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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00CN/LVE/2012/0001**
Property	:	**The Saffrons, Harborne, Birmingham B17 8PL**
Applicant	:	**Dr Patricia M. Scriven and Others**
Representative	:	Dr Patricia M. Scriven
Respondent	:	**Calthorpe Estates and Others**
Representative	:	Mr Iain Davies
Type of Application	:	Application to vary an estate management scheme under Section 159 of Commonhold and Leasehold Reform Act 2002
Tribunal Members	:	Dr Anthony Verduyn Mr D. Satchwell FRICS
Date and venue of Hearing	:	27th January 2014 Priory Court, Bull Street, Birmingham
Date of Decision	:	27th March 2014

DECISION

The Tribunal allows the application insofar as 58, 62 and 64 Woodbourne Road and 150 Gillhurst Road shall be removed from the Saffrons estate management scheme formula (so reducing contributions by 9 of the 110 chargeable units, and the number of properties paying the standard charge per property by four). The contributions by the leasehold properties known as 60 Woodbourne Road and 14 Euan Close are unchanged, and the other contributions will be pro-rated proportionate to the units they pay to make up any shortfall resulting, but otherwise the scheme is unchanged.

REASONS

INTRODUCTION

1. This is an application for variation of the terms of the Scheme of Management for the Calthorpe Estate, Edgbaston, Birmingham ("the Scheme") insofar as it relates to the Saffrons, Harborne. The scheme, which covers a substantial area, was made pursuant to Section 19 of the Leasehold Reform Act 1967 and approved with amendments in July 1974. A copy appears in the hearing bundle.

2 The Scheme is binding on former leaseholders and their successors and provides a comprehensive set of "rules" designed to help maintain the overall character and quality of the area to which it applies following the loss of such controls which would otherwise take place upon enfranchisement. For the purposes of the present application, the Scheme contains two specific financial provisions which require periodic payments to be made by individual freehold owners:

The first, under Clause 31 of the Scheme, relates to the payment of an annual Estate Management Charge intended as a contribution by owners towards the provision or maintenance by the Estate owners of services, facilities and amenities on the Estate - including the administration of the Scheme itself. This charge is fixed each year by reference to the Retail Price Index (based on an original level of charge fixed in 1974) and is payable on 1st January each year by every residential freeholder on the Estate (with a small number of exceptions). **This annual Estate Management Charge is not the subject of this application.**

The second, under Clause 30 of the Scheme, relates to the continuing liability of enfranchised owners to contribute towards the costs of managing the particular development of which their property forms part, which would previously (under their leases) have been recoverable as "lessors expenses". More colloquially, such expenditure is often referred to as "service charges". **It is the apportionment of these charges (but not the amount of the charges themselves) which forms the subject of this application.**

3 The Saffrons is a development of substantial detached leasehold properties built in the late 1970s and lies to the south of Woodborne Road and west of Gillhurst Road. It was built by Bryant Homes Limited, a company that had taken a lease from the Calthorpe Estate, hence the Applicants or their predecessors in title were underlessees. It is understood that, as usual in such developments on the Calthorpe Estate, once the properties were built and sold, the head lease was surrendered. All but two of the properties have now been enfranchised. The two outstanding long leaseholds are 60 Woodbourne Road (the home of an applicant, Mrs B. Bradley) and 17 Euan Close (the home of Mr K. Hayward, another applicant). The Saffrons comprises 19 houses, 4 with driveways opening onto Woodbourne Road, 1 with a driveway opening onto Gillhurst Road, 10 with driveways opening onto a private cul-de-sac called Euan Close (off Gillhurst Road) and 4 with driveways opening onto a private cul-de-sac called Lara Close (off Woodbourne Road). These 19 properties contribute to the management charge for the Saffrons ("the Charge"). The Applicants add that a 20th house was built as part of the Saffrons, with a driveway opening off Woodbourne Road, but it is excluded from the requirement to contribute to the Charge altogether.

4 The Applicants comprise all the owners of the Saffrons with addresses on Gillhurst Road, Woodborne Road and Euan Close. The Respondents comprise the Calthorpe Estate and the owners of properties on Lara Close. The Calthorpe Estate have indicated that, had all the parties agreed and 100% of the costs under the Charge remained payable, then it would not object to the formula being revised, but in the absence of unanimity it does object to any changes being made.

5 The central issue is the application and apportionment of the Charge between the properties comprising the Saffrons. The Applicants observed that, for the purposes of billing the properties, the Charge is divided in 110 chargeable units. The property on Gillhurst Road pays 6 units, the 4 paying properties on Woodbourne Road each pay one unit. The 10 properties on Euan Close pay 6 units each and the 4 properties on Lara Close pay 10 units each. The core of the complaint of the Applicants is that these proportions do not reflect the benefit of the expenditure on the Saffrons. In the period 2008 to 2011 just over £40,000 was charged and spent. The Applicants say that properties on Woodbourne Road and Gillhurst Road have no benefit at all from their contribution of 9% of the total expenditure. Whilst an analysis of the expenditure in that period

shows that 28% was spent on Euan Close and 72% on Lara Close, that stands in stark contrast to the contributions made by the properties on each at 55% and 36% respectively. The Applicants propose a solution in dividing the Saffrons with each Close paying its own estate management charge: each property on Lara Close would pay 25% of the expenditure on Lara Close, and each on Euan Close 10% of the expenditure on Euan Close. The others would be released from paying any contributions at all.

THE LAW RELATING TO THE APPLICATION

6 The text of Section 159 of Commonhold and Leasehold Reform Act 2002 ("CLARA 2002 ") is appended at the end of this decision. It applies to charges under estate management schemes, including those arising under a scheme made pursuant to Section 19 of the Leasehold Reform Act 1967 (Section 159(1)(a)), as in this case.

7 When the application was first made, the Leasehold Valuation Tribunal (since replaced by the First-Tier Tribunal, Property Chamber, Residential Property) listed it for a preliminary hearing. The Tribunal rejected the application on the basis that it had no jurisdiction under CLARA 2002 to vary a scheme giving rise to a variable estate management charge and in doing so followed the first instance decision in Walker v Hampstead Garden Suburb Trust Limited re. Hampstead Garden Suburb (LON/00AC/LVE/2007/001). Its decision was dated 19th December 2012. Subsequently, an application was made to appeal that decision on the basis that Walker had been overturned on appeal in Botterill v Hampstead Garden Suburbs Trust Ltd (Lands Tribunal LRX/135/2007). Permission to appeal was granted and the appeal was allowed on 25th September 2013. For the purposes of the appeal, the Deputy President of the Upper Chamber accepted the (then) consensus of the parties that Section 159(3)(b) conferred jurisdiction in this case. The Deputy President was guarded on whether Botterill was correctly decided (see paragraphs 21 and 22), but the point was not taken and the matter remitted to the First-Tier Tribunal to be considered on its merits.

8 It should be observed that the decision in Botterill was disputed in the Skeleton Argument for the Respondents, but unchallenged by way of submission before us. The point was not taken on the express basis that the Respondents accepted the First-tier Tribunal was bound by the law as stated in the decision of the Lands Tribunal and as commented upon in the appeal judgment as binding upon the Tribunal. The position of the Respondents was, however, expressly reserved on taking this point on appeal, if so advised. The Tribunal considered it disproportionate to insist on argument on jurisdiction in these circumstances, and the hearing proceeded accordingly without argument on that point.

9 It follows that the decision for the Tribunal is whether to make an Order varying the Scheme on the grounds that: "any formula specified in the scheme in accordance with which any estate charge is calculated is unreasonable" (Section 159(3)(b)). If the ground is made out to the

satisfaction of the Tribunal, it may make an order varying the scheme in such manner as is specified in the order (Section 159(4)), and that variation may be that specified in the application or such other variation as the Tribunal thinks fit (Section 159(5)).

THE SITE VIEW

10 The Tribunal visited the Saffrons beginning the inspection at Euan Close. From the rear of 19 Euan Close (the home of the Applicant, Dr Scriven) it was just possible to see features of a property on Lara Close in the distance, but when trees are in foliage, the two Closes would not be visible from each other. Euan Close was arranged around a tarmac roadway about 110 metres long, with a turning area at its closed end. To one side, opposite numbers 5, 7 and 9, there is a modest area of amenity land with fence to its rear and a group of 4 trees upon it. Apart from this land, the carriageway and pavement, which were all maintained under the scheme, Euan Close comprised its freehold properties. The opening of Euan Close on to Gillhurst Road was flanked to the south by No 2 Euan Close, with drive on to the Close, and 150 Gillhurst Road with fencing to Euan Close. This fencing was set back on somewhat higher ground but the verge this created was part of the freehold of 150 Gillhurst Road and accessible from it. Whilst the amenity land would be visible from some rooms of 150 Gillhurst Road, there was no clear benefit to this property from it or from Euan Close in general. The surface of Euan Close appeared somewhat worn and the Tribunal formed the impression that resurfacing would be needed within about 8 to 10 years.

11 To arrive at Lara Close required a walk north on Gillhurst Road past No.150 and west along Woodbourne Road, past 58 to 66 (even numbers only) Woodbourne Road. The properties on Woodbourne Road were all of similar original design, but much extended. They each bordered and opened on to the public dedicated highway. No.66 was in essence indistinguishable from the others, although not contributing to the scheme. Its western boundary roughly aligned with the rear boundaries of 15 to 19 (odd numbers only) of Euan Close. There was then about a 75 metre distance between the edge of this part of the Saffrons development (whether the western boundary of No.66 Woodbourne Road or the rear gardens of Euan Close) before the land developed as Lara Close was reached. Within this gap are three older substantial buildings with long gardens to rear.

12 Lara Close has a much smaller tarmac roadway than Euan Close, being perhaps a little under 50 metres in length, but also with a turning area and small service arm for the benefit of No.1. The amenity land is much more extensive and with markedly more trees than that of Euan Close. The Applicants suggested there were 24 trees or tree groups, which appeared a fair assessment. Trees were tagged if maintained, but a watching brief was apparently in place for all of them. Fencing to the eastern boundary of the amenity land was not maintained under the scheme. The surface of the road in Lara Close was in better condition

than that of Euan Close and may reasonably be expected to have several more years life over it.

THE APPLICANTS' CASE

13 The Applicants provided a detailed statement of case, which was enlarged upon by Dr Scriven at the hearing. The Tribunal has taken account of the entirety of the written material, including the witness statement of Mrs Prosser, and is grateful for the skill with which the case was set out in the hearing before it.

14 Dr Scriven set out that the charges levied on the freeholders on the Calthorpe Estate take two forms. There is an estate wide Scheme of Management with an annual charge of a little below £50 which everyone pays and which is not the subject of the current application. There is then the local management scheme, in this case for the Saffrons as a whole. The remaining leasehold properties, it is said, contribute to the scheme through their leases. A property contributing six units of the 110 (i.e. 150 Gillhurst Road and each property on Euan Close) will this year be expected to pay in the region of £750 (roughly equal to one-third of the current Council Tax liability for the same period).

15 The unreasonableness of the current scheme is characterised by the Applicants in a number of ways:

16 "houses adjacent to each other [or in identical circumstances] pay different charges": in particular 66 Woodbourne Road pays nothing, when it was built with the others and its neighbours on Woodbourne Road pay one unit each, so the scheme has never been reasonable in this respect. It is suggested that the exclusion of No.66 was because the purchaser was employed as agent for the Calthorpe Estate, although there is no actual evidence for this, just suspicion on the part of the Applicants from the circumstance of its exclusion and the role of its first owner. Further, 150 Gillhurst Road pays six units, but receives no benefit (or at least no benefit greater than those on Woodbourne Road) since it is also served by the public highway.

17 It is asserted that houses opening on to Council maintained highway do not benefit from the scheme. Whilst the Tribunal may consider that it is overstated to suggest that 150 Gillhurst did not overlook the amenity land on Euan Close, it does not face that land, and the properties in Gillhurst Road and Woodbourne Road derive no obvious benefit from the state of Euan Close and Lara Close.

18 "In some years, the householders of Woodbourne Road pay in to the scheme less than the agent charges per house for managing them". The Charge which is divided between the properties contains an element for management which is based purely on the number of houses within the scheme (to cover postal charges, for instance, and other matters where each house imposes an identical burden on the scheme). This element is currently greater than one unit, so the Woodbourne Road properties do not contribute enough to cover the management charge within the

scheme for their inclusion. The figures for 2013 support this assertion with a management fee per property being £142.95, but one unit being budgeted at about £98. Figures were presented that were less stark (for example, the difference in 2008 was less than £2), but the cost of being in the Saffrons scheme consistently exceeded the contribution if one unit were payable. The Applicants assert that: "This is unreasonable and economic nonsense".

19 Euan Close and Lara Close are geographically separate, as set out in the description of the site view above. There were two pieces of land which happened to be developed at the same time by the same developer, but with no real connection.

20 Cost and benefit under the Saffrons scheme do not match, particularly between Euan Close and Lara Close. The trees on Lara Close are expensive to maintain, and there are many of them (24 trees or groups of trees, compared to one group of 4 trees on Euan Close). The Applicants suggest that perhaps 4% or 5% of tree expenditure relates to Euan Close. The amenity land on Lara Close is perhaps 4 times larger than that on Euan Close and the benefit shared by 4 rather than 10 properties. The Applicants suggest perhaps 20% of gardening costs relate to Euan Close. The Applicants concede that Euan Close is about twice as long as Lara Close, and so benefits from perhaps two-thirds of roadway cost.

21 Leaving aside properties to Woodbourne Road and Gillhurst Road, Euan Close contributes 55% of the charge (60 units - between ten properties - out of 110) and Lara Close 36% (40 units - between four properties - out of 110). The Applicants have attempted to analyse recent years expenditure dedicated to the Closes, a process not without its complexities (including the treatment of a road repair charge in 2011). The upshot was to suggest that annually between 2008 and 2012 inclusive Euan Close cost between 20% and 41% of expenditure (compared to 55% contribution) and Lara Close between 80% and 59% compared to 36% contribution). For the period 2008 to 2011 (inclusive) each of the four households on Lara Close was subsidised £2,314, and each of the households on Euan Close contributed a subsidy of £782. It was suggested that this could be extrapolated over the 35 years since the developments were constructed. A table upon which the figures are based appears at page 138 of the hearing bundle and was not challenged. It suggests that the figures for 2013 and 2014 would see a division of expenditure at 34% for Euan Close and 66% for Lara Close. This form of subsidy is asserted to be unreasonable.

THE RESPONDENTS' CASE

22 The Respondents' case was advanced by Mr Davies, the representative of the Calthorpe Estate, and was very much a matter of reply to that advanced by the Applicants. There was a contrast between leaseholders who paid a service charge and freeholders who paid (i) a general estate management charge comprising a fixed charge with RPI increments, which is unchallenged, and (ii) a variable estate management charge

relating solely to the costs associated with the management and maintenance of the development on which their property stands. It was contended that the comparison to Council Tax was unhelpful.

23 It was contended that there was no jurisdiction for the Tribunal to bring in 66 Woodbourne Road, since it was excluded from the start for no known reason, and also no jurisdiction in this application to address the leasehold interests that still remain. It was observed that at least one householder in Lara Close was concerned that an amended scheme may be difficult to prove to a future purchaser.

24 The contribution from 150 Gillhurst Road was defended on the basis that it overlooked the amenity land of Euan Close, as may properties on Woodbourne Road.

25 The figures presented by the Applicants over a four year period from 2008 to 2011 were not disputed, but the extrapolation of them over any longer period was in issue. The current analysis amounted to a snapshot. Over the longer term there would be more in the way of "swings and roundabouts" rebalancing what had been identified.

26 It was agreed that the leases had referred to the Saffrons as comprising two areas of land. There was a suggestion that the tree count was perhaps more realistically maybe 27 trees on Lara Close to four on Euan Close. It was agreed that the former had four times the amenity land of the latter, although the relative cost of ground works may have been nearer 25% than 20%.

27 The exclusion of the properties on Woodbourne Road was not capable of agreement, especially because one of them was leasehold at the present time. The freeholder would not agree to the exclusion of the leaseholder from a revised scheme

28 The division of the Closes to create sub-schemes was also resisted. The benefit to each Close may differ due to the arrangement of the Close, but the design of the scheme had been intended to take this into account, hence owners on Lara Close paid ten units, whilst those on Euan Close paid six units. Over the period analysed this may favour Lara Close, but over 35 years or even 15 years, this may not arise, especially when the roads come to be resurfaced.

29 The Respondent called Mr Rupert Wills to give evidence and he confirmed the content of his written statement. He is a Property Manager for the agent of the Calthorpe Estate, Mainstay Residential Limited. He describes the Saffrons as one of the smaller developments on the estate and set out the variable nature of the estate management charge. In chief he stated that in the year to September 2010 Lara Close had received unusual expenditure on its footpaths and in the year to 2011 equal expenditure on potholes to Euan Close. The last 4 years were not typical. This was also true in respect of trees, where there has been a special focus on safety issues since 2002 and a policy of management of mature trees. Mr Wills was cross-examined on the degree to which the

accounts used represented unusual years. Apart from an issue over an insurance claim in 2011, he appeared to accept that there was significant benefit to Lara Close at times over and above contribution. He asserted, though, that the approach taken by his company was to treat Euan Close and Lara Close as a whole. Even so, he asserted that a sinking fund would favour Euan Close when it came to resurfacing the carriageway, as would street lighting costs. He accepted that there was no guarantee that more would be spent on Euan Close overall, but insisted that the new road surface in about 10 years would be rebalancing. It was suggested to him the resurfacing would cost about £20,000, Street lighting £1,500 and fencing £5,000 (all plus VAT). He insisted that in the longer term Euan Close would need greater expenditure to maintain it to standard, and the cost of £20,000 plus VAT would be at today's prices. Funds will need to be accumulated to meet this cost. He could not guarantee that income and expenditure would balance, but planned works as they were needed. There was no intention to favour Lara Close in this.

30 Mr Stephen Richards, a director of Mainstay Residential Limited, was then called to give evidence. In his witness statement he provides a full description of the charges payable on properties in the Calthorpe Estate. He observed that the Saffrons scheme had been crafted to reflect differing benefit in the extent of charges imposed on each house. The scheme was accordingly not inequitable or unfair. In chief he expanded upon this, disputing that the four year period analysed by the Applicants will be replicated in future. Planned or programmed works in future would be different from the recent past. Further he pointed to the common features of Lara Close and Euan Close, both private roads, with footpaths and street lighting. Euan Close had a fence provided, which was not the original one, and it will need resurfacing of the carriageway in the next eight years. Euan Close properties has subsidised Lara Close in the recent past, but this would be reversed. When cross-examined, Mr Richards declined to "second guess" the lawyers who included contributions from Woodbourne Road residents, but he accepted that in terms of services their benefit was negligible. He considered that the Saffrons scheme was developed by lawyers drawing on the experience of developers and the Calthorpe Estate and represented their reasonable view of the future of the Saffrons needs. He was challenged on the introduction of active tree management as upsetting this forecast, but Mr Richards disagreed, and he maintained that if Euan Close had been resurfaced in the last 3 years then the current dispute would be unlikely to have arisen. Finally, he considered that removal of Woodbourne Road properties would inevitably increase the proportion paid by other properties. There may even be years when Woodbourne Road properties made a net contribution to maintenance.

31 The thrust of the Respondents' submissions were that the application ought to be rejected. Euan Close is larger than Lara Close and the size of its smaller amenity area does not accurately reflect capital expenditure. Routine expenditure may be smaller, but not expenditure overall. The draftsman of the original scheme had made some allowances in any event. The division in the current scheme was not unreasonable

accordingly and not unreasonable in the long term. Substantial expenditure to the benefit of Euan Close could be expected in the next 15 years. The existence of two leasehold properties also cannot be ignored, creating both legal and practical difficulties. The creation of estate management schemes was intended to replicate long-leasehold arrangements as enfranchisement took place, and this should not be unduly upset or complicated. Indeed, there will be problems in producing any revised scheme to future purchasers or mortgagees.

CONCLUSIONS

32 The burden in this case is clearly upon the Applicants. It is for them to prove that the Saffrons scheme should be varied on the basis that any estate charge specified in the Scheme is unreasonable or, more pertinently, any formula specified in the Scheme in accordance with which any estate charge is calculated is unreasonable (Section 159(3) of CLARA 2002). It is not for the Respondents to prove that the scheme is reasonable. Indeed, it is appropriate to note that the Scheme represents a transposition in to the freeholds of the burdens entered into by the leaseholders of the Saffrons when the development was first erected and the houses sold. The Scheme represents what the original purchasers contracted for and subsequent purchasers bought in to. This context is significant in that the application of Section 159(3) is effecting a permanent change in a Scheme designed to last, in effect, in perpetuity, unless a further application is made and succeeds. It is accordingly necessary to take account of long term factors when assessing the application. Even so, the recent impact of the Scheme is also plainly relevant and the burden upon the Applicants only requires to be discharged on the balance of probabilities.

33 Whereas there is no issue taken with the jurisdiction before this Tribunal, the reservation of the challenge to jurisdiction to an appeal is noted. Even so, the jurisdiction does not extend to the two leasehold properties, namely 17 Euan Close and 60 Woodbourne Road. They are not within the Scheme of Management, which is addressed to the "owners" of enfranchised properties, and there is nothing in Section 159 that empowers the Tribunal to address the mechanism of leasehold service charges, which have their own separate statutory regime. This limitation undoubtedly creates complications in this decision, which is a factor be taken into account, but equally it cannot be decisive against variation otherwise the statutory provision being enforced would be likely to be nugatory in all but the case of Schemes where enfranchisement has been comprehensive.

34 Equally, the Tribunal does not consider that it has power to add properties into a Scheme that are not and never have been part of it. It does not seem to the Tribunal that the power to vary a specified estate charge or formula includes the power to add additional contributors to that charge and formula. To interfere in a freehold interest in land outside a Scheme, by bringing it within a Scheme, would require clear statutory authority which is absent in CLARA 2002. It follows that, had

the Tribunal wanted to do so, it could not introduce 66 Woodbourne Road into the Saffrons scheme. Fortunately, it was neither Applicants' nor Respondents' case that it should do so, and the significance of 66 Woodbourne Road was merely that the Applicants identified its status as anomalous. With this latter observation, the Tribunal agrees: 66 Woodbourne Road was plainly developed with the rest of the Saffrons and how it came to be outside the Scheme is entirely unclear. Logically it should have contributed 1 unit out of 111. It is impossible to tell, however, why it was excluded, but there could have been some legitimate reasons for this. It simply cannot be determined at this remove and the Applicants advancing speculation and suspicions does not take matters any further.

35 The Tribunal does consider the position of the enfranchised freeholders on Woodbourne Road to be unsatisfactory. Numbers 58, 62 and 64 each pay 1 unit out of 110 in circumstances where they obtain no discernable benefit. The properties on Euan Close and Lara Close may be visible from some windows, but it is unlikely that there is any view of the amenity lands. There is no benefit from the lighting and roadways of these Closes. To all intents and purposes, the connection between the Woodbourne Road properties and the rest of the Saffrons is no different from the connection with any other part of the Calthorpe Estate. These properties receive nothing for their contribution. Furthermore, the evidence is that they represent a burden to the other properties in the development: 1 unit out of 110 is below the level of the standard charge per property. This is absurd and it is surprising if the residents of Lara Close, with this properly explained to them, would object to the removal of these properties from the Saffron's scheme: the accounts show that there is a net saving to all participants if the scheme is reduced to 107 units and a standard charge per property extending to 16 properties, rather than 19. The complete absence of benefit for these properties, and the net cost of their presence, demonstrates to the satisfaction of the Tribunal that in this respect the Saffron's management regime is unreasonable and should be varied. If 60 Woodbourne Road is enfranchised, then at that point in time it too can apply to have the Scheme varied to exclude it. Until then it is likely to remain effectively in the Saffron's management scheme, but since it is likely to avoid the standard charge on freehold properties, its continued link to the scheme may not be burdensome.

36 The position of 150 Gillhurst Road is somewhat different. It has some visual benefit from the good condition of Euan Close, since the amenity land can be seen obliquely from upper windows at least. The owner may even have use of the pavement adjacent to his garden, although he has no real need of it. There is some very modest benefit accordingly. Furthermore, the contribution made to the scheme as 6 out of 110 units is truly a net contribution after the standard charge per property. Indeed, it is a contribution equal to that of the owners on Euan Close and a significant sum of money. Having noted these points of difference from the properties on Woodbourne Road, there is a point of similarity: it is hard to identify any significant benefit from presence in the Saffron's

management scheme. Indeed, the view it receives of Euan Close is hardly materially better than that of any property near to the opening of that Close (or any property near the opening of Lara Close, for that matter). The contribution paid also appears wholly disproportionate to the benefit it receives. For these reasons, the Tribunal considers that its presence in the Saffron's management scheme is unreasonable and the Scheme should be varied to exclude it.

37 Taking into account the withdrawal of three properties on Woodbourne Road and one on Gillhurst Road, the expenditure should accordingly be divided between freehold properties on Euan Close and Lara Close (plus the leasehold in Woodbourne Road under the related provision).

38 Having dealt with these anomalous properties, it is necessary to consider whether the current Saffron's management scheme ought to be converted into sub-schemes with Lara Close dividing expenditure on its own behalf between the four properties upon it and Euan Close similarly between the ten properties upon it. At this point the complications of varying the Scheme when leasehold properties remain become fully apparent. The division into sub-schemes would only be fully effective if all properties were enfranchised and 60 Woodbourne Road duly removed from the scheme. As matters stand, it would be necessary to treat the scheme as unitary, apply the net contribution or burden of 60 Woodbourne Road (presumably equally between the two Closes) as though it were an item on each Close's account, and then allow Lara Close to divide its expenses equally, but Euan Close would have to apply the net contribution from 17 Euan Close and then divide the remaining burden equally. That such a description can be offered shows that such a scheme would be possible, but its complications are hardly desirable.

39 The fundamental question, though, is whether the formula is unreasonable. The Tribunal takes into account all the submissions made to it, but finds that the current scheme is not unreasonable. It is true that Lara Close and Euan Close are some distance apart, but they were developed at the same time and to very similar standards. The residents of one Close may have hardly any view of the other, but that is not necessarily unusual in any development. They are only a short walk apart. The Saffron's management scheme was drafted taking account of the differences between the Closes, the properties on the smaller one with the larger amenity land paying significantly more than the properties on the longer roadway with the more modest amenity land. There was nothing apparent at the time of the creation of that scheme to suggest this was then unreasonable. Since inception the standard of tree management has improved and the costs associated with that increased, but then the standard of lighting and the cost of road maintenance may also change over time. The Tribunal considers it essential to take a long-view, given the intention of the Scheme is to last in perpetuity. History is relevant over the full time frame since development, including recent years, but the future also has to be considered. What is spent on trees disproportionately favouring Lara Close, is likely to be reversed when resurfacing takes place and the cost of Euan Close substantially rises.

Fencing is also a unique cost for Euan Close, but one likely only to occur at substantial intervals of time. Indeed, it is the view of the Tribunal that the recent dis-benefit to Euan Close is likely to be reversed as a sinking fund is developed for the purposes of resurfacing the Closes in due course. To change the formula now risks Euan Close having contributed to the management of trees of Lara Close, which is likely to have been an initially quite high cost, and then to shoulder the entire burden of resurfacing without assistance of net contribution from the residents of Lara Close. To some extent this appreciation of what might take place is speculative, but that in itself may suggest that the design of the scheme for the long term and over properties which have some variety in their service requirements but are otherwise similar may have been wise. Having been treated as a single entity for about 35 years, the Tribunal is not satisfied that change is called for at this juncture, nor is it established that the creation of small sub-schemes for Lara Close and Euan Close is necessarily in the interest of the freeholders in each.

40 It follows that the Tribunal allows the application insofar as 58, 62 and 64 Woodbourne Road and 150 Gillhurst Road shall be removed from the formula (so reducing contributions by 9 of the 110 units, and the number of properties paying the standard charge by four). The contributions by the leasehold properties are unchanged and the other contributions will be pro-rated proportionate to the units they pay to make up any shortfall resulting, but otherwise the scheme is unchanged. The Tribunal does not consider that this revised arrangement is unduly problematic in terms of recording it or notifying it to mortgagees: the terms of this decision can be noted with the Saffrons scheme documentation. The difficulties of keeping a record should not undermine the terms and force of CLARA 2002.

SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

41 This application is rejected by the Tribunal.

42 As a matter of law Section 20C can only be made by a "tenant" and the freeholders of enfranchised properties do not qualify. Two leasehold applications could qualify, but they failed in their application because Section 159 of CLARA 2002 does not apply to them and there is no reason why costs should not follow the event, given that the resistance of the Calthorpe Estate was vindicated in this respect.

43 Even were the Tribunal to be wrong in holding that Section 20C does not apply, it would still not have acceded to the request. Calthorpe Estates would have consented to a variation of the Scheme had all the contributors agreed, but they did not and the view was taken that the changes should be resisted accordingly. In large measure that resistance was successful and it would be iniquitous in those circumstances to burden the Calthorpe Estate and/or the residents of Lara Close with the burden of the legal costs. The justice of the matter indicates that costs of what has taken place ought properly to be treated as a cost under the

Saffrons scheme going forward and recovered from all concerned accordingly.

APPEAL

44 If any party is dissatisfied with this decision, application may be made for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Dr Anthony Verduyn Chairman

Dated 27th March 2014

APPENDIX

Commonhold and Leasehold Reform Act 2002

159 Charges under estate management schemes

(1) This section applies where a scheme under—

(a) section 19 of the 1967 Act (estate management schemes in connection with enfranchisement under that Act),

(b) Chapter 4 of Part 1 of the 1993 Act (estate management schemes in connection with enfranchisement under the 1967 Act or Chapter 1 of Part 1 of the 1993 Act), or

(c) section 94(6) of the 1993 Act (corresponding schemes in relation to areas occupied under leases from Crown),

includes provision imposing on persons occupying or interested in property an obligation to make payments ("estate charges").

(2) A variable estate charge is payable only to the extent that the amount of the charge is reasonable; and "variable estate charge" means an estate charge which is neither—

(a) specified in the scheme, nor

(b) calculated in accordance with a formula specified in the scheme.

(3) Any person on whom an obligation to pay an estate charge is imposed by the scheme may apply to the appropriate tribunal for an order varying the scheme in such manner as is specified in the application on the grounds that—

(a) any estate charge specified in the scheme is unreasonable, or

(b) any formula specified in the scheme in accordance with which any estate charge is calculated is unreasonable.

(4) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the scheme in such manner as is specified in the order.

(5) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(6) An application may be made to the appropriate tribunal for a determination whether an estate charge is payable by a person 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.

(7) Subsection (6) applies whether or not any payment has been made.

(8) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of subsection (6) is in addition to any jurisdiction of a court in respect of the matter.

(9) No application under subsection (6) may be made in respect of a matter which—
(a) has been agreed or admitted by the person concerned,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which that person 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.

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

(11) An agreement (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 subsection (6).

(12) In this section—
"post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen, and
"arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

(13) For the purposes of this section, "appropriate tribunal" means—
(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to premises in Wales, a leasehold valuation tribunal.

[End]