



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

Case Reference	:	CHI/18UC/LSC/2019/0113
Property	:	12, 19A, 27, 32B, 41 & 48 Lenwood Country Club Lenwood Road Northam Bideford Devon EX39 3PN.
Applicant	:	Christopher Graham Ley, Gerald Graham Ley and Marion Jean Ley (12) David John Baldwin (19A) Patricia J Langdon (27) Lawrence May (32B) Brian Steele & Jennifer Steele (41) Peter Charles Metherell (48).
Representative	:	David Baldwin and Lisa Ley.
Respondent	:	Ground Rent Trading Limited.
Representative	:	Paul Simon.
Interested Person	:	Jane Mills Secretary of Lenwood County Club Owners Association (Recognised Tenants Association).
Type of Application	:	Application for determination of reasonableness of service charges and liability to pay Section 19 & 27A of the Landlord and Tenant Act 1985 (The Act) Schedule 5A of the Commonhold and Leasehold Reform Act 2002 (CLARA).
Tribunal Members	:	Judge C A Rai (Chairman) Robert Brown FRICS Chartered Surveyor Michael C Woodrow MRICS Chartered Surveyor.
Date and venue of Hearing	:	4 & 5 March 2020 Cedars Inn, Bickington Road, Barnstaple, Devon. EX31 2HE.
Date of Decision	:	12 May 2020

DECISION

Background

1. The Applicant which comprises six leasehold owners of bungalows or chalets within the site known as Lenwood Country Club (the Property), sought a determination of reasonableness and liability to pay:-
 - a. Service charges demanded for the service charge years ending 29 September 2017; 29 September 2018; and 29 September 2019; and
 - b. On account of anticipated service charges for the service charge year ending 30 September 2020 and for the years through to 29 September 2025.
2. Judge Tildesley OBE made Directions dated 22 November 2019 which identified:-
 - a. Grounds for the application in respect of the years ending in September 2018 and 2019 were attached.
 - b. The Applicant could not specify details of its grounds for the year ending in September 2019 because it had received no details of the budget and expenditure for that period.
 - c. The application for determination of its liability in respect of service charges demanded on account of anticipated expenditure for future years could only be dealt with in respect of the year ending **30 September 2020** because no demands had yet been issued by the Respondent in respect of subsequent years.
 - d. The Applicant had not, (at that time), been able to specify its grounds for the year ending in September 2020 save in respect of property and public liability insurance.
 - e. An application had been made to restrict the landlord from recovering costs of proceedings through the service charges or from individual leaseholders.
3. The Directions proposed a hearing window and directed that the Respondent provide, amongst other things:-
 - a. service charge budgets for the years ending September 2019 and September 2020;
 - b. a statement of its case in relation to the Application including limitation of costs;
 - c. official copies of the freehold title;
 - d. specimen leases;
 - e. service charge accounts, budgets and demands and copies of all relevant documentation relating to the insurance and invoices in respect of all service charge costs which were disputed by the Applicant.

The Directions specified time limits within which the required information must be provided and proposed a range of dates within which the proceedings would be heard.
4. On the 17 December 2019 the Applicant applied to vary the Directions because the Respondent had not complied with them.
5. On 3 February 2020 Judge D. Agnew issued a Notice of intention to debar the Respondent from participation in the proceedings because of its failure to comply with the Directions. The Respondent was given until 11 February 2020 to comply.

6. Following receipt of submissions from the Respondent late in the afternoon of 11 February 2020, Judge D. Agnew issued Further Directions, dated 12 February 2020, in which he reluctantly extended the time limit for the Respondent's compliance until 14 February 2020 and confirmed that the proposed hearing dates of 4 and 5 March 2020 would stand.
7. The Respondent provided a response before 4 March 2020, the first day of the Hearing.
8. After the Hearing, the Tribunal issued Further Directions dated 9 March 2020 requiring that the Respondent submit further information and in particular copies of the invoices underlying the service charges shown in the accounts and a copy of the accounts for the year ending 30 September 2019.
9. In accordance with those Further Directions the Applicant sent an email to the Tribunal dated 19 March 2020 confirming the Respondent had supplied invoices for various years being for 2015/2016; 2016/2017; 2017/2018 and 2018/2019. Copies of those invoices were not sent to the Tribunal but are summarised by reference to the relevant years by Christopher Ley in that email, which was copied to Paul Simon.
10. That email also contained further submissions which the Applicant stated took into account matters which "have come to light following the receipt of invoices for the relevant years". Where appropriate this decision refers to those additional submissions.
11. The Tribunal has not received a copy of Service Charge Accounts for the year ending 30 September 2019 prior to issue of this Decision.
12. The Hearing Bundle, (the Bundle), was prepared by the Applicant and all references to page numbers in this Decision are to pages in the Bundle. It contains duplicates of several documents including the lease of Chalet 12, dated 3 December 1999 made between Robert Henry Prouse and Teresa Ann Prouse (1) Judy Ann Jones (2) [Pages 77 – 96 and pages 493 – 512]. There are no copies of leases of any other chalets belonging to the Applicant.
13. The Bundle, which is both indexed and paginated, contains the Application, the Applicant's statements, two copies of the Lease, service charge accounts for the years ending 30 September 2016, 30 September 2017 and 30 September 2018; service charge budgets for the years ending 30 September 2017 onwards until the year ending 30 September 2020; copies of some Tribunal Directions; copies of two previous Tribunal Decisions; copies of some invoices demanding service charges from the joint owners of Chalets 12 and 19A; information regarding the buildings insurance; copies of the Land Registry title for the freehold and copies of miscellaneous correspondence exchanged between the parties.

The Inspection

14. The Tribunal inspected the Property accompanied by David Baldwin and Paul Simon. Two of its three members had previously inspected the Property on 3 October 2018 prior to the First Tier Tribunal determination made in the Baldwin Decision.
15. The Tribunal wanted to examine the road surfaces to enable it to review the service charge expenditure for repairs/road improvement works referred to in the Service Charge Fund Annual Accounts for the year ending 30 September 2018 and to ascertain, as best it could, any noticeable material differences in the condition of the Property since the date of the last inspection.
16. The Property is part of a site comprising the Country Club building, formed by converting the manor house within the estate but now derelict, a swimming pool and tennis courts all located on its northern boundary. Originally the site contained 59 chalet bungalows but subsequently more have been added.
17. The site is partly wooded and contains grassed areas some of which slope steeply and are maintained for the communal use of the leaseholders and occupiers of the bungalows. Other grassed areas exclusively served the Country Club building.
18. The Tribunal members inspected the spine road and works to it on that part providing access from the northern entrance alongside the northern boundary which sweeps south alongside the yard in front of the Country Club to the central part of the site and on to the second south entrance. Both entrances are from the public highway and provide pedestrian and vehicular access.
19. Some evidence of repairs to the spine road are visible but these appeared to be random and it was agreed that these had been carried out on an ad hoc basis to fill in potholes. At least one deep pothole was clearly visible in the middle road leading from the south entrance. It was impossible to evaluate when any repairs had been carried out.
20. A steep spur road off the spine road in the central part of the site leads up to the bungalows on the western side of the grounds. The members also looked at those communal areas adjacent to the spur road.
21. The Tribunal noticed fewer abandoned vehicles than were on the site during its previous visit but concluded that the general appearance of the Property was broadly unchanged.
22. The Tribunal did not inspect the refuse area or the site of the sewage pump, both of which are referred to in the description in the Baldwin Decision.

The Hearing

23. Prior to the commencement of the formal Hearing, the Judge explained that David Baldwin had already received a determination of the service charges which he was liable to pay for the year ending 30 September

2017 and therefore could not receive another determination for the same year. David Baldwin v. Chancery Lane Investments Limited (CHI/18UK/LSC/2018/0043) the “**Baldwin Decision**”. The Baldwin Decision also determined the amount payable on account in 2017 for the service charge year ending 30 September 2018.

24. This Application for the year ending 30 September 2018 is for determination of the actual amount of service charge payable for the year. Therefore David Baldwin has not received a determination in respect of this year and can be party to the determination for this year and all subsequent years.
25. Certain relevant disclosures made by the parties are recorded in this part of the decision.
26. The issue before the Tribunal relates solely to the Applicant’s liability to pay based on the reasonableness of the amounts of the service charge and the insurance contributions demanded by the Respondent. It is accepted that under the terms of the Applicant’s leases, each is obliged to contribute 1/59 share of the service charge incurred by the Respondent in each service charge year and, notwithstanding that the Lease contains alternative mechanisms for recovery of service charges, the method chosen constitutes a variable service charge so that the Tribunal has jurisdiction to determine the dispute between the parties as to the amounts that may be recovered. Similarly, the Applicant is not disputing its liability to pay towards the insurance of the Property but questioning the reasonableness of the amounts which have been demanded by the Respondent.
27. In an earlier determination regarding the Property dated 15 October 2019, Judge Tildesley OBE sitting in the First Tier Tribunal and the County Court, Chancery Lane Investments Limited v. Peter Shortridge [CHI/18UK/LIS/2019/0015] (the “**Shortridge Decision**”) determined that £600 was a reasonable “on account” charge for the year ending September 2019. [Pages 270 – 297].
28. The Respondent confirmed that three applications had been issued in the County Court for recovery of arrears of service charge and insurance, against the leaseholders of Chalet 12 (Ley), Chalet 19A (Baldwin) and Chalet 32B (May). It was acknowledged by him and the Applicant that these would be transferred to the Tribunal which will stay those proceedings pending the issue of this decision. Paul Simon explained that he was employed by Moreland Property Group as “In-House Counsel” and that he is a solicitor. He describes himself as “**Shmuli (Paul) Simon Solicitor and In-House Counsel Moreland Property Group Limited**”. [Page 63]
29. In response to a suggestion by the Applicant that the Respondent is targeting the Applicant with the threat of debt recovery proceedings, Paul Simon told the Tribunal that no further applications against the Applicant would be made pending the resolution of the Application.

30. Following the Hearing it was confirmed by the Applicant that in fact County Court Claims issued on 16 March 2020 had been served on Brian Steele and Jennifer Steele. [Email dated 19 March 2020 from Christopher Ley to Tribunal]. These applications have been transferred to the First Tier Tribunal for determination, (multiple applications having been made in relation to chalets owned by more than one person).
31. The Tribunal confirmed it would deal with the years 2017/2018, 2018/2019 and 2019/2020 in turn, referring to each disputed item and hearing from each party. It also told the parties that it would deal with costs applications at the end of the Hearing.
32. The Tribunal has dealt with the Respondent's demands for payment towards the insurance premium under a collective "Insurance" heading and considered each of the years for which the Applicant has challenged those payments including 2019/2020.
33. The Applicant told the Tribunal that it does not accept that updated information regarding outstanding service charges invoiced and due is reflected in the service charge demands issued by the Respondent. David Baldwin confirmed the Respondent had not adjusted his service charge statement following the Baldwin Decision. Paul Simon disputed this. He said when any service charge payments are received these were always credited against the "oldest" outstanding payment to minimise interest charges. He agreed that he would endeavour to obtain electronic copies of statements for the Applicant who each agreed to individually authorise the release of all that information to Marion Ley who would then disseminate the information. On 5 March 2020 Paul Simon sent an email, (which was copied to the Tribunal) to Christopher Ley with statements attached.
34. All of the Service Charge Fund Annual Accounts, produced to the Tribunal and referred to in this decision, were prepared on behalf of the Managing Agents by L. B. Ladenheim ACA CPA of Suite 725 19-21 Crawford Street London W1H 1PJ (the "Accountant").
35. It is not clear to the Tribunal who prepared the service charge budgets, or when these were prepared, but the copies in the Bundle were sent to the Applicant by either Mark Muster of Moreland or Paul Simon. The Applicant disputed that copies of the budgets either accompanied the demand for service charges, issued around the end of September each year, or were provided before the issue of those demands.
36. It should be recorded that the Application refers to years ending 29 September but the service charge accounts in the Bundle refer to the year ending 30 September. The Lease provides for a payment on account to be demanded on 30 September in each year but does not clearly specify the end date of the service charge year. On the basis of the documents produced, it has been assumed by this Tribunal that the service charge year runs from 1 October to 30 September.

Service charge year ending 30 September 2017 (16/17). Actual service charge payable

37. The Applicant's case is set out in the Application. It referred to the Tribunal determination in the Baldwin Decision in which it was determined that the service charge payable for that period by David Baldwin was £522.99.¹
38. In the Application the Applicant states that despite "numerous attempts to resolve matters with the Respondent since the first demand for service charges was received in September 2016, the Respondent was not prepared to discuss the demand for the on account payment due in September 2016 which was for £1,142.50". A copy of a "breakdown of the service charge" for the year ending 30 September 2017 was sent by email to Christopher Ley by Mark Muster of Moreland Estate Management, the company who collect and manage the collection of the service charges and the administration of the services for the Respondent ("Moreland") on 13 October 2016. [Page 145]. The total budget was £54,100.
39. A copy of the Service Charge Fund Annual Accounts for that year show total annual expenditure of £66,967.10. The Accountant's report is dated 12 February 2018. [Page 102 – 106].
40. Paul Simon confirmed that the Respondent will accept and apply the determination in the Baldwin Decision in respect of service charges due from each Applicant so there was no need to hear any submissions for that year.
41. He agreed that the service charge contribution due from each Applicant for that year is £522.99 and that an adjustment due in respect of an insurance premium credit must be made. This has been dealt with later in the Tribunal's reasons mostly on the basis of the written submissions received.
42. The Applicant had also made submissions regarding payments of interest and Administration Charges demanded by the Respondent. These have also been dealt with under a separate heading and are referred to later in this decision.

Service Charge year ending 30 September 2018 (2017/18)

43. The Baldwin Decision determined that £571.28 was a reasonable payment on account due on 1 October 2017 in respect of the service charges for the year ending 30 September 2018.
44. A copy of the Service Charge Fund Annual Accounts for this year is at Pages 107 – 111 in the Bundle. These show annual expenditure of £64,977.70, 1/59 of which is **£1,101.32**; The Accountants Report, [Page 110] is dated 7 May 2019. The service charge budget for this year was sent to Christopher Ley by Mark Muster (Moreland) on 18

¹ A copy of the appendix to that Decision is annexed as Appendix 2

September 2017. [Page 176]. The budget is £66,000, 1/59 of £66,000 is **£1,118.64**.

45. The Respondent demanded **£1,366.86** on account of the Service Charges for this year on 30 September 2017. [See invoice for chalet 12; Page 188]. The Respondent offered no explanation as to how the sum demanded was calculated.
46. The Applicant challenged the various heads of expenditure referred to below, which broadly replicate the headings shown in the Accounts or budgets, although these are not consistent.

Audit Fees – determination

47. The parties agreed a charge of £750.

Cleaning of communal areas

48. The amount shown in the 2018 Accounts is £4,500. After the Hearing, invoices relating to Cleaning Gardening and Maintenance of the whole site were provided for a total of £30,000. In the Accounts £4,567.31 was allocated to Repairs and Maintenance and £21,000 to Gardening and Landscaping.
49. The Applicant stated at the Hearing, and in the email dated 19 March 2020, that one operative works on the site for three days each week. It believes that some works are carried out on areas outside the communal areas and therefore only a proportion of the invoiced cost is recoverable. Furthermore the quality and type of work carried out on the Property does not justify the amount charged. The costs have increased significantly from those shown in the accounts for the preceding two years, being **£11,444** in 2015/2016 and **£19,335** in 2016/2017 (reduced to **£17,401** by the Tribunal in the Baldwin Decision). [Pages 99, 104 and 269]. The Applicant considers that an appropriate charge in respect of all three headings would be £18,401. The charge of £30,000 equates to an hourly charge of £24.04 per hour for a 24 hour (3 day) week. He recommended that the reduction referring to the payment on account in the Baldwin Decision, should apply.

Determination

50. The Baldwin Decision established that the some of the “communal areas” were not within the description of the Estate which was described by reference to a plan in the Lease. Both copies of the Lease in the Bundle include coloured plans. The Tribunal recommended a reduction in the charge to reflect the adjustment. [See paragraph 53; page 260 of the Bundle]. It allowed an hourly rate for gardening of £17.68 (to include the provision of plant, machinery and consumables), which it considered reasonable taking into account the nature of the work. It stated that this would include labour and plant. [See para 61; Page 261 of the Bundle].
51. No written submissions were made by the Respondent in relation to this year. It was not established why charges for cleaning, gardening and maintenance were separated when all the work has been carried out by the same person. Reference was made to the example lease within the Bundle which requires the Landlord to certify the service charge and

provide a summary of its expenses for complying with its covenants in Clauses 5(2) and 5(3) of the Lease (excluding the maintenance of the sewage plant and sewers which is a separate head of charge), cleaning and where necessary light the areas used in common; the costs of gardening and landscaping; and the cost of providing and maintaining any service or amenities requested in writing by the majority of the lessees of the bungalows.

52. No evidence as to what cleaning of communal areas had been carried out was provided by the Respondent. The email dated 19 March 2020 from Christopher Ley records that invoices were provided which refer collectively to cleaning of communal areas, repairs and maintenance. The only information provided by the Respondent is at Pages 478 – 480 which appear, to the Tribunal, to be copies of pages extracted from a Moreland ledger. The Applicant submits that even if these costs were incurred, some part will not be recoverable as it was for works to areas which the Respondent has no obligation to maintain under the Lease. Therefore he cannot recover those costs as part of the service charge.
53. The Applicant's evidence is that the operative on the site carried out three full day's work every week. Therefore, taking account of the Applicant's submissions, the Tribunal will allow recovery at a similar hourly rate to that which the Tribunal decided was reasonable in the Baldwin Decision. The Respondent has claimed £21,000 for gardening and in addition separate amounts for cleaning and maintenance and repairs.
54. The Tribunal determines that it will allow recovery of an hourly charge of £18 for gardening and cleaning combined in respect of 24 hours, (3 days), a week. (It allowed £17.68 per hour in the Baldwin Decision. [Page 261]). The Respondent seeks to recover £22,464 but that should be reduced by 10% to take account of works carried out to areas outside of those maintained in accordance with its obligations to the lessees. Therefore the total combined amount allowable for cleaning **and** gardening and landscaping in this year is £20,217.60, of which £19,217.60 is for gardening and landscaping and £1,000 for cleaning.

Electricity

55. The figure shown in the accounts was £1,084.72 which was not disputed at the Hearing. However invoices from Eon and Corona that were eventually provided by the Respondent following the issue of the Further Directions, totalled £437.08. These were dated between 15 January 2018 and 12 September 2018. [Email dated 19 March 2020]. It is therefore not understood why Paul Simon was able to suggest that the higher amount had been charged to the Respondent or on what basis the Accountant might put a different higher figure in the Accounts as Paul Simon assured the Tribunal that the Accountant worked only from invoices provided to him by the Respondent.

Determination

56. In the absence of the production of any other invoices by the Respondent to justify the recovery of an additional amount, the Tribunal determines

that £437.08 is the amount which is recoverable in respect of electricity costs for this year.

Finance Charge

57. The Applicant obtained an invoice from the Respondent, [Page 66], which shows that this was a fixed cost for processing payments for a year. The invoice is from Moreland to the Respondent and dated 14 June 2018. It refers to a period between 1 January 2018 – 31 December 2018 and states that the costs were “agreed”. The Applicant disputes that the charge is payable at all. Paul Simon conceded that the charge should be removed.

Determination

58. The Tribunal determines that this charge is not recoverable by the Respondent and cannot be included within the service charge for this year. The unit cost of £7.50 equated to 59 items which represents a random fixed cost for each of the 59 chalets which the Respondent has sought to add to the service charge. The Tribunal determines that this charge, if incurred, would fall within the overall management charge. It is not in the budget and there is no provision in the Lease which would enable the Respondent to recover this cost.

Gardening and Landscaping

59. The charge shown in the Accounts was £21,000 and the charge in the budget was £5,000 with a further £18,000 being allocated under the budget heading “Site Manager” and a further £1,400 under Rates (Council Tax) so in total £24,400, excluding the cleaning, with an additional £4,567.31 under the heading Repairs and Maintenance.

Determination

60. See paragraphs 53 and 54 above. The Tribunal has determined that a total amount of £19,217.60 is recoverable for the reasons set out in those paragraphs.

Health and Fire Safety

61. No information was offered to clarify the amount of £400 in the accounts which matched the figure in the preceding year’s accounts. In the Baldwin Decision, the Tribunal concluded it related to the provision of a Responsible person but that was not clarified. No invoice has been subsequently provided.

Determination

62. In the absence of any explanation of this charge, and in reliance upon the conclusions of the Tribunal in paragraphs 41 – 43 of the Baldwin Decision [Page 258 of the Bundle], the Tribunal determines that no sum shall be recovered under this heading.

Insurance

63. The sum £10,649.03 is shown in the accounts. Whether or not this is the correct figure, it is not part of the service charge, as the Lease provides for it to be collected separately. [See habendum clause on page 3 of Lease at Page 79]. Therefore it cannot be included in relation to any calculation of the Management Charge.

Repairs and Maintenance

64. The amount shown in the accounts was £4,567.31. The Applicant stated that it would agree £50 stating that the invoices which had been provided were not in respect of costs that were recoverable as service charges.

Determination

65. The Respondent was afforded an opportunity to explain these charges, but has not, so the Tribunal will allow £50.

Pump Maintenance - Determination

66. The figure of £216, based on actual invoices, was agreed.

Road Resurfacing

67. The amount shown in the Accounts is £4,868.14. An invoice dated 10 April 2018, [Page 67], is addressed to Chancery Lane Investments, the former owner. Ownership of the site was transferred to the Respondent on 18 September 2017 as is recorded in paragraph 128 of the Shortridge Decision, [Page 294].
68. The Applicant stated that two men had attended the site. They said that they were working for Moreland and spent part of one day filling potholes in the road with cold tarmac. The Applicant told the Tribunal both men left the site together part way through the afternoon, [Page 54]. The Applicant considers that, allowing for 50 bags of material at £750 and the cost of two men working for part of the day, £1,200 would be a reasonable and generous amount to allow towards this charge.
69. Paul Simon did not submit any evidence regarding the works. He was unable to offer any further information.

Determination

70. The Tribunal saw some evidence of patch work repairs to the road at the northern entrance and in the central area of the site but those repairs were already disintegrating when it inspected the site. However the road leading from that entrance to the Country Club building is not within the definition of Estate in the Lease. Therefore works to that part of the road are not recoverable under the service charge.
71. In the absence of any specification for the works that were carried out or any evidence that the work was of a type or quality to justify more than a basic charge, the Tribunal determines that it will allow a charge of £1,200 because the Applicant agreed to this amount.

The Management Fee - Determination

72. The figure in the budget is £16,500. In both the Baldwin Decision and the Shortridge Decision, the tribunal determined that the Lease restricts the recoverable Management Charge to 5% of the service charge for the year.
73. Paul Simon accepted, that the Management Fee recoverable is 5% of the total of the allowable service charge, excluding insurance, but offered no explanation as to how the budgeted figure had been calculated.

74. The budget figure equates to 25% of the service charge budget. Since the Respondent is aware that the amount that is recoverable is 5%, it is not clear why this figure does not represent 5% of the Respondent's budget which would have been £3,300.
75. **The total allowable service charge for the year ending 30 September 2018 which may be recovered by the Respondent is the amount shown in the Appendix 1 from which it has been possible to calculate (and include) the Management Fee of £1,143.53. The total amount of service charges payable for this year is £24,014.21 which equates to a payment for each chalet of £407.02. See Appendix 1 below.**

Service Charge year ending 30 September 2019 (2018/19)-Actual amount payable

76. The Respondent has not produced accounts for this service charge year. Paul Simon told the Tribunal that the accounts were in the course of preparation and would be available shortly. He requested that the Tribunal adjourn the Hearing pending the issue of the accounts but the Applicant was unwilling to agree to this proposal. The Applicant told the Tribunal that it had been trying to agree the service charges with the Respondent since the issue of the Baldwin Decision but without success. Although it had entered into correspondence with the Respondent, information was rarely provided and service charge accounts were never adjusted. This is illustrated by the fact that the Respondent continues to issue County Court proceedings against the individuals comprising the Applicant. Furthermore, the Applicant had to apply for amended Directions because the Respondent failed to comply with the Tribunal Directions dated 22 November 2019.
77. Paul Simon said that he could arrange to suspend the issue of further demands, which he implied are generated automatically. He said that he would stop the issue of further statements too. Paul Simon said that the issue of the 2019 Accounts was imminent and that these could be sent to the parties and the Tribunal immediately these became available. He suggested it would be much easier for the Tribunal to deal with this year and the budget for 2019/2020 when it received a record of the actual expenditure. When he was asked why the Bundle did not contain copies of the invoices underlying the service charge costs for the year, he implied that these were "with the Accountant".
78. The Applicant was unwilling to rely upon any representations made by Paul Simon. The history of its encounters with the Respondent made it reluctant to believe those representations. It has made numerous attempts to engage with the Respondent as is evidenced by the correspondence included in the Bundle.
79. The Applicant's case and grounds of its challenge to the amount demanded was set out in the Application. It is also appropriate to record that Paul Simon told the Tribunal that it "is just a budget" and there is no reason why anticipated expenditure should not be included. The Applicant said that the budget needed to be reasonable.

80. The Tribunal refused to allow an adjournment and told the parties that it wished to hear both in relation to its determination for this year and on the application for a determination of a reasonable payment on account for the year 2020/2021.
81. However, the Tribunal agreed to issue Further Directions (see paragraph 8 above) and defer making its determination until the parties had complied with those Directions, subject to the caveat that it would not wait indefinitely for the production of the 2019 Accounts. In paragraph 4 of the Further Directions, the Tribunal stated that it would make its determination following receipt of the Applicant's comments on the further information.
82. The Respondent demanded a payment of **£1,382.93** on account of Service Charges for this year on 31 August 2018. See invoice for chalet 12; [Page 206]. The Respondent offered no explanation as to how it had calculated the sum demanded. The budget for the year shows anticipated expenditure of £62,720.11. A 1/59 share of **that budget** is £1,063.05.
83. There is no evidence in the Bundle that the budget for this year was made available by the Respondent before the demand was issued.
84. The budget [Page 61] was emailed to Christopher Ley by Paul Simon of Moreland on 19 December 2019. The Applicant was only able to specify its grounds in full following the disclosure of the budget. (see note at the beginning of Page 30), following receipt of which the Applicant provided a further statement, [Pages 30-40] which also includes comments relating to the subsequent year 2019/2020.
85. The Respondent eventually provided a statement from Paul Simon dated 13 February 2020, [Pages 388-391] and the Applicant responded in detail [Pages 41 – 55], and to the information disclosed following the hearing in its email dated 19 March 2020. Submissions were also made orally by the parties in relation to the three written statements included in the Bundle at the Hearing.

Audit Fees - Determination

86. The budget refers to a figure of £2,750. The actual figure in the 2018 Accounts was £750 and the Respondent offered no explanation of the increase. On that basis the Applicant submitted it was not reasonable. Paul Simon agreed to the sum of £775. He did not explain why the budgeted figure had been inflated from the actual figure in the 2018 accounts. Following the Hearing Paul Simon produced an invoice for £750 which was the amount that the Accountant charged and this was agreed.

Council Tax (rates)

87. This heading first appeared in the budget for 2016/17 where it was referred to as rates but did not occur in the Accounts for that year. The sum of £1,400 is shown in the 2018/19 Budget. [Page 61]. The Applicant told the Tribunal that each owner paid council tax for its chalet and should not be responsible for any additional charges. Paul Simon stated that the "rates" related to a chalet occupied by the "resident caretaker

gardener”. It was not disputed that the operative who carried out the gardening, cleaning and general maintenance recharged to the lessees occupies a chalet on the site during the week. The Applicant’s evidence, not rebutted, was that he is in occupation for three days a week. According to the Applicant he arrives Monday evening and leaves Thursday evening. However it was suggested by Paul Simon at the Hearing that since Christmas (2019) the caretaker/gardener had been available on site six days a week.

88. At this stage Paul Simon offered no response to the Applicant’s submission that the council tax was not recoverable under the Lease. In fact it was suggested that there might be six different versions of a chalet lease although the Tribunal received no evidence about this due to the failure of the Respondent to provide specimen leases as it had been directed to do by the 22 November 2019 Directions made by Judge Tildesley OBE.

Determination

89. The Tribunal determines that Council Tax² payable by the Respondent for a chalet belonging to it which is used by an operative who resides on site is not recoverable within the service charge for the Property.

Electricity

90. A figure of £5,000 is shown in the budget. The Applicant questioned why the budget was so much more than in the previous year. Actual expenditure admitted by the Respondent was £1,037.82 [Page 388]. Paul Simon offered no explanation. The Applicant analysed the information contained in the copy ledger [Pages 478 – 480] and in its response to the Respondent’s Statement, [Page 42] and said that since the switch from Corona Energy to Southern Electric the monthly charge had increased by 34%. At the Hearing Paul Simon said that the charge for the supply of electricity was a contractual issue and the supplier deal had been changed. Following the Hearing, copy invoices totalling £1,137.56 were provided to the Applicant. This exceeds the figure of £1,037.82 which Paul Simon said at the Hearing was the actual figure. The Applicant accepts this charge.

Determination

91. The figure of £1,137.56 for electricity has been agreed. However the Tribunal does not understand the basis for the budgeted figure of £5,000 particularly as the actual figure shown in the preceding years accounts was £1,084.72. The inclusion of a random figure of £5,000 in the budget for this year and the two preceding years is not reasonable.

Gardening and Landscaping (including grounds maintenance and the Site Manger)

92. The budget refers to a figure of £5,000 plus £22,720.11 for a site manager, so a total of £27,720.11. Invoices for £30,000 were provided to the Applicant. The Applicant does not accept that the amount shown in the budget is a reasonable charge for the maintenance carried out

² No invoice for this sum was produced to the Tribunal

during this service charge year. The Respondent's statement states that the cost included the daily attendance of an operative on site.

93. Paul Simon conceded that if the Respondent was able to recover £30,000 it could not recover its the Council Tax too. He offered no actual evidence to counter that of the Applicant regarding the time spent working on site by the resident caretaker/ gardener/ site manager.

Determination

94. The Tribunal noticed no tangible differences to suggest that the maintenance of the site under the description of gardening and landscaping has been substantially enhanced, albeit it is accepted that its visit was at a different time of year from the previous visit. A damaged tree had been removed which presumably explains the cost of the tree survey undertaken that year.
95. On the basis of the information that it has, the Tribunal determines it appropriate to allow £20,217.60 to cover the costs of gardening, landscaping, ground maintenance and general repairs (including the site manager). The Respondent will need to demonstrate far more clearly than it has hitherto done in any year, the scope of the work undertaken, the agreed charge and the contractual arrangement between either the Respondent (or Moreland on its behalf) and any operative. (The amount allowed is the same as allowed by the Tribunal in the previous year save that in this year all has been allocated to gardening and landscaping with nothing allocated to cleaning communal areas.)

Health and Safety

96. The figure in the budget was £850. Paul Simon stated that the actual figure is £375 for a fire risk assessment. This was reluctantly agreed by the Applicant although it suggested that the Respondent is reluctant to provide leaseholders with copies of any such assessments. However following the Hearing, the Respondent failed to provide an invoice for this charge.

Determination

97. The Tribunal has concluded in the absence of any verification of the charge, nothing is recoverable.

Pump Maintenance

98. The figure in the budget was £7,500. Following the disclosure of further information after the Hearing, the Applicant in reliance on invoices produced to it, accepted a total charge of £3,861.25, [Email dated 19 March 2020]. This is the sum which the Respondent has admitted represents actual expenditure. No explanation was offered by Paul Simon why the budgeted figure was £7,500 in the budget for 2018/2019 when the actual figure in the account for the preceding year had been £216.

Determination

99. The parties have agreed the actual charge of £3,861.25.

General Repairs

100. The figure in the budget was £10,000. However the schedule of expenses [Page 479] referred to an amount of £1,134 for an arboricultural survey agreed by the Applicant. The Applicant does not understand the basis of the budgeted figure, and the Respondent offered no clarification but admitted the agreed figure.

Determination

101. The figure of £1,134 is agreed. No explanation was offered by Paul Simon for the wide divergence between the budget and the actual expenditure in the preceding year although he said “under budgeting” would lead to the Respondent needing to recover a large balancing amount once accounts were finalised.

Sundries

102. This item was referred to in the 2017/2018 budget but the amount has been increased to £2,500. Paul Simon suggested that this was a “catch all” figure. There are no items of expenditure under this heading in the schedule of expenses, [Pages 478 – 480]. In the Respondent’s response to the Applicant’s statement, Paul Simon admitted that nothing is recoverable under this heading.

Determination

103. Nothing will be allowed in respect of Sundries as there is no evidence of any expenditure which might fall within such a heading. Had such evidence been available, the Tribunal would have needed to establish that the expenditure was recoverable under the Lease before allowing any charge to be recovered.

Management Fee- Determination

104. The figure in the budget is £5,000. For all the same reasons as have been set out for the preceding year, the Lease restricts recovery to 5% of the total service charge for the year.

105. **The total allowable service charge for the year ending 30 September 2019 is the amount shown in Appendix 1 from which it has been possible to calculate, (and include), the Management Fee of £1,355.02. The total amount of service charges payable for this year is £28,455.43 which equates to a payment for each chalet of £483.30. See Appendix 1 below.**

Service Charge year ending 30 September 2020 (2019/20) - Payment on account

106. Following receipt of the Application, Judge Tildesley OBE directed the Respondent to provide the service charge budget for 2019/2020. The Respondent had already demanded the sum of £1,648.41 on 24 September 2019 and the Applicant said that it had not received a budget explaining the calculation of the sum demanded. However, although a copy of the budget for both this year and the preceding year 2018/2019 were emailed by Paul Simon to Christopher Ley on 19 December 2019 [Pages 61-63], the Respondent has disclosed an earlier email dated 2 October 2019 from Mark Muster to Christopher Ley which also contains a copy of this budget. [Page 233]. This is in the section marked general

correspondence so the Tribunal assumes that this was simply overlooked. The email was sent in response to a request from Christopher Ley.

107. The demand for £1,648.41 does not correlate with the budget. A 1/59 share of the budget is £1,089.63. In addition to the sum demanded on account of service charges, the Respondent separately demanded, on the same date, (24 September 2019) £582.07. This was described as “Service Charge – Retarmac Roads (Insurance Requirement). [Page 232].
108. No specification for proposed work to the road was provided. Neither has an estimate of the costs been disclosed. The amount demanded (£582.07) multiplied by 59 would amount to £34,342.13 which is a very precise amount. It seems unlikely to the Tribunal, based on the conduct of the Respondent hitherto revealed in the evidence, that it will have taken into account that the Applicant is not obliged to contribute towards works carried out to that part of the road which is not within the definition of the Estate. Notwithstanding that the Respondent told the Tribunal it was required by its insurer to repair the road by July 2019, it has not entered into any consultation with the leaseholders or explained how it calculated the sum demanded. In response to questions from the Tribunal, Paul Simon stated that he does not accept that there was any need to undertake consultation before demanding the separate “on account” payment.
109. The Tribunal does not accept that the service charge of £582.07 demanded **in addition** to the payment on account demanded on the same day is reasonable. There is no provision in the Lease which would enable the Respondent to demand an additional payment separately from its annual demand for service charges on account. Given that the additional figure is for specific works, the Respondent must comply with section 20 of the Act and undertake a consultation exercise, before incurring that cost. As an alternative, it could have made an application under section 20ZA of the Act to dispense with consultation if the works required were urgent.

Determination

110. No evidence of any recent road repairs were apparent during the Tribunal’s inspection. Furthermore, taking into account the invoice produced by the Respondent in relation to the claim for Road Resurfacing works in the year ending 2018, the amount demanded seemed inappropriate. The Tribunal determines that the Respondent cannot recover this separate payment in addition to the payment on account of service charges for 2020/2021.

Audit Fees - Determination

111. The budget shows £2,818.75 The parties agreed to £800.

Council Tax (Rates) - Determination

112. Paul Simon had previously conceded that this item should not be included and is not recoverable under the terms of the Lease.

Electricity- Determination

113. The budget figure £5,125. Paul Simon accepted that this was an unreasonable figure and the parties agreed £1,500.

Gardening and Landscaping (including grounds maintenance and the Site Manger) - Determination

114. The amount shown in the budget is £25,913.11 (under the heading Grounds Maintenance) with a separate amount of £2,500 for the site manager. On the basis of what has been disclosed in relation to previous years this is excessive. In the absence of the 2019 accounts which would have indicated the actual expenditure on which the Respondent should have based its budget, and in reliance with what has been allowed by the tribunal for the preceding year, the Tribunal determines that £20,500 is reasonable.

Health and Safety - Determination

115. The Tribunal is prepared to agree to a budget figure because it is appropriate to budget for a Health and Safety assessment. Therefore it determines it is reasonable to include £400 in the budget, subject to the caveat that nothing will be recoverable unless a copy of any assessment undertaken is made available to the leaseholders with a copy of the invoice for that assessment.

Pump Maintenance - Determination

116. The parties jointly agreed a figure of £4,000 which the Tribunal considered reasonable, based on the actual expenditure, (insofar as this could be established), in preceding years.

Repairs and Maintenance - Determination

117. The parties agreed a figure of £1,350 which reflected the actual expenditure, (insofar as this was established), in the preceding year.

Sundries - Determination

118. A figure of £2,562.50 is shown in the budget. For all of the reasons explained in the previous year the Tribunal determines nothing shall be recoverable under this heading.

Management Fee - Determination

119. This is calculated, with the agreement of both parties, as 5% of the total budget and reflects the charge the Respondent is entitled to recover under the Lease.

120. **The amount which the Respondent may reasonably demand on account of the Service Charge for the service charge year 2019/2020 is £508.09. The amount of £582.07 demanded separately is not recoverable. See paragraph 110 and Appendix 1 below.**

Recovery of Insurance contributions for each of the years determined

121. The Applicant accepts that it has a contractual obligation under the Lease to contribute towards the cost of buildings insurance. However, it told the Tribunal that it had received minimal information and, until recently, little or no evidence of insurance cover, notwithstanding that for the most part it has paid the sums demanded by the Respondent.
122. It found it difficult to decipher any information provided by the Respondent in relation to the buildings insurance; it has never received receipts or other evidence of payment of insurance premiums by the Respondent nor any explanation as to how the contributions demanded were calculated. It remains uncertain whether the insurance policy included cover for risks in respect of which the Applicant is not obliged contribute, such as insurance of the Clubhouse.
123. There is some information and documentation in the Bundle relating to the insurance policy for each of the disputed years. The insurance year runs from the 25 January – 24 January, until July 2019. The extracted details for each year, save for that commencing in July 2019, include cover for loss of rent, employers liability, property owners liability and commercial legal expenses.
124. The Tribunal which made the Baldwin Decision found it impossible to calculate a reasonable payment for the year ending 2017 because the Respondent failed to provide sufficient information as to the risks covered and premium paid. The accounts for that year showed an insurance credit which was never explained by the Respondent. Similarly when Judge Tildesley made the Shortridge Decision, he too had insufficient information or evidence. See paragraph 103 of his decision in which Judge Tildesley recorded that “Mr Simon conceded that the amount claimed for insurance may require adjustment”. [Page 291].
125. At the Hearing, Paul Simon insisted that the loss of rent cover is for the benefit of the leaseholders to enable them to claim compensation for loss of rental income in the event of damage to their individual chalets.
126. The Tribunal does not accept his submission. It does not accept that it would generally be possible to insure against losses which do not affect the insured. Furthermore the following wording appears on the policy schedule:- (Tribunal emphasis): -
**“ Residential Property – Rent and alternative accommodation
Residential Property is defined as a flat or block of flats
apartment block maisonette or house situate at the premises
other than temporary/holiday accommodation and as a result
of Damage the insurer will indemnify the insured in respect of
rent and alternative accommodation”** [Pages 336, 341, 347, 351].

127. The Applicant, following the demand of a second insurance contribution (during the same year) in July 2019, asked for an explanation and Moreland told the Applicant that the Respondent had been unable to obtain insurance cover in respect of the site because of the poor condition of the road. [Page 315]. That is the reason given for the cancellation of the existing insurance policy and its replacement with a new policy in July 2019. The documents in the Bundle do not substantiate this explanation.
128. The Bundle contains a copy of the policy schedule for 2019/2020 [Pages 470 – 474] and an invoice from M&N Insurance dated 25 January 2019. The invoice confirms the annual premium of £14,125 due for the renewal of the existing Allianz policy in January 2019 [Page 353]. A copy of the cancellation schedule [Page 354] shows the cancellation of the policy on 12 July 2019 with an effective date of 27 July 2019. There is no evidence of the reason for cancellation in the Bundle.
129. The Allianz policy had been in place since January 2016. No evidence has been provided by the Respondent why the abandoned vehicles on the site and the potholes in the road would have prompted the existing insurer to review the cover in July 2019, six months after renewal of the policy in January.
130. Cover under the new insurance policy commenced on 31 July 2019. The premium is significantly more expensive and the policy excludes cover for Property Owners Liability.
131. In an email dated 31 July 2019 from M&N Insurance and Financial Services to Laurence Freilich, the broker confirms that the new policy covers the chalets but it excludes the Clubhouse and liability of the common areas. This email states, “Once the cars are removed and the potholes sorted I can ask them to add liability back in”. [Page 476]. It refers to an urgency, presumably on account of the fact that no insurance cover was held by the Respondent at that time.
132. In the absence of any evidence to the contrary, the Tribunal has concluded it is likely that the Respondent cancelled the existing insurance Policy. If the existing insurer was disinclined to maintain insurance cover on the existing terms, the Respondent would have been able to produce evidence confirming that decision with the insurer’s reasons. It has not explained why it did not make a similar arrangement with Allianz, as M&N Insurance have made with the new insurer; i.e. to temporarily suspend part of the cover pending removal of abandoned cars from the site and improvements to the road.
133. Clause 5(4) of the Lease contains the Lessors covenant “to insure and keep insured the Demised Premises against loss or damage by fire and such other risks (if any) as the Lessors shall from time to time think fit in some insurance office of repute in the sum ofor such greater sum as the Lessors shall think fit and whenever required (but not more frequently than once every twelve months) produce to the Lessees the policies of such insurance and the receipt for the last premium for the same and will in the event of the demised premises being destroyed by

fire or other insured risks as soon as reasonably practicable lay out the insurance money received in the repair rebuilding or reinstatement of the said demised premises.” [Page 86]. The Applicant is obliged to pay such sum as the lessors may pay, on demand, by way of further or additional rent, for the insurance of the said demised premises in accordance with their covenant. [Page 79].

134. Paul Simon told the Tribunal that it was not possible for the Respondent to comply with the Lease and only insure the individual chalets, but the schedule to the new 2019 policy contradicts his statement as the clubhouse is excluded from the policy. (See paragraph 131 above).
135. At least one payment for insurance has been demanded from the Applicant every insurance year. The sums demanded are shown on various invoices issued by the Respondent, contained in the Bundle. The schedule below shows the amounts demanded by the Respondent in the service charge years 2016/2017 to 2019/2020.
- | | |
|-----------|---|
| £154.86 | [Page 140] for the period expiring on 29.09.17 |
| £152.52 | [Page 155] for the period expiring on 24.01.18 |
| £161.93 | [Page 194] for the period expiring on 24.01.19 |
| £210.82 | [Page 225] for the period expiring on 24.01.20 |
| £294.76 | [Page 248] for the period expiring on 30.07.20 |
| (£104.19) | [Page 248] credit due; cancellation of prior policy |
136. The leaseholders are not named as an insured party and their interest is not noted specifically on any of the insurance schedules disclosed. No receipts for premium payments are included in the Bundle and the Tribunal was not made aware that any were provided after the Hearing.
137. Furthermore, from January 2018 the extracted insurance information refers to the insured as Chancery Lane Investments Limited and Ground Rent Trading Limited. Given that it has been established that the current freeholder acquired the Property on 18 September 2017, the Tribunal does not understand why the previous freeholder retains an insurable interest.
138. The Tribunal, doing what it can with the information in the Bundle, has reached the following conclusion. Insurance contributions were demanded in September 2016, January 2017, January 2018, January 2019 and July 2019. There is evidence that there was buildings insurance cover for January 2016 to January 2017, January 2017 to January 2018, January 2018 to January 2019, January 2019 to January 2020, and July 2020 to July 2021. In September 2016 a payment was demanded for the 12-month period between 30 September 2016 and 29 September 2017. [Page 140]. There is no evidence in the bundle of a buildings insurance policy which covers this period. An extract from the Allianz policy schedule [Pages 333 – 337] shows that cover was held for the period between 25 January 2016 and 24 January 2017. Therefore the payment demanded in September 2016 was demanded prematurely as the existing Allianz insurance policy expired in January 2017. The September demand was clearly made for a period during which insurance was already held. The Tribunal does not know if any payment for insurance was demanded in January 2016, but payment for the

period between 25 January 2017 and 24 January 2018 was demanded in January 2017. For that reason the Tribunal has determined that the September 2016 payment is not recoverable by the Applicant. [See paragraph 144.b below].

139. The next insurance payment demanded was in January 2017 for a 12-month period between 25 January 2017 and 24 January 2018 [Page 155]. Thereafter the insurance year runs from January to January until July 2019.
140. In July 2019 the existing Allianz insurance policy was cancelled, a new policy obtained and an additional £294.76 was demanded. The Applicant received no explanation for this further demand until it requested additional information, which led to an exchange of emails between Brian Steele and Moreland.
141. The only evidence provided to the Applicant to justify the increase is the email dated 18 November 2019 from Moreland to Brian Steele which suggests that the existing insurance company declined to provide cover on account of the condition of the roads in July of 2019. [Page 315 and 316].
142. However, ten months later the Respondent has taken no action to fill in the potholes or remove abandoned vehicles from the site and to rectify the problem which, it claimed, led to cancellation of the existing insurance policy in July 2019. The Respondent was aware of the existence of abandoned cars on the site prior to the Baldwin decision. It is also aware of the current condition of the road.
143. For all of those reasons, the Tribunal concludes that it is unreasonable for the Applicant to be financially prejudiced by the Respondent's inability to insure the site because of its failure to maintain the road and remove abandoned cars from the site. The Tribunal determines that the Applicant should not be responsible for payment of the insurance contribution demanded by the Respondent in July 2019.
144. In summary the Tribunal determines that:-
 - a. the following payments demanded **may be recovered** by the Respondent:-

January 2017	£152.52
January 2018	£161.93
January 2019	£210.82
 - b. The following amounts demanded **may not be recovered** by the Respondent:-

September 2016	£154.86
July 2019	£294.76

Administration charges and Interest - Determination

145. Under the terms of clause 3(14) of the Lease [Page 84], the Respondent is entitled to charge £10 per reminder letter sent in respect of an overdue payment, together with interest at 10%, clause 3(17) [Page 85], on any amount overdue for more than 14 days. In paragraph 102 of the Shortridge Decision, Judge Tildesley OBE identified that, in the absence of any evidence that any arrears due to the previous owner, (those arising before 18 September 2017), had been assigned to the Respondent it **could not** claim those arrears. [Page 291].
146. It is not disputed by the Respondent that there has been no reconciliation of the amounts collected from lessees with the amounts spent by the Respondent in providing services since the Respondent became the owner of the site. Therefore the cumulative arrears shown in service charge accounts of the Applicant are unlikely to be correct.
147. Credits for service charges collected in previous years have been credited to the service charge account although not to individual leaseholders.
148. In reliance upon Judge Tildesley's conclusions in the Shortridge Decision, the Tribunal cannot look back before 18 September 2017 [See paragraph 145 above].
149. This Tribunal has therefore decided that it would be both just and convenient for the Respondent not to be able to recover arrears arising on or before 1 October 2017.
150. The Tribunal determines that all interest and administration charges demanded by the Respondent which relate to alleged debts prior to that date are not recoverable because the Respondent has no contractual right to demand such payments under the Lease.
151. It will only be possible to identify if there are any arrears after 1 October 2017 once appropriate adjustments are made to the service charges demanded during the period of this Application and the Service Charge Accounts are amended.

Generally

152. At the Hearing Paul Simon expressed surprise when it was suggested to him that there are at least six different versions of chalet/bungalow leases. This information was disclosed by a Tribunal member who had discovered information about the site by searching the internet. The Applicant is aware that there are different versions of leases and had told Moreland. During the Hearing, David Baldwin read from a copy of his own lease which he brought to the Hearing, but which was not in the Bundle. The wording, when compared with the wording of the Lease, was slightly different. The Respondent had been directed to provide example leases for each Applicant's bungalow but failed to comply with the Tribunal's Directions.
153. Without having seen copies of all the leases of the Applicant's bungalows, it is impossible for the Tribunal to analyse the potential effect on the recovery of service charges generally on any differences although it has

noted that the Applicant believes that other leases contain different service charge provisions and some lessees are obliged to pay index linked service charges rather than variable service charges.

154. Having carefully examined the available accounts, the Tribunal has concluded that at the end of 2015/2016 the Accounts show a shortfall of £19,798.11 [Page 101]. The Accounts for 2016/2017 show a surplus of £3,887.72 [Page 106].
155. Notwithstanding that Paul Simon insisted that the Baldwin Decision had been applied, so where appropriate sums have been credited to the service charge demands received by the Applicant, this is not reflected in the statements received by the Applicant before the Hearing. Furthermore, those statements provided by the Respondent to the Tribunal after the first day of the Hearing do not show the recent credits and debits in consecutive date order.
156. Paul Simon represents himself as being AssocRICS and is so described on the RICS website. However his approach to service charge budgeting expressed at the Hearing is not in accordance with the RICS management code. It is clear from a comparison of the service charge budgets for successive years and the amounts demanded by the Respondent that Moreland have a similarly cavalier approach to service charge budgeting. [See Appendix 1].
157. Paul Simon's explanation that the budget is simply "a Budget" and therefore may properly include amounts which, to the Tribunal, do not seem to have been calculated with reference to either past expenditure or anticipated expenditure, is not correct. Furthermore when such sums, are collected and exceed actual expenditure, these have never been re-credited to individual service charge accounts. This is demonstrated by the failure to re-credit David Baldwin's service charge account following the Baldwin Decision until just after the Hearing. The annual budget must be calculated on the basis of the RICS code with which Paul Simon will be familiar.

Reasons for the Decision

158. The Lease sets out the obligations of the Lessor and Lessee. The Property (the chalet bungalow), described as a piece or parcel of land with the bungalow thereon, is demised to each Lessee with the right to use the areas designated for parking one motor vehicle and to pass over the footpaths on foot and to use the lawns and gardens within the Estate and to use parking areas excluding those hatched yellow on the Plan [Page 96] (that is a small area between chalet 58 and the public highway). Additional rights enable lessees to maintain the chalet and give it support shelter and protection from adjoining bungalows and drainage rights.
159. The Estate is shown edged yellow and coloured brown on the Plan. It includes part of the road and the grounds in the central part of the site and excludes the Clubhouse, tennis courts and the ground in front and to the south of the Clubhouse and the road leading to it from the northern entrance.

160. The bungalow is demised for a term of 98 years and 302 days until 30 September 2098. In addition to the ground rent reserved the Lessee must pay by way of further or additional rent a contribution towards the insurance of the demised premises and also a service charge.

“in consideration of the Lessors covenants hereinafter contained payable in advance on the 30th day of September in each year such charge being the greater of either:-

- (i) The sum of £247 per annum or if greater the sum or £247 multiplied by the index of retail prices.....
- Or
- (ii) A sum which shall be one fifty ninth of the sum calculated in accordance with the Fourth Schedule hereto and payable in accordance therewith

The Fourth Schedule headed “CALCULATION OF SERVICE CHARGE” is set out in full below.

1. The Lessors shall from time to time determine and give notice to the Lessee of the amount of the service charge and this sum shall be payable as the service charge on the succeeding payment date being the 30th day of September in each year in respect of the year commencing the 30th day of September
2. The Lessors Accountants as soon as practicable after the 30th day of September in each year shall certify the amount of the service charge and if such charge shall be greater than the sum paid in advance in any year of the Term by the Lessee as previously provided the balance of the said sum shall be a debt due and owing to the Lessors and payable with the service charge for the ensuing year and conversely if such charge shall be less than the sum so paid the balance shall be held to the credit of the Lessee and shall be taken into account in determining the service charge for the ensuing year.
3. The said Certificate shall contain a summary of the Lessors expenses which shall constitute the following:-
 - (a) The cost of complying with the Lessors covenants contained in Clause 5(2) and Clause 5(3) of the Lease (in respect of which the Lessor shall be entitled if appropriate to charge for their own time at a reasonable rate) (but excluding always the cost of 5(2)(b) (the same being charged separately)
 - (b) The cost of cleaning and where necessary lighting the areas used in common by the Lessee and other Lessees and the Lessors
 - (c) The cost of gardening and landscaping the Estate
 - (d) The cost of providing and maintaining any service or amenities that may be requested in writing by a majority of the Lessees of the bungalows comprised on the Estate and which may be provided by the Lessors at such request
 - (e) The fees of the Lessors Accountants

(f) The cost of management which shall not exceed the management allowance permitted from time to time by the Department of the Environment and which in any event shall not exceed 5% of the cost of the services otherwise provided

161. Clause 5(2) of the Lease obliges the Lessor
 - (a) to keep the said Estate (excluding the areas hatched yellow and the Demised Premises and the Bungalows on the Estate) and every part thereof and the roads and footpaths and the said services therein in good condition and repair and the grass properly trimmed
 - (b) to keep the sewers and the sewage plant serving the Estate in good working order
162. Clause 5(3) requires the Lessor to provide a refuse collection point for one normal size general purpose refuse bag per week from the premises.
163. The Lease provides clear guidance as to the heads of expenditure which should be referred to in the Service Charge Accounts and enables the Lessor to collect a sum on account of its expenditure in advance on the 30 September each year, the amount of which should be calculated by reference to a certificate, obtained from its accountant, which is a summary of its expenses.
164. There was no evidence of the Respondent having ever obtained or produced a Certificate from its Accountant. Based on the Accounts in the Bundle, it seems unlikely that the Accountant has ever referred to the Fourth Schedule of the Lease as the heads of expenditure in the Accounts do not match the items listed in Clause 5. When the Tribunal questioned Paul Simon about this, he said it must be related to the “accounting package” used by the Accountant but his explanation cannot be correct because when the Respondent introduced a Finance Charge in 2017/2018, the Accountant referred to the new heading in the service charge accounts.
165. The Tribunal considers it reasonable to assume that an accountant who had examined and become familiar with the content of the Lease, should have queried the amount of the Management Charge.
166. As well as complying with the provisions of the Lease, the Respondent must comply with the provisions contained in the Act and in particular Clauses 18, 19 and 27A. The Respondent is only entitled to recover relevant costs which are reasonably incurred in relation to the provision of services or works of a reasonable standard. Furthermore, compliance with the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors is also a legal requirement pursuant to **section 87 of the Leasehold Reform Housing and Urban Development Act 1993**.
167. Paul Simon is styled as AssocRICS. He is described as “Solicitor and In-House Counsel to Moreland” so the Tribunal is entitled to assume that he is fully cognisant of the duties and responsibilities of the Respondent as freeholder, even if Moreland and Laurence Freilich are not. See the

email dated 31 August 2017 from Laurence Freilich to Christopher Ley in which he states;- “ I have not been made aware of this issue by Mark and I am out of the office till mid next week. I will attend to this then but I would remind you that as these are holiday chalets you are not able to seek redress via the Property Tribunal” which was incorrect. [Page 172].

168. The Tribunal has concluded that there is no correlation whatsoever between the service charges demanded and the actual expenditure in the preceding year. It was impossible to work out on what basis the budgets are prepared by Moreland. In many years these have included novel headings for anticipated expenditure.
169. Since the Management Fees shown in all of the Service Charge Accounts disclosed substantially exceed those the Respondent is entitled to recover it is impossible to establish that any Applicant is in arrears in respect of sums demanded and paid.
170. The Respondent is not entitled to recover any interest on arrears unless it can demonstrate that any Applicant remains in arrears with regard to its liability to pay the adjusted service charges due. Any interest due at the rate referred to in the Lease must be calculated by reference to actual arrears of service charges equivalent to the sums which this Tribunal has determined are due.
171. The balance carried forward in the unadjusted 2017 Account is **£3,887.72**. [Page 106]. The balance carried forward in the 2018 Accounts is **£24,877.41**. [Page 111]. Those balances will be increased by the difference between the total expenditure shown in the accounts and the amount which this Tribunal has determined is recoverable. It is inevitable that the accounts produced by the Accountant for 2019 will need further adjustment as the figure which this Tribunal has determined as reasonable is substantially less than the Respondent’s budgeted expenditure for that year. That recalculated surplus should be credited pro rata to each lessees individual service charge account and taken into account before determining the contribution due in the next service charge year. (See paragraph 2 of the Fourth Schedule to the Lease).

Costs

172. Following the conclusion of the parties submissions on the service charges, Paul Simon agreed to reimburse the Applicant in respect of its expenses. Marion Ley provided figures and Paul Simon agreed that the Respondent would reimburse the Applicant **£421.90** (which included both the Application and Hearing Fee).

173. No further submissions in relation to costs were made. Paul Simon stated that he would resist any other costs application on the basis that he had made substantial concessions to the Applicant throughout the Hearing. If either party should decide to make an application they should refer to the guidance provided by the Upper Tribunal in **Willow Court Management Company (1985) Ltd v. Alexander [2016]UKUT (LC)**.

Judge C A Rai (Chairman)

Extracts from relevant parts of the Act

S18 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] [\[FN1\]](#) 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 purposes—
- (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.[...]

S19 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 provisions 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.

[...] [\[FN1\]](#)

- (5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.[...] [\[FN2\]](#)

[\[FN1\]](#) and [\[FN2\]](#) repealed subject to savings specified in SI 2004/669 Sch.2 para.6 by [Commonhold and Leasehold Reform Act \(2002 c.15\), Sch 14 Para 1](#)

S27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation 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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.[...] [\[FN1\]](#)

[\[FN1\]](#) inserted subject to savings specified in SI 2004/669 Sch.2 para.6 by [Commonhold and Leasehold Reform Act \(2002 c.15\), Pt 2 c 5 s 155 \(1\)](#)

S20C "Limitation of service charges: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the

amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.".] [\[FN1\]](#)

[\[FN1\]](#) substituted subject to savings specified in SI 1997/1851 Sch.1 para.1 by [Housing Act \(1996 c.52\), Pt III c l s 83 \(4\)](#)

Appendices 1 and 2 attached