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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UB/LIS/2014/0072
Property	:	163, 164, 165, 166, 168, 272, 273, 274, 276, 372, 374, 375, 376, 473 and 474 The Heart, Walton-on-Thames, Surrey KT12 1GD
Applicants	:	Alexa Gray, Sarah-Louise Cross, Victoria Smith, Clare Howard and others
Representative	:	In person
Respondent	:	A2Dominion South Ltd
Representative	:	A Matraxia (solicitor)
Type of Application	:	Liability to pay service charges
Tribunal Members	:	Judge M Loveday (Chairman) H Bowers MRICS J Herrington
Date and venue of Hearing	:	22 June 2015 The Law Courts, Staines TW18 1XH
Date of Decision	:	14 August 2015

DECISION

Background

1. This is an application under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") to determine liability to pay service charges. The matter relates to a block of fifteen flats which form part of a development at The Heart, Walton-on-Thames, Surrey KT12 1GD. The Applicant lessees seek a determination in respect of the service charge years ending 31 March 2013, 31 March 2014 and 31 March 2015. The Respondent has a long leasehold reversion to each of the occupational leases and it is the landlord for the purposes of LTA 1985.

2. The application was originally brought on 27 November 2014 in the names of Alexa Gray (Flat 376), Victoria Smith (Flat 372), Sarah-Louise Cross (Flat 374) and Clare Howard (Flat 164). An oral Case Management Conference took place on 14 January 2015 and directions were given on the same date.

3. Following the CMC, the parties completed a Schedule of Disputed Service Charges identifying the issues. The Applicants served an (undated) Statement of Case and a Supplementary Statement dated 2 April 2015. The Respondent served a Statement of Case dated 25 February 2015 and four witness statements.

4. As far as the parties to the Application are concerned:
    a. On 14 January 2015, directions were also given that the four lead Applicants should provide signed authority from each of the lessees they represented. A list of the Applicants who have provided such authority appear in Appx.A to this decision. The Tribunal directs these parties should be added as Applicants under Rule 10 of the Tribunal (Procedure) (First-tier Tribunal) (Property Chamber) Rules 2013.
    b. The Application named the Respondent as "A2 Dominion Group". However, the Respondent's Statement of Case explains that A2Dominion Housing Group Ltd is merely the parent company of the landlord, which is A2Dominion South Ltd. The

Tribunal therefore substitutes A2Dominion South Ltd as Respondent under Rule 10.

5. A hearing took place on 22 June 2015. The Applicants were represented by Ms Smith, Ms Gray and Ms Howard. The Respondent was represented by Ms A Matraxia, an in-house solicitor. The Tribunal was presented with hearing bundles running to over 800 pages. The page references below in square brackets are references to pages in those bundles.

The sums in issue

6. The Application challenged liability to pay parts of the service charges in three service charge years between 2012-13 and 2014-15. At the date of the application, the 2014-15 service charge year had not yet ended, and demands had therefore only been made for estimated (i.e. 'interim' or 'on account') service charges.

7. The bundle included material demands for payment in respect of Flat 166:
    a. On 3 February 2012, the Respondent demanded payment of an estimated service charge for the 2012-13 service charge year of £1,274.18 (£106.18 per month). In addition, the demand sought payment of £48.62 per month towards the "S.Chg Deficit" for the 2010-11 service charge year [p.608].
    b. On 4 February 2013, the Respondent demanded payment of an estimated service charge for the 2013-14 service charge year of £1,544.52 (£128.71 per month) [p.611].
    c. On 29 November 2013, the Respondent provided a service charge account summary for the year ending 31 March 2013. This showed that the landlord had incurred relevant costs of £168,847.16 for the "estate", and relevant costs of £8,217.12 for the block [p.623]. These exceeded the estimated relevant costs on which the 2012-13 interim service charges had been

calculated. The Respondent therefore demanded payment of the balance of £823.63 [p.620].

d. On 7 February 2014, the Respondent demanded payment of estimated service charges for the 2014-15 service charge year of £3,951.24 (£230.57 per month). It also demanded an "annual adjustment" of £69.29 per month [p.615].
e. On 20 March 2014, the Respondent provided a revised service charge account summary for the year ending 31 March 2013 which purported to correct an "anomaly" in the previously supplied accounts. It reduced the "deficit" payable to £540.68 [p.624].
f. On 6 May 2014, the Respondent sent a revised demand for the estimated service charge for 2014-15 which amounted to £2,407.90 (£200.66 per month) [p.618].
g. On 31 October 2014, the Respondent provided a service charge account summary for the year ending 31 March 2014 and demanded sums payable. However, on 12 December 2014, the Respondent advised the lessees that the letter of 31 October 2014 and accounts were sent in error.
h. On 2 April 2015, the Respondent provided a further service charge account summary for the year ending 31 March 2014. This showed that the landlord's relevant costs in that year had exceeded the sums it had demanded on account. The Respondent demanded payment of £245.15 for the "deficit". [p.629].

Plainly, the demands made to other lessees will have varied according to the percentage apportionment in their leases.

8. In the Schedule of Issues, the Applicants accepted the service charges were recoverable under the terms of their leases, although an issue did arise as to the construction of the leases which is dealt with below. The Tribunal is also satisfied that no specific challenge is made to the demands themselves. The Schedule of Disputed Service Charges refers to various anomalies and "revisions" to the demands, but no specific

allegation is made that the demands failed to comply with LTA 1985 s.20B or 21B or Landlord and Tenant Act 1987 s.47 or 48. The grounds of challenge are therefore simply that:

a. all or part of the 2012-13 and 2013-14 relevant costs were not "reasonably incurred" under LTA 1985 s.19(1) and;
b. all or part of the 2014-15 estimated service charges were not "reasonable" under LTA 1985 s.19(2).

Inspection

9. The Tribunal inspected the property before the hearing on 22 June 2015. It should be said that it was raining heavily at the time of the inspection.

10. The subject flats are situated in a purpose built, mixed-use development in the centre of Walton on Thames which appears to be approximately 10 years old. The ground floor areas are mainly set out as a large shopping centre with anchor stores such as Next and Sainsburys, and there is associated car parking on basement levels.

11. The residential accommodation is set out in several 'cores' from first floor upwards and the cores serve separate private, social rented and intermediate housing. The Respondent holds the head leases of cores 4–7 which comprise 100 residential units. The application relates to core 4, which has an access from Hepworth Way. The core 4 block comprises some 34 units of intermediate accommodation (shared ownership and key worker housing) on the first to fifth floors. There is a lift serving all floors and an access stairwell. On each floor there is a corridor and a lobby with a bin store and refuse chute. In general the common parts are fairly well maintained. However, it was noted that a number of windows on each level close to the lift were in need of cleaning. The Tribunal also observed at least one light fitting had red tape, indicating that the fitting was faulty. Also a night storage heater appeared to be disconnected from the electrical system.

12. A door from the stairwell on the first floor of core 4 gave access to the external grounds. Immediately outside was a small area which was laid

to grass and some shrubs. These were in a fair condition. A path led from this area towards cores 5-7 though an area which seemed to have been cleared of most shrubs. This area was served by an extensive plastic irrigation system which did not appear to be operational. The area looked quite barren, but it was generally weed free. The footpath from core 4 to core 7 was the route for the occupants of core 4 to reach the lifts and stairs to the basement car park. The Tribunal briefly inspected the car parking which had the expected facilities including some plant rooms. All or most of the occupants of core 4 had individual or shared dedicated parking at this level.

13. Apart from the entrance to core 4, there was a further principal entrance to other residential areas with concierge facilities on New Zealand Avenue. The main entrance is close to the development's management centre and it gives escalator access to other formal gardens at the centre of the scheme and which serve the other Core buildings. The central area is also laid to grass, and is well maintained. However, these areas appeared to be outside the control of the Respondent.

The leases

14. The Tribunal was provided with a copy of a sub-underlease of Flat 166 dated 2 August 2007. Clause 2 of the lease requires the lessee to pay the landlord a "Service Charge" and an "Estate Charge" by equal monthly payments in advance on the first day of each month. The lessee's contribution to these charges is based on two different percentage apportionments of the landlord's relevant costs of providing various services. In the case of Flat 166, the "Service Charge" apportionment was given by the particulars to the lease and clause 7(4)(d) as 2.72% of the "Service Provision" (i.e. a contribution towards the cost of providing services within the block). The "Estate Charge" was specified by the particulars as "0.92% of all sums due from the Landlord under the terms of the Superior Lease or such other proportion as the landlord acting reasonably in the circumstances shall calculate from time to

time" (i.e. a contribution towards the services provided on the estate). It is common ground that the Respondent has undertaken a review of the Estate Charge apportionment under this provision and substituted a figure of 1% for each flat in this core. In its decision below, the Tribunal refers to the Service Provision as the "Block Costs" and the relevant costs included in the Estate Charge as the "Estate Costs". The material provisions of the lease appear in **Appx.B to this decision**.

15. The Tribunal was provided with a schedule of the Service Charge apportionments for the other flats, and these again appear in **Appx.B to this decision**.

16. The Respondent also referred to a headlease of certain parts of the development dated 4 July 2007, which was made between O&H Walton Ltd and the Respondent's predecessor in title A2 Housing Solutions Ltd. A copy was provided to the Tribunal. By clause 2.3, the Respondent was required to pay a service charge to the headlessee in accordance with Sch.4 of the headlease.

Issue 1: external agent charge 2012-13

17. The Service Charge Statement for 2012-13 showed relevant costs of £92,037.13 incurred for an "External Agent Charge": see revised accounts [p.117]. This cost was part of the Estate Costs, and the service charges for all the Applicants therefore included a contribution of 1% to this figure – namely £920.37.

18. At the hearing, the Applicants referred to the budget papers for 2012-13, where the Respondent had estimated it would incur relevant costs of £64,973.05 on the "External Agent Charge" [p.610]. The Schedule of Issues stated that the Applicants disputed the "overspend" and Ms Smith and Ms Gray repeated this at the hearing. They contended the overspend was down to poor budgeting by the Respondent and the discrepancy was so wide (50%) so as to be unreasonable.

19. Ms Matraxia referred to the service charge statements for 2012/13, which gave details of the "External Agent Charge" [p.81]. In essence, these were the relevant costs incurred by the superior landlord's agents (Messrs Savills) in managing the Estate. The charge included managing agent's fees, audit, staff costs/site management, mechanical and engineering maintenance contract, lift maintenance and buildings insurance. Ms Matraxia relied on the evidence of Mr Ken James, the Respondent's Head of Service Charge, whose witness statement was not challenged by the Applicants. Mr James stated [p.634] that for the purposes of preparing estimated budgets in each year, the figures for the external managing agents were provided to him by Michael Haile MIRPM who liaised with the external managing agents. Mr Haile relied on the budgets given to him by Savills, or where such budgets were not available he estimated the costs from the previous year's service charges (plus an uplift for inflation).

20. Ms Matraxia contended there were essentially two reasons for the alleged "overspend" in 2012/13. First, there had been an excess of cost over the estimated figures, and she referred to a reconciliation report by Savills [p.83] which explained the figures. Excluding insurance, the actual costs exceeded the budget by about £8,300 across a range of individual items. In relation to insurance, the budgeted figure included estimated premiums of £17,629. The Respondent paid Savills a contribution to the buildings premiums for the 2012-13 insurance year, but it also paid the 2013/14 insurance premiums before the end of the 2013-14 service charge year. Ms Matraxia referred to an invoice to the Respondent from Savills dated 1 April 2013 for Building and Terrorism Cover in the sum of £16,887.68. The Respondent's Statement of Case accepted this was an "error", although at the hearing Ms Matraxia suggested the Respondent was not to be criticised for paying the premium at the time Savills rendered their invoice. In any event, it was common ground that the 2013-14 premium was charged to the 2012-13 service charge year rather than the 2013/14 service charge year.

21. The Tribunal's decision. There is no doubt the actual relevant costs incurred by the Respondent in relation to the "External Agent Charge" significantly exceeded the budgeted figure. However, the Tribunal concludes the Respondent's relevant costs were not unreasonably incurred:
    a. The mere fact a budget produces a lower figure than the actual costs incurred does not in itself make the actual relevant costs unreasonable. The Applicants' argument is an attack on the budgetary process undertaken by Mr James and Mr Haile (or their predecessors) in early 2012, rather than an attack on the relevant costs.
    b. The Tribunal finds the budgetary process adopted by Respondent was a reasonable one. Mr James's evidence was not challenged, and it represents a perfectly standard method of estimating relevant costs based on budgets (whether those budgets were produced by Savills or by colleagues).
    c. It is of course possible that if a manager systematically produced poor budgets, the services such a manager provided would not be "of a reasonable standard" under LTA 1985 s.19(1)(b). However, that only means a Tribunal could decide not to take the fees of such a manager into account for the purposes of determining the amount of a service charge. It does not mean that in such a situation the other relevant costs of the landlord would become irrecoverable.
    d. No criticism was made that the Respondent was wrong to pay the 2013/14 insurance premiums when Savills demanded them before the end of the 2012-13 service charge year. In any event, if payment had been deferred until the 2013-14 service charge year, that would have simply increased the service charges the following year.

Issue 2: grounds maintenance 2012-13

22. The Service Charge Statement for 2012-13 showed relevant costs of £17,409.65 incurred for "Grounds Maintenance": see revised accounts

[p.117]. This was part of the Estate Costs, so the Applicants each paid a contribution of 1% of Grounds Maintenance, namely £174.10.

23. The first point made by the Applicants was that (yet again) the budgeted figure was far less than the relevant costs actually incurred. The 2012-13 budget included a provision of £6,536.70 for grounds maintenance [p.610].

24. Secondly, the Applicants submitted that the gardening of the areas around cores 5-7 had always been to a very poor standard, and that the area was essentially as barren as it was on inspection. They contrasted this area with the condition of the well-maintained grassed areas in the centre of the development.

25. The Respondent broke down the relevant costs of grounds maintenance for 2012-13 as follows:

    a. Gardening: £11,029.80
    b. Estate level cleaning: £5,667.05
    c. Bulk refuse removal: £712.80

    At the start of the 2012-13 service charge year, the gardening contractors had been In Touch Property Services. However, the gardening had been re-tendered during that year. Ms Matraxia relied on evidence from the Respondent's Group Environment Manager Mr Saleh Mirza whose witness statement was not challenged by the Applicants and was read by the Tribunal. Mr Mirza explained the tendering arrangements and the consultation under LTA 1985 s.20 in some detail and the lessees in Core 4 were consulted as part of this process. The successful contractor was Esskay Facilities Management, and Mr Mirza referred to the invoices from the contractor for grounds maintenance. As far as the standard of service provided, his team conducted inspections and they assessed the work done according to 19 separate standards rated on 4 levels (1 being poor, and 4 being excellent). Mr Mirza produced the relevant inspection sheets which showed the vast majority of standards rated as 2 or 3, with a few individual scores of 1 or 4. When asked about the condition of the Core

5-7 areas on the morning of the hearing, Ms Matraxia stated there had recently been a problem with the irrigation system and that the areas had had more plants in the past.

26. During the course of the hearing, an issue arose as to whether the lessees were obliged to contribute to the costs of maintaining the grassed area at the back of core 4, or the larger area extending to cores 5-7. If the lessees were only obliged to contribute to the costs of maintaining the grassed area, there was a very real argument that relevant gardening costs of £11,029.80 would have been excessive for annual maintenance. By contrast, if the lessees were obliged to contribute to the maintenance of the larger area, costs of £11,029.80 were more likely to be proportionate. The parties were therefore invited to make brief written submissions on the issue after the hearing. The Applicants submitted that the obligations only applied to the small grassed area. In written submissions dated 29 June 2015, the Respondent submitted the lease require the lessee to contribute to expenditure on the "Common Parts": see Particulars to the Lease "The Service Provision". The landlord was required by clauses 5(3) and (4) to maintain etc. the "Common Parts of the Building". The "Building" was explained by the particulars of the lease as meaning "the Centre as defined in the Superior Lease". In turn, the superior lease dated 4 July 2007 defined the "Centre" by reference to a plan edged blue. That plan showed the gardens around Cores 5-7 as part of the Centre.

27. The Tribunal's decision. The Tribunal firstly finds that as a matter of construction of the lease, the Applicants are obliged to contribute to the cost of maintaining all the external garden areas around Cores 4-7. This includes both the grassed area and the area served by the irrigation system. The Tribunal reaches this conclusion essentially for the reasons advanced by the Respondent at para 26 above. It need not repeat the arguments here.

28. Secondly, there is the question as to whether the gardening services were of a reasonable standard in 2012-13. This is essentially a question of fact, but the direct evidence is modest. The Applicants and the Respondent expressed differing views about the condition of the areas around Cores 5-7 in 2012-13 and thereafter and the Tribunal was also able to inspect in June 2015. It is certainly true the inspection suggested the areas around Cores 5-7 were barren with very few plants, but the inspection took place sometime after the events in question. Moreover, the inspection took place in wet weather and (according to the Respondent) only after the irrigation system had broken down. Given the limited direct evidence, the Tribunal therefore attaches significant weight to the contemporaneous inspection sheets kept by the Respondent. They each rated various areas on a scale of 1-4, with 1 being "poor" and 4 "excellent". For example, the inspection sheet for 21 June 2012 rated weed control as 2 and rated the condition of the grassed areas and cleanliness of paved areas as 4 [p.668]. Similarly, the inspection sheet for 18 July 2012 rated weed control as 3, the standard of shrubs as 2, the condition of the grassed areas as 3 and cleanliness of paved areas as 4 [p.675]. The Tribunal considered similar inspection sheets dated 24 May 2012 [p.682] and 23 April 2013 [p.713] – as well as numerous later inspection sheets. In the light of the inspection sheets, the Tribunal accepts that the statutory standard in s.19 (1)(b) was met during the 2012-13 service charge year, and that the gardening services were of a reasonable standard.

29. Finally, there is the question of whether the costs were reasonably incurred under s.19(1)(a). The Tribunal accepts the evidence of Mr Mirza about the tendering process carried out in 2012 (indeed, his evidence was not challenged and his statement was taken as read). The Tribunal has already found above that the lessees were obliged to contribute to the maintenance of the external areas including the area around Cores 5-7. In the light of this finding, it was not suggested that costs of £11,029.80 were excessive for maintaining this much larger area. These costs were reasonably incurred.

30. The Tribunal therefore finds there is no limitation on the contributions to grounds maintenance costs under LTA 1985 s.19(1).

Issue 3: fire alarm appliances 2012-13

31. The Service Charge Statement for 2012-13 showed relevant costs of £5,153.35 incurred for "Fire Alarm/Appliances" for Estate Costs and £422 for Block Costs: see revised accounts [p.117].

32. The Applicants referred to the budgeted figures for these costs which were included in the interim charge for 2012-13. The budget sheet included a provision of £1,574.40 for "Fire Alarm/Appliances" [p.610]. They contended the costs were not reasonable incurred, because they were over double what had been budgeted for. In particular, the Respondent's Statement of Case conceded that an element of these costs amounting to £1,054.08 was not recoverable.

33. The Respondent stated the budget had been prepared in good faith based on the known costs which it was anticipated might arise in 2012/13. Those costs formed part of a regular maintenance contract with Millwood Services Ltd, which covered fire risk assessments, testing etc. The Millwood maintenance contract for 2012/13 was £19,174.55 [p.573]. However, if other work was required, the Respondent incurred other charges. For 2012/13, the Respondent produced invoices for the cost of replacement light bulbs, callouts for smoke vents, changing faulty lights, installing new exist signs and repairs to the door entry and controlled access system. However, the lessees were also originally charged for the cost of replacing three faulty window master motors – see invoice for £1,054.08 from Millwood dated 29 February 2012 [p.570]. Having reviewed the figures, the Respondent accepted this element ought to be borne by The Heart's Central Management and that it should not have been charged to the lessees. The lessees would therefore be credited with their contributions to these costs, namely £10.54.

34. The Tribunal does not consider there was any obvious problem with the budget for fire safety in the block, and in any event this does not mean the relevant costs which were eventually incurred were unreasonable. It has considered the invoices provided by the Respondent and finds the bulk of the costs incurred for "Fire Alarm/Appliances" was reasonably incurred. The sole exception is the concession made by the Respondent in relation to three faulty window master motors. The Tribunal therefore finds the Applicants are liable to contribute to relevant costs of £4,099.27 (£5,153.35 less £1,054.08).

Issue 4: block cleaning 2012-13

35. The Service Charge Statement for 2012-13 showed relevant costs of £7,364,50 incurred for "block cleaning": see revised accounts [p.117]. This was part of the block costs, so the Applicants' contributions varied. The matter was not raised in the Scott Schedule, but it was mentioned by both parties in their Statements of Case [pp.108 and 146].

36. The Applicants contended that the standard of cleaning was poor, and in particular the window cleaning. Ms Smith stated at the hearing that in both 2012-13 and 2013-14, "the windows continuously remained unclean". The Applicants had never seen a window cleaner while they had lived at the development. When pressed by the Tribunal, Ms Smith said that she was referring to the windows for the flats and the windows in the Common Parts.

37. At the hearing, Ms Matraxia argued there was not obligation in the leases of the flats for the Respondent to clean the windows of the flats themselves. As to the window cleaning in the Common Parts, the Respondent again relied on the evidence of the inspection sheets. These showed a satisfactory standard of window cleaning.

38. The Tribunal finds the Respondent is not under any obligation to clean the external faces of the windows for the individual flats. The lessor's express obligation to clean in clause 5.4 of the Lease [p.823] is an

obligation to clean the "Common Parts". However, the "Common Parts" are narrowly defined by clause 1(2)(b) and do not include the windows to the flats. The tenant's obligation at clause 3(3) is to keep "the glass in the windows and doors ... clean and in good and substantial repair"" [p.817]. As far as windows are concerned, Sch.1 para 18 of the Lease also requires the tenant to clean the "inside of the windows of the premises properly cleaned".

39. More significantly, the Tribunal finds that the standard of window cleaning in the common parts was a reasonable one. This is essentially for the same reasons as given above in relation to grounds maintenance. The inspection sheets all refer to "cleanliness of windows, other glazing, ledges and frames". For example, the inspection sheet for 21 June 2012 rated window cleaning as 3 [p.672]. Similarly, the inspection sheet for 18 July 2012 rated window cleaning as 4 [p.679].

40. The Tribunal therefore finds there is no limitation on the contributions to block window cleaning under LTA 1985 s.19(1).

Issue 5: External agent charge 2013-14

41. The Service Charge Statement for 2013-14 showed relevant costs of £76,967.49 incurred for the "External Agent Charge" [p.632]. The service charges for all the Applicants again included a contribution of 1% to this figure – namely £769.67.

42. At the hearing, the Applicants referred to the budget papers for 2013-14, where the Respondent estimated it would incur relevant costs of £61,832.96 on the "External Agent Charge" [p.614]. They contended that by 2013/14, the under budgeting had become systematic and the process was chaotic. For example, the Applicants relied on the mistake with the insurance premium referred to above. The discrepancy was again so wide as to be unreasonable.

43. The Respondent essentially adopted the same arguments made above.

44. Once again, there was significant under budgeting in the 2013-14 service charge year. However, the Tribunal considers the relevant costs of the External Agent Charge in 2013-14 were reasonably incurred, and adopts the reasons given in para 21(a) to (c) above. As far as the insurance premium is concerned, this has already been dealt with. The evidence is that the 2013-14 External Agent Charge did not include any contribution towards 2013-14 buildings insurance, since that premium had been paid in the previous year.

Issue 6: grounds maintenance 2013-14

45. The Service Charge Statement for 2013-14 showed relevant costs of £10,251.60 incurred for "Grounds Maintenance" [p.632]. This was part of the Estate Costs, so the Applicants each paid a contribution of 1% of grounds maintenance, namely £102.51.

46. In essence, both parties repeated the same arguments that they made in relation to the 2012-13 grounds maintenance costs. For the reasons given above the Tribunal finds the relevant costs of grounds maintenance were reasonably incurred.

Issue 7: fire safety 2013-14

47. The Service Charge Statement for 2013-14 showed relevant costs of £3,756.68 incurred for "Fire Safety" [p.632]. This was part of the Estate Costs, so the Applicants each paid a contribution of 1% towards the maintenance of the fire safety equipment, namely £37.57 per flat.

48. In essence, both parties repeated the same arguments that they made in relation to the 2012-13 costs of "Fire Alarm/Appliances". For the reasons given above the Tribunal finds the relevant costs of fire safety were reasonably incurred.

Issue 8: lighting and electricity 2013-14

49. The Service Charge Statement for 2013-14 showed relevant costs of £37,059 incurred for "lighting and electricity": see revised accounts

[p.632]. This was part of the Estate Costs, so the Applicants each paid a contribution of 1% towards lighting and electricity, namely £370.59 per flat.

50. The Applicants submitted that a previous tribunal had found the electricity costs to be excessive, and they referred to a decision of the Leasehold Valuation Tribunal dated 11 September 2012 (case no.CHI/43UB/LIS/2012/0026) which related to the core 4 service charges [p.179]. The LVT recorded at the time it "was common ground that the electricity expenditure for the common parts was excessive": see para 17. The tribunal used "its own expert knowledge and experience ... [to conclude] that expenditure of £350 per flat was reasonable and [it] allowed the amounts of £25,000 and £35,000 for 2009/10 and 2010/11 respectively, as having been reasonably incurred". However, although the Respondent had capped the electricity costs passed on to lessees at £35,000 in the 2012-13 service charge year, it had not done so in the 2013-14 service charge year. In the 'uncapped year', the additional element of relevant costs above £35,000 was not reasonably incurred. In their closing submissions, the Applicants also referred to the standard of lighting – there were a large number of non-functioning lights in the common parts which could be seen on inspection.

51. The Respondent accepted the LVT's 2012 decision which related to the 2009-10 and 2010-11 service charge years. It produced invoices from the electricity suppliers for the 2013-14 service charge year [p.422-449] and the actual bills paid by the Respondent for the estate were £53,961.32 in 2013-14 [p.623] (in addition to £42 for the block). The Respondent had passed on charges of £37,059 for the estate in 2013-14. The estimated budget for the estate in 2014-15 was £25,000 [p.619], although it was anticipated the actual bills would be much higher. The Respondent submitted the LVT had not imposed any "cap", the Tribunal had simply reached a decision on whether the relevant costs in 2012 were reasonably incurred. In any event, the relevant costs of

electricity included in the 2013-14 balancing charge were not the full amount which the Respondent actually incurred. It had adopted a policy of only including a sum representing £350 per flat (based on the LVT's finding), which was then updated for fuel inflation from 31 March 2011. Hence the sum charged to the lessees in 2013-14 was £37,059, which compared to the actual costs of £53,961.32.

52. According to the Respondent, the sum was reasonable since there were some 147 lights in the communal areas, plus lifts, roller shutters etc. The Respondent used a reputable broker (Monarch Partnership) to find the lowest electricity costs. In fact, the actual costs of electricity had fallen year on year as a result of efforts made to reduce costs (such as turning off heating in the common parts and the installation of LED lightbulbs where possible). The Respondent intended to continue capping the electricity costs pending further assessments. If it was found that consumption was excessive, the Respondent intended to have the meters tested. Once it was satisfied that all possible steps had been taken to reduce fuel consumption, the Respondent would start to charge the full costs incurred in each year.

53. The Tribunal finds the electricity costs of £37,059 were reasonably incurred. The uncontested evidence is that this is significantly below the actual relevant costs incurred by the Respondent for electricity. As far as the previous Tribunal's findings are concerned, this Tribunal is not bound by a decision which related to electricity costs in a previous year. However, the LVT's decision was based on a concession by the Respondent that the electricity expenditure for the common parts was excessive in 2009-10 and 2010-11. In this instance, there is no concession that the actual electricity costs incurred are excessive in 2013-14 and no evidence has been produced to show this is the case (other than the voluntary abatement of charges made by the Respondent). Moreover, the Respondent's evidence is that reasonable efforts are being made to control electricity costs. Finally, the Tribunal did find on inspection that some lighting units were not working, but

these were not an unreasonable number given the overall number of lighting units mentioned by the Respondent – and there was no evidence there was a bigger problem with broken lighting units during the 2013-14 service charge year.

Issue 9: block cleaning 2013-14

54. The Service Charge Statement for 2013-14 showed relevant costs of £8,692.56 incurred for "block cleaning": see revised accounts [p.632]. This was part of the block costs, so the Applicants' contributions varied.

55. In essence, both parties repeated the same arguments they made in relation to the 2012-13 costs of "block cleaning". For the reasons given above the Tribunal finds these relevant costs were reasonably incurred.

Issue 10: estimated provision for external agent charge 2014-15

56. The service charge budget for 2014-15 provided for estimated costs of £72,198.88 to be incurred on the "External agent charge" [p.619]. This was part of the Estate Costs, so the Applicants each paid a contribution of 1% towards this element of the interim service charge, namely £721.99 per flat.

57. Details of what this charge is intended to cover and the Respondent's process for estimating the interim service charge appear at para 19 above. However, the Respondent stated that for the purposes of the 2014-15 budget, it was unable to use Savills' own figures for anticipated expenditure because they were late in providing this information. In order to assess the new interim charges in time, the Respondent therefore simply took the previous year's budgeted external agent charge and adjusted it upwards by 4%. Savills' previous budget had been £69,422.00, and a 4% uplift produced a figure of £72,198.88 [p.81].

58. The Applicants did not challenge the process by which the Respondent arrived at its budget for 2014-15. However, they argued that the 4%

uplift was excessive compared to past, present or projected inflation rates. They argued this rendered the service charges unreasonable in amount under LTA 1985 s.19(2).

59. The Respondent argued it had been "prudent to allow for a moderate increase" and that in any event any overprovision would be 'caught' by the balancing charge at the end of the year.

60. The 2014-15 budget was sent to the lessees on 6 May 2014. The Tribunal takes judicial notice that the published Consumer Prices Index annual measure of inflation for April 2014 (the last published index figure) stood at 1.8%. The tribunal also notes the index had been as high as 2.9% in the previous service charge year. The Tribunal accepts it would have been logical to update the 2013-14 budget figure by adopting the April 2014 CPI figure or one which was taken from another published inflation index. However, the test under s.19(2) relates to the service charges payable by individual lessees, not the overall relevant costs which the landlord may incur. The question is whether and to what extent the service charge payable by an individual lessee (which results from the budgetary process) is an "amount" which is "reasonable". In this case, the difference between increasing the 2013-14 budget by 1.8% and by 4% amounts to £1,527.28 – which results in a difference in the interim service charge of £15.27 per flat. The Tribunal does not consider this additional "prudent" provision in the service charge for inflation to be unreasonable. The Tribunal considers that a landlord who makes a small above-inflation provision is acting reasonably to reflect the possibility that property management costs might exceed published consumer inflation indexes. However, such an adjustment is only likely to be permissible if it is (as in this case) a modest one. Any over provision can of course be compensated for at the end of the year when assessing the "balancing" service charge.

Issue 11: estimated provision for grounds maintenance 2014-15

61. The Schedule of Issues referred to above raised an issue about the estimated costs of £10,406.50 for grounds maintenance in the 2014-15 service charge budget [p.49]. This Applicants did not specifically address this matter in their Statements of Case or at the hearing. The Respondent made a general objection to the lack of any particularity of the allegations made in relation to the 2014-15 interim service charges. The Tribunal accepts this criticism and cannot find any element of the interim charges for 2014-15 to be unreasonable in amount on this basis.

Issue 12: estimated provision for fire safety 2014-15

62. The service charge budget for 2014-15 [p.619] did not include any provision for the estimated costs of fire safety.

63. The Applicants contended that this was an example of poor forecasting.

64. The Respondent argued that no figure had been included in the fire safety provision for 2014-15 because the Mechanical & Electrical Team had not provided any estimate at the date of the budget. However, it was likely that a charge would be levied at year end under this heading.

65. The Tribunal simply comments that the interim service charge did not include any provision for the anticipated fire safety costs. It is hard to see how any element of the interim service charge can therefore be said to be unreasonable in amount.

Issue 13: concierge services

66. The Schedule of Issues did not specifically raise any issue about concierge services. However, the Statement of Case referred to concierge services [pp.107 and 145] and both parties addressed the Tribunal the issue at the hearing.

67. The relevant cost of Concierge services appears in the service charges in the following way. The cost is included as an element of the "External Agent charge" in each year. For example, the 2012-13 external agent

cost was based on a certified statement of expenditure by Savills for that year [p.93]. Savills had provided details in a Service Charge Reconciliation report [p.83]. This stated that its expenditure included £10,910.88 for Centre Management and Training. This was stated to cover "a contribution towards the costs of employing a Centre Manager, an Operations Manage, and Concierge together with the costs in maintaining and operating the management suite and training costs etc.

68. The Applicants contended that they got no use of the Concierge. The costs was therefore not reasonably incurred under LTA 1985 s.19(1)(a).

69. The Respondent relied on the evidence of Mr Mark Middleton, who is the Centre Manager for the Heart Shopping Centre, whose witness statement [p.640] was not challenged by the Applicants and was read by the Tribunal. Mr Middleton stated that the estate included 60 shopping units, 799 public car parking spaces, 279 private flats and 100 social housing flats leased to the Respondent. The Centre charged the Respondent 5% of the costs of the Manager of the Centre, operations manager and Concierge. The latter was manned 7am-10pm each day and also at weekends. The lessees could make use of the desk if they had problems with access, and as a point of contact for emergencies etc. Ms Matraxia contended that the costs were reasonably incurred because the Applicants had access to the desk.

70. This matter was not argued in any detail – and it was unclear how this would affect the amount of service charges payable if the Tribunal found the cost of Concierge Services was unreasonably incurred. However, the Tribunal accepts the evidence of Mr Middleton that the lessees do have some direct or indirect benefit from the Concierge desk at the Centre. Ultimately, the lessees at Core 4 each pay 1% of 5% of these staffing costs, and that is not an excessive contribution for the limited benefit provided by these services. In any event, the Tribunal considers it is reasonable for the Respondent to incur a contribution of 5% of the central staffing costs for the Centre, since the overall

management benefits all the occupiers, whether they are retailers or the occupiers of flats of all kinds.

Conclusions

71. For the reasons given above, the Tribunal finds for the Respondent on each of the above issues, save that in the 2012-13 service charge year the Applicants are liable to contribute to relevant costs of £4,099.27 (£5,153.35 less £1,054.08).

Judge MA Loveday (Chairman)
14 August 2015

Appeals

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.

APPX. A – LIST OF APPLICANTS

Lessee	*Flat*	*Date of authority*	*Block apportionment*
Hayden Sheridan	163	05 February 2015	2.76%
Clare Howard	164	*Original Applicant*	2.72%
Andrew Thomas	164	30 January 2015	-
Will Parsons	165	23 January 2015	2.72%
Michaela Fainova	166	25 January 2015	2.72%
Stephanie Sherwood	168	22 January 2015	3.48%
Sarah Austin	272	30 January 2015	2.6%
Mark Austin	272	30 January 2015	-
Kevin Thomas	273	23 January 2015	2.76%
Jacqueline Whalley	274	22 January 2015	2.72%
Mark Cooper	276	23 January 2015	2.72%
Victoria Smith	372	*Original Applicant*	2.6%
Sarah-Louise Cross	374	*Original Applicant*	2.72%
Rebecca Wraight	375	22 January 2015	2.72%
Alexa Gray	376	*Original Applicant*	2.72%
Joel Griffiths	473	27 January 2015	2.76%
Stuart Barr	474	25 January 2015	2.72%

APPX. B – MATERIAL TERMS OF LEASE

1(2)(b) "the Common Parts" means the entrance landings staircases and other parts (if any) which are included within the Landlord's Title which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with occupiers of the other units within the Landlord's title.

2. In consideration of the aforesaid agreement and the Premium (receipt of which the landlord hereby acknowledges) and of the Specified rent and the Leaseholders covenants reserved and contained below the Landlord **HEREBY DEMISES** the Premises to the Leaseholder **TOGETHER** with the easements rights and privileges mentioned in the Second Schedule subject as there mentioned **AND TOGETHER** with the rights but subject to the provisions as more particularly referred to in the Fifth Schedule hereto **EXECPT AND RESERVING** the rights set out in the Third Schedule **AND SUBJECT TO** the matters contained in or referred to in the registers of the Landlord's freehold title save and excepting and financial entries securing any mortgage or charge over the said title **TO HOLD** the Premises to the Leaseholder for the Term of **ONE HUNDRED AND TWENTY FIVE YEARS** from the Commencement Date **YIELDING AND PAYING** therefor **FIRSTLY** the Specified Rent and variation thereof in accordance with the provisions of the Fourth Schedule hereto **AND SECONDLY** the Service Charge **AND THIRDLY** to pay the Estate Charge Proportion ("the Estate Charge") all such sums to be paid by equal monthly payments in advance on the first day of each month the first payment to be made on the date hereof."

3. **THE LEASEHOLDER HEREBY COVENANTS** with the Landlord:

...

3(2)(b) to pay the Service Charge in accordance with Clause 7

...

3(3) To keep the interior of the Premises and the glass and windows and doors (if any) of the Premises ... clean and in in good and substantial repair and condition ...

5. **THE LANDLORD HEREBY COVENANTS** with the Leaseholder as follows:-

...

5(3) That (Subject to payment of the Service Charge and except to such extent as the Leaseholder or the tenant of any other premises shall be liable in respect thereof respectively under the terms of this Lease or of any other lease) the Landlord shall maintain repair redecorate renew and (in the event in the Landlord's reasonable opinion such works are required) to improve the Common Parts.

5(4) That subject as aforesaid and so far as practicable the Landlord will keep the Common Parts of the Building adequately cleaned and lighted.

7(4) The Service Provision shall consist of a sum comprising:-

(a) the expenditure estimated by the Surveyor as likely to be incurred in the Account Year by the Landlord upon the matters specified in Clause 7(5) together with

...

THE FIRST SCHEDULE above referred to
MUTUAL COVENANTS

...

18.To keep the inside of the windows of the Premises properly cleaned.

...