



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

**Case Reference** : CAM/34UE/LSC/2014/0008, 9, 33 and 34

**Property** : Flat 7 Regent Gate & Flat 11 Kings Walk,  
Crown Street, Kettering, Northamptonshire  
NN16 8JF

**Applicant (Landlord)** : Powell & Co Property (Brighton) Limited

**Respondent (Tenant)** : Saaghar Posh Mashad  
**Representative** : Andrew Boddy Solicitors

**Date of Application** : 13<sup>th</sup> January 2014

**Type of Application** : A determination of the reasonableness and  
payability of Service Charges (Section 27A  
Landlord and Tenant Act 1985)

**Date of Hearing** : 17<sup>th</sup> April 2014

**Tribunal** : Judge JR Morris  
Mr D Banfield FRICS  
Mr PA Tunley

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**DECISION**

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**The Tribunal having determined all matters that are within its jurisdiction, the case is transferred back to the County Court for a decision on any outstanding matters and costs.**

**Decision**

1. The Tribunal determined that a reasonable actual cost Service Charge payable by the Respondent to the Applicant for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013 is £1,457.58.
2. The Tribunal determined that a reasonable estimated Service Charge payable by the Respondent to the Applicant for the year ending 24<sup>th</sup> March 2014 is £1,860.00 and for the year ending 24<sup>th</sup> March 2015 is £1,656.66

## **Reasons**

### **Application**

1. An Application was made:  
by way of transfer from the County Court sitting at Kettering of claims numbered:
  - 3QT61830 relating to 11 Kings Walk Deputy District Judge Bradley on 14<sup>th</sup> November 2013
  - 3QT61824 relating to 7 Regent Gate by District Judge Watson on 12<sup>th</sup> December 2013by way of transfer from the County Court sitting at Northampton of claims numbered:
  - AOQZ2966 relating to 11 Kings Walk District Judge McHale on 19<sup>th</sup> March 2014
  - AOQZ2960 relating to 7 Regent Gate by District Judge McHale on 19<sup>th</sup> March 2014for a Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges.
2. It is noted that reference is made in the correspondence to the Court that there are other claims that might be pending. The Tribunal had at the date of the Directions and Hearing not received the transfer of any further cases relating to this development.

### **Issues**

3. The years in issue were identified as:  
The Actual costs incurred for the Service Charge for both Properties for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013  
The Estimated costs for the Service Charge in relation to both Properties for the year ending 24<sup>th</sup> March 2014
4. In addition the parties agreed that, although the year was not the subject of the Court Transfer, the Tribunal should make a determination as to reasonableness in respect of the Estimated Service Charge for the year ending 24<sup>th</sup> March 2015.
5. It was noted that notwithstanding the determinations in respect of the estimated charges, either party might make an application in relation to the reasonableness of cost and standard of work in relation to the actual costs of the Service Charge.

### **Description and Inspection of the Subject Property**

6. The Tribunal inspected the Development in which the Properties are situated in the presence of Mr Powell, the Applicant's Representative, and Mr Posh Mashad, the Respondent's Representative, and Mr Boddy, the Respondent's Solicitor. The Tribunal had inspected the Development in respect of a previous

case number CAM/34UE/LSC/2013/0130 the Reasons of which contained a detailed description. At the present inspection the Tribunal found that the Development had not been altered and was in much the same condition and therefore the description as set out in the previous case is repeated here.

7. The Building is situated between Regent Street, Crown Street, and Kings Street, Kettering. The Building was originally a bakery and food warehouse, which has been converted into 24 flats. The old bakery, which is now Kings Walk, is a three-storey brick structure with pitched slate roof, which abuts the old food warehouse. The old food warehouse, which is now Regent Gate, is a two-storey brick structure with a pitched slate roof. Within each structure there are 12 flats. Both structures have Crittal style metal windows and form a single Building. At the Kings Walk end of the Building there is a yard with a covered area, which affords parking for a number of vehicles. Vehicular and pedestrian access to the yard is from Kings Street. The Regent Gate end of the Building has an undercroft which was originally a loading bay and which provided both vehicular and pedestrian access from Regent Street. The loading bay provides limited parking. The yard and the loading bay are not connected for vehicles although they are for pedestrians. In the yard there is a bin area where there are 2 Euro bins. Both the yard and loading bay are gated. The gates are wired to operate electronically but the automation no longer works.
8. At the Kings Walk end of the Building there were 4 flats on the ground floor under a covered area with upvc lanterns set in the roof. There is a metal staircase to the roof of the covered area, which acts as a walkway. From this walkway are two wooden staircases each of which is covered by an upvc and glass structure giving access to the first and second floors. For each staircase there is a short flight of stairs to two first floor flats with a further dogleg stairs to two flats on the second floor. A separate metal staircase leads to the loading bay of the two-storey food store, which has been converted into 6 flats on the ground floor and six on the first floor. The ground floor flats are around what was the loading bay. Above the bay at first floor level is a wide walkway which gives access to the six second floor flats of the Building. In the roof over the wide walkway is a glass lantern giving light to the first floor walkway and down to the ground floor loading bay.
9. Between the Kings Walk and Regent Gate there is a mezzanine area from which access to the basement under the Building can be obtained. This at one time housed a gym. The area is currently locked as it gives access to the services for the Building and until the area is re-developed and the services enclosed, this part is secured for safety reasons. It was noted that each flat is metered for its own services and that there is a separate meter for the common parts.
10. Externally parts facing the King's Walk courtyard and car park are shabby and betray the poor standard of the conversion. Externally, the two upvc and glass staircases and the walkway above the yard with its lanterns were at the time of inspection in fair condition. The doorways around the yard on the ground floor are unattractively flush with the wall rather than recessed. Internally the staircases are dirty. The area opposite where the bins are now stored had been

a bin store which had been burnt down and the evidence of the fire on the wall remained. Around the yard is a rendered and painted wall.

11. The Tribunal noted the common areas of the yard, with its walkway and two upvc staircases, the loading bay, with its wide walkway above and the mezzanine access to the basement as being aesthetically disappointing, utilitarian and neglected. The paving blocks in part of the yard had become uneven and those around the inspection chambers had sunk. There were several possible reasons e.g. settlement with the weight of cars or following the laying of the drains.
12. The Tribunal noted that there were two main pitched roofs and one flat roof. There were mostly upvc round line gutters but there were also lengths of box guttering. The down pipes were upvc, one of which could be seen to require attention. The condition of the roofs and box gutter could not be seen from any level to which the Tribunal had access. The flat roof is over the Regent Gate first floor walkway ground floor parking area (originally the loading bay) and has a lantern giving light below.
13. The Crown Street elevation brickwork of the Building has been re-pointed. The windows were powder coated Crittal style. They could be inspected at ground level on the Crown Street elevation and there was found to be some corrosion on the hinges of the windows and the seal around the windows was missing on some and required renewing on others. The sills had been removed from some windows and needed replacing. The removal of the sills has left pockets in the brickwork which would have received the sill that had been removed. Some of these pockets had been filled by bricking up, others with a form of filler but several were open and had fabric or similar matter 'stuffed' into them possibly from inside the flat. Also on Crown Street there is a doorway which has been boarded up which is need of replacement.
14. The Tribunal saw the lighting in the undercroft and around the King's Walk courtyard as well as that in the parking area of Regent Gate together with the meter housing in this area. It also saw the gas flues protruding from the walls of the Building.
15. Internally the area around the loading bay on the ground floor and around the walkway above at first floor level is unattractive and poorly converted. The flat doors are not in keeping with the Building. Internally the area between Kings Walk and Regent Gate was dirty and shabby. The Tribunal inspected the basement and found it to be large area with limited light from the window. It appeared to be damp possibly due to having been shut up and without heat.

### **Background to Ownership**

16. The Applicant's Representative provided some background to the past and present development of the site and ownership in written representations. The Old Bakery (now Kings Walk) and food warehouse (now Regent Gate) had been purchased and converted by Templewood Estates Limited a developer who had subsequently got into financial difficulties and has been put into liquidation. The Creditors had put the Building into the hands of Receivers,

JH Gershinson and LJ Brooks of Allsop LLP Residential Management (ARIM). The Receivers had sold the freehold of the Building to the Respondent at auction on the 16<sup>th</sup> April 2012 and it is held under Title Number NN49889 at the Land Registry.

### **The Leases**

17. A copy of the Leases for Flat 7 Regent Gate dated 11<sup>th</sup> August 2011 and 11 King's Walk dated 31<sup>st</sup> January 2008 were provided which were between Templewood Estates Limited (In Liquidation) acting by its Receivers (1) and Saaghar Posh Mashad (2). The Leases are for a term of 125 years from the 1<sup>st</sup> January 2005.
18. The relevant provisions of the Lease were identified as follows:
19. Clause 3 (17) and Schedule 3 of the Leases sets out the Tenant's covenant to pay the Service Charge and the wording of the clause is virtually the same in both Leases. The Tenant covenants to pay to the Landlord the Tenant's share of the "Total Expenditure" as stated in Schedule 3. The Clause and Schedule provide that an "Interim Charge" shall be made on the 25<sup>th</sup> March and 29<sup>th</sup> September in each year on account of the "Service Charge" attributable to the flat, which is a "fair and appropriate proportion of the "Total Expenditure". The "Total Expenditure" means all reasonable and proper costs and expenses whatsoever incurred by the Landlord acting reasonably in any accounting period in carrying out its obligations under Clause 4."
20. Clause 3 also contains the covenants relating to the maintenance of the Demised Premises including the right of the Landlord to enter and view the condition of the Demised Premises and of any defects and to give the Tenant notice thereof.
21. Clause 4 of the Lease sets out the obligations of the Landlord. The Clause includes covenants:
  - To repair, maintain renew uphold and keep in good and substantial repair and condition:
    - The structure of the Building
    - The Common Parts
    - The boundary walls and fences
  - To paint as appropriate
  - To insure
  - To keep clean and where appropriate, lighted, the common parts and to keep clean the windows in the common parts
  - To employ a caretaker, at the Landlord's discretion
  - To employ managing agents, at the Landlord's discretion
  - To maintain any communal television

### **Attendance at the Hearing**

22. The Hearing was attended by Mr Powell, the Applicant's Representative, and Mr Posh Mashad, the Respondent's Representative and Mr Boddy the

Respondent's Solicitor. Mr Sayed Hosseini (an observer) was present and Mrs Eisler, the Caretaker's wife also attended in the latter part of the proceedings.

## Evidence

24. The Applicant provided a copy of the Statement of Claim and the Respondent a copy of the Defence which had been submitted to the County Court. The Respondent accepted the Reserve Fund charge for each year. The Respondent also stated at the Hearing that the Electricity charge of £632.15 and meeting costs of £216.18 were not in issue for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013.
23. With regard to the Estimated Service charges for the year ending 24<sup>th</sup> March 2014 and 2015 the Respondent considered the Insurance premium, Management Charge, Administration Charge, Surveyor's and Architect's Fees to be unreasonable. The Respondent also questioned the Maintenance Charges and Caretaker Costs as it was stated that no maintenance had been carried out at all and that the caretaking had not been carried out to a reasonable standard. The estimated Legal Costs were also put in issue. The estimated Electricity, Fire Risk Assessment and Building Regulations costs were neither denied nor accepted.
24. The Applicant submitted copies of the Service Charge Account of the actual costs for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013 and Estimated Service Charge for year 25<sup>th</sup> March 2013 to 24<sup>th</sup> March 2014 and 2015 as follows:

<b>Service Charge for 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013</b>	
<b>Item</b>	<b>Actual (£)</b>
General Maintenance	4,756.31
Electricity	632.15
Architect's Fees	5,957.60
Caretaker's Costs	3,410.50
Meeting Costs	216.18
Management Fees inc VAT	7,200.00
Reserve Fund	2,280.00
Building's Insurance	5,812.18
Surveyor's Fees	5,996.60
Administration Costs	647.57
<b>Total</b>	<b>36,909.09</b>
<b>Each flat's Share to be paid half yearly</b>	<b>1,537.88</b>

<b>Service Charge for 25<sup>th</sup> March 2013 to 24<sup>th</sup> March 2014</b>	
<b>Item</b>	<b>Estimate (£)</b>
Insurance	9,000.00
Electricity	800.00
Maintenance	5,000.00
Caretaker/cleaning	6,000.00
Administration	700.00
Management Fee inc VAT @ 20%	7,200.00
Fees for Building Regulation Requirements	2,000.00
Fire Risk Assessment	1,000.00
Surveyor's Fees	6,000.00
Architect's Fees	6,000.00
Reserve Fund 2013 – 2014	2,380.00
<b>Total Estimated Service Charge</b>	<b>46,080.00</b>
<b>Each flat's Share to be paid half yearly</b>	<b>1,920.00</b>

<b>Service Charge for 25<sup>th</sup> March 2014 to 24<sup>th</sup> March 2015</b>	
<b>Item</b>	<b>Estimate (£)</b>
Insurance	12,000.00
Electricity	1,000.00
Maintenance	3,000.00
Caretaker/cleaning	6,000.00
Management Fee inc VAT @ 20%	7,200.00
Surveyor's Fees	6,000.00
Architect's Fees	3,000.00
Reserve Fund 2013 – 2014	3,200.00
Legal Fees & Court Costs	9,000.00
<b>Total Estimated Service Charge</b>	<b>50,400.00</b>
<b>Each flat's Share to be paid half yearly</b>	<b>2,100.00</b>

***Actual Service Charge for 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013***

25. Firstly the actual costs incurred for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013 were considered. The Applicant had provided an account and a breakdown of the costs together with invoices for the period in issue.

***Architect's and Surveyor's Fees***

26. The Architects Fees of £5,957.00 and Surveyor's Fees of £5996.60 were disputed by the Respondent. The Respondent's Solicitor referred the Tribunal to the finding of a Tribunal in a previous case (number CAM/34UE/LSC/2013/0130) where a determination was made in respect of the reasonableness of qualifying works to be undertaken following the consultation procedure under section 20 of the Landlord and Tenant Act 1985. In that case the Tribunal found that the estimated Architect's Fee of £6,000 and the Surveyor's Fee of £6,000 were linked not only to each other but also to the proposed works and therefore should have been the subject of the section 20 consultation.

27. Mr Boddy stated that this finding was correct and that the two sets of fees were in effect one fee as the Architect had instructed the Surveyors and that the fees were wholly related to the qualifying works.
28. Mr Powell, the Applicant's Representative disagreed. He submitted that the previous Tribunal had mistakenly viewed the fees as being related to the management of the project. Mr Powell drew the Tribunal's attention to the wording of the Act which refers to qualifying works. Emphasising the word "works". He said that the fees here were preliminary to the carrying out of the works. He distinguished between the surveyor who is assessing works needed and the surveyor who is undertaking project management. He drew the Tribunal's attention to the costing adduced at the previous hearing which identified a sum for administration and management of the works which was separate from the Architect's and Surveyor's Fees.
29. Mr Boddy questioned the Architect's invoices of £2,358.80 and £3,598.80 asking why there were two. He also asked why a local architect had not been employed. He further stated that the cost was very high. He suggested that architect's fees are in the region of £65.00 to £100.00 per hour whereas these fees worked out at £200 an hour for 5 weeks on one project. In addition Mr Boddy questioned the Architects fees appearing in the estimated service charge for subsequent years which appeared to be come within the meaning of a long term qualifying contract.
30. Mr Powell stated that the invoices were submitted at different stages of the work. The Architect was employed to prepare a vision for the building. He had to prepare plans from scratch as the original plans were so poor. The Architect had to consult with the local authority with a view to obtaining planning permission for the works, in the course of which he had to make a number of revisions.
31. Mr Powell said that a local architect had been approached but had not proved suitable and so a London architect was chosen who had worked very satisfactorily on a building owned by the Applicant in Hove. The fees were not agreed on a time basis. Mr Powell said that he had worked with a number of architects and that the fees appeared reasonable for the work that was required to be done. He further stated that the fees were 'one-off' payments and were not qualifying long term agreements. The inclusion of the fees in subsequent years was an estimate for further work that may be needed to put the building into a fit state.
32. Mr Boddy expressed surprise at the amount of the surveyor's fees. Mr Powell said that the survey was a comprehensive document and was sent to all the Leaseholders. Members of the Tribunal had seen copies of the survey which had been provided at a previous case (number CAM/34UE/LSC/2013/0130) and were able to confirm that it was a substantial and detailed assessment of the building as could be evidenced by the references to it in the previous decision.



*General Maintenance*

33. The Respondent disputed the sum of £4,756.31 for the item of General Maintenance with regard to the removal of rubbish. A number of invoices were produced by the Applicant from National Property Management in the Bundle which related to the actual Service Charge costs for the year ending 24<sup>th</sup> March 2013. The Applicant's Representative stated that he understood these related to:
- a) the fortnightly commercial collection of waste by Kettering Borough Council payable quarterly in advance following the replacement of the individual bins for each flat;
  - b) the commercial collection of waste by builders skip;
  - c) some miscellaneous works e.g. replacing of broken locks.
34. It was not clear from the invoices how each charge was broken down e.g. how much was allocated for the bin collection by the Borough Council and how much for other commercial waste collection. The Applicant's Representative stated that National Property Management charged an administration fee of 15%.
35. At the hearing it was agreed that the Applicant would produce clearer copies together with supporting invoices to those produced from National Property Management (NPM). The Tribunal made an analysis of the invoices so far as it was able and directed the Applicant to provide the clearer copies and supporting documentation which it did as follows:

	<b>Date of NLP Invoice</b>	<b>Description</b>	<b>Cost of Services</b>	<b>NPM Cost</b>	<b>Total Cost £</b>
1	4 <sup>th</sup> May 2012	Rubbish removal	500.00	150.00	650.00
2	15 <sup>th</sup> May 2012	Rubbish removal	96.00	29.00	125.00
3	25 <sup>th</sup> May 2012	Rubbish removal	48.00	27.00	75.00
4	25 <sup>th</sup> May 2012	Rubbish removal	300.00	75.00	375.00
5	5 <sup>th</sup> July 2012	3 bins (KBC)	188.96	61.04	250.00
6	18 <sup>th</sup> July 2012	New mortise lock on electric cupboard 'no smoking' signs etc	480.00	75.00	555.00
7	25 <sup>th</sup> July 2012	Inspection holes in ceilings	180.00	40.00	220.00
8	3 <sup>rd</sup> August 2012	Replacing door locks	192.00	303.00	495.00
9	26 <sup>th</sup> June 2012	Rubbish removal	425.00	70.00	495.00
10	3 <sup>rd</sup> Sept 2012	3 bins (KBC)	188.96	61.04	250.00
11	1 <sup>st</sup> October 2012	2 bins (KBC)	125.97	29.03	155.00
12	3 <sup>rd</sup> Dec 2012	5 bins (KBC)	314.93	35.07	350.00
13	6 <sup>th</sup> March 2013	5 bins (KBC)	314.93	35.07	350.00
	<b>Total</b>		<b>3,354.75</b>	<b>990.25</b>	<b>4,345.00</b>

36. At the Hearing Mr Boddy, the Respondent's Solicitor expressed the view that the cost was excessive and wholly disproportionate to what would be expected. He submitted that the arranging of the clearing and collection of waste should be within the management charge. He added that he understood that NPM was an associate company of the Applicant and that the Directors of NPM and the Applicant were related.
37. Mr Powell for the Applicant said that a distinction had to be made between the domestic waste which was collected by the Local Authority and the commercial waste which had to be removed by private contractors. He said that the quantity and type of waste produced and deposited at the Development led the local authority to classify it as commercial which meant that private contractors had to be employed to remove it at additional cost.

#### *Caretaker*

38. The Respondent questioned the need for and cost of the caretaker.
39. Mr Powell said that the caretaker was paid £425.00 per month. There are some additional charges for which he invoiced separately such as the removal of rubbish and fixing of locks to secure premises (invoices were provided). He confirmed that the caretaker started on 12<sup>th</sup> September 2012. He added that the caretaker was Mr Eisler who was the only owner occupier in the building and was keen to get it 'sorted out'. A written statement was provided by Mr Eisler. This focused largely upon the need for the proposed works which were the subject of the previous case (number CAM/34UE/LSC/2013/0130) and the problems with the development confirming the statement already made by Mr Powell.
40. Mr Powell said the caretaker was engaged on a self employed basis and that Mr Eisler was an appropriate and experienced person and ran two businesses in addition to being the caretaker. Mr Powell said there was no written contract but he was able to outline his job description. He said that he acted as a security officer and as such had been assaulted on more than one occasion by a sub tenant at the premises. He liaised with the police and local authority as the Development had become the focus of anti-social behaviour with sub tenants being involved in drug taking and prostitution. He added that the insurers were unwilling to insure the Building because of the problems already described until they heard that there was a caretaker. He said that it was now a requirement of the insurance that a caretaker was employed.
41. The caretaker was also a cleaner (sweeping the car park and clearing the substantial quantities of litter), car park attendant, fire officer and health and safety officer. He had no set hours but living on the premises was available at times when disturbances were most likely at the weekends on Friday and Saturday nights.
42. Mr Boddy questioned whether Mr Eisler was the right person for the job and with two businesses to run whether he was good value for money and could give the time to the task. He also asked whether he paid his contribution of the service charges. Powell said that he did and that he was up to date.

## *Insurance*

43. Mr Boddy said that the insurance of £5,812.18 was very high and if the service charge estimates were accurate, was increasing. He referred the Tribunal to the documents included in the bundle which contained a cover/debit note from the insurance brokers, Oncover Insurance Services Limited, which quoted the premium of £11,442.40 for the period 2013 to 2014 in issue payable to AXA Insurance. He submitted that the presence of the caretaker should reduce the insurance premium not increase it.
44. Mr Powell said that the first premium was not a true reflection of the cost because when it was taken out all the problems were not known by either the Applicant or the broker. When the problems such as the lack of building completion certificates and the anti-social behaviour became apparent and the Applicant informed the broker, the insurers were reluctant to take on the Development. Mr Powell said that it was only because the Respondent is a large account holder that they were prepared to provide insurance.
45. Mr Boddy said that although details of the insurance for 2013 to 2014 were provided there were none for 2012 to 2013, only the brokers invoice. Mr Boddy asked whether there was a letter stating unequivocally that insurance would not be provided unless there was a caretaker. Mr Powell said that there was an enormous quantity of correspondence relating to the Development which he could not bring with him and amongst it was an exchange relating to the provision of a caretaker. Mr Powell added that in any event the Lease provided for the appointment of a caretaker.
46. Mr Boddy questioned the manner in which the insurance was placed. Mr Powell said that the Respondent employed a broker, previously Lark and currently Oncover, to go into the market place to obtain quotations at arm's length. He said that he did not receive a commission although the brokers may do so for the work they carried out. He said that he had a block policy but each property was valued separately and a specific premium allocated and charged to each property. He referred to the invoice from Lark Insurance Brokers of £5,812.18 in the Bundle.
47. Mr Boddy referred the Tribunal to a quotation which the Respondent had obtained from Bricks and Mortar Property Owners Insurance who had quoted a premium of £5,943.91 in December 3013 which was in line with the Applicant's insurance premium for 2012 to 2013 but was well below the premium of £11,442.40 for the period 2013 to 2014 obtained by the Applicant. Mr Powell questioned whether the insurers were aware of the problems with the Development when giving that quotation.

## *Administrative Costs*

48. Mr Boddy said that these costs should have been included in the Management Charge. Mr Powell said that they related to the provision of copies of the Surveyor's Report to the Tenants. It was submitted that these costs were

outside the management charge. The breakdown of the charges was as follows:

Printing cartridge x 2	£461.92
Postage (Recorded delivery)	£98.25
Envelopes x 24	£13.07
Folders x 24	£43.15
Paper x 24	<u>£31.18</u>
Total	£647.50

#### *Management Fee*

49. Mr Boddy, on behalf of the Respondent, submitted that the Management fee which equated to £250.00 plus VAT a unit was excessive as little management takes place. He said that it was believed that the charge largely related to the time spent by the Respondent in respect of the proposed work which had been the subject of the previous case (number CAM/34UE/LSC/2013/0130) instead of ensuring the Development was run efficiently as it stood. Mr Boddy also questioned why there were no invoices from the Management Company.
50. The Tribunal stated that it considered the charge high and that in the Kettering area a charge of £160.00 per unit might be considered to be more reasonable although this might be increased due to the problems of the Development.
51. Mr Powell for the Applicant stated that managing the Development took more time than any other single property in the Applicant's portfolio. He said that the anti-social behaviour problems were largely due to the persons to whom the Tenants sub-let. He submitted that it had appeared unnecessary to raise a separate invoice from the Managing Agents, Carvalho Concept Limited because it was the managing Agents who were making the Service Charge Demands on behalf of the Applicant. They would in effect be writing invoices to themselves.

#### ***Estimated Service Charge for 25<sup>th</sup> April 2013 to 24<sup>th</sup> March 2014 & 25<sup>th</sup> April 2014 to 24<sup>th</sup> March 2015***

52. Mr Boddy stated that the points he had raised with regard to the actual costs were equally applicable to the estimated charges. In particular he said the Insurance premium was excessive and referred to the quotation obtained by the Respondent. He said that even if the Surveyor's and Architect's Fees were payable for the year ending 24<sup>th</sup> March 2013 it was not reasonable to estimate a charge for them again in the following years. The Management Charge was also said to be excessive and the Administration Charge should be part of the management. He added that the Maintenance Charges and Caretaker Costs were unreasonable because no maintenance was being carried out. He suggested that many of the problems might be solved if the gates to the Development operated. Most of the charges relate to the removal of rubbish. He also submitted that the caretaker role was unnecessary and the caretaking was not of a reasonable standard.

53. Mr Boddy also questioned the Legal Costs which had been estimated as £8,849.73 for which he said invoices would need to be provided. He noted that, although not in issue at these proceedings, the invoices for the year ending 24<sup>th</sup> March 2014 had been provided with the exception of those relating to the Legal Costs.
54. Mr Posh Mashad in a written statement said that a reasonable estimate of charges would be as follows;
- |                     |         |
|---------------------|---------|
| Maintenance         | £1,500  |
| Electricity         | £500    |
| Caretaker           | £1,000  |
| Management Fees     | £2,500  |
| Insurance           | £6,000  |
| Administration Fees | £500    |
| Total               | £12,000 |
- This would give a Service Charge of £500.00 per flat.
55. Mr Powell confirmed the points he made with regard to the Insurance premium, the Management Fees, and the Caretaker's Costs. He said that the rubbish problem was due to the sub-tenants of the Tenants and so its remedy was in the hands of the Tenants themselves. He said that he had incurred significant legal costs because the Tenants had not paid their service charges. He added that due to previous case number CAM/34UE/LSC/2013/0130 substantial revisions to the proposed works will be required and therefore further architect's and surveyor's fees will be incurred.

## **Decision**

### ***Actual Service Charge for 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013***

56. The Tribunal considered each of the items of the actual costs incurred for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013 were considered.

#### *Architect's and Surveyor's Fees*

57. The Architects Fees of £5,957.00 and Surveyor's Fees of £5,996.60 were payable as costs incurred prior to the qualifying works.
58. The Tribunal considered the finding of the Tribunal in the previous decision (number CAM/34UE/LSC/2013/0130) referred to by the Respondent's Solicitor.
- Firstly it was a finding at those proceedings and is not binding on the present Tribunal.
  - Secondly it was a finding that, in the event, had no bearing on that previous decision.
  - Thirdly the finding was based upon the evidence at the time which related to estimated costs in respect of the reasonableness of qualifying works to be

undertaken following the consultation procedure under section 20 of the Landlord and Tenant Act 1985. The view was expressed in that Decision that the charges should have been subject to the section 20 consultation. It is apparent from the present case that the actual costs were incurred in anticipation of the qualifying works and therefore the view was incorrect and the Architects and Surveyor's Fees are not subject to the section 20 consultation.

59. In relation to the third point the Tribunal took into account the case of *Marionette Limited v Visible Information Packaged Systems Limited* [2002] EWHC 2546 (Ch) with particular reference to paragraphs [95] to [98] in that case and the distinction drawn between the costs incurred in undertaking architectural drawings and surveys in order to assess whether work is required and if so what work is necessary and the costs incurred in the supervision of such works. The Architects' and Surveyors' Fees were prior to and not part of any qualifying works and so did not require to be included in the section 20 consultation.
60. The Tribunal therefore considered whether they were reasonable. With regard to the Architect's Fees the Tribunal were not persuaded by Mr Boddy's submission that the architect should have been paid on an hourly basis at a fee in the region of £100 or less. The Tribunal accepted that the work was substantial and taking account of professional fees such as those charged by lawyers the overall charge of £5,957.00 and was determined to be reasonable.
61. With regard to the Surveyor's Fees, the Respondent and the Tribunal had received a copy of the Survey and its content was set out in the Decision referred to by Mr Boddy. The Tribunal found that the document was a substantial one and determined the fee of £5,996.60 to be reasonable.

#### *General Maintenance*

62. The Tribunal considered the breakdown of the charge of £4,756.31 for the item of General Maintenance. It was noted that it was predominantly for rubbish removal either for the hire of local authority bins or for the employment of private contractors. The sum of £4,345.00 was paid to National Property Management and comprised of £3,354.75 to contractors and the local authority and £990.25 for management.
63. No evidence was adduced to show that the sum of £3,354.75 had not been expended or that the work had not been carried out and done so to a reasonable standard. The amount was therefore determined to be reasonable.
64. There is no evidence to indicate that NPM is registered for VAT therefore the management charge is just under 30% rather than the 15% suggested by Mr Powell, the Applicant's Representative.
65. The Tribunal considered the figure of 15% to be a reasonable management charge in these circumstances and therefore adjusted the figure accordingly, 15% of £3,354.75 being £503.21. Therefore the General Maintenance charge is reduced by £487.04.

66. The outstanding sum of £411.31 appeared to be payable directly to the contractors and had not been subject to any management charge. This was determined to be reasonable.

#### *Caretaker*

67. The Tribunal found that under the Lease the Applicant is entitled to employ a caretaker. The Tribunal then addressed the question of whether the charge was reasonable. The caretaker is paid £425.00 per month. On the basis of an hourly charge of £7.00 which is a little over the minimum wage a service of 60 hours a month which is the equivalent of 15 hours a week. The Tribunal was of the opinion that a higher rate would be justified as insurance and other costs would be payable by a self employed person. The Tribunal accepted the evidence of Mr Powell as to the role of Mr Eisler and were of the opinion that in the absence of evidence to the contrary the caretaker's charges were reasonable.

#### *Insurance*

66. The Tribunal took account of the cases relating of insurance of *Bandar Property Holdings Limited v JS Darwen (Successors) Limited* [1968] 2 All ER 305; *Havenridge Limited v Boston Dyers Limited* [1994] 2 EGLR 73; *Berrycroft Management Company Limited and others v Sinclair Gardens Investment (Kensington) Limited* [1997] 1 EGLR 47 *Solent House (Management) Limited v Freehold Managers (Nominees) Limited* LON/00AH/LCI/2009/001 and *O'Sullivan and others v Regisport Limited* LVT/INS/027/003/00.
67. The Tribunal accepted the evidence of Mr Powell that the Respondent obtained competitive quotations for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013 and that the premium of £5,812.18 was reasonable.

#### *Administrative Costs*

68. With regard to the administrative charges of £647.50 the Tribunal agreed that these costs related to the provision of copies of the Surveyor's Report to the Tenants and as such were outside the normal management charge. The Tribunal determined them to be reasonable.

#### *Management Fee*

69. The tribunal agreed that the Management Fees of £7,200.00 were high particularly as there is a caretaker for dealing with day to day matters and that NPM arrange rubbish collection and other repair works. However, taking account of the number of sub-tenants at the Development and the reports of anti-social behaviour the Tribunal agreed the Development was difficult to manage. It was also considered reasonable that included in the fee should be an allowance for making arrangements to deal with the long term issues with the Development. The Tribunal therefore determined that a unit charge of

£200.00 plus VAT was reasonable, giving a total Management Fee of £5,760.00 including VAT at 20%.

### **Summary**

70. The Tribunal determined that a reasonable actual cost Service Charge payable by the Respondent to the Applicant for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013 is £1,457.58. Details are set out in the table below:

<b>Service Charge for 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013</b>	
<b>Item</b>	<b>Actual (£)</b>
General Maintenance	4,269.27
Electricity	632.15
Architect's Fees	5,957.60
Caretaker's Costs	3,410.50
Meeting Costs	216.18
Management Fees inc VAT	5,760.00
Reserve Fund	2,280.00
Building's Insurance	5,812.18
Surveyor's Fees	5,996.60
Administration Costs	647.57
<b>Total</b>	<b>34,982.05</b>
<b>Each flat's Share to be paid half yearly</b>	<b>1,457.58</b>

### **Estimated Service Charge for 25<sup>th</sup> April 2013 to 24<sup>th</sup> March 2014 & 25<sup>th</sup> April 2014 to 24<sup>th</sup> March 2015**

71. The Tribunal considered the estimated service charges for the years ending 24<sup>th</sup> March 2014 and 2015.
72. The Tribunal firstly assessed the particular issue of the Insurance premium and referred to the quotation obtained by the Respondent from Bricks and Mortar Property Owners Insurance of £5,943.91 in December 2013 which was in line with the Applicant's insurance premium for 2012 to 2013 of 5,812.18. However, it was well below the estimate of £9,000 and the premium actually obtained by the Applicant for the year ending 25<sup>th</sup> March 2014 of £11,442.40.
73. The Tribunal had accepted the evidence that the Respondent obtained competitive quotations. The Tribunal was not persuaded that the quotation obtained by the Respondent was like for like in that it was not made clear whether the broker had been made aware of the particular problems with the Building such as the anti-social behaviour and the lack of building completion certificates which were likely to increase premium. The Tribunal therefore determined that the estimated insurance premium was reasonable.
74. No evidence was adduced that the maintenance costs of £5,000 and £3,000 were unreasonable and they were in line with the actual costs for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013.



75. The estimated caretaking costs were higher than the actual costs for the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2014. However, it was accepted these were estimated and therefore the figure was determined to be reasonable.
76. The allowance for a fire risk assessment and building regulations compliance of £1,000 and £2,000 respectively were determined to be reasonable for the year ending 24<sup>th</sup> March 2013.
77. The estimated Administration costs for the year ending 24<sup>th</sup> March 2014 were determined to be reasonable because it was accepted that revisions of the architects plans and updates of the surveyor's report would be required and consultation with the Tenants would be necessary. The Architects and Surveyor's Fees for the years ending 24<sup>th</sup> March 2015 were determined not to be reasonable and that the allowance for 2014 should be sufficient.
78. The estimated Management Fee was determined to be as for the actual cost in the period 16<sup>th</sup> April 2012 to 24<sup>th</sup> March 2013.
79. The estimated sum for electricity of £1,000 was reduced to £800 for the year ending 24<sup>th</sup> March 2015 in line with previous years.
80. The Tribunal appreciated that an amount would need to be set aside for legal costs as it was aware that the Applicant had taken action in relation to non-payment of service charges. The awarding of costs will be a matter for the court involved and this was an estimated amount.

### **Summary**

81. The Tribunal determined that a reasonable estimated Service Charge payable by the Respondent to the Applicant for the year ending 24<sup>th</sup> March 2014 is £1,860.00 and for the year ending 24<sup>th</sup> March 2015 is £1,656.66. Details are set out in the tables below:

<b>Service Charge for 25<sup>th</sup> March 2013 to 24<sup>th</sup> March 2014</b>	
<b>Item</b>	<b>Estimated (£)</b>
Insurance	9,000.00
Electricity	800.00
Maintenance	5,000.00
Caretaker/cleaning	6,000.00
Administration	700.00
Management Fee inc VAT @ 20%	5,760.00
Fees for Building Regulation Requirements	2,000.00
Fire Risk Assessment	1,000.00
Surveyor's Fees	6,000.00
Architects' Fees	6,000.00
Reserve Fund 2013 - 2014	2,380.00
<b>Total Estimated Service Charge</b>	<b>44,640.00</b>
<b>Each flat's Share to be paid half yearly</b>	<b>1,860.00</b>

<b>Service Charge for 25<sup>th</sup> March 2014 to 24<sup>th</sup> March 2015</b>	
<b>Item</b>	<b>Estimated (£)</b>
Insurance	12,000.00
Electricity	800.00
Maintenance	3,000.00
Caretaker/cleaning	6,000.00
Management Fee inc VAT @ 20%	5,760.00
Reserve Fund 2013 - 2014	3,200.00
Legal Fees & Court Costs	9,000.00
<b>Total Estimated Service Charge</b>	<b>39,760.00</b>
<b>Each flat's Share to be paid half yearly</b>	<b>1,656.66</b>

Judge JR Morris

Date: 18<sup>th</sup> June 2014