



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

Case Reference: **BIR/44UB/LIS/2022/0003
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Property: **(1) The Mews and (2) The
Cottage, St Pauls House,
Coleshill, Birmingham, B46
1AY**

Applicant: **Rookhill Properties Ltd**

Respondent: **Michael Plomer-Roberts**

Type of Application: **s.27A Landlord and Tenant Act
1985
s.20C Landlord and Tenant
Act 1985
Paragraph 5A Schedule 11
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members: **Judge C Kelly (Chair)
Mr D Satchwell**

Date of Decision: **7 November 2022**

Date Decision issued **16 December 2022**

DECISION

REASONS FOR DECISION

Background

1. These are proceedings brought by way of application by Rookhill Properties Limited (“the Applicant”) against Mr Michael Plomer-Roberts trading as “Michael Roberts Property” (“the Respondent”) in respect of service charges and other issues pertaining to matters at Number 1 High Street, Coleshill, B46 1AY (“the Estate”).
2. Rookhill Properties is the owner of The Mews (aka Apartment 2) and The Cottage, both situated within the Estate (“the Properties”). The Applicant was represented by Mr Mahon of counsel and the Respondent, by Dr Tromans of counsel.
3. The application challenges the service charge rendered by the Respondent for the service charge years 2015-2016, all the way through to 2020-2021 and in respect of the service charge budget for the year 2021-2022. The application itself was made by way of application notice, signed by both Mr Andrew Gregory and Neil Jewitt, directors of the Applicant, on 3 February 2022.
4. Although issues for determination were described slightly differently by the parties, they are in essence as follows:
 - a. whether the Respondent sent service charge demands to the Applicant within the relevant service charge years, or whether they were sent in one go in 2021 (**Issue 1**)
 - b. is the Respondent entitled to charge a service charge, for the service charge years concerned, in circumstances where the Applicant maintains that there had been “*no formal agreement*” and where the parties should have agreed the “Initial Estimated Service Charge” for the first year as per the terms of the Lease (**Issue 2**);
 - c. whether there was a meeting between those representing the Applicant and the Respondent in 2009, at which an agreement was reached that no contribution was required towards the service charge by the Applicants given that they were entitled to undertake their own maintenance of the Properties pursuant to such agreement (**Issue 3**);
 - d. whether the Respondent is entitled to recover, as matter of construction of the Lease and on the basis of the sums being reasonable, monies demanded in respect of the supply of gas to the Properties up until the point of the installation of a new gas meter which provided for direct billing between the Applicant and third-party utility providers (**Issue 4**);

- e. whether the Respondent is entitled to recover for sums in respect of the insulation of gas meters providing for a direct metering between third party suppliers and the Applicants (**Issue 5**);
- f. whether the insurance costs charged by the Respondent in the service charge years 2019/2020 and 2020/2021 are payable and reasonable (**Issue 6**)

Procedural Matters

- 5. Regional Judge Jackson provided directions dated 22 March 2022. The directions required, amongst other things, the following key steps to be undertaken:
 - a. that the Respondent provide, by 13 April 2022, copies to the tenant of all relevant service charge accounts and estimates for the years in dispute (audited and certified where so required by the lease), together with the demands for payment and details of any payments made;
 - b. by 29 April 2022, the Applicant to send to the Respondent, and the Tribunal, a schedule in template form attached to the directions, setting out each item and amount of service charge in dispute, the reasons why the amount is disputed and the amount, if any, that the Applicant will be willing to pay for that particular item;
 - c. by 13 May 2022, the Respondent was to send to the Applicant and the Tribunal, responses to the relevant schedule prepared by the Applicant, containing his comments to the specific issues raised and thereafter providing copies of all relevant invoices and documentation relating to those matters.
- 6. Schedules for each of the service charge years were prepared by the Applicant, in the form directed, but no specific items of expenditure were identified as being challenged and reasons for challenge provided other than a general observation that they did not seem to accord with the service provided, save in respect of the following matters:
 - a. charges for gas usage by tenants, in the sum of £4,697 (service charge year 2020/2021);
 - b. the insurance contribution of £220.71 (service charge year 2020/2021); and
 - c. the insurance contribution £200.78 (service charge year 2021/2022).
- 7. In addition, in each of the schedules, with reference to the £1,800 service charge levied in respect of the relevant year, the Applicant said that this

related to services which were not supplied for the benefit of the residential properties but instead for the commercial premises.

8. The matter came before the Tribunal for final hearing on 20 June 2022. It was apparent at the outset of that hearing that it was inappropriate to proceed on the basis that a substantial number of the documents that had been directed to be provided, had not been so provided, and that issues were raised by the Applicant as to the authenticity of a number of documents said to be relied upon by the Respondent. Accordingly, directions were given, adjourning the matter for a further date, directing that service charge accounts be provided together with demand letters since 2006 and permission was given for further evidence to be provided by the parties, such permission being specifically limited to issues of authenticity of those documents disclosed as per the directions given – essentially, these related to service charge demand issues and associated documents.
9. Witness evidence was provided by the Respondent, limited to the issues of authenticity, dated 18 July 2022. The Applicant, however, provided a witness statement given by Mr Gregory dated 18 July 2022, addressing issues of authenticity, but going much further and addressing, for the first time, a number of specific entries within the service charge breakdowns that were then challenged on the question of reasonableness for each of the relevant years, arguing that the said sums were excessive and certain works were not carried out.

Preliminary issues

10. The matter returned before the Tribunal on 13 September 2022 at an in person hearing for 2 days, with the second day being used for submissions via MS Teams.
11. The Tribunal raised its concern that the evidence provided by Mr Gregory dated 18 July 2022 appeared to go beyond the permission given by the directions of 20 June 2022. The statement raised issues not only in relation to the reasonableness of specific individual items of service charge, but also compliance with the relevant requirements concerning consultation under s.20 of the Landlord and Tenant Act 1985, suggesting that works carried out that would result in a charge to the tenant in excess of £250 and any given service charge year should not be recoverable.
12. Dr Tromans, appearing for the Respondent, had done her best in preparing a skeleton argument on the basis that she was able to argue that a number of the items referenced were not qualifying works, for the purposes of the service charges (Consultation Requirements) (England) Regulations 2003) (“the Regulations”), but she was unable to really go beyond that because The Respondent had not provided evidence relating to such matters as these issues were not raised in the statements of case. Dr Tromans was unable to address whether any specific items were reasonable in amount and properly incurred, as there was no evidence on

such issues, evidence as to compliance with any of the consultation requirements. Dr Tromans was essentially handicapped because there was no evidence for her client addressing these specific issues, which was perhaps unsurprising, given that they were raised only in the second witness statement of Mr Gregory dated 18 July 2022.

13. Having sought submissions from both parties, the Tribunal queried with Mr Mahon whether he had intended to pursue at the hearing as to reasonableness in relation to the specific expenses by references to the reasons set out, for the first time, it witness evidence. Mr Mahon confirmed that in light of the Tribunal's concerns that these were issues raised late and appeared to potentially prejudice the Respondent, the Applicant would abandon those points, and therefore no formal determination was required by the Tribunal to address the matter. However, had Mr Mahon have pursued the matter and requested the Tribunal to determine those issues, it would have declined to do so, given the prejudice the Respondent by the absence of prior notice that these issues being set out in the statements of case in respect of which evidence was then provided.
14. Similarly, although not specifically abandoned by Mr Mahon, the issue arose as to whether matters concerning compliance with s.20 of the 1985 Act ought to be entertained at the final hearing. The Tribunal concluded that it would be inappropriate to do so, because again, no prior notice of the issue had been given other than in the evidence from Mr Gregory. There was one exception to this, however, which related to the gas installation charges, given that they were clearly in issue from the outset.

General Legal Issues

15. Before turning to the specific issues in this case, it is useful to have in mind the relevant legal provisions.
16. There are issues in this case concerning the payability and reasonableness of service charges; the Tribunal has jurisdiction to determine such issues by section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), such being in the following terms:

"27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

17. Service charges are defined by s.18 in the following terms:

18.— Meaning of “service charge” and “relevant costs” .

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose—

(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

18. Any service charge can only be recovered if it is reasonable. Section 18 defines reasonableness in the following way:

“19.— Limitation of service charges: reasonableness.

(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; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after

the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

19. The first determination when assessing reasonableness is therefore to determine whether the costs associated with the relevant expense have been reasonably incurred. The initial focus is not on the amount of the expense, this comes at the second stage of the test.
20. When assessing whether the costs have been reasonably incurred, two tests must be applied:
 - a. Was the landlord’s decision-making process appropriate and properly effected in accordance with the terms of the lease and reasonable under the provisions of the 1985 Act and proper practice;
 - b. Was the amount incurred, to which the tenants are required to contribute, reasonable as distinct from being out of line with the market norm.

(Forcelux Ltd -v- Sweetman and Parker¹)

21. Where evidence exists that the costs of works is unreasonably high, it is for the landlord to show that the costs were reasonably incurred. The Tribunal, being a specialist judicial body, is entitled to use its expertise in testing the evidence before it and making a determination on issues of reasonableness.

Specific Issues

22. Turning then, to the specific issues in these proceedings, the parties’ positions on the Tribunal’s decision in respect of each of them.

Issue 1 - whether the Respondent sent service charge demands to the Applicant within the relevant service charge years, or whether they were sent in one go in 2021 and back-dated

23. It was the Applicant’s position that the service charge demands rendered by the Respondent had been provided for the first time in December 2021. The Applicant claimed not to have received them before December 2021.
24. The demands provided in the bundle were all dated 9 December 2021. Mr Gregory’s evidence on behalf the Applicant, as set out in his witness statement and for the most part in cross-examination, was that service charge demands, and subsequent breakdowns and statements of tenant’s rights, were not provided with the demands in respect of each of the relevant service charge years, or certainly within the period of 18 months following the date upon which the relevant expense was incurred.

¹ [2001] 2 EGLR 173, cited with approval by the Court of Appeal in *Waalder v The London Borough of Hounslow* [2017] WWCA Civ 45.

25. Mr Gregory's position was to dispute the authenticity of the service charge demands, although in reality, it transpires he was not disputing the authenticity of the documents provided in bundle, in the sense that they purported to be documents dated 9 December 2021, but rather, he was saying that he had not been provided with demands prior to that date, together with the statement of tenants' rights until December 2021 or, at the least, within 18 months of the relevant expenses being incurred such that as a consequence, s.20B(2) of the 1985 Act operated to prevent their recovery as being demanded more than 18 months following the expense being incurred.
26. The Respondent's evidence was that annual invoices in respect of the service charges were sent each year at the relevant time since 2009. However, his evidence was that the version provided in the bundle were generated from new software that he was using, as it was no longer possible to access the invoices rendered from the time from the software then used and that these demands were re-rendered from the present software. Further, Mr the Respondent gave evidence that he had personally posted the demands, together with the statement of tenants' rights, each service charge year. He said that his accountant prepared year end accounts based on the indebtedness due.
27. Mr John Prince, a chartered accountant, of Prince Chartered Accountancy gave evidence to the Tribunal that he had been acting for the Respondent since 1992, and that the service charge had been invoiced annually since 2009. He additionally confirmed that the Respondent had used three types of accounting software over the last 30 years, being cashflow manager, Sage and Iris Kashflow. Mr Prince's evidence was that the change from Sage to Iris Kashflow was made in 2016.
28. The Tribunal found Mr Prince to be a straightforward and honest witness, who was not shaken in any way by any part of the cross-examination from Mr Mahon. Mr Prince readily conceded that there was no evidence from him specifically as regards to the actual service of the service charge demands themselves, in the sense that he could not say they were sent out, and that the best he could do was say what the position was on the accounts which recorded the debts said to be due within the demands the Respondent says he posted.
29. Mr Prince noted that his aged debtor list, included in the bundle, showed outstanding debtors for Rookhill Properties at £14,979.38 as at 5 April 2017. Mr Prince's evidence was that that sum reflected the amounts set out in invoice 270, which is an invoice recording the transfer of the outstanding debt, from the previous software system, as at the start of the new tax year in 2017. That invoice comprises all of the outstanding service charge from 2009/2010.
30. Ms Louisa Barton gave evidence to the Tribunal for the Respondent. Her evidence was focussed on issue of the switch-over of the software and that she had attempted to secure the original demands from the software used

at the time but which she had been unable to secure. The Tribunal found Ms Barton to be a straight-forward and honest witness and accepts her evidence.

31. Mr Gregory provided evidence in his witness statement that he disputed the authenticity of a number of documents, including, the letters of 15 September 2010, 4 August 2011, 3 October 2012, 14 December 2012, 22 March 2013, 8 October 2013 and 27 November 2020. These were all demand letters said to have been sent by the Respondent insisting on payment of the outstanding service charge at the relevant time. If these letters were created on or around the dates on them, it would suggest that they were likely sent too, at around that time, and they were sent on the back of demands previously made for service charge.
32. During the course of Mr Gregory's cross-examination, an iPad was produced to him which had the relevant letters set out in paragraph 31 above, accessible on it. They were in a cloud-based service. A number of specific letters were put to Mr Gregory on the iPad, enabling him to open them, and review their properties and, in particular, their creation and modification dates. Those of 4 August 2011, 3 October 2012 and 8 October 2013 were each specifically put to Mr Gregory, and having accessed them whilst giving evidence, he accepted that he could see that the properties for the files showed a creation date of the date of the letters themselves.
33. The Tribunal found the Respondent's evidence to be preferable to that of Mr Gregory, in relation to the demands being sent out, not least because of the difficulty in accepting Mr Gregory's position that no demands had been sent at all. The existence of chasing letters, being created when they were, suggests they were sent out, and indeed, the finding that we make is that they were indeed sent out in response to a failure to pay the demands sent out by the Respondent.
34. The Tribunal has no difficulty in thus concluding, as it does, that the demands sent out were, as per the Respondent's evidence accompanied by the relevant statement of tenants rights.
35. Accordingly, the Tribunal is satisfied that the legislative requirements in respect of the form and content of the service charge demands, together with the statement of tenants' rights, have been met. As the demands were thus sent out each year and within the 18-month period permitted by statute of the expenses being incurred, these were not well founded grounds upon which to resist payment of the service charge demands now relied upon by the Respondent.
36. However, there is one further issue which arises. The Respondent accepts that he had demanded a fixed figure of £1,800, which he says covered all of the expenses specifically excluding expenses incurred in connection with the commercial premises. There is no reason under the Lease that the Respondent needed to have excluded expenses concerning the commercial premises, but the calculations provided suggested that he had in fact done so. Given that, it may feel somewhat arbitrary to note that the

figures relied upon to demonstrate the expenses incurred showed, for some years, a figure just shy of £1,800 having been incurred and indeed, we are satisfied that had the Respondent calculated the expenses properly, including those in respect of the commercial premises, that it would have exceeded £1,800.

37. Nevertheless, the parties have proceeded throughout on the basis that expenses relating to the commercial premises would not be included within the demands made. The figures are small, but the Tribunal considers it reasonable to reduce those demands which are for £1,800 and based on expenses, which exclude the commercial units, to those sums actually calculated as due based on actual expenditure concerning the common parts that benefit the Properties as calculated by the Respondent. Accordingly, we reduce the sums recoverable under one of the invoices for service charge year 2018-2020 to £1,574.20, as the actual calculation based on the expenses relied upon by the Respondent resulted in a figure of that amount, not £1,800 as claimed.
38. The position therefore on the various demands for each service charge year is as follows:

Service Charge Year	Amount Demanded	Amount determined by Tribunal as payable
2020-2021	£1,800	£1,800
2019-2020	£1,800	£1,574.20
2018-2019	£1,800	£1,800
2017-2018	£1,800	£1,800
2016-2017	£1,800	£1,800
2015-2016	£1,800	£1,800

39. The position concerning gas charges, installation costs and insurance premiums are dealt with separately and the above table does not include those charges.

Issue 2 - is the Respondent entitled to charge a service charge, for the years concerned, in such circumstances the Applicant said, whether there where there had been “no formal agreement” and where the parties should have agreed the “Initial Estimated Service Charge” for the first year as per the terms of the Lease

40. This issue comprises two parts. Firstly, the question of whether there is a right to send service charge demands “absent any formal agreement”. There was, of course, a formal agreement, in the form of the leases entered into between the parties. The relevant provisions of the lease provide for service charge demands to be made.

41. The second part relates to reliance upon the requirements of the Lease that there has been no “*Initial Provisional Service Charge*” demand made of the Applicant.

42. The relevant provisions of the Lease are to be found in the Second Schedule:

“2. The Landlord shall as soon as convenient after the end of each Financial Year prepare an account showing the Annual Expenditure for the Financial Year and containing a fair summary of the expenditure referred to in it and upon such account being certified by the Agent it shall be conclusive evidence for the purposes of this lease of all matters of fact referred to in the account except in the case of manifest error.

3. The Tenant shall pay for the period from the date of this lease to the end of the Financial Year next following the date of this lease the Initial Provision Service Charge the first payment being a proportionate sum in respect of the period from and including the date of this lease to and including the day before the next quarter day to be paid on the date of this lease the subsequent payments to be made in advance of the relevant quarter days in respect of the relevant quarters.

4. The Tenant shall pay for the next and each subsequent Financial Year a provisional sum equal to the Service Charge payable for the previous Financial Year (or what the Service Charge would have been had the previous Financial Year been a period of 12 months calculated by establishing by apportionment a monthly figure for the previous Financial Year and multiplying this by 12) increased by 10% by 4 equal quarterly payments on the usual quarter days.

5. If the Service Charge for any Financial Year exceeds the provision sum for that Financial Year the excess shall be due to the Landlord on demand if the Service Charge for any Financial Year is less than such provisional sum the overpayment shall be credited to the Tenant against the next quarterly payment of the Rent and Service Charge.”

43. The Applicant’s position was that no demand was ever made of service charge in the first year of the Lease. This was before the Respondent acquired the Estate and became the freeholder of the Properties. As a result, the Applicant says there can be no service charge payable at all. However, Mr Mahon conceded that, if the provisions of the lease impose a pre-condition for liability to arise, that at some point, following a course of conduct, there would come a time at which the service charge position would regularise itself, in the sense that demands would again become valid and that any pre-condition that might have existed would fall away. Mr Mahon was essentially referring to an estoppel situation arising which is commonly argued by landlords to regularise compliance with strict contractual provisions after a period of time of non-compliance but the adopted practice being treated as acceptable by the parties.

44. Dr Tromans did not accept that there was a pre-condition to being entitled to render a service demand.
45. It is important to note that the wording in paragraph 3 of the Second Schedule refers to a payment by the tenant, this being the obligation, from the date of the Lease until the end of the financial year concerned.
46. The payment for the following year is, by paragraph 4 of the Second Schedule, to be a provisional sum equal to the service charge payable for the previous financial year, and increasing it by 10%, such being payable in four equal instalments. Paragraph 5 then provides that if the service charge exceeds the provisional sums for the year concerned, the excess shall be paid on demand.
47. The essence of the provisions in the Second Schedule is to require, by paragraph 2, a summary of the annual expenditure to be provided as soon as convenient after the end of the financial year concerned. Paragraph 3 provides a means to obliged payment be made by the tenant, of the “Initial Provisional Service Charge”, although, this is left blank in the version of the Lease provided by the parties and relied upon by them. Accordingly, it would seem that the sum obliged to be paid pursuant to these provisions was zero in any event.
48. The practice adopted by the Responded has been to invoice £1,800 each year for general expenses (excluding insurance and gas matters – to which we turn below) as a set figure, irrespective it seems of the actual levels of expenditure. Clearly, this approach is wrong, but it is one that has favoured the Applicant for the most part.
49. The consequence therefore of there being obligation to pay a nil sum for the Interim Provisional Service Charge is that there simply follows a demand after the end of the final year for the sum due, by reference to a percentage fixed by the Lease.
50. It ought to be additionally noted that the reference to a certification being provided in paragraph 2 does not affect the entitlement for monies to be payable by the Applicant, it merely purports to try and put those expenses beyond contest.
51. The Applicant’s grounds of challenge in Issue 2 therefore fail.

Issue 3 - whether there was a meeting between those representing the Applicant and the Respondent in 2009, at which an agreement was reached that no contribution was required towards the service charge by the Applicants towards the service charge for any of the years concerned, given that they were entitled to undertake maintenance of the Properties

52. The Applicant says that a meeting took place between Mr Gregory and the Respondent in 2009 relating to maintenance issues and payment of service charge. The Respondent accepts that such a meeting took place,

and indeed, that an agreement of sorts was reached, although the terms of that were in issue.

53. Mr Gregory essentially claimed that the agreement was that there would not need to be a contribution towards the service charge as the Applicant was going to be responsible for maintaining its own properties. The Respondent said the agreement was only that the Applicant could take steps to maintain its own properties and that there was never an agreement to abandon the right to recover service charges.
54. The Respondent explained in cross examination that whilst a meeting did take place and that an agreement was reached, it related solely to the Applicant's ability to undertake its own maintenance. The Applicant said the agreement was to not pay service charge except where it benefitted the Properties specifically.
55. The Respondent stated that the agreement was not to avoid paying service charge – or any element of it. We accept the Respondent's evidence on this point as being more credible.

Issue 4 - whether the Respondent is entitled to recover, as matter of construction of the Lease and on the basis of the sums being reasonable, monies demanded in respect of the supply of gas to the Properties up until the point of the installation of a new gas meter which provided for direct billing between the Applicant and third-party utility providers (Issue 4);

56. The Applicant says that there is no entitlement for the Applicant to render charges for gas used by the Properties as charged by the Respondent as follows:
 - a. for the period November 2019 to May 2020 - £4,696.98 (the Cottage)
 - b. for the period November 2019 to May 2020 - £4,696.98 (Apartment 2);
 - c. for the period December 2018 to November 2019 - £679.35; and
 - d. for the period December 2017 to November 2018 -£679.35.
57. There was said to have been some agreement between the Respondent and the Applicant's tenant, such that they would contribute to the supply of gas made. The invoices are said to charge on the basis of the sums being 16.5% of the supply bill, which levies this charge notes that it is said to be 16.5% of the gas supplied to "the Cottage". The actual gas bill that the Respondent would have received was not supplied to the Tribunal and it has not been possible to review the figures behind the demands.
58. What is clear, however, is that the demands made of each of the Properties for the period of November 2019 to May 2020 is excessive and it would be incumbent upon the Respondent to demonstrate that these costs were reasonably incurred and reasonable in amount.; we are far from satisfied as to the Respondent having done this.

59. Notwithstanding the position on reasonableness, the Applicant's position is that the gas supply charges are irrecoverable as a matter of construction under the Lease. The Respondent recognised that these charges were to make up for a shortfall due to payments having not been made the Applicant's tenants, such having been the practice adopted for some time.
60. The relevant scope of "the Services" in the First Schedule, which the Respondent is obliged to provide by clause 4.3 of the Lease, states:
- "4. To pay and discharge any rates (including water rates) taxes duties assessments charges impositions and outgoings assessed charged or imposed on the Building as distinct from any assessment made in respect of any Premises in the Building".*
61. The proper construction of paragraph 4 of the First Schedule is that the obligation was upon the Respondent to pay for those gas charges relating to the building overall and not in respect of any provision concerning the Properties in the Building, which is what the demands now made and relied upon by the Respondent relate to.
62. The Tribunal concludes that the costs of the gas supply to the Premises is not provided for specifically by the Lease. As such, there is no right to the Respondent to recover the sums by way of the service charge as they do not fall within the definition of relevant costs, such being those costs incurred by or on behalf of the landlord for which the service charge is payable (section 18(2) of the 1985 Act).
63. Further, even if the Tribunal is wrong about the scope of paragraph 4 of the First Schedule, it would note:
- a. taking account of the fact that the demands were made to remedy what was said to be a default in the failure to pay as per specific agreements with tenants, this is not a proper basis for them to fall within the definition of relevant costs and service charge in any event; and
 - b. there was no evidence before the Tribunal as to the billed amount from the Respondent and therefore, to justify what appeared to be excessive demands – accordingly, we would have reduced the sum to £600 per annum per each of the Properties on the basis of reasonableness, has this been a recoverable amount.
64. Accordingly, the Applicant's challenge to the gas supply invoices succeeds in full. The invoices referred to above at paragraph 56 are not payable as service charge under the Lease. To the extent that these charges fall outside of the service charge regime, therefore, it remains open to the Respondent to seek their recovery in the County Court to the extent he considers there are grounds to do so.

Issue 5 - whether the Respondent is entitled to recover for sums in respect of the installation of gas meters providing for a direct metering between third party suppliers and the Applicants (Issue 5):

65. The supply of gas to the estate was via one main metered supply. It transpires that supply was not, for some time, being charged for by the utility company supplying, because the meter appears to have been “off-grid” with some suggestion it has been stolen from a public house.
66. There were sub-meters in the Properties. The arrangements in place had been for the Respondent to obtain (as presumably did his predecessor) monies from those actually using the gas in the Properties. In this case, however, the Applicant was not in possession, instead, leaving its tenants to liaise directly with the Respondent regarding payment for the gas.
67. The issue of gas not being paid for by the main supply to the Building are said to have come to light following a gas leak arising and steps being taken to isolate and then reconnect the supply.
68. Difficulties ensued when the Respondent was unable to secure payments from the Applicant’s tenants, who whilst some payments were recognised as having been made, refused to further sums at some point owing to their understanding that all gas bills are included in the rent they were paying to the Applicant. This, it was suggested, was an indication that the Applicant’s directors knew full well the real position with the gas supply to the Building not being charged for (at least, up until the issue being addressed by the gas supplier).
69. The Respondent said he was having to pay for the gas supplied, which was used in part of the Properties, but which they were not contributing to. Additionally, the Respondent identified that the owner of another property in the estate had difficulties selling her property due to there being no direct relationship between the gas supplier and the owner of that property, with any billing arrangement being an informal one with the Respondent.
70. In any event, new gas meters were installed for the benefit of the Properties and one other property on the estate (they were not installed in the Properties themselves but they related solely to their supply) in 2018 and recovery was sought in the service charge year 2018/2019 of the sum of £6,101.25 for each of the Properties. This sum is said to be one third of the sum incurred overall as paid for the external gas works (i.e. manifold setup of three meters being installed in the cellar area), the internal piping work required to route the supply to the Properties and a new cellar door to address ventilation requirements.
71. The Respondent says that there was an agreement with the Applicants to instal these new meters and meet those charges. The agreement was said to pertain to the meter installation insofar as the works to be carried out by Fulcrum, the contractor, were concerned. In his witness statement, the Respondent was firm as to the existence of the agreement, but in cross

examination, less so, instead suggesting it may have been an in principle agreement subject to later verification, that never came. Indeed, it is noted that the invoice raised for £10,000 per each of the Properties was later credited. We are not, therefore, satisfied that there was an agreement that would oust the Tribunal's jurisdiction under s.27A.

72. We must therefore deal with the issues of payability and reasonableness of these works in full.
73. The Tribunal has no doubt, however, that a direct supply to the individual Properties was appropriate and beneficial, to both the Applicant and the Respondent, in terms of placing an appropriate legal nexus between those using the gas and the supplier and removing the administrative and the immediate financial burden from the Respondent of meeting the gas costs.
74. There is clearly authority in the Lease to incur costs of the installation of the gas meters. Paragraph 6 of the First Schedule in the Lease permits of the Respondent in the following terms:

“6. To do or cause to be done all works installations acts matters and things as in the absolute discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Building”.
75. We consider that there was a clear desirability (if not a practical necessity) for the installation of new gas meters for the benefit of the Properties (and the other residential property) in order to facilitate:
 - a. a direct relationship between supplier and consumer and thus, relieve the Respondent of the obligation to seek to administer the supply of gas and identify charges and collect monies in relation to the said supply, especially in circumstances where the right to recover any costs of supply were dubious under the Lease (and such right contested by the Applicant); and
 - b. the alienability of the properties third parties who would more likely than not require a direct supply rather than a more informal arrangement as appears to have existed with the property owners and the Respondent.
76. Further, we consider it to have been reasonable for the installation of the meters to be placed in the cellar area, owned by the Respondent, instead of in the Properties themselves, on account of the installation costs being significantly less (see below) and the Respondent being willing to provide access to the meters as necessary for the purposes of reading the same.
77. As to the amount of installation works, the Respondent gave evidence that he obtained a number of quotes for the installation of the gas meters from Fulcrum. Fulcrum were to make the supply from the mains in the road, requiring digging and traffic management orders. The cost of this initial quote was £9,886.36 plus VAT. However, this approach was abandoned,

in light of the significant costs, with a lesser quote of £6,022.94 being accepted. There is evidence within the bundle that this sum was paid by the Respondent to Fulcrum. It is unclear from the bundle and the evidence provided where a figure of c. £12,000 is said by the Respondent in correspondence comes from. The Tribunal thus proceeds on that which can be demonstrated: the sum paid to Fulcrum is £6,022.94.

78. An email from the Respondent to Mr Jewitt on 11 November 2020 states the cost for the internal pipework was £4,200 and the cost of the new cellar door which would permit adequate ventilation was £1,481.60. We consider these sums to be reasonable in amount.
79. However, the provisions in the lease do not permit a full recovery of the sums expended, only a percentage. On the basis therefore that the reasonable sum incurred and paid by the Respondent in respect of the gas installation works were £11,704.54 (i.e. £6,022.94, plus £4,200 plus £1,481.60), by applying a percentage of 16.5%, the total sum due is £1,931.24, so a total of £3,862.48 for both properties.

Issue 6 - whether the insurance costs charged by the Respondent in the service charge years 2019/2020 and 2020/2021 are payable and reasonable

80. Insurance expenses fall within the definition of service charges under s.18 of the 1985 Act and thus, may be the subject of an application regarding payability and reasonableness.
81. The Applicant says that it had to secure its own property insurance policy for the years 2020/2021 and 2021/2022 and thus, the sums demanded from the Respondent for £220.71 and £200.78 for those years respectively and thus, the sums should not be payable. The Applicant queried whether the sum charged for insurance was reasonable, although in so doing, offered not indication itself as to what it believed a reasonable cost would be, other than by reference to the expense it incurred to insure its own properties, which of course, is not comparing like for like when considering what the Respondent was obliged to insurance under the Lease.
82. There are numerous letters from Forbes Insurance, brokers, which records that for each of the relevant service charge years, that “1 High Street, Coleshill, Birmingham, B46 1AY Comprising of 10 Offices and 3 Leasehold apartments” was insured with Arch Insurance. With the exception of the certificate for the period 24 June 2021 to 23 June 2022, each of these letters from the broker is undated. It may well be that the letters from Forbes Insurance were created for the purposes of these proceedings, to demonstrate, not unreasonably, that insurance cover was in place for each of the relevant years to include the residential apartments, two of which are owned by the Applicant.
83. The Respondent maintains a block policy, covering numerous estates within his property portfolio. There are pros and cons to such an approach, with greater purchasing power and lower premiums often being

obtained, but the drawback of a greater scope for claims to subsequently adversely affect premiums. Indeed, it appears that for the period 24 June 2022 onwards, the insurance premium has increased due to a significant claim having been paid. However,

84. By clause 5 of the Lease, the parties to the Lease agreed as follows:

“5.1 The Landlord covenants with the Tenant to insure the Estate subject to the Tenant paying the Insurance Rent unless such insurance is vitiated by any act of the Tenant or anyone at the Estate expressly or by implication with the Tenant’s authority.

...

5.8 The Landlord covenants with the Tenant in relation to the policy of insurance effected by the Landlord pursuant to his obligations contained in this lease:

5.8.1 to procure to the Tenant on demand a copy of the policy and the last premium renewal receipt or reasonable evidence of the terms of the policy and the fact that the last premium has been paid

5.8.2 if requested by the Tenant to procure that the interest of the Tenant is noted or endorsed on the policy...”

85. The Estate is defined as all the land and premises owned by the Respondent and known as “*St Pauls House, High Street, Coleshill ... under title numbers WK341093 & WK347163...*”. Hence, the insuring obligation extends well beyond those two properties owned by the Applicant.

86. The “Insurance Rent” is defined in clause 1.1 in the following terms:

“1.11 Insurance Rent means:

1.11.1 the cost to the Landlord from time to time of paying the premium for insuring the Estate and

1.11.2 all of any increase premium payable by reason of any act or omission of the Tenant”

87. The Lease curiously contains a definition of “*the Insurance Rent Contribution*”, which is said to be one-ninth of the cost of the Insurance Rent, which equates to 11.11%. However, the Lease itself does not reference this defined when obliging the Respondent to pay for the insurance.

88. The correspondence from Forbes Insurance records that the insurance cost for the estate was as follows:

- a. For the period 24 June 2020 to 23 June 2021 - £1,705.33; and
- b. For the period 24 June 2021 to 23 June 2022 - £1,807.23.

89. The Respondent appears to have charged about a tenth of the premium cost by way of demand to the Applicant. This is slightly more than the one-ninth envisaged by the definition of “*Insurance Rent Contribution*”, but, as noted above, this definition has not been used within the obligation to pay in respect of the insurance and to the extent that rectification might be sought in relation to the Lease, that is not within the Tribunal’s jurisdiction, although neither party asked us to consider such in any event.
90. Accordingly, the sum charged by the Respondent appears to be significantly less than the Lease permits. However, it is notable that the Respondent has sought to charge only 11.11% (i.e. one-ninth) of the total cost, and so, has adopted an approach which might be more consistent with the spirit than the letter of the Lease. In any event, nothing prevents the Tribunal from determining whether the sum charged is still unreasonable still for the purposes of a s.27A application and we do so on the basis that the common intention of the parties appears to be that the insurance contribution is to be limited to 11.11% of the cost for the insurance on the whole estate.
91. The difficulty, however, is that the Tribunal has no other evidence on which to properly conclude that the premium is in any way unreasonable. There is nothing on which we can properly assess the real benefit, or otherwise, of the block insurance policy compared to freestanding policies covering the same risks. In the Tribunal’s own experience, however, the sums charged to the Respondent for each period identified above does not seem excessive and, accordingly, we conclude that the sums for the amounts charged in respect of the estate as a whole, and as passed on to the Applicant, are reasonable.
92. A further issue arises, however, as the Applicant says that the Respondent refused to provide a copy of the insurance documentation, such that the prudent and necessary step was to obtain its own insurance policy to ensure that its investment in the Properties was protected. A further issue that was identified during the hearing was that the insurance certificates disclosed in these proceedings did not specifically note the Applicant’s property as insured property. Additionally, the certificates did not specifically note the name of the Applicant. As to this last point, however, there was no evidence before the Tribunal that the Applicant had requested its interest be noted, such as to trigger the obligation in clause 5.8.2. In any event, it is far from clear what difference noting the Applicant’s interest would have made, if any, to the existence and enforceability of the rights that arise by reason of the insurance being in place and needing to be called upon. To this extent, the Applicant’s and Respondent’s interests are likely to be commensurate, both are likely to want the premises to be reinstated/repairs effected should an insured peril arise. Further, the Applicant would have rights under the Lease to require steps be taken of the Respondent to achieve such an objective in any event.
93. The Respondent pointed to evidence of the insurance documentation being provided to the Applicant upon request in an email of 12 January 2022

and denied ever having refused to provide a copy of the insurance policy documentation when requested. We find it unusual that the Applicant would wish to seek their own insurance in circumstances where, for many years, they have been paying such demands when levied, as was the accepted position.

94. We prefer the Respondent’s evidence that he has never refused to provide a copy of insurance policy documents when requested. Indeed, from the emails provided in the bundle, it can be seen that, following a request being made by Mr Jewitt on 12 January 2022 for the insurance certificates and a shopping-list of other documents, the Respondent replied that same day, within three hours, providing a detailed email about the insurance position and confirming attaching policy documents. It is unclear what the attachment to the email of 12 January 2022 contained specifically, but there was no follow up email from Mr Jewitt (nor from Mr Gregory) which insisted that inadequate insurance documentation had been provided.
95. For the above reasons, we conclude that the two invoices rendered in the sum of £220.71 and £200.78 are both payable and reasonable.

Conclusion

96. For the reasons set out above, the Tribunal declares:
- a. that the service charge demands as set out at paragraph 37 of this decision are payable in the amounts allowed in that table;
 - b. the gas supply invoices referred to above at paragraph 56 are not payable as service charge under the Lease and as these charges fall outside of the service charge regime, it remains open to the Respondent to seek their recovery in the County Court to the extent he considers there are grounds to do so;
 - c. that the amount demanded of the Applicant by the Respondent for the installation of gas meters shall be reduced to £3,862.48 in total;
 - d. that the demands made for £220.71 and £200.78 for insurance expenses are payable in the amounts demanded by the Applicant.
97. The position therefore on the various demands for each service charge year is as follows:

Service Charge Year	Amount determined by Tribunal as payable
2020-2021	£1,800 £220.71 Total: £2,020.71
2019-2020	£1,574.20

2018-2019	£1,800 £3,862.48 (gas installation) Total: £5,662.48
2017-2018	£1,800
2016-2017	£1,800
2015-2016	£1,800

98. The present service charge year is ongoing, so the Tribunal can only make the determination it does about the insurance charges for that year at this stage.
99. To the extent that the Applicant wished to pursue their applications under s.20C of the 1985 Act and/or Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, they are invited to make submissions to the Tribunal setting out their basis for seeking such orders, within 28 days of the receipt by them of this decision. If such submissions are received, the Tribunal within this timescale, it shall provide further directions to address the Respondent's Reply and determine whether a hearing is necessary: the Applicant should identify in any application for orders under these sections whether they consider a further hearing to be required or whether they are content for the matter to be dealt with on paper.

Judge C Kelly