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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HE/LSC/2017/0082
Property	:	Various properties on Inny Vale Holiday Village (IVHV), Davidstow, North Cornwall PL32 9XN
Applicant	:	John and Maureen Harris (2 IVHV) Mr and Mrs Barnes (3 IVHV) Su Bryant and John Goodwin (5 IVHV) Rachel Evans (12 IVHV) Mr and Mrs Burgess (16 IVHV) Derek John Baker (17 IVHV) Terry and Cynthia Martin (22 IVHV) Paul Kavanagh (23 IVHV)
Representative	:	Ms Su Bryant
Respondent	:	Mr Steven Richardson trading as Inny Vale Partnership (IV)
Representative	:	Merricks Solicitors
Type of Application	:	For the determination of the reasonableness of and the liability to pay service charges
Tribunal Member(s)	:	Judge Tildesley OBE Mr W Gater FRICS Mr M Woodrow MRICS
Date and Venue of Hearing	:	Bodmin County Court, The Law Courts, Launceston Road, Bodmin PL31 2AL 5 and 6 December 2017
Date of Decision	:	24 January 2018

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the service charge for the year ending 31 December 2015 is £33,936. The amount payable by each applicant is £753.38.

2. The Tribunal determines that the service charge for the year ending 31 December 2016 is £29,221. The amount payable by each Applicant is £648.71.

3. The Tribunal determines that a sum of £22,500 for the provisional service charge for the period 1 January 2017 to 31 December 2017 is reasonable. The Applicants are each liable to pay the sum of £500 towards the provisional service charge.

4. The Tribunal determines that the charges of £10,474 (2015), £10,898.36 (2016) and £11,598.90 (2017) for insurance were reasonably incurred. The Applicants are each liable to contribute £232.52 (2015), £241.94 (2016), and £257.50 (2017) towards the insurance premium.

5. It would appear that Mr Richardson has not sent the "summary of tenant's rights and obligations" with a demand for service charges on a leaseholder. If that is the case Mr Richardson's advisers should do so, particularly if Mr Richardson is wishing to take action to collect outstanding service charges against leaseholders. The advisers should ensure that the summary of rights and obligations is served with all future demands for service charges against leaseholders.

6. The Tribunal decides that the lease did not permit the Respondent to recover his legal costs through the service charge. The Tribunal makes no order under Section 20C of the Landlord and Tenant Act 1985

7. The Tribunal's provisional view is that the Respondent is not entitled under the lease to recover his legal costs in connection with these proceedings against the individual Applicants. If that is correct, there is no obligation upon the Tribunal to consider the provisions of paragraph 5(a) Schedule 11 of the 2002 Act. The Tribunal gives the Respondent's representatives the right to make representations on this point to be received within 14 days from the date of the decision. If representations are received, the Tribunal would issue further directions to progress the matter.

8. The Tribunal makes no order in respect of reimbursement of application and hearing fees which have been paid to the Tribunal by the Applicants.

9. The Tribunal has not been asked to consider the water charges and the costs of the tree clearance in 2015.

The Application

10. In early 2000 a group of investors (Inny Vale Limited) purchased a caravan park at Inny Vale with the intention of developing an "upmarket" holiday village. The development was carried out in five phases. Phase 1: 1-20 Inny Vale (no number 13) comprised one/two bedroom detached single storey properties block built with slate roofs and held on 999 year leasehold. Phase 2: 21-24 Inny Vale, a terrace of four bedroom three storey properties block built with slate roofs and held on 999 year leasehold. Phase 3: 25-40 Inny Vale comprising three bedroom detached two storey properties timber built with oak frame and slate roofs and held on freehold tenure. Phase 4: 41-45 Inny Vale comprising one/two bedroom detached single storey properties block built with slate roofs and held on 99 year leasehold. Phase 5: site owner's home. The amenities at the holiday village included a tennis court, a picnic area and a lake.

11. The owners of the cottages in phases 1, 2 and 4 were liable under their leases to pay ground rent and service charges. The owners of the freehold lodges have entered into a service agreement with the site owner to pay an annual charge for services to the site. There was no planning restriction limiting the occupation of the properties to specific periods of the year, provided they were not used as the main residence. The owners of the properties either let them for short holiday lets or used them as second/holiday homes.

12. In May 2013 Inny Vale Limited decided to sell its interests in the holiday village. The directors of Inny Vale Limited considered that they had completed their venture of developing the site, and did not see themselves as holiday park operators. In April 2015 Mr and Mrs Richardson purchased the site together with the site owner's home and one of the cottages in phase 1. Mr and Mrs Richardson had various plans for the Holiday Village and intended to provide the necessary services for the smooth running of the site. Their plans did not come to fruition and they decided to sell the site at the end of July 2016. Sadly Mrs Richardson died shortly afterwards in August 2016 at the age of 40 which was sudden and completely unexpected. Mr Richardson found himself in the position of having to manage the Holiday Village alone whilst raising and supporting his seven year old son. Mr Richardson now simply wants to leave Inny Vale.

13. This dispute concerns eight sets of leaseholders, six of whom hold leases on phase 1 properties, whilst the remaining two have leases on phase 2 properties. Ms Bryant who represented the Applicants said that several owners of the freehold lodges wished to join the application but were unable to do so because the Tribunal has no jurisdiction to determine the service charges for freeholds. In this respect John and Yvette Clark of 37 and 40 Inny Vale provided a witness statement in support of the application.

14. The dispute was wide ranging and involved the service charges for 2015, 2016 and 2017. The Applicants' principal argument was that over

the last two years service charge costs have risen sharply but the quality of services has decreased. The Applicants wanted the Tribunal to determine questions that were outside its powers, such as instructing the landlord to maintain proper records in line with recognised standards of practice, and to advise the landlord of his obligation to obtain comparative quotations for insurance. It was also apparent to the Tribunal that the leaseholders had different expectations as to what services were required and of the amount of service charge they were prepared to pay. Some leaseholders cited the relatively low service charge of around £500 per annum demanded by the previous owners, Inny Vale Limited, as a principal reason for purchasing a home on the site. Mr Richardson, on the other hand, complained about the difficulties presented by the level of non-payment of service charges with arrears of £12,582.65 outstanding as at 31 December 2016.

15. At the outset of the hearing on 5 December 2017 the Tribunal identified those matters that it had power to determine which were the actual service charges for 2015 and 2016, and the estimated service charge for 2017.

16. The contest for 2015 and 2016 concerned the reasonableness of the charges for Mr and Mrs Richardson, the charges for third party gardening and grounds maintenance, the site cleaning costs, charges for repairs and renewals, professional fees and accountancy fees. The Applicants also challenged their liability to pay the charges incurred by the previous owners in the first quarter of 2015. Finally the Applicants questioned the insurance charges for 2015, 2016, and 2017, in particular the level of cover provided and the apparent failure of Mr Richardson to supply policy details.

17. The Applicants' dispute regarding the estimated service charge of £500 for 2017 was that they were not convinced it was a genuine amount based on sound assumptions.

18. The Applicants contended in respect of all years that Mr Richardson had not complied with the statutory requirements for service charge demands in that he had not sent a "Summary of Tenants' Rights and Obligations" with the demands.

19. The Applicants made applications under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5(a) of schedule 11 of the Commonhold and Leasehold Reform Act 2002 to limit the landlord's powers to recover his legal costs in connection with these proceedings.

20. At the hearing the Applicants were represented by Ms Bryant who also gave evidence in support of her witness statement. Mr Harris and Mr Burgess were called and asked questions on their witness statements. Mrs Burgess and Mr Goodwin were in attendance but did not give evidence. Mr and Mrs Barnes and Mr Kavanagh supplied witness statements but did not attend the hearing.

21. Mr Richardson was represented by Mr Tim Pullen counsel. Mr Richardson called Ms Margaret Clarke of 11 Inny Vale Holiday Village,

and Mr David Sturt of 20 Inny Vale Holiday Village as witnesses. Ms Clarke and Mr Sturt had supplied witness statements dated 9 and 10 November 2017 respectively which were supportive of the efforts made by Mr and Mrs Richardson to improve the services at the Holiday Village.

22. Ms Bryant prepared the hearing bundles to a good standard which were in two volumes: the Applicants bundle [A:] and the Respondents' bundle [R:]. On 21 November 2017 Judge Tildesley gave Mr Richardson's solicitors permission to submit late documents which comprised 13 pages including the witness statements of Ms Clarke and Mr Sturt.

23. The Tribunal inspected the holiday village in the presence of the parties on the morning of the hearing on 5 December 2017.

Consideration

The Law

24. The Tribunal has power under Section 27A of the 1985 Act to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant or determined by a Court.

25. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

26. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

27. Before examining the individual years in question the Tribunal starts with the terms of the lease. The Tribunal understands that the leases for the properties were in a similar format. The Tribunal refers to the lease relating to 2 Inny Vale dated 23 August 2010, and made between Inny Vale Limited of the one part and John Edward Harris and Maureen Harris of the other part. When he purchased the property Mr Harris secured minor amendments to the lease but they were not material for the purposes of this decision.

28. Clause 1 deals with definitions. Clause 1.8 defines rent as the sum of £100 doubling every 25 years to a maximum of £600 per annum. Clause 1.11 states that insurance rent means the insurance rent percentage of the cost to the landlord from time to time of paying the premium for insuring the Village. Under clause 1.10 insurance rent percentage means

2.22 per cent. Clause 1.12 defines services as services, facilities and amenities specified in the First Schedule. Clause 1.13 states that the financial year is the period from 1 January to 31 December in each year. Clause 1.14 defines annual expenditure as all costs expenses and outgoings whatever reasonably and properly incurred by the landlord during a financial year in or incidental to providing all or any of the services. Annual expenditure, however, does not include any expenditure in respect of any part of the Village for which the Tenant or any other Tenant is wholly responsible. Clause 1.16 states that service charge means the service charge percentage of the annual expenditure. Under clause 1.15 the service charge percentage is 2.22 per cent. Clause 1.24 includes service charge and the insurance rent under the definition of rents.

29. Clause 3.1 obliges the tenant to pay the rents on the days and in the manner set out in this lease and not to exercise or seek to exercise any right or claim to withhold the rents. Clause 3.5 places an obligation on the tenant to clean the property and keep it in clean condition, in particular to clean the windows at least once a month.

30. Under clause 5 the landlord covenants to insure the property. Clause 5.2 provides that insurance be effected against damage or destruction by the insured risks to the extent that such insurance may ordinarily be arranged for these properties on the Village. Further the insurance is to be effected in such insurance office or with such underwriters and through such agency as the landlord may require. Under clause 5.7 the landlord covenants to produce to the tenant on demand a copy of the policy and to use reasonable endeavours to procure that the interest of the tenant and his mortgagee is noted or endorsed on the policy.

31. The First Schedule defines the services provided by landlord. Paragraph 1 requires the landlord to maintain and keep in good and substantial repair and condition and renew or replace when required the main structure, the common parts, the cottage gardens, the parking spaces, any pipes used in common and the boundary walls, privacy panels and fences. Paragraph 2 requires the landlord to decorate the external parts of the village and common parts every three years. Paragraph 3 requires the landlord to keep the common parts, the cottage gardens and the parking space clean and where appropriate lit. Paragraph 5 enables the landlord to employ a Village manager and/or a firm of managing agents to manage the Village. Paragraph 5 also permits the landlord to charge for his reasonable and proper time in carrying out of any of the services referred to in the First Schedule. Paragraph 7 gives the landlord reasonable discretion to do works, installations and acts as may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Village. Paragraph 8 requires the landlord to keep proper books of account of the sums received from the tenant in respect of annual expenditure. Finally paragraph 9 allows the landlord to set aside such sums as he reasonably requires to meet future costs.

32. The Second Schedule sets out the machinery for the collection of service charges. Paragraph 4 requires the tenant to pay a provisional

sum as estimated by the Surveyor for the likely annual expenditure of the financial year by four equal instalments on the usual quarter days. Paragraph 2 requires the landlord as soon as convenient at the end of the financial year to prepare an account showing the annual expenditure for the financial year. Paragraph 5 provides that the tenant shall pay a balancing payment on demand if the service charge for the financial year exceeds the provisional sum. If the service charge is less than the provisional sum the landlord shall credit the overpayment to the tenant against the next quarterly payment.

Actual Service Charge for 2015

33. The Respondent published Service Charge Accounts for the year ended 31 December 2015 [R A1:4-9] which were prepared by Hodgsons, Chartered Accountants which expressed the opinion that the service charge statement represented a fair summary of the transactions and signed by Mr Richardson confirming that the transactions all related to Inny Vale Service Charges.

34. The accounts showed expenditure of £37,082 with additional recharges for building's insurance, water charges and tree clearance. The Tribunal is concerned with the actual expenditure of £37,082 which comprised two elements. The expenditure of the previous owners, Inny Vale Limited, in the sum of £8,436 which was said to have been incurred in the period of 1 January 2015 to 22 April 2015. The expenditure of the current owners, Mr Richardson and the late Mrs Richardson, in the sum of £28,646 for the remaining period of 2015.

35. The previous owner's expenditure of £8,436 [A B3:67a] was broken down into the following categories: gardening £4,310, window cleaning £1,636, pest control £75, bank charges £11.22, repairs £1,800, Alro services £356.78, and gutter clearing £247.

36. The Applicants contended that they were not liable to pay for the previous owner's expenditure. The Applicants stated that they had received a letter from Justin Williams, Director of Inny Vale Limited, saying that Inny Vale Limited had sold its interest in the Village on 22 April 2015. Further Mr Williams said that Inny Vale Limited had accounted for service charges and handed over surplus funds to the new owners, Mr and Mrs Richardson. The Applicants referred to the "Village Update" dated 3 June 2015, the newsletter circulated by Mr and Mrs Richardson, in which they said they were unable to pass comment or provide the leaseholders with any breakdown of the monies that Inny Vale Limited had spent in 2014 or at the start of 2015. The Applicants relied on the fact that Mr Richardson was unable to supply invoices or other documents to substantiate the expenditure incurred by the previous owners.

37. The Applicants submitted that the lack of transparency with the figures, the contradictory statements of the previous owners and the absence of supporting documentary evidence all added to the conclusion that the previous owners' costs were not incurred, and should be excluded.

38. Mr Pullen for Mr Richardson pointed out that under the terms of the Transfer, Inny Vale Limited, assigned to Mr and Mrs Richardson its right to collect service charges incurred during its ownership. Mr Pullen maintained that Mr Richardson was entitled by virtue of sections 23(1) and (2) of the Landlord and Tenant (Covenants) Act to demand and recover the previous owner's costs. In this respect Mr Pullen referred to an e-mail from a Mr James, a leaseholder assisting Mr and Mrs Richardson, who confirmed that he had established that the Transfer allowed Mr and Mrs Richardson to collect arrears pre-existing their purchase of the Inny Vale Holiday Village [R D:68].

39. Mr Richardson asserted that Inny Vale Limited had only provided a spreadsheet setting out its expenditure during the period 1 January 2015 to 22 April 2015, and had not handed over any detailed service charge records.

40. Mr Pullen was not convinced with the validity of the Applicants' submission that costs had not been incurred by the previous owners. Mr Pullen pointed out that the Applicants' case was built around the assertion that the work of the gardeners engaged by Inny Vale Limited was excellent. Further Mr Pullen said that the Applicants had not challenged the fact that the works had been carried out on the site during this period which would have incurred expenditure. In Mr Pullen's view, the costs claimed were consistent with previous patterns of expenditure and should be treated as reasonable.

41. The Tribunal noted that the Applicants had couched their submission in terms of burden of proof arguing that the onus was on Mr Richardson to establish that the previous owners had incurred the costs in the relevant period. The Tribunal does not consider this approach correct. The Court of Appeal in *Yorkbrook Investments Limited v Batten* [1986] 18 HLR 25 doubted the wisdom of relying on burden of proof in service charge cases saying it could find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or of costs. In its view, the court should reach its conclusion on the whole of the evidence.

42. The Tribunal is satisfied on the evidence that Inny Vale Limited carried out works to the Village in the period 1 January 2015 to 22 April 2015. The Applicants did not suggest otherwise. Further the Tribunal finds that the items of expenditure as set out on the spreadsheet provided a fair representation of the type of works that Inny Vale Limited was required to do in order to meet its obligations under the lease during this period. Finally the Tribunal holds that the level of costs incurred on the various work categories was in line with the service charge forecast for 2015 prepared by Inny Vale Limited in December 2014 [R A1]. In the Tribunal's view, there was no evidence to suggest that the costs were excessive.

43. The Tribunal considers that the Applicants misinterpreted the contents of Mr Williams' letter. The import of this letter was that Inny Vale Limited had supplied Mr and Mrs Richardson with details of the service charge accounts for each lessee, and with any monies held in the Trust

account. Inny Vale Limited had issued demands for the 2015 service charge and ground rent in the sum of £807.97 on 30 December 2014. Some lessees including several Applicants had paid contributions towards those demands. Inny Vale Limited was clearly holding monies in relation to future liabilities which it was required to pass onto Mr and Mrs Richardson. In turn Mr and Mrs Richardson undertook at the meeting with the leaseholders on 27 June 2015 to ensure that any payments made by leaseholders to Inny Vale Limited would be offset against future demands for the 2015 service charge. Mr and Mrs Richardson fulfilled their obligation as shown in the later demands dated 18 December 2015 which recorded payments already received on account.

44. The Applicants placed weight on Mr Williams' use of the word "surplus" in his letter which the Applicants cross referred to the entry in the 2015 balance sheet of reserves brought forward in the sum of £7,175. The Applicants argued that these reserves should be credited against their liabilities for the 2015 service charge. The Tribunal considers that the Applicants' view was mistaken in several respects. There was no surplus at the end of 2014. The 2015 demand issued by Inny Vale revealed that expenditure in 2014 had exceeded payments on account with the result that each leaseholder was required to make a contribution of £81.52 to cover the shortfall. Next reserves should not be confused with in year surplus and deficit. Under the lease the landlord is entitled to set aside monies collected through the service charge as reserves to meet future contingent liabilities. It would appear from the accounts that Inny Vale Limited had established a reserve in the years preceding 2014. Finally the Tribunal considers the most likely explanation for Mr Williams' use of surplus was that he was referring to the payments on account for 2015 made by specific leaseholders, which have been properly accounted for by Mr and Mrs Richardson in their subsequent demands.

45. The Tribunal considers that the Applicants' initial challenge to the previous owner's charges was based on the misconception that Mr and Mrs Richardson were not entitled in law to take on the benefit and burden of the landlord's covenants under the lease. The challenge then mushroomed into the proposition that no costs had been incurred by the previous owners because there was no documentation substantiating the individual items of expenditure.

46. The Tribunal disagrees with the Applicants' case. In the Tribunal's view, there was evidence of costs being incurred in the form of the 2015 budget and the spreadsheet supplied to Mr and Mrs Richardson. The Tribunal is obliged to assess this evidence in the context of a landlord having a responsibility to perform its repair and maintenance covenants under the lease, and there is no suggestion that the landlord failed to carry out its responsibilities during the period in question. The Tribunal is required then to apply its judgment to the facts found which does not take the form of a mythical slide rule but embraces the good sense of Tribunal members informed by their expert knowledge of landlord and tenant matters. The Tribunal concludes that the previous landlord incurred costs of £8,436 in the period 1 January 2015 to 22

April 2015, and the costs cited were reasonable for the tasks identified. The only caveat that the Tribunal applies is that the landlord was not entitled to recover the costs of window cleaning (£1,636) through the service charge (see clauses 1.14.2 and 3, 5 of the lease). This does not mean that Mr Richardson is obliged to refund the whole amount because clearly some leaseholders took advantage of this service and would owe this money to Mr Richardson under a separate contract not connected with the service charge. The Tribunal believes that several Applicants did not use the window cleaning service in which case they need to enter in separate dialogue with Mr Richardson's agent. For the purposes of this decision the Tribunal determines that costs of £6,800 (£8,436-£1,636) have been reasonably incurred.

47. The expenditure of the current owners, Mr Richardson and the late Mrs Richardson, in the sum of £28,646 was broken down into the following heads of expenditure: £17,208, managers' charges, £959 electricity for sewage plant, £2,717 other sewage plant expenditure, £983 environmental licence, £1,416 third party gardening and grounds maintenance, £430 site cleaning costs, £2,387 repairs and renewals, £252 pest control, £1,080 professional fees, £1,200 accountancy fees and £14 miscellaneous.

48. The Applicants challenged the managers' charges, third party gardening and grounds maintenance, site cleaning costs, repairs and renewals, professional fees and accountancy fees.

49. The managers' costs related to the time spent by Mr and Mrs Richardson in providing the services under the lease. Paragraph 6 of the First Schedule enabled Mr and Mrs Richardson to charge for their time and recover the costs of their time through the service charge.

50. The Applicants' dispute with the managers' charges were on two grounds. They considered the charges were too high, and that the services provided by Mr and Mrs Richardson were not to the required standard. The Applicants suggested that the appropriate figure was in the region of £9,100 to £9,800 for the costs of the seven month period from June to December 2015. The Applicants pointed out that Mr and Mrs Richardson had agreed not to charge for May 2015 because of the transition from the previous owners of the village.

51. Mr and Mrs Richardson had calculated an annual fee for their services in the sum of £29,500. The charge of £17,208 for 2015 represented the cost for seven months. The annual calculation was based upon Mr Richardson working 1,150 hours per year at the hourly rate of £18, and Mrs Richardson working 800 hours per year at the hourly rate of £11. According to Mr and Mrs Richardson, their estimate of annual hours worked was based on their actual hours worked in the first six months of living at Inny Vale. Mr and Mrs Richardson had taken the advice of their accountant on the appropriate hourly rate for the jobs done. Mr Richardson described his duties as doing all practical work including gardening and maintenance. Mrs Richardson described her duties as doing all the office work, dealing with correspondence, calls, liaison

with owners and contractors, dealing with recycling tasks, and assisting Mr Richardson with gardening and maintenance.

52. Mr and Mrs Richardson had set out their calculations of their charges in the various budgets shared with the leaseholders. They also in the "Village Update" dated 4 June 2015 set out the works they had carried out to the site in their first three months and their plans for the next six months.

53. Mr Richardson in his witness statement referred to the business plan prepared by Inny Vale Limited [R D:49] which was provided with the sale particulars for the holiday site. According to Mr Richardson, the business plan confirmed that if work on the site was undertaken by the owners then an income of over £30,000 per annum could be generated.

54. Mr Richardson in his witness statement elaborated upon the number of hours he and his late wife worked at the site. Mr Richardson said that his official hours of work were from 10.00am to 3pm Monday to Friday with no break. Mr Richardson stated that as he lived on site he would often get called at home by the leaseholders to undertake further work as and when required. Mr Richardson said that he spent a lot of his time attending to guests on site as the majority of leaseholders let out their homes. Mr Richardson stated that he found himself assisting guests as late as 8.00 pm and at weekends.

55. Mr Richardson stated that his late wife worked seven days a week, and her hours were much longer than his. According to Mr Richardson, Mrs Richardson would often be up until 2.00am going through paperwork and responding to the multiple queries raised by leaseholders.

56. Mr Richardson said that his late wife would often assist leaseholders with a range of matters, such as delivery of goods to the property. Mr Richardson referred to an e-mail from Rachel Evans, one of the Applicants, regarding two deliveries from Argos and Roseland [R D:52].

57. The minutes of the meeting on 27 June 2015 recorded that Mr and Mrs Richardson would hold keys for each property for free, and that Mrs Richardson would do checks once a month in the months that the properties were left unoccupied for 30 days or more. Mr and Mrs Richardson would keep a log of the checks.

58. Mr Richardson explained that at the outset they encountered opposition from various leaseholders/owners regarding payment of the service charge. According to Mr Richardson, this opposition took on various forms. Some leaseholders/owners wanted only to pay for their own costs and not the costs associated with the site generally. Other leaseholders were unwilling to accept that the charges of Mr and Mrs Richardson were reasonable and would only pay what they considered reasonable. Mr Richardson stated that as a result of the actions of some leaseholders the service charge account was substantially in arrears.

59. Mr Richardson, on the other hand, testified of the support that he had received from other leaseholders/owners, who had purchased their property because it was a managed site:

> "One of the reasons we purchased our property at Inny Vale was the fact that there would be a site manager to tend the grounds, make decisions about the upkeep of the site, and generally keep an eye on the property and we were prepared to pay for the service"[R D:64].

60. Mr Richardson disputed that the works carried out by him were not of a reasonable standard. Mr Richardson said that as well as maintaining the site he made various improvements. Mr Richardson referred to the work done to the bin store to stop visitors from dumping their bags of rubbish. Mr Richardson said that he would spend hours sorting out the rubbish.

61. Mr Richardson exhibited with his witness statements e-mails from various leaseholders in November 2015 commenting favourably on the tasks done by Mr and Mrs Richardson:

> "We were at Inny Vale a couple of weeks ago and met Mr and Mrs Richardson. This was our first trip since early in the year, and we were very impressed by the work that had been done, particularly on the rubbish store which is vastly better than it was. Whilst we were there the Richardsons were both out and about working, and they have done some tidying in my chalet garden in recent weeks" [R D:65].

> "We have spent a few days on the site on about five occasions since Mr and Mrs Richardson took over. Each time we have seen both of them around the site working. On our visits the gardens have been tidy, lawns properly mown, despite the weather. Our guttering has been cleaned. We have seen Mrs Richardson applying the weed killer to the gravel drives and in October clearing the leaves from the car park in quite inclement weather" [RD:66].

> "We were down there last week, the site looked good to us and both Mr Richardson (who was clearing out the downpipes) and Mrs Richardson were out working" [R D:67].

62. Ms Clarke of 11 Inny Vale gave evidence in support of Mr Richardson. Ms Clarke purchased her leasehold interest on the site in or around 2008, and currently lived full-time at the Village. According to Ms Clarke, the previous owners allowed the site to deteriorate after it had sold the last property. Ms Clarke said during this period the previous owners only maintained the site when problems arose. The bins in the summer would be left for long periods of time. Ms Clarke stated that following the arrival of Mr and Mrs Richardson there was a marked improvement in the maintenance and repair of the communal areas. Ms Clarke recounted improvements to the bin store, signage, and in the general standard of maintenance. Ms Clarke said that visitors to the site commented on how attractive it looked. Ms Clarke asserted that the majority of leaseholders/owners were satisfied with the general maintenance of the site. Ms Clarke believed that Mrs Richardson was too accommodating to those leaseholders who objected to the charges. Ms Clarke considered the service charges perfectly reasonable.

63. Mr Sturt of 20 Inny Vale also gave evidence in support of Mr Richardson. Mr Sturt said that he and his wife purchased their leasehold interest shortly before Mr and Mrs Richardson bought and took over the management of the site. Mr and Mrs Sturt rented out their property as a holiday let, and visited the site on about ten occasions during the year. Mr Sturt said that he found Mr and Mrs Richardson friendly and straightforward and that they always dealt with any issues raised in a timely and good natured manner. Mr Sturt considered the site to be much tidier than under the previous management. Mr Sturt said that the grass was cut regularly, the front gardens were dug and mulched using the chippings from the tree pruning. Further Mr Sturt said that Mr Richardson had helped with small maintenance items with their cottage. Mr Sturt stated that he never had any cause to complain about the administrative fees or costs charged by Mr Richardson. Mr Sturt acknowledged that at times the grass was longer than it should have been particularly after the sad death of Mrs Richardson. Mr Sturt said it was to Mr Richardson's credit that he managed to continue with his maintenance duties after suffering the hideous blow of the loss of his wife.

64. Mr Richardson produced several photographs of the site, in particular the tennis courts to demonstrate the level of leaf fall which can happen in a short period of time. [R D:86-89].

65. The Applicants insisted that they wanted Mr and Mrs Richardson to make a success of their venture. The Applicants, however, were not prepared to pay an inflated price for Mr and Mrs Richardson's services. The Applicants pointed out that they made every effort to engage with Mr and Mrs Richardson at the outset of their arrival in the Village in order to reach an agreement on a service charge estimate which was acceptable to all parties. In this respect two owners/leaseholders who were both accountants offered their time free of charge to Mr and Mrs Richardson. The Applicants believed this dispute would have been avoided if Mr and Mrs Richardson had agreed to consider and discuss the provisional service charge estimate put forward by the Inny Vale Owners Group.

66. The Applicants considered that Mr and Mrs Richardson had accepted the income generation assumptions in the business case supplied by the previous owners without carrying out sufficient due diligence to ensure the soundness of the assumptions in the business case. Further the Applicants believed that Mr and Mrs Richardson had been seduced by the business case into believing that they were entitled to be paid a good salary for doing a job, and that the leaseholders/owners would accept a steep increase in their service charges.

67. The Applicants contended that Mr and Mrs Richardson were approaching service charges from the wrong direction. In the Applicants' view, they considered that Mr and Mrs Richardson failed to appreciate that leaseholders and owners were only obliged to meet the actual reasonable costs associated with the provision of services under the lease.

68. The Applicants argued that Mr and Mrs Richardson's method of calculating their costs was fundamentally flawed. The Applicants stated they were not liable to pay for charges derived from a formula based on the number of hours Mr and Mrs Richardson expected to work in a particular week. The Applicants submitted that they were only liable to meet the reasonable costs of the actual time spent by Mr and Mrs Richardson in carrying out service charge related services or works. The Applicants also stated that there was no evidence of the hours that Mr and Mrs Richardson actually worked on the site, despite the fact that Mr and Mrs Richardson had promised to keep time-sheets which had not materialised.

69. The Applicants challenged the hourly rates proposed by Mr and Mrs Richardson. Mr Burgess in his capacity as Chair of the Inny Vale Owners Group had suggested that the hourly rate for gardening should be in line with the industry standard of around £9-12 for gardening in North Cornwall. Further the hourly rate for rubbish control and gutter cleaning should be lower, effectively the minimum hourly wage of £6.50.

70. The Applicants at the hearing proposed an hourly rate of £12 for gardening and maintenance which they said was at the top end of the "pay-scale" rates for such activities. This hourly rate resulted in an annual charge of £13,800 (1150 hours at £12) which produced a cost of £8,050 for the remaining seven months in 2015. The Applicants preferred a fixed management fee for undertaking the administration and book-keeping associated with the collection of the service charges and the day-to-day running of the site. The Applicants' initially proposed a fixed fee of £1,000 which at the hearing increased to £3,000 which brought it in line with the management charge of the previous owners in the budget forecast for 2015.

71. The Applicants argued that the standard of work in relation to gardening, repairs and general site maintenance was not up to scratch. Further the Applicants maintained that the record keeping was seriously flawed as evidenced by mistakes on invoices, the lack of adequate evidence for the majority of the 2015 actual expenditure and the questionable way in which the bank accounts were managed.

72. Mr and Mrs Barnes in their witness statement said that they had never seen Mr and Mrs Richardson on site, and that they had to pay other people to do the gardening.

73. Ms Bryant acknowledged in her statement that Mrs Richardson tried really hard to do make a go of things, and that Mrs Richardson had been helpful regarding the delivery of parcels and the installation of high speed broadband. Ms Bryant, however, reiterated in her statement that management and gardening and grounds maintenance had not been to a reasonable standard.

74. In his witness statement Mr Burgess said that in October 2016, he, his wife and Ms Bryant inspected the documents relating to the 2015

service charge accounts at the offices of Hodgsons accountants. They found the records to be incomplete with no evidence of breakdown of the activities undertaken by Mr and Mrs Richardson, missing receipts, no receipts for the previous owners' expenditure, and the inclusion of items of personal expenditure in the service charge bank account statements.

75. Mr Burgess stated that Mr Richardson's garden maintenance consisted essentially of mowing the grass. According to Mr Burgess, there have been times when the grass has not been attended to for many weeks. Mr Burgess asserted that the gardens had not been maintained to a proper standard. No pruning of shrubs and bushes at appropriate intervals, no weeding of flower beds and not cutting back plants when finished flowering. Mr Burgess asserted that this resulted in an unacceptable untidy state with many owners having to resort to pruning and weeding themselves.

76. Mr Burgess said that Mr Richardson had not adequately cleared the house gutters of leaves and other debris. Mr Burgess said that he had to clear the gutters of his property on every visit to it which was once a month. Mr Burgess argued that there was no evidence that Mr Richardson ever cleared the gutters.

77. Mr Burgess stated that in June 2015 he identified to Mrs Richardson cracks and render missing on the outside walls of his property. Mr Burgess said that Mrs Richardson advised that a schedule would be produced to fix and decorate the properties during Autumn 2015. Mr Burgess said that nothing had been done by Autumn 2016 which resulted in him doing the work to prevent further deterioration to the property.

78. Mr Burgess supplied a series of photographs dated 4 and 7 September 2015 and 18 December 2015 which he said showed evidence of poor garden maintenance. One of the photographs dated 4 September 2015 revealed a gutter full of leaves. Mr Burgess also included photographs showing the state of the garden on 17 August 2016, 8 September 2016, 25 June 2017 and 19 September 2017, and the state of the gutters from 11 January 2017 to 19 September 2017.

79. Mr Burgess also supplied photographs (8 July 2014 and 11 January 2017) which he said demonstrated lack of building maintenance. The photographs showed blemishes and cracks in the render and the presence of mould.

80. Mr Burgess' final set of photographs were dated 13 December 2016, and showed the level of leaf fall on the site on the day when Mr Richardson had advised Ms Bryant that all leaves had been cleared from the site.

81. The Applicants' bundle also contained a series of photographs showing the state of various gardens, the tennis courts and the gutters. Most of these photographs were taken in August and September 2017 [A B3:107-149].

82. Mr and Mrs Clarke, who owned the freehold of 37 and 40 Inny Vale said that the grounds maintenance had been sub-standard since Mr and Mrs Richardson took over the site. Mr and Mrs Clarke said they visited the site three or four times a week and during their visits they rarely saw Mr Richardson doing any work whatsoever. Mr and Mrs Clarke said that they did grass cutting as a business and that during the last three years they had done a lot of their own and other owners' grass cutting and outside maintenance. Mr and Mrs Clarke gave the dates when they had to carry out jobs at Inny Vale. Three dates were given for 2015: 24 June 2015, 4 July 2015 and 2 November 2015. On the first two dates Mr and Mrs Clarke spent six hours weeding, and on 2 November 2015 they cut the grass at their two properties. The other dates given for grass cuts and cleaning the gutters were in the period 25 August 2016 to 20 October 2017.

83. The Tribunal's consideration of managers' charges starts with its understanding of the nature of Inny Vale Village. The Tribunal finds that Inny Vale was developed and marketed as a holiday village comprising 44 properties under leasehold and freehold tenures with separate accommodation for the owner or Village manager. The Tribunal understands that the properties may be occupied throughout the year as a private residence for a single family but not as main residence or as holiday accommodation. As a result the leaseholders and owners of the properties at the site either occupy them as second or holiday homes or let them for short term holiday accommodation. The Tribunal observes that the Village provided the leaseholders and owners with amenities of a tennis court, a lake and a picnic area.

84. Under the terms of the lease the landlord is required to maintain and keep in good and substantial repair and to keep clean not only the structure of the buildings and common parts but also parts of the demise, namely the cottage gardens and parking space. The Tribunal considers this range of services went beyond what was normally provided in a typical long leasehold. The Tribunal understands that the freehold properties on the site have a separate agreement with the site owner for the provision of these services, which if so would not be the usual arrangement with a freehold.

85. The landlord under the lease is given the authority to employ a Village Manager and/or a firm of managing agents to manage the site, and or to carry out the services himself. The Tribunal notes that under the lease the landlord was entitled to charge for carrying out any matters commonly carried out by the Village Manager and the time in administering the Village including the tennis court, the picnic area and the lake. The Tribunal infers that the responsibilities of the Village Manager went much wider than the enabler or provider of the repair and maintenance services. The previous owners, Inny Vale Limited, employed a site manager who resided in the village with her husband until the practical completion of the site in 2013.

86. The Tribunal finds from the facts surrounding the development of the site, and the terms of the lease that the bargain struck between the landlord and the leaseholders was that the landlord would be providing

a managed site with a resident manager. Although Mr Burgess and Mr Harris contended that the landlord was only required to supply a narrow range of services, the Tribunal is satisfied from the evidence that their expectation was not the one shared by the majority of the leaseholders/owners, and not supported by a proper construction of the lease. In this regard the Tribunal refers to the evidence of Ms Evans and Ms Bryant who asked Mrs Richardson to take deliveries for them, and to the minutes of the meeting on 27 June 2015 in which Mr and Mrs Richardson were expected and agreed to provide "additional services" free of charge.

87. The Tribunal considers the physical characteristics of the site, the use of accommodation for holiday lets, and the sophistication of the owners/leaseholders added levels of complexity to the site management.

88. The Village was located in a long narrow strip of land in a valley surrounded by trees with a stream on its northern boundary. There were extensive areas of lawn, particularly in the part occupied by the leasehold properties. The road surfaces were not consistent throughout the site with tarmac for the leasehold properties, and stone/shale chippings for the freehold properties. The Village was not connected to the mains sewer but had its own sewage treatment plant which required regular maintenance.

89. The majority of the owners and leaseholders advertised their properties as holiday lets. The presence of short term occupants on the site had its own dynamic with visitors not being familiar with the requirements for the site, such as rubbish collection and the disposal of sanitary products. It would also appear that some visitors viewed Mr and Mrs Richardson as a source of help which they were entitled to call upon by virtue of booking a holiday at one of the properties. Mr Richardson said that he spent a lot of time attending to visitors often assisting them as late as 8pm in the evenings and at weekends.

90. Following Mr and Mrs Richardson's purchase of Inny Vale the owners/leaseholders understandably were keen to discover Mr and Mrs Richardson's intentions for the site. The Tribunal finds that the leaseholders' level of scrutiny was intense and sophisticated which meant that Mr and Mrs Richardson had to spend significant time in dealing with their queries. The Tribunal acknowledges that owners and leaseholders were entitled to raise and be consulted on legitimate matters of concern and that some owners with specific expertise gave help at no charge to Mr and Mrs Richardson. The Tribunal, however, observes that the level and form of the leaseholders' engagement were such that it made the management of the site more complex and problematical.

91. The Tribunal is obliged to assess the reasonableness of the managers' costs in the context of the management challenges presented by the particular circumstances of Inny Vale Village. The Tribunal considers the Applicants' proposals to align the charging structure for Mr and Mrs Richardson to an average hourly rate of contractors for gardening

and grounds maintenance coupled with a fixed charge for the administration had no resonance with what was expected and involved in managing the site.

92. The Tribunal acknowledges that the Applicants may state that the formulation adopted for their proposals was necessary in order to provide a meaningful comparison with those put forward by Mr and Mrs Richardson. The Tribunal takes a different perspective on what Mr and Mrs Richardson were attempting to do in the presentation of their rationale for the justification of the charges.

93. The Tribunal considers that Mr and Mrs Richardson were putting forward an annual fixed fee for what they considered to be reasonable for the managing the site. In the Tribunal's view, Mr and Mrs Richardson clearly stated this in their calculation of the charge: "the figure is fixed even if hours worked increase"; "there will be no surcharges, add on fees, management fees in respect of third party bills, and "no additional charge for holidays and sickness" [A B3:68]. The Tribunal is satisfied that their underlying justification for the fixed fee in terms of the proposed hours worked and rates of hourly pay on which they took professional advice was an attempt to provide a rational and transparent basis for the proposed annual fee rather than a fixed formula for calculating the appropriate charge.

94. The question for the Tribunal is, therefore, whether the charge of £17,208 is reasonable for the duties performed by Mr and Mrs Richardson in managing the site for the period from 1 May 2015 to 31 December 2015. In answering the question the Tribunal is obliged to consider the entirety of the circumstances and not limit its assessment to a forensic analysis of hourly pay rates.

95. The Applicants insisted that the charge of £17,208 had to be assessed for a seven month period because Mr and Mrs Richardson had agreed not to charge for the full eight month period because of the disruption of the handover from Inny Vale Limited. The Tribunal disagrees. The fact that Mr and Mrs Richardson charged a lesser amount to reflect the disruption goes towards the reasonableness of the overall charge.

96. The Tribunal understands that Mr and Mrs Richardson following representations from the leaseholders reduced its original annual budget estimate for management charges by about £6,000 which suggested that Mr and Mrs Richardson applied their minds to the reasonableness of the proposed charges.

97. Ultimately the question of reasonableness depends upon whether Mr and Mrs Richardson carried out the duties associated with management of the site to the required standard.

98. The Tribunal is satisfied in the period up to Mrs Richardson's sad demise that Mr and Mrs Richardson were working the hours they said they would do in managing the site. The Applicants stated that they had no way of checking this because Mr and Mrs Richardson did not provide copies of the time sheets that they had promised to supply. The

Tribunal, however, has to weigh up the Applicants' concerns about the absence of time sheets against the entirety of the evidence. Mr Richardson in his witness statement stated that his official hours of work were from 10.00am to 3.00pm Monday to Friday with no breaks, and that he was called to do things outside those hours because of living on site. Mr Richardson said that Mrs Richardson worked seven days a week, and her hours were often longer than his often staying up until 2.00am going through paperwork. Mr and Mrs Richardson in their submission on management charges provided to leaseholders in December 2015 stated that Mr Richardson had worked between 95 and 125 hours each month for the last six months and that Mrs Richardson worked between 65 and 80 hours a month. The analysis of the leaseholders/owners' statements showed that with the exception of Mr and Mrs Clarke (37-40 Inny Vale) they either saw Mr and Mrs Richardson doing various jobs around the site on a regular basis or that maintenance had been carried out, and that problems with work not being done did not manifest itself until after the death of Mrs Richardson.

99. The Applicants' challenges to the quality of the work performed by Mr and Mrs Richardson fell into three broad categories.

100. Mr Burgess voiced concerns about the maintenance and decoration of the external structure of his property. The parties accepted that external painting was long overdue because of the previous owner's failure to keep to the agreed cycle for external decoration. Mr and Mrs Richardson said that they planned to address the external maintenance of all properties in the six months from June to December 2015, and advise each owner of the costs. At the June 2015 meeting Mr and Mrs Richardson put forward indicative costs for the redecoration of the Village, £12,600 for 28 single storey cottages, and £4,000 for the 16 wooden chalets (windows and patio doors), and stated they would obtain three estimates. Mr and Mrs Richardson's suggestions for redecoration were then put on hold pending resolution of the estimated service charge for 2015 and 2016. In March 2016 following a meeting of the Owners Group, one owner who had experience in the paint industry offered his services to Mr and Mrs Richardson to draft a specification for the works. Mr and Mrs Richardson accepted the offer of help with Mrs Richardson obtaining quotations from three contractors. Mrs Richardson then died. In October 2016 the Owners Group discussed the various quotations and decided they were too high. The owners expressed a preference for them to be allowed to do their own work or engage contractors direct. The upshot was that Mr Richardson agreed to the proposals of the Owners Group subject to the specification on colours. The Tribunal considers the events surrounding the redecoration of the properties illustrated the management challenges of the site. Mr and Mrs Richardson opted to collaborate with the owners/leaseholders over major works rather than adhering to the statutory consultation process which would have given them the right to choose the contractor. Ultimately the owners achieved their objective of having control of the redecoration.

101. The next area of contention concerned the standard of gardening and day to day maintenance carried out by Mr and Mrs Richardson. The Tribunal's assessment of the evidence was that most leaseholders/owners were satisfied with the standard of gardening and day-to-day maintenance in the period up to Mrs Richardson's death. Additionally Mr and Mrs Richardson called in occasional help from contractors to carry out gardening. The Tribunal considers the physical characteristics of the site were demanding in terms of location, the number of trees, and layout, and that some owners failed to take this into account with their expectations of what Mr and Mrs Richardson could reasonably achieve in the circumstances.

102. The final category related to the standard of book-keeping and accounts. The Applicants said that the record-keeping and accounting were flawed as evidenced by mistakes on invoices, the lack of supporting evidence for the 2015 actual expenditure, the questionable management of bank accounts, and the failure to distinguish costs. The Tribunal observes that keeping of the books and accounts formed one aspect of the range of administrative duties performed by Mrs Richardson. The Tribunal notes that Mr and Mrs Richardson were hampered by the failure of the previous owners to publish service charge accounts, and supply documentation substantiating past expenditure. The Tribunal holds that Mr and Mrs Richardson were transparent from the beginning with leaseholders/owners about the problems caused by the previous owners in respect of their poor account keeping and about their own proposals for future service charges. The Tribunal finds that Mr and Mrs Richardson did their best to address leaseholders' concerns about the accounts. Mr and Mrs Richardson in July 2016 wrote to all owners about their many queries regarding the accounts [A B3:255]. In that letter Mr and Mrs Richardson explained that they sought assistance from the accountant, and supplied answers to some of the immediate points which included giving a credit note to reflect additional service charge income. Mr and Mrs Richardson also made proposals going forward to improve the accounting information to owners but this would come as an additional cost to the service charge. The Tribunal acknowledges the difficulties faced by Mr Richardson in dealing with the queries about the inadequacies in the supporting documentation which has come to light after the death of Mrs Richardson. The Tribunal decides on balance that Mr and Mrs Richardson carried out the administrative duties to a reasonable standard.

103. In the light of the above findings the Tribunal is satisfied that Mr and Mrs Richardson in the year ending 31 December 2015 carried out the management of the site to the required standard.

104. Having regard to the complexity of management challenges posed by Inny Vale Village, the Tribunal is satisfied that the charge of £17,208 is reasonable for the duties performed by Mr and Mrs Richardson in managing the site for the period from 1 May 2015 to 31 December 2015.

105. The Applicants' challenged the charge of £1,416 for third party gardening and grounds maintenance. The Applicants said that the

charge should be reduced by 40 per cent to £850 to reflect Mr Richardson's poor standard of service.

106. The Applicants accepted that gardening work had been carried out by contractors in 2015, and they had no concerns with the actual charges and standards of work of the contractors.

107. Although Mr Richardson produced invoices for gardening work in 2015, the sums on those invoices did not add up to the charge claimed. The Tribunal, however, places weight on the fact that the accounts for 2015 were drawn up by a firm of Chartered Accountants which gave an opinion that the service charge statement was a fair summary of transactions sufficiently supported by accounts, receipts and other documents provided to them.

108. The Tribunal concludes that costs of £1,416 were incurred on third party gardening work in the period of 1 May to 31 December 2015. Further the Tribunal finds that the amount of £1,416 was reasonable taking into account that the previous owners spent in the region of £11,000 per annum on third party gardening. Finally the Tribunal is satisfied that the third party gardening works were carried out to a reasonable standard, which was not challenged by the Applicant. The Tribunal determined under management charges that Mr Richardson performed his management duties to a reasonable standard.

109. The Tribunal disallows site cleaning costs of £430 because in all probability they related to the costs of window cleaning which was not a service recoverable through the service charge. The Tribunal, however, repeats its view that this does not mean that Mr Richardson is obliged to refund the whole amount relating to window cleaning because clearly some leaseholders took advantage of this service and would owe this money to Mr Richardson under a separate contract not connected with the service charge.

110. The next disputed charge was the £2,387 for repairs and renewals. The Applicants contended that this amount had not been substantiated by the invoices produced, and that in any event it should be reduced by 40 per cent to £1,432 to reflect the poor standard of service supplied by Mr Richardson.

111. Mr Richardson in his bundle produced invoices to substantiate the expenditure claimed in 2015. Of those the Tribunal identified 26 invoices in the total sum of £2,953 which might fall within the repairs and renewals expenditure head[1]. The subject of the invoices ranged from repair work by contractors, the purchase of materials, and skip hire. The Applicants questioned the validity of some of the invoices. They referred to two invoices which they said were for items of private expenditure, namely a tyre, and road tax[2]. The Applicants also queried

[1] [RC 6,7,9,13,14,24,29,30,31,35,36,37,38,39,41,42,46,47,48,49,71,77,79,80,81&82]

[2] The Tribunal is not sure whether the two invoices referred to by the Applicants were incurred in 2015 or in 2016. The Tribunal decides to include it in the 2015 because the Applicants' objection that the charges included items of private expenditure applied to both years.

why Mr Richardson claimed the cost of petrol for mower, which in their view should be incorporated within the management charge.

112. The Tribunal notes that the accounts were prepared by a firm of Chartered Accountants which gave an opinion that the service charge statement represented a fair summary of the accounts.

113. The Tribunal is satisfied that there was sufficient evidence to demonstrate that costs of £2,387 were incurred for repairs and renewals in 2015. The Tribunal finds the Applicants' arguments unconvincing and that there was no justification to reduce the charge by 40 per cent to reflect poor standards of workmanship.

114. The Applicants challenged the expenditure of £1,080 on professional fees. This comprised an invoice for £840 from Mr and Mrs Richardson's accountant for attendance at meetings to discuss the acquisition of Inny Vale and matters arising out of the charging and collecting of service charges [A C1:28]. The fee of £840 also included the costs of the accountant's attendance at the meeting with the leaseholders/owners on 27 June 2015. There was no supporting documentation for the balance of £240.

115. The Applicants argued that the professional fees were charged for advice to Mr and Mrs Richardson on their personal business affairs. According to the Applicants, there was no clear evidence linking the advice to provision of services under the lease.

116. The Tribunal observes that the expenditure on professional fees was separate from the charges for accountancy.

117. The Tribunal does not consider the provisions of the lease enable the landlord to recover the costs of professional advisers through the service charge. Under paragraph 5 of the First Schedule to the lease the landlord is restricted to the costs of a Village manager or a managing agent or such other persons who may be managing the Village. There is no mention of the costs of professional advisers in the provisions of the First Schedule. The invoice revealed that the charges were not those of a managing agent or of such other person managing the Village.

118. Mr Pullen relied on the definition for Annual Expenditure under clause 1.14.1 as the authority enabling the landlord to charge the costs of professional advisers. The Tribunal considers Mr Pullen's argument flawed in two respects. First the Tribunal observes that the definition of annual expenditure did not stand in splendid isolation but was inextricably linked to the definition of services in the First Schedule. Thus under clause 1.4.1 the landlord can only charge leaseholders the costs reasonably and properly incurred on the provision of the services specified in the First Schedule. Second the Upper Tribunal has emphasised in a series of cases[3] the requirement for explicit and unambiguous wording in order to recover professional fees (particularly legal costs) through the service charge.

[3] See Union Pension Trustees Ltd v Slavin [2015] UKUT 103 (LC); Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd [2016] UKUT 317 (LC).

119. The Tribunal finds that there is no authority under the lease to recover the professional fees of £1,080.

120. The final disputed charge for 2015 was the accountancy fees of £1,200. The Applicants considered that the fee was too high for the services rendered. They did not dispute that the charges had been incurred. The Applicants proposed a figure of £800 which had been suggested by those members of the Owners Group who were accountants.

121. The Tribunal is satisfied that paragraph 8 to the First Schedule enables the landlord to recover the costs of an accountant engaged in keeping proper books of account of the sums received for service charges. The Tribunal applying its own expertise and general knowledge consider that a fee of £1,200 would in normal circumstances be excessive for preparing the service charge accounts. The Tribunal, however, notes that the accountant on behalf of Mr and Mrs Richardson had to deal with a large number of questions from leaseholders/owners following the finalisation of the 2015 accounts. Given those circumstances the Tribunal finds that an accountancy fee of £1,200 was reasonable.

122. In view of its findings the Tribunal determines that the service charge for the year ending 31 December 2015 is £33,936. The amount payable by each applicant is £753.38.

123. This charge is in addition for the amounts payable for insurance (which will be dealt with later), water charges and tree clearance.

Actual Service Charge for the year ending 31 December 2016

124. The Respondent published Service Charge Accounts for the year ended 31 December 2016 [R A2:58-62] which were prepared by Hodgsons, Chartered Accountants which expressed the opinion that the service charge statement represented a fair summary of the transactions and signed by Mr Richardson confirming that the transactions all related to the Inny Vale Service Charges.

125. The accounts showed expenditure of £32,309 which was broken down into the following heads of expenditure: £19,799 managers' charges, £706 electricity for sewage plant, £2,075 other sewage plant expenditure, £2,031 environmental licence, £1,118 third party gardening and grounds maintenance, £764 site cleaning costs, £1,515 repairs and renewals, £316 pest control, £2,524 professional fees, £1,230 accountancy fees and £231 miscellaneous.

126. Mr Richardson supplied an Expenditure schedule [R: C2 113-115] which itemised the invoices making up the charges for each expenditure head. The Tribunal is satisfied that the Expenditure Schedule constituted persuasive evidence that the charges set out in the accounts had been incurred.

127. The Applicants agreed the charges electricity for sewage plant, other sewage plant expenditure, environmental licence, and pest control.

128. The Applicants challenged the managers' charges, third party gardening and grounds maintenance, site cleaning costs, repairs and renewals, professional fees, accountancy fees and miscellaneous. Their grounds of dispute replicated the ones put forward in relation to the charges for 2015.

129. The Applicants' principal contentions were that the mangers charges, third party gardening, repairs and renewals and miscellaneous charges should be reduced by 40 per cent to reflect the poor standard of service.

130. The Tribunal finds that the standard of services deteriorated following the sad death of Mrs Richardson in July 2016. The Tribunal also finds that Mr Richardson acknowledged that the services provided after July 2016 was not to the standard that he and his wife would have delivered had she been alive. Mr Richardson to his credit had reflected the deterioration of standards in the charges made against the leaseholders/owners. Mr Richardson reduced the monthly management charge from around £2,500 to £700 a month from August 2016. Mr Richardson did not incur any significant expenditure from August 2016 on grounds maintenance (one invoice on 16 September 2016), and on repairs and renewals (two invoices 12 and 24 October 2016). Mr Richardson incurred no miscellaneous expenditure in the period from August to December 2016.

131. The Tribunal applies its reasoning for justifying the management charges, third party gardening, and repairs and renewals in 2015 to those charges including the miscellaneous charges incurred in the period from 1 January 2016 to 31 July 2016. Further the Tribunal has found that the charges incurred by Mr Richardson in the period 1 August 2016 to 31 December 2016 had already taken into account the acknowledged deterioration in standards.

132. Given the above circumstances the Tribunal decides that managers' charges of £19,799, third party gardening charges of £1,118, repairs and renewals charges of £1,515, and miscellaneous charges of £231 had been reasonably incurred.

133. The Tribunal observes that the site cleaning costs of £764 included an invoice of £200 from a Mr Whitehead which appeared not to relate to window cleaning. The Tribunal, therefore, disallows the amount of £564 for cleaning the windows which cannot be recovered through the service charge but allows the £200 paid to Mr Whitehead.

134. The Tribunal disallows the professional fees of £2,524 for the reasons given for the item of expenditure in 2015. The lease allows for the landlord to charge individual leaseholders legal costs provided the requirements of clauses 3.23 and or 3,24 are met but there is no provision in the lease permitting recovery of legal costs through the service charge.

135. The Tribunal finds that the accountancy fee of £1,230 have been reasonably incurred for the reasons given for the 2015 charge. The

accountants dealt with a large amount of correspondence in connection with the 2016 budget.

136. In view of its findings the Tribunal determines that the service charge for the year ending 31 December 2016 is £29,221. The amount payable by each applicant is £648.71.

The Estimated Service charge for the year ended 31 December 2017

137. Mr Richardson appointed Millerson to act as managing agents for Inny Vale Village. On 22 August 2017 Millerson sent a demand for ground rent, insurance, and service charge on account. The provisional service charge for the period 1 January 2017 to 31 December 2017 was in the sum of £500 for each leaseholder/owner and which represented an annual estimated service charge of £22,500.

138. The Applicants objected to the provisional service charge because it was not supported by a budget of anticipated expenditure, and that proper processes had not been followed in arriving at this amount. In this respect the Applicants referred to paragraph 7.3 of the RICS Code of Practice 3rd edition which stated that managing agents should use due diligence and professional expertise to make an assessment of expenditure required to maintain the development and services for the forthcoming period, and that the managing agent must not purposely under-estimate costs.

139. The Applicants contended that Mr Richardson through his managing agent was required to guarantee that the actuals would not vary to a significant and unwarranted degree from the £500 estimated. In the Applicants' view, given the shortfalls highlighted by them in the services provided by Mr Richardson, they expected the actual service charge for 2017 to be lower than £500. Finally the Applicants argued that the surplus of £10,614 identified in the service charge accounts for 2016 should be set off against the provisional service charge.

140. Mr Pullen was at a loss to understand the Applicants' objections to a provisional service charge in the sum of £500. Mr Pullen pointed out that this was the amount charged by Inny Vale Limited in the years leading up to the sale of the Village to Mr and Mrs Richardson and the amount that the Applicants had indicated in their correspondence with Mr and Mrs Richardson was a reasonable sum to pay for service charges.

141. The Tribunal observes that paragraph 4 to the Second schedule to the lease gives authority for the landlord to demand a provisional sum as is estimated by the Surveyor of what the annual expenditure is likely to be for that year.

142. The Tribunal is concerned with the provisional service charge for the year ended 31 December 2017, not with the actual service charge for

that period. When examining an estimated service charge the Tribunal has regard to section 19(2) of the 1985 act which provides that

> "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 charge or otherwise".

143. The Tribunal considers the correct approach for determining the provisional service charge for the year ended 31 December 2017 is to assess the reasonableness of the costs at the time the sum was demanded (August 2017) having regard to expenditure in previous years and what was known in August 2017.

144. The Tribunal is satisfied that a sum of £22,500 (£500 for each leaseholder/owner) was not excessive when compared with the previous expenditure over the last two years. Despite the Applicants' reservations about the standard of services provided the Tribunal also considers that Mr Richardson was giving a level of services in 2017 which required funding. The Tribunal found the condition of the site to be in a reasonable state at its inspection on 5 December 2017. The Tribunal acknowledges that the inspection was a snapshot in time but if there had been a dramatic deterioration in the provision of services in 2017 it would have been apparent at the inspection.

145. The Applicants' principal objection to the estimated sum was that the managing agent had not followed the advice in the RICS Code of Practice and that the estimate may be significantly out of step with the actual expenditure. The Tribunal accepts that it is obliged to have regard to the RICS Code Practice when assessing the reasonableness of the estimated service charge. The Tribunal, however, views the Code in the light of all the circumstances relevant to the particular matter under consideration. The Tribunal finds at the time of the appointment of the managing agent that no service charge had been demanded for 2017, many leaseholders/owners had raised objections to the 2015 and 2016 service charges, there was a significant overall level of service charge arrears, and the site required funding to keep it going. The Tribunal considers that the managing agent chose the sum of £500 because he believed that the leaseholders/owners might pay it in view of their previous indication of £500 being a reasonable amount for service charges, and in so doing he would ensure a cash flow for the site. The Tribunal takes the view that the managing agent had regard to proper considerations when advising on the appropriate amount for the provisional service charge.

146. The Applicants argued that the surplus identified in the 2016 actual service charge should have been credited against the provisional service charge for 2017. The Tribunal observes that the surplus has been allocated to reserves in the 2016 accounts. The Applicants have not put forward a case on the reasonableness of sums allocated to reserves.

147. Having regard to its findings the Tribunal determines that a sum of £22,500 for the provisional service charge for the period 1 January

2017 to 31 December 2017 was reasonable. The Applicants are each liable to pay the sum of £500 towards the provisional service charge.

Insurance 2015, 2016 and 2017

148. The sums demanded for insurance were £10,474 (2015), £10898.36 (2016) and £11,598.90 (2017). The amounts demanded from individual leaseholders were £253.45 (2016) and £263.62 (2017). The Tribunal does not have details of the individual contributions for 2015 which presumably were paid to the previous owners. The period of the insurance cover ran from 1 April to 31 March each year.

149. Under the lease the insurance is demanded separately from the service charge, and is referred to as "Insurance Rent". Each leaseholder is required to pay 2.22 per cent of the insurance charge. Clause 5 of the lease sets out the terms of the landlord's covenant to insure the property.

150. Mr Richardson used a broker to secure insurance for the site. Mr Richardson produced a copy of the email correspondence from the broker explaining that it had approached various insurers and that the quotation given by the present insurers was competitive and the most suitable option. The broker also explained that the increase in premium from 2016 to 2017 was due to a rise in Insurance Premium Tax from 6 per cent to 9.5 per cent [R D:72].

151. The Applicants conceded that although they could possibly obtain insurance at a lower charge, the premium secured by Mr Richardson for insurance was in the bounds of reasonableness. The Applicants did not challenge the amount of the insurance premium.

152. The Applicants raised questions about the calculation of their contribution to the insurance charge. Millerson, the managing agent, applied a proportion of 2.27 per cent to the 2017 charge for insurance. It would appear that the proportion applied to the 2016 service charge was 2.32 per cent. Mr Richardson or his representatives have not supplied an explanation for why the percentage contribution varied from the percentage of 2.22 per cent given in the lease. In the absence of an explanation the Tribunal decides that the individual contribution must be calculated using the percentage of 2.22 per cent.

153. The Tribunal determines that the charges of £10,474 (2015), £10,898.36 (2016) and £11,598.90 (2017) for insurance were reasonably incurred. The Applicants are each liable to contribute £232.52 (2015), £241.94 (2016) and £257.50 (2017) towards the insurance charge.

154. The parties raised various other issues regarding the insurance. The Tribunal intends to deal with these points summarily:

- A tenant has the right under the 1985 Act and the lease to inspect the insurance policy. The Tribunal understands the

Applicants have now been supplied with a copy of the insurance policy.

- The landlord is only obliged to take out insurance covering the risks as defined in the lease. If a tenant wishes for the policy to cover risks not defined in the lease, the tenant would have to take out and pay for separate insurance on top of the contribution payable to the landlord for the premium paid for insuring the site.

- A tenant cannot avoid his responsibilities under the lease to contribute to the premium paid by the landlord for insuring the site. If the tenant takes out own insurance for the property, the tenant still has to pay his contribution to the landlord.

- There is no requirement for Mr Richardson to consult on the insurance arrangements because they did not constitute a qualifying long term agreement.

Summary of Tenants' Rights and Obligations

155. The Applicants argued that Mr and Mrs Richardson had not complied with the statutory requirements for the service of service charge demands because they had not been accompanied by the statutory form setting out the summary of tenant's rights and obligations.

156. Section 21B of the 1985 Act states that a demand for the payment of a service charge must be accompanied by a summary of rights and obligations. Under subsection 2 the Secretary of State may make Regulations prescribing the requirements as to the form and content of such summaries. The applicable regulations are The Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007, (2007 No. 1257) as amended. Regulation 3 specifies that the summary attached to the demand must be legible and must contain the title *"Service Charges-Summary of tenants' rights and obligations"* and the following statement of rights

157. Section 21B only applies to leaseholders. The freeholders on the site were not entitled to a summary of rights and obligations.

158. The effect of a landlord's failure to attach the current *Summary of tenants' rights and obligations* is that leaseholders (not freeholders) are entitled to withhold payment of the service charges demanded until the landlord complies with the statutory requirements.

159. Mr and Mrs Richardson in their letter on 7 July 2016 acknowledged that "a statement of owners rights and obligations" had not been sent and that they would correct the position for the future. Mr and Mrs Richardson explained that their accountant had advised them that none of his clients in similar businesses did this. Clearly the accountant's advice was incorrect as far as Mr and Mrs Richardson's situation.

160. Mr Richardson's solicitor supplied a copy of the "Summary of Rights and Obligations" dated 7 November 2016 in the supplemental bundle. There was no covering letter explaining whether the Summary of Rights and Obligations had been served on the leaseholders.

161. The Applicants referred to the Upper Tribunal decision in *Tingdene Holiday Parks Limited v Cox* [2011 1UKUT 310 (LC) which decided that a landlord must send a summary of rights and obligations with a demand in order to cover the defect, and until that is done a leaseholder is entitled to withhold payment of the service charge.

162. It would appear that Mr Richardson has not sent the "summary of rights and obligations" with a demand, and if that is the case Mr Richardson's advisers should do so for the relevant previous years, particularly if Mr Richardson is wishing to take action to collect outstanding service charges against leaseholders. The advisers should also ensure that the summary of rights and obligations is served with all future demands for service charges against leaseholders.

163. The Tribunal considers that Mr Richardson's failure to provide a summary of rights and obligations has no practical effect in respect of those Applicants who have paid their charges to date. The failure to provide the Summary of Rights and Obligations entitles leaseholders to withhold payment, it does not extinguish liability to pay the charges.

Applications under S20C and under Paragraph 5(a) Schedule 11 of the 2002 Act and refund of fees

164. The Tribunal has decided there is no power under the lease for the landlord to recover legal costs through the service charge. In those circumstances the Tribunal makes no order under section 20C of the 1985 Act.

165. The Tribunal's provisional view is that the landlord is not entitled under the lease to recover his legal costs in connection with these proceedings against the individual Applicants. If that is correct, there is no obligation upon the Tribunal to consider the provisions of paragraph 5(a) Schedule 11 of the 2002 Act. The Tribunal, however, did not invite representations on this point from Mr Pullen unlike the service charge matter. The Tribunal gives Mr Richardson's representatives the opportunity to make submissions on this point within 14 days of receipt of this decision. If no submissions are received the Tribunal's provisional view would be made final. If submissions are received, the Tribunal would issue directions giving the Applicants the right of reply.

166. The Applicants have not been successful on all the points raised. In those circumstances the Tribunal makes no order for reimbursement of application and hearing fees paid by the Applicants to the Tribunal.

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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.

Section 27A

(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.

Section 20C

(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, residential property tribunal or the Upper 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;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper 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.