



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

**Case Reference** : **MAN/30UK/LSC/2019/0107**

**Property** : **3, Royal Drive, Preston PR2 3AF**

**Applicant** : **Greenheys (Preston) Management Company Limited  
(represented by Homestead Consultancy Services Limited and Miss W Turner of Counsel)**

**Respondent** : **Mr Keith Barton**

**Type of Application** : **Reasonableness of Service Charges  
Section 27A and 20C Landlord and Tenant Act 1985.**

**Tribunal Members** : **Mr J R Rimmer  
Mr J Faulkner**

**Date of Determination** : **26<sup>th</sup> February 2021**

**Date of Decision** : **03 March 2021**

**DECISION**

**Order**                    **the service charges payable by the Respondent  
For the years 2010-11 to 2017-2018 are as set  
out in the Annex hereto.  
Budget contributions for 2018-19 and 2019-20  
are payable subject to reconciliation against  
actual costs  
Costs prior to 2010-11 are not payable for the  
reasons set out in paragraph 27.**

## **Application**

- 1 The Tribunal has received an application on behalf of the Applicant in this matter in the form of a referral from the Stockport County Court which transferred the matter by Order dated 18<sup>th</sup> November 2019.
- 2 The County Court proceedings related to the recovery of a monetary sum representing alleged unpaid service charges, together with interest and costs over an extensive period of time in relation to the property at 3, Royal Drive, Preston, a development of some 136 mixed residential properties constructed at the start of the present century on the site of the former Preston Cattle Market.
- 3 Mr Barton is the leasehold owner of the property in question, a house previously known as, and sometimes referred to in the documentation supplied to the Tribunal as, 3, Greenheys. The Applicant is the management company set up at the time of the construction of the development and which has retained Homestead Consultancy Services Limited as its managing agent.
- 4 The latter company is not the original manager, having apparently replaced the original manager in somewhat acrimonious circumstances. It is suggested that the current managers have never received full documentation, accounts and information relating to the collection and application of service charges prior to taking over management responsibility. This appears to be verified by a finding of what was then the Leasehold Valuation Tribunal (“the LVT”) in a determination from 2012 in relation to service charges for the years up to 31<sup>st</sup> August 2010.
- 5 The County Court claim refers to historic arrears that had accrued in relation to previous accounting years (which run annually from 1<sup>st</sup> September to 31<sup>st</sup> August) and specifically to unpaid charges for the years ending 31<sup>st</sup> August 2013 onwards.

- 6 The situation is made more complex by events following the determination of the LVT, the findings of which resulted in a recasting of earlier charges so as to reduce Mr Barton's liability. The Applicant sought to credit Mr Barton's account and so reduce alleged arrears. Mr Barton sought instead to receive a payment. When this was not forthcoming, he issued proceedings for the recovery of the amount in question. For reasons that were not adequately explained to the Tribunal this claim was not challenged and the Applicant in due course paid the judgement debt to Mr Barton.
- 7 By common consent it would appear that Mr Barton has made no contribution towards service charge costs since before the LVT proceedings in 2011-12 and now that proceedings have been brought, he makes a raft of challenges in relation to their reasonableness and payability. It is the Tribunal's role to assess those two matters and make a determination accordingly. It is perhaps unfortunate that the only direct reference to annual service charge amounts in the Applicant's claim related to the years from 2012-13 onwards and the Order transferring the matter from the County Court is not particularly clear. Certainly, the direction given at the start of the Tribunal proceedings are based on the need to assess the charges from 2012-13 onwards.
- 8 Thereafter the proceedings have created an amount of paperwork out of all proportion to the amount of the original claim spread over some 1200 pages, and a schedule of disputed matters totalling some 300 different items.
- 9 Whilst the Tribunal does not wish to be seen to be overly critical it feels that it has not been assisted as it might have been by the parties in fulfilling the requirements of Rule 3 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the FTT Rules"). It has not been helped by the continued repetition by the Respondent of the same complaint in respect of the same matter year after year and a failure to distinguish matters that are relevant to the service charges from those that are not. Nor has it been assisted the Applicant in seeking recovery of service charge costs for years before 2012-13 in adopting slavish adherence to the direction for the production of documents only from 2012-13 onwards and then only for those after further intervention from the Tribunal. The Respondent also makes numerous references to accounting for contributions to reserves funds, without once mentioning what he regards those contributions to be.

## The law

- 10 Section 18(1) Landlord and Tenant Act 1985 (“The Act”) provides the definition of a service charge as ...  
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, improvement, 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
  
- 11 The law relating to jurisdiction in relation to service charges, falling within Section 18, is found in  
Section 19 of the Act which provides:
  - (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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
  
- 12 Further Section 27A Landlord and Tenant Act 1985 provides:
  - (1) An application may be made to a leasehold valuation 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

and the application may cover the costs incurred in providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)
  - (4) No application under subsection (1)...may be made in respect of a matter which-
    - (a) has been agreed or admitted by the tenant
  - (5) but the tenant is not to have been taken to have agreed or admitted any matter by reason only of having made any payment

- 13 Section 20C landlord and tenant Act 1985 provides that:
- (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... the First-tier tribunal... 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...
    - (ba) in the case of proceedings before the First-tier Tribunal, to the Tribunal
  - (3) The...tribunal to which the application is made may make such an order on the application as it considers just in the circumstances.

### **The lease**

- 14 The lease in respect of 3, Royal Drive is one dated 30<sup>th</sup> January 2004 and made between Fairclough Homes Limited (1), the Respondent (2) and the Applicant (3). It is granted for a period of 250 years from 1<sup>st</sup> September 2003 at a rent which increases at intervals.
- 15 Clause 3 of the lease provides for the reservation of the lessee's proportion of the service charge costs, referred to as the maintenance expenses, as additional rent and the lessee further covenants in Clause 4 to perform the obligations imposed upon him by the Seventh Schedule to the lease. Those obligations include payment of the lessee's proportion of the service charge costs by way of an annual budgeted amount which is balanced at the end of each year with a resulting credit, or further surcharge, reflected in the charge for the subsequent year.
- 16 The lessor covenants in Clause 5 to perform the obligations in the Eighth Schedule and the Applicant management company covenants to perform the obligations in the Ninth Schedule. Those latter obligations on the management company are to perform the obligations imposed by the Fifth Schedule to provide the relevant services and management to the development and the costs thereof, together with any additional sums collected for periodic maintenance, are the maintenance expenses
- 17 The maintenance expenses are divided into three parts in a lease that relates to a house such as the subject property:
- Part A – being the cost of the general maintenance of the estate and shared between all properties.
  - Part B – being the additional expenses that relate to the car park and are shared by those having an entitlement to car parking space (some of which are designated, others are communally shared).
  - Part C – being those additional expenses relating to management, operation and other “back office” provision to the estate

- 18 It is also pertinent to mention that the development has two peculiar aspects to it that actually, or potentially, affect the service charges in a manner that is not common elsewhere:
- (a) There is a pumping station situated on the estate. Its purpose is not identified to the Tribunal, but reference is made in the lease (in the Fourth and Fifth schedules) to potential charges arising in relation to it. The Tribunal is not aware of any such charges being raised. It may well be that any issues that may have arisen have been resolved by the relevant local undertakings.
  - (b) As a condition of planning consent for the development provision was to be made for 2 play areas, one more extensive than the other which was restricted to younger children. They are understood to have been problematic and the larger one has now been removed. Provision is made in the service charges for the costs of these areas, including replacement equipment and repairs, and provision made by the Applicant for a reserve fund to meet anticipated cyclical expenditure.

### **Inspection**

- 19 In view of the current pandemic the Tribunal applied its revised policy in relation to inspections and did not attend the subject property prior to the hearing. As a result of what it heard and was able to determine thereafter, no subsequent inspection was deemed necessary.

### **The submissions and evidence**

- 20 The Tribunal received extensive submissions and documentation pertaining to the situation that is outlined in paragraphs 1 to 6, above, to the extent that it unfortunately required further information from the parties as a result of the information received by the time of the first hearing on 11<sup>th</sup> November 2020. The Tribunal therefore provided further directions and was able to reconvene on 18<sup>th</sup> January 2021 having received considerable further details relating to the charges in question. It has taken considerable time for the Tribunal to give consideration to all that it has read in the documentation provided and what it heard at the hearings.
- 21 The Tribunal also had the benefit of witness statements and statements of case prepared by the parties at various stages of both the County Court proceedings and these Tribunal proceedings, regularly updated by responses to observations made by the other party.
- 22 The Applicant's case is a simple one. The Respondent is a bad payer and has sought to avoid payment of service charges that are due. The Applicant avers that it has accounted properly for the costs that have been incurred and that those costs are reasonable. It believes that it has done everything that it reasonably might be expected to do to accommodate the numerous enquires that the Respondent has made in relation to those costs and how

they are accounted for. Historic arrears had accrued which needed to be recovered, together with all payment for recent service charge years to which no contribution had been forthcoming.

23 For his part Mr Barton aimed a number of criticisms at the management company and its agent:

- Accounting failures whereby the service charge costs and accounts were not provided in accordance with the terms of the lease.
- It was not clear from year to year how they had been assessed and why there was a lack of consistency from year to year .
- Those costs that had been incurred could not be shown to be reasonable.
- Historic matters had already been dealt with by the previous LVT in 2012 and thereafter proceedings had been brought to recover what he alleged to be owed to him, without challenge by the Applicant and those matters should not be re-opened.
- The Applicant had not afforded him a proper opportunity to consider the Applicant's documentation in sufficient depth to be able to take a proper view of income and expenditure.
- The accumulation of considerable reserve funds were not properly taken into account by the Applicant, or its agent, in assessing what would be reasonable budgets and/or reasonable expenditure year on year that was being recovered by way of annual service charge contributions.

24 For the assistance of the Tribunal a schedule was produced by the parties providing observations on approximately 300 specific matters of complaint. As outlined in paragraph 7, above, many issues were repeated as matters of complaint year on year, but they remained matters of concern to the Respondent in generic terms.

25 At the hearing on 18<sup>th</sup> January the Tribunal was able to spend some considerable time with the parties assessing the merits of those complaints and following the conclusion of that hearing it required a further considerable amount of time for the Tribunal to work through the representations in respect of each item, either those made at the hearing or observations included by the parties in the Schedule.

## **Determination**

26 In coming to its conclusions in relation to the service charges in question, the Tribunal has sought to identify first those issues that will have the greatest bearing upon the greatest number of those issues raised in the Schedule.

27 Historic arrears prior to 2010-11

The position appears to be this:

- The reasonableness, or otherwise, of the service charge costs prior to 2010-11 have been the subject of proceedings before an earlier LVT.
- It is not appropriate for this Tribunal to revisit them.
- Whatever calculations that may, or may not, have been carried out make provision for that determination, either in relation to Mr Barton and other applicants at that time, appear to have resulted in Mr Barton issuing proceedings and recovering a judgement debt against the Applicant in respect of those charges.
- For whatever reason, the Applicant sought not to challenge Mr Barton's claim, nor to seek any counterclaim against him for unpaid charges when it had an opportunity to do so.
- In those circumstances this Tribunal is of the view that in the absence of any clear evidence within these proceedings as to how those supposed charges accrued, the information they are based upon and the services provided that may give rise to them it is appropriate to draw a line with effect from 31<sup>st</sup> July 2010 and provide that those charges are not recoverable as service charges reasonably incurred at reasonable cost.

28 Service charges and accounts from 1<sup>st</sup> August 2010 onwards

The Respondent makes a number of allegations in relation to the way in which the Applicant accounts for the service charge expenditure and the assessment of a lessee's proportion of those relevant costs.

29 It is important that the Tribunal reminds itself that it is looking at the reasonableness and payability of service charge costs. It is not conducting a professional examination of the Applicant's accounting procedures, nor those of its agent. The complaint is made that the accounts are not audited in accordance with the articles of association of the management company, nor is a directors' report provided.

30 Neither, of those matters is fatal to the Applicant's case so far as the Tribunal is concerned. They are matters of company law and may be addressed in that way if parties wish to take such points. They do not prevent the Tribunal proceeding to the assessment of reasonableness and payability, if such can be established with sufficient clarity from those accounts that are produced.

31 Complaint is also made that no certificate is provided with the service charge accounts as required by the sixth schedule to the lease. In some years the annual accounts are produced without anything purporting to call itself a certificate appearing within them. In other years prior to 2014-15 there is a certificate, but it relates to the company accounts that precede it and not to the service charge accounts that follow.



- 32 It would no doubt have been simple for the accounts to include a certificate, using that word, given that the issue was raised before he last LVT and observations made then. For whatever reason the Applicant has chosen not to take that course. Is the lack of a certificate fatal to its case?
- 33 The Tribunal thinks not and does so for two reasons. Firstly, it is of the view that as a general principle a certificate, or lack of one, does not prevent the Tribunal making determinations as to reasonableness and payability if it believes it has sufficient information upon which it may reasonably proceed.
- 34 Secondly, close examination of paragraph 6(6) of the lease is assistive. The initial obligation of the tenant is provided by paragraph 6.1 and is to pay the budgeted charge in advance. Paragraph 6(2) provides for the balancing of the account at the end of the year according to the accounts which should have the certificate. If there is a shortfall the lessee should pay the balance within 21 days and if there is a credit it should go to reduce the charge for the next year. If there was a credit the lack of a certificate would not, in the Tribunal's view, suggest that the Applicant need not credit the lessee's account. As a matter of equality and fairness it must be the case that the applicant should be able to recover the shortfall. This issue will be re-visited in paragraph 43.
- 35 There are however a number of accounting issues raised by the Respondent that the Tribunal does feel need to be addressed.
- 36 In the service charge accounts, as produced on an annual basis, it is not clear immediately how the cost of services to the houses, such as the one leased to the Respondent are assessed when compared to the other properties including flats with their own entrances, and flats with common entrances. They show in the accounts as overall amounts, for example as management, repairs, landscaping etc, not all of which is attributable to the houses. The annual budgets do provide some assistance with breakdowns of how the proposed amounts spread through the various types of properties.
- 37 Although the lease divides the charge payable by the Respondent under his lease into Part "A", "B" and "C" costs the service charge account does not separate out what elements of the overall cost go into each "pot" for the houses.

- 38 It is clear that some such separation takes place to produce an amount to be collected against each annual budget and then reconciled when actual expenditure has been ascertained. That is easier to ascertain in later years, from 2013-14 onwards, as the ledgers of the managing agent show what charges are attributed to the overall estate and those others that are attributed to properties other than houses. Such a breakdown of the amounts is then followed in the 2014-15 accounts themselves.
- 39 Thereafter those charges that are attributable to the houses are paid as various proportions of the total costs, calculated on a percentage basis:
- Part “A” (estate costs ) 0.7353%
  - Management (part of Part “C” costs) ) 0.3287%
  - Electricity costs (similarly part of Part “C” costs) 0.1838%
  - Landscaping (separated out from remaining Part “A” costs?) 0.3676%
- 40 The proportion of 0.7353% is clearly an equal division of costs between all 136 properties. The car park cost are expressed in the lease as having 4% apportioned to the Respondent, although this changes to 1.818% when the costs are subsequently apportioned between all leaseholders with car park spaces. Others are less clear but are suggested by the Applicant as an assessment of the relative benefits attributable to those costs for the particular types of property. The landscaping proportion would appear to be beneficial to the Respondent, rather than detrimental, when compared to the overall proportion applied to the estate costs. Mr Barton does not agree with them. He believes them to be unreasonable. He does not suggest any other options. The Tribunal considers them to be a reasonable attempt at a realistic attempt at achieving a suitable balance.
- 41 Analysis of the ledgers for 2014-15 onwards, together with the invoices and vouchers eventually provided by the Applicant - suggest that it is possible to assess the relevant costs attributable to houses that should fall within the annual service charges for a house such as Mr Barton’s. This can also be used to assess those costs for 2012-13 and 2013-14, but with the caveat that the ledgers from that time do not separate payments according to how they should be attributed across the estate. It is undoubtedly possible, in the Tribunal’s view, to identify the costs that are clearly attributable to the estate in general, as opposed to the other types of accommodation.
- 42 Indeed, the Tribunal is sure that a combination of the ledgers for 2010-11 and 2011-12 and a reliance upon the accuracy of those records for subsequent years enables a relatively clear picture of costs attributable to the estate to be established.

- 43 The Tribunal has created a spreadsheet, Annex 1 to this decision that shows how it has calculated what has been spent on services relevant to Mr Barton's property for the years 2010-2018, according to figures produced by the Applicant. It should be noted:
- It appears, conveniently, that according to invoices for the service charge produced on behalf of the Applicant that 2010-11 starts without any credit, or deficit, to be carried forward. This negates any need to consider in any further depth the issue of any balance referred to in paragraph 34.
  - For the years 2010-11 to 2013-14 only those costs clearly attributable to Mr Barton have been included. Those not clearly identified have been excluded.
  - On some occasions the amounts in the ledgers do not exactly match those appearing in the income and expenditure accounts for the service charge from 2014-15 onwards. The Tribunal has endeavoured to use the lower amount on each occasion in its calculation.
  -
- 44 Furthermore, in each of the years in question the amounts are based on actual expenditure, up to and including 2017-18. Any dispute about the budget for those years and their relationship to what is actually payable is irrelevant. Mr Barton has not made any contribution to his charges in those years and there is no reconciliation to be made. No doubt at the time this determination is being made the costs for 2018-19 and 2019-20 will also be known and the budgets for those years as well will be redundant.
- 45 Notwithstanding, those calculations Mr Barton raises other concerns to suggest that service charge costs are not reasonable, or otherwise why payment should not be made.
- 46 Of particular concern are reserve funds. They change nomenclature from time to time over the course of the years under consideration, but they are essentially reserve funds. The Tribunal's attention is drawn particularly to three of relevance to the Respondent:
- An income and expenditure reserve (later referred to as a general reserve fund)
  - A major works reserve fund
  - A playground reserve fund
- 47 The Tribunal is aware that there are other reserve funds relating to other parts of the development, particularly referencing the flats.
- 48 The latter two are largely self-explanatory. The playground is referred to in paragraph 18, above, and notwithstanding the type of property belonging to the Respondent significant cost might be incurred in relation to such

items as the car park, or the soundproof fence alongside the railway on the Western boundary of the development, from time to time.

- 49 The income and expenditure reserve fund is somewhat peculiar. It is referred to in the decision of the previous LVT which expressed a view as to its size. It has reduced slightly since then but still exceeds £40,000.00. Its origins appear largely unknown to the managing agent, and, given the difficulties encountered with the previous agent, to the Applicant also. It would appear that the fund arises from previous income from service charges vastly exceeding the budget and not being credited. Some element of that activity remained until the earlier LVT considered the issue.
- 50 Mr Barton identifies two particular concerns:
- (1) That in view of the size of this fund it is unreasonable to require payment of service charge expenditure from leaseholders when such a reserve has been accumulated.
  - (2) As and when the fund is used, Mr Barton should be credited with an appropriate proportion of his contribution.
- 51 The Tribunal notes that paragraph 13 of the fifth schedule to the lease provides:  
“such sum as shall be considered reasonably necessary by the Management Company (whose decision shall be final as to question of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Maintained Property”.
- It is appropriate to assume that in the context of that schedule these words might usefully be considered to be preceded by “to collect and maintain” to give the paragraph some sense. In such a case the Applicant clearly has, within the bounds of reasonableness the power to collect operate such a fund.
- 52 In this situation the Tribunal is of the view that Mr Barton’s concerns are illusory. He repeats the point in relation to using the fund first for each of the years under consideration. In the Tribunal’s view it could only ever apply, roughly, to any one year as the value of the fund bears a broad approximation to any one year’s expenditure and would be quickly exhausted. Such an approximation would suggest that the amount held, is not unreasonable, coincidentally the view of the last LVT, and has seen some reduction.
- 53 Ideally it would not have accumulated in the manner it has, but that is an issue that related to matters prior to 2010. Just as Mr Barton asks the Tribunal not to revisit other matters prior to then, so too should it accept that a line has been drawn here as well. The Tribunal notes that although Mr Barton suggests he be credited for previous contributions he has not assisted the Tribunal by identifying what they were, or when they were made. He has made no recent contributions whatsoever.

54 Given the current balances in each of the three funds it is considered by the Tribunal that given the potential costs that might be incurred in respect works for which the funds might be used the retained amounts are reasonable within the terms of paragraph 13. Notwithstanding the recent removal of the large play area, the sums in the play area reserve are not unreasonable.

55 There are three particular contributions to the reserve funds in relation to the playgrounds: £729.00 in 2016-17, £200.00 in 2017-18 and the £500.00 in the budget for 2018-19. Given the expenses incurred in relation to the removal of one of the sites those contributions do not seem unreasonable to restore that element of the reserve.

56 Thereafter, it is useful to move on to particular issues that Mr Barton raises in relation to specific aspects of elements in the service charge.

57 Bank Charges

Until a separate trust bank account is set up to hold service charge monies the funds are subjected to bank charges. The lease requires the funds to be held in a trust account (Ninth Schedule, paragraph 3). Those charges are therefore disallowed. They do not appear in the Annex.

58 Interest and other income of management company

Mr Barton accepts that interest earned is set off against the service charges. He is of the view that other income earned by the management company should be dealt with in a similar manner. Such income is chiefly from administration charges, identified and permitted by the lease. The Applicant disagrees. They are viewed as fees for additional work done by, and accruing to, the managing agents. The Tribunal agrees. They are fees for work done over and above general management and are identified as such in the lease.

59 Management fees

Two significant complaints are made in respect of these charges. Firstly, they are too high. Secondly, the service provided is unsatisfactory. Mr Barton suggests that the fees are high, in proportion to the service charges to which they relate. The Applicant accepts this, but points out that a unit cost for a house such as Mr Barton's is reasonable. The managing agent suggest no managing agent would do it for less. The Tribunal would agree. A fee of under £30.00 per property is reasonable for the work expected in respect of managing such properties.

So far as the level and standard of service is concerned, the Tribunal accepts that some matters could be dealt with in a more satisfactory way in relation to the assessment and presentation of accounts is concerned, but they are none the less sufficiently clear. Mr Barton raises the issue of the lack of assistance he has received in relation to being able to verify the service charge and company accounts. The Tribunal feels he overplays his

hand. The evidence suggests he has had ample opportunity to obtain a satisfactory picture. It is quite often the case that more and better provision could be made to manage the estate and its affairs. From what it has seen and heard a satisfactory balance is provided between service and cost.

60 Car park Management

This item was a separate head of charge in early years under consideration. It had previously been apportioned that 4% of the charge was attributable to the Respondent as having 1 of 25 relevant parking spaces. The position changes after the last Tribunal to 1.818% of the total, referable to a total of 55 spaces, allocated or unallocated, until absorbed into the major head of management fees from 2013-4 onwards. It appears to have represented some £212.00 of total management fees and as such would appear to be reasonable for work done in relation to management of car park maintenance and repair.

61 Repairs, including litter pick and light bulbs

From 2013-14, where they are vouchered in the additional material supplied by the Applicant, these costs appear to be allocated across the various types of dwellings. The ledgers from 2010-11 do not always clearly identify an allocation and the Tribunal has used its best endeavours to allocate appropriate costs to 3, Royal Drive. Light bulbs sometimes appear as a separate item and again the Tribunal has sought to allocate them appropriately, but only where it feels they are identified as relating to the car park, rather than any communal part of the flats.

Litter picking appears as a separate cost in early years until subsumed elsewhere. The Tribunal considers that given the nature of the development and its situation this will have been a reasonable exercise at reasonable expense.

62 Landscaping

The Tribunal is aware from the plan of the development and from information received from the parties that this is an extensive development with extensive open spaces and car park areas. The Tribunal considers that extensive upkeep of such facilities will require regular attention and the costs incurred are reasonable. The respondent offers no evidential basis for his assessment of what alternative cost might be reasonable.

62 Public liability and directors' insurance

Although raised as a concern by the Respondent, entries on the schedule of issues indicate that they are largely accepted by the Respondent as a legitimate charge. They have therefore been entered appropriately in the Annex.

63 Company House fees

These now appear to be accepted by Mr Barton, notwithstanding a point he raises as to whether they should be payable in one particular year when the management company made a notional loss.

64 Accountancy fees

These fees are largely accepted by the Respondent, subject to one issue raised he raises in relation to costs in respect of the last LVT which, so far as Mr Barton is concerned is subject to the determination made under Section 20C of the Act. On one occasion there appears to be a higher fee by reason of attendance at the annual tenants' meeting.

65 Sundries

This head of charge primarily relates to room hire for the annual tenants meeting and an additional item for £27.00 accepted by the Respondent.

66 Brady's solicitors' account

There appears to be limited evidence available to the Tribunal as to this cost which may be attributable to a fee for proceedings against a leaseholder in relation to a breach of covenant. The management company has power to seek such assistance and recover costs. As the only account of this type, it is suggestive of prudence and caution on the part of the Applicant in respect of such actions and reasonable in the circumstances, but as the evidence is not available to support this view of how it was incurred it should be disallowed.

67 Administration charges

The Applicant seeks to recover a number of administration charges levied in relation, principally to enforcement and recovery of the debt it alleges is owed to the Applicant by the Respondent.

As such these charges are subject to the provisions of the Commonhold and Leasehold Reform Act 2002, Schedule 11 and the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 requiring certain notices in the prescribed form to accompany any relevant demand.

As there is no evidence of such notices being served the charges are not recoverable until such time as the regulations are complied with.

68 Costs

The Applicant has incurred considerable costs in the course of this application. Its solicitors have provided a summary schedule of them. It seeks to have those costs, relating to both the County Court and Tribunal, paid by the Respondent as it believes that the Respondent has conducted his defence of these proceedings in an inappropriate and unreasonable manner.

69 There are three conflicting cost regimes that may apply to the current proceedings in view of its commencement in the County Court and its transfer to the Tribunal:

- (1) An obligation on the Respondent to meet the Applicant's costs on an indemnity basis under the terms of the lease.
- (2) The assessment of costs in relation to County Court proceedings in accordance with Section 51 Senior Courts Act 1981 and Civil Procedure Rule 44.
- (3) The non-shifting of costs in the First-tier Tribunal (subject to Rule 13 of the FTT Rules) provided under section 29(1) Tribunals Courts and Enforcement Act 2007.

70 This conflict is identified in part by the Applicant in its statement of case by reference to the cases of *Avon Ground Rents v Child* [2018] UKUT 204 (LC) and *Chapair Limited v Kumari* [2015] EWCA Civ 298, to which the Tribunal would add the need to consider *John Romans Park Homes v Hancock & Others* [2018] UKUT 209 (LC), together with the observation that those costs conceivably falling within (1) in the preceding paragraph are likely to be a variable administration charge incurred, or to be incurred, at the time of the County Court application so falling within Schedule 11, paragraph 5A Commonhold and Leasehold Reform Act 2002.

71 To give this matter proper consideration the Tribunal invites the Respondent, if he wishes, to make application in the County Court to have the costs incurred there considered under paragraph 5A and respectfully suggest within the application that it should be referred back to the Tribunal. If the County Court judge is in agreement, further directions can then be given.

72 The Tribunal orders that if such an application is to be made, it should be made within 28 days of this decision and the Tribunal notified accordingly. In the absence of such an application the Tribunal will revisit the issue.

J R RIMMER  
Judge of the First-tier Tribunal  
26 February 2021



**ANNEX**

<b>2010-11</b>	<b>Item</b>	<b>Total</b>	<b>%</b>	<b>Amount</b>
		£		£
	electricity	1,189.00	0.1838%	2.19
		£		£
	man.fees	8,533.00	0.3287%	28.05
	car pk	£		£
	man	300.00	1.8180%	5.45
		£		£
	landscaping	8,902.00	0.3676%	32.72
		£		£
	co.ho.rtn	14.00	0.7353%	0.10
		£		£
	insurance	252.39	0.7353%	1.86
		£		£
	repairs	986.96	0.7353%	7.26
		£		£
	sundries	99.94	0.7353%	0.73
		£		£
	accy	216.00	0.7353%	1.59
		£		£
	prof costs	1,224.00	0.7353%	9.00
		£		£
	interest	25.00	0.7353%	<u>0.18</u>
				£
	<b>Total</b>			<b><u>89.13</u></b>

2011-12	Item	Total	%	Amount
	electricity	£ 1,039.00	0.1838%	£ 1.91
	man fees	£ 7,726.00	0.3287%	£ 25.40
	car pk	£		£
	man	251.00	1.8180%	4.56
	landscaping	£ 6,381.00	0.3676%	£ 23.46
	co.ho.rtn	£ 14.00	0.7353%	£ 0.10
	insurance	£ 252.00	0.7353%	£ 1.85
	repairs	£ 1,784.90	0.7353%	£ 13.12
	sundries	£ 40.45	0.7353%	£ 0.30
	accy	£ 216.00	0.7353%	£ 1.59
	interest	£ 24.00	0.7353%	£ <u>0.18</u>
	<b>Total</b>			<b>£ <u>72.46</u></b>

2012-13	Item	Total	%	Amount
		£		£
	electricity	1,188.00	0.1838%	2.18
		£		£
	man fees	6,512.00	0.3287%	21.40
	car pk	£		£
	man	212.00	1.8180%	3.85
		£		£
	landscaping	6,300.00	0.3676%	23.16
		£		£
	co.ho.rtn	13.00	0.7353%	0.10
		£		£
	insurance	265.00	0.7353%	1.95
		£		£
	repairs	968.74	0.7353%	7.12
		£		£
	sundries	358.00	0.7353%	2.63
		£		£
	accy	420.00	0.7353%	3.09
		£		£
	interest	15.00	0.7353%	<u>0.11</u>
				£
	<b>Total</b>			<b><u>65.60</u></b>

2013-14	Item	Total	%	Amount
	electricity	£ 1,118.00	0.1838%	£ 2.05
	man fees	£ 8,656.00	0.3287%	£ 28.45
	landscaping	£ 6,000.00	0.3676%	£ 22.06
	co ho.rtn	£ 13.00	0.7353%	£ 0.10
	insurance	£ 267.90	0.7353%	£ 1.97
	repairs	£ 1,296.34	0.7353%	£ 9.53
	sundries	£ 27.00	0.7353%	£ 0.20
	accy	£ 378.00	0.7353%	£ 2.78
	interest	£ 12.00	0.7353%	£ <u>0.09</u>
	<b>Total</b>			£ <u><b>67.23</b></u>

2014-15	Item	Total	%	Amount
		£		£
	electricity	1,418.00	0.1838%	2.61
		£		£
	man fees	8,640.00	0.3287%	28.40
		£		£
	landscaping	4,950.00	0.3676%	18.20
		£		£
	co.ho.rtn	13.00	0.7353%	0.10
		£		£
	insurance	262.00	0.7353%	1.93
		£		£
	repairs	1,974.00	0.7353%	14.51
		£		£
	sundries	280.00	0.7353%	2.06
		£		£
	accy	260.00	0.7353%	1.91
		£		£
	interest	8.00	0.7353%	<u>0.06</u>
				£
	<b>Total</b>			<b><u>69.77</u></b>

2015-16	Item	Total	%	Amount
	elctricity	£ 1,465.00	0.1838%	£ 2.69
	man fees	£ 8,640.00	0.3287%	£ 28.40
	landscaping	£ 5,253.00	0.3676%	£ 19.31
	co.ho.rtn	£ 13.00	0.7353%	£ 0.10
	insurance	£ 309.00	0.7353%	£ 2.27
	repairs	£ 3,382.00	0.7353%	£ 24.87
	sundries	£ 40.00	0.7353%	£ 0.29
	accy	£ 260.00	0.7353%	£ 1.91
	interest	£ 30.00	0.7353%	£ <u>0.22</u>
	<b>Total</b>			<b>£ <u>79.84</u></b>

2016-17	Item	Total	%	Amount
	electricity	£ 2,066.00	0.1838%	£ 3.80
	man fees	£ 8,813.00	0.3287%	£ 28.97
	landscaping	£ 4,990.00	0.3676%	£ 18.34
	co.ho.rtn	£ 13.00	0.7353%	£ 0.10
	insurance	£ 319.00	0.7353%	£ 2.35
	repairs	£ 648.00	0.7353%	£ 4.76
	sundries	£ 40.00	0.7353%	£ 0.29
	accy	£ 260.00	0.7353%	£ 1.91
	interest	£ 14.00	0.7353%	£ <u>0.10</u>
	<b>Total</b>			<b>£ <u>60.62</u></b>

2017-18	Item	Total	%	Amount
	electricity	£ 1,351.00	0.1838%	£ 2.48
	man fees	£ 8,899.00	0.3287%	£ 29.25
	landscaping	£ 5,340.00	0.3676%	£ 19.63
	co.ho.rtn	£ 13.00	0.7353%	£ 0.10
	insurance	£ 327.00	0.7353%	£ 2.40
	repairs	£ 1,377.00	0.7353%	£ 10.13
	sundries	£ 40.00	0.7353%	£ 0.29
	accy	£ 260.00	0.7353%	£ 1.91
	interest	£ 72.00	0.7353%	£ <u>0.53</u>
	<b>Total</b>			<b>£ <u>66.72</u></b>