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**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | CHI/00ML/LIS/2014/0082 |
| **Property** | : | Flat 20, Baltic View, Withyham Avenue, Saltdean, Brighton BN2 8GE |
| **Applicant** | : | Grand Ocean View Management Company Limited |
| **Representative** | : | Remus Management Limited |
| **Respondent** | : | Richard Wayne Knights and Jaqueline Penelope Knights |
| **Representative** | : | |
| **Type of Application** | : | Service Charge transferred from the County Court |
| **Tribunal Member(s)** | : | Judge Tildesley OBE<br>Mr A O Mackay FRICS<br>Miss J Dalal |
| **Date and Venue of Hearing** | : | 23 and 24 June 2015, Tribunals Centre, CityGate House Dyke Road Brighton |
| **Date of Decision** | : | 3 August 2015 |

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DECISION

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## Decisions of the Tribunal

I. The Respondents are liable to pay the Applicant £1,055.84 (instead of £1,125.22) in service charges for the year ending 31 August 2013.

II. The Respondents are liable to pay the Applicant £1,267.04 (instead of £1,346.02) in service charges for the year ending 31 August 2014.

III. The administration charges for £25 and £60 dated 4 and 27 June 2014 respectively are not payable by the Respondents.

IV. The Respondents admit liability to pay the water charges totalling £224.98

V. The Tribunal does not make an order under Section 20C of the Landlord and Tenant Act 1985.

VI. The Tribunal remits the decision back to the County Court for final determination which shall include the interest charge of £49.95, further legal and administrative costs of £325, and the court fee of £105.

## The Application

1. Following a transfer from the County Court (Claim Number A8QZ182A) the Tribunal is required to make a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.

2. A case management hearing took place by telephone conference on 25 February 2015 which was attended by Mr Paul Taylor of Remus Management Limited for the Applicant and Mr Richard Knights for the Respondents. At the hearing directions were issued and a hearing date was fixed for 23 and 24 June 2015.

3. The schedule of arrears as at 17 July 2014 which accompanied the claim [20] showed that the balance due from the Respondents was £1,520.42.

4. The schedule identified the following issues to be determined by the Tribunal and which fell within its jurisdiction:
   - Service charge for the year 1 September 2012 and 31 August 2013. The schedule showed a year end balancing charge of £100.95 dated 28 February 2014 in the Respondents' favour.
   - Service charge for the year 1 September 2013 and 31 August 2014. The schedule showed the following amounts owed by the Respondents: estate service charge on account in the sum of £149.29 dated 12 August 2013, service charge on account in the

sum of £411.79 dated 23 January 2014, and estate service charge on account in the sum of £207.36 dated 23 January 2014.

- Administration charges of £25 (debt reminder) dated 4 June 2014 and of £60 (case preparation charge) dated 27 June 2014.
- Water charges in the sum of £224.98 (£67.72 dated 10 October 2013; £82.52 dated 27 February 2014; and £74.74 dated 26 June 2014).

5. The schedule also included an interest charge of £49.95, further legal and administrative costs of £325 and the court fee of £105. The County Court will determine the Respondents' liability to pay these charges. The Applicant withdrew the charge of £48 for the freeholder's preliminary costs in preparation for forfeiture action,

6. The Respondents have subsequently discharged its debts under the service charge. The statement of account as at 25 June 2015 showed an account balance of £85 in their favour.

7. Mr Knights at the hearing sought to broaden the dispute to include, amongst other matters, rights of access, enjoyment of communal areas, and disrepair. The Tribunal went to great lengths to explain to Mr Knights the limits of its jurisdiction on dealing with transferred applications from the County Court. Under section 176A of the 2002 Act the Tribunal is restricted to answering the question posed by the County Court which in this case was restricted to the monetary claim in connection with the service charges for the years ending 31 August 2013 and 2014 and administration charges. There was no application before the Tribunal to determine the service charges for the year ending 31 August 2015.

8. In this case the Tribunal limited its determination to those matters identified in paragraph 4 above, and whether an order should be made under section 20C of the 1985 Act preventing the Applicant from recovering its costs in connection with the Tribunal proceedings through the service charge.

9. The relevant legal provisions are set out in the Appendix to this decision. References to documents in the bundle are in [ ].

## The Hearing

10. Mr Taylor of Remus Management Ltd represented the Applicant at the hearing. Remus Management Ltd was appointed as managing agents of the building in 2010. Mr Knights presented the case on behalf of the Respondents.

11. The Tribunal inspected the property on the morning of 23 June 2015. The hearing commenced at 1pm on 23 June and concluded at 5pm part heard. The hearing resumed the following morning at 10.00am and

finished around 3.30pm. The Tribunal broke at convenient times during the hearing to meet the parties' requirements.

12. Prior to the commencement of the hearing Mr Taylor supplied the Tribunal with an additional bundle of documents which Mr Knights had requested to be put before the Tribunal. Mr Taylor did not object to the late admission of the documents. The Tribunal decided to admit the additional bundle of documents on the understanding that the parties would bring those documents upon which they relied to the Tribunal's attention.

**The Lease**

13. In October 2009 the Respondents purchased their three bedroom Flat on a shared ownership basis with Hyde Housing Association Limited. At that time the Respondents' ownership of their home was governed by the requirements of an underlease with Hyde Housing for a term of 125 years. Hyde Housing was responsible for the collection and payment of the service charge to the Applicant.

14. On 4 November 2013 the Respondents exercised their option to acquire the head lease to the property which meant that Hyde Housing ceased to be the Respondents' immediate landlord. From that date the Respondents were liable to pay the service charge to the Applicant under the terms of lease dated 29 March 2007 between Explore Living PLC as the lessor, the Applicant as the Manager, and Hyde Housing as the tenant. The lease was for a term of 999 years from 1 January 2007.

15. On 20 December 2013 Elmbirch Properties PLC acquired the freehold to the property from Explore Living PLC.

16. A copy of the lease dated 29 March 2007 was included in the First Bundle at [86-116].

17. Under clause 6 and Tenth schedule of the lease the Applicant was responsible for providing the services to the Respondents which were set out in the Sixth schedule to the lease. The Sixth schedule was split into two parts. The first part related to the Estate Charge (Sector 1 costs), and the Second Part was the Block Charge (Sector 2 Costs).

18. Under paragraph 1 of the Eighth schedule to the lease, the Respondents were required to pay the Applicant the Lessee's Proportion at the times and in the manner specified in the lease. The Lessee's Proportion was defined as the proportion of the relevant sector of the maintenance expenses applicable set out in the Seventh Schedule. The Maintenance Expenses were defined as the reasonable and proper costs actually expended or reserved for periodical expenditure by or on behalf of the Applicant in carrying out the obligations under the Sixth Schedule to the lease.

19. The Seventh schedule to the lease sets out the method for calculating the Lessee's Proportion for Estate Charges and for Block Charges.

Paragraph 6.1 to the Seventh schedule require the Respondents to pay the service charge in advance by two half yearly instalments on 1 September and 1 March of each year. In essence the service charge comprised two elements, a proportion of the Block Charge and a proportion of the Estate Charge.

20. The Tribunal will refer to other provisions in the lease when making its determination on the disputed issues.

**The Property**

21. The flat was located within a block known as Baltic View which formed part of the development known as Grand Ocean Estate at Saltdean near Brighton. The development was on a plot of about three acres on high ground with extensive views of the English Channel.

22. The development comprised 234 flats which included a conversion of a Grade 11 listed "art deco" building named Grand Ocean View, and the construction of five blocks of flats at the rear of the Grand Ocean building. Four blocks, Atlantic Heights, Caspian Heights, Ionian Heights and Pacific Heights fanned out in a linear fashion from the back of Grand Ocean View. Baltic View was a horizontal structure at the southern end of the development on a step below the four linear blocks, and finished in both render and external cladding with a flat roof which also served as a paved communal area for the Estate.

23. The development had extensive grounds which were mainly to lawn with a fountain feature at the front of Grand Ocean View. There were also walkways throughout the development. In addition the development had 170 underground parking bays and 18 other parking bays which had been allocated to individual lessees under the terms of their respective leases. Access to the underground car parking was controlled by means of electronic gates which required the swiping of a fob key to open them.

24. The Tribunal's inspection started at the Respondents' property. In order to gain access to the property, the Tribunal climbed metal work open stairs onto a landing and then through a communal door controlled by a key fob which opened into a corridor off which the front door of the property was located. Inside the Flat, Mr Knights identified incidences of damp around the windows, and demonstrated the difficulty with opening the window to the living room.

25. A door to the underground car park was located immediately opposite the front door of the Respondents' Flat. Mr Knights pointed out that if he had access through the car park gates he would be able to enter his Flat on the level without the need to climb stairs. The Tribunal understood that Mr Knights had permission to pass through the door to deposit rubbish in the allocated bin area, and to take readings from the utility meters located in a cupboard on the opposite part of the car park but did not have permission to go through the gates because this was

restricted to vehicular access for parking in designated spaces. The Respondents did not own a designated parking space.

26. Mr Knights said the bin area inside the car park would get overloaded with rubbish because it was convenient for lessees with cars to drop off their rubbish there. The Applicant had put up a notice asking residents not to leave rubbish outside the bins. The Tribunal noticed that the light inside the meter cupboard was not working. It would appear that the light fitting had been stolen.

27. Mr Knights drew the Tribunal's attention to items of disrepair which included signs of rust on the metal work stairs, a loose paving stone on the landing at the top of one set of stairs, flaps coming loose from the newly installed damp course for Baltic View, and the breaking up of paths at the rear of Baltic View.

28. The Tribunal walked the length and breadth of the development. Mr Knights asked the Tribunal to contrast and compare the state of the gardens at the rear of Baltic View with those at the front of Grand Ocean View. The Tribunal observed the patches of bare earth with exposed irrigation pipes at the rear of Baltic View. Mr Knights drew the Tribunal's attention to the standard of light fittings for the walkways which were made of plastic in Baltic View compared with stainless steel for the fittings in front of Grand Ocean View. Mr Knights showed the Tribunal the allocated bike stores for Baltic View and Grand Ocean View. The bike store allocated to Baltic View was small with no finished floor and a stiff door. In contrast Grand Ocean View had two bike stores which had been finished to a high standard. Finally Mr Knights took the Tribunal to the terraced area above Baltic View indicating areas of previously designated communal land which had been sold off by the developer as part of the demise of individual flats.

**Service charge for the year 1 September 2012 and 31 August 2013.**

29. The Tribunal required the Applicant to provide copies of the service charge statements for 20 Baltic View because the documents bundle only contained the statements for Grand Ocean View Estate. The Applicant supplied these statements to the Tribunal and to the Respondents by e-mail on 8 July 2015.

30. The statement for the year ending 31 August 2013 showed service charge expenditure of £1,125.22 as against income of £1,226.16 for 20 Baltic View which meant that the Respondents received a credit of £100.95 in their service charge account.

31. The Respondents challenged items of expenditure under the estate charge which totalled £344.99 of the £1,125.22. The Respondents set out their case in the form of a Scott schedule which was found at [118]. The Tribunal intends to take in turn each disputed item of expenditure.

The amounts in brackets are the total amount expended on the item followed by the Respondents' contribution.

32. **Pest Control (£240;£1.38):** The £240 comprised £168 for seagull prevention works [295] and £72 for anti-roosting device [297]. The works were carried out by Betapest which was on the Applicant's list of approved contractors. The Tribunal is satisfied that the works were necessary, particularly in view of the seaward location of the property, and they were authorised by the lease (paragraph 1 Sixth schedule [Estate Charge][1]). The Respondents adduced no evidence to support their contention that the charges were excessive. The Tribunal, therefore, finds that the charges for pest control were reasonably incurred.

33. **Pump Maintenance (£1,586.34;£3.33):** The expenditure was incurred on the maintenance of water pumps which were required to shoot the water round the development. The Respondents objected to the expenditure on the ground that the need for a water pump was symptomatic of the failure by Explore Living (the developer) to put in an adequate infra-structure for the size of the estate. The Respondents did not challenge the reasonableness of the expenditure incurred. The Applicant was of the view that it was not responsible for the design of the estate, and that the design had no bearing upon the Respondents' liability to pay for the services provided.

34. The Tribunal finds the expenditure was authorised by paragraph 5 of Sixth schedule (Estate Charge) which related to keeping the service installations in good and substantial repair. The expenditure was substantiated by invoices from Acorn Pressurisation Services Limited [229-245]. The Tribunal is satisfied that the charges on pump maintenance were reasonably incurred.

35. **Fountain Cleaning (£2,894.35;£16.61):** The expenditure related to the weekly servicing and cleaning, and the maintenance of the ornamental fountain which was located at the front of Grand Ocean View. The expenditure was substantiated by invoices from Dorian Pools [246-259].

36. The Respondents argued they should not pay for the fountain because they received no benefit from it. Mr Knights said that he was asked to leave the fountain area by members of the sales team. Mr Knights did not consider the fountain area part of the estate.

37. The Tribunal is satisfied that the fountain was part of the Communal Areas as defined by Part 11 of the Second schedule to the lease, and therefore, within the Manager's Land (Part 1 of the Second schedule). Further the Tribunal finds the expenditure on the fountain was

[1] *"Whenever reasonably necessary to light maintain cleanse repair renew and maintain the Manager's land and the boundaries thereof".*

authorised by paragraph 1 of the Sixth schedule (Estate Charge) to the lease. Paragraph 1 was broadly written and enabled the Applicant to incur and recover costs on lighting, maintaining, cleaning, repair and renewing the Managers Land. The Tribunal did not consider it was necessary to classify the fountain as a service installation to recover the costs. The authority under paragraph 1 was sufficient justification to recoup the costs through the service charge.

38. The fact that the Respondents did not apparently receive a benefit from the fountain was not material to their liability to pay a contribution towards the costs of cleaning and maintaining the fountain. In the Tribunal's view, it was part and parcel of communal living and service charge provision that some lessees may not benefit from some aspect of the "services" or "obligations" or "functions" performed by the landlord/management company. The Respondents' liability to pay depended upon the wording of the lease not upon whether they benefitted from the facility. The Tribunal is satisfied for the reasons given in the preceding paragraph that the Respondents were obliged under the lease to contribute towards the cleaning and maintenance of the fountain. As there was no challenge to the quantum of the costs and the standard of the works, the Tribunal holds that the costs incurred on the fountain were reasonably incurred.

39. **Grounds Maintenance (£11,375; £65.29):** The gardening specification as set out in [467] required the contractor to visit the property fortnightly during the months March to October, and monthly from November to February. The duties involved cutting all grassed areas, weeding, pruning and generally keeping the gardens tidy. The contractor which carried out these services charged £850 a month or £10,200 per annum. The balance of £1,175 was incurred on treatments to the lawns by another contractor carried out on a quarterly basis. The expenditure incurred on general gardening and lawn treatment was substantiated by invoices from the two contractors [260-283].

40. The Respondents' original objections to the grounds maintenance costs were that the gardens were poorly managed with many trees and plants either dying or dead, and that the lawns were mossy with weeds. Mr Knights at the hearing, however, accepted that he had no qualms with the standards and costs of the basic gardening. Mr Knights' issue was with the monies spent on replacing the dead trees and plans, which did not form part of the gardening expenditure in 2012/13. The Tribunal is, therefore, satisfied that the expenditure on grounds maintenance was reasonably incurred.

41. **Gate Maintenance (£3,876; nil):** The service charge statement for 20 Baltic View supplied by the Applicant showed that there was no charge against this expenditure item to the Respondents for the year ending 31 August 2013.

42. **Irrigation System (£810.49; £4.65):**This related to expenditure on the grey water recycling system which was piped to provide

irrigation to the gardens. According to Mr Knights, the irrigation system had not operated at the rear of Baltic View since Spring 2010. The Applicant produced an e-mail from Mr Neuman of Aquality dated 12 June 2014 which lent support to Mr Knights' assertion regarding the dysfunction of the irrigation system. Mr Neuman stated that the system was not much in use and he was not sure about whether the re-use applications had been connected. The expenditure incurred during 2012/13 had been on the maintenance of the pump and the repair of leaks [285-287]. The Tribunal accepts Mr Knights' evidence and decides that the works carried out were not to the required standard. The Tribunal considers that its finding on the standard of works justified a reduction of the charge by 50 per cent which meant that the amount charged to the Respondents was £2.32 rather than £4.65.

43. The Tribunal notes that the service charge statement for the year ending 31 August 2013 for 20 Baltic View included a charge of £67.06 for gymnasium maintenance and cleaning. The Tribunal in 9 Pacific Heights (reference CHI/00ML/LIS/2013/0112) determined the expenditure on the gymnasium including the maintenance were not authorised by the lease. Given the previous Tribunal's determination the Tribunal disallows the charge of £67.06.

44. Given the above findings the Tribunal determines the Respondents' contribution to the Estate Charge at £275.60 (£344.99 – (£2.33 + £67.06). Thus the Respondents are liable to pay the Applicant £1,055.84 (instead of £1,125.22) in service charges for the year ending 31 August 2013.

**Service charge for the year 1 September 2013 and 31 August 2014.**

45. The statement for the year ending 31 August 2014 showed service charge expenditure of £1,346.02 as against income of £1,238.30 for 20 Baltic View which meant a deficit of £107.71 to be collected from the Respondents.

46. The Respondents challenged items of expenditure under the estate charge which totalled £488.76 of the £1,346.02.

47. The Respondents set out their case in the form of a Scott schedule which was found at [118-121]. The Tribunal intends to take in turn each disputed item of expenditure. The amounts in brackets are the total amount expended on the item followed by the Respondents' contribution.

48. **Car Park Lights (£1,795.34; £10.30 est):** The expenditure was incurred on repairing faults to the lighting circuits in the underground car parks which was evidenced by invoices from two different contractors Bright Lights, and Powerwise Electrical Limited [301-319]. The Tribunal understands the Applicant inherited the first contractor from the Developer but then decided to use Powerwise Electrical Limited because it was on the Applicant's approved list of contractors.

The bundle included two invoices in the sum of £48 [311 & 319]. The first related to the lights in the gymnasium which the Tribunal assumed had been captured in the expenditure head entitled gymnasium maintenance and cleaning. The second concerned expenditure on bollard lights in the car park.

49. The Respondents said they were not liable to contribute to the repairs because they were not allowed in the car park. The Tribunal is not in a position to comment on the Respondents' rights of access over the Estate. This was not a matter that fell within the Tribunal's jurisdiction. The Tribunal saw advice given by The Leasehold Advisory Service on the Respondents' rights under the terms of the lease, which was included in the bundles of documents. The Leasehold Advisory Service suggested to the Respondents to instruct solicitors because of the complex nature of the legal issues involved. The Tribunal also notes the Applicant's understanding of the access rights may be imperfect, particularly regarding access to the meter cupboard.

50. The issue of the Respondents' rights of access over the car park was not relevant to the question of their liability to contribute to the repairs. It was the wording of the lease which determined the Respondents' liability. Under the lease the Respondents were required to contribute to the expenditure incurred by the Applicant in carrying out the obligations under the Sixth schedule to the lease.

51. The Tribunal is satisfied that the costs incurred on the repairs to the lighting in the car parks were authorised by paragraph 1 to the Sixth schedule (Estate Charge), namely, "*Whenever reasonably necessary to light maintain cleanse repair renew and maintain the Managers land and the boundaries thereof*". The definition of Managers land in Part 1 to the Second schedule included the car parking areas within the Managers land. As there was no challenge to the quantum of the costs and the standard of the works, the Tribunal holds that the costs incurred on the repairs to the car park lighting were reasonably incurred.

52. **Fire Doors to the Car Park (£2,358: £13.54 est.)** The expenditure incurred involved the replacement of three fire doors to the car park which was substantiated by invoices from the contractors [325-330]. The original doors had broken on the back hinges, and it was necessary to replace them with doors with a commercial specification which explained their relatively high cost.

53. The Respondents repeated their argument that they should not contribute to the cost of the fire doors because they derived no benefit from the car park. The Tribunal is satisfied the costs incurred on the replacement of the fire doors was authorised by paragraph 1 to the Sixth schedule (Estate Charge) and paragraph 3 to the Sixth schedule (Block Costs) which said:

"Keep in good and substantial repair and condition and wherever necessary to rebuild and reinstate the electronic gates, barriers, or access to the car parking areas within the Managers Land".

54. The Respondent did not make a substantive challenge to the quantum of the costs and the standard of the works. The Tribunal, therefore, finds that the costs incurred on the replacement of fire doors were reasonably incurred.

55. **Rubbish Removal (£264; £1.50):** This concerned the costs incurred on four separate occasions to remove bulky items, such as beds and a fish tank, which had been left in the bin store by persons unknown. The expenditure was evidenced by invoices raised by All Sussex Rubbish Clearance, which were on the Applicant's approved list of contractors [380-388].

56. The Respondents contended that the charges were excessive. In support of their contention they relied upon the prices charged by Brighton and Hove City Council for the removal of bulky waste items [164]. The Applicant, however, pointed out that if the price list was applied to the items removed from the bin store, the charges of the City Council would be higher than those of the Applicant's approved contractor. Given this evidence the Tribunal is satisfied that the charges for rubbish removal were reasonable and authorised under the lease in accordance with paragraph 1 of Sixth schedule to the lease.

57. **Pest Control (£669.60;£3.86):** The expenditure was incurred on rodent control and flies in the bin areas and in the grounds. In total there were five invoices for the works which were carried out by Betapest which was on the Applicant's list of approved contractors [362-369]. The costs were authorised by the lease (paragraph 1 Sixth schedule [Estate Charge]). The Respondents adduced no evidence to support their contention that the charges were excessive. The Tribunal, therefore, finds that the charges for pest control were reasonably incurred.

58. **Pump Maintenance (£508.92;£2.94):** The expenditure was incurred on the six monthly service of the water pumps and evidenced by the invoices from the contractors [335-338]. The Tribunal repeats its findings at paragraphs 33 and 34 above and holds that the charges on pump maintenance were reasonably incurred.

59. **Fountain Cleaning (£2,944.44; £17.21):** The expenditure related to the weekly servicing and cleaning of the ornamental fountain located at the front of Grand Ocean View. The expenditure was substantiated by invoices from Dorian Pools [342-351]. During the year the water pump had to be replaced twice. On the first occasion this was due to normal wear and tear. The second occasion was a result of vandalism to the fountain where a person unknown had put a bottle in the fountain causing the pump to burn out. The Tribunal repeats its findings at

paragraphs 36-38 above and holds that the costs incurred on the fountain were reasonably incurred.

60. **Grounds Maintenance (£15,780.40;£90.66):** The expenditure incurred on gardening was substantiated by invoices from three separate contractors [390-414]. The charges comprised three separate elements. The routine maintenance of the gardens which was at the same cost as the previous year, £850 a month or £10,200 per annum. The treatment to the lawns which was slightly cheaper than the previous year at £1,090. The final element was for £4,490 which involved the replacement and removal of dead hedging in January 2014 (£1,320 [399]); the supply and spread of quality loam on the dead beds in August 2014 (£1,068 [414]); and the planting of quality shrubs in the bare podium areas (£2,102.40 [410]).

61. The Respondents accepted the charges for the routine maintenance and lawn treatment but questioned the amount of monies expended on the replacement of hedging and the replanting of quality shrubs. Mr Knights argued that this expenditure was a result of the Applicant's poor management of the grounds maintenance. Mr Knights pointed out that the replacement of plants would not have occurred if the gardens had been watered properly. Mr Knights also questioned the wisdom of replacing hedging in January which normally was not a good month for planting.

62. The Tribunal considered there was some force to Mr Knights' submissions and decided to reduce the third element of £4,490 by 50 per cent. This produced an overall charge of £13,535 of which the Respondents were liable to contribute £77.76. The Tribunal decided that the revised amount of £13,535 had been reasonably incurred.

63. **Install Wooden Barrier (£872.40; £5.01):** This expenditure related to the replacement of two wooden bollards on the service road running behind Grand Ocean View. The Applicant believed that the bollards had been damaged by a refuse lorry. The Applicant supplied an invoice for the works [372] which were authorised by paragraph 1 to the Sixth schedule of the lease. Mr Knights considered the level of expenditure ridiculous and that it should have been covered by insurance. Mr Taylor after making enquiries confirmed there had been no insurance claim in respect of the damage. The Tribunal understands the excess on the insurance policy would have exceeded the cost of the works. The Tribunal decided that Mr Knights' objections lacked substance, and that the costs expended on the bollards had been reasonably incurred.

64. **Repairs to the Electrics to the Water Feature (£568.80; (£3.27):** This involved works to the electrics of the fountain at the front of Grand Ocean View. The first invoice for £270 [376] concerned the investigation of a faulty circuit, which was due to the ingress of water. The second invoice of £298.80 [378] was for the fitting of a new time clock. The Respondents maintained that they were not liable for

the costs because they derived no benefit from the fountain. The Tribunal reiterates its findings at paragraphs 37 and 38, and holds that the costs incurred on the electrics to the water feature were reasonably incurred.

65. **Maintenance to Benches (£1,200; £6.90):** The works involved the repair of six wooden benches in the communal areas, which were carried out by CPS Property Services, which was on the Applicant's approved list of contractors. The expenditure was substantiated by an invoice[322]. Mr Knights again argued that they received no benefit from the benches as they were located at the other end of development. The Tribunal is satisfied the expenditure was authorised by paragraph 1 to the Sixth schedule of the lease and was reasonably incurred.

66. **Wall Maintenance (£4,400; £25.30**): The invoice for these works was at [333] and involved the cleaning and painting of the perimeter wall at the front of Grand Ocean View. The Respondents argued they were not responsible for the charges because the works did not relate to their block. The Respondents did not challenge the reasonableness of the costs and the standard of the works. The Applicant suggested that the charges were covered by paragraph 3 to the Sixth schedule (Block Charges). The Tribunal disagrees the appropriate clause in the lease is again paragraph 1 to the Sixth schedule (Estate Charges) which applied to the maintenance of boundaries. The Tribunal is satisfied the costs have been reasonably incurred.

67. **Irrigation System (£1,056; £6.08):** This related to expenditure on the grey water recycling system which was piped to provide irrigation to the gardens. The expenditure is substantiated by an invoice from Aquality [340]. The Tribunal relies on its findings at paragraph 42 and reduces the charge by 50 per cent which meant that the amount charged to the Respondents is £3.04 rather than £6.08.

68. **Gate maintenance (£2,250; £12.94):** This was for an annual maintenance contract of £1,674 [357] and two calls out to carry out repairs to the electronic gates in the sums of £462[354] and £114 [360]. The gates control access to the underground car parks. The Respondents argued they should not pay the charges because they were not allowed access through the gates. The Tribunal restates its view that it was the terms of the lease which determined the Respondents' liability to pay not whether they received a benefit from the service. The Tribunal is satisfied that the costs were recoverable through paragraph 3 to the Sixth schedule (Block Costs)[2] and that they were reasonably incurred.

[2] "Keep in good and substantial repair and condition and wherever necessary to rebuild and reinstate the electronic gates, barriers, or access to the car parking areas within the Managers Land".

69. The Tribunal notes that the service charge statement for the year ending 31 August 2014 for 20 Baltic View included a charge of £63.04 for gymnasium maintenance and cleaning. The Tribunal in 9 Pacific Heights (reference CHI/00ML/LIS/2013/0112) determined the expenditure on the gymnasium including the maintenance were not authorised by the lease. Given the previous Tribunal's determination the Tribunal disallows the charge of £63.04.

70. Given the above findings the Tribunal determines the Respondents' contribution to the Estate Charge at £409.78 (£488.76–£12.90+£3.04+ £63.04). Thus the Respondents are liable to pay the Applicant £1,267.04 (instead of £1,346.02) in service charges for the year ending 31 August 2014.

**Administration charges of £25 (debt reminder) dated 4 June 2014 and of £60 (case preparation charge) dated 27 June 2014.**

71. The Applicant charged the Respondents £25 to cover the administrative costs connected with the issue of the reminder to the Respondents on 4 June 2014 regarding the non payment of service charge arrears. On 27 June 2014 they charged another fee of £60 to cover their costs in putting together a file to the solicitors to take legal action against the Respondents. Mr Taylor explained that after the file had been sent to the solicitors, the Applicant, would not enter into dialogue with the Respondents and would refer them to the solicitors.

72. Mr Knights submitted that the Respondents should not pay these charges because he had made every effort to set up arrangements to pay the service charge by direct debit. Mr Knights stated that he had contacted the Applicant's agent on 6 and 23 December 2014 to explain they had stair-cased to full ownership of the lease, and that he wanted to make arrangements to pay the service charges. The Applicant's agent was not prepared to deal direct with Mr Knights until they had confirmation from Hyde Housing about the stair-casing. Mr Knights heard nothing further, so he wrote to the Applicant's agent on 28 February and 21 March 2014 requesting a review of the service charges. The Applicant's agent did not respond to the letters and issued instead the debt reminder letter on 4 June 2014. Thereafter the communications between the parties became strained with the file being eventually passed to the solicitors for court action. The solicitors declined to accept part payments from Mr Knights towards the debt.

73. Mr Taylor advised the Tribunal that Hyde House informed them of the stair-casing on 17 December 2013. Mr Taylor also said that the Agent had no record on file of Mr Knights' letter dated 21 March 2014. Mr Taylor did not dispute that Mr Knights had sent the letter. Mr Taylor explained that if he had seen the letter dated 21 March 2014 he would have put on hold enforcement action to recover the debts and would have attempted to agree a payment plan with Mr Knights. Given that concession, Mr Taylor decided to withdraw the charges for £25 and £60 respectively against Mr Knights. The Tribunal, therefore, holds

that the administration charges for £25 and £60 dated 4 and 27 June 2014 respectively were not payable. Mr Taylor may wish to reflect whether his decision to withdraw the charges should have an effect on the other legal costs to be decided by the County Court

**Water charges in the sum of £224.98**

74. This concerned three invoices £67.72 dated 10 October 2013; £82.52 dated 27 February 2014; and £74.74 dated 26 June 2014 issued by the Applicant to recover the cost of the Respondents' usage of water in their home.

75. Southern Water, the utilities supplier, billed the Applicant for all the water used on the Estate. The Applicant calculated the amount of the Respondents' usage by taking readings from a sub-meter which was connected to the water supply to their home. The Applicant then added a proportion of the standing charges to the Respondents' bill. The calculations and the readings were at [424-430].

76. The Respondents admitted liability for the water charges which they had paid prior to the hearing. The Tribunal questions whether it had authority to adjudicate on the non-communal water charges because they were not service charges. The amounts paid for water by individual lessees were determined by usage not by the formula in the lease for calculating the service charge. The Respondent's liability to pay for the water charges was derived from their personal covenant to discharge all outgoings under paragraph 3 of the Eighth schedule to the lease. The lease gave the Applicant the power to enforce the Respondents' personal covenant, and therefore collect the charges for water direct from them. The question of water charges should have been reserved to the County Court. The issue, however, was somewhat academic because of the Respondent's admission of liability.

**Application under S20C and refund of fees**

77. At the hearing, the Respondent applied for an order under Section 20C of the 1985 Act preventing the Applicant from recovering its costs in connection with the Tribunal proceedings.

78. The criterion for deciding whether an order under section 20C should be made is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings. Under Section 20C the Tribunal is given a power to deprive a landlord of a property right. If the landlord has abused its rights or used them oppressively section 20C is a salutary power, which may be used with justice and equity.

79. In this case the Tribunal is satisfied that the Applicant has not abused its authority under the lease or used its authority oppressively to recover the service charges. The Applicant, on the whole, has been.

successful with its application in respect of the service charges. The Tribunal, therefore, makes no order under section 20C of the 1985 Act.

80. The Tribunal considers it would be helpful if the parties could arrive at a common understanding regarding the Respondents' rights of access under the lease, and for the Applicant to secure a formal response from either the freeholder and or the developer to Mr Knights' offer to purchase a designated car parking space.

## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

## Appendix of relevant legislation

## Landlord and Tenant Act 1985 (as amended)

### Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

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

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

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### Section 19

(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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### Section 27A

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

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

**Section 20C**

(1) 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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**Commonhold and Leasehold Reform Act 2002**

**Schedule 11, paragraph 1**

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

**Section 176A of the Commonhold and Leasehold Reform Act 2002:**

"Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the tribunal, the court –

a) may by order transfer to the First-tier Tribunal so much of the proceedings as relate to the determination of that question;
b) may then dispose of all or any remaining proceedings pending the determination of that question by the First-tier

Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal, as it thinks fit.