FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/LSC/2019/0048** **MAN/00CG/LSC/2019/0093** **MAN/00CG/LSC/2019/0094** **MAN/00CG/LSC/2019/0101**
Property	**:**	**Various at Low Matlock Lane, Loxley Works, Loxley, Sheffield S6 6RN**
Applicants	**:**	**See Annex A**
Respondent	**:**	**Campbell Homes Limited**
Type of Application	**:**	**Commonhold and Leasehold Reform Act 2002 - Schedule 11(5)(a)** **Landlord & Tenant Act 1985 - Section 20C** **Landlord & Tenant Act 1985 - Section 27A(1)**
Tribunal Members	**:**	**Tribunal Judge M Simpson** **Mrs S Kendall**
Date of Video Hearing	**:**	**22 October 2020**
Date of Determination	**:**	**30 November 2020**

DECISION

DETERMINATION**.**

1. At the time the County Court proceedings were issued, and indeed to date, none of the claimed service charges are due, because they have not been correctly demanded. The County Court should consider striking out the civil claims.

2. The management administration fee for the years 2016 to 2020 inclusive (none claimed for 2015) be reduced from £2000 to £1000 p.a.

3. The service charge item for the replacement blower/pump in 2016 be limited to £1800 inclusive of vat.

4. The cost of installing a mains connected sewage system is not a service charge item, and not claimable from or payable by the Lessees.

5. All other service charges are reasonably incurred as claimed and payable, subject to being correctly demanded with a Summary of rights and obligations in proper form.

Background.

6. In 2015 Campbell Homes Ltd ("CHL") developed a late 19th century redundant historic mill building into 11 dwellings. They were sold, Leasehold, with CHL as Lessor. We have a copy of the Lease re Mr & Mrs Rooney dated16th September 2015, which, it is accepted, is the form of Lease common to all dwellings.

7. The precise wording of the Lease, so far as service charges are concerned, does not, at this stage, need detailed analysis. It is common ground that CHL have an obligation to maintain and repair the service installations and to carry out the services set out in schedule 6 of the Lease, and that the Lessees have an obligation to meet the cost of that work. The obligations of both parties are subject to the terms of the Lease and the statutory framework relating to service charges – including those in respect of which this Tribunal has jurisdiction.

8. CHL set up Loxley Works Management Company ("LWMC") to administer the estate as Landlord. LWMC is not a party to the Lease. In many ways it has behaved as a separate entity. It has its own bank account, headed notepaper etc and the annual accounts for LWMC are distinct from those of CHL. The precise governance of LWMC was not in evidence, but it is accepted that it is wholly owned by CHL and is, in effect, a firm not a limited company. It is CHL trading as LWMC. It is said, by the respondent, that it was set up in that way to save the administrative expenses associated with a Limited Company and to afford representation to the tenants. In the event, in recent years at least, the

tenants have had no significant part in the management or control of LWMC. It has served primarily to distinguish between CHL as developer, and CHL trading as LWMC as Lessor, and to separate those latter functions from the general business of CHL

9. It is apposite, at an early stage to specify the Tribunals jurisdiction. It is statutory and limited to the extent of its statutory powers. In this case, those set out primarily in Landlord & Tenant Act 1985 Sections 18, 19 and 27A. In brief summary, the jurisdiction is to determine if costs are reasonably incurred to a reasonable standard, and by who and to whom they are payable. Except to the extent that a decision falls within those parameters, the Tribunal does not have jurisdiction to determine contractual or environmental issues.

10. This matter comes before the Tribunal primarily because of issues with the sewage disposal system. That is specified in the Lease as one of the Service Installations for which CHL has responsibility to maintain and repair. (Sixth Schedule: part I)

11. A substantial cost was incurred to replace a pump. The lessees objected to the cost and being held liable for it. CHL issued County Court proceedings. We are aware from the County Court Directions that proceedings were issued against Rooney (2); Harburn (2); Machin; Ashford & Oxley, but we have only the papers for Rooney, issued on 17th Jan 2018 and Harburn, issued on 9th April 2018. Rooney filed a detailed professionally drafted Defence on 16th Feb 2018 and Harburn a detailed narrative Defence on 13th May 2018.

12. The gist of the defences was that the problems with the sewage disposal system were the fault of CHL for not installing a legal system when developing the site and/or not maintaining it in a way which sustained the manufacturers' warranty (By not following the warranty terms) and /or the system was not Environmentally compliant. The development has a Packaged Sewage Treatment Plant ("PSTP"). It has been problematic. By an Order of 4th October 2019, the District Judge transferred all cases (which had not been consolidated, but directed to be jointly case managed) to the First Tier Property Tribunal. Despite the wide wording of that Order, it cannot bestow any wider jurisdiction on the Tribunal than that conferred by statute.

13. In the meantime (July 2019) Mr & Mrs Rooney had made a free standing application to the Tribunal for the determination of the reasonableness and payability of service charges for the past 4 years and for 2019/20. That raised the issues set out in the County Court Defence but also emphasised the allegation of illegal operation of the sewage system and the failure to consult under section 20 of Landlord & Tenant act 1985 re major works (replacement pump). That latter issue appears to have been resolved, so far as breach of S20 is concerned, by LWMC limiting the claim re Pump works to £250 per Lessee. Reference was also made, in that application, to the likelihood of substantial

cost re: main drain connection, which may be encompassed in the 2019/2020 service charges.

14. The Tribunal single Judge considered the papers then available, and gave directions on 20th April 2020, which should be read in conjunction with this determination, and as a preamble to it.

15. The parties have substantially complied with the Directions and the Tribunal has read the documentation, including that referred to above from the County Court, together with the Lease; the written case of the Respondent of 27th April 2020 (and documents and Accounts of LWMC); Applicants Reply and documents (undated but with email of 18th May 2020); Respondents response 3rd June 2020; sundry party correspondence and additional representations - July to October 2020.

16. The issues fall into eight main categories: Sewage plant maintenance costs; Electricity; Gates; general maintenance cost; management fees; Bank charges; interest charged on late payments; new direct connection sewage costs.

Hearing.

17. A video hearing was convened for Thursday 22nd October 2020 and attended by :-

18. Mr & Mrs Rooney (who led the oral representations on behalf of the applicants); Mr. Marples; Ms Machin: Mr Oxley; Mr & Mrs Beeston; Mr & Mrs Harburn and Ms. Ridge.

19. Mr Campbell (Managing Director and Chairman of Campbell Homes Ltd) represented that Company and Loxley Works Management Company. In the room with him but not permanently in vision were Messrs Hignell (Accounts administrator), Bott (internal accountant), and Milner (construction manager).

20. Mr Rooney briefly highlighted one or two points from their detailed and extensive written representations, but otherwise had nothing to add at that stage.

21. Mr Campbell highlighted the Respondents written representations, with particular regard to how the PTSP should not be regarded as 'illegal', because it had Planning Permission, Building Regs. consent and, by implication Yorkshire Water (YW) and Environment Agency (EA) approval.

22. Each party was afforded an opportunity to ask questions of the other, which generally served to reinforce their respective stances as set out in the written representations.

23. Mr Bott satisfied us as to the system used to account for the income and outgoings. LWMC has a bank account separate from that of CHL. He did not conduct an audit, but provided more detailed information to the Lessees, based on the invoices etc, than was usual, in his experience, in a Leasehold management structure of this type. He did not verify the work done in respect of, for example, the monthly maintenance invoice or management charge.

24. A service charge was estimated for the forthcoming year and adjusted at the end of the year once the accounts had been finalised by him. Mr Hignell was responsible for rendering the invoices and service charge demands.

25. Mr Hignall briefly reiterated the written representations of the Respondent re maintenance and management fees. He confirmed that the demands for payment were sent out as and when any extraordinary items arose. They were sent as, or with, letters or emails to the Lessees. All demands had been in this form from the outset. In answer to a specific question from the Tribunal, he confirmed that no demands had ever been accompanied by an appropriate statutory summary of the rights and obligations of the lessees in relation to service charges, as required by the Regulations made pursuant to S 21B Landlord & Tenant Act 1985.

26. Four of these cases come before us on a reference from the County Court civil proceedings. When retuning the case to them our only finding can be that, at the time the proceedings were issued, and indeed to date, none of the claimed service charges are due, because they have not been correctly demanded. The County Court should consider striking out the civil claims. Costs of those proceedings are a matter for it. The unenforceability of service charge claims applies to all applicants until the format of the demands is rectified. The liability is not extinguished; it is merely suspended. We have no power to dispense with that requirement.

27. Notwithstanding that this evidence meant that none of the disputed and outstanding service charges were currently payable, the Tribunal continued with the application. The charges, as determined by the Tribunal, would become payable, as and when this failure is remedied.

28. In answer to questions from the Tribunal, who pointed out the discrepancies evident on the Sheffield City Council ("SCC") Planning portal (to which reference had been made in the Respondent's written representations), Mr Campbell insisted that the terms 'Septic tank' and 'PSTP' were interchangeable, and often used as such by system designers, consultants, planners and water and environment authorities. He accepted that almost all the planning application documents referred to 'septic tank' and only in one site plan was there any reference to a PSTP, but averred that planning consent for a septic tank was sufficient, and included consent for a PSTP. It was put to him that the documentary evidence and Portal information indicated that

planning consent was for a septic tank; Sheffield C C thought it was to be a septic tank; building control thought it was to be a septic tank. In fact a septic tank was not adequate for the number of users, hence the installation of a PSTP by CHL as developers of the site. He said that even the PSTP was legal pre 2015, whatever the planning paperwork indicated. It was only the introduction of the later Binding Rules that made it require a permit, for which CHL unsuccessfully applied and had its appeal rejected.

29. The Tribunal Judge directed Mr. Campbell's attention to the documentary evidence produced by CHL which indicated the contrary. The appeal against the EA refusal of a permit, which was dealt with judicially by the Planning Inspector's decision of 8th February 2019, was very clearly predicated on CHL's case, as developer, that it had been …."erroneously advised".. at the time of construction.

30. That Appeal decision endorsed the EA findings, when refusing the application for a permit, that:- "Assent Building Control had wrongly assumed that the proposal made by CHL met the criteria as set out under the General Binding Rules. CHL's proposal failed to meet the criteria as laid out in the General Binding Rules etc. "

31. Further, the Section 20 notice, prepared by solicitors instructed by CHL and dated 29th March 2019 states:- "At the time the original pumping station was installed, the Landlord was erroneously advised by its Building Inspector that the existing pumping station did not require an Environmental Permit".

32. Mr Campbell thought that those references were mistakes by those who made them, and were not accurate.

33. He had no recollection of the Judge in the County Court proceedings being told, as was alleged in Mr & Mrs Rooney's evidence, that in the event that the application for a permit failed CHL would be looking to their advisors for remedy.

34. He had not read the Binding Rules current at the time.

35. Mr Campbell said the installation of the sewer to the mains was going ahead, come what may, on 16th November 2020 and the applicants can't challenge or stop it, because they missed their chance to do so by not formally responding to the S20 notice re consultation. The Tribunal Judge pointed out that S20 related only to amount of contribution and did not deprive any party of their right to a determination under Section 18, 19 and 27A of Landlord & Tenant act 1985.

36. There then followed questions, answers and discussion as to the nature and extent of the proposed new scheme; the cost; the tendering process; the route and, mostly, whether Yorkshire Water would adopt it.

37. Mr Milner of CHL gave evidence of his visit to YW offices in Bradford to try, unsuccessfully, to persuade YW to adopt. They will not adopt a system where their vehicular access for plant and machinery depended on an unadopted private road.

Summary of Written and Oral representations.

PSTP maintenance.
Applicants.

38. Firstly, they say that the system is 'illegal' in the sense that it does not have the necessary permits or permissions from statutory bodies. They should not be required to pay anything for an illegal system.

39. They set out, at paragraph 4.3 of their written representations, six documents upon which they rely to establish 'illegality', comprising, mostly correspondence and documentation from and with the Environment Agency ("EA") and CHL re permit application and the subsequent unsuccessful appeal. The appeal decision of the Inspector dated 8th February 2019 is particularly informative.

40. They also highlight, at paragraph 10 of their written representations, the confusion which they say is apparent, in the correspondence between CHL, Assent Building Control (Advisors to CHL) and Sheffield City Council planning and building control departments, regarding what had been applied for, what had been granted and what was actually constructed. The terms Septic Tank and PSTS are used as though interchangeable, when in fact they mean something very different.

41. Secondly, they say that the quality of the maintenance of the system has been poor and unreasonably expensive and that the failure of the pump was due to this, for which the Lessor should be responsible. In any event the replacement pump was not obtained at a best price. CHL/Loxley Works Management Company, as Lessor, was inexperienced in PSTS construction and maintenance, which is specialist.

Respondent.

42. It produces and relies upon the documentary evidence in correspondence between itself, Assent Building Control (ABC), Sheffield City Council (SCC) and CHL's consulting engineers, to establish that the system installed had all the necessary consents at the time of installation. Whilst conceding that it had lacked experience in the construction and maintenance of off mains sewage systems, its case is that the system, as approved, and installed was compliant with the Regulations and that the need for a Permit and/or modification only arises since the Leases were entered into because of the implementation of the more recent Regulations of the EA.

43. On the issue of maintenance, it produces detailed attendance records and invoices showing attention to the system by itself and outside contractors. It avers that the principal course of failure of the pump/blower was abuse of the system by the residents by allowing inappropriate waste items to be flushed into the system. Most of the costs were reactive to the need to deal with such problems, apart from proper general system maintenance. The cost of replacing the blower/pump was reasonable and has in any event been trimmed to £250 per house, because of Section 20 issues.

FINDING;

44. As was conceded on behalf of the Applicants at the hearing, the question of 'legality' would never have arisen in their minds if the system had been faultless. The absence or otherwise of compliance with permits, regulations etc does not in any way, of itself, adversely affect the day to day running of the system or its maintenance. The maintenance costs do not become unreasonably incurred or unreasonable in amount because of mere regulatory failure. Subject to the maintenance costs being otherwise reasonably incurred, they are payable.

45. 'Reasonableness' is a broad concept when deciding if costs are reasonably incurred and reasonable in amount. We have considered the claims year by year from 2015 to 2019, including an analysis of the line by line challenges of the applicants and the details in the schedules provided by the Respondent. In 2015 there were no charges. The PSTP was in warranty.

46. 2016: £3473 blower/pump replacement (£2881 after Section 20 refund). The invoice paid to SYPumps appears to be the only item for 'Septic tank[sic] maintenance & repairs' in these accounts. There are 2 tank cleans included on the CHL schedule – 22/11 16 & 6/12/16. It may be that the high cost of site maintenance (provided by CHL) of £4053 includes items other than the pump. It is not clear to us how the SYPumps VAT of £694.60 has been dealt with. Mr Rooney obtained alternative quotes for the pump work from Off Mains Drainage Inspections (OMDI) of £1049 + vat, fitted and another unspecified source in the sum of £1395 +vat + (we presume) fitting. These are quotations not final accounts.

47. The Section 20 issue is entirely distinct from the question of reasonableness, but of course the reduction in cost leaves a net figure (£2881) which is to be the one considered by the Tribunal. Even allowing for the fact that on site work often leads to some increased cost over and above a bald estimate it does appear, and we have documentary evidence to that effect, that even the £2881 is unreasonably high. Doing the best that we can to allow for contingencies, and based on OMDI quotation we would regard £1800 as a reasonable sum.

48. As to whether any sum, at all, is payable for this replacement pump, we do not have sufficient evidence to exclude it and say it is unreasonable. It was clearly essential work. The pump failure was catastrophic. It was caused either by inappropriate material, or maintenance failure, or a manufacturers' defect or some unidentified cause. We have considered the OMDI report following an inspection on 18th January 2017, when the replacement had already been carried out. We are wary of an expert report which opines 'without doubt' after the event. We do not discount it, but on balance we do not feel able to say, without more evidence, that the replacement of the pump was necessitated only by CHL's allegedly inadequate management of the system. The cost, in our revised sum, is accordingly payable.

49. 2017: £2674

50. 2018: £1081

51. 2019: 2833

52. Whilst these may be considered to be on the high side, we had no evidence of alternative quotations for general maintenance of the system, and the charges are not so high as to be obviously unreasonable. It is accepted that CHL was inexperienced in PSTP maintenance and that may have contributed to the cost, but it is not apparent that that was to such an extent as to make the overall costs unreasonable. The cost of the replacement blower/pump are payable in our revised sum.

Electricity

Applicants.

53. Firstly, that no charge should be made for use of electricity on an 'illegal' system and the applicants inability to discern how much, or what proportion, that should be, has been inhibited by the lack of information from the respondent. The applicants obtained an estimate of PTSP power usage from waste water disposal specialists, WPL Diamond Ltd. (Approximate estimate of £755 p.a.)

54. Secondly that the meter readings were spasmodic and inept and the lowest cost tariff was not used. Copy accounts from E-On were produced to illustrate, along with emails and some web based information re alternative tariffs.

Respondent.

55. The Respondent sets out a detailed history of meter readings, estimated bills, payments etc. It confirms estimated meter figures until May of 2018. It avers that the inability to pay the arrears promptly and avoid late payment charges, was, in part, due to failure by some lessees to pay service charges on time or at all, leaving the service charge account without funds.

56. It declined to use a price comparison site supplier and indicated that not all the tariffs suggested by the applicants were available to LWMC or CHL as commercial, rather than domestic, users.

FINDING;

57. The cost of electricity is unaffected by any issues of 'illegality'. There is no point in trying to isolate the cost of the PSTS from other electricity usage.

58. We accept that not all alternatives suggested by the Applicants were available to the Lessor, as a commercial user. It is, however apparent that the provision of meter readings and general administration of this service (and to a significant degree some other services) was lacking. We do not have specific evidence of the precise effect of other possible tariffs. We are not in a position to decide if some of the arrears are claimed so late from the Lessees as to offend, for example, section 20B of Landlord & Tenant Act 1985, or if the lack of funds was due to tenant failure or mismanagement by LWMC.

59. We accordingly are not persuaded that the electricity charges are unreasonably incurred, but take into account this issue as some evidence of mismanagement, when we consider the challenge to the LWMC management charge.

Gates
Applicant.

60. That the gates have been repaired and then needed repairs for apparently the same issue only a few months later. The invoices refer to the same parts being supplied and the work carried out by the same contractor. LWMC do not appear to have challenged the item.

Respondent.

61. The work was required as, on both occasions, the gates were not functioning. The control panel was burnt out, not because of any defect in the original repair, but because of misuse of the key fob.

FINDING;

62. The work was reasonably incurred at reasonable cost. The challenge by the applicants would have been better dealt with if LWMC had at least queried the second account from Crucial Engineering, and responded more helpfully and positively to the lessees. This is a management issue rather than a gate issue. The absence of funds in 2019/20 appears to be partly due to withheld service charge payments and partly due to the service charge funds having been used, without demur, to settle CHL invoices.

General Maintenance and management fees.
Applicants.

63. The applicants acknowledge that the relationship between them and LWMC is now one of mistrust. That has, to a certain extent, influenced the very detailed analysis, and challenge, to the accounts in general, including the monthly maintenance fees of £198 (£165+ vat). That has been exacerbated by the tone of correspondence and dismissive and unsympathetic attitude of some of the personnel involved.

64. The additional £2000 p.a. charged to LWMC by CHL is unjustified as little or no additional work is undertaken by CHL, in addition to the maintenance and other work for which CHL render specific additional invoices.

Respondent.

65. Full details of site visits, call outs and work on site have been supplied. The cost is reasonable for a site of this size and density. The £2000 is invoiced quarterly to cover the day to day running of LWMC as defined in the Lease.

66. In addition to the parties written representations we heard oral evidence from Mr. Bott (CHL's internal accountant) and Mr Hignell (CHL company accounts Administrator and the one primarily responsible for the administration of LWMC).

FINDING:

67. Given the broad spectrum of the concept of 'reasonably incurred', we do not find the monthly general maintenance charge to be unreasonable. There may be some items where reasonableness is borderline, but it would be disproportionate in this case to embark on a forensic analysis of such details. The amount is in the region of £200 p.a. for each of the 11 dwellings.

68. The overall service charges are considerably greater than that. Those items do warrant the analysis that we have given them.

69. It is apparent that the management has been carried out in an unsatisfactory way. No regard has been had to any of the available advice or Codes of Practice. The management has been ad hoc and reactive rather than strategic and considered. It was understandable that CHL interposed LWMC between CHL, (as developer and Lessor) and the Lessees, (as tenants) but CHL has imposed a management burden upon Mr Hignall that, it is apparent to us, he was not trained to bear. There are many examples of this, the most glaring of which are the ineffective demands in breach of Section 21B of Landlord & Tenant Act 1985; the failure to address S20 issues re the Blower/pump replacement (even to seek dispensation) and the failure to regularise the Electricity account; imposing unjustified late payment penalties (which were refunded).

70. The £2000 management Fee is not reasonably incurred. Partly that is because of the incompetent management and partly because the frequency of visits, for which £198 per month is charged, enable many of the functions of management to be fulfilled on those visits. Some accounts administration is carried out by CHL. We regard a reasonable charge by CHL to the management company to be no more than £1000 pa.

Bank Charges and interest.

71. These matters have been resolved between the parties and no determination is required from the Tribunal. They remain as claimed.

Replacement Sewage system to main sewer.

Applicants.

72. This is not a service charge item. It is the responsibility of CHL for installing an 'illegal' system. It is outwith the terms of the Lease because it is just putting right what CHL did wrong and about which CHL gave guarantees at the time CHL sold the dwelling to the applicants or their predecessors. In any event the work would be better done by an expert contractor, not CHL. It would be preferable to have it done in a way whereby it could be adopted by YW.

Respondent.

73. The responsibility is the lessees under the terms of the Lease. It is not the fault of CHL or is advisors and consultants. The system, when installed, was lawful and had all necessary approvals. It was only when the later Binding rules came into force, that a permit was required and the system was not sufficiently compliant to obtain one. CHL have provide the cheapest quotation for carrying out the work, which is necessarily and therefore reasonably incurred and the cost is reasonable in amount. It should in due course be paid for by the Lessees in the 2020 and/or 2021 service charges.

FINDING

74. The costs of and associated with the installation of a new system, to rectify the system installed by CHL, is not a service charge item, and therefore not payable by the Lessees.

75. CHL have two distinct and separate roles. Developer and Lessor. It set up a structure for administering its role as Lessor by forming LWMC. That is illustrative, but not determinative, of the distinction. However CHL has adduced extensive evidence which establishes that its original view was that the sewage system was a developer's issue not a landlord's issue. We rely most heavily on the evidence of CHL, because any conclusions drawn by the applicants could be said to be self serving.

76. The best evidence is that the system was commissioned in early to mid 2015. That was before any Lease was entered into and therefore before CHL could possibly have the status of Lessor, or any applicants had the status of Lessee.

77. We reject the assertion that the system, even if installed before 1 January 2015, was compliant with the Binding Rules. The most cogent evidence for that, and the reason for our rejection, is the way in which CHL must have put its case to the Inspector in the Permit Appeal and the repetition of that, in the solicitor-prepared S20 notice. Both are documents, not dependent on recollection. Both clearly assert that CHL insists that it was "erroneously advised". That error can only have been that the system was lawful and appropriate when, in fact and law, it was not. Mr Campbell's explanation was unconvincing.

78. We are relieved of the task of undertaking for ourselves an analysis of the Planning and Environmental regulations. That task has been carried out by the experts in the field, the Environment Agency. The EA, on 10th April 2018, refused the CHL application for a permit. It gave written reasons extending to a narrative of 20 pages plus photographic evidence. The appeal against that refusal, and the reasons for it, was determined on 8th February 2019. We readily recognise that the criteria for deciding the application for a permit are not the same as the criteria that we have to apply, but the factual findings, which have not been effectively contradicted by any evidence that has been presented to us, are striking, relevant and informative. In particular:-

    " On 31 March 2015 Sheffield City Council granted planning permission to CHL for a development at the Site including the proposal to install the septic tank and soakaway system for the foul drainage. Independent building consultants, Assent Building Control, advised both CHL and Sheffield City Council, that a discharge permit was not required. Assent building control had wrongly assumed that the proposal made by CHL met the criteria as set out under the General Binding Rules.

79. CHL's proposal failed to meet the criteria… etc

80. Despite the fact that Sheffield City Council granted planning permission for a septic tank/soakaway system, CHL installed a PSTP…. The installation of the PSTP and the connection into surface water drainage system were both done without the agency's knowledge or consent."

81. So far as the representations of CHL's consultants were concerned that '*we also believe that the planning permission approval together with the building regulation approval* already *obtained for this site supports this position'* i.e. that the continued use of a PSTP is pragmatic in the long term, the EA pointed out that:-

82. "Sheffield City Council granted planning permission for to install the septic tank and soakaway system for the foul drainage, not a Packaged Sewage Treatment Plant"

83. We also note, contrary to Mr Campbell's assertion that the terms 'Septic tank' and 'PSTP' are used interchangeably, it is clear that those such as the EA, who have considerable expertise, draw a very clear distinction.

84. The subsequent enforcement action has been against CHL as developer. It is convenient for CHL to adopt the persona only of Lessor, but that is not consistent with the factual matrix in this case. CHL, as developer, sought the Permit needed from the EA. CHL, as developer, has sought variation of the Planning Consents which were granted to it or its predecessor, and which pre-date any Lease. So far as we can see, none of the costs and fees of applying for a Permit have been included in the service charges for 2018 or 2019. That is as it should be, and is consistent with CHL's acceptance that this issue is a developer's issue, not a Lessor's issue.

85. CHL has proceeded on the basis of being optimistic that a Permit would be obtained and planning variations granted, and if not, CHL would claim against their advisors. It is not now open to CHL, when that optimism has proved unfounded, to assert, contrary to its own evidence, that this is a service charge item.

Section 20C application.

86. Mr Campbell indicated that it was not the intention of CHL or LWMC to include the costs of this application in any service charge claim. For the sake of completeness we order that it would not be just and equitable for the costs of the landlord to be regarded as relevant costs in determining the amount of service charge payable.

Tribunal Judge Simpson.
10th November 2020.

Annex A

MAN/00CG/LSC/2019/0048, MAN/00CG/LSC/2019/0093, MAN/00CG/LSC/2019/0094, MAN/00CG/LSC/2019/0101

Mr Christopher Rooney
Mrs Deborah Rooney
Ms Alexandra Machin
Mr Matthew Ashford
Miss Rebecca Oxley
Mr Paul Harburn
Mrs Jennifer Harburn
Mrs A Ridge
Ms L Myers
Mr & Mrs G Dalby
Mr & Mrs P Marples
Mr & Mrs C Saltfleet
Mr & Mrs R Temple
Mr S Telford