FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**HAV/24UN/LSC/2025/0663**
Property	:	**Flats 1 – 8 Chilworth Heights, Chilworth Drove, Southampton, SO16 7JH**
Applicants	:	**Malcolm Henley and Others shown on the attached Schedule**
Representative	:	**Mr Rabby Fozlay Counsel instructed by Scott Bailey LLP Solicitors, Lymington**
Respondent	:	**BH Ground Rents Limited**
Representative	:	**Mr Paul de la Piquerie, Counsel instructed by Addleshaw Goddard LLP Solicitors, Manchester**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Mr C Norman FRICS Valuer Chairman** **Mr A Crawford MRICS** **Ms T Wong**
Venue	:	**Havant Civil Justice Centre**
Date of Hearing	:	**21 and 22 January 2026**
Date of decision	:	**24 June 2026**

DECISION

Decisions of the Tribunal

(1) The Tribunal finds that the tankerage costs for foul water removal fall outside of the service charge provisions and are irrecoverable by the Respondent.

(2) The Tribunal finds that the professional fees incurred by the Respondent in relation to the tankerage issue, the Nattadon claim (see below), the investigation of alternative means of drainage are all outside the scope of the service charge provisions and are irrecoverable.

(3) The Tribunal finds that the legal and litigation costs incurred by the Respondent in relation to the Nattadon claim, and the claim against the Respondent's predecessor in title are outside the scope of the service charge provisions and irrecoverable.

(4) The Tribunal finds that the amount of the additional reserve fund required during the next seven years is £16,093. This is an annual equivalent over seven years of £2,298.92 or £287.36 per flat.

(5) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(6) The Tribunal makes an order under Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's litigation costs in these proceedings may be recoverable as an administration charge under the respective leases.

(7) The Tribunal orders the Respondent to repay the Applicants their application and hearing fees within 28 days.

The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2020, 2021, 2022, 2023, 2024 and 2025.

2. The amounts in dispute were not agreed by the parties. Mr Fozlay helpfully annexed a table to his skeleton argument. In summary the parties' respective positions ~~was~~ were as follows: Applicants £54,685 for tankerage, ~~£54,974,40~~ £54,974.40 for legal and professional fees and nil for the reserve fund. The Respondent's position was £47,177 and £37,288 and £15,000 respectively.

3. The Applicants also apply for orders under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and under Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

The Hearing

4. The Applicants were represented by Mr Rabby Fozlay, counsel at the hearing and the Respondent by Mr Paul de la Piquerie, counsel. Both provided detailed skeleton arguments for which the Tribunal is very grateful. It was necessary for the Tribunal to sit late in order to finish the case on the second day. As a result, the Tribunal permitted the Applicants to submit a written Reply following the hearing, which was served.

The Background

5. The property which is the subject of this application is a former country house which was converted into eight luxury flats in or around 2009. The building is in an isolated location and there is no mains drainage. The property was built with a water treatment plant. The water treatment plant has never worked as intended.

6. This failure caused a nuisance to arise, by foul water flooding, affecting an adjoining property known as Nattadon. The owners of Nattadon, a Mr and Mrs McNamara, successfully brought proceedings against the Respondent in the County Court at Central London in claim number C66YM642. This resulted in an Order from Recorder ~~Ellison~~ Ellington and a Judgment from HHJ Roberts (see below).

7. Following these proceedings, the method adopted by the landlord to abate the nuisance was to use the water treatment plant as a cesspool. This has been and continues to be the subject of a 2 weekly evacuation of foul water by tanker. These costs of around £8,000 per annum have been charged to the service charge of the Applicants. In addition, the sRespondent has charged to the service charge account substantial costs in relation to legal fees and professional fees. These costs are all disputed by the Applicants as falling outside the service charge provisions under the lease.

8. On 12 July 2010, Chilworth Heights RTM Co Ltd ("the RTM") was incorporated and became responsible for management functions, until dissolved on 6 November 2019.

9. On 22 December 2012, the Respondent purchased the freehold interest in Chilworth Heights, under an Agreement with Banner Homes Group Plc. At clause 6.5 of that agreement, the Vendor agreed to carry out, at its own expense, all works required in respect of "*the disclosed drainage issue*" and indemnify the Respondent against the cost of the same.

10. The parties did not request an inspection, and the Tribunal did not consider that one was necessary.

The Scope of the Proceedings

11. In the Respondent's statement of case, Mr de la Piquerie submitted that the way the application had been put was limited to an application under s. 27A and not s. 19 of the 1985 Act. He submitted that the Tribunal was restricted to considering the question of payability and not as to whether the disputed service charges had been reasonably incurred or work not done to a reasonable standard.

12. Counsel submitted "This means that the question for the FTT is whether the Respondent as landlord has made decisions which are in accordance with the Lease or not (per Lord Justice Nugee in *Bradley v Abacus Land 4 Limited* [2025] EWCA Civ 1308 at Paragraphs 68 and 69). Where the contractual clause states that it allows recovery if the landlord acts *reasonably*, it is the case that the landlord will have acted in breach of that clause: "*if, and only if, it can be said to have acted unreasonably or to have not exercised a reasonable discretion. The very fact that the Landlord is given a discretion indicates that where there is a range of possible views, it is the Landlord who is entitled to choose between them. It is not therefore a question of how the FTT would have chosen had the decision been for them, but of whether the Landlord's choice was outside the range of permissible decisions. Only if it was will the Landlord have acted in breach of contract such as to entitle the FTT to decide that the service charge is not payable.*" (per Lord Justice Nugee at Para.72)."

13. In reply, the Applicants submitted that *Bradley v Abacus* was not authority for the proposition advanced. Mr Fozlay submitted that section 19 did not apply in that case because the leaseholders were not challenging reasonableness. He submitted that under section 27A, as part of the Tribunal's jurisdiction to decide payability, reasonableness is also invoked as referenced at Paragraph 29 of the Upper Tribunal decision. He submitted that the Applicants' challenge to the reasonableness of the sums in dispute was made clear in the application form. The Tribunal should determine both recoverability and the reasonableness of the costs. The sums in dispute were not reasonably incurred or reasonable in amount because they fall under the Respondent's responsibilities or liabilities and are recoverable from the developer/vendor.

Decision on the Scope of the Application

14. The Tribunal prefers the Applicants' case. It agrees with Mr Fozlay that in *Bradley,* section 19 was not engaged on the facts. The dicta of Judge Cooke in the Upper Tribunal were not rejected by the Court of Appeal. In the present case, sums in issue were specifically referenced in the

application form. The application and statement of case did not reference section 19, but the Tribunal finds that a challenge under that provision was implicit for the reasons set out by Judge Cooke when considering the scope of section 27A in *Bradley*.

<u>The relationship of the present parties with their predecessors</u>

15. The Respondent submitted that it was relevant that past members of the RTM were also Applicants in the present proceedings. The 3rd, 5th and 13th Applicants were former directors of the RTM. Therefore, the parties were not identical but there was an overlap. The Tribunal expressed the view that this was not a relevant consideration because actions carried out by the RTM being a corporate body could not be imputed to individual Applicants in the present proceedings. The judgment of HHJ Roberts also states that the Respondent was an associated company–of Banner Homes Southern Limited which carried out the development.[1] That too has been entirely disregarded by the Tribunal.

<u>The County Court Proceedings</u>

16. The salient parts of the Order of Recorder ~~Ellison~~ Ellington dated 31 January 2022 were as follows:

> 1. The Defendant shall carry out works to the property known as Chilworth Heights to remediate the drainage arrangements upon the said land to prevent a continuation of the nuisance caused by the flow of drainage water from Chilworth Heights onto the Claimant's property known as Nattandon. Provided that the obligation to carry out remediation works is subject to:
>
> 1.1 the investigation by the Defendant of the feasibility and costs of the options for carrying out such works (including the obtaining of all necessary permissions and easements);
>
> 1.2 the drawing up of the scope of the required works and the tendering process; and
>
> 1.3 compliance with all statutory requirements upon which the Defendant will need to comply with in order to recover any of the costs of the works from the leasehold owners of Chilworth Heights.

[1] Para 5

17. The Salient Parts of the Judgment of HHJ Roberts dated 17 August 2022 were as follows:

> 45. I find that the remediation of the defective design, construction and installation of the drainage system installed by Banner Homes Southern Limited in 2007-2008 is not, as a matter of construction, a management function with respect to services, repairs, maintenance, improvements, insurance and management. Mr de la Piquerie asked the Court to have particular regard to the word “improvements” but did not say any more than this. I find that the replacement of the drainage system, which could never have been made to work, is not an improvement. It is a complete replacement of a system which the Defendant accepts could never provide adequate and reasonable surface and foul water drainage. The Defendant’s expert Chartered Surveyor, Mr Cushing, says in his witness statement, dated 1 August 2022, at Paragraph ~~1541~~ 15[41],
>
> > “AKS Ward’s[2] clear opinion appears to be that as such follow-on advice been obtained, it may have led to the conclusion that the soakaway solution was not an overall suitable solution for the site drainage at Chilworth Heights.”
>
> 46. I note that the cost of the remedial works is very substantial. In the Defendant’s witness statement from Mr Cushing, Chartered Surveyor, dated 1 August 2022, he says at Paragraph 24,
>
> > “For indicative purposes only, the original costing was c£195,000 excluding VAT and inflation.”
>
> [...]
>
> 48. I find that the remedying of the defective design, construction and installation of the drainage system installed by Banner Homes Southern Limited in 2007-2008 does not, as a matter of construction, fall within the ambit of Schedule 8, Paragraph 19. The necessary remedial works cannot be construed as repairing, maintaining, inspecting and as necessary reinstating or renewing the conduits; the necessary remedial works amount to a complete replacement of the existing drainage system with a differently designed system. Similarly, I find that the necessary remedial works do not fall within the scope of clauses 22, 23 and 24. I find that

[2] Construction consultants for the Respondent

the case of *Collins* (supra) referred to by Ms Akther helpfully summarises the law that the words "repair, amend or renew" did not involve the tenant in rendering up the premises in a different condition from that in which they were demised.

The Lease

18. The leases are granted for a term of 125 years from 1 January 2008. The relevant definitions in the Particulars and definitions [106][3] are as follows:

> "Communal Areas and Facilities : [include]
>
> (xi) The Treatment Plant
>
> (xiii) any other facility or facilities which is not
>
> referred to in this Lease but_which is designed or intended for the common use of the Tenants and purchasers on the Estate
>
> "Conduits "…includes flues ventilating ducts cisterns tanks radiators water and electricity and gas supply pipes sewers soakaways manholes drains tubes meters Treatment Plant Gas Tanks soil pipes waste water pipes […]
>
> "The Included Rights": the rights easements and privileges contained in Schedule 2 hereto
>
> "The Treatment Plant" means the sewerage treatment plant as shown on the Plan".

19. By clause 3 the tenant covenants to comply with Schedules 4, 5 and 10. By clause 5 the landlord covenants to comply with Schedule 8. At Schedule 1 the Demise expressly excludes at 7.3 any "Conduits in the Estate which do not serve exclusively the Demised Premises […]"

20. Schedule 2 headed "The Included Rights" states:

> 2. The right in common with all other persons entitled to the like right to the free and uninterrupted passage and running of gas electricity water and soil and all other services to and from the Demised Premises in

3 Numbers in square brackets denote page references in the main bundle

through and along the Conduits now laid or which may at any time during the Perpetuity Period be laid in or through the Estate or any part thereof and serve the Demised Premises.

21. Schedule 5 obliges the tenant

> To pay to the Landlord without any deduction whatsoever:
>
> 1.1 the Tenant's Service Charge Proportion of the expenses which the Landlord shall in relation to the Estate Leasehold Property and Communal Areas and Facilities reasonably and properly incur in each Maintenance Year in complying with the covenants on its part contained in Schedule 8 hereto (including the provision for future expenditure therein mentioned)".

22. Schedule 6, Part II provides:

> 1. The Aggregate Maintenance Provision in respect of each Maintenance Year shall be computed so as to make provision for:-
>
> 1.1 The whole of the expenditure estimated as likely to be incurred in the Maintenance Year by the Landlord for the purposes mentioned in Schedule 8
>
> 1.2 An appropriate amount as a reserve [...]

23. Schedule 8 provides:

> "Subject to payment by the Tenant of the Maintenance Charge and all other sums due under this Lease without deduction and provided that the Tenant has complied with all the covenants agreements and obligations on his part to be performed and observed the Landlord hereby covenants:
>
> 19. To repair maintain and inspect and as necessary reinstate or renew the Conduits not exclusively serving the Demised [...]
>
> 22. To provide maintain and (if necessary) renew any foul waste and storm water pumping stations and ancillary equipment serving the Estate as the Landlord may reasonably think fit
>
> 23. To provide inspect maintain repair reinstate and renew any

other equipment and to provide any other service or facility which in the opinion of the Landlord it is reasonable to provide for the benefit of the Estate

24. To manage and administer the Estate and protect the amenities of the Estate and for that purpose if necessary to employ a firm of managing agents or consultants or similar and to pay all costs fees and expenses incurred by the Landlord

24.1 in the running and management of the estate and the collection of the aggregate maintenance provision and other rents and service charges issuing therefrom

24.2 in making such applications and representations and taking such action as the landlord shall reasonably think necessary in respect of any notice or order or proposal for a notice or order served under any statute order regulation or bye law on the tenants or on the landlord in respect of the estate

24.3 in the preparation for audit of annual accounts [...]

24.4 in the enforcement of the covenants on the part of the tenant [...]

24.5 in the enforcement of the covenants on the part of the tenant as to payment of the aggregate maintenance provision [...]

24.6 in seeking a declaration that the interim maintenance charge or the maintenance charge are reasonable

24.7 In respect of any notice or order or proposal for a notice or order served under any statute order regulation or bye law on the tenant [...]

24.8 in the performance of any such other duties as may from time to time be assigned to him by the landlord or are otherwise imposed on him by the provisions of this lease or ~~buy~~ by any statute or statutes for the time being in force

26. To abate any nuisance and execute such works as may be necessary for complying with any requirement notice or direction served by a local statutory or competent authority in

connection with the Estate or any part thereof insofar as the same is not the liability of or attributable to the Tenant or to any other Tenant or under Tenant of the Leasehold Property...

...

29. <u>To accumulate such sum or sums from time to time as the Landlord shall consider desirable for the purpose of accumulating one or more reserve funds as a reasonable provision against the future expenditure to be or expected to be incurred at any time in connection with the maintenance management or improvement of the Estate</u>

30. To pay all other expenses (if any) incurred by the landlord in and about the maintenance and proper and convenient management and running of the estate including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Estate Building or any part of the Communal Area and Facilities (except insofar as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or may be liable therefore) any interest paid on any money borrowed by the Landlord to defray any expenses incurred by it and specified in this Schedule any costs reasonably incurred by the Landlord in accordance with the performance of its obligations herein contained [...]".

<u>The 'Applicants' statement of case</u>

24. The 'Applicants' statement of case may be summarised as follows. The Nattadon claim resulted in a judgment in the County Court from HHJ Roberts dated 17 August 2022. The judge held that the cause of flooding was systemic failure in the design construction and installation of the new surface of foul water drainage system installed at the block in 2008. He found that the remedying of the defective design construction and installation did not fall within the landlord's obligations under Paragraphs 19, 22, 23 and 24 of schedule 8 of the Applicants' leases. The Respondent is now litigating against the developer of the block in relation to the defective drainage. The Respondent has implemented an "interim works" being removal of wastewater by tanker at the cost of £6-£10,000 per year. The Applicants live with the threat of effluent

backfilling into their flats, so they must avoid overloading the system. There is a foul smell when the tank is emptied and noise. When surveys are carried out damage is caused to the gardens. The market value of the Applicants' flats is adversely affected.

25. By letter dated 24 May 2023 the Respondent relies solely on Paragraph 23 of schedule 8 of the leases in contending that the cost of removing the waste is recoverable as a service charge. Paragraph 23 of schedule 8 requires the landlord to *"provide any other service or facility which in the opinion of the landlord it is reasonable to provide for the benefit of the estate"*. This cost is not recoverable under Paragraph 23 or elsewhere because it is not a service for the benefit of the estate but aa service for the benefit of the Respondent to abate the flooding nuisance to Nattadon. Further, Paragraph 23 is a sweeper provision. Moreover, the cost of removing waste water by tanker is unreasonable because the Respondent should fix the underlying problem.

26. Legal costs have also been demanded as service charges. In so far as these relate to the Nattadon claim or any claim pursued by the Respondent against the developer such costs are not recoverable under the terms of the lease. Costs relating to nuisance caused by the Respondent to land owned by aa third party are irrecoverable as being unreasonably claimed as a service charge by the Respondent. Further if the Respondent intends to recover its legal costs against the developer, from *Avon Ground Rents Ltd v Cowley* it is not reasonable to require the Applicants to meet these costs now.

27. The service charges include significant sums for professional fees and feasibility studies. Insofar as these costs relate to advice, studies or other matters relating to remedying the defective drainage system and/or the fees of experts instructed to give evidence in litigation such costs are not recoverable as a service charge. Such works fall outside schedule 8 of the lease.

28. The Respondent's demand towards the reserve fund of £15,000 for the year ending 31 December 2025 is excessive. The Respondent already holds £57,000 in such funds. The planned preventative maintenance programme upon which this demand is based [from Bawdia[4], see below] is overly cautious and provides for excessive estimates. No amount should be allowed for the years in question.

The Applicants' Witnesses

29. Mr Peter Barry was called having given a witness statement verified by a statement of truth. He adopted the evidence of Mr Malcolm Henley (see below). In summary he acquired the flat in 2021 with Mrs Barry. He had been informed about a problem with the sewerage system but had been

[4] Surveyors who provided a planned preventative maintenance report in 2023

assured by the vendors that it would be sorted fairly soon. The landlord had ignored the problem and operated the sewerage system as a cesspool leading to regular emptying and extremely high service charges. This has reduced his standard of living and led to mental stress, physical stress and financial anguish. Routine maintenance has not been carried out. In cross-examination he accepted he had been in arrears but was not now.

30. Miss Rita O'Grady, with permission of the Tribunal gave evidence as set out in the witness statement of her late husband John O'Grady. This may be summarised as follows. She adopted the evidence of Mr Henley. She could not sell the property. When she bought in May 2022, she was not aware of the problems, and she bought in good faith. She was told 2 hours before completion that there were problems and could not back out of the purchase. It was an international move. There had not been an overflow of the tank, but they had come close. She had decided to withhold payment of service charges. No enforcement action had been taken. The consequences of noise, smell and the financial burden had affected her mental health.

31. Mr Graham Jones was called. His evidence may be summarised as follows. He adopted the evidence of Mr Malcolm Henley. He had bought the property with his wife in June 2016. He was made aware on the day of completion of the dispute with a neighbouring property. However, he was informed that the drainage system had been altered and the dispute was historical only. He had not been made aware that the drainage was not fit for purpose. He had suffered great distress and inconvenience as a result of this matter. This had affected his mental health and caused financial anguish and physical distress. There has been a lack of normal maintenance on the property. He had marketed the property in 2024, and a prospective purchaser withdrew as a result of the drainage system not being operational. He had reduced the price twice, but the buyer refused to proceed. The property is unsaleable. In cross-examination he accepted that the RTM had taken the view the interim solution charges could be charged to the service charge account. The RTM ceased to perform its functions in November 2019. The interim solution was only adopted by the RTM as a temporary solution. The residents wish to reclaim the money back from 2018. They had no choice but to incur these costs.

32. Mr Malcolm Henley gave evidence having submitted a witness statement verified by statement of truth. He supported the Applicants' statement of case. He was authorised to communicate with the managing agents on behalf of all Applicants. He annexed a chronology of events. He had been active in trying to get the underlying problem resolved. An NHBC report from September 2019 stated that the treatment plant was being used as a cesspool and surface water was not getting into the soakaways. This problem has been continuing for 12 years causing great strain on his mental health, financial anguish and physical distress. Routine maintenance has been delayed or stopped.

33. Problems were identified in 2012/13 and thereafter the situation became worse. It was recognised early that the soakaway system was not capable or was incorrectly installed requiring a replacement soakaway system which was built in March 2013. That too was ineffective and, in the end, the complete drainage system had to be closed down, with waste water and effluent being removed by tanker. Two pseparate technical drainage surveys have been conducted. Mr ley'sHenley's chronology stated that following surveys in 2018, exited foul water was returning to the plant causing the electric motor to burn out. Following a CCTV survey the residents were advised that the Klargester tank should be capped off converting it into a cesspool requiring regular emptying. NHBC investigated and found that the soil strata were unsuitable for the level of soakage required. The soakaways were also not correctly installed.

34. The sRespondent has shown a dismissive attitude towards the Applicants. The major hike in service charge amounts results in the properties being unsaleable. The interim solution of waste water removal by tanker has been in place for 6 years. The 'Respondent's costs in their proceedings against the original developer should not be recoverable. The exact amount of legal costs incurred by the Respondent has never been sufficiently particularised. Professional fees incurred by the Respondent in relation to the defective drainage system will not provide a benefit to the block or its residents but only for the Respondent. In cross-examination Mr Henley stated that he had not read the RTM defence to the County Court proceedings or seen the County Court order. He had inferred from the judgment that the asRespondent was responsible for repairing the drainage system. He considered that the lessees should recover the drainage costs incurred going back to 2018. The landlord should pay for its own professional advice. Contributions to the reserve fund must be prudent.

The Applicants' submissions

35. Mr Fozlay submitted that the Respondent could recover from third parties. The lease provisions must be interpreted in accordance with *Arnold v Britton* [2015] UKSC 36. Paragraph 7 of the defined terms of the lease included the treatment plant as "communal areas and facilities". Conduits under Paragraph 8 were defined so as to include the treatment plant. The estate meant all of the freehold land in accordance with Paragraph 11. Paragraph 17 defined "The included rights" as the rights and easements and privileges contained in schedule 2. Paragraph 19 defined "the leasehold property" as such part or parts of the estate upon which the landlord is constructing apartments to be disposed of on a leasehold basis. Paragraph 29 defined "treatment plant" as the sewerage treatment plant shown on the plan. In the lease, clause 2 defined the demised premises and rights. Clause 3 was a covenant by the tenant to perform obligations under schedules 4, 5 and 10. Clauses 4 and 5 obliged the landlord to comply with schedules 7 and 8. Mr Fozlay submitted that Paragraph 4 of schedule 1 included all conduits serving

exclusively the demised premises. It excluded conduits not exclusively serving the premises [Paragraph 7.3].

36. Mr Fozlay submitted that schedule 2 [Paragraph 2] included rights in common with other persons entitled to the like right to the passage of water and soil to and from the demised premises in through and along the conduits. He submitted that a breach would be a derogation of grant by the landlord.

37. Mr Fozlay submitted that Paragraph 1.1 of schedule 5 obliged the lessee to pay its proportionate part of any costs pursuant to schedule 8. Schedule 6 part 2 at Paragraph 1.2 also provided for a reserve. Mr Fozlay submitted that the consequence of the judgment was that direct and indirect costs both temporary and permanent, as a consequence of the failure and design of the drainage system fell outside of the service charge provisions, applying *Arnold v Britton*.

38. Mr Fozlay submitted that Para 22 of Schedule 8 "*To provide maintain and (if necessary) renew any foul waste and storm water pumping stations and ancillary equipment serving the Estate as the Landlord may reasonably think fit*" was not engaged under the defined term "Treatment Plant" because no pumping was involved.

39. In relation to Paragraph 23 of schedule 8 "*To provide inspect maintain repair reinstate and renew any other equipment and to provide any other service or facility which in the opinion of the Landlord it is reasonable to provide for the benefit of the Estate*" Mr Fozlay submitted that there was an express obligation to provide for the removal of soil from the flats and that failure to do so was derogation of grant. Furthermore, the current provision is not a benefit because it is an express or implied right obligation under the terms of the lease. "*Benefit of the estate*" meant all of the freehold land not part only. Tankerage does not benefit all of the freehold land, only the ~~leasehold property~~ Leasehold Property (as defined in the lease) Nattadon and/or the Respondent .

40. Paragraph 24 of schedule 8. "*To manage and administer the Estate and protect the amenities of the Estate and for that purpose if necessary to employ a firm of managing agents or consultants or similar and to pay all costs fees and expenses incurred by the Landlord: 24.1 in the running and management of the Estate and the collection of the Aggregate Maintenance Provision and other rents and service charges issuing therefrom*" only relates to managing agents and consultants costs. It does not relate to the estate i.e. all the freehold land. The treatment plant is not referenced.

41. Paragraph 26 of schedule 8 "to abate any nuisance" should be read in context. The Respondent cannot recover the cost of its own nuisance.

42. Mr Fozlay referred to Paragraph 30 which states "*To pay all other expenses (if any) incurred by the Landlord in and about the*

maintenance and proper and convenient management and running of the Estate including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Estate Building or any part of the Communal Area and Facilities (except insofar as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or may be liable therefore) any interest paid on any money borrowed by the Landlord to defray any expenses incurred by it and specified in this Schedule any costs reasonably incurred by the Landlord in accordance with the performance of its obligations herein contained…". Mr Fozlay submitted that the costs of rectification of inherent defects including the tankerage costs are only recoverable under Para 30. Applying *Avon v Cowley* [2019] EWCA Civ 1827, the Respondent could recover the costs from a third party.

43. In terms of legal fees and professional fees Mr Fozlay submitted that they do not relate to management and running of the estate or equipment servicing of the estate. Recovering these costs from the Applicants would undermine the judgment of Judge Roberts.

44. The reserve fund contribution should be limited to £2,000.

The Respondent's Submissions

45. The submissions may be summarised as follows:

"Statement of Case

21. By a claim numbered C66YM642 ("the County Court Claim") a Mr and Mrs McNamara as Claimants brought an action in nuisance against the Respondent as Defendant. Mr and Mrs McNamara were (and remain) the owners of the premises known as 'Nattadon' which adjoins Chilworth Heights. Mr and Mrs McNamara averred in the County Court Claim that foul water had escaped since around 2013 out of the foul water drainage system (known as The Treatment Plant in the Leases as set out above) at Chilworth Heights, onto Nattadon.

22. The RTM Co was a Part 20 Defendant in the County Court Claim. The reason why was that by virtue of its status as RTM Company, it had had the obligation of discharging the landlord's covenants under Schedule 8 of the Leases during its existence (by the time of trial it had been dissolved as below). Accordingly, if the nuisance were established, then the Applicants' worry was that it would be held liable in damages for the period during its existence, and, perhaps, that directors of the RTM Co might be held liable and/or to have breached their obligations under sections 172 – 174 of the Companies Act 2006 and/or the

fiduciary duty they owed to the Company in the performance of their role.

23. In the County Court Claim the RTM Co's pleaded position, in Paragraphs 9.4, 9.5, 9.7, 10, 12.1 to 12.4 and 23 of its Defence, was that the proper construction of the landlord's obligations in Schedule 8 of the Leases did not include remedying the problems with the surface and foul water drainage system because they were caused by 'inherent defects' and the landlord's obligations did not extend to remedying the same. By contrast, the Respondent pleaded in the County Court Claim that such an obligation was included within its obligations under Schedule 8.

24. In the County Court Claim the RTM Co acted by (some of) and had the support of all of the current Applicants. The RTM Co was then dissolved on 26 January 2021 which was shortly after the Claimants served a schedule of loss on the other parties in the County Court Claim.

25. Some of the Applicants nonetheless attended the trial in the County Court Claim, which was before HHJ Roberts on 16 and 17 August 2022. It was pointed out to the Applicants by the Respondent that there was a difficulty with the Applicants' argument in the County Court Claim; in trying to achieve the short-term advantage of not being held liable for the nuisance whilst the RTM Co had existed by arguing that the landlord's obligations under Schedule 8 of the Leases did not include remedying the problem, they were inviting the Judge to reach findings which would mean that the Respondent (as the successor to the RTM Co as landlord) would have no obligation to the tenants under the Leases to remedy the problem in the future.

26. By a judgment handed down on 17 August 2022 by HHJ Roberts in the County Court Claim the Judge found in favour of the Claimants in the County Court Claim and held, as the Applicants had wanted, that the problems with the surface and foul water drainage system were caused by 'inherent defects', and that the obligations of the landlord in Schedule 8 of the Leases do not extend to fixing them. Those findings were contained in Paragraphs 32, 45, 48 and 49 of the judgment. In Paragraph 28 of the judgment the Judge referred to Paragraph 12.3 of the RTM Co's Defence, in which the argument above was made by the RTM Co. The RTM Co's argument was additionally adopted by counsel for the Claimants, who referred to it at trial.

27. The result of the County Court Claim, and the arguments advanced by and endorsed by the Applicants within it, is that the

Applicants achieved their short-term goal of avoiding a finding of liability to Mr and Mrs McNamara. However:

a. The Respondent's covenants to the Applicants in Schedule 8 of the Leases do not include remedying the problems complained of (and have been so found by the Court);

b. The Respondent is under no obligation to the Applicants to do anything. It cannot be said by the Applicants (in case there were any doubt) that a failure to do anything by the Respondent would be either a breach of covenant for quiet enjoyment or derogation from grant, because in order for such an omission to be so there would have to be a positive obligation on the Respondent elsewhere in the Leases to do the thing omitted (Westminster (Duke) v Guild [1985] Q.B. 688).

28. By a claim numbered E02CL778 issued on 25 September 2018 in the County Court at Central London ("the Existing Claim") the Respondent as Claimant brought a claim against (1) Banner Homes Southern Limited and (2) Banner Homes Group Limited as Defendants. The First Defendant was the developer that developed Chilworth Heights to residential flats and installed the surface and foul water drainage system. The Second Defendant was the Seller from whom the Respondent bought the freehold title to Chilworth Heights.

29. The claim against the First Defendant is brought in negligence in the installation of the surface and foul water drainage system. The claim against the Second Defendant is in breach of contract because, apparently aware that there were defects with the surface and foul water drainage system, the Second Defendant as seller covenanted with the Respondent as buyer, inter alia, in clause 6.5 of the Share Purchase Agreement dated 20 December 2012 under which Chilworth Heights was sold: "*the Seller agrees to carry out at their own expense all works required in respect of the repair or likely relocation (by reference to the attached plan) of the disclosed drainage issue at Chilworth Heights and will indemnify the Buyer against the cost of the same*". The Second Defendant did not do so. In the Existing Claim the Respondent seeks, inter alia, specific performance requiring the problems with the surface and foul water drainage system to be remedied.

30. The Existing Claim, because in part of the Applicants' position in the County Court Claim above, is the only means by which the Respondent can reasonably achieve legal redress in respect of the defects to the surface and foul water drainage system.

31. The Defendants have defended the Existing Claim. The Existing Claim has been transferred to the TCC List.[...]

32In an attempt to expedite the resolution of the problems with the surface and foul water drainage system the Respondent as Claimant has corresponded extensively with Banner Homes Southern Limited in order to try to settle the Existing Claim on terms that require the fixing of the problem by the Defendants. As a result of those efforts by the Respondent:

a. The parties nearly attended a mediation on 19 September 2022. The reason the mediation did not happen was that Banner Homes Southern Limited refused, at short notice, to attend, for unspecified reasons. The Respondent criticised Banner Homes Southern Limited for so doing and tried to re-arrange the mediation, but was unable to do so because of the conduct of Banner Homes Southern Limited; and

b. Pressurised Banner Homes Southern Limited to find a method/instruct an expert to find a method by which the problems with the surface and foul water drainage system could be resolved. This included granting Banner Homes Southern Limited a licence dated 18 January 2024 for access and works. It appears to be the case that Banner Homes Southern Limited did instruct Hydrock Consultants Limited to inspect and report on proposed remedies for the surface and foul water drainage system, but that Banner Homes Southern Limited was unhappy with the resulting findings because they required rights to be granted by third parties including the Forestry Commission who own the adjoining Lords' Wood. As is set out in Paragraphs 33 and 34 below, it is the Respondent's case, following its own investigations, that proper remedying of the problems with the surface and foul water drainage system requires an expensive and difficult new scheme which also cannot be implemented without rights being granted to Chilworth Heights by adjoining land owners.

33. This will be the subject of expert evidence as directed.

34. In an attempt to expedite the process of remedying the matters complained of the Respondent instructed AKS Ward Construction Consultants to consider remediation of the inherent defects to the surface and foul water drainage system. The work done by AKS Ward included percolation testing at Chilworth Heights. It has been concluded that the ground at Chilworth Heights cannot provide adequate drainage and that, as apparently was also concluded by Banner Homes Southern Limited as above, any process of remedy requires carriage and

discharge over and onto land belonging to third parties and so requires consent. It is also estimated that such work would cost approximately £225,000."

46. The Respondent also submitted that professional fees are recoverable under clause 23 because they were part of providing a facility for the benefit of the estate, under clause 26 because they have been incurred in abating a nuisance and under clause 30 because they were incurred in performance of the Respondent's obligations under schedule 8 of the lease.

47. Further the fact that remedying an inherent defect is outside the scope of schedule 8 does not mean that the Respondent cannot recover the cost of investigating it and implementing an interim solution for the benefit of the estate. It was reasonable for the Respondent to try to help the Applicants by investigating and adopting an interim solution to prevent the entry of sewage into their flats and by investigating remedying the underlying defects.

48. The reserve sums demanded were a reasonable proportion. The RTM had also demanded contributions towards a reserve fund.

49. In his skeleton argument and orally Mr de la Piquerie made additional submissions. In the nuisance claim the Respondent was not ordered simply to remedy the inherent defects. Recorder Ellington ordered that the defendant should do work to remediate the arrangements upon the land so as to prevent the continuation of the nuisance, which is different from remedying the defects. Further the order was not unconditional because it was not obvious how the remedying of the defects could be carried out, if at all. The Recorder ordered "*the investigation of the feasibility and costs of the options for carrying out such works including the obtaining of all necessary permissions and permits and drawing up of a scope and tendering*". The Respondent complied with the order, and the nuisance has been abated.

50. The Applicants' case is that using the treatment works as a septic tank [cesspool] instead of a treatment plant is conceptually unreasonable and that some unspecified other solution should have been implemented by the Respondent to remedy the inherent defect.

51. The Respondent has acted on the expert advice it has been given. The interim solution cannot be described as a breach of contract or unreasonable. AKS Ward's advice proposed two remedial solutions but suggested that there are significant problems with them. They would require rights over nearby land belonging to third parties. They might involve requisitioning the sewer from Southern Water costing in excess of £225,000. Had the interim solution not been of benefit for the estate and its amenity sewage would be backing up into the flats. If the Respondent chose to implement a costly alternative it would be unable to recover the cost. Further the Applicants are in arrears of service

charges. The Applicants have adduced no evidence that the tankerage costs are unreasonable.

52. Mr de la Piquerie submitted that the costs are recoverable under clause 22 of schedule 8 because the interim solution is the provision and maintenance of the foul water pumping station and ancillary equipment serving the estate. It falls under clause 23 because it is the provision of a service or facility which the Respondent thinks is reasonably for the benefit of the estate. It also engages clause 24 because it is part of managing and administering the estate and protects the amenities of the estate. Clause 26 applies because it has abated the nuisance claim by the adjoining landowners. It falls within clause 30 because the costs are reasonably incurred ~~in~~ by the landlord in accordance with performance of its obligations.

53. In relation to the nuisance claim, the Respondent was a defendant. The impression given by the judgment is that it was not unreasonable for the Respondent to fight the nuisance claim. The fact that Respondent lost that claim is not a bar to recovery of legal costs. The fees are reasonable and proportionate. None have been specifically challenged. The fees are recoverable under Paragraphs 30 and 24 of schedule 8.

54. In terms of the existing claim the Respondent acted reasonably. It is to the advantage of leaseholders. *Avon Ground Rents Ltd v Cowley* does not support the 'Applicants' position that the Respondent should not seek its costs through the service charge at present. In *Avon Ground Rents* the Court of Appeal held that each case turns on its own facts and there is also a substantial difference between a case where liabilities have been admitted and where they are disputed as here. If the Respondent does recover its costs, credit will be given to the leaseholders. The leaseholders have not particularised challenges to the level or nature of legal costs.

55. In terms of professional fees these fall within schedule 8 Paragraphs 22, 23 24, 26 and 30. The Applicants' case is that the Respondent should have remedied the inherent defect and the fact the Respondent lost the nuisance claim means the professional advice was wasted. No particular point is taken about the quantum.

56. The reserve fund requested is based on professional advice and is exacerbated by arrears. There was no assertion that the reserve fund cannot be demanded contractually, or that certain items were outside its scope.

57. Mr de la Piquerie also cited *Triplark Ltd v Martin Howard* [2025] UKUT 232 (LC), *Sella house v Mears* [1989] 21 HLR 14 and *Imperion v Broadwalk House Residents Ltd* [1995] 2 EGLR 47 in interpreting recoverability of legal costs.

58. He also submitted that from *Hafton Properties v Camp* and *Another* [1994] 1 EGLR 67 that arguments relating to non-derogation of grant

cannot be used to expand the landlord's obligations under the lease. He submitted from *Jackson v J H Watson* [2008] EWHC 14 (Ch) that the law of nuisance cannot be used to expand a landlord's covenant to repair.

59. The interim solution is a benefit to the amenity of the estate as the interim solution is better than the position before. It stopped sewerage backing up into the subject flats. The landlord is under no obligation to remedy an inherent defect. No solution has been identified as a possible remedy to the underlying defect. There is no expert evidence. The Respondent has acted on expert evidence by Mr Selway and AKS Ward.

60. The Definition of "estate" cannot mean "the whole estate, " having applied commercial sense following *Arnold v Britton*.

The Respondent's Witnesses

61. Mr Selway gave evidence having given a witness statement verified by statement of truth. Mr Selway is a member of the Royal Institution of Chartered Surveyors and has been employed as an asset manager by Schroders Capital since November 2022. Schroders have a mandate to manage the properties owned by the Respondent. He took over asset management in November 2022. The Respondent purchased the freehold from Banner Homes Group in December 2012. Banner Homes Southern Ltd utilised a Klargester septic tank. An alternative system had been proposed. It became apparent in 2012 that there was flooding with wastewater, and the system was not working as intended. The ground has inadequate permeability to absorb treated wastewater. He referred to the McNamara proceedings.

62. To deal with the issue of wastewater flooding a temporary solution was implemented whereby the storage tank was pumped out on a biweekly basis. This had commenced in early 2020. There is no alternative temporary solution. It was both reasonable and necessary for the Respondent to do this.

63. The Respondent is not legally liable to remedy the inherent defect within the drainage system as a result of the court ~~judgement~~ judgment. Banner Homes should remediate the drainage defect. Proceedings were issued in 2018 against Banner Homes by the Respondent. Mr Selway's evidence referenced the clause in the purchase agreement whereby Banner Homes would "*carry out at their own expense all works required in respect of the repair or likely relocation of the disclosed drainage issue and would indemnify the buyer against the cost….*" The Respondent is seeking an order for specific performance and damages.

64. The only possible solutions are for wastewater to be discharged over third party land, or, to cross the land of a third party to connect to other drainage. Either would be difficult and expensive. It was reasonable for the Respondent to have instructed experts to progress the resolution of the drainage issue.

65. Mr Selway accepted that the Respondent must address the nuisance but not inherent defects. He said that the Respondent is sympathetic to the Applicants.

66. Ms Hodgson's evidence may be summarised as follows. She is a property team manager at Rendall & Rittner (R & R) property managers. Her team is the South-Central team comprising 7 staff members. R & R are instructed by the Respondent via Schroder Capital. She has worked at R & R since 15 March 2022 and managed Chilworth Heights between 28 March 2022 and May 2023. She confirmed the contents of the witness statement from Alan Winter, a colleague at R & R.

67. There were significant service charge arrears at the property arising from disputes in connection with the interim solution. This prevented day-to-day services being carried out. The legal professional fee invoices exhibited to Mr Winter's witness statement were accurate for the period of time during her management. The RTM had put its legal fees through the service charge. She agreed with Mr Winter's comments in relation to the reserve fund.

68. Mr Rodney Alan Winter (known as Alan Winter) gave evidence. He is a senior property manager at R & R. He began working for R & R on 16 May 2023. R & R took over from Evolve Block & Estate Management Limited which acted for Chilworth Heights RTM Company Ltd, which ceased in November 2019. The handover from Evolve to R & R was not detailed. Mr Winter exhibited a spreadsheet setting out items in dispute. Leaseholders were in arrears to £64,357.64 as of 9 October 2025 and a schedule of arrears was exhibited. As a result of the arrears there were serious challenges in managing the building.

69. It was reasonable for R & R to commission the interim solution. The costs of Drain Tech Tankers Ltd are competitive and have not materially increased over time. He was satisfied with the service. Absent the interim solution, the Applicants would still have to pay for the repair and maintenance of the septic tank under Paragraph 22 of schedule 8 of the lease.

70. Mr Winter exhibited invoices for legal fees in relation to the Respondent's costs of resolving the ongoing drainage issue and previous litigation with the neighbouring property. He also exhibited professional invoices incurred by the Respondent in seeking to resolve the drainage issues.

71. As to the reserve fund, the Respondent has sought £15,000 based on a report prepared by Brawdia which was exhibited. This set out a preventative maintenance and replacement schedule for each building component. The report was prepared by qualified surveyors. This advises that a sufficient reserve is £141,325 with a further £66,075 for contractors' overheads, professional fees and contingencies. This requires reserve contributions of £21,140 per annum, collectively for leaseholders for the next 10 years. R & R have adjusted that figure and reduced it to £15,000. The amount actually in the reserve fund is £19,399.46 and not the £57,000 cited by the Applicants which is the amount that should be in the reserve fund. The property [post conversion] is 16 years old and maintenance issues will need to be dealt with including to wooden balconies which have rotted, and which had been subject to a section 20 consultation. The cost is approximately £22,000 plus VAT per balcony so the project cost will be £118,000 including surveyors' fees.

72. In cross-examination he said that there was never a pump in the treatment plant from which foul water was sucked out. The Respondent had made a loan to enable the Drain Tech invoices to be paid. The

Respondent was responsible for abating the nuisance. During his management the Applicants have always disputed the interim solution and legal costs for the nuisance claim and legal costs. The balcony works could not be carried out because of lack of funds.

73. Mr Winter accepted that the provision for reserves had increased greatly since 2020 when they were £2,000. This was as a result of the Brawdia report. The £25,000 reserve in 2024 reflected £10,000 for the section 20 balcony works.

74. In relation to the Brawdia report, Mr Winter explained that several of its entries were no longer required as the expenditure had been taken into account in day-to-day costs or had been completed. In answer to questions from the Tribunal these differences were identified by Mr Winter and embodied in a schedule forwarded to the Tribunal after the hearing. This showed that the amount contended for was now £56,225 plus contractors' ~~preliminary's~~ preliminaries , professional fees and contingency.

Discussion

75. The Tribunal found that all the Applicants' witnesses were credible. The Tribunal finds that the drainage problems have caused great strain on the tenants and prevented flat sales. The Tribunal accepts the evidence of those tenants who bought leases in recent years that they were not informed about the problem prior to exchange of contracts.

76. In relation to the Respondent's witnesses the Tribunal notes that none was directly involved with the property before 2022. It finds that all three witnesses were credible. However, in relation to Mr Winter, the Tribunal is concerned that it was only during questioning from the Tribunal that it emerged that many of the entries in the Brawdia PPM were no longer relevant. This should have been made clear in Mr Winter's witness statement. In addition, Mr Winter only had direct knowledge of the treatment plant since 2022.

77. The leading case on contractual interpretation is *Arnold v Britton* [2015] UKSC 36 as referred to above. Lord Neuberger said this at Paragraph 25:

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Limited v Persimmon Homes Limited* [2009] AC 1101, Para. 14 . It does so by focussing on the meaning of the relevant words …in their documentary, factual and commercial context. That meaning has to be assessed in the light of: (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall

purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial commonsense, but (vi) disregarding subjective evidence of any party's intentions."

78. The Tribunal finds that the treatment works do fall within the definition of Conduits not exclusively serving the demised premises under Sch. 8 Para 19. However, the Tribunal finds that the evacuation of effluent biweekly is not "maintenance" of the conduits, within the meaning of that Paragraph. This is because (i) it was not in the contemplation of either party when the lease was granted, applying *Arnold v Britton* (ii) this is not maintenance of the Klargester treatment plant as originally designed but maintenance of a cesspool following substantial alterations which included the bunging up of outlets and removal of the motor and (iii) it is provision of a new service. It arises only because the original treatment plant has been converted into a cesspool as a result of the inherent defect.

79. The treatment plant when built was as a foul water pumping station and therefore within Sch. 8 Para. 22. It clearly contained motorised components and Mr Henley referred to it containing a pump in his chronology. However, the biweekly tankerage cost is outside the scope of Para 22 for the same reasons given above.

80. The Tribunal finds that the reason why the tankerage is being undertaken by the landlord is to comply with the Order of Recorder ~~Ellison~~ Ellington. It is not being carried out to confer a benefit on the tenants, which is incidental. The Tribunal also finds that it does not confer a benefit on the Estate within the meaning of Sch. 8 Paragraph 23. Applying *Arnold v Britton*, such a benefit has to be judged against the status quo at the time when the leases were entered into. At that time the Klargester system was thought by the tenants to be fully functional. The Tribunal infers that the original vendor also considered that the system was functional or proceeded on that assumption. Against that yardstick, the tankerage is not a benefit. In fact, it still represents a disbenefit in terms of noise nuisance smell.

81. In considering the recoverability of litigation costs and professional fees the Tribunal has considered *Triplark Limited v Martin Howard and 55 Others* and the review of past authorities cited within it. The Tribunal finds that the weight of authority requires specific reference to legal and professional costs being included in the clause wording. However, it accepts that this is not always required. In the present case the Tribunal finds that the legal and professional costs fall outside any of the lease covenants, for the reasons below.

82. Sch. 8 Para. 24 is concerned with managing the estate and protecting the amenities of the estate and auditing. Legal and litigation costs are not mentioned. The Tribunal finds that it does not extend to litigation costs

in relation to Nattadon nor the costs of consultants in investigating alternative means of providing sewerage, or in pursuing the original developers.

83. The Tribunal finds that Sch. 8 Para. 26 (abating nuisance) does not extend to the cost of litigation in relation to abating nuisance. The clause makes no reference to legal costs. Many nuisances (for example removing a fallen tree across a boundary onto land owned by another) will not ordinarily give rise to any legal or litigation costs. Therefore, such an extended meaning would require clear words.

84. In Sch. 8 Para. 30 the first clause "*proper and convenient running of the Estate"* does not include the cost of the tankerage for the same reason as for Paras. 19 and 23. The second clause in relation to structural defects does not apply because the cost may be recoverable from a third party, namely the developers, who are being actively pursued by the Respondent in live litigation.

85. The Tribunal therefore finds that none of the tankerage, professional fees incurred in connection with the drainage issue, or any legal costs incurred are recoverable as service charges under the leases. It is unnecessary for the Tribunal to make further findings on other matters raised on construction of the lease.

The Reserve Fund

86. The Tribunal finds that the 2023 Brawdia report is a credible basis for provision of a reserve fund, once the necessary adjustments were applied to it. This is because it was prepared by chartered surveyors for this specific purpose. The Tribunal finds that the adjusted figure of £56,225 as set out on the attached spreadsheet which reflects the evidence of Mr Winter in the witness box is appropriate for total costs over the remainder of the 10 year term from February 2023. This excludes provisions for the section 20 balcony works.

87. As at the hearing date that was approximately seven years. To this should be added the contractors' overheads and profit and professional fees each at 15% of £8,433.75 respectively giving a total of £73,093. The Tribunal does not consider that a contingency is appropriate for a reserve fund which by its very nature is an estimate only. The Tribunal is not concerned with the cash position of the Respondent but with the amount of the reserve fund as stated in the accounts. This shows a fund of £57,000. This is a difference of £16,093. This is an annual equivalent over seven years of £2,298.92 or £287.36 per flat. The Tribunal finds this sum payable.

Applications under s.20C, and Para 5A Sch.11

88. In the application form Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and

taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

89. The Applicants also apply for an order under Paragraph 5A Schedule 11 of the 2002 Act. For the same reasons, the Tribunal orders that none of the landlords' costs in these proceedings may be recovered as an administration charge for litigation costs under the leases.

90. The Tribunal orders the Respondent to reimburse the Applicants their application and hearing fees within 28 days.

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).