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MAN/16UG/LSC/2011/0102

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

of the

NORTHERN RENT ASSESSMENT PANEL

SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Dwelling	:	Flat 39 and Boathouse Windermere Marina Village Nab Wood Bowness on Windermere LA23 6JQ and other properties
Applicants	:	Mr I. Wild and Mrs G. Barton & Others represented by Aaron & Partners LLP
Respondent	:	Windermere Marina Village Limited represented by Harrison Drury & Co Solicitors
The Tribunal	:	Chairman : J. M. Going Valuer Member : J. Rostron MRICS Lay Member : Dr. J. Howell

Preliminary

1. The Applicants applied on 6th September 2011 to the Leasehold Valuation Tribunal ("LVT") under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to the liability of the Applicants to pay the service charges in respect of the dwelling for 2008, 2009, 2010 and 2011.

2. The Applicants were acting as the lead Applicants for themselves and for the owners of 25 other dwellings within the development of which the dwelling forms part.

3. On 23rd February 2012 a procedural Chairman of the LVT gave Directions.

4. The Respondents entered into a cross application on 23rd March 2012.

5. Further directions were issued by a procedural Chairman on 26th March 2012.

6. Both parties provided copious written submissions which were copied to the other.

7. The Tribunal inspected the dwelling and toured the whole of the Windermere Marina Village on 3 July 2012.

8. Present at the inspection were Mr I Wild, Mr J Dearden the Respondent's managing director, Mr R Forrester the Solicitor for the Applicants, Mr C Fenny the Solicitor for the Respondent, Miss E D'arcy the barrister for the Applicants, Mr J Fryer- Spedding the barrister for the Respondent, Mr D Gale-Hasleham the expert witness of the Applicant and Mr D Pogson the expert witness of the Respondent.

9. Later in the day, a hearing was begun at Kendal Magistrates Court with the same parties in attendance.

10. The hearing was adjourned at the end of the day by which time Mr Gale-Hasleham had completed the giving of his expert evidence.

11. The hearing was reopened with all the same parties in attendance (apart from Gale-Hasleham) at the Northern Rent Assessment Panel Offices in Manchester on 7th September 2012.

Facts and Submissions

12. The dwelling and the other properties joined in the application are located in the Windermere Marina Village in a quiet inlet off the main lake just south of Ferry Nab car park and the road to the car ferry across the lake to Sawrey. It is 1 mile south of Bowness and very attractively situated in the heart of the South Lakes and the Lake District National Park.

13. The marina has a number of different types of properties and tenants including boat moorings, flats, boat houses, holiday cottages, houses, marina centre with offices for boat sales, and a boat yard. It accommodates various ranges of boats including sports boats, leisure cruisers and yachts up to a maximum length of 50ft. Copies of the Respondent's website in 2012 produced to the Tribunal referred to there being "400 moorings"

14. The dwelling was built in the early 60's with 17 others of a similar design which are hereinafter referred to as "the boathouses" being made up of 18 flats in 3 separate blocks of 6. Each boathouse protrudes over the water with living accommodation on the first floor overhanging the secure and enclosed mooring for a small boat below.

15. The Applicants own the dwelling as the Lessees under a term of 99 years which began on 1st July 1962 created by a Lease ("the Lease") dated the 29th day of July 1965 and made between Windermere Marina Limited (1) and Marjorie May Lomas (2).

16. By clause 1 of the Lease the property was inter alia granted:-

(a) a full and free right of way at all times for all purposes with or without a motor car over and along the roadway leading from the demised premises to the main road (the position of which said roadway being alterable from time to time by the Lessors at their own discretion and without any consent on the part of the Lessee being required .... and

(d) to use a car park on the adjoining or nearby land of the Lessors for the occasional parking thereon of not more than two private motor vehicles"

Clause 2 of the Lease stated "there is excepted and reserved unto the Lessors out of this demise the right to alter the general plan of their Windermere marina estate (of which the demised premises form part) and to develop the same in any way they may see fit and to alter the general route or direction or position of any of the roadways, car parks or other amenities thereof or thereon" ....

Clause 4 of the Lease reads as follows:-

"The Lessee hereby further covenants with the Lessors that in consideration of the Lessors exercising general supervision of the observance and performance of the covenants on the part of the Lessees of other boathouses and premises on their said Windermere marina estate for the intended general good and well being of the Lessee and the various other occupiers thereof he the Lessee will pay to the Lessors the additional sum of fourteen pounds ten shillings per annum .... in each and every year .... referred to .... as "a supervision charge".

The Lessee's covenants were set out in the Schedule to the Lease and included:-

"(2) to pay a fair proportion (to be determined by the Surveyor for the time being of the Lessors whose determination shall be final and binding) of the expense of all communal services including the re-constructing, repairing, maintaining, rebuilding, cleansing and dredging of all Estate walls, fences, sewers, drains, roads, car parks, water ways and piers and other things the use or enjoyment of which is or shall be common to the demised premises and other premises Provided Always the Lessees shall be under no obligation hereby to pay any contribution towards the cost of making good any damage thereto caused in the course of any future development work of the Lessors".

17. Soon after the building of the boathouses a further terrace of 14 flats was built each with an adjacent private jetty enabling the owners to moor their boats outside those flats. They can be usefully referred to as "the lagoon apartments"

18. The boathouses and lagoon apartments comprise 32 separate dwellings. One of the boathouses was conveyed as a freehold but the remaining 31 properties all appear to have been let on leases with exactly comparable terms to the Lease.

19. The owners of 25 of the boathouses and lagoon apartments have joined in the application.

20. Windermere Marina Village is accessed direct from the adjoining A road. There is a short common drive to the main reception centre which also includes offices for boat sale and brokerage businesses. Thereafter the left

hand roadway leads principally to the boathouses and the lagoon apartments. Whereas the road going right leads to the rest of the marina.

21. After the building of both the boathouses and the lagoon apartments in the 1960's there have been a number of additional phases of development. A number of cottages were added in the 1980's and these were initially occupied under timeshare arrangements. More houses and apartments as well as a bar, bistro and leisure centre were built later. There was also a small convenience store.

22. It was apparent at the time of the inspection that further substantial works are being undertaken to the main part of the estate which is on the "right hand side" of the main entrance. It is understood that such works will include modernising the bar and restaurant and the building of some more luxury apartments.

23. Historically prior to 2007, the principal charges levied under the service charge provisions of the Lease were for maintaining sewers and sewer pumps.

24. Towards the end of 2007 the Respondent informed the owners of the boathouses and the lagoon apartments that it intended to rely on the service charge provisions in their Leases to recover the costs of items which had previously not been charged for, including those which the Applicants have objected to in the application.

25. The Respondents employed Mr Pogson who is a fellow of The Royal Institution of Chartered Surveyors to advise and determine how the relevant costs should be apportioned between the different properties and elements within the estate, which he did. The first occasion when the revised service charge regime was implemented was in 2008 with service charge invoices based on Mr Pogson's apportionments issued in February 2009. The proposed charges gave rise to a number of complaints and questions from the owners of the boathouses and the lagoon apartments.

26. Correspondence continued for some time and following various representations, and after the Respondent had taken Counsel's opinion, the Respondent realised that it did not have any right to recover a management charge which had originally been included in the service charge demand for 2008, and that it had failed to properly consult the owners (under Section 20 of the 1985 Act) before entering into a contract for security services which were to last for more than 12 months where the owners had initially been requested to pay more than £100 for a 12 month period.

27. As a consequence, the Respondent confirmed that it would reduce the security charges for each of 2008 and 2009 to £99.99.

28. Under the revised service charge demands the Applicants were requested to make the following payments:-

2008

Security £99.99
Grounds Maintenance £123.75
Surveyors Fees £6.22
Sewers and Sewer Pumps £116.42
Street Lighting £2.37
Electricity Sub Station £3.56 Total £352.31

2009

Security £99.99
Grounds Maintenance £141.26
Sewers and Sewer Pumps £40.72
Street Lighting £2.93
Electricity Sub Station £2.53 Total £287.43

2010

Security £162.48
Grounds Maintenance £137.01
Sewers and Sewer Pumps £51.64
Street Lighting £3.41
Electricity Sub Station £2.11 Total £356.65

2011

Road repairs to the left of the entrance £2.48
Security £179.03
Grounds Maintenance £133.31
Sewers and Sewer Pumps £101.66
Street Lighting £3.00
Electricity Sub Station £1.28 Total £420.76

29. The majority of the owners of the boathouses and the lagoon apartments did not however agree that all of the charges included in the revised service charge demands were properly payable and eventually the application was made. The main reason for the Respondent's cross application was to seek reassurance that those items which had been included within the service charge demands which did not appear to be contested should be endorsed.

30. Mr Pogson explained his methodology and the reasoning used to make his apportionment both in his independent experts report and his subsequent evidence at the hearing.

31. He explained that the apportionment needed to be carried out in accordance with the RICS' code of practice for service charges in commercial properties, and that whatever method was used it must reflect the benefit of services to

individual occupiers, be fair and reasonable, and that the costs should be transparent to all and on a not for profit and not for loss basis.

32. As he explained, because of the general nature of the services, any method of apportionment would have to rely on assessing availability, measurement of use, weighting or a mixture. Mr Pogson identified the individual types of properties within the estate and then sought to identify all the common services, to identify their uses for linking the relevant common services to the relevant users before deciding upon a method of apportionment for each common service. As part of the process it was noted that reasonable judgement would need to be employed where precise measurement was not possible, particularly as regards the weighting of the different elements.

33. As Mr Pogson quite rightly observed "The marina is a large and complex property covering workshops, storage, retail, office, leisure and residential uses. The types of property range from open moorings at one end of the spectrum through simple open front boathouses to more complex buildings such as cottages, flats, offices, a club, shop and other commercial structures at the other. This variety created challenges for assessment".

34. Because of this variety and complexity Mr Pogson decided it would be necessary to simplify the complexity by giving all of the different types of properties that enjoyed common services within the village a standard base unit for the purposes of comparison. He then identified the common services for each type of holding, grouped them together and went on to compare the benefit each type of property received from the particular service before weighting any variations against the standard base unit in the final apportionment calculations.

35. Thus, as an example when determining who should pay the sewerage charge, there was a calculation of the number of toilets per unit and different weightings were attached to those which were available for public rather than simply private use. The apportionment employed in respect of the sub station maintenance was a reflection of the amount of electricity consumed by each group of users. The cost of the road repairs to the left of the entrance and to the right of the entrance were dealt with separately so that (inter alia) the Applicants and the owners of the boathouses and lagoon apartments do not pay any costs of the road repairs to the right of the entrance. The cost for street lighting was calculated on the basis of the number of street lights to the left and right of the main entrance.

36. In deciding what weighting to apply to the liability for the road repairs to the right of the entrance, as between the moorings and the property owners to the right of the entrance, Mr Pogson had regard to the various car parking rights enjoyed by the different users and stated "The moorings are non residential and parking is not guaranteed; if full then cars can be turned away. It is also noted that one parking space per eight boats was a general planning requirement and this was therefore used".

37. Mr Pogson however concluded "With regard to security and grounds maintenance these services were provided as an overall communal benefit for the whole of the estate and should be assessed on that basis rather than seeking to apportion them to individual units based on proximity or distance".

38. Mr Pogson applied the same weightings to the cost of security, grounds maintenance and professional fees. He "judged that the weighting adjustment for moorings as applied to road repairs (based on a ratio of 1:8) was too generous for these common services (for example security) at one extreme whilst the default weighting of 1:1 also seemed too expensive at the other". He felt "it was also appropriate to reflect the difference derived from grounds maintenance by moorings which were non permanent residency as opposed to flats and cottages etc that did allow for permanent residency and again the weighting extremes referred to above seemed inappropriate". Accordingly taking all factors into account he judged that a weighting at the mid point 1:4 was most appropriate to reflect the particular circumstances.

39. Mr Pogson in giving his evidence at the hearing said that part of his reasoning for deciding that the owners of the boathouses should pay four times the security charges apportioned to each mooring was because the boathouses were on the perimeter of the estate and therefore, in his opinion, less secure than the boats which were grouped in the middle and to an extent self policing and more secure.

40. The Applicants engaged Mr Gale-Hasleham to advise and act as their expert witness. Like Mr Pogson, Mr Gale-Hasleham is a fellow of The Royal Institution of Chartered Surveyors with many years experience.

41. Mr Gale-Hasleham was instructed by the Applicants to confine his opinions to "security and the grounds maintenance charges" because these were by far the highest elements of the service charge.

42. Mr Gale-Hasleham did not feel able on the basis of the information that he had, to advise specifically what he believed the service charges should be for each year but clearly felt that a starting point for any apportionment should be calculations according to the size of the different units, the pontoon lengths, and a breakdown of the lengths of the boats.

43. Despite not feeling able to calculate the amount of the service charges Mr Gale-Hasleham clearly did not agree with the 1:4 weighting which Mr Pogson had applied between the moorings and the property owners in respect of both the security and grounds maintenance charges. In his report he stated "it is arguable that the marina users benefit more from the security charges than the building users as this is a service that Windermere Marina Village has to have in order to protect the boat owner's property/chattels."

44. At the hearing Mr Gale-Hasleham confirmed that he felt a weighting of 1:1 would be fair as between those users with moorings and those with dwellings.

45. Mr Wild argued for the same ratio. In his evidence he confirmed before buying the dwelling he had rented a mooring at the marina and as part of his application for insurance of the boat, which was a requirement of the marina, he had been asked to state whether or not there was CCTV or security on the site. As such he was clear that such security arrangements are material to an insurers assessment of risk and the premiums to be charged to a boat owner. Mr Wild confirmed when subsequently insuring the dwelling there had been no similar enquiry by its insurers.

46. Mr Wild clearly felt the Respondent paid less attention to the ground maintenance for the areas to the left of the entrance as opposed to those to the right. Attention was also drawn to the barriers across the roadway to the right of the entrance. Mr Wild also said that now that the shop had closed there was no reason for the owners of the dwellings to go to the other side of the marina.

47. He also questioned the number of moorings and noted that the numbers on the number plates went up to nearly 470.

48. He felt that the most vulnerable items within the marina were the tenders and dinghies.

49. Mr Dearden in giving his evidence explained that there were less than 470 number plates for the moorings and that the numbering was not always sequential because of how individual numbers had been allocated to certain boat owners over the years. He also explained the number of moorings changed from year to year dependent on how the pontoons were configured. Mr Dearden conceded (as had Mr Pogson, Mr Gale-Hasleham and Mr Wild) that he had not counted the number of moorings. Nevertheless he felt that 380 would be a mean or average figure including those which were allocated to the boat yard or for other purposes.

50. Mr Dearden argued that good estate management required that the grounds maintenance for the different parts of the estate be treated as a single entity, and that the overall expense would be increased if works to the right of the entrance were treated and costed separately from those to the left. He also pointed out that there were tree preservation orders attached to all of the trees on the site and that the ground maintenance work included regular surveys of all of the trees.

The Law

51. Section 27(a) of the 1985 Act provides that:-

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to:-

(a) the person to whom it is payable
(b) the person by whom it is payable
(c) the amount which is payable
(d) the date at or by which it is payable

(e) the manner in which it is payable

(2) Sub-section 1 applies whether or not any payment has been made.....
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

52. Section 18(1) of the 1985 Act states that "service charge means an amount payable by a tenant .....

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

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

53. Section 19(1) of the 1985 Act provides that "relevant costs should 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 Tribunal's Reasons and Conclusions

54. Section 19 of the 1985 Act imposes a general requirement of reasonableness in relation to service charge expenditure.

55. The requirement that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give a landlord a licence to charge a figure that is out of line with the market norm.

56. The initial questions to be asked are whether a landlord's actions in incurring the relevant costs and the amount of those costs are both reasonable, and whether the works are of a reasonable standard.

57. The Tribunal concluded that all the works and services had been reasonably incurred, that the costs did not appear unreasonable, and that the works and services appeared to have been completed or provided to a reasonable standard.

58. The Tribunal noted that the Applicants did not seek to pursue an argument that the amounts for sewers and sewer pumps, street lighting, the electricity sub-station and road repairs to the left of the entrance in the revised service

charges were unreasonable and the Tribunal found that all those items were due and payable.

59. The questions in dispute between the Applicant and the Respondent were as follows:-

(a) whether upon a proper construction of the Lease the Applicants are liable to contribute towards the ground maintenance costs of the estate as a whole, the security costs and the surveyor's fees ("the contentious charges").

(b) whether the amounts sought by the Respondent for such items is a "fair proportion"

(c) whether the security costs for 2011 should be irrecoverable for non consultation having regard to the requirements of Section 20 of the 1985 Act

("the disputed matters")

60. Dealing with each of the disputed matters in turn:-

Whether the contentious charges are within the service charge provisions in the Lease?

61. The Tribunal began its deliberations by carefully considering the terms of the Lease.

62. It was common ground between the parties that a proper construction of the Lease involved deciding on the meaning which the document would convey to a reasonable person having all the background knowledge which would have reasonably been available to the parties in the situation which they were at the time of the contract (ICS -v- West Bromwich Building Society [1998] (1) WLR 896).

63. The Applicants argued that the words "and other things the use for enjoyment of which is or shall be in common to the demised premises and other premises" in clause 2 of the schedule to the Lease should be construed "eiusdem generis" with the previous words "reconstructing, repairing, maintaining, rebuilding, cleansing and dredging of all estate walls, fences, sewers, drains, roads, car parks, water ways and piers" and that as such the Lease did not authorise charging the Applicants for the provision of security.

64. The Applicants also argued that the service charge provision should be limited to only those costs specifically incurred in relation to what they referred to as "the original development" which had been completed in the 1960's. They drew attention to the fact that the Lease does not provide for any formal rights of way over what might be termed as "the new development" and argued that the Applicants did not derive any material benefit from the provision of either ground maintenance or security over the land to the right of the entrance to the site.

65. The Tribunal having carefully considered the terms of the Lease rejected the "eiusdem generis" argument.

66. The Tribunal decided that a proper interpretation of the Lease required using the ordinary and natural meaning of the words that had been employed.

67. Clause 2 of the Schedule to the Lease clearly refers to "all communal services including reconstructing ...the use or enjoyment of which shall be common to the demised premises and other premises" and there is no indication in the Lease that the specific examples referred to are to be construed as an all inclusive list

68. The Tribunal agreed with the Respondent's argument that the "eisudem generis" rule of construction does not apply where specific words follow general words instead of preceding them, and that the items specifically listed were but examples of possible communal services.

69. As a consequence of the above, the Tribunal concluded that the wording of the Lease did not preclude the payment by the Applicants of a contribution to either ground maintenance or security charges.

70. The Tribunal clearly concluded following their inspection of both the property and the marina as a whole that the Applicants derive a benefit from the ground maintenance works.

71. The Tribunal came to the same conclusion when having regard to the provisions for security.

72. The Tribunal concluded that the security provisions were a "service" within the ordinary meaning of that word and that the Applicants together with the other occupiers and users of the marina derived a benefit from that service.

73. The Tribunal was conscious that the vast majority of those using the marina did so for holiday and recreation purposes and as such were unlikely to be in full time attendance.

74. The marina is easily accessible to the public at large from the road and from the lake. It has a changing population and inevitably will be more of a security risk than a private single permanently occupied first residence.

75. The Tribunal carefully considered the Applicant's argument as to whether the costs of security and ground maintenance should be limited to those specifically incurred in respect of the original development and the areas principally to the left of the entrance and what the Applicants had referred to as "the original development".

76. The Applicants had argued that they had no formally granted rights of way over what they termed as "the new development" and that they did not derive any material benefit from the provision of ground maintenance and security over the land to the right of the entrance.

77. The Tribunal again carefully considered the wording of paragraph 2 of the Schedule to the Lease.

78. That specifically refers to the payment of a fair proportion of ".... all communal services ... the use or enjoyment of which is or shall be common to the demised premises and other premises".

79. The Tribunal well understands an individual property owner's concern when asked to pay sums for works which may appear not to have any direct benefit to the owner's own property. However, it is in the nature of service charges that each property owner is asked to pay a proportion of costs spread between various property owners. On occasions, such works may not be of direct benefit to an individual property owner but dependent on the works in question there can be a swings and roundabouts effect where sometimes a particular property owner receives a greater benefit from particular works and sometimes a lesser benefit.

80. It is well established that a property owner can be obliged to pay services charges in respect of work even if he takes no personal benefit from the work.

81. The Tribunal found that as a matter of a construction of the Lease the payment of the service charges were not limited to the area which the Applicants had referred to as the original development and rejected the arguments that their liability should be limited to the areas originally developed in the 1960s.

82. The Lease was granted for a term of nearly 100 years and included clear indications that the marina would and could change over that term.

83. Clause 2 of the Lease stated that the original Lessors had kept back the right "to alter the general plan of their Windermere marina estate .... and to develop the same in any way they may see fit ...".

84. The same clause and indeed others in the Lease made it clear that there were rights to alter the routes and directions of roadways, car parks and other amenities, and the Tribunal concluded that it must, or should, have been in the contemplation of the original parties to the Lease when signing the same that the marina could be developed and would change over the course of the lease term.

85. The Applicants contended that the words at the end of clause 2 of the Schedule to the Lease which read "provided always that the Lessees shall be under no obligation hereby to pay any contribution towards the cost of making good any damage thereto caused in the course of any future development work of the Lessors" meant that the Applicant should not have to contribute to any services which might benefit both the original development and the later development.

86. The Tribunal did not agree with that argument and concluded that the proviso should simply be taken to mean what it said, as being a prohibition against

passing on any charges for the costs of repairing damage caused by capital redevelopment works.

87. The Tribunal clearly concluded following their inspection of both the property and the marina as a whole that the Applicants derive a benefit from the ground maintenance works which were undertaken not just within the area of the original development but also the marina as a whole. As but one example the balcony at the front of the Applicant's boathouse enjoys marvellous views over the rest of the marina and beyond.

88. The Tribunal also concluded from its site inspection that all of the properties within the marina derived some benefit from the security patrols.

89. The Tribunal went on to consider whether the charge for surveyors costs which had been included in the 2008 service charge demand is properly payable.

90. It was explained to the Tribunal that that charge simply related to Mr Pogson's costs of deciding on what would be a fair apportionment and the Tribunal had no doubt that the charges themselves were entirely reasonable because of the amount of work involved.

91. However, the Tribunal concluded that for the Landlord's legal or administration or other costs to be passed on to the Tenant there needs to be clear and unambiguous authority from within the Lease itself.

92. The Tribunal was not persuaded by the Respondent's argument that because clause 2 of the Schedule refers to the need for the Landlord to employ a surveyor his charges are a common benefit to the Applicants and others.

93. It was noted that the Respondent's own Counsel when advising as to enforceability of the original service charge demand had advised the Landlord's own administration charges were not payable.

94. The Tribunal also noted the terms of clause 4 of the Lease whereby a fixed charge was imposed for what was said to be "in consideration of the Lessor's exercising general supervision ...". Whilst that clause may not necessarily cover any Landlord's surveyor's costs it does make it clear that not all of the Landlord's costs of complying with its obligations under the Leases are to be passed on and apportioned between the various tenants.

95. The Tribunal is aware that many modern Leases will make the matter explicit. However this does not lead to a general presumption that a Landlord is entitled to pass on all its management expenses to the Lessees.

96. Without an express and clear provision having been included within the wording of the Lease the Tribunal decided that the Landlord's surveyor's costs of determining an apportionment are not chargeable to the Lessees.

97. Turning next to the question (which appeared to be at the heart of the dispute) as to whether the contentious charges have been fairly apportioned to the Applicants.

98. Clearly the two experts were at odds both as to the correct methodology and the result.

99. Both had many years' experience but both had to concede that they had not previously been asked to apportion service charges between different types of users of a lake marina.

100. Both agreed that they should follow the RICS Code of Practice.

101. The Tribunal concluded that that Code of Practice would allow a number of possible ways of constructing a fair apportionment.

102. The Tribunal were not persuaded that the Code of Practice inevitably required, as Mr Gale-Hasleham had argued, the measurement of all of the properties and moorings, although were quite happy to agree that such measurements may have been of assistance to deciding on a fair apportionment.

103. The Tribunal had no objection to Mr Pogson's "unitary" approach and indeed were impressed by his professionalism and diligence in deciding on a matrix which allowed the various different elements within the marina to be compared.

104. There was a discussion at the hearing as to the exact number of moorings and it accepted that neither of the experts nor the Applicants nor the Respondent had physically counted them.

105. On the basis of the evidence before it, the Tribunal concluded that 380 moorings would be a reasonable figure for the apportionment calculations.

106. The Tribunal accepted Mr Dearden's response to the question as to why the marina's website had referred to it having 400 moorings as being for "advertising purposes". They also noted that the various number markings were not necessarily sequential for various historical reasons.

107. The Tribunal did not however agree that it was appropriate that each of the boathouse and lagoon apartment owners should pay four times the amount for security and ground maintenance as each of the moorings.

108. Mr Pogson had, it appeared, in deciding on the weighting used as a starting point a ratio of 1:8 which derived from a planning requirement in deciding on what parking spaces might be required for boat owners. He had then gone on to moderate that to a ratio of 1:4.

109. The Tribunal felt that the marina's main function was not the parking of cars but the parking of boats. The Tribunal also noted that there is a public car park adjoining the marina on the other side of Ferry Nab Road.

110. The Tribunal was also not persuaded by the argument that boats in the centre of the marina are somehow more secure than the surrounding housing.

111. The Tribunal was clearly of the opinion that the main reason for the security patrols was because of the vulnerability of the boats within the marina, the risks of vandalism and theft.

112. The Tribunal concluded that boats stored within a boathouse would be far more secure than those that were attached to the different moorings.

113. The Tribunal felt that Mr Pogson's weighting had derived from a judgement as to the amount of time that boat owners as opposed to householders may be at the marina.

114. The Tribunal however felt that security considerations were more pertinent and more pressing when someone was absent rather than when they were present. The Tribunal was therefore not persuaded by Mr Pogson's argument that the moorings were self policed and thereby more secure than the houses. It was also noted that the security patrols were at night, not in the day.

115. The Tribunal also felt it significant that the terms and conditions of the marina specified that each boat owner must maintain insurance and that boat insurers were particularly interested to ask as to what the security arrangements might be before setting their premium.

116. The Tribunal also noted that Mr Wild had confirmed that no such questions were asked as regards his insurance for his boathouse.

117. The Tribunal also concluded that the majority ground maintenance works were concentrated in the more public areas to the right of the entrance notwithstanding that the house owners derived some benefit from the same.

118. For all these reasons the Tribunal concluded for the years in question a fair and reasonable apportionment of the costs of security and ground maintenance of the estate as a whole should be the basis of a ratio of one to one between the house owners and the moorings.

119. In recalculating the amounts due for security and grounds maintenance, the Tribunal concluded that the Applicants should pay 1/506 of the total costs. That figure was arrived at by allocating 380 units to the moorings and adding to that figure the additional 126 units identified in Mr Pogson's matrix.

120. Turning next to the question as to whether security costs for 2011 should be recoverable for non consultation having regard to the requirements of Section 20 of the Act.

121. The Tribunal carefully studied the written agreement with Town & Country Security Management Limited. That referred in Schedule 4 to a start date of 18 July 2011 and a period of not less than 12 months.

122. The terms and conditions relating to termination of the Contract also referred to the agreement remaining in full force for a minimum period of 6 months from the date of commencement and continuing thereafter until terminated by the client giving not less than 30 days notice.

123. The Tribunal concluded that it would be legally possible therefore for the Respondent to cancel the Contract at the 12 month point.

124. Section 20ZA(2) of the 1985 Act confirms that a "qualifying long term agreement" means ... an agreement entered into ... for a term of more than 12 months.

125. The Tribunal concluded that the agreement entered into with Town & Country Security Management Limited was not for a term which exceeded 12 months and as such did not invoke the consultation requirements of Section 20 of the 1985 Act.

126. The Tribunal is also aware having made its decision as to what would be a fair apportionment of the security charges for 2011, that the amount apportioned to the Applicant did not now exceed £100 being the appropriate amount and threshold referred to in Section 20.

127. Turning finally to the request made by the Applicants for an order under Section 20C of the 1985 Act.

128. Section 20C(1) as amended provides that:

> "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the Landlord in connection with proceedings before ... a Leasehold Valuation Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

129. The Tribunal having regard to what is just and equitable in all the circumstances determined that such an order should be made.

The Determination

130. The Tribunal therefore determined as follows:-

(i) the Applicant's are due to pay the Respondent the following sums in respect of the service charges for

2008

Security £63.23
Grounds Maintenance £52.26
Surveyors Fees £6.22

Sewers and Sewer Pumps £116.42
Street Lighting £2.37
Electricity Sub Station £3.56 Total £244.06

2009

Security £64.69
Grounds Maintenance £59.65
Sewers and Sewer Pumps £40.72
Street Lighting £2.93
Electricity Sub Station £2.53 Total £170.52

2010

Security £68.61
Grounds Maintenance £57.85
Sewers and Sewer Pumps £51.64
Street Lighting £3.41
Electricity Sub Station £2.11 Total £183.62

2011

Road repairs to the left of the entrance £2.48
Security £75.60
Grounds Maintenance £56.29
Sewers and Sewer Pumps £101.66
Street Lighting £3.00
Electricity Sub Station £1.28 Total £240.31

(ii) pursuant to the powers contained in Section 20(C) of the 1985 Act and the request included in the Applicant's initial application, the Respondent be precluded from including within the amounts of the service charge payable by the Applicant, or any other person, the costs of the present proceedings before the Tribunal

(iii) there be no further order for costs.

Date 14th November 2012

Signed

Chairman: JM GOING

JMG/REN005-1/Flat 39 and Boathouse Windermere