FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UN/LSC/2021/0014
Property	:	Henley Lawn, 11 Crow Hill, Broadstairs, Kent CT10 1HN
Applicants	:	John Edward Harris & Jane Kathleen Williams (Flat 1) Paul James Rohan (Flat 2) Adrian & Tara Gilham (Flat 3) Callum Alexander Hobson (Flat 4) Kristopher Stewart McLelland Bate (Flat 5) Helen Pearce (Flat 6) Deborah French (Flat 7)
Representative	:	Adrian Gilham
Respondent	:	Tindrell Limited
Representative	:	Francesca Elu
Type of Application	:	Determination of service charges (Section 27A of the Landlord and Tenant Act 1985)
Tribunal Member(s)	:	Judge R Cohen Tribunal member, K Ridgeway
Date and venue of hearing:		16 August 2021 Video conference
Date of Decision	:	27 October 2021

DECISION

Decision of the Tribunal

1 The Tribunal has decided, for the reasons that follow, that the demands for budgeted service charge expenditure for the years ending 24 December 2020 and 24 December 2021 should be reduced by omitting the amounts for:

1.1 Major works

1.2 Garden expenditure.

The challenges to the other items referred to all fail.

2 The consequential orders for which the First and Second Applicants applied are granted in relation all of the Respondent's costs.

3 The Tribunal makes no order for costs to be paid by any of the parties.

The Application

4 This is an application by the Applicants to determine service charges in the sum of £85,241.27 for 2020 and 2021, under section 27A of the Landlord and Tenant Act 1985 ("**the Act**"). On 20 July 2021, the Tribunal made directions for the conduct of this application. The Tribunal was not satisfied that the application was suitable for determination on the papers alone without an oral hearing. An oral hearing was directed. This took place on Monday 16 August by way of a video conference using the cloud video platform.

5 At the video conference hearing, the Applicants were represented by, the Applicant, Mr Gilham whose comments to the Tribunal were supplemented by the Applicant, Mr Harris. The Respondent was represented by its director, Ms Francesca Elu.

6 The application concerns a building known as Henley Lawn, 11 Crow Hill, Broadstairs, Kent ("the Building"). The Building comprises a four storey block of flats converted in 2002/03 comprising one two bedroom flat (garden flat with patio area), four one bedroom flats and two studio flats. The site of the Building includes two demised parking bays, plus a turning head. There is a garden at the rear of the Building which affords access to the two demised parking areas. The garden area was once a communal area for leaseholders but the Respondent has now deemed that it is not.

Specimen lease

7 The Tribunal was shown the lease of flat 7 which was assumed to be standard for all the flats in the Building. The lease contained the following provisions which are relevant to this application

Clause 1(iii)

"the Building" shall mean the freehold building situate and known as Henley Lawn 11 Crow Hill Broadstairs whereof is indicated edged red on the annexed plan "A" which plan is itself hereinafter called "plan A".

(NOTE by the Tribunal: It is not clear which of the lease plans is, in fact, plan A. The site plan shows a red line which includes the entire site on which the Building stands.)

"the flats" shall mean all the flats comprised in the Building and "the flat" or "a flat" shall mean one of such flats

"the reserved portions of the Building" shall mean the common entrances, stairs, corridors and landing not intended to be let; the external walls of the Building but not the internal plaster forming part of any flat; the foundations of the Building; the reinforced concrete slabs forming the floor of any flat but excluding any ceiling plaster or floor surfacing forming part of any flat; the roof rafter; ceiling joists and roof of the Building; all reinforced concrete beams; one half severed medially of all walls dividing the common entrances stairs corridors and landings from any individual flat, and , for the purposes of decoration only, the exterior surfaces of all window frames and window surrounds of any flat (but not the glass in the windows)and of the doors and the door surrounds giving access to any flat from the common entrances ; all pipes, cables, wires, ducting, drains and other things serving more than one flat; and the communal television aerial (if any) and wiring thereto serving the Building.

(vi) the expression "the Buildings" "the flats" and "the reserved portions of the Building "as respectively defined above shall each where the context so admits also include all additions improvements replacements fixtures and fittings thereto respectively and an part or parts thereof respectively.

Schedule 1 of the Lease describes the demised premises as the flat and parking space forming part of the Building.

Clause 6(4) is a covenant by the Tenant as follows

"So far as such expense is not recoverable from the Tenant under the next subclause to pay the Landlord or on demand a fair proportion as conclusively determined by the Surveyor for the time being of the Landlord of any expense incurred by the Landlord of cleaning repairing altering or rebuilding any part of the Building used or enjoyed by the Tenant in common with any tenant of any adjacent flat or flats

Clause 6(5) is a covenant by the Tenant as follows

" To pay to the Landlord [ ]%of the total amount from time to time expended by the Landlord or estimated as likely to be expended by the Landlord during the succeeding accounting period of the Landlord or towards a reserve which the Landlord wishes to establish in respect of obligations not of an annually recurring nature (the obligations of the Landlord being described in Clause 7 and in Schedule IV) including the remuneration of any professional person agent or manager staff workmen and others employed or engaged by the Landlord in connection with the provision of any such services"

By clause 7(2) the Landlord covenants with the Tenant to provide the services and to carry out the obligations in Schedule IV repairs and services

Schedule IV of the lease relates to the obligations of the Landlord which are listed as follows:

1. The decoration of the external surfaces of the Building in 2005 and every third year

2. The decoration as and when necessary and at least once in every five years of the common entrances, stairs, corridors and landings of the Building and the doors and door surrounds giving access to the flats

3. The periodic cleaning and maintenance as and when necessary of the common entrances, stairs, corridors and landings of the Building

4. the lighting of common entrances, stairs, corridors and landings of the Building including replacement of bulbs tubes and other electrical equipment as and when necessary and the provision by arrangement with the appropriate supply authority of power to serve the same

5. The cleaning repair and where necessary the replacement and rebuilding of the reserved portions of the Building and any walls of fences surrounding the Building the dustbins and dustbin areas (if any) forming part of the Building

6. The general management of the Building and the provision of any other service of amenity which the Landlord may consider appropriate or desirable having regard to the principles of good estate management

7. The payment of any rates taxes and outgoings charged upon the Building (other than such as may be payable in respect of an individual flat)

8. The keeping up of any third party or employers liability insurance which the Landlord may consider appropriate or which the Landlord shall reasonably require to be kept up

9. The keeping of proper books of account the auditing of the same and the preparation of an annual account by a Chartered Accountant including the supply and copy of such accounts to the tenant of each flat in the Building and to the Landlord

Previous proceedings

8 Disputes arose between the Respondent and the Applicants or some of them from time to time. The Tribunal was informed that there had been previous decisions of the First-tier Tribunal in disputes between the parties as follows

23 March 2016 CHI/29UN/LBC/2015/0024

13 April 2018 CHI/29UN/LIS/2018/001/002/0012/0055

30 October 2018 CHI/29UN/LSC/2018/0049

18 December 2019 CHI/29UL/LSC/2019/0105

9 There was produced to the Tribunal a decision of the First-tier Tribunal dated 21 May 2018, which the Tribunal read. By that decision made the Residential Property Tribunal decided in a dispute concerning this building between the Respondent and some of the present Applicants that £18,000 was a reasonable amount for major works of decoration of the building.

10 However, the Tribunal did not obtain decisions in other applications to which reference was made by one party or the other. Given the fact specific nature of many of the cases of this nature, the Tribunal did not consider that it would be a proportionate use of time to do follow up and read those earlier decisions.

The managing agents

11 Up to 31 July 2019, the Respondent's managing agents were JH Property Management. Bamptons took over that role until 31 January 2021. From 1 February 2021 David Adams Surveyors took over,

The background

12 The submissions of the parties in this application have made copious reference back to events and alleged errors and omissions over the last 5 years or so. The Tribunal holds that no useful purpose is served in seeking to recreate the history of the service charge disagreements between Respondent and its tenants. The Tribunal considers, having reviewed the evidence and read and listened to all the submissions, that it should not go back further than is necessary to reach the best decision that it can.

13 A statement of budgeted service charge expenditure for the period ending 24 December 2020 gave a budget total of £ 33, 748, including £15,500 for major works. In the case of flat 1 for example its service charge liability was 22.22% making the amount demanded £7498.80. The statement sent to flat 1 recorded that it was for "service charge estimate for y/e 24 December 2020 £7498.80".

14 In January 2021, the Respondent demanded from the Applicants budgeted service charge expenditure for the year to 24 December 2021. The budgeted amount was £38,988. This included an item for major works of £15,500. Again, taking flat 1 as an example, its liability was 22.22% making the amount of the demand £8663.18. The statement sent to flat 1 recorded that it was for "service charge estimate for y/e 24 December 2021 £8,663.13".

15 The major works item was in respect of the same works as in the statement for the previous year. That work had not been performed in the year to 24 December 2020.

16 On 22 May 2020 the Respondent's then managing agents, Bamptons, issued service charge demands to each flat including (in the case of flat 1):

Reserve fund contribution from 30 December 2019 of £1333.20;

Reserve fund contribution for year ending 24 December 2020 of £1777.78; and

The service charge estimate for the year ended 24 December of £7498.80.

17 On 7 January 2021 Bamptons issued a service charge demand to flat 1 including the items demanded on 22 May 2020 and the following items;

Service charge estimate for year ended 24 December 2021 £8663.13

Reserve fund contribution for the year ended 24 December 2021 £1777.60

18 On 4 June 2021, the Respondent's new managing agents, David Adams Surveyors Limited emailed to each flat a 14-day reminder for the service charge amounts claimed.

19 As at 12 April 2021, the accounts for the service charge year ending 24 December 2020 had not been received by David Adams Surveyors Limited. These accounts were not produced to the Tribunal.

20 In summary, demands were made for estimated service charges for the year to 24 December 2020 which included an item for major works. That demand was repeated for the year to 24 December 2021 notwithstanding that the major work had not ben performed in 2020 and that the demands based on the estimate for the earlier year had not been superseded by a balancing demand based on the actual expenditure, because the accounts have not been produced.

21 Each of those totals are broken down below. In addition to the budgeted amounts for the years ending 24 December 2020 and 2021, the Respondent, through its managing agents demanded the following further amounts, subject to the credits listed

B/F from JH Property Management		£1328.30
Reserve fund contribution		£5332.80
Reserve fund contribution for year ended 24 December 2020		£8000.01
Reserve fund contribution for year ended 24 December 2021		£7999.20
Sub-total		£22660.31
Less credits for		
Balance for year ended 24 December 2018	£2205	
Balance for year ended 24 December 2019	£4115.61	
Mortgage lender payment re flat 5 only	£3827.39	
		£10,148.00
Total		£12,512.31

22 Thus the total amount demanded was

Budget estimate to 24 December 2020	£33,748
Budget estimate to 24 December 2021	£38,988
Other items	£12,512.31
Total	£85,248.31

23 The Applicants gave the total demanded as £85241. or thereabouts. Nothing turns on the discrepancy of £7 or so with the total in the table above.

The Tribunal now sets out a table extracted from the documents summarising the actual service charge expenditure in 2019 and the budgets for the two years in question.

Item	Incurred 2019	Budget to 24.12.20	Budget to 24.12.21
Insurance	1268	1750	2350
Grounds maintenance	1172	1250	1250
Cleaning	360	360	360
Repairs and maintenance	534	1000	5000
Fire and safety	1051		
Electricity communal areas	213	250	250
Managing agents fees	2125	2400	2400
Professional fees	1800	6200	6740
Accountancy	2310	1200	1200

Bank charges	48		
Entryphone		1000	
Admin fee for major works		1800	1800
Fire equipment/alarms		288	288
Gutter		400	400
Major works		15500	15500
Risk assessment		350	350
Tree pruning			1100
Totals	£10,881	£33,748	£38,988

24 The amount demanded in respect of each flat following the January 2021 demands for the budgeted service charge to 24 December 2021 was as follows:

Flat 1	18,889.41
Flat 2	9,457.76
Flat 3	9,424.76
Flat 4	9,349.76
Flat 5	10,957.01
Flat 6	8,548.61
Flat 7	18,614.41
Total	£85,241.27

25 The Applicants challenge the service charges demanded on the following grounds. First, they complain that the total demanded includes estimated expenditure that has been estimated and demanded twice for the same major work, namely in each of the service charge years ending 24 December 2020 and 2021, without the work having been performed. Secondly, they complain about unexplained increases in the budget for 2021 as against 2020. Specifically, they challenge as unreasonable the budgets for

25.1 Landlord's contents insurance

25.2 Garden expenditure

25.3 Repairs

25.4 Risk assessment.

A similar complaint about guttering was withdrawn.

The law

26 The following provisions of the Landlord and Tenant Act 1985 ("**the 1985 Act**") are relevant.

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.

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.

(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).

27 This application is made under section 27A of the 1985 Act. The Tribunal refers to the following comments taken from the textbook "Service Charges and Management" fourth Edition by Tanfield Chambers. The authors state at paragraph 34-06 that section 27A encompasses three stages of consideration:

- Are the service charges recoverable as a matter of contract under the terms of the lease?
- Are the service charges reasonably incurred and/or services of a reasonable standard under section 19?
- Are there any other statutory limitations on recoverability?

28 The Respondent's bundle contained about 230 pages of 13 authorities. No detailed submissions on the case law were made at the

video hearing. The Tribunal refers in this decision to three of those cases; having referred to each case as far as seemed to be appropriate.

Reasonableness

29 In *Waaler v Hounslow London Borough Council* the Court of Appeal held that whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of "service charge" in section 18 of the 1985 Act, as inserted, there was a real difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations.

30 The Tribunal will consider each item in turn, beginning with the major works.

Major Works

31 The Applicant contends that the 2019 service charge accounts show that there is cash at bank available for service charge expenditure in the sum of £25,400.

32 The Respondent's case is that the budget expenditure demands for the year to 24 December 2020 were to include major works. Therefore, the demands could not be issued until the budgeted costs for the major works were known. Once issued the demands for the budgeted service charge year to 24 December 2020 were never withdrawn. The demand for the budgeted estimate for the year to 24 December 2021 followed in January 2021. As the managing agents, then Bamptons emailed the Applicants on 12 January 2021

"… there is as yet no credit for the 2020 accounts. Therefore the net amount payable will be reduced by the credit arising from the 2020 accounts as no major works took place last year. We will be sending the information for the 2020 accounts to Spurling Cannon very shortly so that the accounts can be issued."

33 The Applicant, Mr Harris was not satisfied by this response and emailed in reply to say that he would be taking legal advice.

34 The Respondent contends that on the payment date for each of the 2019-20 and 2020-21 service charge demands the Respondent considered that the sums claimed were required to cover anticipated expenditure. The reasonable sums would not then become retrospectively unreasonable should it become clear that the expenditure was avoided. When determining whether a service charge is reasonable under section 19(2) of the 1985 Act, matters not known to the landlord at the time when the tenant's contractual liability to pay the service charge arose are disregarded; see *Knapper v Francis* 2017 L&TR 20

35 In *Knapper v Francis* the Upper Tribunal held that for the purposes of s.19 (2) of the 1985 Act, the reasonableness of on-account service charges is to be assessed as at the date when their payment was due. Thus, the fact that items of anticipated expenditure are not in fact subsequently incurred does not make the charges unreasonable.

36 The Respondent says that it carried out a consultation as to proposed major works of repair in 2017 but this did not lead to works taking place.

37 On 21 October 2019, Bamptons instructed Harrisons, Chartered surveyors to provide a summary of required works for two notices of intention under section 20 of the 1985 Act. The Applicants or some of them were aware of works being considered as on 27 October 2019 Mr Harris emailed Bamptons to ask if it was the intention to carry out the work in one phase or two.

38 On 17 February 2020 the Respondent gave a section 20 notice of intention to carry out works which included both internal and external works and:

- Complete external redecoration and associated repairs to render ,joinery and roof coverings
- Complete internal redecoration and associated repairs to joinery, walls and ceilings.

39 Bamptons issued a section 20 statement of estimates for proposed works dated 22 May 2020. That statement recorded that the estimated costs proposed by the three contractors nominated by the Respondent were £29,447,£45700 and £52,317; and that none of the

five contractors nominated by the Applicants each of whom received a tender returned a tender in response.

40 On 23 June 2020 Bamptons gave a notice to flat 1 pursuant to section 20B of the 1985 Act that expenditure on service charge items amounting to £10,881 had been incurred. There were no major works items in the list of expenditures in that notice.

41 The Respondent summarised the major works costings in May 2020 at £40,991.55 being the net contract price plus fees and VAT

42 The Respondent says that it always had ben its aim to get the works done as soon as sufficient funds were in hand to get the works done.

43 The Respondent claims to have awarded a contract major works contract to the contractor with the lowest estimate who returned a tender by the closing date for so doing.

44 From an internal Bamptons email dated 23 May 2020, which was drafted to have been sent to the Applicants, Bamptons stated that the major works estimate of £15.500 was calculated after taking into account a £20,000 contribution from current reserves.

45 The Applicants make three complaints concerning the estimated service charges for the years ended 24 December 2020 and 24 December 2021.First, they say that the Respondent has no intention to deliver the major works and that this makes the major works items unreasonable. Secondly, they point to the duplication of the estimated charges for major works in both years. Thirdly, they point to the amount of the estimates which they say are far too high having regard to the nature of the flats and the size of the reserves available to the Respondent.

46 It is necessary to consider separately each service charge year and each date on which estimated service charges fall due for payment.

47 The date of the demand for the service charge year to the 24 December 2020 was 22 May 2020. It follows from the decision in *Knapper* that reasonableness can be judged by reference to the facts known to the landlord up to the date for payment of estimated service charge but not later. *Knapper* was a case in which the Upper Tribunal had to consider the reasonableness of an estimated item of work that was not performed during the year for which the estimate had been made. The Upper Tribunal held that only facts known up the due date for payment could be taken into account.

48 In the present case, by 22 May 2020 tenders had been returned for works following the engagement of surveyors to specify works in October 2019. The fact that the major works were not performed in the year to 24 December 2020 is not a fact which the Tribunal can take into account in determining what costs are reasonable under

section 19(1) or what adjustments should be made under section 19(2) of the 1985 Act. The objective evidence is to the effect that the Respondent did intend to perform these works in the 2019-20 service charge year.

49 However, the facts of the 2020-21 service charge year are different. The payment date for this year was the date of the demands, being 7 January 2021. At this date, no further progress had been made with the major works, the 2019-20 service charge year had come and gone without the major works having been performed and the 2020 accounts had not been produced so that the actual figures could replace the estimates. The major works estimated charge for 2020-21 was a duplication of the estimated charge for the previous year and on that ground alone was wholly unreasonable. It should be excluded from the demand.

50 That leaves the third ground of challenge to the 2019-20 estimate in terms of major works. The Tribunal has reviewed the correspondence and found no evidence of any consideration being given by the Respondent to the amount of the accumulated reserves and how these should be applied in managing the cost of repairing and maintaining the Building. It was said that £20,000 would be used in addition to the £15,500 service charge item but there was no analysis of the amount of the reserves or how the works might be phased. On that ground, the Tribunal considers that the major works item for the 2019-20 service charge year is wholly unreasonable and should be excluded from the demand for that year.

Insurance

51 The Applicants challenge the estimates for buildings insurance which includes cover for the landlord's content which, say the Applicants, is unnecessary. The Respondent's case is that there had been colossal change in the insurance market following COVID. There had been a claim settled in October 2020 at £13,200.This was in relation to flooding in flat 1. On 29 March 2021, the Respondent emailed its brokers, St Giles Group, to ask what impact the cover of £25,000 for landlord's contents had on the premium. The broker advised that the cover was included as standard by the insurer and would not change the premium if it was reduced or removed. The Respondent's evidence was that on the insurance renewal for the period from July 2020 to July 2021, three insurers declined to quote with only Allianz, the incumbent quoting for the renewal.

52 In the circumstances, the Tribunal finds the estimated charges for insurance to recoverable and reasonable. There is no statutory limitation on recoverability. These items stand.

Garden expenditure

53 The issue concerning garden expenditure is as follows. On 3 June 2020 the Respondent completed a licence agreement with a third party to park/keep his Swift Challenger 470 caravan on the area

hatched in red on the plan attached to an email from Ms Elu to Bamptons on that date or in some other area as the neighbour is allocated from time to time. The licence ran from 10 June 2020 until further notice. The plan attached shows the area hatched red as a parking space in the south-east corner of the freehold site.

54 On 5 June 2020, Mr Harris became aware of the licence arrangement. He emailed Bamptons to ask that any reference to gardening and ground maintenance from the 2020 service charge "as I have no intention of contributing to the upkeep of an area rented out to a third party". Whether the space is rented or licensed is of no concern. The point is that if the freeholder is deriving an income for the space from a third party, the cost of upkeep should not be borne by the Applicants.

55 There is however a more fundamental point. The service charge provisions in the lease relate to the Building. Is the Building the structure on the freehold land or the entirety of the freehold land including the structure but also the grounds on which the structure is built?

The lease contains two relevant indicators that the Building is only the structure and not the surrounding grounds or land.

56 Clause 6(16) is a covenant by the tenant

"Not to park or permit to be parked any vehicle under the Tenant's control in such a position as to impede access to the Building …"

The drafter must have had in mind that the parking would occur outside the Building rather than on part of it.

57 Schedule II paragraph 7 is the grant of a right to park one private motor vehicle in the allocated parking space shown on the plan as hereinbefore mentioned together with the right of access to and from such parking space.

Again, the drafter avoids any reference to parking on the Building or any part thereof.

58 Accordingly, the Tribunal holds that, without recourse to the test of reasonableness, the Respondent has no right to levy a service charge for the maintenance or upkeep of the parking space which is licensed by the Respondent to a third party. However, the maintenance of the parking spaces allocated to leaseholders might fall within the general management paragraph, paragraph 6 of Schedule IV to the lease.

Repairs

59 The Applicants complain that the budget for general repairs increased from £1000 in the year to 24 December 2020 to £5000 in the following year. The Applicants challenge this increase noting that no plan of work was presented for this expenditure and no section 20

notice had been given in respect of works proposed. They say that absent a section 20 notice the maximum amount that could be claimed is the statutory maximum of £250 for the seven flats being £1750.

60 The Tribunal noted the email exchanges between the Respondent and Bamptons from 5 January 2021 in which it was recorded that the general repairs line "is meant to cover the work that is said to be required to the drive and also if the buildings insurance policy is not going to cover the work required to the basement." On 7 January 2021 Bamptons emailed Ms Elu to say that "the insurers will cover all the basement works costs including for the retained parts so will remove that item (£5k) from the budget. I will increase however the general repairs to £5k to cover the driveway."

61 On balance, the Tribunal concluded first that this was a provision within paragraph 6 of the service charge schedule and secondly, it was on the evidence a reasonable provision to make. The Applicants' challenge to this amount therefore fails.

Risk assessment

62 The Applicants challenged the annual budget for a risk assessment. They first queried what risks were being assessed. The Respondent's case was that the assessments were for fire safety risks. The Applicants submitted that the Building as a single entrance and a single staircase and nothing changes from year to year. An annual review was not justified. The Applicants said that the last annual risk assessment had been carried out in May 2017.

63 However, the Respondent produced a fire risk assessment review prepared on 16 May 2019 and which referred to a previous report in May 2018. The Respondent also produced a combined fire, health and safety risk assessment with a review date of 16 November 2020. These are both substantial documents. The Tribunal was satisfied that these costs fall with paragraph 6 of the service charge schedule to the lease. Provision for annual checks on fire safety seem to the Tribunal and reasonable and indeed necessary price to pay for assurance that the risk of fire is minimised in the Building.

64 Accordingly, the Applicants' challenge to these items fails

Section 20B and the 18 months rule

65 Section 20B of the 1985 Act provides that if any service charge costs taken into account in determining a service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant then subject to the point that follows the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. The following point is that this rule does not apply if within the period of 18 months beginning with the date

when the costs were incurred the tenant was notified in writing that those costs had been incurred.

66 The thrust of the arguments and the evidence before the Tribunal concerned the reasonable of budgets for work to be incurred rather than the comparison of costs actually incurred and the notice given in respect of those works.

67 Accordingly, the Tribunal holds that this is not the occasion to consider the operation of the 18 months rule in section 20B on the claims which are the subject of the decision. Whether, as and when demands for actual charges and accounts are provided, there is scope for the Applicants to rely on section 20B is a matter which can be gone into at that time.

Conclusions.

68 The challenges by the Applicant to the budgets in question are allowed to the extent indicated.

Consequential applications

69 The Respondent applied also under (1) section 20C of the Landlord and Tenant Act 1985 and under (2) paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 for orders that (1) the landlords costs incurred in connection with these proceedings should not be included in the amount of any service charge payable by the tenant and (2) that any liability to pay an administration charge in respect of litigation costs should be reduced or extinguished.

70 The Applicants have succeeded in the main and it is just and reasonable that orders are made pursuant to the consequential applications to forestall any attempt by the landlord to seek to recover any part of its costs of this application.

Conclusion

71 Accordingly, the application to the Tribunal is allowed to the extent stated.

Rights of APPEAL

1 **A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.**

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

3. **If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.**

4. **The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking**.