750ft² to allow for the roof terrace which is accessed via Core C.

42. We consider this revised apportionment, is reasonable to calculate L&Q proportion where square footage is used.

Security

The Tribunal's Decision

43. The reasonable amount payable in respect of security costs is 50% of the relevant square foot apportionment set out at paragraph 38 above.

44. The question posed by Mr Wilks is:

    Is it reasonable for L&Q residents to be charged the same security cost apportionment as the build-to-rent apartments and commercial units?

45. We do not consider it is reasonable for L&Q residents to be charged the same security cost apportionment as the BTR properties and commercial units.

Reasons for the Tribunal's Decision

46. The H4 Plot offers a 24-hour concierge service. However, it is common ground that the concierge team work from 8am to 5pm on weekdays, excluding bank holidays. Security work from 2pm until 8am on weekdays, plus weekends and bank holidays. Security is based at the concierge desk in the reception area of Central Park West, where they can view monitors connected to security cameras located around Plot H4. Therefore, from 5pm to 8am when the concierge team are not working, security act as both security and an "out-of-hours" concierge. The Second Respondent points out that security provide a more basic service because they do not have training, nor access to the same systems as the concierge team. So, for instance, the security team cannot re-programme entry fobs or issue new keys to BTR residents, whereas the concierge team can.

47. According to paragraph 40 of Ms Barbabosa's witness statement the actual security costs claimed from L&Q for the year 2021/22 was £8,917, for 2022/2023 it increased to £35,756. The budgeted security costs for 2023/2024 and 2024/2025 are £40,948 and £42,552 respectively.

48. It is also common ground that the Beck House residents do not have access to the concierge service, and by schedule 9 of Mr Wilks' Shared Ownership lease concierge costs are excluded from the service charges that are payable.

49. In light of the above, Mr Wilks complains that L&Q should not be charged a square footage apportionment, because they do not obtain equal benefit from the security guards who provide the overnight concierge service to BTR residents which services L&Q residents are excluded from.

50. To support his argument that BTR residents enjoy greater benefit from security, Mr Wilks observed security on 10th March 2025 from 4.58pm to 5.58pm, when he recorded their interactions with residents (one involving a 15-minute discussion), prospective tenants, parcel and food delivery drivers, and dealing with lost property. He calculated 53% of the security guard's time was spent on concierge-related matters. He carried out a similar observation on 11th March 2025 between 5.17 to 5.47pm, when he calculates 27% of the security guard's time was spent on concierge-related tasks.

51. Mr Wilks also complains about the reasonableness of the service provided by security. He states that when he called security twice about a disturbance on 21st August 2024, he received no response. He adds that they have a general reputation of being unresponsive, and security's presence (in Central Park West) has not prevented vandalism and other criminal activity at Beck House. Mr Wilks considers that having the security guard stationed in Central Park West also affords BTR residents a greater benefit.

52. He states that security do not carry out any patrols. Although limited weight is attached to the hearsay evidence of other residents, it's noted that these support Mr Wilks' direct evidence that no patrols are carried out. Furthermore, Ms Barbabosa's and Mr Side's written evidence regarding security carrying out patrols appears to be based on what they should do, as opposed to direct evidence of what they actually do.

53. Overall, Mr Wilks assesses the benefit security provide to BTR residents compared to L&Q residents is 70%/30%.

54. In light of the above, Mr Wilks proposes an apportionment of 6.07%, calculated as 20.26% x 30%.

55. In support of the Second Respondent's position, Mr Side relies on his monitoring of the security team. He monitored security on 28th January 2025 between 4.38pm to 5.38pm, during which time he noted 5% of their time was spent interacting with either building staff or residents. He also viewed CCTV footage for the lobby, including footage covering the period from 2pm on 17th January 2025 to 2pm on 18th January 2025, when he noted 5.6% of security's time was spent on such interactions, with 4.5% of interactions during the 24-hour period of footage viewed covering 18th January 2025. On this basis, he assesses that security guards spend approximately 5% of their time interacting with residents. In his written evidence, Mr Side states that security carry out patrols of Plot H4 during their shift.

56. In light of his observations of security, Mr Side proposes the current method of apportioning 20.26% of all security salaries to L&Q should be replaced. The revised system proposed is that between 2pm to 10pm BTR properties are liable for 10% of security costs, the remaining 90% is apportioned based on square footage. Outside those hours, BTR properties are liable for 5% of security costs, and the remaining 95% is apportioned on square footage.

57. There is a marked difference between the 5% of the shift spent carrying out concierge duties that Mr Side observed, compared to the 27% to 50% that Mr Wilks observed.

58. In our judgment, although the periods over which Mr Wilks observed security was shorter, it was a more detailed observation of what they spent their time doing. Mr Wilks has provided a minute-by-minute breakdown of this analysis (see pages 3873 and 3874). Whereas Mr Side only observed where security was interacting with residents and staff, that is only part of what a concierge would do. Receiving deliveries of packages, which nowadays can be throughout the day and evening, and dealing with takeaway deliveries which are more often in the evening, are typical concierge duties which security would carry out in addition to dealing with residents' enquiries, recording routine repairs and admitting residents who have lost their keys or fobs.

59. However, to some extent, the actual amount of time spent carrying out security tasks as compared to concierge duties is only part of the picture. That is because, as Mr Wilks points out, security guards are not only paid when they are actively dealing concierge-related duties. When they are on duty between 5pm to 8am, they are required to deal with any concierge duties that arise which are within their remit. It is likely to be that the amount of time security spends doing concierge-related tasks will vary from shift to shift.

60. Therefore, to reflect the time security spend dealing with concierge related tasks, that they are mainly stationed in Central Park West, that there are not regular patrols, and they are generally unresponsive, we consider the Second Respondent's proposal is unreasonable.

61. We consider adapting Mr Wilks formula, a reasonable apportionment is square footage[1] x 50% (not 30% as M Wilks proposed).

Community Manager and Assistant Community Manager Staffing Costs

The Tribunal's Decision

62. We find a contribution by L&Q of 25% for these staffing costs is unreasonable. We find a reasonable contribution is 10%.

63. The questions Mr Wilks poses are:

Is it reasonable for L&Q residents to be charged 25% of the cost of the Community Manager and Assistant Community Manager?

Is it reasonable for L&Q residents to be charged more per square foot than the build-to-rent residents?

Is it reasonable for Lendlease to change the apportionment to increase the salary costs for Beck House residents after they've met their S106 obligations?

64. We consider it would not be prima facie reasonable for L&Q residents to be charged a higher proportion of these staffing costs compared to the square footage of the L&Q properties, accordingly the 25% apportionment claimed is not reasonable.

65. The extent to which we are able to deal with Lendlease's section 106 obligations is discussed at paragraphs 194 to 206 below.

Reasons for the Tribunal's Decision

66. Initially these costs were charged through the Building Service Charge schedule, resulting in actual total staffing costs for the service charge year 2021/2022 of £458,139. These charges were subsequently charged through the Apartment Service Charge when

[1] The revised square footage is 19.95% - 750 ft²

the actual total cost for 2022/2023 was £642,580, and budgeted costs of £684,442 and £762,209 for 2023/2024 and 2024/2025 respectively.

67. A copy of the Community Manager's job description is at pages 3619 to 3623 of the hearing bundle, which shows the postholder is attached to the Build to Rent unit, and reports to the Build to Rent director. The primary objective for recruiting to this post is described by Lendlease as follows (see page 3619):

    It's an exciting time within our Investment Management business in the UK as we introduce a new business product, Build to Rent. This role is critical to the development and success of this product and will be responsible for the profitable operation of the apartment community, while providing excellent customer service and asset prevention and enhancement. Given the infancy of the Build to Rent portfolio in the United Kingdom, this role will also support the Head of Build to Rent to develop the Build to Rent processes, systems and team needed for the success of the business.

68. The community manager has nine areas of responsibility covering various aspects of property and asset management, and some seem to deal predominantly or entirely with the BTR (see for instance leasing/marketing, resident services, collection/legal/fair housing).

69. The assistant community manager's role is fairly broad. It encompasses some aspects of the community manager's role, but also has a greater emphasis on providing the day-to-day customer services that residents would require, and dealing with more financial/administrative tasks compared to the community manager.

70. Mr Wilks argues that the community manager's job description is heavily weighted towards the BTR and commercial premises, noting that because L&Q deals with property management for its tenants and leaseholders, the property management functions of the community manager would be for the BTR residents.

71. He treats the assistant community manager role as similar to the community manager role, albeit carrying out the responsibilities at a more junior level.

72. In his witness statement Mr Side lists 14 broad responsibilities of the community manager, most of which require some involvement with L&Q properties or residents, fewer seem to be exclusively for BTR residents. Mr Sides states the community manager informed him that he spends approximately 50% of his time dealing with exclusively BTR matters, 30% of his time on matters of equal benefit to BTR and L&Q residents, and 20% on matters of exclusive benefit to the latter. However, this breakdown does not address how much time is spent in relation to commercial premises, even though according to the list of duties Mr Side has provided, this forms part of his role.

73. Notwithstanding the information provided by the community manager regarding the division of his role across the different tenures, we consider a 25% apportionment is unreasonable.

74. Firstly, there are considerably more BTR residents that the community manager is responsible for compared to the number of L&Q residents. Secondly, in our judgment and experience, residents who are renting will require greater personnel resources for

various reasons, but primarily due to the higher turnover, and the greater repairing responsibilities, which will add to the procurement and invoicing aspect of his role. Finally, we agree with Mr Wilks that the job description is weighted towards the BTR properties, and that is the team they work in. In light of the above, we do not consider a 25% apportionment is reasonable, and instead we consider 10% is reasonable for the role of community manager.

75. As Mr Side's acknowledges in his witness statement (see paragraph 27 of his first statement at page 3609), the assistant community manager role in many ways is an extension of the community manager role. Therefore, like the community manager role, we consider L&Q contributing 10% towards the assistant community manager's role is reasonable. Apportioning the same amount for both these roles also reflects the Second Respondent's position that the amount of time each postholder spends on L&Q related tasks is similar.

Maintenance Supervisor and Maintenance Technician

The Tribunal's Decision

76. The parties have agreed Mr Wilks' service charge contribution towards the maintenance technician's salary at 20%, being the amount claimed by the Second Respondent. Accordingly, no Tribunal determination is required.

77. We find the Second Respondent's proposal that L&Q pays the square footage apportionment of 87% of the maintenance manager's salary is reasonable.

Reasons for the Tribunal's Decision

78. As to the cost of the maintenance manager role, we have set out below our reasons for concluding the Second Respondent's revised proportion is payable by L&Q.

79. Mr Wilks objected to L&Q's previous apportionment of 20% for the maintenance manager's staffing costs when square footage of the L&Q properties is 20.26%, and Mr Side accepts that the maintenance technicians whom the maintenance manager supervises, spend a large proportion of time working on BTR properties. Furthermore, the maintenance manager supervises three maintenance technicians, only one of whom works on L&Q properties, and according to the Second Respondent, the maintenance manager spends 20% of his working time doing so.

80. The Second Respondent's revised position is that BTR should be liable for 13% of the maintenance manager's costs, with the remaining 87% apportioned according to square footage.

81. Mr Wilks also objects to the revised proportion. He considers instead of 13% being apportioned to the BTR properties, that amount should be 27%.

82. As stated, the Second Respondent accepts a large proportion of the maintenance team's time is spent dealing with BTR properties, which comprises 3 technicians, only one of whom spends part of their time on L&Q properties. However, its position is also that it has carried out a review of the maintenance manager's role, and only around one hour

per day is spent supervising the maintenance technicians, the remainder is spent dealing with matters that equally benefit the BTR and L&Q properties.

83. Mr Wilks calculations presuppose the maintenance supervisor spends more of his time supervising maintenance technicians than is in fact the case. However, we accept Mr Sides evidence, which is supported by his discussions with the maintenance manager. Mr Sides relies on the breakdown of the planned preventative maintenance ("PPM") carried out by the maintenance manager exhibited to Mr Side's witness statement (see page 3768).

84. Accordingly, we find the revised contribution claimed from L&Q is a fair reflection of the amount of time the maintenance manager spends dealing with matters that the L&Q properties benefit from.

Service Yard Co-ordinator

The Tribunal's Decision

85. We find a contribution by L&Q of 20% for the service yard co-ordinator's staffing costs, equating to 9.33% payable by Beck House residents is reasonable ~~unreasonable.~~

86. Mr Wilks asks:

Is it reasonable for L&Q residents to be charged the same Service Yard Supervisor cost (per square foot through the plot schedule) as the build-to-rent apartments and commercial units?

87. It is reasonable for ~~Beck House~~ L&Q[2] residents to be charged the same per square foot as the BTR properties for the reasons stated at paragraphs 93 to 99 below.

Reasons for the Tribunal's Decision

88. We note Mr Wilks' concern on this point is primarily about the apportionment paid in respect of L&Q residents generally, rather than Beck House residents specifically. That is because, he submits the 20% proposed by the Second Respondent for L&Q should be reduced to 2.5% for L&Q, with Beck House residents paying 1.16% of the 2.5%. It means on his case, Beck House residents would pay the same amount per square foot as Carney House. We consider it is reasonable for ~~Beck House~~ L&Q residents to be charged the same per square foot as the commercial units because the square footage apportionment is made after the £9,000 annual allowance in respect of the commercial units is applied. Taking into account the allowance, ~~Beck House~~ L&Q residents do not pay the same per square foot as the commercial units.

89. ~~It is unclear whether Beck House (and any other L&Q residents) who have a parking space pay an additional amount for this.~~ We consider the Service Yard Co-ordinator is likely to spend more time dealing with supervising deliveries for the commercial units. Therefore, we consider the L&Q apportionment is reasonable, even without an

[2] We note the question Mr Wilks asks relates to L&Q residents, not Beck House residents (see page 164)

additional £9,000 annual contribution contended for by Mr Wilks from residents who have a parking space.

90. Mr Wilks also asks:

*If no one is in this role, is it reasonable to be charged for it***?**

91. It is not reasonable to claim a contribution towards the salary of a Service Yard Co-ordinator for periods when the post was vacant. We accept the Second Respondent's evidence that this post has been filled since January 2022.

92. There is broad agreement that the service yard co-ordinator's role is dealing with refuse collection, parking, managing deliveries, including for the commercial units and delivery of bulky items for resident, and where residents are moving in and moving out.

93. At paragraph 20.3 of his Legal Argument (see page 163) Mr Wilks states that Beck House has no parking as agreed in the lease. He also states that he has never seen a service yard co-ordinator, and he is unsure whether L&Q is being charged a proportion of the salaries on-costs is provided as a global figure.

94. When a service co-ordinator is employed, Mr Wilks argues the apportionment of their salary charged to L&Q should be reduced from 20% to 2.5%, which amounts to a reduction to Beck House leaseholders from 9.33% down to 1.16%. Mr Wilks seeks to justify this on the grounds that most deliveries will be for the commercial units and to a lesser extent, the BTR. He says that BTR residents have a higher turnover, so the service yard co-ordinator will spend more time dealing with the moving in and out of BTR residents, who also occupy more units.

95. Mr Sides states that a service yard co-ordinator has been employed since January 2022 working from 7am to 3.30pm and wears a uniform, although it's the same uniform as the maintenance technician, so Mr Wilks may have mistaken the service yard co-ordinator for maintenance technician. He elaborates on their role as being responsible for the service yard areas in Plot 4 and Plot 5, dividing his time equally between each, in carrying out various tasks.

96. Mr Side's evidence is that L&Q pay 20% of the staffing costs for this role. He states 11 parking bays are used by ~~Beck House~~ L&Q residents, while BTR residents have no parking bays. He adds that from 5th October 2024 to 15th October 2024 the vehicle movements were monitored, which showed 68% related to L&Q residents, compared to 28% for BTR residents moving in and out.

97. We consider the survey results are limited because it seems to relate to vehicle movements only, so not the time spent dealing with residents' bulky deliveries, for instance. It also provides no breakdown of the movement of commercial vehicles delivering items to the commercial units.

98. ~~Mr Wilks has based his assessment on Beck House residents having no parking, whereas according to Mr Side, they have 11 parking bays. Mr Wilks does not specify which lease he is referring to when he says "the lease" provides for no parking. The headlease states "the Tenant", being L&Q, must not park a commercial vehicle~~

~~(clause 7.1 page 315), and clause 32.1 (page 326) states the Tenant must not apply for a resident's parking permit. However, these provisions do not expressly prohibit Beck House residents using the parking bays, and according to Mr Sides, 11 have parking spaces. This undermines Mr Wilks's valuation.~~ We accept Mr Side's evidence that none of the BTR residents use the 11 parking bays. He also believes that a Beck House resident uses a parking bay for a motorcycle, but doesn't state the grounds of this belief. Mr Wilks states that none of the Beck House residents use the parking bays. We prefer Mr Wilks' evidence on this point because as a resident his direct evidence of which residents use the parking bay is more persuasive than Mr Side's belief. Nonetheless, as stated, the effect of Mr Wilks' submissions are that the apportionment between Beck House and Carney House should be based on square footage. We therefore base our assessment of the staffing costs for the servie yard co-ordinator on the same principle.

99. On balance, and taking into account that the service yard co-ordinator equally divides his time across plots 4 and 5, and in the former case, deals with parking for ~~Beck House~~ L&Q residents, whereas BTR residents have no parking, we consider the 20% apportionment of these staffing costs to L&Q is reasonable.

Electricity

The Tribunal's Decision

100. We find claiming electricity costs solely through the Building Service Charge results an unreasonable service charge. We consider the previous apportionment applied for 2020/2021 and 2021/2022, where electricity costs were claimed through the Building Service Charge, the Apartment Service Charge, the Courtyard Service Charge and the Servicing Areas Service Charge resulted in a reasonable amount being claimed.

101. Mr Wilks asks:

Is it reasonable for Beck House to pay for Electricity when they have not received an invoice for any previous year?

102. The section 19 test of reasonableness is based on whether the cost is reasonably incurred and whether the works or services are of a reasonable standard. Subject to section 21A of the Landlord and Tenant Act 1985, the cost of electricity is payable under section 19 irrespective of whether an invoice has been provided.

103. Mr Wilks also asks:

Is it reasonable for Beck House residents to pay the standard VAT rate (20%) on its electricity when they're eligible for a reduced rate (5%)?

104. This is dealt with at paragraph 113 below.

Is it reasonable for Beck House residents to subsidise the 'Concierge' and 'Leisure Facilities'?

105. This has been addressed by the reapportionment of the square footage (see paragraphs 38 to 41 above).

Reasons for the Tribunal's Decision

106. Mr Wilks states that the electricity costs for Beck House residents for 2020/2021 were £4,488. This covered the 7-month period from December 2020 when occupation in Beck House began, to June 2021, being the end of the service charge year. He calculates that over a full 12-month period, the equivalent cost would be £7,693.

107. Ms Barbabosa states that costs claimed in 2020/2021 was an accrual because invoices were not received until October 2021.

108. Based on the Second Respondent's figures (see Ms Barbarosa's statement, paragraph 83, page 1670) the electricity costs for the four full years of occupancy from 2021/2022 to 2024/2025 are as follows:

Landlord Electricity

	21/22 Actual £s	22/23 Actual £s	2023/24 Budget £s	2024/25 Budget £s
Grand Total	**280,299**	**286,697**	**292,902**	**292,902**
BTR	211,762	227,902	216,023	216,023
L&Q	50,947	57,395	59,344	59,344
Retail	17,590	1,400	17,535	17,535

109. It is common ground that for the service charge years 2020/2021 and 2021/2022 electricity costs were charged across various schedules, comprising the Building Service Charge, the Apartment Service Charge, the Courtyard Service Charge and the Servicing Areas Service Charge. Whereas for 2023/2024 and 2024/2025 the budgeted costs have been charged through the Building Service Charge schedule only.

110. According to Mr Wilks, and unchallenged by the Second Respondent, Beck House pays 85% more for electricity costs compared to Barnard House, even though the latter has 17 more apartments and three more storeys. Mr Wilks argues that by charging electricity through the Building Service Charge schedule only, Beck House subsidises the electricity consumed by other parts of the development. In particular the concierge and leisure facilities which include the cinema room, shared workspace, computers, industrial/commercial kitchen appliances, lighting, games room and outdoor terrace.

111. He also queries whether Beck House residents are charged VAT on electricity at 5% as residential customers, or at 20% charged for non-residential customers.

112. Mr Wilks also objected to late payment fees being charged to residents, which the Second Respondent has agreed to refund L&Q's share of the late payment fees.

113. Ms Barbabosa confirms VAT on Beck House electricity costs is charged at 5%. We accept this evidence.

114. Ms Barbabosa explains that there is only one electricity meter covering the entire H4 Plot making it difficult to apportion electricity costs. However, she also confirms that the Second Respondent has instructed an independent surveyor to calculate the electricity used by each area of the development, and it will adopt the findings.

115. On behalf of the Second Respondent, Mr Castle argued that the apportionment was both rational and reasonable. He continues, because there is only one electricity meter for the H4 Plot, based on the information available from that one meter, square footage apportionment was considered to be a reasonable method. The Second Respondent's position was that Mr Wilks argued for check meters to be installed and used to apportion electricity costs, but he did not know what the installation costs would be, or how long it would take before the installation costs were recovered. Therefore, Mr Wilks cannot legitimately argue that the method the Second Respondent has used is irrational, when there is insufficient evidence as to the rationality of his alternative method.

116. We find that the apportionment of electricity costs based on square footage is unreasonable.

117. For the service charge years 2020/2021 and 2021/2022 electricity costs were charged through the Building Service Charge, Apartment Service Charge, Courtyard Service Charge and Servicing Areas Service Charge, which would require some apportionment other than on square footage. The electricity costs were transferred to the Building Service Charge from 2022/2023 onwards, and so since then have been apportioned based on square footage. We note that since 2022/2023 there has been a noticeable increase in the electricity costs claimed from L&Q. We also note that those increased electricity costs disproportionately impact L&Q when compared to the BTR increases (the electricity costs to the commercial units have been broadly the same except for 2022/2023 when the electricity costs decreased). We also note Mr Wilks' evidence that the electricity costs in the larger Barnard House are 85% lower than in Beck House was unchallenged. This should also be a signal to the Second Respondent that there is a problem with the apportionment.

118. We have had regard to the decision in Waaler, which Mr Castle relied in relation to the electricity costs during his closing submissions. In light of that decision, we note that the Second Respondent's decision cannot be regarded as irrational simply because there other methods of apportioning the electricity costs. Nonetheless, we find the Second Respondent's decision to apportion electricity costs based on square footage is irrational for the following reasons.

119. In his Written Legal Argument Mr Wilks repeatedly alleges the Second Respondent has transferred various items of service charge expenditure from one schedule to another in order to reduce BTR's financial liability at the expense of the L&Q properties. This point is not adequately addressed by the Second Respondent. When Ms Barbabosa was asked during her oral evidence why certain items of service charge expenditure had been transferred from one schedule to another, she explained that because it was a new development, there were certain unknowns at the outset, and

over time the Second Respondent concluded that transferring certain expenditure was appropriate. We are not satisfied that this adequately address Mr Wilks' allegation, nor does it adequately explain the decision-making process, particularly when transferring costs have resulted in disproportionately increased electricity costs being claimed from the L&Q properties.

120. Absent any adequate explanation, we consider it more likely than not that the reduced liability on the BTR properties resulting from transferring service charge costs, was the reason or main reason for transferring items of expenditure. Furthermore, we note that this is contrary to paragraph 7 of Part V of the Second Schedule (see paragraph 19 above).

121. In light of the above, we do not consider transferring these costs were done in good faith.

122. We also consider the Second Respondent's reasoning in the decision-making process is fundamentally flawed. Paragraph 20 of Waaler refers to the potential conflict of interests that arises in a scenario where a landlord arranges works and services at a leaseholder's expense. It is especially pertinent in this case because not only are L&Q properties paying for electricity costs, but an increase in the proportion of the electricity costs paid by L&Q is likely to result in a corresponding decrease in the amount paid in respect of the BTR properties. Ms Barbabosa denied there was a conflict during cross examination, she also denied there was a potential conflict when asked about this by the Tribunal and when Mr Castle asked her about this following the Tribunal's questions. This failure to recognise any actual or potential conflict is likely to taint the decision-making process. Because it raises the question, how can the Second Respondent guard against or mitigate any potential conflict if it doesn't recognise that a potential conflict of interests exists.

123. There is also an absurdity to the Respondent's evidence and its justification of using square footage to apportion electricity costs. For instance, when asked during cross examination about apportioning electricity costs by square footage, and whether that was reasonable because some of the higher energy consumption per square foot of gym equipment, the screening room/cinema, and kitchen appliances, Ms Barbabosa said she couldn't say whether that would result in a higher energy consumption per square foot. That is despite the electricity costs for Beck house representing hallway and other communal lighting for two lifts serving seven floors, whereas the electricity costs for Central Park West include three lifts serving 24 floors, plus the higher energy consumption equipment and appliances located in the gym and other leisure spaces in Central Park West.

124. Mr Wilks' unchallenged evidence is that the communal electricity supplied to Beck House consists of sensor-controlled lighting to 8 communal hallways.

125. In the circumstances, we find there is an absence of good faith, the transfer of service charge expenditure across schedules is contrary to the terms of the lease, and no adequate reason has been given as to why this was done. Therefore, we conclude the decision to change the way electricity costs were charged by transferring these to the Building Service Charge, resulting in this being apportioned by square footage is irrational.

Cleaning

The Tribunal's Decision

126. We find the service charge costs for cleaning claimed by the Second Respondent are reasonable.

Reasons for the Tribunal's Decision

127. Based on the Second Respondent's legal submissions, cleaning costs may be claimed as service charges for Building Services, Apartment Services, Courtyard Services and Servicing Area Services.

128. For the service charge years 2020/2021 and 2021/2022 cleaning was charged through the Building Service Charge, the Apartment Service Charge and the Courtyard Service Charge, then for 2022/2023, 2023/2024 and 2024/2025 it's charged through the Apartment Service Charge and Courtyard Service Charge.

129. Mr Wilks admits to being unclear about how the cleaning charges have been calculated. He has prepared the following table which he says represents the amounts claimed for cleaning.

	Plot	Beck House	Courtyard	Total	Percentage Increase
2020/21 Actual*	£3,503	£3,040	£259	£4,792	
2021/22 Actual	£11,580	£2,596	£513	£8,228	72%
2022/23 Actual	£ -	£5,669	£582	£5,937	-28%
2023/24 Budget	£ -	£10,393	£1,700	£11,175	88%
2024/25 Budget	£ -	£5,583	£3,526	£7,205	-36%
*2021 is only 6 months					

130. He argues that by charging Beck House cleaning costs through both the Plot (or Building Service Charge) as well as Beck House (the Apartment Service Charge), the Second Respondent has effectively charged twice for cleaning. He also claims that when comparing the actual costs for 2022/2023 against the budgeted costs for 2023/2024, there is an estimated 88% increase.

131. Ms Barbabosa explains in her witness statement that Beck House leaseholders have not been charged twice. She provides a table as follows:

Cleaning

	21/22 Actual £s	22/23 Actual £s	2023/24 Budget £s	2024/25 Budget £s
Grand Total	**16,961**	**11,285**	**22,486**	**15,488**
H4 Plot SC	11,580	-	-	-
H4E Apartments SC	2,272	5,034	10,393	6,379
H4F Apartments SC	2,596	5,669	10,393	5,583
H4 Courtyard SC	513	582	1,700	3,526

132. She states that the H4 Plot SC costs were shared building cleaning costs relating to the common parts of Plot H4 which she describes as the building common areas, back of house areas, service yard, court yards and external front entrances. These costs were apportioned to L&Q based on square footage. Beck House was also charged apartment cleaning costs under H4F Apartments SC, plus H4 Courtyard SC.

133. Additionally, the costs charged in 2021/2022 as shared building costs in the table above, from 2022/2023 onwards, they were charged as part of the H4F Apartments SC. Ms Barbabosa states that the floor area L&Q were charged for in 2020/2021 and 2021/2022, is the same as the floor area L&Q was charged cleaning for from 2022/2023 onwards. Ms Barbabosa seeks to justify the costs as she states benchmarking was carried out in 2022, 2023 and 2024. However, Mr Wilks's complaints regarding cleaning doesn't appear to be on the grounds of the contract price or apportionment. Ms Barbabosa also seeks to justify the square footage apportionment on the basis of the RICS' recommendation as follows:

"The costs have been apportioned on a square footage basis. In conjunction with the lease, the RICS Residential Service Charge Residential Management code of practise 3rd edition was consulted to apportion costs on a fair and reasonable basis to ensure that individual occupiers bear an appropriate proportion of the total service charge expenditure that reflects the availability, benefit and use of services. The method of apportionment used to reflect this was based on square foot occupancy of the L&Q residencies. This is a common and straightforward way of apportioning and is considered fair and reasonable because security is considered to benefit all the occupiers of Plot H4 equally."

134. Ms Barbabosa's evidence addresses the questions that Mr Wilks posed, and we find her explanations are credible. Therefore, we conclude the actual and budgeted cleaning costs are reasonable.

Insurance

The Tribunal's Decision

135. We find it is contrary to the headlease and/or Shared Ownership lease to claim insurance costs through the Apartment Service Charge. We also find that in doing so, the apportionment has resulted in an unreasonable amount being charged to L&Q.

136. In our judgment, to claim a fair and proper proportion of the insurance costs, these costs should be claimed through the Building Service Charge in accordance with the square footage calculations at paragraph 38 above.

137. Mr Wilks asks:

Is it reasonable for Lendlease to provide visibility on their procurement process?

138. The Second Respondent has explained its procurement process (see paragraphs 144 to 145 below).

139. He also asks:

Is it reasonable for Lendlease to provide information about any commission received?

140. The Second Respondent states it does not receive any commission for the insurance.

Reasons for the Tribunal's Decision

141. In general terms Mr Wilks' has two main concerns about insurance. Firstly, the increasing cost of building insurance for Beck House. Mr Wilks points out that from 2020/2021 to 2021/2022 there was a 39% increase, from 2021/2022 to 2022/2023 a 38% increase, from 2022/2023 to 2023/2024 a 26% increase, and finally from 2023/2024 to 2024/2025 a 20% increase. Although he accepts costs may have increased due to market conditions, he notes the Second Respondent has failed to provide information he has requested regarding its procurement process, it failed to answer his queries regarding whether the Second Respondent receives any commission, incentives or remuneration from insurance providers, and failed to provide information regarding steps taken to mitigate the costs. He has also requested insurance costs for the BTR properties, which has not been provided.

142. He relies on Wallace-Jarvis v (1) Optima (Cambridge) Ltd (2) Khazai *[2013] UKUT 328 (LC)* to argue that absent any adequate explanation or mitigation of the insurance costs, the Second Respondent has failed to demonstrate that these costs are reasonable.

143. Mr Wilks' second concern is whether the Second Respondent receive commission, incentives or remuneration from the insurers.

144. In her witness statement Ms Barbabosa clarifies the Second Respondent receives no commission from insurance providers, the insurance is arranged through a FCA regulated broker who obtain cover on a block-by-block basis placed with a panel of insurers, with a re-marketing exercise carried out in recent years. However, she states:

We obtained quotations from an insurance broker to insure Beck House which was driven by a number of factors such as claims history, rebuild valuations and risk profile for the insurer. Unfortunately, the premiums increased significantly during the period in line with market pressures and less favourable conditions.

145. The Second Respondent confirms it receives no commission. It is evident from Ms Barbabosa's evidence that the insurance is arranged at arm's length through a regulated broker, with efforts made to try to secure a competitive premium.

146. We therefore accept that it it's a combination of poor market conditions, and the insurance risk Beck House represents, that has resulted in increasing premiums.

147. L&Q argue that the insurance costs should be claimed through the Building Service Charge under the terms of the headlease. We agree that according to paragraph 7 of The Building Services at Part IV of the Second Schedule, insurance forms part of the Building Services. This is consistent with the Second Respondent's statement of case

which states that insurance is recoverable under this provision (see paragraph 68 at page 1647). Paragraph 7 of Part IV of the Second Schedule does not distinguish between whether insurance is obtained on a per block or plot-wide bases. Therefore, irrespective of how cover is obtained, the costs should be claimed through the Building Service Charge.

148. We consider the insurance costs should have been apportioned based on square footage, and charged through the Building Service Charge, even though the insurance is obtained on a per block basis. That is because the lease does not distinguish between whether the insurance is obtained on a per block or per plot-wide basis.

149. Therefore, while we find the Second Respondent has taken appropriate steps to obtain cover at reasonable rates, we consider it incorrectly apportioned the costs by charging them through the Apartment Service Charge since 2021/2022, instead of charging them through the Building Service Charge

Concierge services

The Tribunal's Decision

150. A Tribunal determination is not required.

Reasons

151. Mr Wilks' initial objection to this charge was based on L&Q residents being excluded from receiving concierge services, and yet they seemed to be charged service charges for concierge services in 2020/2021 amounting to £1,751. But this item is no longer disputed. Mr Wilks accepts the Second Respondent's explanation that this cost relates to the 5 members of staff who supported L&Q's residents during the moving in period. The associated costs are described as "concierge" services because at the time, there was no other way they could be categorised on the Second Respondent's payroll system. Mr Wilks accepts that this cost does not relate to concierge services, but to the five members of staff referred to.

Security

The Tribunal's Decision

152. ~~We find the £540 claimed by the Second Respondent is reasonable.~~ The Second Respondent having agreed to refund security costs for Clipfine for 2020/2021 in the amount of £30,031.03, we find the remaining security costs of £540.60 claimed by the Second Respondent for the period 2020/2021 is reasonable.

Reasons for the Tribunal's Decision

153. Prior to practical completion of the BTR properties and prior to commencement of the Second Respondent's security contract with Securitas, the Second Respondent arranged security through Clipfine. In her witness statement, Ms Barbabosa states that the Second Respondent absorbed most of these costs relating to the 2020/2021 service charge period, which Mr Wilks accepts.

154. Mr Wilks provides no grounds for objecting to the remaining £540.60 claimed for security during this period, and we consider the amount claimed is reasonable.

MJ Signs

The Tribunal's Decision

155. No Tribunal determination is required.

Reasons

156. Mr Wilks accepts the Second Respondent's explanation that the actual cost claimed from L&Q is £820.86, and not £4,46.00, therefore he is not challenging the actual cost being claimed.

Waste removal costs

The Tribunal's Decision

157. This item does not require determination.

Reasons

158. £2,374 was originally claimed for 2022/2023, which the Second Respondent has agreed to refund.

Refuse costs

The Tribunal's Decision

159. This item does not require determination.

Reasons

160. £540 was originally claimed for 2020/2021, which the Second Respondent has agreed to refund.

Management fee – L&Q

The Tribunal's Decision

161. This does not require determination.

Reasons

162. The parties have reached an agreement on this item.

Management fee – Landlease

The Tribunal's Decision

163. ~~This does not require determination.~~ We find the reasonable cost for the Second Respondent's management fee to be the amount claimed less a 33% deduction, leaving the amount payable to be 67% of the amount claimed.

Reasons

164. ~~The parties have reached an agreement on this item~~. Our reasons for applying a 33% reduction are set out below.

164.1 In summary, Mr Wilks argued that there should be a discount on the management fee for every discount upheld. During his oral evidence, he equated this to any other service one receives, where the amount paid should reflect the level of service provided.

164.2 The Respondent's primary position is that there should be no discount because Mr Wilks has had the benefit of the Second Respondent's management of the Plot. Mr Castle further argued that the discount Mr Wilks seeks would be disproportionate when taking into account that services have been provided and Mr Wilks' dispute is largely about apportionment. Mr Castle added that the level of reduction Mr Wilks is seeking risks straying into compensation

164.3 In arriving at a 33% discount, we take into account that while Mr Wilks has secured a discount either by agreement or by our determination, on more items than not, there are also other management services which the Second Respondent has provided which are not the subject of this application. It is apparent from the relevant schedules to the Headlease, that there are various other services the Second Respondent provides as part of its management function about which no complaint has been made. On the other hand, although we accept that the dispute is primarily about apportionment rather the provision or adequacy of the services provided, we consider that apportionment is an important part of the management function, in respect of which there are numerous instances where the Second Respondent's original apportionment has been reduced.

Certification of accounts

The Tribunal's Decision

165. This does not require determination.

Reasons

166. The parties have reached an agreement on this item.

Transparency

The Tribunal's Decision

167. The right to withhold service charges under section 21A does not apply in this case.

168. Mr Wilks asks:

Is it reasonable for Beck House residents to withhold the service charge while section 22/23 requests are not fulfilled for 2020/21 and 2021/22?

169. The issue of withholding service charge payment is dealt with at paragraph 177 below.

Reasons for the Tribunal's Decision

170. It is common ground that the headlease requires that the Building Service Charge will be "a fair and proper proportion" of expenditure, with paragraph 5 of Part V of the Second Schedule making similar provision for the Apartment Service Charge, Courtyard Service Charge and the Servicing Area Service Charge to also be a fair and proper proportion of the relevant expenditure.

171. Mr Wilks makes a broad complaint regarding what he sees as a lack of transparency in the way the Second Respondent deals with the service charges.

172. One aspect of this complaint is that both Landlease and L&Q have been slow to, or failed to, respond to his communications, and when they do respond, they fail to take responsibility for the issues raised, or provide an explanation and/or documentation which is difficult to understand. Against a background of increasing service charge costs, Mr Wilks finds this frustrating.

173. To support his argument regarding transparency, Mr Wilks cites the RICS Service Charge Residential Management Code which states a property should be managed "… on as open and transparent basis as is practicable…"

174. Mr Wilks points out that following his request under sections 22 and 23 of the Landlord and Tenant Act 1985, requesting various invoices for the service charge years 2020/2021 and 2021/2022, around 24 requested invoices have not been provided.

175. He further relies on section 21A of the Landlord and Tenant Act 1985, which allows a leaseholder to withhold payment of service charges where the landlord has failed to comply with section 21 of the Landlord and Tenant Act 1985.

176. In its statement of case and skeleton argument, the Second Respondent treats transparency as a non-issue, stating in the latter:

Item #17 poses the legal question of whether Section 21A of the 1985 Act allows A to withhold payment of service charges if R2 has failed to comply with Section 22 or 23 of the 1985 Act. The answer is simply no, so no further time is required on this issue.

177. We do not consider this aspect of Mr Wilks' transparency argument has merit. Section 21A states that a leaseholder may withhold service charges where a landlord has failed to comply with section 21. However, Mr Wilks seeks to withhold payment on the grounds that there has allegedly been a failure to comply with his requests made under sections 22 and 23, which sections are not covered by the right under section 21A to withhold payment of service charges.

Compliance

The Tribunal's Decision

178. The Second Respondent has not complied with service charge provisions at paragraph 3 of Part V of the Second Schedule of the headlease.

Reasons for the Tribunal's Decision

179. There is an additional aspect to Mr Wilks' transparency argument. He argues that the Second Respondent has transferred certain items of service charge expenditure (e.g. staffing costs, electricity, cleaning and insurance) to different service charge schedules over time. In doing so, he says the Second Respondent has engineered a situation where the costs charged in respect of L&Q properties have increased, and therefore, ultimately the amount of service charges demanded from him have increased.

180. Mr Wilks argues that being transparent requires the Second Respondent to disclose the invoices for all schedules, so that he can check these to ensure he has not been charged costs excluded under his Shared Ownership lease, and so that he can ascertain whether a fair and proper proportion of costs have been charged. Mr Wilks seemed to appreciate this would be a substantial amount of documentation, but he argues that is necessary to ensure transparency. He says that because the headlease allows the Second Respondent to reapportion service charge costs, visibility is even more important.

181. L&Q supported greater transparency, but argued that providing annotated accounts and the relevant service charge schedules would be sufficient.

182. The argument was framed by reference to the headlease. Firstly, to the definition of "Building" under the lease, which reads:

the land and premises situate at and the buildings and other structures for the time being erected upon part of title number TGL418288 the extent of which land and premises is shown edged red on Plan [4] subject to variation from time to time by the addition of any other land which the Landlord or the Superior Landlord declare to be part of the Building and the removal of any land or lands by the Landlord which may include without prejudice to the generality of the foregoing land to be dedicated as public open space

183. It is common ground that the area edged in red is the Elephant Park Estate, and not the "Building". It is also common ground that the definition was intended to refer to Plan 3, which shows Plot H4 edged in red.

184. L&Q builds on the above definition of the Building to argue that the lease requires the Second Respondent to provide accounts information relating to the Building, namely Plot H4. Whereas the Second Respondent has been providing accounting information limited to those parts of Plot H4 which are let to L&Q.

185. L&Q maintains that the Second Respondent is therefore failing to comply with the lease (see paragraph 19 above). It further argues that in failing to comply with the lease, the accounting information provided prevents L&Q from being able to ascertain whether the Second Respondent is claiming from L&Q a fair and proper proportion of the service charge expenditure.

186. The Second Respondent offers several responses. First, it states that the lease simply requires it to provide a written summary (or statement) of the Building Service Charge, certified by a qualified accountant, confirming that the statement is a fair summary, and it is adequately supported by receipts and other documents. In other words, the lease does not require the Second Respondent to provide accounting information that enables L&Q to ascertain whether it has been charged a fair and proper proportion. It merely requires a qualified accountant certifies that the statement is supported by adequate documentation, and that the statement is a fair summary of the Building Service Charge for that accounting year.

187. The Second Respondent also argues that paragraph 6 of Part V of the Second Schedule (see paragraph 19 above) envisages that some costs might be excluded from the Building Service Charge accounts. Furthermore, according to the Second Respondent, because the costs that have been excluded relate to the BTR and commercial units which L&Q do not contribute towards, excluding the accounting information relating to those parts of Plot H4 is not a failure to comply with the lease. The Second Respondent continues that if there is any concern about whether service charge costs are fair or reasonable, an application to the Tribunal under section 27A can be made for a determination as to whether the service charges are reasonable.

188. Finally, it is understood that the Second Respondent is also concerned about the commercial sensitivity of providing all the accounting information that Mr Wilks has requested, and even the lesser accounting information that L&Q has requested (see the e-mail from L&Q to Mr Wilks sent on 30th October 2023 at page 1450).

189. Taking each of the Second Respondent's points in turn. We do not consider paragraph 6 of Part V of the Second Schedule allows the Second Respondent to exclude the accounting information of any part of Plot H4. Paragraph 3 of Part V of the Second Schedule does not expressly state the requirement to provide a certified statement is subject to paragraph 6 of Part V of the Second Schedule.

190. In any event, paragraph 6 of Part V of the Second Schedule refers to "items" of expenditure, it cannot sensibly be taken to mean entire schedules of expenditure relating to other premises within Plot H4 can be withheld. Yet further, paragraph 6 of Part V of the Second Schedule allows the Second Respondent to claim for items of service charge expenditure in subsequent years where the item has not been included in the accounting information for the accounting year in which the expenditure or liability was incurred. That provision does not apply to the BTR and commercial

premises on Plot H4, because, as the Second Respondent makes clear, it will not seek to charge L&Q for those service charges in future years.

191. As to Mr Castle's argument that Mr Wilks and/or L&Q can apply to the Tribunal if they are concerned about the reasonableness of the service charges. We find this submission to be surprising and unsatisfactory. Although we were told the headlease makes no provision for the Second Respondent to recover its legal costs, the Shared Ownership lease allows L&Q to recover its legal costs, exposing Mr Wilks to the risk of legal costs if he applies to the Tribunal in order to obtain closer scrutiny regarding service charges. There is also the time and stress of bringing an application, and the Tribunal's resources being used in this way, which we consider would be disproportionate.

192. In any event, we agree with L&Q that paragraph 3 of Part V of the Second Schedule requires the Second Respondent to provide an annual statement relating to all of the H4 Plot, not just those parts of the plot that are let to L&Q.

Affordability

The Tribunal's Decision

193. The Tribunal makes no determination regarding the affordability of the service charges

Reasons

194. Regarding the lack of affordability, we were told that there are strong feelings amongst a number of Beck House residents about this issue; their statements are in the bundle and Mr Wilks has included extracts from many of their statements within his written submissions.

195. One concern Mr Wilks raises is due to the multiple tenures. The BTR residents do not pay service charges, so the communal costs relating to the BTR are paid by Lendlease. Therefore, Mr Wilks argues, Lendlease has a financial incentive to apportion service charges to reduce the amount of service charges paid in respect of the BTR properties, which would be likely to result in a corresponding increase in the amount charged to L&Q, and consequently, to Beck House leaseholders. He argues this is a potential conflict, which is exacerbated by Ms Barbabosa holding the position of Head of BTR at Lendlease while also being a director of H4 Management Company Ltd.

196. Surprisingly, when asked during her oral evidence, Ms Barbabosa not only denied there was an actual conflict, but said she could not see any potential conflict of interest with this situation.

197. In his Written Legal Argument, Mr Wilks requests the Tribunal appoints a manager under section 24 of the Landlord and Tenant Act 1987 so as to avoid a conflict of interest. However, there has been no formal application before the Tribunal to appoint a manager.

198. As to the substantive issue of affordability, Mr Wilks says his annual service charge has increased 149% in 3 years. For the year 1st April 2024 to 31st March 2025, Mr Wilks states he has paid £6,322, noting that no major works have been paid for during this period.

199. Mr Wilks argues that under its section 106 obligations the Second Respondent was required to ensure service charges were maintained at an affordable and proportionate level. He continues that service charge levels were initially set in accordance with those obligations, but that after that criteria was met, he believes in subsequent years the Second Respondent has deliberately increased service charges to maximise its profit on the BTR properties, at the expense of L&Q properties, who have seen various service charge costs reapportioned to facilitate this, resulting in substantial increases in their service charge costs.

200. Mr Wilks refers to the obligations under the section 106 agreement, which includes establishing and maintaining service charges at a reasonable and affordable level. While Mr Wilks notes that underlessees are not a party to that agreement, he states that they are the main beneficiaries.

201. Therefore, Mr Wilks argues, when considering what are reasonable service charges, because Beck House was built as affordable housing, pursuant to the section 106 agreement, the reasonable level of service charges should be affordable, and lower than service charges payable in respect of leasehold properties in the open market. He cites part of the obligations imposed by Southwark pursuant to section 106 of the Town and Country Planning Act 1990 which prohibits charges being levied on leaseholders in order to subsidise costs payable in respect of BTR residents.

202. In particular, he relies on paragraph 5.9.3 of the section 106 agreement, which reads (see page 530):

> *The Affordable Housing Service Charge shall be affordable and a fair and reasonable proportion of the actual costs incurred or anticipated in relation to any Affordable Housing and the Developers shall work together with the Registered Provider to take reasonable steps (including in the design and construction of the Affordable Housing) establish and maintain affordable housing service charged at a fair and reasonable level PROVIDED THAT at no time show the Market Units subsidise the services provided to Affordable Housing*

203. In our judgment, the Tribunal does not have jurisdiction to determine whether service charges are reasonable by reference to whether the costs are affordable. That is because the statutory assessment of the reasonableness of the amount of costs at section 19 of the Landlord and Tenant Act states that costs are payable if they are reasonably incurred.

204. The phrase "reasonably incurred" was defined in Waaler as follows (at paragraph 37):

> *If the landlord has chosen a course of action which leads to a reasonable outcome the costs of pursuing that course of action will have been reasonably incurred, even if there was another cheaper outcome which was also reasonable.*

205. This definition does not provide scope to find cost are unreasonable on the grounds that the costs are unaffordable.

206. Aside from the jurisdictional issues, there are practical problems of assessing reasonableness on the grounds of affordability. That is because any meaningful assessment of affordability requires a consideration of whether the global service charge costs are affordable. However, section 19 is concerned with the reasonableness of individual items of service charge expenditure, which is incompatible with a global assessment of affordability.

Costs

207. The parties have agreed the position regarding costs, and we make an order under rule 13 to reflect that as follows:

207.1 An order under section 20C and paragraph 5A of schedule 11 in relation to L&Q, who states that in any event it will not seek to recover its legal costs through the service charge fund;

207.2 An order under section 20C paragraph 5A of schedule 11 in relation to the Second Respondent who states that in any event there is no provision to recover its costs under the lease;

207.3 The orders under section 20C paragraph 5A of schedule 11 apply to all those individuals listed in Appendix 1; and

207.4 An order under rule 13(2) that LQ and the Second Respondent shall each refund 50% of the application and hearing fees totalling £330 that was paid by Mr Wilks.

Name: Judge Tueje **Date:** **2nd September 2025**
Amended on 9th October 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 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).

Appendix 1

Patricio Macadam Ugarte	Apartment 102 Beck House
Sergio Beleno	Apartment 103 Beck House
L J Atkins	Apartment 104 Beck House
Piia Tonder	Apartment 105 Beck House
Santiago Dosal Ariza	Apartment 106 Beck House
No response	Apartment 107 Beck House
Sebastian Londono Sierra	Apartment 201 Beck House
Stefania Sola Collado	Apartment 202 Beck House
William Curtis and Jesse White	Apartment 203 Beck House
Kathyn Nguyen	Apartment 204 Beck House
Luis Siles	Apartment 205 Beck House
Munah Zreika	Apartment 206 Beck House
Applicant	Apartment 301 Beck House
Natalia Nieto Campallo	Apartment 303 Beck House
Lewis Taylor	Apartment 304 Beck House
Azry Amran	Apartment 305 Beck House
Esther Lozano	Apartment 306 Beck House
Joshua Chivers	Apartment 307 Beck House
Maria Alejandra Jaen Ruda	Apartment 401 Beck House
Scott Pumar	Apartment 402 Beck House
Deborah Oluwole	Apartment 403 Beck House
Sheila McDonagh	Apartment 404 Beck House
Alvaro Lopez Rodriguez	Apartment 405 Beck House
Jasmine Luk	Apartment 406 Beck House
Elliot Tilbey	Apartment 407 Beck House
Oana Birsan	Apartment 502 Beck House
John Brooks	Apartment 503 Beck House
Jonathan Christer	Apartment 504 Beck House
Kelvin Hall	Apartment 505 Beck House
Timo Rumble	Apartment 506 Beck House
Faizi Freemantle	Apartment 507 Beck House
No response	Apartment 601 Beck House
Roussin Nicolas	Apartment 602 Beck House
Roman Gomez Gomez	Apartment 603 Beck House
Sarah McIntosh	Apartment 604 Beck House
Stephen Crosot	Apartment 605 Beck House

Ewan Alexander Macgregor	Apartment 606 Beck House
Zoe Christer	Apartment 607 Beck House
Iryna Chaus	Apartment 701 Beck House
Cherise Douglas	Apartment 702 Beck House
E Reus	Apartment 703 Beck House
Stephen Mounsley	Apartment 704 Beck House
Matilda Travers	Apartment 705 Beck House
Lee Redpath	Apartment 706 Beck House

Appendix 2

Extracts from the Landlord and Tenant Act 1985

18.— Meaning of "service charge" and *"relevant costs"* .

(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

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

21.— Request for summary of relevant costs.

(1) A tenant may required the landlord in writing to supply him with a written summary of the costs incurred—

(a) if the relevant accounts are made up for periods of twelve months, in the last such period

ending not later than the date of the request, or

(b) if the accounts are not so made up, in the period of twelve months ending with the date of the request,

and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.

(2) If the tenant is represented by a recognised tenants' association and he consents, the request may be made by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the Secretary.

(3) A request is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.

(5) The summary shall state whether any of the costs relate to works in respect of which a grant has been or is to be paid under section 523 of the Housing Act 1985 (assistance for provision of separate service pipe for water supply) or any provision of Part I of the Housing Grants, Construction and Regeneration Act 1996 (grants, &c. for renewal of private sector housing) or any corresponding earlier enactment and set out the costs in a way showing how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items, namely—

(a) any of the costs in respect of which no demand for payment was received by the landlord within the period referred to in subsection (1)(a) or (b),

(b) any of the costs in respect of which—
(i) a demand for payment was so received, but

(ii) no payment was made by the landlord within that period, and

(c) any of the costs in respect of which—
(i) a demand for payment was so received, and

(ii) payment was made by the landlord within that period,

and specify the aggregate of any amounts received by the landlord down to the end of that period on account of service charges in respect of relevant dwellings and still standing to the credit of the tenants of those dwellings at the end of that period

(5A) In subsection (5)*"relevant dwelling"* means a dwelling whose tenant is either—

(a) the person by or with the consent of whom the request was made, or

(b) a person whose obligations under the terms of his lease as regards contributing to relevant costs relate to the same costs as the corresponding obligations of the person mentioned in paragraph (a) above relate to.

(5B) The summary shall state whether any of the costs relate to works which are included in the external works specified in a group repair scheme, within the meaning of Chapter II of Part I of the Housing Grants, Construction and Regeneration Act 1996 or any corresponding earlier enactment, in which the landlord participated or is participating as an assisted participant.

(6) If the service charges in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants of more than four dwellings, the summary shall be certified by a qualified accountant as—

(a) in his opinion a fair summary complying with the requirements of subsection (5), and

(b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.

21A Withholding of service charges

(1) A tenant may withhold payment of a service charge if—

(a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or

(b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a) the service charges paid by him in the accounting period to which the document concerned would or does relate, and

(b) so much of the aggregate amount required to be dealt with in the statement of account for that accounting period by section 21(1)(c)(i) as stood to his credit.

(3) An amount may not be withheld under this section—

(a) in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord, or

(b) in a case within paragraph (b) of that subsection, after a document conforming exactly or substantially with the requirements prescribed by regulations under section 21(4) has

been supplied to the tenant by the landlord by way of replacement of the one previously supplied.

(4) If, on an application made by the landlord to a leasehold valuation tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

22.— Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a) for inspecting the accounts, receipts and other documents supporting the summary, and

(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

23.— Request relating to information held by superior landlord.

(1) If a request under section 21 (request for summary of relevant costs) relates in whole or in part to relevant costs incurred by or on behalf of a superior landlord, and the landlord to whom the request is made is not in possession of the relevant information—

(a) he shall in turn make a written request for the relevant information to the person who is his landlord (and so on, if that person is not himself the superior landlord),

(b) the superior landlord shall comply with that request within a reasonable time, and

(c) the immediate landlord shall then comply with the tenant's or secretary's request, or that part of it which relates to the relevant costs incurred by or on behalf of the superior landlord, within the time allowed by section 21 or such further time, if any, as is reasonable in the circumstances.

(2) If a request under section 22 (request for facilities to inspect supporting accounts, &c.) relates to a summary of costs incurred by or on behalf of a superior landlord—

(a) the landlord to whom the request is made shall forthwith inform the tenant or secretary of that fact and of the name and address of the superior landlord, and

(b) section 22 shall then apply to the superior landlord as it applies to the immediate landlord.