FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: MAN/00EW/LUS/2025/0003** **MAN/00EW/LSC/2024/0236**
Property	**: The Old Mill, Ainsworth Lane, Crowton, Northwich, CW8 2RS**
Applicant	**: 1. The Old Mill RTM Co Ltd** **2. Colin Hickson, (Apartment 5)** **3.Daniel Pollock (Apartment 2)** **4. Christopher Hale, (Apartment 3)** **5.Christine Marshall (Apartment 4)**
Representative	**: Christine Marshall, (Apartment 4)** **Secretary of Old Mill RTM Co Ltd**
Respondent	**: Grey G R Limited Partnership**
Representative	**: J B Leitch Solicitors** **Rebecca Ackerley of Counsel**
Type of Application	**: Section 94 (3) Commonhold and Leasehold Reform Act 2002- the payment of accrued uncommitted service charges to a RTM company** **Section 27A Landlord and Tenant Act 1985- determination of the payability and reasonableness of service charges**
Tribunal Members	**: Judge T N Jackson** **Mr A Davis MRICS FAAV**
Date of Hearing	**: 27 April 2026**
Date of Decision	**: 27 May 2026**

DECISION

Decision

We determine that:

The insurance premium of £17,373.56 for service charge year 2021 is payable and reasonable.

The accrued uncommitted service charges held by the Respondent on the Acquisition Date of the right to manage was £5,223.34.

No orders are made under section 20C of the Landlord and Tenant Act 1985 or paragraph 5(A) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 Act.

No order is made as to costs.

Reasons for decision

Introduction

1. On 13 June 2024, the First Applicant applied under section 27A Landlord and Tenant 1985, ('the 1985 Act'), for a determination of the payability and reasonableness of service charges.

2. On 6 August 2025, the Applicants applied under section 94(3) of the Commonhold and Leasehold Reform Act 2002, ('the 2002 Act') for the payment of accrued uncommitted service charges held by the Respondent on the Acquisition Date of the right to manage.

Property

3. The Tribunal has not carried out an inspection but understands from the agreed bundle that the Property comprises a purpose - built development of five residential apartments built over three stories and with the benefit of car parking. The Property suffered flooding in 2019 and 2021.

Background

4. The Respondent was the freehold proprietor of the Property until 6 February 2023.

5. The apartments are held subject to the terms of long residential leases, a sample copy of which is included within the agreed bundle. Christine Marshall, Christopher Hale, Colin Hickson and Daniel Pollack are the leaseholders of Apartments 4,3,5 and 2 respectively.

6. Homeground Management Limited ('Homeground') are property managers for the Respondent. Warwick Estates Property Management Limited ('Warwick') were the Respondent's managing agents for the Property from October 2019 until the First Applicant RTM Company took over management of the Property on 27 March 2022, ('the Acquisition Date'). The Directors of the First Applicant RTM company are Christine Marshall, Christopher Hale, Colin Hickson and Daniel Pollack. Accrued uncommitted service charges of £5,223.34 were transferred to the First Applicant on 20 September 2022.

7. On 7 February 2023, the freehold interest in the Property was acquired by Kingscrown Properties Limited, Christine Marshall, Christopher Hale and Colin Hickson. Daniel Pollack is one of the directors of Kingscrown Properties Limited. The Freeholder's interest in the Property is registered at HM Land Registry under title number CH408078.

The Lease

8. We have been provided with a sample Lease for Apartment 4 dated 1 May 2009 between Cornerstone Properties UK Limited (in administration) acting by its administrators (1), Paul Stanley and Stephen Leonard Conn, the administrators (2) and Kevin Martyn Reilly. The Lease commenced on 1 July 2005 and was for a term of 125 years from that date.

9. There was no dispute as to the terms of the Lease.

10. The Sixth Schedule sets out the 'Maintenance Expenses' in which clause 4 includes the cost of insuring the building '*against all comprehensive risks applicable to a normal insurance policy covering this type of property and to satisfy CML mortgage requirements and such other risks as the Lessor shall reasonably decide in the full reinstatement value'*.

11. The Seventh Schedule sets out the Lessee's Proportion of the Maintenance Expenses. The service charge year runs from 1 January to 31 December and clause 6 of the Seventh Schedule provides that service charge demands will be sent on 1 January and 1 July each year and the service charges will be paid in advance. Clause 8 provides for a balancing payment to be made after the service charge accounts have been audited.

12. The Eight Schedule sets out covenants by the Lessee. The Ninth Schedule sets out the Lessor's covenants including at clause 6 a covenant to '*keep the reserve fund of funds referred to in the Sixth Schedule in a separate trust account and to hold any interest on or income of the said fund as an accretion thereto in trust for the lessees of the dwellings and to apply such fund and accretions only in accordance with the terms of the Sixth Schedule.'*

Procedural History

13. On 24 April 2023, Ms Marshall attended a Tribunal hearing in relation to an earlier application against the Respondent regarding service charges for service charge years 2019, 2020 and 2021 (MAN/00EW/LSC/2022/0048). The application was withdrawn following a settlement, the terms of which provided that it was in full and final settlement of the entirety of her application.

14. On 13 June 2024, the First Applicant applied under section 27A of the Landlord and Tenant Act 1985 for a determination of liability for service charges.

15. As the application appeared to relate to the whereabouts of an alleged sinking fund of £24,119 prior to the First Applicant acquiring the right to manage, rather than the liability to pay or reasonableness of service charges, a video case management hearing was held on 29 July 2025. The Respondent had applied to have the application struck out on the basis that i) the Respondent had sold the freehold on 7 February 2023, ii) the Applicant, (the RTM company),was not a leaseholder and therefore was unable to make an application under section 27 of the 1985 Act and iii) the application should properly be brought under section 94(3) of the 2002 Act.

16. By Directions dated 29 July 2025, the Tribunal refused the strike out application. It adjourned the case to enable the Applicant make an application under section 94 of the 2002 Act. In relation to the application under section 27A of the 1985 Act, it directed that other leaseholders may wish to apply to join as co-applicants.

17. On 6 August 2025, the First Applicant applied under section 94(3) of the Commonhold and Leasehold Act 2002 for a determination regarding the payment of accrued uncommitted service charges held by the Respondent on the Acquisition Date of the right to manage.

18. On 8 September 2025, Directions were issued that the section 94(3) application be treated as the Applicant's Statement of Case in that matter and gave the Respondent 28 days in which to submit a Statement of Case in Response. The two cases were to be dealt with jointly.

19. On 6 October 2025, the Respondent's solicitor sought a 14 day extension as the Respondent no longer had a contractual relationship with the Applicants and the former agent, Warwick, were no longer appointed and therefore needed to review historical records to consider the relevant information to respond to the section 94 application which required a significant amount of time and resources.

20. On 20 October 2025, the Respondent's solicitor sought a further 14 day extension to 3 November 2025.Their Statement of Case in Response was provided on that date.

21. Following applications to be joined as parties in the service charge case under section 27A of the 1985 Act, on 4 November 2025, the Tribunal directed that Colin Hickson, Daniel Pollock and Christopher Hale, were joined as co-applicants.

22. On 1 December 2025, the Tribunal directed that a further case management meeting be held to consider joint management case directions. It directed that before the case management hearing, Ms Marshall provide a copy to the Tribunal and all parties of a copy of a document from McKay and Ball accountants, ('the Document'), which Ms Marshall claimed had been in the previous 2023 Tribunal bundle and which broke down the sum in the alleged sinking fund as follows:

Apt 1	£5.606.60	
Apt 2	£3,479.30	
Apt 3	£7,119.80	
Apt 4	£3,446.90	
Apt 5	£4,466.50	totalling £24,119.10.

23. On 18 December 2025, a case management hearing was held. Ms Marshall was not able to provide a copy of the Document as previously requested as she had shredded all her papers following the conclusion of the previous Tribunal hearing. However, she had a handwritten note of the contents of the Document in the diary she kept of matters relating to Old Mill.

24. On 18 December 2025, the Tribunal directed that the Applicants must decide whether they wish to seek orders requiring McKay and Ball and/ or any other person to answer any questions or produce any documents relating to any issue under the proceedings under Rule 20 (1)(b) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. It advised that any such application should be supported by witness statements and should append a copy of the diary entry Ms Marshall made of the content of the Document and a detailed account of the circumstances under which she had possession of the Document.

25. The Directions further directed that the Applicants send to the Tribunal and Respondent a Statement of Case, including evidence they wished to rely on at the hearing which must cover afresh all points, arguments and submissions upon which they rely even if they have previously been provided. The Directions directed the Respondent to submit a Statement of Case in Response including statements of account to the Acquisition Date and other financial information. The Applicants were given the opportunity to provide a short supplementary statement in reply.

26. On 5 January 2026, Ms Marshall applied for a disclosure order in relation to the Document, accompanied by photographs of the diary and witness statements from Ms Marshall and Mr and Mrs Hickson regarding the Document. The application is unclear as from whom disclosure is sought, as in the Order 1 Form it refers to 'the Respondent and/or McKay and Ball or any other person' and yet in the supporting witness statement, it only seeks an order in relation to the Respondent.

27. On 26 January 2026, the Respondent's solicitor responded to the application. However, it appears that the Tribunal did not make a determination on the disclosure application, for which the Tribunal proffers its sincerest apologies. The matter was therefore considered as a preliminary issue at the beginning of the hearing.

28. On 24 April 2026, the Respondent's solicitor sent to the Tribunal and the First Applicant's representative, a copy of the service charge accounts for the year ended 31 December 2018.

29. On the morning of the hearing, the Respondent's solicitor provided to the Tribunal and the First Applicant's representative, a copy of the Statement of Accounts of the leaseholder of Apartment 1.

Hearing

30. Neither party requested an inspection and after reading the agreed bundle, the Tribunal did not consider the need for one. The hearing was attended by Christine Marshall, Director and Secretary of the first Applicant and who acted as it's representative. She was accompanied by Colin Hickson, a Director of the First Applicant and leaseholder of Apartment 5 and his wife Margaret Hickson. The Respondent was represented by Rebecca Ackerley of Counsel and her instructing solicitor, Victoria Brewer. Stuart Stiles of Warwick managing agents and Lauren Rowland, Senior Asset Operations Manager of Homeground attended and gave evidence on behalf of the Respondent.

Preliminary issues

a. Disclosure application

31. Ms Marshall has consistently stated throughout the proceedings and correspondence with the Respondent that the Document formed part of the Respondent's bundle for the Tribunal heard on 26 April 2023. In an email between herself and 'Handovers @ Warwick' dated 7 November 2022, Ms Marshall says "Going through the upcoming Tribunal service paperwork we have been informed by McKay and Ball that our sinking fund at the time of leaving Warwick and Grey GR was actually" and sets out the allocation by apartment referred to in paragraph 22 above totalling £24,119.10.

32. For the current proceedings, Ms Marshall sought, and on 1 December 2025, received from the Respondent's solicitors a copy of the bundle for the 2023 Tribunal. She subsequently made her disclosure application on 5 January 2026. At the hearing, Ms Marshall confirmed to us that after reading the 2023 bundle, it had not contained the Document. She could give no explanation as to why it was not included in the bundle and confirmed that she was not alleging that the Respondent's solicitors had taken it out.

33. In their response to the disclosure application, the Respondent's deny having had the Document. At the hearing, Respondent's Counsel advised that McKay and Ball had been contacted and they had also confirmed that they did not have the Document as described by Ms Marshall.

34. Respondent's Counsel submitted that, with the exception of Apartment 5, where there seemed to be an error, the stated figures in the breakdown relied on by the First Applicant were exactly the same as the arrears on the Statement of Accounts immediately prior to the service charge demand for the period 1 July 2022 to 31 December 2022. This is the first half yearly period that the First Applicant managed the Property.

35. Having regard to the fact that the Document was not in the bundle for the former Tribunal proceedings where Ms Marshall had claimed it to be, the denials from both the Respondent and McKay and Ball in relation to the Document and the persuasive argument of Respondent's Counsel as to what the breakdown actually reflected, we determined that there was nothing to be gained by making a disclosure order of a document that did not appear to exist.

    b. Late admission of 2018 service charge accounts
    c. Late admission of Statement of Account of Apartment 1

36. Although both documents had been circulated to the First Applicant's representative, one on the morning of the hearing, she had not seen them. After being given paper copies at the hearing and time to read them, Ms Marshall did not object to the admission of either of the documents.

37. It transpired that the 2018 service charge service accounts were already contained within the Respondent's bundle and therefore a decision as to late submission was not required.

38. In relation to the statement of accounts for Apartment 1, although the document was served late, we considered that it was relevant to the proceedings. The document was not lengthy and followed the same format as the statements of account for the other four apartments already submitted in the Respondent's bundle and would not have taken long to read. We did not consider that the First Applicant's representative was prejudiced by the late production and allowed the late admission.

    d. Joining of Ms Marshall as an Applicant in her personal capacity as a leaseholder

39. The Tribunal noted that Ms Marshall had not applied to be joined in the proceedings under section 27A of the 1985 Act in her personal capacity as had the other leaseholders. We understand that as Ms Marshall is not legally qualified, she may not have appreciated the distinction between acting as the First Applicant's representative and acting in a personal capacity. Following agreement of the parties, we joined Ms Marshall as an Applicant in her personal capacity as a leaseholder in relation to the section 27A of the 1985 Act application.

Submissions

40. In their bundle, the Applicants have raised many issues including communication difficulties with Warwick throughout their tenure as property managers; the cost of the reinstatement works carried out by the insurers following an insurance claim in 2021; alleged damage caused by contractors during the reinstatement works; the appropriateness of certain works being carried out as part of the reinstatement works and allegations of a cartel. These matters are not relevant to the applications before us and we have therefore restricted our comments to the specific applications.

i. Sinking fund

The First Applicant

41. The First Applicant asserts that at the date it acquired the right to manage the Property, there was a sinking fund of £24,119 which should have been transferred to the First Applicant. Only the sum of £5,223.34, representing the accrued uncommitted service charge had been transferred to the First Applicant on 20 September 2022.

42. The figure is based on a document alleged to have been seen by Ms Marshall in her previous Tribunal proceedings (MAN/00EW/LSC/2022/0048). She describes a document prepared by McKay and Ball, Warwick's accountants which she asserts broke down the sum of the sinking funds as follows:

Apt 1	£5,606.60	
Apt 2	£3,479.30	
Apt 3	£7,119.80	
Apt 4	£3,446.90	
Apt 5	£4,466.50	totalling £24,119.10

43. After the last Tribunal hearing, she had destroyed all her papers, including the above document. She had however, noted the figures in 'The Old Mill diary' which she uses to record all details of the works and needs of the Old Mill and says the page was dated September 2023. A copy of the relevant page is in the agreed bundle. Mr and Mrs Hickson, (Apartment 5), have provided witness statements that they saw the relevant document and that it had come from McKay and Ball. They say that the total of £24,119 seemed reasonable due to the number of years there had been residents. However, they queried the individual amounts as they considered that as the longest serving residents having lived there for approximately 16 years, their contribution should have been highest whereas at £4,466.50, it was lower than Apartments 1 and 3 which had totals of £5,606.60 and £7,119.80 respectively. Ms Marshall and Mrs and Mrs Hickson say they used the figures in later correspondence with Warwick and were not challenged on the details of the Document or that McKay and Ball were author of the document.

44. Ms Marshall's evidence is that Mr S Stiles, Regional Manager of Warwick had informed the leaseholders on 30 May 2023 that the Respondent had used £15,000 from the sinking fund to pay for the insurance for 2021 without notifying the leaseholders.

45. Ms Marshall asserted that the sinking fund monies should have been kept in a separate account from the service charge monies under the provisions of Clause 6 of the Ninth Schedule of the Lease.

The Respondent

46. The Respondent submits that the sinking fund did not have £24,119 at the Acquisition Date. They have provided copies of the audited accounts for service charge year 2018 to 2021 inclusive. They have produced a copy of the closing bank statement for the service charge account dated 20 September 2022 in the sum of £5,223.34. Whilst there had originally been a separate bank account for the sinking fund opened by Warwick on 9 September 2019, the only activity on it had been a deposit of £750 on 25 May 2020 and the subsequent withdrawal of that same amount on 24 November 2020.

47. The Respondent asserts that due to the Applicants' failure to pay service charges when demanded, this resulted in cashflow issues at the development. Though an amount to be

transferred into the sinking fund was budgeted for each year (£1,500), this was not possible due to the arrears on each of the Applicant's accounts. Mr S Stiles witness statement includes annexes showing each of the Applicants to be in arrears at the Acquisition Date. Mr Stiles' evidence described the conflict that arises due to the accruals basis of accounting which reflects the financial the position assuming all service charges are paid compared to the reality where there are significant debtors. Mr Stiles said that when Warwick took over a property manager in 2019, the service charge accounts, (calculated on an accruals basis), showed reserves of £4,054 but only £1,274 was transferred by the outgoing property agents due to service charge arrears.

48. In respect of the accounts for the 2022 service charge year 27 March 2022 when the First Applicant took over management of the Property, on 1 June 2022, Warwick provided bank statements for the periods 1 January 2021 to 1 June 2022, the bank transaction report, the debtor transaction report, an outstanding invoice for Southern Electric, a paid invoice report, a spend report and leaseholder statements of account. Copies of the bank statements, bank transaction report and leaseholder statements of account are included in the bundle.

49. As previously described, Respondent's Counsel submits that the alleged £24,119 was the total of the arrears of the five leaseholders immediately prior to the service charge demand for 1 July 2022 to 31 December 2022, (the first demand to be sent after the First Applicant had acquired the right to manage) as set out in each leaseholders' statement of account and as detailed below-

Apt 1 £5,606.60
Apt 2 £3,479.30
Apt 3 £7,119.80
Apt 4 £3,446.90
Apt 5 £4,929.64 (compared to Ms Marshall's figure of £4,466.50).

50. Respondent's Counsel suggests that the discrepancy on Apartment 5 may be an error when the figure was written in the diary note.

51. She submits that it would be unusual for the arrears of each apartment, as at the date of handover, to also be the exact same figure that was suggested to be held in the sinking fund. She submits that Ms Marshall's diary entry written in September 2023 sets out the figures in relation to each apartment, references the period '01.07.22-31.12.22', (which is the first half yearly service charge period the First Applicant manages the Property) but the diary entry does not make any reference to 'reserve fund' or 'sinking fund'.

52. The Respondent asserts that the accrued uncommitted service charges held by the Respondent on the Acquisition Date was £5,223.34 which was transferred to the First Applicant on 20 September 2022 and that there are no other sums.

53. Respondent's Counsel submits that the sum of £24,119.10 is not found in any of the service charge accounts prepared by McKay and Ball accountants.

54. Respondent's Counsel submits that any alleged sinking fund would not have covered 15 years as the Leases were primarily entered into in 2011, with one in 2009.Further, the account history for the reserve fund account opened by Warwick on 9 September 2019 and managed during their tenure shows only two transactions, namely the deposit of £750 on 25 May 2020 and its withdrawal on 24 November 2020.

55. Respondent's Counsel submits that any allegations as to misappropriation of sinking funds is not a matter the Tribunal have jurisdiction to deal with (*Solitaire Property Management Co Ltd v Holden [2021] UKUT 86 (LC))* and in any event there is no evidence before the Tribunal that this has happened.

ii. Cost of insurance- service charge year 2021

56. For clarification, the service charge year runs from 1 January to 31 December but the insurance policy runs from 1 July to 30 June.

The Applicants

57. There was no dispute that the Lease required the leaseholders to pay the cost of insurance within their service charges under the provisions of the Sixth Schedule.

58. From 1 July 2020, the building insurance premium, including flood risk was £2,339.82 including terrorism. From 1 July 2021, the insurance premium increased to £17,373.56. The area was designated as a black zone 3 flood risk and therefore no flood cover was available.

59. On 29 June 2022, the First Applicant, as the RTM company, arranged insurance for the Property at a cost of £3,873, excluding flood. On 15 June 2023, the First Applicant arranged insurance for £2,815.52 plus £319.22 (total £3,134.74), excluding flood.

60. Ms Marshall asserts that the building had a history of flooding having flooded in 2019 and 2021. In her oral evidence she describes the topography of the area surrounding the Property and that when it rains, the rain pools in front of the Property with the consequence that cars driving through cause water to go onto the Property. She asserts that flooding in January 2021 after Storm Christoph was due to a consistent lack of flood preventative measures being installed by the Respondent of a building with a history of flooding. She also asserts that no flood preventative measures were put in place after Storm Christoph and both factors resulted in the vastly increased premium.

61. Ms Marshall refers to clause 16 of the Ninth Schedule of the Lease which provides '*Not to suffer or permit any act or omission which may render any increased or extra premium for insurance'*. She asserts that failure to put in flood prevention would likely influence the insurers to increase the premium, as would repeated floods.

62. She says that after acquiring the right to manage in March 2022, over a period of 2 and a half years, the First Applicant met several external organisations which resulted in two new drains being placed outside the Property. The Applicants bought covers for air bricks and a bespoke barrier for the main front door and a supply of sandbags. After the flood in 2023, the leaseholder of Apartment 2 had carried out tanking works at his own expense. The Applicants have a procedure they adopt once it starts to rain to mitigate the risk of flooding. She says that the Respondent and Warwick should have been proactive to reduce the flooding risk after the claim in 2019, and after the claim in 2021 and the failure to do so has resulted in the high premium in 2021.

63. In her oral evidence, Ms Marshall said that she was not aware of the details of the 'Escape from Water' claim in 2019.

64. Ms Marshall asserts that incorrect information was given to the insurers, namely that the Property was grade 2 listed which it is not, and that would likely have increased the

premium. The policy renewed from 1 July 2021 also included the risk of terrorism which the Applicants consider to be unreasonable as the property is located in the countryside.

65. At the hearing, Ms Marshall accepted that the £4,002.47 for the cost of standard building insurance without flood was reasonable.

The Respondent

66. The Respondent submits that the insurance service charges for the periods 2019,2020 and 2021 have been dealt with under the previous Tribunal case relating to Apartment 4 under reference MAN/00EW/LSC/2022/0048 and to redetermine them would be an abuse of process.

67. Ms L Rowland's evidence is that the breakdown of insurance charges for the insurance periods 1 July to 30 June in 2018 to 2021 inclusive were £1,938.56; £2,339.82 (including terrorism); £3,096.98 (including £100.99 for terrorism) and £17,373.56 respectively. Miss L Rowland produced copies of the relevant insurance certificates.

68. The insurance policy for service charge year 2021 ran until 30 June 2022. The Applicant acquired the right to manage the Property in March 2022. The First Applicant therefore took over responsibility for placing the insurance from 1 July 2022.

69. The insurance premium for 1 July 2021 to 30 June 2022 was for £17,373.56 comprising £4,002.47 for a standard buildings policy with an excess of £100,000 for flood; £13,264.66 flood excess indemnity insurance and £106.43 terrorism insurance.

70. As a result of the high flood risk at the Property and the Property being listed in a black category for flooding, AXA increased the flood damage excess to £100,000 effective from renewal 1 July 2021. Homeground asked Gallagher (insurance broker), to seek alternative quotes. However, the alternative insurers that were contacted (namely Zurich Insurance Company Ltd, Aviva Plc and Covea Insurance Limited) all declined to provide quotes because of the black category status.

71. Homeground sought to reduce the Applicants exposure to future flood claims by sourcing specialist flood excess infill cover to provide indemnity of up to the £100,000 flood damage excess.

72. On 25 November 2021, correspondence was issued to all leaseholders to provide an explanation for the increased insurance premiums between service charge periods 2020 and 2021. They were advised of the following insurance claims submitted for the Property in 2021 and 2019: -

    a. An escape of water claim for £48,620.19 was submitted for a loss dated 27 July 2019 in respect of escape of water at the Property; and
    b. A flood claim for £159,105.25 was submitted for loss dated 21 October 2021 in respect of a flood at the Property.

73. Within the letter dated 25 November 2021, the leaseholders were informed that there was an option to remove the flood excess insurance policy, however, there was the risk that any flood damage under £100,000 would not be covered by the premium and the leaseholders themselves would have to fund any costs within the £100,000 excess.

74. Regarding flood prevention works, Mr Stiles and Ms Rowland were not aware of any advice or requirements suggestions having been made by the insurers following either of the

claims in 2019 and 2021. Mr Stiles oral evidence was that Warwick were not made aware by the Applicants of the need for flood prevention works until the Applicants raised it with a representative of Warwick's after the 2021 flood.

75. Ms Rowland's oral evidence was that if such a request had been made, then the Respondent and Warwick would have had to consider i) the terms of the insurance cover, ii) the Lease provisions and whether any such works would be considered as an improvement as such costs could not be recovered through the Lease and iii) whether the required location of any wall would be within land owned by the Respondent or whether it would require agreements with adjoining landholders.

76. Mr Stiles's oral evidence was that even if it had been demonstrated after the 2021 flood that flood prevention measures were required, the process and construction could not have been completed as the erection of a wall at a cost of approximately £15,000 would have required formal consultation under section 20 of the 1985 Act which is a statutory prescribed period of 3 months. Further, long term preventative measures would unlikely to be considered or progressed once the right to manage process had commenced, which has a statutory lead in period of approximately seven months and which was completed in March 2022.Any flood preventative works could not have been completed before the 1 July 2021 insurance renewal.

77. The premium of £17,373.56 was only part-paid by the service charge funds due to insufficient funds received from the leaseholders and a payment contribution of £3,000 was made towards the 2021-2022 insurance charge in November 2021. The remaining costs towards the insurance renewal premium were loaned by the Respondent. Note 5 of the service charge accounts for 2021 record a freeholder loan of £14,374.

78. To Ms Rowland's knowledge, the Respondent has not recovered their loan contribution of £14,373.56 from the leaseholders and, on a commercial basis, does not intend to do so. Respondent's Counsel submits that as the Applicants have, in effect, only actually paid £3,000 of the £17,373.56, there is no issue to be determined by the Tribunal.

79. The Respondent says that the Applicants have not stated what Grade of listing, (if any), they believe the building to be and whether they have suffered any prejudice as a result of the alleged discrepancy.

iii. Condition of the Property

The Applicants

80. In the Response to the Respondent's Response, Ms Marshall has sent photos of the condition of the development post floods in January 2021 and October 2023. She has included photographs of rotten communal window frames and dirty walls of the building.

The Respondent

81. The Respondent has not been able to respond to the above photos or claims of disrepair as they have not previously been provided and were only provided in response to the Respondent's Response to the Applicant's Statement of Case.

Deliberations

i. Sinking fund

82. We have reviewed the audited service charge accounts for service charge years 2018 to 2022, (which evidence the financial position, including the sinking fund), and bank statements for the service charge account.

83. When Warwick became the managing agents in 2019, the audited service charge accounts, (audited by a firm other than McKay and Ball), for service charge year ending 2018 show a sinking fund of £4,054. The service charge accounts for service charge years 2019 to 2021 show a sinking fund of £5,554; £7,054 and £8,554 respectively. This needs to be considered within the context of the accruals' basis of accounting, so this reflects the figure if all service charges had been paid and there were no arrears.

84. It is clear from the service charge accounts that there have been service charge debtors from service charge year 2019 to 2021. This is confirmed by the Statements of Account for each leaseholder.

85. The audited service charge accounts for all service charge years report that the auditors found the balance of service charge monies shown in the accounts agreed or reconciled to the bank statement for the accounts in which the funds were held. The financial evidence therefore does not suggest that there was ever a sinking fund of £24,119.

86. We note that the audited service charge accounts refer to a separate bank account for the sinking fund in service charge years 2018 and 2019 only. This confirms the Respondent's evidence that other than one payment of £750 paid in to a separate sinking fund account on 25 May 2020 and subsequently withdrawn on 24 November 2020, a separate account was not used. We do not consider this to be a breach of clause 6 of Ninth Schedule of the Lease as asserted by Ms Marshall as, on our interpretation, the Clause does not necessarily require separate accounts for service charges and sinking fund, but rather that all funds are kept in a separate trust account so that they are ring fenced for the use of the Property only to prevent it's use on any other development.

87. Whilst we accept that Ms Marshall saw a document which resulted in her writing down the figures set out at paragraph 22 above, we are not persuaded that it related to the sinking fund. We consider that she misunderstood or misremembered what the breakdown related to and who provided it. We are unclear why there would be a need for an accountant to prepare a document to specifically identify which apartment contributed what specific amount to a sinking fund. A sinking fund is not spent according to the contributions of individual apartments. Once money is within the sinking fund, it is spent on the development as a whole. It is used for anticipated large items of expenditure for the development to ensure that leaseholders do not receive a very large service charge in one year, for example for the replacement of the roof. Neither does the assertion take into account that monies may have been spent from the sinking fund over the period of the alleged contributions, thus reducing the total.

88. Mr and Mrs Hickson's evidence specifically refers to querying the amounts allocated to each apartment as set out in paragraph 22 above, as they thought that as the longest serving residents, their 'allocation' at £4,466.50 should have been higher than that allocated to Apartments 1 (£5,606.60) and Apartment 3 (£7,119.80) whose leaseholders had lived there for a shorter period of time. This strengthens our view that whatever the document was, it did not relate to the sinking fund.

89. We are also persuaded by Respondent Counsel's submission that the breakdown by apartment and the total of £24,119.10 relates to the arrears as at the period immediately before the service charge demand for 1 July 2022 to 31 December 2023, the first period after which the First Applicant acquired the right to manage.

90. We accept that there is a minor discrepancy in relation to Apartment 5 where on Ms Marshall's noted breakdown the figure was £4,466.50 whereas on the leaseholder's statement of account the figure is £4,929.64. We also note that the figures for each apartment referred to by Respondent's Counsel vary as to whether they include the service charge and reserve fund demand of 1 July 2022 to 31 December 2022, (Apartments 1 3 and 5), or just the reserve fund for that period (Apartments 2 and 4). However, despite those discrepancies, we find it more than a coincidence that the figures set out in the breakdown written in the Old Mill diary are, with one exception, exactly the same as figures stated as arrears in the respective statements of account. At the hearing, Ms Marshall accepted that the majority of the figures reflected the arrears and did not have an explanation as to why they would be the same figures as the alleged apartment contributions to the sinking fund totalling £24,119.10.

91. At handover of the right to manage, the First Applicant would need to know the service charge arrears in order to take appropriate action. This is a reasonable explanation as to why such a breakdown would be produced and made available to the First Applicant at the time of handover.

92. The alleged Document was not within the 2023 Tribunal bundle as Ms Marshall has consistently stated. She refers to the breakdown in an email to 'handovers@Warwick' dated 7 November 2022, which suggests that it more likely related to documentation received by the First Applicant regarding the handover of the right to manage.

93. Based on all the evidence, we therefore find that there was not a sinking fund of £24,119.

94. Based on the financial evidence, we determine that the accrued uncommitted service charges held by the Respondent on the Acquisition Date of the right to manage was £5,223.34 which was transferred to the First Applicant on 20 September 2022.

ii. <u>Cost of insurance- service charge year 2021</u>

95. In considering this issue, we noted that Ms Marshall had settled her 2023 Tribunal in relation to service charge years 2019,2020 and 2021 'in full and final settlement of the entirety of her application', therefore including service charges relating to insurance. She is therefore unable to be a party to the proceedings on this point, as distinct from being the representative of the First Applicant.

96. There is no dispute by the Applicants that the cost of insurance was payable as part of the service charge in accordance with the terms of the Lease.

97. We have seen the relevant insurance policy certificates and associated premiums for insurance periods 1 July 2018 to 30 June 2022 inclusive.

98. At the hearing, the Applicant accepted that the cost of the standard building insurance without flood at £4,002.47 was reasonable. We agree and note that it is not dissimilar to the premium for buildings cover in 2020, nor the subsequent premium of £3,873 obtained by the First Applicant for the period 1 July 2022 after it had acquired the right to manage. We therefore find that element of the insurance premium to be reasonable.

99. In relation to terrorism, in our professional experience, the costs of insuring against terrorism is standard practice. We note that it had been included covered by the insurance policies since 1 July 2019, initially being explicitly included within the buildings insurance and in subsequent years being sought as separate insurance. We find the inclusion of the risk of terrorism and the premium of £106.43 for the insurance period 1 July 2021 to 30 June 2022 to be reasonable.

100. In relation to insurance for the excess cover, in the context of the Property having had 2 previous significant insurance claims for flooding in 2019 and 2021, we note that the building insurance, at a cost of £4,002.47, could only be obtained with an excess of £100,000. We do not consider it unreasonable for the Respondent to have sought insurance for flooding. Neither do we consider it to be unreasonable for the Respondent to seek to mitigate the exposure to the £100,000 excess by obtaining further indemnity infill insurance, which they did at an additional cost of £13,264.66 By the letter dated 25 November 2021, on our reading, the leaseholders were given the option of not taking the infill insurance for the excess, but the leaseholders did not appear to take this option.

101. The Applicants did not provide any evidence of comparable insurance for flood risk provided by other providers to suggest that the premium was unreasonable. They have not provided any evidence that other providers would not also have asked for an excess of £100,000 for flood risk. Neither did they provide evidence of any quotes for insurance on the assumption that flood prevention works had been carried out.

102. We have considered whether the increase in premium was affected by the alleged misrepresentation of the building as a Grade 2 listed building. We consider that such a categorization is likely to have impacted on the premium. However, we have no evidence from the Applicants as to the extent of that impact and what the premium would have been without such a categorization. We are therefore unable to quantify any prejudice caused to the Applicants.

103. Regarding flood prevention works, we do not agree with Ms Marshall's interpretation of Clause 16 of the Ninth Schedule of the Lease, as the Ninth Schedule refers to Covenants by the Applicants as lessees not the Respondent as lessor.

104. We have considered whether the Respondent or their agents have been negligent in failing to carry out flood prevention work to mitigate the risk, thus resulting in an increase in the premium. In such circumstances, following the decision in *Continental Property Ventures Inc v White and Anor [2006] 1 EGLR*, the Tribunal could consider equitable set off for the damage caused by the Respondent or Warwick's neglect.

105. There is limited evidence that, following the insurance claims in either 2019 or 2021, the Respondent, Homeground or Warwick were advised or required by the insurers to carry out flood prevention works to mitigate the risk of future claims. Ms Marshall could not recall the incident in 2019 which was classed as Escape of Water and therefore it may not have been related to a flood. Comparing the 2018 and 2019 insurance certificates, they do not show a huge increase in excess for flood or escape of water. The premiums of £1938.56 and £2339.82 respectively do not demonstrate a huge increase, which suggests to us that the increase related to a cost of living/inflation rather than an increase due to increased flood risk arising from the Escape of Water claim.

106. There is limited evidence that, despite their concerns of the risk of flooding to the Property arising from the topography and water standing on the road immediately outside the Property when it rained, the Applicants formally raised those concerns in writing with the Respondent or Warwick and requested flood prevention works prior to Storm Christoph.

We accept Ms Marshall's evidence that she 'probably' raised it when discussing other matters on the phone with Warwick employees prior to the storm, but not in such a manner that Warwick appreciated that the Applicants were asking for flood prevention works. Ms Marshall has not provided any evidence of notes of telephone calls, emails or letters from the Applicants to the Respondent or Warwick in which the risk of flooding or need for flood prevention works were raised prior to Storm Christoph. Mr Stiles was not aware of any such concerns raised before Storm Christoph.

107. On the face of it, prior to Storm Christoph in January 2021, there was no evidence to suggest that Warwick or the Respondent knew that flood preventative works were advised or required (by the insurers) or had been requested by the Applicants.

108. The evidence suggests that the issue was first raised verbally with a Ms Whitehead, a property manager who was employed by Warwick from January 2021 to October 2021 inclusive at a meeting at the Property following Storm Christoph.

109. There is no evidence that when receiving the quote with the flood excess of £100,000 for the 1 July 2021 renewal, the insurers advised Homeground of possible flood prevention works that may minimize the risk and therefore reduce the excess.

110. It is likely that any flood preventative works after Storm Christoph would have had to wait until the loss adjusters had completed the 2021 insurance claim. Surveyors would have then had to report on possible flood prevention measures. If agreed by the Respondent, as such measures would likely to have cost over £250 per leaseholder, they would have required a consultation process under section 20 of the 1985 Act which has a prescribed timescale. During this period, the First Applicant was commencing the right to manage process, and therefore it was unlikely that the Respondent would have proceeded with any flood prevention measures had any been considered necessary.

111. Having had regard to the above, we do not find that the Respondent or Warwick were negligent in failing to provide flood prevention measures prior to the insurance renewal of 1 July 2021.

112. We note that the insurance brokers attempted to get alternative quotes for the indemnity insurance for the flood excess but none were willing to quote. We therefore determine that the excess flood insurance premium of £13,264.66 was reasonable.

113. In summary, we determine that the insurance premium of £17,373.56 for the period 1 July 2021 to 30 June 2022 was payable and reasonable. However, this may be academic as the Applicant's only paid £3000 of that sum out of the service charge account, with the balance being provided by a loan which we are told there is no intention by the Respondent to recover.

iii. Condition of the Property

114. In their application under section 27A of the 1985 Act application, the Applicants have not referred to any specific element of the service charge, such as costs of general minor repairs to allege that works were not carried out, or if carried out were poor quality or the charge was unreasonable for the work carried out. Neither have they referred to Warwick's management fee as being unreasonable due to the alleged lack of action by Warwick in the maintenance of the Property. We therefore cannot consider any matters relating to the alleged poor condition of the Property. The Applicants are advised to seek legal advice if they wish to pursue other legal avenues regarding this issue.

Section 20C Landlord and Tenant Act 1985
Paragraph 5(A) of Schedule 11 Commonhold and Leasehold Reform Act 2002

115. In relation to the application under section 27A of the 1985 Act, the Applicants did not make an application under either of the above sections and we make no such orders.

Costs

116. No party made an application for costs and we make no such order.

Appeal

117. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson