

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	HAV/00HE/LSC/2024/0601
Property	:	Atlantic Bays Holiday Park, St Merryn, Tregolds, Padstow PL28 8PY
Applicant	:	Point Curlew Residents Association (recognised tenants association)
Representative	:	J Sharples of counsel, instructed by Coodes LLP
Respondent	:	Atlantic Bays Holiday Park Limited (landlords)
Representative	:	A Gourlay of counsel, instructed by Charles Russell Speechlys LLP
Type of application	:	Determination of liability to pay service charges s.27A Landlord and Tenant Act 1985
Tribunal Members	:	Tribunal Judge M Loveday R Waterhouse FRICS
Venue	:	The Court House, Truro (27 April) and Bodmin Law Courts (28-29 April)
Date of Hearing	:	27-29 April 2026
Date of decision	:	13 July 2026

DECISION

Introduction

1. This is an application to determine liability to pay service charges under s.27A Landlord and Tenant Act 1985 ("LTA 1985"). The matter relates to leasehold chalets at Atlantic Bays Holiday Park, Padstow. The Applicant is a recognised tenant's association under s.29 LTA 1985, representing the tenants listed in the schedule to the application. The Respondent is the landlord.

Background

2. The factual background was summarised by the Deputy President in *Francis v Sandoz* [2021] UTLC 174 (LC); [2022] L. & T.R. 1:

> "1. The Atlantic Bays Holiday Park at St Merryn, Cornwall is a 25-acre site on a former RAF base which was developed for holiday use in the 1970's. It includes areas occupied by permanent holiday chalets and lodges, and separate areas for touring caravans and a camping field. Communal facilities are provided on the Park for the use of residents and visitors. In 2008 the appellants, Mr and Mrs Francis, acquired the freehold interest in the Park from the St Merryn Holiday Estate Management Company Ltd, a company whose shareholders were the long leaseholders of chalets on the Park.
>
> 2. All of the chalets (except the 17 owned by Mr and Mrs Francis) are let on long leases which include a covenant by the Park owner, now binding on Mr and Mrs Francis, to maintain the Park and provide certain services. The leases also include provision for the leaseholders to pay service charges to meet the cost of those services. Each year the leaseholders are required to pay an estimated charge, with a balancing charge or credit being applied at the end of the year.
>
> 3. Since their acquisition of the Park from the leaseholders' company in 2008 Mr and Mrs Francis and the leaseholders

have been in almost constant dispute over the cost of providing services.

3. As mentioned by the Deputy President in *Sandoz*, the site has a very long history of litigation. The leaseholders and the former freeholders (a Mr and Mrs Francis) have previously been involved in numerous matters in the courts and tribunals, up to and including the Court of Appeal. But for present purposes, it is only necessary to refer to another decision of this Tribunal dated 9 March 2017 *Atlantic Bays Holiday Park, St Merryn, Cornwall PL28 8PY* (CHI/00HE/LIS/2015/0013), a copy of which was exhibited to a witness statement from Mr Adrian Pattereson ("the 2017 Tribunal decision"). The Tribunal returns to the 2017 Tribunal decision below.

4. The Respondent acquired the freehold from Mr and Mrs Francis on 20 January 2023, and it now manages the site with the help of various group companies. The Respondent operates a service charge year which corresponds with the calendar year. But despite the change of ownership, the disputes referred to in *Sandoz* have continued.

5. The present application was issued on 10 September 2024 by Ms Moira Street on behalf of the Applicant, seeking a determination of liability to pay service charges during the 2023 service charge year. The parties produced a Scott Schedule identifying numerous issues in dispute. Although there are several versions of this schedule in the hearing bundle, the final iteration was provided as a separate document with the Applicant's skeleton argument.

6. Directions were given on 28 February 2025, 28 April 2025, 1 October 2025 and 14 November 2025 and the matter was listed for a final hearing on 27-29 April 2026. Both parties were represented at the hearing by counsel: Mr John Shaples for the Applicant, and Ms Amanda Gourlay for the Respondent. The Tribunal is grateful to both for their helpful and economic submissions.

The application to adjourn

7. The first matter was an oral application by the Respondent's counsel, who applied to adjourn the hearing. The Tribunal refused the application, with its reasons to be given in this determination.

8. It is first necessary to give a brief outline of the unfortunate procedural history. A 1-day hearing was originally listed for 1 October 2025, but this was adjourned and replaced by a case management hearing. The matter was then listed for a 3-day hearing at Bodmin Court House commencing on Tuesday 17 February 2026. On 13 February 2026 (i.e., the Friday before the 3-day hearing), the Respondent applied to adjourn the hearing because the partner of the Respondent's key witness, Mr Macdonald, had suffered a stroke. The Tribunal granted this application and vacated the 3-day hearing. A fresh hearing was then arranged for 27-29 April 2026 at Truro Law Courts (day 1) and Bodmin Court House (days 2-3). The unusual listing arrangement reflected the difficulties finding suitable court premises in this part of Cornwall.

9. On 21 April 2026, an application to adjourn the second 3-day hearing was made by the solicitors for the Applicant, essentially on the grounds that the parties were close to settlement. This application was supported by the Respondent. The application was initially refused on 22 April 2026. Regional Judge Whitney set aside the order of 22 April 2026. But he substituted his own decision not to adjourn the final hearing for the reasons given by him on 24 April 2026.

10. On 27 April 2026, both parties attended the scheduled hearing with counsel and witnesses. They sought time to discuss matters to narrow the issues. But they were unable to make any progress, and the hearing proceeded at 13:15. The Respondent renewed its application to adjourn at this point.

11. In contrast to the two previous applications, on this occasion the argument reverted to the ill-health of Mr. MacDonald's partner. Mr

MacDonald had travelled to Truro and was present for the settlement discussions, but he lived in Cambridgeshire. His partner had suffered a partial stroke in February following by a later stroke. She had then been re-admitted to hospital with other serious medical conditions (details were given to the Tribunal, but it is unnecessary to set them out in this decision). She was currently undergoing therapy at home. Ms Gourlay explained Mr MacDonald was both a witness and the main source of instructions for the Respondent. He had made arrangements to care for his partner while he was away. The Applicant opposed the application to adjourn.

The Tribunal's decision

12. Although it is material that the Regional Judge has already refused an application to adjourn, the Tribunal retains a general discretion to adjourn a hearing under rule 6(3)(j) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

13. The application has a sorry procedural history, with the adjournment of two previous final hearings. Plainly, three listings for a final hearing are disproportionate to the costs of a service charge dispute for a single year – as well as the resources of the parties. The difficulties for the resources of the Tribunal are illustrated by the unusual arrangements that had to be made to find a venue for the second 3-day hearing. The Tribunal also notes the lateness of the application and the fact that it raises issues which were known about (but not mentioned) in the two previous applications made in April 2026. Against this, without Mr MacDonald attending the hearing, serious prejudice could possibly be caused to the Respondent, and it might not be able fully to participate in the hearing took place as planned. The Tribunal accepts Mr MacDonald's difficulties are indirectly caused by a genuine medical condition, but this is not of course the same as the illness of the witness himself.

14. Ultimately, the Tribunal considered a flexible approach would have enabled the hearing to proceed and allow Mr MacDonald to participate fully in the proceedings. The Tribunal therefore indicated at the hearing that since Mr MacDonald was already in Truro, he could give his oral evidence right away and return home to Cambridge later in the afternoon. As to giving instructions, the Tribunal offered Mr MacDonald a video feed to enable him to follow the Bodmin part of the proceedings from home. He could be in telephone contact with his solicitors to give instructions.

15. The Tribunal gave both these indications when it refused the adjournment. In the event, Mr MacDonald completed his evidence on the first day. But he chose to remain in Cornwall rather than returning to Cambridge, and he attended the second and third days of the hearing.

The Lease

16. The application refers to "the Lease" and exhibits a copy of a lease of chalet no.149 dated 1 February 2005. The directions given on 14 November and 1 October 2025 both required the bundle to include "A specimen lease, with a schedule setting out any relevant variations in other leases." The bundle includes a copy of the lease of chalet no.149, but there is no schedule of variations.

17. For the avoidance of doubt, references below to "the Lease" are to that lease. The material covenants in the Lease appear in Appx. A to this decision.

Apportionment

18. Two issues arose about apportionment of the Estate costs to arrive at the service charges for each chalet. Clause 4 of the Lease does not fix this apportionment: It is a matter of contractual discretion for the landlord: see *Aviva v Williams* and *Abacus* (below).

19. The first issue was about the apportionment which was in fact used. In his skeleton argument, Mr Sharples argued the Respondent used the "wrong" apportionment figure for the interim charges and that the "correct divisor [for these charges] was 183". He submitted the Tribunal had jurisdiction to determine that the interim charges under clause 2(q) of the Lease should have been based on a divisor of 183. Ms Gourlay suggested the Respondent had in fact used a divisor of 1983, and that that was the number of chalets at year end.

20. In the event, it does not appear there is any issue between the parties. It is common ground that at year end, the Respondent apportioned using a divisor of 183. Whatever figure was used at the start of the year, the Tribunal is not concerned with the 2023 interim charges.

21. The second point is the form of the Lease. Given the directions referred to above, it was something of a surprise when (late on in the hearing), the Applicant took the point that the lease of chalet 149 differed in material respects from other chalet leases.

22. The difference lies in the physical extent of the "Estate" referred to in clause 4 of the Lease. The "Estate" is referred to in Recital (2):

> "The lessor is the owner in fee simple of a holiday estate known as St Merryn Holiday Estate Point Curlew St Merryn Padstow Cornwall (hereinafter called "the Estate").

The lease for chalet 149 does not therefore purport to define the Estate by reference to any plan, and the lease plan simply showed easements over estate roads: see para 1 of Sch.1 to the Lease. It appears to be accepted that for the purposes of that lease, "the Estate" includes all parts of the site, including all the areas referred to in *Sanchoz* at [1] and [15].

23. On the third day of the hearing, the Applicant produced various leases for other chalets which define the "Estate" in different ways. Chalets 72 and 74 expressly define the "Estate" by reference to a lease plan showing

the whole of the Estate. The leases of chalets 157 and 181 have a similar definition of the "Estate", but the lease plans show a smaller area edged red. This smaller area excludes about 25% of the larger site, an area sometimes described as the "lodge area". It therefore appears there are (at least) two types of chalet lease.

24. Plainly, if other chalet leases define the area of the "Estate" more narrowly than the Lease, those lessees may not be liable at all for some costs incurred in relation to other parts of the site. The issue may affect apportionment (as well as allocation of costs between parts of the site). Counsel referred to para 10 of the 2017 Tribunal decision, which mentioned the difference between the two types of chalet lease, although on that occasion the parties pragmatically agreed the same apportionment of site costs should be applied to all of the chalets. In this case, counsel invited the Tribunal to apply different apportionments to the two different kinds of lease. Mr Sharples described the two as a "Type 1" and "Type 2" apportionments. Ms Gourlay objected to the argument being raised, largely because the distinction was not pleaded "in any shape or form".

25. The Tribunal declines to make the distinction suggested by counsel, for the following reasons:
    (1) As Ms Gourlay says, the point is not raised in any statement of case or in the Scott Schedule. The Applicant has not previously suggested different "Type 1" or "Type 2" apportionments in this application.
    (2) The Applicant has not explained the effect of this distinction. Which chalets have "Type 1" apportionments, and which chalets have "Type 2" apportionments? And what is the Applicant's case as to the effect on the service charges payable by each?
    (3) The Applicant has not complied with directions given on 1 October and 14 November 2025. Both required it to provide "a schedule setting out relevant variations in other leases".

(4) The suggestion there should be different apportionments was made very late indeed, and after close of witness evidence. The witnesses did not therefore comment on the argument.

Against this, it could be said it is artificial to ignore the new evidence because the leases speak for themselves. But that ignores various possible arguments available to the Respondent:

(1) It is possible the various leases might have a different interpretation, depending on the meaning of Recital (2) and the weight to be attached to markings on the lease plans.
(2) It is also possible that an estoppel by convention operates, which binds both the relevant lessees and the landlord. Whether such an estoppel exists would require the Tribunal to hear evidence, and that evidence was not provided at the hearing.

At this late stage, it is therefore not fair or just to allow an argument to be raised to the effect that different apportionments should be applied to different chalet leases.

26. This clears the way for a consideration of the contractual issues in this matter. The Tribunal will apply the terms of the Lease as it appears in the bundle.

The evidence

27. The Tribunal heard from the following witnesses, who were also cross-examined at the hearing:

(1) Mr Adrian Pattenden, the spouse of the lessee of chalet no.149 (for the Applicant); and

(2) Mr David MacDonald, the General Manager of the site (for the Respondent.

The Tribunal is grateful to both for giving evidence. Mr Pattenden provided useful background. But as a non-lessee, he was able to provide

only limited help with questions of fact. Mr MacDonald's evidence, where pertinent, is set out below.

The Law

28. As to the meaning of the lease terms, the principles for interpretation of contracts are helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] EWSC 36; [2015] A.C. 1619 at [15]:

> "[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of
> (i) the natural and ordinary meaning of the clause,
> (ii) any other relevant provisions of the lease,
> (iii) the overall purpose of the clause and the lease,
> (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and
> (v) commercial common sense, but
> (vi) disregarding subjective evidence of any party's intentions."

No special rules of interpretation apply to leases: *Arnold v Britten* at [23].

29. Section 19(1) LTA 1985 is as follows:

> **19 Limitation of service charges: reasonableness.**
> (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
> (a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

The approach to the assessment of 'reasonableness' is of course dealt with in some detail by Lewison LJ in *Waaler v Hounslow LBC* [2017] EWCA Civ 45; [2017] 1 WLR 2817. But the statutory context of s.19(1) LTA 1985 was explained by Lord Neuberger in *Daejan v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [42]:

> "It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a)."

30. In closing submissions, Ms Gourlay suggested a sequential approach:

(1) Step 1: Decide whether the relevant costs are recoverable under the lease terms. That is a matter of contractual interpretation, applying the principles in *Arnold v Britten*;

(2) Step 2: If recoverable, decide whether the relevant costs are reasonably incurred for the purposes of s.19(1) LTA 1985, applying the principles in *Waaler v LB Hounslow*; and

(3) Step 3: If reasonably incurred, decide the allocation and/or apportionment of costs. Since the Lease gives the landlord a discretion on this, the Tribunal's power is a power to review: *Aviva Investors Ground Rent GP Ltd v Williams* [2023] UKSC 6; [2023] A.C. 855 at [15]. And the test is one of '*Braganza*'-rationality: *Aviva v Williams* and *Bradley v Abacus Land 4 Ltd* [2025] EWCA Civ 1308; [2026] L. & T.R. 4 at [73].

In particular, counsel stressed that s.19 LTA 1985 does not apply to Step 3, because s.19(1) LTA 1985 must bring 'something to the party' which rationality does not bring: *Abacus* at [69-70].

31. Save in one respect, the Tribunal agrees with this approach. The qualification is with Step 3, which is dealt below under "allocation of costs.

Allocation of costs

32. The issue of allocation of costs[1] was explained in *Sandoz* at [15-17]:

> "15. As the FTT explained in its decision, the Park is divided into several sections. Short term visitors pay a fee for the use of the camping or caravan fields but do not contribute directly to the service charge paid by the leaseholders. The cost of services provided to the Park as a whole is apportioned between the different parts of the site, and the leaseholders contribute to that part of the total which is assessed as of being of benefit to them. For example, the appellants arrange for insurance of the Park under a single policy, and the premium is split between the chalets and lodges on the one hand, and the other areas. The appellants meet the cost apportioned to the caravan and camping areas as an expense of their business and pass on the cost apportioned to the chalets and lodges through the service charge."

33. The allocation of costs between the chalet area and other areas of the site has been dealt with on previous occasions, particularly in the 2017 Tribunal decision. For example, in its decision §77 and 85, the 2017 Tribunal found that:

(1) Electricity metered through the "the meter serving the Clubhouse and pumphouse … should be borne equally" between the chalet/lodges and the landlord.

(2) Electricity metered through the "the meter serving the toilet block

[1] The Tribunal uses the verb "allocate" in this sense, to distinguish it from the apportionment of Estate costs to arrive at an individual lessee's service charge.

… should be borne in proportion as to the number of chalet/lodges and touring pitches benefitting or likely to benefit (i.e. 70/30)

(3) As for the rest of the electricity consumed on site, "the most appropriate apportionment should be in accordance with the number of units benefitting, therefore split as to 70% to the service charge and 30% to the Respondent's business.

34. Many of the disputed items in the Scott Schedule raise questions of allocation of costs at Step 3. It includes a column for the allocation adopted by the landlord in each case – generally giving figures of 50% or 70% of overall costs, but in some cases allocating 0% or 24% of site costs to the service charges for the chalets. In many cases, the allocations used by the Respondent followed the 2017 Tribunal decision. But in some cases, they did not. Equally, the Applicant argues for allocations which in some instances differ from the 2017 Tribunal.

The Step 3 test

35. In oral submissions, Mr Sharples submitted that the test at Step 3 §30 above was not a test of "rationality" or "objective reasonableness": see *Abacus* at [67-71]. The Court of Appeal concluded at [72-3] that:

> "72. So, I agree that the requirement that the Landlord act reasonably does mean reasonably, and not just rationally. But I do not think that by itself answers the question. The question for the FTT as I have said is whether the Landlord acted in breach of contract. The Landlord will have acted in breach of contract 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.
>
> 73 What then is the limit of permissible decisions? I do not think one can improve on the way it was put by Lewis LJ in argument, namely that a decision is a permissible one if it is one that a landlord acting reasonably could reach. Or to put it negatively, the landlord's decision will be flawed only if it is one that no reasonable landlord could have reached."

Given the wording of clause 4 of the Lease, Mr Sharples submitted that the Tribunal has jurisdiction to determine a "fair and equitable proportion" of the Estate costs at Step 3.

36. The Tribunal considers the Applicant's suggested approach reads too much into the above passages in *Abacus*. It is important to understand that these statements must be read in the context of the covenant which was under consideration in that *Abacus*. In that case, the equivalent provision to clause 4 of the Lease was that the allocation of costs was "such part as the Landlord may otherwise reasonably determine". This explains why (in the passage cited above) the Court of Appeal suggested "a decision is a permissible one if it is one that a landlord acting reasonably could reach" (our emphasis).

37. It follows that the Step 3 test in this case is not whether the landlord acted "reasonably" or indeed rationally. It is whether the landlord acted contractually. In this instance, the contractual requirement is for the landlord to allocate costs "fairly" and "equitably". The test for review in *Abacus* §72 can therefore be reframed for the purposes of this case as follows:

> "a decision is a permissible one if it is one that a landlord acting [fairly and equitably] could reach. Or to put it negatively, the landlord's decision will be flawed only if it is one that no [fair and equitable] landlord could have reached."

The Tribunal therefore reviews the landlord's decisions at Step 3, by asking itself whether the Respondent's allocation of costs was one that no fair and equitable landlord could have reached.

Previous tribunal decisions

38. Another issue common to the many allocation issues is the materiality of the 2017 Tribunal decision. Ms Gourlay submitted that previous court and tribunal decisions in relation to the Park in relation to apportionment must be treated with some caution, because they appeared to reflect the pre-*Aviva v Williams* position, as exemplified in *Oliver v Sheffield City Council* [2017] EWCA Civ 225; [2017] 1 W.L.R. 4473. Mr Sharples placed more weight on the 2017 Tribunal decision. It created an issue estoppel between the parties, unless the relevant facts had significantly changed, or the earlier decision was plainly wrong: *Hemmise v Tower Hamlets BC* [2016] UKUT 109 (LC) at [21].

39. The Tribunal prefers Ms Gourlay's contention. The 2017 Tribunal's approach to this issue was explained in its decision §61:

> "Instead, the Tribunal has looked at the type of cost and applied what it considers to be the most appropriate apportionment. So, for example, site maintenance (which involves mainly grass cutting) is more appropriately apportioned as to the number of units that benefit or are capable of benefitting from the service."

That is essentially the approach to the exercise of the Tribunal's functions in *Oliver v Sheffield*. But the correct approach to the Tribunal's role in relation to apportionment is now set out in *Aviva v Williams* and *Abacus*. The Tribunal therefore agrees with Ms Gourlay that no weight should be attached to the apportionments in the 2017 Tribunal decision.

40. That clears the way to a consideration of the individual items of cost in the Scott Schedule

Professional and legal costs

41. In the 2023 service charge year, the Respondent incurred costs of £172,036.40 on professional and legal costs, of which £126,303.48 was allocated to the service charges for the chalets. The Applicant admitted the leaseholders were liable to contribute to £56,987 of costs.

Item 1: Solicitors fees (£1,000)

42. LMP Law solicitors invoiced the Respondent for £1,000 in respect of professional fees on 29 June 2023. The Respondent allocated the whole of these costs to the service charges for the chalets. The Applicant disputed liability for these costs.

43. The Applicant's case was that LMP Law was no longer trading. Mr MacDonald stated in evidence that when LMP Law was first instructed, the firm was paid for advice on account. The solicitors' retainer letter was in the bundle, and this referred to a "payment on account of our costs in the sum of £1,200 (£1,000 plus £200 VAT"). In cross-examination, he explained the payment was essentially a 'set-up fee' for initial administrative work the solicitors had to carry out when they accepted instructions.

44. Ms Gourlay submitted the legal costs fell within clause 2(q) and para 6 of Sch.3 to the Lease ("fees paid to … solicitors employed by the Lessor in regard to the management of the Estate"). She relied on Mr MacDonald's evidence. Mr Sharples submitted there was no evidence any services were provided "in regard to the management of the Estate". The legal costs were therefore not payable under para 6 of Sch.3 to the Lease and the costs were not "incurred" for the purposes of s.19(1)(a) LTA 1985.

45. <u>The Tribunal's decision</u>. On the balance of probabilities, the Tribunal finds legal services were provided in relation to LMP's initial fees. The retainer letter suggests the fees were on account of future work. And it is

known the solicitors did future work, including letter writing and litigation (up to and including the conduct of the present proceedings to late 2025). It follows the costs fell within para 6 of Sch.3 to the Lease and they were "incurred" for the purposes of s.19(1)(a) LTA 1985.

Item 2: Architect's fees (£2,000)

46. Reynolds Associates invoiced the Respondent for £2,000 + VAT in respect of professional fees on 14 December 2023. The Respondent allocated the whole of these costs to the service charges for the chalets. The Applicant accepts liability for £1,400 of these costs.

47. Mr MacDonald stated in evidence that the architects oversaw the implementation of planning consents relating to drainage upgrades on the part of the site where the chalets were located. This was the reason the costs were allocated 100% to the chalets. In cross-examination, he explained the drainage upgrades were for surface and waste-water. He was taken to the 2017 Tribunal decision §77, which suggested "every part of the site does actually benefit from the whole site being well drained". The 20217 Tribunal apportioned the cost, resulting in 70% being payable by the chalet owners. Mr MacDonald said he took the 2017 Tribunal decision into account, but considered that on this occasion an apportionment of 100% was more appropriate.

48. Ms Gourlay submitted the architect's costs fell within clause 2(q) and para 6 of Sch.3 to the Lease ("fees paid to architects … employed by the Lessor in regard to the management of the Estate"). She relied on Mr MacDonald's evidence as to the allocation of costs based on the fact the works were wholly to the chalet part of the site. Mr Sharples relied on the 2017 Tribunal decision, which related to works carried out on other parts of the site. In effect, the present circumstances were the reverse of the same argument. It was not fair and equitable to allocated 100% of the costs to the chalet owners, and counsel submitted the proper allocation should be 70%.

49. The Tribunal's decision. The Tribunal has explained the approach it adopts to the allocation of costs above. The Applicant's decision to allocate 100% of Architect's costs to the chalet owners was based on the fact the works were being carried out to 'their' part of the site. This decision was one a landlord acting fairly and equitably could reach. And for the reasons given above, the Tribunal is not bound by previous decisions relating to the allocation of costs between parts of the site.

Item 3: Payroll processing (£1,680)

50. On 30 September 2023, the accountants Price Bailey invoiced the Respondent and "Bourn Golf and Country Club" for £3,360 + VAT. The invoice describes the work as "Payroll processing of your weekly and monthly payroll, equating to 39 weeks and 9 months (January 23 to September 23)". The Respondent allocated 50% of these costs to the service charges for the chalets (£1,680). The Applicant accepts liability for £1,400 of these costs.

51. Mr MacDonald stated in evidence that the Respondent allocated 50% to the chalets because Price Bailey's payroll services partly benefitted other group companies.

52. Ms Gourlay relied on Mr MacDonald's evidence as to the allocation of costs based on the fact the payroll services partly benefitted the chalet part of the site. Mr Sharples submitted that it was not fair and equitable to allocated 50% of the costs to the chalet owners.

53. The Tribunal's decision. The Tribunal has explained above the approach it adopts to the allocation of costs between parts of the site. The same principles apply to the allocation of costs between group companies. The Applicant's decision to allocate 50% of the cost of payroll services is based on the fact the services also benefitted Bourn Golf and Country Club Ltd. The 50/50 split is a decision which a landlord acting fairly and equitably could reach.

Item 4: Management accounts (£1,250)

54. On 16 November 2023, the accountants Price Bailey invoiced the Respondent and "Bourn Golf and Country Club" for £2,500 + VAT. The invoice describes the work as "Preparation of 6 monthly management accounts for the period January-June 2023".

55. The evidence and arguments on each side are the same as for Issue 3. And for the reasons given above, the Applicant's case fails.

Item 5: Management cover fee (£71,400)

56. This is the largest disputed item of cost. There is an invoice in the papers dated 8 July 2024 for £102,000 + VAT, addressed to the Respondent. The invoice is on the letterhead of Cambridge Country Club, and describes the services provided as "Management charge for year ending 31/12/2023". It also requires payments to be made to Bourn Golf & Country Club Ltd. The Respondent allocated 70% of these costs to the service charges for the chalets (£71,400).

57. Mr MacDonald stated in evidence that the Respondent allocated 75% to the chalets because Price Bailey's payroll services partly benefitted other group companies. He explained that:

> "CCC has an operational team providing services remotely by drawing on staff without them being needed to be employed at the Park. CCC employed counting staff, marketeers, administrative staff, procurement and construction personnel able to complete tasks remotely where this expertise would have been expensive to source locally to the Park."

The Respondents also employed a property management company called Vickery Holman, which issued service charge invoices to the chalet owners and certified the accounts relating to the long leaseholders. There was also extensive cross-examination by counsel at the hearing. Mr MacDonald accepted the Respondent shared a common director with Cambridge Country Club Ltd, and that the latter was currently in

"insolvent liquidation". It no longer had any management responsibilities in relation to the Atlantic Bays site. He accepted the Respondent also retained Vickery Holman as managing agents in 2023 but asserted Cambridge Country Club still provided "various services". He was taken to another invoice from Cambridge Country Club dated 1 August 2023 for the provision of other similar management services. He accepted the hearing bundle did not include a copy of any contract for the provision of management services by Cambridge Country Club, although he said a copy could be provided. Mr Macdonald could not break down the £102,000 figure. When it was pointed out there were no time sheets and no documentation to show how the figure was calculated, Mr MacDonald answered that none had been requested. He was unable to say whether the invoice had actually been paid by the Respondent to Cambridge Country Club. Counsel then took Mr MacDonald to the various versions of the "Statement of the Annual Service Charge Costs for the year ending 31.12.23" in the bundle:

(1) The first showed "Professional & Legal" costs of £85,170.13, which plainly did not include the Cambridge Country Club fees. Mr MacDonald suggested these accounts were drawn up by Cambridge Country Club.
(2) The second service charge costs statement was "based off Y23 accounts audited by Price Bailey" and certified by the Respondent on 20 June 2025. Again, this did not include Cambridge Country Club's fees in the professional and legal costs of £81,111.07.
(3) The third service charge costs statement was again "based off Y23 accounts audited by Price Bailey" and certified by the Respondent on 4 July 2025, and again appeared to omit any fees for Cambridge Country Club Ltd.
(4) It was not until 28 November 2025 that the fourth version of the statement included this fee. Mr MacDonald maintained that the services were provided.

Counsel also took Mr MacDonald to a "consulting transactions" sheet for 1 January 2023 to 31 December 2023, which made no mention of Cambridge Country Club management charges.

58. The Applicant submitted that Cambridge Country Club was owned by the site owners and therefore their fees should have been covered by the 5% management fee in para 8 of Sch.3 to the Lease. There was further duplication of management costs with the managing agents Vickery Holman (£20,000) and the employed Park Manager (£29,491.40). The total management costs were not reasonably incurred under s.19(1)(a) LRA 1985. The total management charges were (in counsel's words) "exorbitant". There was nothing at all to justify Cambridge Country Club's charge of £102,000, which represented over a fifth of the total costs. There was no evidence of a contract with the company, what was contractually due, or what services were provided. The late appearance of the figures in the fourth version of the service charge statements was suspicious. Nothing should be allowed for this head of cost because it was not contractually covered by the Lease and not reasonably incurred under s.19(1)(a) LRA 1985. Ms Gourlay relied on the evidence of Cambridge Country Club's services given by Mr MacDonald. She submitted there was no evidence of duplication of services, and no evidence that Cambridge Country Club provided no services at all.

59. The Tribunal's decision. In this instance, the Respondent's evidence is that management services were provided. If so, those services were potentially within the scope of para 6 of Sch.3 to the Lease. However, that does not answer the contractual requirements of the Lease, because clause 4 only entitles the Respondent to include in the service rent an equitable proportion of certified "sums actually expended on the liabilities incurred by the Lessor". These words were considered in the *Sanchoz* decision, and the issue is referred to below in connection with the costs of providing staff accommodation. But the words "actually expended" are clear.

60. In this case, the evidence suggests no sums were "actually expended" on management services provided Cambridge Country Club during the 2023 service charge year. The invoice in the bundle is only dated 8 July 2025, and Mr MacDonald was unable to say whether even that invoice had been paid. It is also telling that the first three versions of the "Statement of the Annual Service Charge Costs for the year ending 31.12.23" made no reference to any payment to Cambridge Country Club Ltd. Two of these statements (in June/July 2025) stated they were based on audited accounts by the accountants. There is also the evidence of the "consulting transactions" sheet for 2023, which makes no mention of a sum of £102,000 "actually expended" on services provided by Cambridge Country Club during the 2023 service charge year. Other circumstances are consistent with this. It was no explained by two sets of agents were employed in 2023. Neither was it explained why Cambridge Country Club rendered at least one other invoice for management services in 2023 which did break down the services provided: see invoice dated 1 August 2023. This evidence points unequivocally to a conclusion that no moneys were "actually expended" on the alleged services during the 2023 service charge year in accordance with clause 4 of the Lease.

61. Strictly speaking it is therefore unnecessary to consider s.19(1) LTA 1985. But putting matters briefly, the Applicant has raised a *prima facie* case that the "services" provided by Cambridge Country Club duplicated services in the 1 August 2023 invoice and services provided by the managing agents and others. The Respondent has failed to give a sufficient explanation for this. The Tribunal therefore also finds the costs were not reasonably incurred under s.19(1)(a) LRA 1985.

62. The lessees are not therefore required to contribute to the £102,000 costs of Cambridge Country Club which appear in the Scott Schedule. Their service charges are limited accordingly under s.27A LTA 1985.

Site maintenance wages

63. In the 2023 service charge year, the Respondent incurred costs of £65,270.55 for on-site maintenance wages, of which £45,689.39 was allocated to the service charges for the chalets. The Applicant admitted the leaseholders were liable to contribute to £44,138.14 of these costs.

Items 6-7: Ryan Davis

64. The Scott Schedule refers to payments of £1,000 and £500 to Mr Ryan Davis on 30 September 2023 and 19 May 2023. The bundle includes a copy of "Invoice # 12" for the latter payment, which describes Mr Davis's services as "Site Management". The Respondent allocated 70% of these costs to the service charges for the chalets (£700 and £350). The Applicant accepts liability for 50% of these costs (£500 and £250).

65. Mr MacDonald explained in evidence that Mr Davis was an experienced self-employed holiday park specialist who provided IT help relating to implementation of the "ParkVu" site management system. The Respondent allocated 70% to the chalets because the management system covered management of both parts of the site. There was a value to the Respondent's business also from Mr Davis's IT work.

66. Ms Gourlay relied on Mr MacDonald's evidence. She submitted the apportionment of costs between the parts of the site was rational. Mr Davis's services primarily benefitted the chalet owners. Mr Sharples submitted that it was not fair and equitable to allocate 70% of the costs to the chalet owners. They should be allocated 50/50 as per the 2017 Tribunal decision.

67. <u>The Tribunal's decision</u>. The Tribunal has explained above the approach it adopts to the allocation of costs. The Applicant's decision to allocate 70% of the costs of IT services for the ParkVu management system is based on the fact these services also benefitted the Respondent's businesses on other parts of the site. This decision was one a landlord

acting fairly and equitably could reach. For the reasons given above, the Tribunal does not interfere with that allocation of costs.

Items 8-10: Lifting of bases

68. The Scott Schedule refers to payments of £577.50 and £770 to Mr Kyran Duff 3 November and 15 December 2023 and a payment of £440 to Mr Paul Bennett on 1 December 2023. The bundle includes copies of invoices for all three, describing the services in each case as "Lifting bases". The Respondent allocated 70% of these costs to the service charges for the chalets (£404.25, £539 and £308).

69. In evidence, the most detailed explanation of the concrete bases was given by Mr Pattenden. He referred to photographs and plans of the site. There were essentially two kinds of base. The material ones projected approximately 1.5ft above. They appeared to be formed from solid concrete faced with aerated concrete blocks. These had evidently been prepared to receive a lightweight structure similar to one of the chalets, since services could be seen protruding through the bases ready for connection, and there were prepared paths leading to the estate roads. Mr Pattenden also referred to photographs showing the bases after the Respondent's work. The above ground structure had been removed and the sites levelled and faced with concrete screed. Again, services and paths could be seen ready to receive a chalet or mobile home. Mr MacDonald explained the reference to 'lifting' the bases in the contractors' invoice costs meant removing the bases and levelling them to ground level. He said they were removed for both health and safety and aesthetic reasons.

70. The Applicant's case is that Mr and Mrs Francis laid the concrete bases in order to install extra chalets which they intended to sell, and that the Respondent should bear the whole cost of removing them. It was a commercial decision by the Respondent to 'lift' them. Mr Sharples submitted that no part of these costs therefore fell within the lease. Ms Gourlay relied on the general words of clause 4: "in connection with the

management and maintenance of the Estate and the provisions of such services as herein described". The 'lifting' of the bases also fell with paras 6 and 7 of Sch.3 to the Lease.

71. The Tribunal's decision. The Tribunal has explained above the approach it adopts to interpretation of the lease provisions. It firstly notes that although the Respondent suggested the main purpose of the works was to deal with health and safety, that is not a phrase which appears in clause 4 or Sch.3 to the Lease. The material words of clause 4 are "management and maintenance", the material words of para 6 of Sch.3 are "Management of the Estate and its appurtenances" and the material words of para 7 of Sch.3 are "Repairing renewing rebuilding decorating cleaning and maintaining those parts of the Estate … used in common with other lessees". The focus of these obligations is not therefore on health and safety considerations, but rather on the maintenance of physical structures. In this case, the photographs do not suggest the concrete bases were in any significant disrepair. In particular, they were not in such a state of physical disrepair to require the removal of the above ground elements of the bases and the provision of new level concrete plinths – again as shown in the photographs. Moreover, clause 4 and paras 6 and 7 of Sch.3 require the purpose or object of the expenditure to be considered (that is, what was the expenditure "for"): *Dell v 89 Holland Park (Management) Ltd* [2023] EWCA Civ 1460' [2024] L. & T.R. 11 at [38]. The photographs show the bases were plainly prepared with new services and paths to receive new mobile homes or chalets, rather than simply being levelled to make them safe or wind and watertight. Such work could incidentally involve health and safety concerns (or more pertinently, "maintenance" or "repair" of the "Estate"). But the object of the expenditure was to improve the bases for the landlord's commercial purposes. The Tribunal accepts the Applicant's arguments and the costs are not recoverable under the Lease.

72. The lessees are not therefore required to contribute to the allocated costs of lifting the concrete bases (£404.25, £539 and £308). Their service charges are limited accordingly under s.27A LTA 1985.

Office wages

73. In the 2023 service charge year, the Respondent incurred costs of £41,229.69 office wages, of which £13,271.53 was allocated to the service charges for the chalets. The Applicant admits the leaseholders are liable to contribute to £13,721.53 of costs, and this figure is accepted by the Respondent.

General site bills

74. In the 2023 service charge year, the Respondent incurred costs of £41,756.54 general site bills, of which £21,045.12 was allocated to the service charges for the chalets. The Applicant admits the leaseholders are liable to contribute to £16,014 of costs.

Items 11-14: EDF Energy

75. The Scott Schedule refers to payments of £3,794.58, £209.23, £161.86 and £5,038.42 to EDF Energy on 27 November, 6 December, 13 December and 31 December 2023 (£9,204.09). The bundle includes copies of invoices for payments to the energy supplier. The Respondent allocated 70% of these costs to the service charges for the chalets (£2,656.21, £146.46, £113.30 and £3,526.89 = £6,442.86).

76. Mr MacDonald's evidence was that there were 216 electricity meters on the park, of which only four were re-charged to the chalet owners. He referred to the EDF bills which gave the serial numbers for the four meters, and explained them as follows:
    (1) Meter K78D10124 - the Clubhouse/pumphouse;
    (2) Meter AB70016 - communal lighting (the meter being located next to chalet no.148);
    (3) Meter K98D01892 - the office/laundry; and
    (4) Meter D00D20965 – a ring circuit (the meter being located by chalet no.101).

The Scott Schedule suggested the electricity costs had been allocated as per a general 70% figure. In cross-examination, Mr MacDonald denied meter no.D00D20965 included electricity used for lighting the main site entrance and he also denied meter K78D10124 covered electricity consumed by the touring park. Counsel suggested to Mr MacDonald that an allocation of 50% of costs between the parts of the site was more appropriate. But Mr MacDonald said the Applicant relied on the established percentage of 70%, largely derived from the 2017 Tribunal decision.

77. Mr Sharples submitted that it was unclear which meter covered supplies to the touring/caravan site. In closing submissions, he submitted that a single split of 50% of costs across all four meters was reasonable for the purposes of s.19(1) LTA 1985, as suggested in parts of the 2017 Tribunal decision. Ms Gourlay submitted that a universal split of 70% was rational, and that a rational allocation of costs was sufficient.

78. The Tribunal's decision. The 2017 Tribunal made a different allocation of electricity costs to those adopted by the Respondent in the 2023 service charge year (although is it not altogether easy to identify the meters concerned). But for the reasons already explained, this Tribunal does not place weight on the specific findings in the 2017 Tribunal decision which relate to allocation of costs between parts of the site.

79. By the time of closing submissions, there was no dispute that the electricity costs should be allocated to the chalets using a single common percentage. The only issue was whether that percentage should be 50% or 70%. The landlord's 70/30 split is based on a broad assessment of the benefit of the electricity consumed on site and it has the very real advantage of being the established allocation for most of the electricity costs adopted since the 2017 Tribunal decision. Even if any different allocation would also be reasonable for the purposes of s.19(1) LTA 1985, the decision was one a landlord acting fairly and equitably could reach.

80. The lessees are therefore required to contribute to 70% of the costs of electricity shown in the four meters referred to above, namely £6,442.86.

Waste collection

81. In the 2023 service charge year, the Respondent incurred costs of £17,014.60 for waste collection, of which £12,812.39 was allocated to the service charges for the chalets. The bundle includes copies of invoices, principally from Biffa Waste Services.

Items 15-16 and 18-29: Waste collection (Biffa)

82. The Applicant accepts liability to pay £5,951.09 of these costs. It did so mainly by analysing the Biffa invoices, which it breaks down into invoices marked "Main Lodge Park" and those marked "Padstow Touring Park".

83. Mr MacDonald explained he personally negotiated a new waste collection contract with Biffa after the Respondent acquired the site, and the contract was on more favourable terms than before. Biffa emptied the bins on both the touring park and the chalet parts of the site, and they charged for each "lift" of a refuse bin. They attended site on regular basis, emptying the bins when full. The Respondent then allocated 70% of the costs to the chalets, in line with the 2017 Tribunal decision and according to broad usage of the waste bins. In cross-examination, it was put to Mr MacDonald that most of the bin locations were on the touring park. He disagreed. There were essentially 5 refuse locations on the site. One served the touring park (3 bins) and 4 served the chalets (16 bins). It was put to him that all the 4 chalet locations were accessible to both parts of the site, but he denied this: the touring park was fenced in. As to the suggestion the Biffa invoices could be broken down into the two categories suggested by the Applicant, Mr MacDonald again disagreed. These did not reflect the locations of the bins. For example, the Biffa invoice addressed to the "Main Lodge Park" dated 29 December 2023 referred to the cost of renting a "standard glass" bin. But there were no glass recycling bins on that part of the site.

84. Mr Sharples submitted the Biffa invoices should be split by the location of the bins. Ms Gourlay submitted that Biffa's invoices did not split the charges between the chalets and the touring park, and the Respondent's allocation of 70% of costs was rational. Even if one allocated the costs by the number of refuse points, it was close to this allocation.

85. The Tribunal's decision. It was common ground that the waste collection related to both the chalet part of the site and touring park. The Tribunal accepts it was a fair and equitable division to allocate costs according to the split of 70% adopted elsewhere, based on a broad estimate of benefit. The Tribunal accepts that references to the "Main Lodge Park" and "Padstow Touring Park" on the Biffa invoices do not distinguish between the various parts of the site. It would of course have been possible to ask Biffa to make this distinction in their invoices, but that would have required additional administration. Moreover, even that presupposes the chalet owners never use the fifth refuse point, and that the touring site users never use the four refuse points on the chalet part of the site. The approximate split adopted in this case is sufficient in this case. The decision is one a landlord acting fairly and equitably could reach.

Item 17: Shower block waste removal

86. The Scott Schedule refers to a payment of £489.15 to BTE Services for removing waste for the shower block. The bundle includes a copy of the relevant invoice. The Respondent allocated £244.58 (50%) of this cost to the chalet owners. It is common ground that the shower is located near the main entrance to the site, to the east of the part containing the chalets.

87. Mr Sharples submitted that the shower block was not part of the Estate, and that this was therefore not a service charge item. Ms Gourlay submitted that it was part of the Estate.

88. The Tribunal's decision. This is essentially a matter of interpretation of the Lease. The Tribunal finds that the shower block is within the area of

"the Estate" as defined in Recital (2) to the Lease in the bundle. There is no dispute that the Respondent is "the owner in fee simple of a holiday estate known as St Merryn Holiday Estate Point Curlew St Merryn Padstow Cornwall", and that the shower block is located within the Respondent's freehold title. That finding means that waste removal involves "management and maintenance" of a part of the "Estate", within the meaning of clause 4 of the Lease. The cost of waste removal is properly a service charge item. That is sufficient for the purposes of this application, Whether the same can be said for chalets with different leases, the possible argument is for another day: see above.

89. The lessees are therefore required to contribute to the £12,812.39 allocated costs of waste collection.

Site maintenance materials

90. In the 2023 service charge year, the Respondent incurred costs of £23,552.78 for site maintenance and materials, of which £16.004.58 was allocated to the service charges for the chalets. The Applicant accepts liability to contribute to £9,296.86 of these costs.

Item 30: Electrical work

91. The Scott Schedule refers to a payment of £550 to Lighthouse Electrical on 8 July 2023 for electrical work, of which £385 (70%) was apportioned to the chalet owners. The Applicant accepts liability to contribute to £327.25 of these costs. The Lighthouse Electrical invoice refers to work to the staff accommodation block and the laundry.

92. Ms Gourlay relied on the apportionment of costs. Mr Sharples argued the costs should be apportioned 50/50. It was only fair, as the Respondents' businesses were far more intensive to manage than the chalets, and the lessees of the chalets had limited use of the laundry.

93. <u>The Tribunal's decision</u>. The staff accommodation and laundry are parts of the Estate, and the Respondent is obliged to repair retained parts

under Sch.3 to the Lease. The only issue is allocation of costs between the chalet owners and the Respondent. The allocation of 70% to the chalets is a decision a landlord acting fairly and equitably could reach.

Item 31: shower replacement parts

94. The Scott Schedule refers to a payment of £106.63 on 1 August 2023, of which £53.32 (50%) was apportioned to the chalet owners. The Respondent's case was that this was for the replacement of shower parts in staff accommodation.

95. Ms Gourlay submitted this is recoverable. Mr Sharples argued the showers are in a lodge, and not recoverable under the Lease.

96. The Tribunal's decision. The "staff accommodation" is part of the Estate, and the Respondent is obliged to repair retained parts under Sch.3 to the Lease. The only issue is allocation of costs between the chalet owners and the Respondent. The costs are relatively modest, and the Respondent is entitled to take a broad view of allocation. The allocation of 50% to the chalets is a decision a landlord acting fairly and equitably could reach.

Items 32-4: Plant hire and labour

97. The Scott Schedule refers to three payments of £1,155, £1,050 and £3,600 on 2 and 3 March 2023 (£5,805), of which £4,063.50 (70%) was apportioned to the chalet owners. The Applicant does not accept liability to pay any of these costs. The invoices in the bundle referred to:
    (1) Plant hire from Steve O'Hagan Plant Hire (including a mini excavator, a 6-ton dumper truck, a wheeled digger, 14-ton excavator, tractor and trailer);
    (2) Day hire of a crusher and transport from Glebe Quarry Ltd; and
    (3) Hire of labour from Tango Holdings (3 men for 10 days).

98. Mr MacDonald's evidence was that these costs related to different things. He accepted that part of the plant hire was for removing the bases, but the rest was earth moving machinery. Glebe Quarry's invoice was for re-

doing plant beds in various parts of the site. The labour charges were for reinstating paths around the site. In cross-examination, Mr MacDonald denied the costs were for lifting the concrete bases or creating new ones. The work mainly related to drainage and tidying up the entrance to the site.

99. Ms Gourlay relied on Mr MacDonald's evidence about the purpose of these costs. The 70% allocation was in line with other allocations of costs to the chalet owners. Mr Sharples invited the Tribunal to reject Mr MacDonald's evidence about the purpose of these costs. This substantial expenditure corresponded with the time when the bases were being lifted.

100. The Tribunal's findings. The Tribunal notes the plant hire and labour invoices refer to works over the first half of March 2023. By contrast, Mr Duff and Mr Bennett were employed to 'lift' the concrete bases in November/December 2023. It therefore accepts Mr MacDonald's evidence that the three invoices do not relate to lifting the concrete bases, and that they relate to other maintenance works on the Estate. The allocation to the chalet owners is in line with other allowances of 70%, and the allocation is one a landlord acting fairly and equitably could reach. The Tribunal therefore finds the chalet lessees are liable to contribute to the £4,063.50 allocated costs of plant hire and labour.

Item 35: Communal showers

101. The Scott Schedule refers to a payment of £320 on 27 June 2023 to Nicholls Plumbing and Heating, of which £160 (50%) was apportioned to the chalet owners. The bundle includes the relevant invoice describing the work as "ANNUAL BOILER SERVICES INCLUDING SHOWER BLOCK & TOILET" and "**Labour** SERVICES X 4". The Applicant does not accept liability to pay any of these costs.

102. The Tribunal's decision. The arguments on both sides mirror the BTE waste collection issue. The Tribunal has already found the shower block

forms part of the "Estate" within the meaning of the Lease. The chalet lessees are therefore required to contribute to the £160 allocated costs of servicing the boiler in the shower block.

Items 36-7: Carpets

103. The Scott Schedule refers to payments of £897 and £792 on 28 July 2023 (£1,689) to Flawless Floors Cornwall, of which £1,182.30 (70%) was apportioned to the chalet owners. The bundle includes the relevant invoices which are in similar form, and which describe the work as supplying and fitting "Bexhill Carpet to bedrooms, hall and living area" with underlay. The Applicant does not accept liability to pay any of these costs.

104. The Respondent's case is that these costs related to the actual expenditure for maintenance of staff accommodation. Ms Gourlay relied on Mr MacDonald's evidence, and there was nothing to gainsay what the landlord had said about these costs. Mr Sharples submitted the costs related to the fitting out of new lodges, and that they are not a service charge item.

105. The Tribunal's findings. The Tribunal accepts Mr MacDonald's evidence, which was not shaken in cross-examination. There is no evidence the Respondent incurred these costs in fitting out chalets for sale. The Tribunal finds the carpets were provided for staff accommodation which formed part of the "Estate" within the meaning of Recital (2) to the Lease. The new carpets therefore also related to "management and maintenance" of a part of the "Estate", within the meaning of clause 4 of the Lease. The allocation to the chalet owners is in line with other allowances of 70% and it is one a landlord acting fairly and equitably could reach. The Tribunal therefore finds the chalet lessees are liable to contribute to the £1,182.30 allocated costs of carpeting the staff accommodation.

Item 38: Sundry supplies

106. The Scott Schedule refers to a payment of £2,914.56 to Cambridge Country Club on 1 August 2023, of which £2,040.19 (70%) was apportioned to the chalet owners. The invoice from Cambridge Country Club has already been referred to above, and the payment of £2.914.56 is shown there. It simply describes the cost as "Amazon 01/08".

107. Mr MacDonald's evidence was that this invoice covered the purchase of paint, parts and accessories for machinery including and lawnmower, strimmer wire. This was not challenged in cross-examination.

108. Ms Gourlay submitted the "Amazon" costs are simply general maintenance costs, and the allocation of 70% to the chalet owners is in line with the other allowances of 70%.

109. The Tribunal's decision.. Although one would have hoped to see slightly more detail in the Cambridge Country Club invoice, the Tribunal accepts Mr MacDonald's evidence, which was not challenged in cross-examination. These costs are recoverable under the Lease. The allocation is in line with other allowances of 70% made above and is one a landlord acting fairly and equitably could reach.

Item 39: Electrical work

110. The Scott Schedule refers to another payment to Lighthouse Electrical on 25 August 2023, this time for £724.50, of which £362.25 (50%) was apportioned to the chalet owners. There is an invoice from the contractors which includes this work, describing it as repairs to lighting in the "Clubhouse kitchen".

111. Mr MacDonald's evidence was that this invoice covered the purchase of paint, parts and accessories for machinery including and lawnmower, strimmer wire. This was not challenged in cross-examination. Mr Sharples submitted these costs were not reasonably incurred under

s.19(1) LTA 1985 because the Clubhouse kitchen provided little utility to the chalet owners.

112. The Tribunal's decision. The Tribunal finds the costs were reasonably incurred under s.19(1) LTA 1985. The obligation to contribute to repairs and maintenance of parts of the Estate is clear, and the Clubhouse forms part of the "Estate" within the meaning of Recital (2) to the Lease. The 50% allocation of costs is also one a landlord acting fairly and equitably could reach. The limited utility the chalet lessees get from the Clubhouse is reflected in the reduced allocation of costs of 50%.

Item 40: Red Diesel

113. The Scott Schedule refers to a payment of £551.76 to Fury Developments on 14 March 2023 for the supply of 'red diesel', of which £386.23 (70%) was apportioned to the chalet owners. There is a corresponding invoice from the supplier in the bundle.

114. Mr MacDonald's evidence was that the diesel was for general use for plant. It was put to Mr MacDonald that the date of the diesel supply coincided with the date of the works to the bases. It was therefore fuel for the plant used to lift the bases. Mr MacDonald denied this.

115. Ms Gourlay submitted there was no evidence the diesel was connected with lifting the lodge bases. Mr Sharples submitted the costs were associated with lifting the concrete bases. It was also a lot of money for diesel, and the cost was not reasonably incurred under s.19(1) LTA 1985.

116. The Tribunal's decision. The Tribunal notes the supply of red diesel corresponds with the date of the hire of a mini excavator, 6-ton dumper truck, wheeled digger, 14-ton excavator, tractor and trailer from Steve O'Hagan. It finds on balance that the fuel was primarily for this plant. The Tribunal has already found the plant costs were not associated with lifting the concrete bases. It is therefore a general maintenance cost for the Estate within clause 4 of the Lease. The significant costs can be

explained by the fuel thirsty nature of the plant involved. The costs are payable under the Lease and reasonably incurred under s.19(1) LTA 1985.

Item 41: Marketing at Royal Cornwall Show

117. The Scott Schedule refers to a payment of £270.83 to South West Electrics, of which £135.42 (50%) was apportioned to the chalet owners. The invoice in the bundle dated 5 June 2023 refers to the cost of installing and supplying a stand at the 2023 Royal Cornwall Show.

118. The Applicant's case is these costs were incurred to market new lodge sales. Mr MacDonald's evidence was that the costs were associated with promoting the Park under new ownership, which benefitted the chalet owners.

119. Ms Gourlay relied on Mr MacDonald's evidence. There was a benefit to the lessees because the marketing helped them sublet their pitches. Mr Sharples submitted they are not a service charge item under the Lease.

120. The Tribunal's decision. It is unusual for a residential service charge to cover marketing costs, and neither clause 4 nor Sch.3 to the Lease specifically refers to such costs. The Tribunal notes that where promotional or information costs are intended to fall within the Lease, they are specified in Sch.3: see para 2, "the erection and maintenance of suitable notice Boards on the Estate". The Lease is not "clear" that the service charge provisions extend to promotional activities of this kind – whether or not the chalet owners do in fact derive a benefit from the marketing. The Tribunal therefore finds these marketing costs do not fall within the scope of the service charge provisions.

121. The lessees are not therefore required to contribute to the £135.42 allocated costs of the stand at the Royal Cornwall Show. Their service charges are limited accordingly under s.27A LTA 1985.

Pump house materials

122. In the 2023 service charge year, the Respondent incurred costs of £1,609.55 for maintenance of the pump house, of which £1,126.69 (70%) was allocated to the service charges for the chalets. The Applicant admits the leaseholders are liable to contribute to these costs.

Rates

123. In the 2023 service charge year, the Respondent incurred costs of £4,519.07 for rates, of which £3,163.35 was allocated to the service charges for the chalets. The Applicant admits the leaseholders are liable to contribute to these costs.

Advertising and website

124. In the 2023 service charge year, the Respondent incurred costs of £44,522.05 for advertising and maintenance of the Park's website, of which £22,261.03 (50%) was allocated to the service charges for the chalets.

Item 41A: Advertising and website

125. The Applicant disputes some 22 items, and argues the leaseholders are only liable to contribute to costs of £4,539.69. Although these costs cover various items ranging from advertising on websites to signage and "owners communications", the Applicant and Respondent dealt with all the disputed advertising and websites together.

126. Mr MacDonald's evidence was that the 50% apportionment reflected a different approach to the previous site owners. Advertising was now aimed at the whole of the Park, not just the touring park. Chalets were sub-let to generate income, and so chalet owners benefit from the advertising. The spend included "brand development, media profiling, planning and scheduling", signage, brochures, re-branding work, promotion, advertising on industry platforms, print magazines, websites, social media and (again) attending the Royal Cornwall Show.

127. Ms Gourlay relied on Mr MacDonald's 50% allocation of costs and the reasons he gave. She argued the advertising and website costs fell within clause 4 of the Lease, namely "management and maintenance of the Estate". Mr Sharples was asked whether he agreed with this. He accepted "that all of these costs fall within the word "management" in [para 6 of] Sch.3 and the general words" of clause 4 of the Lease. He suggested it was a question of allocation only. He relied on the 2017 Tribunal decision, which allocated 85% to the landlord's business and 15% to the service charges. It explained §75 that "These costs will benefit the chalets/lodges to some extent as they will enhance the owners' ability to let them out on holiday lets but the Tribunal considers that the main benefit will accrue to the Respondent's business". Mr Sharples submitted this represented a fair and reasonable contribution to the costs of advertising and the website, since most of the spend was to market new lodges for sale.

128. The Tribunal's decision. It is important to note the Applicant expressly conceded the costs were recoverable under the terms of the Lease. This can be contrasted with certain other promotional matters such as the Royal Cornwall Show stall (above) and the website costs (below). Neither is there any evidence to support a contention that the costs were not reasonably incurred under s.19(1) LTA 1985. The sole issue is therefore the allocation of costs between parts of the site, in accordance with Step 3 of the above sequential approach.

129. Mr MacDonald's unchallenged evidence was that the advertising and marketing spend was now more broadly-based and provides more equal benefits to chalet owners than in 2017. The allocation of 50% therefore has a logical basis. The allocation to the chalet owners is in line with other allowances of 50%, and it is one a landlord acting fairly and equitably could reach. The Tribunal therefore finds the chalet owners are liable to contribute to the disputed advertising and website costs.

Office and stationery

130. In the 2023 service charge year, the Respondent incurred costs of £29,520.63 for office and stationery, of which £14,902.81 was allocated to the service charges for the chalets. The Applicant accepts liability for allocated costs of £5,146.69.

Item 42: Website

131. The Scott Schedule refers to payments to Barsbank.co.uk between 31 March and 30 September 2023 amounting to £7,342.50, of which £3,671.25 (50%) was apportioned to the chalet owners. There are invoices from the contractors, describing the work as a new website for Atlantic Bays together with later amendments and changes to the site.

132. Mr MacDonald's evidence was these invoices covered a new website for the Park. This benefitted the whole of the Park.

133. The Applicant's case in the Scott Schedule was that this was not a service charge item under the Lease. Ms Gourlay argued it fell within the general words of clause 4, because the website related to the "management and maintenance of the Estate".

134. The Tribunal's decision. The Tribunal accepts Mr MacDonald's evidence that the website benefitted the chalet owners in 2023. Property management systems are a common feature of leasehold properties (see below), but it is hard to see how an essentially promotional website falls within the terms of the Lease. Neither clause 4 of the Lease nor Sch.3 specifically refer to marketing costs. The Tribunal notes that where promotional or information costs are intended to fall within the Lease, they are specified in Sch.3: see para 2, "the erection and maintenance of suitable notice Boards on the Estate". The Lease is not therefore "clear" that the service charge provisions extend to general promotional activities of this kind – whether or not the chalet owners do in fact derive a benefit from the marketing. The Tribunal finds the website costs do not fall within the scope of the service charge provisions.

135. The lessees are not therefore required to contribute to the £3,671.25 allocated costs of the website. Their service charges are limited accordingly under s.27A LTA 1985.

Item 43: Site management system

136. The Scott Schedule refers to four payments of £61, £1,330.50, £2,430 and £4,054.50 (£7,876.50) to ParcVu between 13 February and 30 June 2023, of which £3,938.25 (50%) was allocated to the chalet owners. There are invoices from the contractors, describing the work as a "data take on", system training and a licence fee for the ParcVu system.

137. Mr MacDonald's evidence was that ParkVu is a specialist modular park home site management system. For example, it logs maintenance issues for the chalet owners, keeps records of which chalets are being sublet, etc. The cost was apportioned 50/50 to reflect the benefit to both the Respondent's business and the chalet owners. In cross-examination, Mr MacDonald stated that this was the property management system for the site.

138. Ms Gourlay submitted this was simply a property management system, which is common with leasehold management, but adapted to deal with the special needs of Park home sites. The allocation of 50% was appropriate. Mr Sharples again suggested this system was for taking bookings for touring caravans. It was not a cost recoverable under Sch.3 to the Lease.

139. The Tribunal's decision. The Tribunal accepts Mr MacDonald's evidence that ParkVu is conventional property management software, adapted for the specific needs of Park Homes sites. It assists the Respondent in delivering numerous basic management functions. The cost therefore falls within the general words "management and maintenance" in clause 4 of the Lease and the words "Management of the Estate" within para 6 of Sch.3 to the Lease. The cost of the ParkVu system is therefore recoverable under the Lease. As to the allocation of 50% of costs, this is

not expressly challenged. But the Tribunal finds the allocation is one a landlord acting fairly and equitably could reach, for the reasons explained by Mr MacDonald.

Item 44: Pallets

140. This item sits slightly uncomfortably within the heading of "office and stationery". The Scott Schedule refers to a payment of £100 on 27 November 2023 to "Jack's Pallets", of which £70 (70%) is allocated to the chalets. There is an invoice in the bundle from Jack's Pallets for delivery of 140 heavy pallets to the site.

141. The Scott schedule suggests it is common ground that the pallets were connected with lifting the concrete bases, and the date coincides with the employment of Mr Duff and Mr Bennett to 'lift' the concrete bases in November/December 2023. The arguments on each side follow the arguments in relation to items 8-10.

142. The Tribunal's decision. For the same reasons given in relation to items 8-10, this cost is not recoverable under the Lease terms. The lessees of the chalets are not required to contribute to the £70 allocated costs of the pallets. Their service charges are limited accordingly under s.27A LTA 1985.

Insurance

143. In the 2023 service charge year, the Respondent incurred costs of £12,219.80 for insurance, of which £8,553.86 (70%) was allocated to the service charges for the chalets. The Applicant accepts liability for allocated costs of £3,927.28.

Items 45-56: insurance

144. Mr MacDonald stated that the insurance policy was for the whole of the Estate, and the Respondent had adopted a 70% allocation based on pervious tribunal decisions. It reflected the "utilisation of the Park". He accepted there was no evidence from brokers, etc., to show the different risks and premium allocation between parts of the site. Ms Gourlay

submitted that the 70% allocation was "rational". Mr Sharples submitted that a 50% allocation was appropriate.

145. The Tribunal's decision. The Tribunal has already indicated above its approach towards the allocation of costs between parts of the site. Is the 70% allocation of costs a decision a landlord acting fairly and equitably could reach"? The 2017 Tribunal allocated 70% of insurance costs to the chalet in its decision §85. This at least suggests there is now a settled 70% allocation of the costs of insuring the Estate. Other than that, a Tribunal would normally expect to see evidence (whether from an insurance broker or otherwise) about the risks and premium allocation between parts of the site, before there was even a *prima facie* case that the allocation of the premiums to the chalets was not fair and equitable and/or reasonably incurred under LTA 1985 s.19(1). Absent that kind of evidence, the challenge to the established apportionment of insurance costs fails.

Health and safety

146. In the 2023 service charge year, the Respondent incurred costs of £2,600 for health and safety, of which £1,820 (70%) was allocated to the service charges for the chalets. The Applicant accepts liability for these costs.

Machinery and renewals

147. In the 2023 service charge year, the Respondent incurred costs of £2,887.26 for machinery and renewals, of which £1,443.63 (50%) was allocated to the service charges for the chalets. The Applicant accepts liability for these costs.

Accommodation costs

148. The Scott Schedule refers to accommodation costs of £44,522.05 during the 2023 service charge year, of which £22,261.03 (50%) was allocated to the service charges for the chalets. The Applicant denies the leaseholders were liable to contribute to any of these costs.

Item 57: staff accommodation

149. The bundle includes an invoice from the Respondent dated 31 December 2023. This explains the costs as follows:

> "Service Charge – covering maintenance of communal areas, waste disposal, on-site support, and general facility management.
>
> Electricity – supply and usage for all accommodation units.
>
> Water – inclusive of fresh water supply and wastewater charges.
>
> Gas – covering heating and hot water usage.
>
> Council Tax – apportioned local authority charges for the accommodation units.
>
> Accommodation provided at a rate of £62.50 per night per unit, calculated for 4 units."

Mr MacDonald's evidence was that the long leaseholders benefited from having staff on site, in terms of operating the clubhouse and manning the front office. These were not high paying jobs and (given the Park's fairly remote location and local demand for accommodation in the summer months) providing accommodation for staff off-site would be difficult. In the event of an emergency, there is also a benefit from having staff on site. In cross-examination at the hearing, Mr MacDonald explained the accommodation was for housing maintenance staff, catering staff, etc., ready for the park season. The invoice was an estimate of the number of nights taken up each year.

150. Ms Gourlay described the cost as an "inter group charge" or an "internal invoice". It covered the water, gas and electricity and Council Tax for the staff accommodation. She referred to the decision in *Francis v Sandoz* at [40] to [44], which dealt with the chalet leases in this case. It was permissible to include the staff accommodation costs in the service charges. Mr Sharples submitted that the notional cost of staff accommodation was not recoverable under the Lease, because clause 4 referred only to "sums actually expended on the liabilities incurred … in connection with the management and maintenance of the Estate and the provisions of such services as herein described". He submitted that *Francis v Sanchoz* was conclusive on the point.

151. The Tribunal's decision. Starting with the evidence, the invoice is dated 31 December 2023, which is the last day of the service charge year. The Tribunal accepts Mr MacDonald's evidence that the invoice estimated the cost of providing accommodation for members of staff. But the last sentence of the invoice quoted above is significant, because it explains that payment was sought based on a nightly rate of "£62.50 … calculated for 4 units". Although Mr MacDonald's evidence, and the rest of the invoice, stress the landlord has incurred costs in providing the staff accommodation, the invoice therefore itself unambiguously seeks payment based on a nightly rental rate. The invoice was provided by the Respondent to the Respondent, so there is no suggestion any rent was in fact paid to a third party for providing the staff accommodation. It can only therefore be described as a "notional rent".

152. The Tribunal next turns to the provisions of the Lease. Starting with clause 4, the significant words are of course "sums actually expended", but these words do not appear in a void. They are part of a service charge provision which, as Lord Neuberger stressed in *Arnold v Britten*, must be "clear". The word "expended" is an ordinary English word, which generally requires money to change hands. In this provision, it is also noticeable that the draftsman has expressly excluded the possibility that the expenditure could merely be a "liability incurred", since such liabilities can only be included as service charge costs if they are "sums actually expended". Moreover, the Lease makes express provision in relation to "staff" costs at para 6 of Sch.3, where it deals with "charges wages pensions contributions insurance and provision of uniforms and working clothes of any staff employed by the Lessee". One would have expected any other permissible staff costs to be set out there. The Tribunal therefore finds the notional rent claimed by the invoice of 31 December 2023 is not a cost which falls within the scope of the Lease.

153. That decision is reached without reference to previous authority. But the decision in *Sanchoz* is directly on point and it is binding on this Tribunal. The material passages are:

> "40. The costs which may be recovered under clause 4 are costs actually expended … What the appellants cannot do is recover a sum which they have not "actually expended" because the language of the lease is restrictive. The practical difficulties and expense of housing a warden off-site, in accommodation rented for that purpose, are not relevant, and the FTT's reference to that possibility was simply to illustrate the difference between a cost actually expended and a notional cost of providing accommodation in a lodge which already belongs to the appellants."
>
> 41. I therefore agree with the FTT in its decision under appeal and with the decision of 9 March 2017 that a notional staff housing cost representing letting income foregone by the landlord cannot be recovered as part of the service rent."

Pausing there, the evidence in this case is essentially the same as in *Sanchoz*. The invoice of 31 December 2023 was based on an estimated nightly rent, not the actual costs of outgoings for heating, lighting and Council Tax, etc.

154. In the course of argument, Ms Gourlay drew the Tribunal's attention to the next part of the judgment in *Sanchoz*.

> "42. But that is not the end of the matter. The appellants say that the costs incurred by them in providing the accommodation are not all "notional" costs. They contribute to the cost of providing services for each of the chalets or lodges used to house staff members and they pay the utilities costs, business rates, insurance and maintenance costs of the accommodation.
>
> 43. When I put to Mr Crozier the proposition that the annual budget ought properly to include a figure for expenses which would actually be incurred in connection with staff accommodation, he had two answers. The first was that the figure included in the 2020 budget was said to represent the income which could have been obtained from letting the flats, and it had not been claimed by reference to costs actually incurred. The second was that the contribution made by the appellants towards the costs of running

the Park as a whole through their payment of a sum equivalent to the service charge, was not a cost actually incurred.

44. Neither of these answers seems to me to be a persuasive reason, in principle, why a portion of the figure of £18,000 rejected by the FTT should not be included in the budget to cover costs which were actually to be incurred in respect of manager's and warden's accommodation. As to the first point, the figure in question is an estimate, and while the appropriate figure must be reasonable it need not be precise or based on a particular method of assessment. As to the second, all of the costs included in the estimated service charge were costs to be incurred by the appellants in 2020; the appellants' accounting practice of raising a service charge demand of themselves should not be allowed to obscure the fact that the FTT was satisfied that £1,475 was a reasonable pre-estimate of the expenses the appellants would incurred in 2020 in respect of each unit on the Park. The costs of utilities and maintenance for the staff accommodation itself was additional to that expense incurred by the appellants. It therefore seems to me to be permissible for the appellants to be allowed a sum to reflect their estimated expenditure on actual accommodation costs for their staff subject to their being evidence to support it."

155. Notwithstanding Ms Gourlay's cogent submissions, the Tribunal does not consider these passages permit the inclusion of elements of a notional rent in the "end of year" costs for the chalets. As explained in *Sanchoz*, the issue there was an estimated or interim service charge. With such charges, it is possible to budget for the costs of heating and lighting parts of the landlord's retained parts (such as the staff accommodation), if the Lease permits it. But in this case, the certified sums "actually expended" do not include the costs of heating and lighting the staff units and paying any Council Tax, etc. They include only a notional rent, which for the reasons given above, is not recoverable under the chalet leases. Neither is it permissible to use s.19(1) LTA 1985 to

compensate a landlord who has claimed payment for something it is not entitled to claim under a Lease.

156. In principle, and in the light of binding authority, the Tribunal therefore finds the allocated 2023 staff accommodation costs of £22,261.03 are not recoverable under the chalet leases.

Costs: s.20C LTA 1985 and para 5A of Sch.11 to CALRA 2002

157. There are applications for limitation of costs under s.20C LTA 1985 and under para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002. However, there was insufficient time to deal with these costs arguments at the hearing. Accompanying this decision are directions for these issues to be dealt with on paper, if not agreed.

Conclusions

158. The Tribunal finds most of the service charge costs are payable by the lessees to the Respondent. But the lessees are not liable to contribute to the following allocated costs:

(1) Item 5. Management cover fee (£71,400);
(2) Items 8-10. Lifting of concrete bases (£404.25, £539 and £308);
(3) Item 41. Marketing at Royal Cornwall Show (£135.42);
(4) Item 43. Website (£3,671.25);
(5) Item 44. Pallets (£70); and
(6) Item 57. Staff accommodation (£22,261.03).

The chalet lessees' service charges are limited accordingly under s.27A LTA 1985.

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

APPENDIX A: Lease Covenants

2. The Lessee HEREBY COVENANTS with the Lessor as follows:-

… q) Pay to the Lessor by way of additional rent the service rent hereinafter defined in Clause 4 within fourteen days of written demand after the accounting date as hereinafter defined in each and every year of the term **PROVIDED ALWAYS** that the tenant shall pay to the Lessor on each of the accounting dates in every year during the term such sum or sums as the Lessor may reasonably require on account of the said service charge and any such payment to be credited to the tenant against payment of the services as certified to be due from it (as hereinafter provided) by the certificate issued next after the making of such demand and in default of such payment by the Lessee of the whole or any part of the service rent the Lessor shall be entitled to distrain re-enter and exercise all the remedies of a lessor exercisable in respect of a breach of covenant

…

4. The service rent hereinbefore covenanted to be paid by the Lessee shall be a fair and equitable proportion determined from time to time by the Lessor and such sum shall be ascertained by a certificate given by the Lessor or its managing agents and certified by them to be the aggregate of the sums actually expended on the liabilities incurred by the Lessor in any period ending on the thirty first day of December or such other date as the Lessor may in its discretion determine (hereinafter called "the accounting date") during the term hereby created **in connection with the management and maintenance of the Estate and the provisions of such services as herein described and in particular without limiting the generality of the foregoing shall include the cost of the matters referred to in the Schedule 3 hereto**.

…

SCHEDULE 3

1. To pay all rates and other charges upon the Estate or any part thereof other than those properties specifically demised to third parties

2. The erection and maintenance of suitable notice boards on the Estate

3. The maintenance operation and cleaning of soil and drainage pipes and other conducting media conduits and channels and pumps in relation thereto

4. The provision and maintenance of fire lighting equipment

5. The cutting and mowing of grass lopping pruning and felling of trees on the Estate

6. Management of the Estate and its appurtenances including where applicable the charges wages pensions contributions insurance and provision of uniforms and working clothes of any staff employed by the Lessee and the provision of telephones (if any) and also the cost of providing tools appliances cleaning and other materials bins receptacles together with any amounts of fees paid to architects agents surveyors and solicitors employed by the Lessor in regard to the management of the Estate

7. Repairing renewing rebuilding decorating cleaning and maintaining those parts of the Estate (which include an amenity centre if any) used in common with other lessees including without prejudice to the generality of the foregoing the footpaths roadways and car park on the Estate

8. A management charge of five per centum (5%) of the total cost of the items referred to in this Schedule