FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/LIS/2021/0052
Property	**:**	Sawyers B and B (formerly known as Tom Sawyer's Tavern) Nailzee Point, Marine Drive Hannafore, West Looe, Cornwall PL13 3DF ("the premises")
Applicant	**:**	Nailzee Point Residents Association Ltd
Representative	**:**	Christopher William Warne
Respondent	**:**	Mr Kenneth Bartlam and Mrs Tracy Bartlam
Representative	**:**	Tanya Jones of Magdalen Chambers instructed by Michelmores LLP solicitors (Exeter office)
Type of Application	**:**	Determination of Service Charges (Section 27A of the Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge H Lederman Mr D Jagger MRICS Valuer Member
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Date of hearing	:	3rd November 2022
Date of Decision	:	10th November 2022

DECISION AND REASONS

DECISION

The Tribunal determines:

a. **The amount payable by the Respondents for interim service charges for the service year ending 31st December 2020 will be £2486.00 calculated by reference to 22% of the costs of the Applicant complying with its obligations under Parts I and II of the Third Schedule to the Lease of the premises dated 26th May 2006 ("the Lease").**

b. **The amount payable by the Respondents for interim service charges for the service year ending 31st December 2021 will be £3026.80. This sum is calculated by reference to 22% of the costs of the Applicant complying with its obligations under Parts I and II of the Third Schedule to the Lease for the first six months and 24% of the said costs for the second six months of that service charge year.**

c. **The amount payable by the Respondents for interim service charges for the service year ending 31st December 2022 will be £3553.35 calculated by reference to 24% of the costs of the Applicant complying with its obligations under Parts I and II of the Third Schedule to the Lease in that service charge year.**

d. **Those sums will become payable when the Applicant has served a valid demand under the Lease accompanied by a summary of rights and obligations complying with Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257).**

e. **The specified percentage of the costs of the Applicant complying with its obligations under Parts I and II of the Third Schedule to the Lease for the service charge year ending 31st December 2023 is 24%.**

f. **The Tribunal makes no determination in relation to any other "future" service charge years.**

g. **The Tribunal makes no determination in respect of the fees of the chartered surveyor, legal costs incurred or the cost of a fire risk assessment said to have been incurred by the Applicant, which were not the subject of the application or the hearing.**

h. **The Respondents shall reimburse the Applicant the application and hearing fees amounting in total to £300.00 within 14 days of the date of this Decision (whether or not the sums above have become payable).**

REASONS

Background

1. The Tribunal is asked to determine service charges payable by the Respondents for service charge years 2020, 2021 and 2022 and "for all future years". In particular, the Tribunal is asked to determine the proportion of expenses incurred by the Applicant freeholder/landlord which are payable by the Respondents as lessees under clauses 1(n), 4, and paragraph 2 of the Second Schedule to the Lease, described as "the specified percentage".

2. The "specified percentage" is defined to mean "22% or such other percentage as the Surveyor fairly and reasonably considers appropriate and such other additional sum as shall from time to time be demanded by the landlord in order to meet his obligations as described in Parts I and II of the Third Schedule" to the Lease. The specified percentage does not include payment for insurance of the premises which is separately assessed at 30.76% in clause 2(o) of the Lease. "The surveyor" is defined to mean the landlord's surveyor by clause 1(p) of the Lease.

3. The Premises were described in the application as "a 7 bedroom Bed and Breakfast Unit with owner's living accommodation". The Tribunal was referred to the report of Charles Kingley Evans MRICS MCIArb Dip Arb dated 28 05 2021, a surveyor appointed by the Applicant to address apportionment of service charge to the premises and insurance valuation ("the report"). The report described Nailzee Point (the building within which the premises are located) as a semi-detached building dating from circa 1890 which was converted in the 1950's to provide a number of self-contained flats. The report describes and it was common ground the building comprises, 19 self- contained units (including a penthouse added circa 2008). In the course of the hearing and in the report, the premises were said to contain a self-contained flat known as "Kentra". The 19 other flats were all the subject of 999 year leases. Some of those other Leases also demised a separate garage according to the official copy of the land register as at January 2022 included in the Hearing Bundle at [13-19]. References to "the register" in these Reasons are to that edition of the register.

4. The copy of the register confirms that the premises (formerly known as Tom Sawyer's Tavern) includes ground floor premises, lower ground floor passage and store, land and parking area (page 18). One of the Lease plans at page 74, was discussed at the hearing. Although Ms Jones initially doubted this, the Tribunal concludes that the area hatched brown was the passage.

Bundles and documents available for the hearing

5. In these Reasons references to page numbers are to the Applicant's paginated bundle, except where indicated otherwise.

6. Before the hearing commenced the Tribunal Judge confirmed with the parties (and their representatives) that the following bundles and document had been made available to the Tribunal: Paginated hearing Bundle (90 numbered pages); Applicant's annotated photographs (numbered 1-12); Respondents' Photographs said to be dated 9th September 2022 (not paginated but preceded by index entitled "photographs" comprising 23 pages including 2 pages of index); Respondents' "Written Submissions" prepared by Ms Jones (Respondents' Counsel) dated 22nd August 2022 (7 pages) Applicant's Response to those submissions dated 25th August 2022 (6 pages); Respondents' "Written Reasons" prepared by Ms Jones dated 20 September 2022; email from Ms Jones to Tribunal of 21st September 2022 (explaining personal and professional difficulties encountered in complying with the Tribunal's directions of 2nd September 2022). Mr Warne on behalf of the Applicant also sent a letter of 6th June 2022 to Tribunal Judge Dobson that was referred to in the hearing. The Respondents did not provide copies of any of the authorities referred to in their submissions. The Tribunal indicated in the course of the hearing that it was familiar with the principles set out in decisions such as *Waaler v Hounslow LBC* [2017] 1 W.L.R. 2817 and would be considering the issue of the "specified percentage" in accordance with the principles set out in the Court of Appeal decision in *Aviva Investors Ground Rent GP Ltd v Williams* [2021] 1 W.L.R. 2061.

Relevant Procedural background

7. The Application was issued in December 2021. The background and nature of the issues for determination are set out in the directions issued by Tribunal Judge Dobson dated 10th May 2022. The Respondents were directed to file evidence and relevant documents by 5th July 2022 (paragraph 18).

8. The Tribunal issued directions on 17th August 2022 requiring the Respondents to provide further "submissions" relied upon at the determination of this application and provide written reasons for the delay in providing such submissions.

9. The Respondents filed written submissions dated 22nd August 2022 but omitted to provide reasons for delay in providing submissions or the postal address of their solicitors. The Applicant filed submissions in response on 25th August 2022. The Respondents' written submissions dated 22nd August 2022 raised issues which had not been ventilated previously and which required an extension of time to comply with the Tribunal's earlier directions of 10th May 2022.

10. The issues raised by the Respondents' further submissions included:

    A. specified percentage for the Respondents' contribution to the service charges.

B. Whether some or all of the services provided by the Applicant in respect of painting of the rear of "the building" were provided to a reasonable standard;
C. Whether the service provided in respect of repairs by the Applicant to the Respondents were provided to a reasonable standard
D. Whether the services provided in respect of the Respondents guttering were not provided;

11. On 03 August 2022 Tribunal Judge Tildesley determined the issue was suitable for a paper determination. The Tribunal concluded on 17th August 2022 that the above issues and in particular the Respondents' references to "the façade" and the garages in their further submissions meant that this application was no longer suitable for paper determination and gave directions for determination by video platform and production of annotated and dated photographs.

12. The Respondents' Counsel's "Written reasons" and email suggested that the Respondents wished to seek further legal advice and an inspection of the premises by their legal advisers was required for that advice to be given. The Tribunal determines that paragraph 18 of the Tribunal's directions of 10th May 2022 should be varied and the time for compliance extended so that all of the Respondents' submissions could be considered at the hearing, consistently with the overriding objective in rule 3 of the Tribunal Procedure Rules 2013.

Procedure at the hearing

13. Mrs Tracy Bartlam attended the hearing by telephone together with Ms Jones the Respondents' Counsel, who attended by cloud video platform. Mrs Bartlam was unable to secure a video connection but the Tribunal Judge checked throughout the hearing that she was able to hear and understand the issues. Mrs Bartlam did not have access to all of the hearing bundles, but was in contact with Ms Jones intermittently throughout the hearing. Mrs Bartlam was given the opportunity to provide evidence, to provide clarification to ensure the Tribunal understood her case, even though she had not provided a witness statement or other statement in accordance with the Tribunal's directions. None of the parties sought a long adjournment of the hearing although Ms Jones was given the opportunity to take instructions from Mrs Bartlam in the course of short adjournments in the hearing. All parties were asked if they wished to take a break at lunch time and were content to complete the hearing, without a long lunch break. No vulnerabilities or special needs of any of the participants were apparent or drawn to the attention of the Tribunal by any of the parties or their representatives.

Inspection of the premises by the Tribunal

14. None of the parties sought to persuade the Tribunal that an inspection of the premises or the building was necessary or appropriate. The Tribunal concluded that the issues could be determined fairly justly and efficiently

on the material available without such an inspection, consistently with the overriding objective.

Structure of these reasons

15. For ease of reference, these reasons have been divided into separate headings. Reference to reasons under one heading is often relevant to the Tribunal's conclusions under other headings. The omission to cross refer to reasons should not be read as meaning that sections of these reasons which relate to one of the issues are not relevant to other issues.

16. These reasons address in summary form the key issues raised by the appeal. They do not rehearse each and every point raised or debated. The Tribunal concentrates on those issues which in its view go to the heart of the appeal. For convenience, the Tribunal addresses the issues in the order of how they arise for the purpose of this hearing.

17. The Tribunal will not lengthen these reasons by referring to the detailed text of the statutory provisions referred to. Some of the key provisions are referred to in the submissions of the Respondents' Counsel.

Findings of fact

18. Where the Tribunal finds a particular matter as a fact, it does so on the basis that it is confident that on the available evidence that fact is established or proven by the Applicant on the balance of probabilities (more likely than not).

Issues which the Tribunal is unable to determine at this hearing

19. The Applicant contends that the Respondents have carried out works of alteration and extension to the premises demised by the Lease without the landlord's consent or licence. The Applicant contends that the Respondents have not paid the specified percentage of 22% for which the Respondents contend for the service charge years in issue. The Applicant seeks recovery of legal costs incurred, the costs of instructing the chartered surveyor and costs of a fire risk assessment for the premises. None of these issues are before the Tribunal in this application as it is currently framed. The Tribunal will not consider an application for payment of costs incurred in these proceedings on the ground that one of the parties have conducted or defended these proceedings unreasonably (a very high hurdle to establish) under rule 13(1)(b) of the Tribunal Procedure Rules unless a separate application is made within 28 days of the decision notice being sent pursuant to rule 13(5) of those Rules.

The percentage of costs payable by lessees of the premises

20. The default "specified percentage" of costs incurred was set at 22% by clause 1(n) of the Lease in May 2006. The extent of the Premises

demised included the patio, car park and land edged blue (see First Schedule part 1). At the hearing the Respondents sought to argue that the right to use the garden was not included in rights granted under the Lease. The Tribunal does not need to determine that issue as on any view the communal garden is part of "the Estate". The specified percentage is defined to include as the expenses and costs of the landlord's obligations in parts I and II of the Third Schedule which include obligations of repair and maintenance of "the Estate". "The Estate" is the entirety of the freehold land held by the Applicant landlord under title CL32305: see clause 1(c) of the Lease.

21. The main Building in which the premises are located known as Nailzee Point has common parts including a main entrance staircase: see the report at page 86.

22. There have been significant changes to the configuration and layout of the Building and the Estate since the grant of the Lease. Firstly the construction of a penthouse flat in about 2008 with private lift: see page 85 the first page of the report, which is supported by the entry for the penthouse in the official copy of the land register. Secondly, a small area to the western end of the building converted to residential use in comprising studio room with kitchenette and bathroom or shower and small external seating area to front and private parking: see the report at pages 86-87 and Applicant's photograph 4. The former smoking shelter adjacent to the front elevation of the Building has been converted to use as an additional room serving and office/private area by the Respondents: see the report at page 87 and the Applicant's photograph 2.

23. The facade of the building at ground level abutting the premises has been extended by the Respondents by several metres. A load bearing wall has been removed: see the report at page 87 and the Applicant's photographs numbered 1, 2, 5, 6 and 11. This work appears to have taken place at about the same time as the change of use of the premises from a public house "tavern" to a bed and breakfast business: see the Respondents' letter of 24th September 2013 at page 83 of the bundle and the planning application at pages 75-79. The Applicant's Response of 25th August 2022 described this extension as an area of over 90 square metres with a flat roof. The Applicant stated the extension has enclosed downpipes and a manhole cover for the whole building. These statements went unchallenged by the Respondents and the Tribunal accepts the Applicant's evidence on this point which is consistent with the photographic evidence.

24. The nature and fact of these alterations or changes to the configuration of the premises were not challenged by the Respondents.

25. The Applicant contends these alterations have been carried out without the landlord's licence or consent. Neither the Respondents nor the Applicant were able to show why the issue of consent was relevant to the

specified percentage. The Tribunal's view is that the issue is not directly relevant.

26. The Respondents sought to argue at the hearing and in written submissions provided to the Tribunal at an earlier stage that as they were not permitted to use the communal garden, or have access to communal areas (such as the staircase) they should not be required to pay service charge for maintenance or repair of the Building, or possibly these parts of the Estate or the Building: see pages 40-41. They say that the only wall shared with the rest of the Building is a 10 metre square wall: see page 40. Ms Jones in cross examination indicated this was the white wall to the right of the are described as "Kentra" depicted in the Applicant's photograph 4 and Respondents' photograph at the 14th page of their photograph bundle.

27. The issue about access to the communal garden could not be resolved by the Tribunal and did not need to be the subject of a finding. Mr Warne said that the garden was available for use by the Respondents but not for their bed and breakfast business guests. The Respondents said that the access was only available to the for maintenance purposes: see page 40-41 and the oral evidence of Mrs Bartlam. The Respondents contended that the Applicant was not maintaining "the extension" and that should be relevant to the apportionment of the specified percentage. (see paragraph 14(e) of Respondents' submissions of 22nd August 2022). This does not address the question whether the Applicant's obligations in respect of the Estate under the Lease have been increased by reason of the extension, whether or not the Respondents are ultimately found to have a primary liability for repair and maintenance of the alterations and extension.

28. The Respondents contend they do not have access to the bin store and this is relevant to the specified percentage. The Applicant responds that the Respondents do have access, but not for commercial waste: see response to item 12 d. This issue is not directly relevant to determination of the extent of the Applicant's liability for this area, for which the Respondents are liable to contribute under the terms of the Lease. Whether or not there have been disputes about access, the Applicant retains liability for repair and maintenance of that area.

29. Page 86 of the report referred to a block of 5 garages which might contain asbestos which would require removal. It became clear that these garages were separately demised to individual lessees at the Building. The Tribunal considers their structure and maintenance costs could not be taken into account in calculating costs payable by the Applicant in respect of costs of its obligations in respect of the Estate and the specified percentage.

30. The Tribunal did not hear any evidence from the author of the report. It was not entirely clear whether the author of the report had taken into account or assumed that the block of 5 garages was part of the Applicant's obligations in respect of the Estate under parts I and II of

the Third Schedule to the Lease. The Tribunal noted that the surveyor was accompanied by Mr Bartlam on his inspection. At the date of his inspection the parties were in disagreement. It is distinctly possible that Mr Bartlam would have made the ownership of the garages clear to the surveyor. On balance, the Tribunal finds that the author of the report may have incorrectly assumed or concluded that that the block of 5 garages was part of the Applicant's obligations in respect of the Estate under parts I and II of the Third Schedule to the Lease and taken that into account in reaching the conclusion that the revised specified percentage should be 25%.

Analysis – specified percentage

31. The Tribunal did not find the contention that the Respondents did not have *unrestricted* access to particular parts of the Estate helpful in ascertaining whether the specified percentage allocated by the Applicant's surveyor was fair and reasonable or appropriate. It is not relevant to this issue whether the Respondents now need to access common parts such as the staircase leading to the upper parts of the Building (paragraph 15 of Respondents' submissions of 22nd August 2022). The staircase remains part of the common parts for the purpose of clause 1(b) of the Lease. The Applicant retains a liability for that area under the Lease, even if the Respondents have recently ceased use of the staircase.

32. The specified percentage is intended to reflect a contribution to cost of complying with obligations, rather than a reflection of availability of facilities or access to those facilities. The specified percentage for insurance is an issue which is separately dealt with in clause 1(o) of the Lease and must be left out of account. The report at page 87 appears to have taken the additional space and floor area available to the premises into account. The Respondents' suggestion that the Applicant does not accept responsibility for maintenance of the extension does not address the point that issues of additional user of part of the Estate and associated costs (including additional use of facilities such as drainage and other liabilities of the Estate) are bound to be incurred. Examples of those kinds of obligations include the need to investigate the structural integrity of the extension as it impacts upon the main Building and the Estate and to assess whether the extended area complies with fire safety regulations. Inevitably the additional user will impact upon other parts of the Estate, even if it is the additional user by guests of the extensions by guests of the Bed and Breakfast business at the premises.

33. The assessment of what is fair and reasonable as a specified percentage in the Lease is not an exact science. The starting point is what the parties to the Lease considered as a fair apportionment in 2006. The Respondents did not produce any calculations of floor area, or expenses incurred by the Applicant in maintenance or repair of the Estate. Nor did they contend explicitly that the expenses and costs incurred by the Applicant had reduced or changed significantly since 2006. The Respondents did not argue that the apportionment should change as

their rights to use the garden bin store or other facilities had been restricted or interfered with in the service charge years 2020, 2021 and 2022 *for the first time* since 2006. Their argument appeared to be that the Lease did not permit them to have access to the garden and that they had been refused access to the bin store on unspecified occasions. Doing its best on the evidence available the Tribunal assesses the specified percentage as 24% from the mid-point in the service charge year 2021 – the date when the Applicant seeks to revise the specified percentage. This increase reflects the additional liabilities and expenses which the changes to the layout of the premises will have imposed upon the Applicant. This is likely to remain the position in the service charge year ending 31st December 2023. Neither party pointed to any forthcoming changes in configuration or layout which might affect the service charge year ending 31st December 2023.

34. It is not appropriate to make a determination of the specified percentage for any year after 2023. The relevant circumstances may change.

Whether costs were reasonably incurred/ or the services provided were of a reasonable standard

35. The Respondents' Counsel elided submissions about these two parts of section 19 of the Landlord and Tenant Act 1985 ("the 1985 Act") in her submissions of 22nd August 2022. Firstly it was said that the costs were unreasonably incurred by the Applicant because a service was not provided to the Respondents. Secondly it was said that certain parts of the services were not provided to reasonable standard. As far as the Tribunal could see from the available evidence most of the complaints under these headings appeared to have been raised (or at least documented) for the very first time in Counsel's written submissions of 22nd August 2022. This is surprising. This application has been on foot since December 2021 and the parties have been in disagreement some time beforehand.

36. The Respondents' complaints in paragraphs 19 and 20 of the 22nd August 2022 submissions relevant to this issue (modified to correctly describe the parties) were as follows:

> "19. The Respondents aver that their part of the rear building was not painted when the rest of the property was decorated, and their guttering is the only one to not be cleaned. The Respondents' roof was water damaged when another resident placed tiles onto the floor in the garden which were not fitted correctly allowing water to ingress. The [Applicant] confirmed that the service charge would not cover this and the Respondents were made to cover the cost of the repairs themselves
> 20....
> a. The [Applicant] Claimant has failed to repair the Respondents' property which was caused by a leak at the fault of another resident.
> b. The Respondents' guttering has not been cleaned.
> c. The Respondents' part of the property has not been painted.

d. The Respondents do not have access to the garden unless it is for maintenance.
e. The Respondents have no access to the garages which are separately leased.
f. The façade at the front of the building was built using the Respondents' own financial resources and should not have been included in the valuation report."

37. The complaints about the guttering to the extension were elucidated in the course of cross examination by Ms Jones. She put to Mr Warne that the Respondents' photographs numbered ii, iv and vi showed the guttering to the extension (also described as the façade) had not been cleaned. Mr Warne disputed this. He pointed out that the Respondents' photographs were taken at a point in time (said to have been in September 2022). He said that at the seaside location gulls/birds tended to pick off various pieces and/or items from the roof and leave them on the roof/gutters. He said that any damage or apparent debris may well have bene deposited after the cleaning of the gutters. Ms Jones invited Mr Warne to agree that a photograph (viii) one part of the gutter was damaged. This was a very small area. The Tribunal could not draw any firm conclusions from the apparent area of disruption in that photograph.

38. The Tribunal found the photographic evidence produced by the Respondents to be of very little assistance or weight in attempting to address the complaint about the guttering raised by the Respondents. The absence of any witness statements or evidence of previous complaint before August 2022 was striking. These issues were of some importance to the Respondents and there had been an earlier hearing before Tribunal Judge Dobson in this application. Had there been a complete failure to clean or repair gutters, or a failure to maintain gutters at an earlier stage, the Tribunal would have expected to have seen some evidence of this. Although the Respondents did not have legal representation or advice throughout, they consulted Michelmores solicitors in about December 2020 and more recently instructed Michelmores solicitors to instruct Ms Jones in August 2022.

39. In relation to the Respondents other complaints the Applicant responded as follows in its submissions of 25th August 2022:

> "Whole of building was painted but obviously not the Respondent's unpainted natural stone frontage.
> As stated previously a contractor was engaged to clean the guttering to the whole building.
> The Respondent states that a water leak into their property was caused by the Applicants placing tiles on the floor of the garden. The tiles were in fact loose laid plastic open weave tiles.
> The complaint was investigated by our maintenance manager and the tenant of a flat that the Bartlams owned up to Dec 1921. The tenant of that flat was a skilled self-employed builder, Mr Paul Sleeth and he traced the water ingress to the threshold of the flat he was renting and owned by the Bartlams."

40. This response went unchallenged by the Respondents. The Respondents did not explain why they felt the stone frontage should have been painted.

41. The Tribunal sought to test the possible impact of these complaints, in the event they were found to have merit, by inviting Ms Jones to quantify a possible monetary deduction or allowance. No evidence of their possible value or an appropriate deduction was advanced by the Respondents.

42. The gist of a separate complaint under the heading that costs were not reasonably incurred by the Applicant was that maintenance work was carried out from January 2019 which only benefited other Lessees and not the Respondents. These were itemised in paragraph 12 of the submissions of 22nd August 2022. They were

a.Leaking down pipes outside No.11.

b.Leaks in flats 1 and 4.

c.New solar light in garden (The Respondents are not allowed to access the garden unless it is for maintenance).

d.Rat infestation in the bin store (The Respondents do not share the same bin store as the other residents).

e.Re-fixing loose stair carpet and regular hoovering (The Respondents do not have access to the stairs and this does not form part of the Common Parts.

f.Design and print new signage for the building (The Respondents have paid for their own sign for their Bed and Breakfast.

g.Revalued the building and garage for insurance purposes (The garages are leased separately and the Respondent has no access to the garages.

h.New sensor in the main hallway (The Respondents have their own access point and have no reason to use this main hallway).

i.Change of electricity supplier to lower cost provider (The Respondents have their own electricity provider that they pay separately for).

j.Garden wall repairs (The Respondents do not have access to the garden unless it is for maintenance purposes).

k.Cleaning of balcony guttering (The Respondents confirm that all

residents have had their guttering cleaned apart from theirs).

43. Some of the above are addressed separately in these reasons . The Applicant commented in response on 25th August 2022 as follows:

> **"12 d. Re: Bin Store**, the Respondents have access and use of the Bin Store but not for any commercial waste. The fact that they say they do not use it is entirely their choice. I note that they do not have a Commercial Waste contract.
>
> **12 f. Re new signage.** To assist post, deliveries, visitors etc. some laminated cards were put on walls at minimal cost.
>
> **12 g. Re garages**, these are insured **separately** by owners and is **NOT paid** by NPRA or included in service charges.
>
> **12g. 12h. 12i.**
> These are all common parts which Sawyers B and B guests in their end room used for access until recently (this year).
>
> **12 J. Garden wall**
> The Bartlams have been told many, many times that they as proprietors and their family have use of the garden. Their clientele when a public house did not have use of the garden for obvious reasons.
>
> **12 k. Gutters**
> The company that recently cleaned the gutters were instructed to clean all the gutters of the whole building and as far as I know that is what they did."

44. The gist of these submissions was repeated in evidence by Mr Warne. The veracity or reliability of his evidence was not challenged, except by reference to the photographic evidence. The Tribunal saw no reason to doubt his evidence which had force. The Tribunal found his evidence about shared use of the main hallway by guests of the Respondents' business until recently particularly telling.

45. On the available evidence, the Tribunal is unable to reach findings that the costs incurred by the Applicants for painting decorating repair maintenance or cleaning of the Estate for the service charge years in question were not reasonably incurred. Nor is there evidence which would justify a finding that the services provided by or on behalf of the Applicant were not of a reasonable standard.

46. Had the Tribunal found that some of the services provided were not of a reasonable standard, or the costs of the services complained of were not reasonably incurred for any of the service charge years in question, this would not have caused the Tribunal to reach a different view about the specified percentage for the years in the circumstances. Whether or not

some services were below a reasonable standard for a particular year would only impact upon the specified percentage, if it could be shown that it would have been outside the contemplation of the parties that the specified percentage should be altered or reviewed for the year in question. That is a high hurdle to overcome as it would entail a reading of the Lease which envisaged a revision process each time an allegation of failure to provide a service to a reasonable standard or an omission to provide a service was made.

Alleged failure to comply with request for inspection of facilities for inspection of accounts etc

47. The Respondents' submissions of 22nd August 2022 (paragraphs 9 – 10) refer to correspondence said to have been dated 28 December 2022 (sent in 2021). This is said to have "confirmed the Respondents rights to request a written summery (sic) of cost which make up the service charge" and other unspecified requests. This is alleged to amount to a breach of the Respondents' rights under section 22 of the 1985 Act. None of this correspondence was within the hearing bundle or produced for the Tribunal to consider. Page 40 of the Bundle asserts that Mrs Bartlam had requested a "breakdown" but gives no details of where when, how or to whom the request was made. This means the Tribunal is unable to attach much weight to this evidence.

48. The Applicant's response in submissions of 25th August 2022 was as follows: "The Respondent like all other leaseholders received Annual Audited Accounts, including income and expenditure. Everyone also received a proposed budget for the coming year and a ten-year projection. 2021/22 Annual Accounts are still with the auditors but will be presented at the AGM in October 2022". The Tribunal accepts that evidence which was not the subject of a successful challenge by the Respondents.

49. The Tribunal does not have sufficient material to determine whether or not a breach of the Respondents' rights under section 22 of the 1985 Act has taken place. The Respondents did not appear to dispute that they received the annual accounts (which Mr Warne said were prepared by a qualified accountant). The Tribunal would have expected any challenge to the reasonableness of the sums claimed as service charges to be framed by reference to those accounts, budgets or requests. Mrs Bartlam confirmed that they had sought (and obtained) the advice of Michelmores solicitors some 2 years before the hearing. The Respondents' failure to refer to those accounts or budgets or produce evidence of written requests for inspection, severely undermines the cogency of their challenge to the reasonableness of the service charges for the years in issue on this ground.

Failure to comply with section 21 of the 1985 Act

50. The Respondents' submissions of 22nd August 2022 (paragraph 10) allege breach of section 21 of the 1985 Act. On one reading, this is a

repetition of the earlier complaint about failure to provide facilities for inspection of documents and accounts. However the Tribunal section 21B of the 1985 Act requires that any service charge demand complies with the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257). The Tribunal has not been provided with copies of any service charge demands for the years in issue. The sums which the Tribunal has declared will be payable in this Decision, will become payable when a valid demand or demand (usually an invoice) accompanied by a summary in prescribed form has been provided to the Respondents.

Amounts which will be payable

51. The Tribunal has calculated the service charges which will be payable by the Respondents when valid demand(s) have been served accompanied by the relevant summary of rights and obligations by reference to the specified percentage set out above. It has taken the figure of £3701.41 referred to in paragraph 9 of the Respondents' submissions of 22nd August 2022 as the starting point for the calculation of service charges for the service charge year ending December 2021. The Tribunal's assessment of the specified percentage has been applied to that figure and the other annual service charge figures given in the application, which were not the subject of separate successful challenge.

Hearing and application fee

52. The Tribunal has no hesitation in deciding that it is just and equitable for the Respondents to reimburse the Applicant for the application and hearing fee paid to achieve this hearing and determination. The Respondents' delay in providing details of its case challenging the surveyor's apportionment, failure to comply with directions timeously and failure to provide supporting evidence, contributed to the need for this dispute to be the subject of this determination and further delay in providing this determination.

Form of hearing

53. This has been a remote hearing. The form of remote hearing was Video and audio. A face to face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing.

H Lederman
Tribunal Judge
10th November 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.