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

**Case Reference** : **LON/00AL/LAC/2013/0024**

**Property** : **42 Woodland Heights, Vanbrugh Hill, London SE3 7EL**

**Applicant** : **Mr Mark Dominik Baechli**

**Representative** : **Mr Mark Baechli In Person**

**Respondent** : **Triplerose Limited**

**Representative** : **Mr Daniel Robinson Counsel**

**Type of Application** : **To determine the amount of a variable administration charge – paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.**

**Tribunal Members** : **Judge John Hewitt Chairman  
Mr Philip Tobin FRICS  
MCI Arb  
Mr Richard Percival Solicitor**

**Date and venue of Hearing** : **11 November 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **17 December 2013**

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**DECISION**

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## **Decisions of the Tribunal**

1. The Tribunal determines that:
  - 1.1 The reasonable amount of a variable administration charge for the consent granted by the Respondent to the Applicant in the email dated 27 February 2013 is the sum of £500 + VAT, a total of £600.00;
  - 1.2 The Respondent shall by 5pm Friday 10 January 2014 reimburse the Applicant the sum of £315.00 being the fees paid by him to the Tribunal; and
  - 1.3 The Applicant's application for costs in the sum of £50 is refused.
2. The reasons for our decisions are set out below.

**NB** Later reference in this Decision to a letter and number in square brackets ([ ]) is a reference to the section and page number of the hearing file provided to us for use at the hearing.

## **Procedural background**

3. The Applicant, Mr Baechli, is the current tenant of the property. The Respondent is the current landlord.
4. Mr Baechli made an application pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) for the determination of the amount of a variable administration charge said by the Respondent to be payable by him.
5. Directions were given on 12 September 2013. By and large the parties have complied with those directions.
6. The application came on for hearing before us on 11 November 2013. Mr Baechli appeared in person and presented his own case. The Respondent was represented by Mr Robinson of counsel.
7. The papers indicated that oral evidence was proposed to be given by Mr Baechli and his former partner, Ms Marina Themistocleous, and by Richard Simmons and Mr Simon Levy FRICS on behalf of the Respondent.

At the commencement of the hearing Mr Tobin disclosed that he had previous professional dealings with Mr Levy when Mr Levy acted for the neighbour of Mr Tobin's daughter concerning a party wall dispute.

Mr Robinson disclosed that he had previously been employed as a research assistant at the Law Commission, by whom Mr Percival is employed, but that he had not worked in the same group as Mr Percival.

Neither party wished to make any representations on the constitution of the Tribunal.

8. Mr Robinson took a preliminary point about two email contained in the hearing file which he submitted were inadmissible in evidence being the subject of privilege. The email are at [E6 & E9]. Having adjourned to consider the rival submissions and considered the authorities referred to by Mr Robinson we concluded that the email at [E6] was subject to privilege but the email at [E9] was not. The email at [E9], which is dated 8 January 2013 simply stated that the Respondent would require an administration fee of £2,000 + VAT and the process by which proposed to consider the application for consent made by Mr Baechli.

**The lease and background matters not in dispute**

9. The subject property is a flat located within the ground floor/basement of a Victorian building, now known as Woodlands Heights. Evidently in the early 2000s the building was adapted to provide 42 self-contained apartments with associated parking and amenity spaces. All of those apartments have been sold off on long leases. Most of those leases were registered at Land Registry between April 2005 and April 2007.
10. The subject lease was originally dated 6 June 2006 [A1] and was granted by Woodlands Property Management Limited to Jacqueline Linda Selby for a term of 999 years commencing on 1 January 2004 at a ground rent starting at £250 per year and increasing during the term and on other terms and conditions therein set out.
11. Clause 6.8 of the lease [A13] which is a covenant on the part of the tenant is in the following terms:

*“not to cut maim or injure the Structural Parts and not to make any structural alterations or additions to the Apartment whatsoever and not to make any internal non-structural alterations to the Premises without the prior written consent of the Landlord such consent not to be unreasonably withheld or delayed provided that any requisite statutory or public authority consent has been obtained”*

The lease defines ‘Apartment’ as being:

*“Apartment number 42 Woodland Heights ... described in Part 1 of the First Schedule”*

So far as material the First Schedule provides that the apartment includes:

- “3. *the linings of the and surface finishes (including lath plaster and board) of the internal non-load bearing walls*
- 4. *the linings and surface finishes (including lath plaster and board) of the ceilings together with the boards and surface finishes and screed of floors (but excluding the floor and ceiling joists beams or slabs) including all sound attenuation materials and floor coverings*
- 5. ...

*BUT WHICH EXCLUDES all Structural Parts and the walls (other than linings and surface finishes) which are load bearing or enclose the Apartment and Service Installations not exclusively serving the Apartment”*

The lease defines ‘Structural Parts’ as being:

*“ the foundations of the Building, the main structural frame and the exterior of the Building including all exterior walls, window frames and doors to the exterior and all patios roof terraces and balconies (not included in any demise) and all the Building’s load bearing columns and walls any party walls, the structural parts of the floors and ceilings and the timbers stanchions and girders and roofs of the Building (at whatever level) and floor slabs”*

- 12. Although in clause 6.8 there is used the expression “Premises” that does not appear to be a defined term of the lease. Given the context in which it is used we infer that it refers to the demised premises which are, of course, in nature and extent the same as the Apartment.
- 13. On 26 July 2010 the Respondent was registered at Land Registry as the proprietor of the freehold interest. Day to day management of the development and the provision of services and the collection of service charges is evidently undertaken by a company which is or may be controlled by the lessees, or a majority of them.
- 14. The Respondent has appointed an agent, Avon Estates (London) Limited (Avon), to collect the ground rents on its behalf and to act as it agent on matters arising directly between the freeholder and the lessee. The principal shareholders and directors of the Respondent are Mr Israel Moskovitz and Mrs Chavi Moskovitz. They are also both officers of Avon. Both of those companies and other group or related companies carry on business from premises at Timberwharf Road, London N16 6DB.

15. It appears that the original lessee, Ms Selby, may have purchased leases of several apartments in the development, including number 41. It also appears that there may have been a mix up or error in the lease as originally granted and the wrong lease plan was appended to it. Apartment 42 was marketed for sale by Ms Selby and Mr Baechli took an interest in it and agreed terms. His solicitors noticed the incorrect lease plan and required the vendor to take steps to correct it. A deed of variation to do that is at [A45]. It was made between Triplerose Limited as landlord and Jacqueline Linda Selby as tenant. The copy provided to us is undated. The substituted lease plan shows a change in the number of the apartment. However, the layout of the apartment is not an accurate representation of the existing layout and it seems it may never have been.

The register maintained by Land Registry shows that because the demise was altered the deed of variation operated as a surrender of the original lease and the grant of new lease on the same terms as the original, save as varied. The new lease is registered at Land Registry with Title Number TGL367670. It records that the (new) lease dated 28 May 2012 was registered on 5 September 2012 with Mark Dominik Bachli being the registered proprietor. (Mr Baechli will note that his surname has not been correctly recorded on the register and he may wish to have this error corrected at some convenient time).

16. As originally constructed the subject flat comprises some 92 Sq M (990 Sq Ft) laid out to provide a reception room, kitchen, shower room, and two bedrooms, the master one of which is en suite. Mr Baechli wished to carry out alterations to sub-divide the master bedroom so as to create a third bedroom. Mr Baechli was aware that he would require landlord's consent to the proposed works. Although the lease does not make express reference to payment of fees for such consents as may be required Mr Baechli recognised that he would have to pay the reasonable professional fees which the landlord may incur in connection with an application for consent.

**The application for consent and how it was dealt with.**

17. We heard oral evidence from:

Mr Baechli. His witness statement is at [D12] Mr Baechli was cross-examined by Mr Robinson and he also answered questions put to him by members of the Tribunal;

Ms Themistocleous. Her witness statement is at [D16]. Ms Themistocleous was not cross-examined. Mr Robinson did not wish to challenge any of her evidence;

Mr Simon Levy. His witness statement is at [D19]. Mr Levy was cross-examined by Mr Baechli and he also answered questions put to him by members of the Tribunal;

Mr Richard Mark Simmons. His witness statement is at [D31]. Mr Simmons was cross-examined by Mr Baechli and he also answered questions put to him by members of the Tribunal.

18. Having regard to the oral and documentary evidence before us we make the following findings of fact:

18.1 The issue of consent with which are concerned was dealt with by Avon as agent for and on behalf of the Respondent. The transaction was handled by Mr Richard Simmons. Mr Simmons gave evidence and he told us that he reported to and took instructions from Mr Moskovitz.

18.2 By letter dated 4 October 2012 [E1] Mr Baechli wrote to Ms Bella Sharer at Avon [E1]. He informed Mrs Sharer that he wished to make some internal alterations to the layout of the flat and he sought the landlord's written consent in accordance with clause 6.8 of the lease. He enclosed a floor-plan [E2]. Copyright in this drawing is claimed by Jamesis Limited 2011 and we infer that it was drawn up by that company. The floor-plan was provided to Mr Baechli by the selling agent when he purchased the apartment. The floor-plan had been annotated by Mr Baechli using different coloured lines which were explained in his letter as:

Red lines: indicate where he proposed to construct internal partition walls;

Blue line: indicates where he proposed to make a small opening in an existing wall to create a passageway; and

Green lines: indicate where he proposed to create doorways in existing walls.

In cross-examination at the hearing Mr Baechli accepted the following annotations to the floor-plan:

'A' A new doorway to be created from the reception room into the master bedroom;

'B' A new doorway to be created in the new internal partition wall to be erected in the corner of the reception room;

'C' The existing doorway into the master bedroom;

'D' A new doorway to be created from the hall into the reception room; and

'E' The new internal partition wall to divide the master bedroom into two smaller bedrooms.

18.3 By email dated 10 October 2013 [E3] Mrs Sharer confirmed an earlier telephone conversation that taken that place to the effect that:

*"Before any work can take place our in-house surveyor will need to inspect the property for which there is a fee charge of £500 + VAT. Cheques should be made payable to [Avon] Upon receipt of clear (sic) funds we shall arrange a suitably convenient time to inspect the property."*

The reference to 'our in-house surveyor' was a reference to Mr Simmons.

18.4 By email dated 29 October 2012 [E4] Mr Simmons wrote to Mr Baechli and said, as far as material:

*"I have been passed your details from Mrs Sharer, as I understand you would like to carry out some alterations to your property. In response to your queries the £500 + VAT includes:*

- 1. A representative of the Freeholder to visit the property for a consultation to see what alterations are to be made;*
- 2. Look at your proposal and the consideration of the lease;*
- 3. Seek legal and professional advice;*
- 4. Respond back with the Freeholder's decision.*

*No official drawings or report shall be given to yourself, the report is entailed for the Freeholder only and for them to make a decision. Please let me know when it would be viable to visit the property.*

*I look forward to hearing from you.*

*Kind Regards*

*Richard Simmons  
Head of Developments  
Avon Group of Companies"*

- 18.5 By email dated 3 December 2012 [E5] Mr Baechli replied to Mr Simmons as follows:

*“Dear Mr Simmons*

*Many thanks for your email.*

*We had the building officer from building control at our flat today to look at the internal alterations that we plan and he said that everything looks fine to go ahead. Therefore we would now like to have a representative from the freeholder to come to our flat so that we can start building work in the next few weeks.*

*We are available any day next week. Please let me know when and who will come in order to look at our flat. Also, could you or Mrs Sharer send me the bank details in order to pay the £500 + VAT.*

*Thanks and kind regards.”*

- 18.6 The fee charge of £500 + VAT which equates to a total of £600 was paid to Avon by Mr Baechli.

- 18.7 Mr Simmons visited the subject apartment on Monday 10 December 2012. When Mr Simmons arrived Ms Themistocleous was in the property on her own. Ms Themistocleous explained to Mr Simmons the nature of the proposed works. Mr Baechli then arrived home and joined in the discussion. Mr Simmons stated that everything seemed very straightforward and was unlikely to cause any problems, the alterations were small and did not have any structural impact, and that he would speak with the freeholder.

Mr Simmons was at the property for about 15 minutes and did not take any measurements or photographs.

- 18.8 Following that visit Mr Simmons made a written report to Mr Moskovitz. Mr Simmons had not disclosed the report because he considered it to be private.

- 18.9 In his evidence Mr Simmons was at pains to stress that he is not a chartered surveyor. We accept that. Nevertheless we find he is a trusted and senior member of staff who has property experience and who regularly makes reports and recommendations to Mr Moskovitz who acts on them as he sees fit. Mr Simmons said, and we accept, that when Mr Moskovitz decides that a consent shall be granted he, Mr



Moskovitz, also decides the amount of the administration fee that will be imposed.

18.10 There then followed an exchange which we held was marked 'Without Prejudice' and which was not admissible in evidence as it was the subject of privilege.

18.11 By email dated 8 January 2013 [E9] Mr Simmons wrote to Mr Baechli in the following terms:

*"Thank you for your email with the attached letter dated 2nd January 2013.*

...

*We have been advised that we have to be careful before giving consent and will require you to provide us with the planning permission and building regulation from the Council which you would have to obtain before carrying out such works.*

*We will require an administration fee of £2,000 + VAT to deal with the following:*

- 1. Writing to all Leaseholders to see if they raise any objection to us granting consent;*
- 2. Consider the Council's planning permission;*
- 3. Consider the building regulation;*
- 4. Obtain legal advice in consideration of the lease before granting consent.*

*I look forward to hearing from you."*

In relation to the above at the hearing the proposal to write to all 41 lessees to see if they had any objection to the Respondent granting consent was withdrawn. Further it was not disputed that the proposed works did not require planning permission and that Building Control would not issue any documents before works commenced.

18.12 Mr Baechli replied by email dated 14 January 2013 [E10] and sought a clear breakdown of the administration fee of £2,000 + VAT that the Respondent sought to impose.

18.13 By email dated 28 January 2013 [E13] from Mr Simmons to Mr Baechli he said:

*"Dear Mark*

*I have spoken with the Freeholder and their opinion remains the same. Unless the fee is paid to write to*

*leaseholders and obtain legal advice in consideration of the lease and looking at the proposed plans and deal with the administration they will not grant you consent.*

*I look forward to hearing from you.”*

18.14 By email dated later on 28 January 2013 [E14] Mr Baechli again pressed for a breakdown of the fee of £2,000 + VAT. He also sought an explanation as to why these additional charges had not been mentioned at the outset and asserted that he had been led to believe that the payment of £600 he had made was all that would be required.

18.15 In a reply to that Mr Simmons said in an email dated 8 February 2013 [E15]:

*“Dear Mark*

*I do believe that I answered your email from the 28<sup>th</sup> Jan on the same day at 16:34. I can only report back to you the Freeholder’s decision and as I stated in my previous email that unless the fee is paid, which is there (sic) charge for the administration and time that unless this process has and will take place they will not be in a position to grant consent.”*

18.16 There then followed a telephone conversation between Mr Baechli and Mr Simmons and by an email to Mr Baechli dated 27 February 2013 Mr Simmons said:

*“Dear Mark*

*In response to your questions you raised in our telephone conversation, which I wrote down, I have set them out with the response to make the decision clear for everyone’s behalf.*

***Whose authority is it to charge £2,000?***

*The Freeholder is allowed to charge an administration fee for the consent. You are correct that consent cannot unreasonably be withheld. The Freeholder is not withholding consent and is willing to give consent as long as his ‘costs’ are paid for.*

***Why was this not mentioned when asked for £600 + VAT?***

*The £600 + VAT was purely for the inspection /consultation at the property and the other points set out to you in earlier. The ‘consent’ you were asking for was not as simple as just putting up a wall. You will be*

*creating a third bedroom, a new hallway, decreasing (slightly) the size of the lounge and creating a new opening from the new bedroom to the hall way. All of this has to be taken into consideration which takes time and administration. Our legal department had to spend much time looking at the lease with all the changes that would be occurring in the property.*

*When you raised the issue that you felt the original fee was too high, this was taken into consideration by the freeholder and they dropped their fee significantly.*

*Unfortunately this has taken up considerable time and administration on our behalf and unless the fee is agreed to we will not be able to continue with emails or discussions. We would like to come to an amicable solution without any bad feeling from either party.*

*I look forward to hearing from you.”*

18.17 In a reply dated 20 May 2013 [E17] Mr Baechli continued to complain that he had not been given a breakdown of the administration fee of £2,000 + VAT and he again asserted that it was an unreasonable fee.

18.18 Mr Simmons replied on 10 June 2013 [E18] and said:

*“Dear Mark*

*Thank you for your email.*

*I believe I responded to your questions in our previous correspondence.*

*I am afraid our position has been made clear many times., this has involved a lot of time, contrary to how you may feel and once the works are finished we may have to have a survey carried out to make sure we are satisfied with the changes made together with the legal and admin costs involved in this consent. Once again we are not withholding consent.*

*If you wish to take legal action please serve any notices etc. to our office at Avon House ...*

*Kind regards”*

19. We observe that in the email at [E16] Mr Simmons makes reference to the Respondent’s legal department “...had to spend

*much time looking at the lease with all the changes that would be occurring in the property. “*

Taking that email in context and having been reminded that the Respondent was not entitled to withhold consent unreasonably, we find that Mr Simmons made plain to Mr Baechli consent was not being withheld, it was being granted but the Respondent wanted an administration fee of £2,000 +VAT. We are reinforced in this conclusion by the email at [E18] by the reference to “*this consent*” and the further steps the Respondent might have to undertake in connection with the proposed works.

We bear in mind that at this point in time the Respondent had received a report from Mr Simmons, had evidently decided to grant consent, the Respondent’s legal department had considered the lease and the proposal and evidently had not raised any issues so that the only issue between the parties was the amount of the any further administration fee payable by Mr Baechli.

We are further reinforced in that conclusion by the opening words of the Respondent’s statement of case – see paragraph 20 below.

In these circumstances we find that consent has been given and that the issue for us to determine, pursuant to paragraph 5 of Schedule 11 to the Act is the amount of a reasonable fee for that consent.

### **The case advanced by the Respondent**

20. The Respondent’s statement of case addressed to Mr Baechli is at [D1 and D3]. It starts with the words:

*“Further to the directions given by the first tier tribunal on 12 September 2013 we now set out an itemised statement of our charges in respect of the grant of consent to the alterations sought to be done yourself”*

The statement of case then goes on list those as being

Avon’s charges as managing agent	£ 500 + VAT
Legal fees – Black Graf (Estimate)	£1,200 + VAT
Fees of Mr Simon Levy – Surveyor	£1,650 + VAT
Total	£3,350 + VAT

A breakdown dated 1 October 2013 showing how Black Graf’s fee has been estimated is at [D5].

A breakdown dated 2 October 2013 showing how Mr Levy’s fee has been arrived at is at [D4].

Mr Baechli's response to that statement of case is dated 16 October 2013 [D6].

21. In the event the Respondent did not instruct Black Graf to act for it in relation to these proceedings but instructed Conway & Co. By letter dated 25 October 2013 Conway & Co notified the Tribunal that they had been instructed to act for the Respondent. They asserted that some of the proposed works may involve structural alterations or additions; against which there is a complete prohibition and that the Respondent was entitled (but not obliged) to grant a consent and that the terms of any such consent were to be freely negotiated and would not amount to a variable administration charge within the meaning of Schedule 11.
22. At the hearing on 11 November 2013 the Respondent sought to maintain that position. It relied upon the evidence of Mr Levy and Mr Simmons.
23. Mr Levy's witness statement dated 25 October 2013 is at [D19]. It has been amended by an email dated 6 November 2013 which we have paged numbered [D30(a)-(d)].

Mr Levy sets out what he considers might be elements of the proposed works which might affect the structure.

Mr Levy suggests that the lease plan [A47] is a more reliable drawing of the subject apartment and he considers that it might show structural elements. By way of an example he suggested a small square at point A on the annotated drawing there might be a structural column but he would want to verify that by a site visit. He also suggested that if masonry walls were cut into to create new doorways it would be necessary to install a structural lintel to support the wall. He also suggested that if the floors of the apartment were of timber it would be advisable to ensure the new partitioning rested on an advanced building joist and if the joists were at 90° he would suggest inserting noggins to stiffen the joist structure to ensure that it was not over stressed. Again he said that it would be necessary to undertake a site inspection before reaching a considered view. In cross-examination Mr Levy accepted that the floor of the apartment might be of concrete construction and he also accepted that the apartment was constructed out of the basement which had formerly been a cellar. He also said that he had had some bad experiences with building control officers and he had little confidence in them, and therefore discounted the reported view of the officer who had attended the apartment that the proposed works did not involve structural alterations.

24. Mr Simmons also gave evidence. His witness statement is at [D31]. Mr Simmons is senior employee of Avon and holds the

position of Head of Developments. He has experience in the property sector and in property management and development. Mr Simmons reports directly to Mr Moskowitz and regularly makes recommendations to him. Mr Simmons was unable to give us a convincing explanation as to why if, in February 2013 the Respondent was willing to grant consent to the proposed works in return for a fixed fee of £2,000 + VAT, it was now suggested that there was not to be a fixed fee but an estimate of fees which stood at £3,350 + VAT. He also said that Black Graf always acted for the Respondent on the grant of such consents and usually also advised on whether or not consent should be granted. That evidence did not square with the assertion that the Respondent's legal department had considered and advised on the matter. Further, Mr Simmons was unable to explain to us why the Respondent had left it so late to obtain a fee quote from Black Graf. It had not been sought until October 2013, well after the commencement of these proceedings.

Similarly, if it had always been the intention to instruct Mr Levy, Mr Simmons was unable to give a satisfactory explanation for his visit and inspection on 10 December 2012 and the subsequent intimation that consent would be granted and that the fee for it was £2,000 + VAT. Mr Levy's fee statement was also not sought until October 2013.

Mr Simmons confirmed that the only breakdown of the fee of £2,000 given by the Respondent were those that set out in the email dated 8 January 2013 [E9] and the email dated 27 February 2013 [E16].

#### **Final submissions and discussion on them**

25. Both parties made final submissions to us.
26. Mr Robinson took us carefully through the material provisions of Schedule 11 to the Act. He submitted that the Tribunal did not have jurisdiction to determine the application. He said that jurisdiction arose where a charge was payable for a consent to be given whether or not subject to a proviso that such consent was not to be unreasonably withheld. He said that it does not apply to a case where a tenant seeks a variation of a lease. He said that in those circumstances the parties are free to negotiate terms. He cited *Mehson Property Co Limited v Pellegrino* [2009] UKUT 119 (LC) in support. We would not disagree with that as a general proposition. In the present case Mr Robinson submitted that the proposed works included structural alterations such that the Respondent was not obliged to give a consent; there being an absolute prohibition against such alterations.
27. We reject that submission for several reasons.

28. First we have found as a fact that Mr Baechli made an application to the Respondent for a consent pursuant to clause 6.8 of the lease. Mr Simmons, who is an experienced property manager, inspected the apartment; considered the proposed works; made a recommendation to the Respondent and the Respondent has stated that consent is granted and that it requires an administration fee of £2,000 + VAT for that consent.
29. Secondly there was no evidence upon which we can rely with confidence that the proposed works included structural alterations. At best Mr Levy could only suggest they might. Mr Levy said he had not made a site inspection and thus such views as he might have tentative only and would need to be confirmed by a site visit. Mr Levy was a witness of fact, not an expert witness. Clause 6.8 prohibits the cutting maiming or injuring of the Structural Parts. That is a defined term. There was no evidence before us that such cutting or maiming as may be proposed was to that part of the premises within the definition of Structural Parts. Similarly there was no evidence before us that the proposed works involved structural alterations or additions to the Apartment.
30. Next Mr Robinson submitted that the estimate of costs now provided by the Respondent are reasonable in amount. We reject that submission. It is based on the premise that there is a pending application before the Respondent and what might be a reasonable course for the Respondent to take and the reasonable costs of so doing. That is not the situation here. The Respondent has already carried out such technical and legal appraisals as it considered appropriate and concluded that consent was to be given, has made plain that consent is not being withheld and is demanding a fee of £2,000 + VAT for that consent.
31. Thus the focus is not on what the Respondent might reasonably do in the future, the focus is on what it has done in the past and whether a further charge of £2,000 + VAT has been reasonably incurred and is reasonable in amount. We have found as a fact that Mr Simmons made an inspection, reported to Mr Moskovitz and that Mr Moskovitz made the decision to grant consent. A charge of £500 + VAT was imposed at the outset. In Mr Simmons' email dated 29 October 2012 [E4] he stated that that fee encompassed:
1. *A representative of the Freeholder to visit the property for a consultation to see what alterations are to be made;*
  2. *Look at your proposal and the consideration of the lease;*
  3. *Seek legal and professional advice;*
  4. *Respond back with the Freeholder's decision.*

*No official drawings or report shall be given to yourself, the report is entailed for the Freeholder only and for them to make a decision. Please let me know when it would be viable to visit the property.*

That is exactly what occurred. Mr Simmons visited, he reported, the Respondent sought such legal advice as it required, Mr Moskovitz made a decision Mr Simmons responded back to Mr Baechli with that decision.

32. Drawing on the accumulated experience and expertise of the members of the Tribunal we find that a reasonable fee for those services carried out in-house by persons experienced in property management and development is the sum of £500 + VAT. We find that having been paid the charge for that exercise it is wholly unreasonable for the Respondent to impose a further charge of £2,000 + VAT for services or costs it has failed to explain, let alone justify. Such limited matters as it sought to rely upon are set out in Mr Simmons' email dated 8 January 2013 [E9]. The Respondent has, effectively, withdrawn items 1, 2 and 3. As to item 4, in the event no external legal advice was sought and although there has been reference to advice from the Respondent's legal department, no evidence as to the nature and cost of such advice has been given by the Respondent.
33. It follows from this finding that we also reject Mr Robinson's final submission that the costs to date are only estimates and that the Respondent is entitled to levy further charges in due course.
34. We have no doubt that what has occurred here is that the Respondent made the decision to grant consent to Mr Baechli to carry out the proposed works and sought to recover a further fee of £2,000 + VAT from Mr Baechli. Mr Baechli pressed hard for details to justify such a charge and the Respondent was simply unable to do so. Mr Simmons tried hard to deflect Mr Baechli's attention but he failed to do so. In the proceedings before us the Respondent also failed to show what was proposed to be covered by the further £2,000 + VAT fixed fee which the Respondent sought to impose. The Respondent then changed track and suggested that the charge demanded was to be regarded as an estimate only and sought to set out what further costs it might incur if it were to consider the application for consent afresh.

#### **Costs and reimbursement of fees**

35. At the conclusion of the hearing Mr Baechli made applications for costs and reimbursement of fees. He claimed costs of £50 being postage and stationery. The fees paid by him to the Tribunal amounted to £315.00.



36. Mr Robinson opposed the application and suggested that costs and fees should follow the event.
37. We find that it was entirely reasonable that Mr Baechli should bring these proceedings and we consider it just and equitable that the Respondent should reimburse him the £315.00 he has incurred. We have therefore made an order pursuant to Rule 13.
38. We have rejected Mr Baechli's application for costs because although we have found the Respondent's case to be without merit it was not unreasonable for the Respondent to defend the proceedings. It had an arguable case even though, in the event, the arguments were not successful.
39. The parties may wish to note as regards costs the Tribunal has a wide discretion under Rule 13. The starting point will normally be that each party shall be responsible for its own costs. A costs order will generally only be made where a party has acted unreasonably in bringing, defending or conducting proceedings.

**The law**

40. The statutory provisions we have taken into account in arriving at our decision are set out in the Schedule below.

Judge John Hewitt

**The Schedule**

**Commonhold and Leasehold Reform Act 2002**

**Schedule 11**

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

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

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

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

(a) specified in his lease, nor

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

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

**2**

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

**3**

(1) Any party to a lease of a dwelling may apply to the appropriate tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(3) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

4 ...

5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).