1047

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LSC/2014/0157**
Property	:	**45 Brunel Court,201 Green Lane, Edgware, HA8 84Y**
Applicant	:	**Dr Abiramy Gnanasampanthan**
Representative	:	**Mr T Gnanasampanthan (Applicant's father)**
Respondent	:	**E &J Ground Rentals No.6 LLP**
Representative	:	**Barratt Residential Asset Management (BRAM)represented by (i) Mr Billson Managing Director (ii) Mrs S Hurst Property Manager (iii) Mr M Dowland Head of Operations**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Ms M W Daley LLB (hons)** **Mr P Roberts Dip Arch RIBA** **Mr J Francis QPM**
Date and venue of hearing	:	**3 July 2014 and 11 September (for the Determination) at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**2nd November 2014**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations set out in the various headings below.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act) as to the amount of service charges payable by the Applicant in respect of the service charge years 2012/13, 2013/14 and the estimated charges for 2014/15.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At the hearing, although the applicant was not present, she was represented by her father, Mr T Gnanasampanthan. The Respondent was represented by Mr A Billson managing director Barratt Residential Asset Management ("BRAM") Mrs S Hurst Property manager and Mr M Dowland- Head of Operations.

4. The Tribunal decided that where an issue arose over more than one year, the Tribunal's determination unless stated otherwise would apply for all of the periods in issue.

Both parties had produced separate trial bundles, and there were differences in the figures produced by the Applicant and the Respondent, the Tribunal have ,unless otherwise stated, in reaching its determination placed reliance on the budget and service charge account figures produced by the Respondent.

The Background

5. The property which is the subject of this application is a flat, within a purpose built block of flats, consisting of 67 flats in a new development, which is part of regeneration project consisting of 800 plots/units and a number of commercial units. Building at the development is on-going, although there are a number of blocks which have been completed. The project is expected to be completed in approximately 2020. At present there are about 380 occupied units with another 180 coming up for completion.

6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease(included in the Respondent's bundle) will be referred to below, where appropriate.

The issues

(i) The Issues were set out in the directions. In the Directions dated 10 April 2014, the Tribunal identified the following issues-:

(a) The reasonableness of the service charges for the years 2012/13, 2013/14 and 2014/15.

(b) Whether the estimated costs of the works are reasonable in particular in relation to the nature of the works, the contract price and supervision and management fee.

(c) Whether an order for reimbursement of application/hearing fees should be made.

(ii) Mr Gnanasampanthan stated that there was also an issue concerning the cost of the gym and also the use of the gym by others in particular the residents of Nevis Court, and

(iii) Whether the respondent was charging a reasonable sum for the estate costs and what is the boundary of the estate.

7. Mr Gnanasampanthan stated that his daughter and the other leaseholders had a number of concerns that they were being overcharged by the management company BRAMS described, as a not for profit organisation.

8. Mr Gnanasampanthan stated that the leaseholders were unhappy that the charges, for example electricity, were distributed over a number of different parts of the service charges, so that electricity was charged for the estate, the block and the Gym under each separate heading rather than being set out as one service charge for electricity this made it difficult to estimate the total charge and gave the impression that it was less than it was.

9. The Applicant was also concerned about the fact that the Gym was being used by other leaseholders and their associates from the neighbouring Nevis Court. Mr Gnanasampanthan stated that this was a security issue as the leaseholders from Brunel Court did not know who was using the Gym, and the fob/access key might have been given to others.

10. The Tribunal decided to structure the hearing with reference to the Scott Schedule which had been produced by both parties.

11. The Tribunal were informed by the Respondent, by way of background information, that the regeneration project was started in some 6 years ago and that Brunel Court, was part of the third phase of the development. The development consisted of the following blocks Brunel Court, Loch Crescent, Amias Drive, Nevis, Fyne, Lomont Court, Melfort Court, Skene Court and Lindus Court, Lindisfarne Court, Ravensbourne, Malbrook, Medlock, Bradford, Cornbrook and Academy Green amongst others. The blocks consist of 1 to 3 bedroom apartments. The Respondent stated that there were houses on the estate, and that the freeholders had covenanted to contribute to the estate costs.

12. The premises were previously managed by O M Peverel, however after the first year, the management was taken over by Barratt Residential Asset Management (BRAM) who were set up by the Landlord on a not for profit basis.

13. The Tribunal considered the wording of the lease provided.

The provisions of the lease and how the service charges are apportioned. The Tribunal referred to Clause 1.45 which defined "Service charges as " *a fair and reasonable proportion attributable to the Premises (as reasonably and properly determined by the Landlord or its managing agents having regard to the number and size of the apartments or other residential units in the Development and/ or Estate from time to time and the services provided to each Apartment and which may be a different proportion in relation to part A Service Costs the Part B Service Costs the Part C Service Costs the Part D Service Costs the Part E Service Costs the Part F Service Costs the Part G Service Costs the Part H Service Costs"*

14. Clause 1.46" the Service Costs" this was defined-: *as "the proper and reasonable costs and expenses which are properly and reasonably incurred and lawfully recoverable described in the Sixth Schedule."*

15. Clauses 1.47- 1.53 was set out in similar wording in relation to each of the Costs heads (such as Service Charge Cost Part A)

16. The Part A Service Cost set out in the fifth schedule of the lease was in relation to Estate Costs for the Estate Common Parts. Part B related to Development Costs. Part C related to the Building Structure and External Costs, Part D provided for the Block Internal Costs and Door Entry Systems, Part E the Basement Parking Costs Part F the Community Heating System costs and Part G the Gymnasium Costs.

17. The Estate was defined in clause 1.17 of the lease provided as *"... the land (other than the Property) situate in the London Borough of Barnet NW shown for identification purposes being the Land edged red the land edged green and the land edged yellow on Plan 4 attached hereto or shown or such alternative plan as the landlord may from time to time supply to the Tenant together with any buildings or structures erected or to be erected thereon or on some part thereof..."*

18. The Tribunal noted that the estate was extensive, and was still under development. Given this the scope of the estate may be subject to change. As set out in the wording of the lease. The Tribunal consider that the Respondent should set out details of the percentage cost payable for the estate by the leaseholders, and details of the landlord's contribution for the properties which are under construction, and set out the basis upon which the landlord's contribution has been assessed. The information should be provided within 21 days of this determination..

19. The Tribunal examined the various heads of cost for the year 2011, and noted that the first issue was the electricity.

20. Mr Gnanasampanthan informed the Tribunal that the electricity for the periods was as follows-: £10860 (2012/13), £10860 (2013/14) and £16760.00 (2014/15). These charges were based on budget estimates and Mr Gnanasampanthan was concerned that these figures had been arrived at by using the wrong tariff. Mr Gnanasampanthan stated that a commercial Tariff had been used rather than a domestic tariff with an increased element due to VAT. This was not disputed by the Respondent.

21. In his submissions, Mr Gnanasampanthan stated-: *"... The current and past bills were based on so many light bulbs left on all day long and night 24/7/365. If we consider the actual usage which is by turning on and off the lights as and when we need them then the usage would not exceed the most three hours a day which is an over exaggerated the usage and this means the actual cost would be about 1/8 of what we are currently using and paying for...*

22. The Tribunal were referred to the bundle which set out the breakdown for electricity for each of the different services provided (estimated 2012/13); the figure was £1200.00 for Brunel Courts share of the estate electricity charges, £6900 for the block charges, £2000.00 for the car park and £360 for the gym.

23. The Tribunal were informed by the Respondent's that these figures were the sums set out in the budget. It was accepted that the original rate was on the commercial tariff rather than the domestic tariff. This had however been subsequently adjusted. The Tribunal were informed

that although there had been an adjustment, the actual cost for electricity was now higher than the estimate.

24. The Tribunal were informed that the figures were now based on the readings and that the information would be provided to the Applicant. The Tribunal noted that the lease did not specifically provide a percentage breakdown of the leaseholder's service charge contribution. Mr Billson explained that the building costs were was split between the 67 units based on the square footage of the apartment, with the Gym electricity being equally divided. Unfortunately there were no separate electric meters for the car park and Gym. Given this the figure was apportioned with 10% of the total costs apportioned to the gym payable by leaseholders of Brunel Court and 15-20% of the costs apportioned to the car park.

25. The electricity was used for the lighting of the common parts, the lifts, the underground car park lighting, the fire alarms smoke extractors and detectors and the water pump. There were four separate meters for the landlords supply with 2 in each stair core. The Tribunal were referred to clause 10 of the lease which set out the heads of charge.

26. Mr Billson explained that the cost of electricity had actually gone up, however this was not reflected in the budget estimate for 2013/14 which had been based on assumptions from the 2012/13 account. Mr Billson considered the apportionment to be reasonable and in accordance with the terms of the lease

27. Mr Gnanasampanthan stated that he would be prepared to accept the actual bill if it was based on a reading and had the correct tariff applied.

The tribunal's decision and Reasons

28. The tribunal accept that there were issues with the tariff and VAT charges and also the estimated cost of electricity; subsequent to the Tribunal hearing, it was provided with copies of the actual bills, which demonstrated that appropriate adjustments had been made.

29. The Tribunal noted the nature and scope of the development, and that given this the electricity charges would be higher than those of a smaller estate. Although the cost is higher than the expectation of the Applicant there is nothing about the charges to suggest that the charges are not fairly and reasonably apportioned. The charges for end of Jan 2013 were £3382.83, the Respondent's had explained that this was for only part of the year as it was at the start of the lease and some of the electricity cost were born by the contractor who was still on site. The charges for 2013/14 were £5225.87 for the estate and £11811.76 for the block and the gym.

30. The Respondent expected that the cost would increase because the subsidy of the landlord would be lost, accordingly we find the actual charges reasonable, and accept that the estimated charge of £16760.00 2014/15, is based on the assumptions that the respondent was able to make on the best information available. Accordingly we find the estimated charges reasonable and payable, subject to the lease which provides that any surplus collected will be credited to the leaseholder.

The cost of the reserve fund for the Gym and the use of the gym

31. In his statement of case he set out the issues as follows-: " ...*We were told at the time of the purchase that we have a residents gym. We were issued with a welcome pack and among the contents were two floor plans... The Gym is clearly marked on the latter one as resident's gym...The use of our gym by outsiders was only come to our attention in Sep 2013 during a meeting we had with BRAM. We were assured that there are only 10 Nevis court residents (which is the block of flats across the road to Brunel Court) were given membership...In a recent meeting with Gary Patrick (Barratt sales director) announced that the membership numbers of Nevis Court users had dropped to three. This looked to us as things are moving in the right direction...*"

32. Mr Gnanasampanthan was also concerned with the gym cost. Mr Gnanasampanthan in considering the cost of the gym had stripped out the cost of electricity and cleaning, and had put these cost under the general service charge headings for these charges, this meant that his figures were different to those of the respondents.

33. The service charges for 2012/13 included a budget estimate of a contribution to reserves of £7650.00. Mr Gnanasampanthan considered this to be excessive. He referred to cost in the service charge accounts of £3382.00. The Applicant's representative stated that the difference which was £4268.00 should be refunded.

34. Mr Gnanasampanthan stated that the current reserve had been set on the basis of the estimated replacement value of the gym equipment, based on costs of around £70,000. Mr Gnanasampanthan had sought quotations from the the manufactures of the gym equipment and his assessment was that the actual replacement cost was more in the region of £25,000, approximately 1/3 of the Respondent's estimated value. The Applicant had produced quotations for the replacement of gym equipment and had also obtained an estimate for the maintenance of the equipment.

35. Mr Gnanasampanthan stated that the audited service charge accounts figure of £3382.83 contribution to Reserves for (2012/13) shows that the reserve was unreasonable and that the figure should not exceed £3300.00.

36. Mr Gnanasampanthan had also produced quotations for the maintenance cost of the gym. This was from Life Fitness for the sum of £335.57. This was based on one annual service a year.

37. The Tribunal were informed that the reserve for the gym was provided for by clause 6th Schedule clause 15 of the lease. The Tribunal were informed by Mr Billson that the sum of £3382.83 was the actual for the year ending 2012/13, and that this figure had been set by the Respondent, which was based on the number of occupants and the number of days that they were occupying the premises.

38. The provision of a gym was described by Mr Billson as "a new phenomenon" for the Respondent. Accordingly the Respondent did not have figures upon which to base their estimated cost, as a result the Respondent had used a number of assumptions, in setting the budget estimate.

39. Mr Billson referred the Tribunal to the list of equipment which had been installed in the gym. This list was more extensive that the list of equipment referred to by Mr Gnanasampanthan. The cost of re-installing the equipment was £72612.00. The Respondent also enclosed a copy of the maintenance contract between the Respondent, and Motive 8, which provided for quarterly maintenance in the sum of £2160.00 for the year. Mr Billson stated that this was considered necessary as it was an unmanned Gym, and given this there was a higher risk of equipment being damaged or misused.

40. Mr Gnanasampanthan complained that the Respondent had offered the use of the Gym to residents at Nevis Court for £250.00 per annum. This was expected to be used to subsidize the cost of running the gym for the benefit of the residents of Brunel Court. The Tribunal were referred to a letter which was sent to the residents which set out the basis upon which the use of the gym was offered.

The tribunal's decision and Reasons

41. The Tribunal noted the assumptions and cost information that the Respondent had used in setting theservice charge budget, such as the maintenance contract, which was based on an unmanned gym which might suffer possible misuse of equipment. The fact that health and safety considerations meant that the equipment should be subject to more regular maintenance, and that this was in contract with the scheme which had been proposed as an alternative on the Applicant's behalf.

42. The assumptions which had been used to set the budget for the reserve, was that the equipment would be replaced over an 8-10 year period. The Tribunal consider that this is a reasonable and realistic

assumption. The Tribunal also noted that this assumption might well change once the Respondent had gained experience in what was involved in running the Gym.

43. The Tribunal accepted that the specification put forward by the Applicant did not equate with the existing equipment in the gym, given this, the Tribunal did not consider that the estimate put forward by the Applicant was comparable to the maintenance contract entered into by BRAMS on behalf of the freeholder.

44. The Tribunal also noted that save for the year 2012/13, the figures given for the interim service charges, were based on a budget, and as such these sums were estimates, , if there was a surplus or deficit then there would be either a refund or a balancing charge.

45. The Tribunal noted that, it was for the Respondent to put forward an estimate based on a realistic appreciation of the likely cost. The Tribunal are satisfied that the Respondent had tried to do this and that such an exercise was not an exact science; accordingly the Tribunal finds that the sum for the cost and maintenance of the gym for 2012/13, 2013/14 and the estimate is reasonable.

46. The Tribunal noted that nothing in the lease provided for exclusive use of the gym. However the Tribunal also noted that there was no suggestion from the landlord that the leaseholders from Nevis Court had anything other than a licence, for which they paid the annual sum of £250.00 they were also entitled to discontinue with the license.

47. The Tribunal were referred to the content of a letter dated 31.1.2013 offering the use of the Gym for £250.00. The Tribunal considers that the sums paid by the residents of Nevis Court who use the Gym should be accounted for, this should be shown as a credit in the accounts, and as such it should reduce the leaseholder's contribution. **If these sums are yet to be credited this should be done within 28 days.**

48. The Tribunal were informed that the estate had a Central heating and hot water system, which was referred to as Community Heating System Costs in the Service Charge; although this system was for the estate, the cost of heating and hot water were payable by the leaseholders directly, whilst the service charge contribution was for Insurance, plant & machinery maintenance and management fees.

49. The Applicant in the Statement of case set out the position as follows-: *"...BRAM is adding the CHP maintenance cost to our service charge instead of adding it to the total cost of running the CHP. BRAM is diluting the actual cost of running of CHP. This system is designed to serve some 388 flats according to the contract but currently serving additional 120 flats in total in excess of 500 units..."*

50. In reply, the Respondent rejected the proposal put forward by the Applicant's representative that the cost should be added to the cost of the individual heating and hot water expenses. The Respondent in their response stated-:...*We are of the opinion that the servicing of the equipment should be a standing charge paid by all lessees regardless of consumption and that consumption should be charged on "an as used basis". The HIU(Heating Interface Unit) must be maintained as part of CHP Maintenance and there is a requirement in the lease for the landlord to maintain the equipment..."*

51. The Respondent had provided a copy of the maintenance contract which set out the details of the maintenance agreement. The Respondent had also provided a copy of the insurance certificate for the maintenance of the boiler.

52. The actual cost for the CHP system for 2012/13; Insurance in the sum of £52.44, Plant and Machinery Maintenance £567.81 and management fees in the sum of £185.67. The estimated cost for 2013/14 was Insurance in the sum of £220.00, Maintenance £10,300 and management fee of £1,254.00. There was also a contribution to the reserve fund of £2000 based on a 10 year replacement program.

53. The actual charges for the year ending 2013/14 were lower than the estimated figures. The Respondent at the hearing stated that there was now a new maintenance contract in place this started in February 2014. The contractor had subsidised the cost of the CHP during the development, however, the contractor would not continue to provide a subsidy.

54. The Tribunal were informed that the cost of producing the paper bills, which were sent to the leaseholders quarterly, and set out their individual consumption in relation to the heating and hot water was £15.00 per bill.

55. In answer to this Mr Billson stated that not all leaseholders required paper bills and that they had tried to get the supplier Vital Energi to reduce the cost but had not been successful, Mr Billson agreed that the cost was high but stated that this was the sum paid for the bills; they had tried to negotiate with the supplier unsuccessfully.

The tribunal's decision and Reasons

56. During the hearing the Tribunal were referred to the provisions of the lease, the Tribunal in considering this matter found assistance in the definitions which state as follows-: *1.11 'the "Community Heating System Consumption Costs" means (in so far as such costs are not included within the Part G Service Costs) the costs incurred in running the Community Heating System and providing hot water from the*

Community Heating System together with any reasonable administration fee and/or standing charges and costs incurred in maintaining the individual meter/s for the Premises. 1.15 "Energy Supply Company" means the company responsible for providing hot water via the Community Heating System 1.16 "Energy Supply Company Contract" means a contract entered into by an Energy Supply Company with the Tenant on terms agreed between the parties which provides that (i) the Energy Supply Company will maintain the Community Heating System (ii) the Energy Supply Company will be responsible for providing the hot water from the Community Heating System to the Heat Exchanger and (iii) the Tenant will be responsible for paying the Community Heating System Consumption Costs and a proportion of the costs incurred and /or charged by the Energy Supply Company during the existence of the contract towards the cost of maintaining repairing replacing or renewing the Community Heating System however such costs and/or charges are levied."

57. *Part F of the lease also deals with the Community Heating System Costs and states-:The following services shall be provided by the Landlord except during any period or periods when an Energy Supply Company Contract exists: 1. Inspecting, insuring, testing, maintaining, repairing, replacing, renewing and cleaning the Community Heating System 2. Any costs incurred in keeping insured, clean tidy and well lit the part or parts of the Estate housing the Community Heating System.*

58. This clause also stated that the Community Heating System Consumption Costs remain the responsibility of the occupiers of the apartment.

59. The Tribunal considers that from the wording of the lease that the Respondent is responsible under the terms of the lease for maintaining the heating system, and the Leaseholder is responsible for contributing to the the cost of maintaining the Community Heating System, and that although the Applicant considers that this should be included in the cost for the heating. The lease provides for the cost to be separately provided for.

60. The Tribunal considers that this cost is payable by the Applicant. However the Tribunal are concerned that the cost appears inflated in that the estimate for 2013/14 was £13774.00 whereas the actual cost, were £5281.02. The Tribunal accepts that this lower sum is reasonable, plus a contribution to the reserve.

61. The Tribunal noted that the estimate for 2014/15 was in the sum of £10,300 The Tribunal consider that this figure is reasonable, the Tribunal have formed this view based on the fact that the figure in 2013/14 represented a subsidized figure, accordingly this higher

estimated figure is not unexpected. The Tribunal determine that the sum of £10,300 is payable in accordance with the lease.

The Billing Charge

62. The Tribunal noted that the billing charge was linked to the contract for the supply of heating and hot water provided by Vital Energi, in the Tribunal's experience this charge was outside the normal cost associated with paper based utility bills, and no good reason was given for this, based on the Tribunal's knowledge and experience the Tribunal determines that this should cost no more than £15.00 per annum per household.

63. The Tribunal finds that the sum payable is limited to £15.00 per unit per year.

The Reserve Fund

64. At the hearing Mr Gnanasampanthan stated that the Applicant accepted in principle that there should be a reserve fund, however this should be provided for by one reserve account which should then be utilised across the estate. Mr Gnanasampanthan also submitted that the property was a new build which had an NHBC 10 year guarantee. Given this, it was unlikely that there would be any major planned maintenance at the premises, and his view was that even if a lower sum was payable, there would be sufficient time to build up a reserve fund.

65. Mr Billson did not accept the Applicant's submissions, firslty he considered that the Respondent's approach of dividing the reserve into its component parts was reasonable as not all of the services were provided equally across the development (for example the gym), given this it was fair and reasonable that the reserve should be apportioned and that only those who would benefit from the expense should contribute to the cost.

66. Mr Billson set out the details of how the reserve was proposed to be used. The reserve was for the essential long term building costs associated with items such as external redecoration and major works. Each block had its own separate reserve fund. It was planned that redecoration would take place over a 4 to 5 year period, with carpets being replaced approximately on an 8 year cycle and the lift over 20 years. The Reserve fund was necessary to enable such expenditure to be planned. Although the sums for the reserve appeared across the service charge they covered expenditure such as the gym, which was a resource on which expenditure did not benefit everyone.

The tribunal's decision and Reasons

67. The relevant clause was in the 6th Schedule Clause 15 Reserve Fund.

68. The reserve budgeted service charges for 01/02/2013/2014 were as follows-: Estate Costs reserve funds £1500.00 , Estate Costs Brunel Court £2740.00, Basement Parking Brunel Court £4150.00, Community heating program £2000.00, External Building Costs £230.00, Internal Building Costs £8200.00 and the Gymnasium reserve in the sum of £7650.00. Similar figures had been estimated for 2014/15.

69. The Tribunal were provided with the service charge accounts for 2012/13 in which the actual sums allocated to the reserve were £17335.95. The sum payable by each leaseholder was approximately £258.00. This was in part as a result of the managing agents reducing the figure for the reserve gym cost to £3382.83. In the statement of case, Mr Billson accepted the suggestion made by the Applicant that this contribution be held at this level. Mr Billson stated that the managing agents were prepared to accept this suggestion on behalf of the landlord although it might result in insufficient funds being available should repairs to the Gym become necessary at an earlier stage than that anticipated by the landlord.

70. The Tribunal noted this concession, the Tribunal also noted the nature and extent of the development, and also noted that by breaking the contribution down into separate budgeted sums, the Applicant could be kept informed as to the amount in the reserve, and how the sum was allocated. The Tribunal also noted the statement on the budget made it clear that notwithstanding the sums were to be applied against the various heads of budget, in the event of work needing to be carried out and there being insufficient sum in the budget under one heading, then the funds in the budget would be applied against the work to be undertaken.

71. The Tribunal having considered the actual sums paid into the reserve, and having noted the extent of the development consider that in respect of the 2013/14 budget, the sums set out were reasonable and payable.

The General repairs

72. In the Scott schedule in the statement of case which accompanied the application. Mr Gnanasampanthan on the Applicant's behalf stated-: *"...We cannot accept any general repairs took place during year 2012 and 2013. ...actual cost of some repairs indicates a reserve fund of £500 is sufficient to meet minor repairs we therefore refused to pay £4700.00 in advance for anticipated repairs..."*

73. The Tribunal were informed that repairs had been carried out; there were minor repairs to the door closers and door locks, and the cowlings over the lift door reveals had also needed repairs in the sum of £156. There had also been and repairs needed to the car park shutters which had been driven into and had needed repairs, in the sum of £469.15 although part of the repair cost had been covered by insurance, the insurance had been subject to a £250.00 excess.

74. The Tribunal were also informed that where sums had not been used they had been refunded. For example there had been provision for a nominal budget provision in the sum of £300.00 for the TV aerial, as this had not been used, it had been refunded. The Respondent had also entered into a contract for the maintenance of the Car park shutter doors and this was budgeted for as part of the service charge items.

75. The Respondent's representative acknowledged that the cost of repairs had been lower than could be anticipated in the future, as the landlord's contractor had carried out minor repairs and had absorbed the cost of these as it had been in the contractor's interest to do so whilst the development was being marketed for sale.

The tribunal's decision and Reasons

76. The Tribunal noted that there was an under spend of the repairs budget for 2012/13, and this was unsurprising as the premises were not fully occupied for most of the relevant period. The Tribunal also accepted that as a new build it could be anticipated that the expenditure on repairs would increase. The Respondent had also made separate provision for the car park doors together with a maintenance contract.

77. The Tribunal also noted that it was likely that there would be a mixed occupancy at the dwelling with some residents who had less incentive to assist in keeping the premises in good repair, and as such the Respondent needed to be prudent in anticipating future expenditure. Accordingly the Tribunal consider that the sums budgeted for repairs, in the sum of £4700.00 is on the balance of probabilities reasonable and payable by the applicant.

The cost of the cleaning

78. This was in the estimated sum of £16570.00. The contract for cleaning covered the cost of three visits per week cleaning the bin area at the back and for rolling out the bins for collection. The Tribunal were informed that there were 12 paladin bins in total.

79. The Respondent referred to the cleaning contract with Premier Cleaning Company. This involved cleaning the gym twice a week

removal of rubbish from the car park and wiping down doors and surfaces and the cleaning of brass wear and the vacuuming and dusting.

80. The Applicant stated that the cost of the cleaning should not be divided between the different areas and should be amalgamated, Mr Gnanasampanthan had obtained copies of alternative cleaning contracts for the cleaning which involved two visits a week. He also complained that the car park was filthy and as such this indicated that the cost of the cleaning was not reasonable.

The tribunal's decision and Reasons

81. The Tribunal noted that although Mr Gnanasampanthan complained about the car park, he made no complaint about the standard of the cleaning as part of his statement of case, either in relation to the building or the gym. The Tribunal also noted that the alternative estimates put forward did not mirror the service that was being provided in that they were for one less clean a week.

82. The Tribunal noted that there is no general requirement under the terms of the lease that for the cost to be reasonably incurred (in accordance with Section 19 of the Landlord and Tenant Act 1985) the Respondent is required to use the cheapest possible quotation this was not the case, the only requirement was that the sums incurred be reasonably incurred.

83. The Tribunal heard no evidence from Mr Gnanasampanthan such as photographic evidence save for a passing remark about the basement car park that he had any concerns over the standard of the cleaning. Mr Gnanasampanthan also did not set out why the quotation provided by him was for two visits rather than three.

84. The Tribunal noted that the development was still ongoing and given this, there may be an element of the cleaning which was undertaken to ensure that the condition of the premises remained attractive to potential purchasers. Given this, it may be possible for the regime to be reduced; however, this change would have implications for the respondent. The Tribunal have considered the services provided and whether the costs are within the range of reasonable costs for this type of service, and that the cost had been incurred in accordance with the terms of the lease.

85. The Tribunal are satisfied on a balance of probabilities that that the sum incurred was reasonable.

The Management charge

86. The management fee for 2012/13 was £16305.00. The Applicant stated that this was excessive. Mr Gnanasampanthan also stated that the management fee should be no more than £150 per unit inclusive of VAT, and that the leaseholder was dissatisfied with the management and that this was why the Residents Association was set up.

87. However Mr Gnanasampanthan had not provided alternative estimates to support his contention that management could be carried out for less. The Respondent in their closing submissions stated-: " *We do not accept that the Management Fee levied is excessive at £200.00 per unit + Vat per annum. We do not feel that the applicant has produced any evidence to substantiate their claim...",*

88. The Tribunal agreed with this submission, and noted that no real basis had been put forward to substantiate the submissions that the sum claimed was unreasonable. The Tribunal in using its knowledge and experience noted that the estate was a large estate, which was a somewhat complex undertaking in that the management involved the management of a site which was still under construction.

89. The Tribunal in the absence of alternative quotations also used its knowledge and experience to determine that the cost of management, was reasonable, in the Tribunal's view the sum charged was less than the sum charged for the management of such a development. Accordingly the Tribunal find that the sum claimed for the management of the development in the sum of £200.00 plus VAT per unit is reasonable and payable.

90. The cost of the accountant's fee was £965.00 per annum this cost was for carrying out the audit and preparing the service charge accounts. The Tribunal are satisfied that this sum is reasonable.

Miscellaneous service charge account cost and the Tribunal's determination on these sums

91. The Respondent had provided a budget with estimated service charges budget expenditure in the sum of £800.00 for CCTV for the cost of 13 Cameras on and around the estate, the budgeted sum was to cover the maintenance contract costs. Mr Gnanasampanthan had noted that nothing had been paid for the period 2012/13.

92. This was accepted by Mr Billson, stated that this was because the CCTV was still under guarantee accordingly the leaseholders had not been required to pay for the maintenance contract. He stated that a refund had been given. The Tribunal considers, that although a refund had been given for the first year, it was anticipated that the contract would be required for future years; accordingly the sum of £800.00 is reasonable and payable for the CCTV contact.

93. The Applicant queried the cost of a water bill under the heading Water & Sewage in the sum of £100.00 the estimated cost had been £500.00. The Tribunal had been informed that this was for the provision of Water Taps in the bin store, garden area and the gym. The Tribunal find that the actual in the sum of £100.00 is reasonable and payable and that the budgeted sum for 2014/15 is reasonable.

94. The fire safety equipment; this was in the estimated sum of £1250.00 for 2013/14 and £1650.00 for 2014/15. The Respondent stated that this was for the fire alarm, the dry risers, safety lights, automatic opening vent and for quarterly checks for the fire alarm lights, and annual checks of the dry risers. The Applicant accepted the cost of these items. The Tribunal accordingly finds that the sum claimed is reasonable and payable.

95. The Tow Truck this cost was set out under the heading; plant and machinery, in the sum £435.00 for the period 2014/15. The Tribunal were informed that the tow truck was used for moving the paladin bins and other rubbish around the estate. Mr Billson did not consider that these could, or should be moved manually. The Applicant's objection appeared to largely be based on the fact that he was unaware of the nature of this expenditure.

96. The Tribunal considers that this cost was for the benefit of the estate, and covered for by the provision of the lease, accordingly the Tribunal find the sum claimed reasonable and payable.

Application under s.20C and refund of fees

97. The Tribunal noted that other than the cost of the billing for the Community Heating, which was reduced by the Tribunal, the Applicant has not succeeded in her claim. Accordingly the Tribunal finds that it is not just and equitable for a section 20 C order to be made.

98. The Tribunal makes no order for the refund of Application and Hearing fees.

Name: Judge Daley **Date:** 02 November 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) The whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "Costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) Only to the extent that they are reasonably incurred, and
   (b) Where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   And the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

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

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

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