FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/00CS/LIS/2019/0002
Property	:	69 Kinsey Road, Smethwick, Birmingham B66 4SL
Applicants	:	Dr Hossam Said and Mrs Mona Abdalla
Respondents	:	Neon Property Investments LLP (1) Adriatic Land 8 Limited (2)
Representatives	:	Centrick Property (1) Principle Estate Management (2)
Type of Application	:	An Application under section 27A of the Landlord and Tenant Act 1985 for the determination of the payability and reasonableness of service charges in respect of the subject property
Tribunal Members	:	Judge David R Salter (Chairman) Mr Ivan Taylor FRICS (Valuer)
Date of Hearings	**:**	9 April 2019 and 12 June 2019
Date of Decision	**:**	3 October 2019

DECISION

Background

1 This is a decision made in respect of an application ('the Application') by Dr Hossam Said and Mrs Mona Abdalla ('the Applicants'), who are the sub-tenants of 69 Kinsey Road, Smethwick, Birmingham B66 4AL ('the subject property'), which was dated 2 January 2019 and received by the Tribunal on 3 January 2019.

2 In the Application, the Applicants sought a determination by the Tribunal under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') of the payability and reasonableness of budgeted service charges in respect of the subject property for the service charge years 2017/2018 and 2018/2019 ('the service charge year 2018' and 'the service charge year 2019').

3 Initial Directions were issued by the Regional Judge on 8 January 2019. Principally, those Directions related to the processes associated with the preparation and submission of statements of case and related documents by the parties to the Application. Subsequently and following receipt of further information from the Applicants and Principle Estate Management, the Regional Judge in further Directions ('Directions No. 2') dated 24 January 2019 amended his initial Directions as follows:

"The Applicants have a mortgage with an Islamic Bank (Al Rayan Bank). The lease under which the property is held is dated 21st June 2010 and made between the First Respondent (1) and Miss MA Russell (2). Ms Russell assigned the lease to Al Rayan Bank Plc by way of transfer dated 18th August 2017. Al Rayan granted a sub-lease to the Applicants on 18th August 2017 which is registered at HM Land Registry under Title No. MM93636.

As sub-tenants the Applicants fall within the definition of a "tenant" by virtue of section 30(b) of the Landlord and Tenant Act 1985. Under those circumstances the application is properly made and I see no reason why Al Rayan should be joined as a party.

Principle Estate Management in an e-mail of 22nd January 2019 explain that they act for the second Respondent which acquired the Property in March 2018. Prior to that the freeholder was the First Respondent whose agents were Centrick Property Management.

The service charge years in dispute are 2018 and 2019. The Lease at page 5 defines the Maintenance Year as a twelve-month period ending on 31st December. Accordingly, the service charge year 2018 covers the periods of ownership of both the First and Second Respondents. I therefore exercise my powers under Rule 10 to add Adriatic Land 8 Limited as Second Respondent. I also correct the title of the First Respondent from Limited to LLP.

Accordingly, in these Directions any reference to anything to be done by the Landlord is a requirement applicable to both the First and Second Respondents in relation to their respective periods of ownership. Any requirement on the Tenant to send documents to the Landlord shall be a requirement for the Tenant to send that document to both the First and Second Respondent…"

4 Statements of case and related documents were duly filed with the Tribunal by the Applicants and by Principle Estate Management on behalf of the Second Respondent on 25 February 2019 and on 22 March 2019 respectively. Thereafter, the Applicants made a further submission in response to the Second Respondent's statement of case which was received by the Tribunal on 25 March 2019.

5 The Tribunal carried out an external inspection of the subject property and its immediate environs on 9 April 2019 in the presence of Mr A Said, the son of the Applicants and occupant of the subject property, and Mr I Smallman, a Director of Principle Estate Management (Mr Smallman) who attended on behalf of the Second Respondent.

The subject property is a two bedroom flat located on the first floor of a four-storey apartment block ('the block') and it is served by a communal staircase. The block is situated within a substantial mixed residential development known as the Mitchell's Brook comprising apartments and maisonettes constructed circa 2010. There is a paved forecourt to the rear of the block from which an entrance to the block provides access to and egress from the subject property and some, but not extensive, landscaping comprising bushes, hedging and small grassed areas. Within the forecourt, tarmacadam dedicated car parking is provided and the subject property has a designated car parking space. The block fronts the busy Cape Hill Road from which access to and egress from the subject property may also be obtained.

Following the Inspection, a Hearing (the 'preliminary Hearing') was held at City Centre Tower, 5-7 Hill Street, Birmingham. The following individuals were present - the Applicants, Mrs I Hossam-Said (who addressed the Tribunal with Mrs Abdalla on behalf of the Applicants) and Miss M Hossam-Said (as an observer), Mr Smallman, acting on behalf of the Second Respondent, and Miss B Wootton, an Associate Director of Centrick Property (the managing agents for part of the service charge year 2018 and during the ownership of the freehold title by the First Respondent). Mr C Hill and Mr C Grogan of Centrick Property also attended as observers.

At an early stage in the proceedings, it was established that the final end of year service charge accounts for 2018 relating to the subject property would be available in mid-May 2019. In view of this, the Tribunal proposed that the matters for consideration be held over pending the completion and presentation of these accounts. The parties agreed to this proposal. Accordingly, the preliminary Hearing was adjourned.

6 On 12 April 2019, the Tribunal issued further Directions ('Directions No. 3') in which it directed Principle Estate Management acting in its capacity as managing agent of the Second Respondent to provide the final end of year service charge accounts for 2018 in respect of the block of flats (67-74) in which the subject property is located together with supporting explanatory information and documents, including copies of pertinent contracts of work and/or services, invoices and the certificate(s) and policy/policies of insurance. These Directions also provided that the Applicants should have a right to file a response to the Tribunal within 14 days of the receipt of the service charge accounts, information and documents. A further Hearing was scheduled for 12 June 2019.

7 Principle Estate Management duly submitted the final end of year service charge accounts for 2018 prepared by Bennett Whitehouse, Chartered Accountants, ('the 2018 service charge accounts') and related documentation in accordance with Directions No. 3 together with a covering letter dated 10 May 2019, and, in turn, the Applicants filed a response on 30 May 2019.

8 The further Hearing (the 'substantive Hearing') took place on 12 June 2019 at the Centre City Tower. The Applicants were accompanied by Mrs I Hossam-Said and Mr A Said. Mrs Abdalla and Mrs Hossam- Said presented the Applicants' case. Mr Smallman attended on behalf of the Second Respondent and presented its case. Mr Grogan attended the Hearing as an observer and took no part in the proceedings.

The Lease

9 The Applicants and the Second Respondent enjoy rights and are subject to obligations set out in a lease dated 21 June 2010 and entered into by Neon Property Investments LLP and Miss M A Russell for a term of 125 years from 1 January 2010 ('the lease').

10 The provisions of the lease which are pertinent to the Application are as follows.

11 Clause 3 of the lease contains the tenant's covenants with the landlord with which the Applicants are obliged to comply. These include the following covenants relating to payment of the service charge:

> "3.3 On 1st January in respect of the Maintenance Year to pay the Service Charge Proportion of the estimated Service Charge to the Landlord in advance or by such other payment method agreed with the Landlord…
>
> 3.4 To pay to the Landlord the Service Charge Proportion of any Service Charge adjustment calculated pursuant to Paragraph 4 of the Fourth Schedule"

The Particulars of the lease define the maintenance year as 'Every twelve month period ending on the 31st day of December the whole or any part of which falls within the Term' and the service charge proportion as 'A fair and reasonable proportion as determined by the Landlord (acting reasonably) by reference to the number and size of flats within the Estate obliged to contribute to the Service Charge'. The lease indicates that the Estate comprises the Mitchell Brook Cape Hill Smethwick development.

12 The Fourth Schedule makes the following provision for the calculation of the service charge:

> "1. The estimated Service Charge in respect of each Maintenance Year shall be calculated…in accordance with paragraph 2 hereof
>
> 2. The estimated Service Charge shall consist of a sum comprising:-
>
> 2.1 the expenditure estimated as likely to be incurred in the Maintenance Year by the Landlord for the purposes mentioned in the Fifth Schedule together with
>
> 2.2 an appropriate amount as a reserve for or towards those of the matters mentioned in Part 1 Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired Term of this Lease or at intervals of more than one year during such unexpired Term including (without prejudice to the generality of the foregoing) such matters as the decorating of the exterior of the Building the repair of the structure thereof and the repairs of Conduits; and
>
> 2.3 a reasonable sum to remunerate the Landlord or agents employed by it for its administrative and management expenses in respect of the Building and Communal Areas (including a profit element) such sum if challenged by any Tenant to be referred for determination by an independent Chartered Accountant appointed on the application by the Landlord by the President of the Institute of Chartered Accountants in England and Wales acting as an expert
>
> 3. Prior to the start of each Maintenance Year (or as soon after the start as practicable) the Landlord shall prepare and provide the Tenant with a statement showing the estimated Service Charge for the forthcoming…Maintenance Year

4.

4.1 After the end of each Maintenance Year the Landlord shall determine the Service Charge Adjustment which shall be the amount (if any) by which the estimate under Paragraph 2. above shall have fallen short of the actual Service Charge

4.2 The Tenant shall on demand pay the Service Charge Proportion of the Service Charge Adjustment

5. A certificate signed by the Landlord and purporting to show the amount of the actual Service Charge or the amount of the Service Charge Adjustment for any Maintenance Year shall be conclusive of such amount

6. The Landlord shall arrange for accounts of the Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Tenant a summary of such accounts"

The Particulars of the lease define the Building as 'The building within the Estate comprising the block of flats which includes the Flat'.

13 Clause 4 of the lease contains covenants of the Landlord with the Tenant with which the Second Respondent is obliged to comply. For the purposes of the Application the following covenant is material:

"4.1 During the Term to carry out the repairs and provide the services specified in the Fifth Schedule provided always that:

4.1.1 the Tenant shall have respectively paid the Service Charge Proportion of the estimated Service Charge (and any Service Charge Adjustment due)".

14 The Fifth Schedule sets out the purposes for which the service charge is to be applied. Those purposes which are pertinent to the Application are set out *fully* below.

"1.

1.1 [E*xternal decoration of the Building]*

1.2 [*Decoration of communal areas*]

1.3 [K*eeping the walls and structure of the Building in good repair and condition*]

1.4 To keep the Communal Areas clean and in good repair and condition and (where appropriate) properly lit

1.5 As often as may in the reasonable opinion of the Landlord be necessary to clean the external surfaces of the windows in the block

1.6 To keep properly cultivated and/or tended any gardens or amenity area comprised in the Communal Areas

2 [*Keeping all conduits in good repair and condition*]

3.

3.1 To pay all existing and future rates taxes charges and outgoings whatsoever which are now or shall during the Term be charged or payable on or in respect of the entirety of the Building

3.2 [P*ayment of all costs and expenses for maintaining the water supply*]

4. To employ such staff to perform such services as the Landlord shall think necessary in or about the Building but so that the Landlord shall not be liable to the Tenant for any act or default or omission of such staff

5. To make provision for the payment of all costs and expenses incurred by the Landlord or its appointed agents:-

5.1 in the running and management of the Building and the collection of the Service Charge in respect of the flats therein and in the enforcement of the covenants and conditions and regulations contained in the leases granted for the flats and parking spaces in the Building and

5.2 [*Payment of all costs and expenses incurred by the Landlord's agents in taking actions in respect of notices or orders served on the Tenant(s)*]

5.3 in the determination of the remuneration of the Landlord or its approved agents referred to in paragraph 2.3 Part 1 Fourth Schedule

5.4 in the preparation and audit of the Service Charge accounts

6. To pay all expenses of providing leasing maintaining servicing and renewing or otherwise relating to the entry phone system communal television aerial and/or satellite dish security apparatus or other similar apparatus (if any are installed) including any fees or charges payable to any contractor or corporation in respect of the same

7.

7.1 To keep the Building (but not the contents of any flat in the Building) insured against loss or damage by fire lightning storm tempest earthquake flood escape of water or oil explosion impact aircraft or anything dropped therefrom riot or civil commotion malicious damage subsidence heave landslip accidental damage to underground services falling trees and branches and aerials theft or attempted theft public liability professional fees demolition and site clearance costs (so far as cover in respect of such risks is available in the insurance market) and such other risks as the Landlord shall think fit for a sum equal to the full replacement value thereof and all architect's surveyors' and other fees necessary in connection therewith in some insurance office of repute and through such agency as the Landlord shall in its discretion decide. The Building shall be deemed to be insured for a sum equal to the full replacement value thereof notwithstanding that any policy or policies of insurance in force contains a provision whereby the first part of any loss shall not be borne by the Insurers so long as the Landlord is satisfied that the inclusion of such an excess provision in any policy of insurance is in the general interest of the Tenants of the flats in the Building having regard to the additional costs of insuring without such an excess provision

7.2 To have the Tenant included in the policy as insured persons and to produce to the Tenant on request the policy of insurance and the receipt for the current premium

7.3 [*To utilise proceeds received from any insurance policy to extend, rebuild or reinstate the Building*]

8. To effect insurance against the liability of the Landlord to third parties and against such other risks and in such amount as the Landlord shall reasonably think fit (but not against the liability of individual Tenants as occupiers of the Estate)

9 [*To pay any taxes assessed or charged on the service charge or on any income from the investment of the service charge*]

10. To carry out all repairs to any part of the Building or Communal Areas for which the Landlord may be liable and to provide and supply such other services for the benefit of the Tenant and other Tenants in the Building and to carry out such other repairs and such improvements works additions and to defray such other costs …as the Landlord shall reasonably consider necessary to maintain the Building as a good class block of residential flats or otherwise desirable in the general interests of the Tenants

11 [*If so required, to comply with maintenance obligations in respect of facilities contained in a section 106 Agreement]*"

Issues in Dispute

15 In the Application, the Applicants challenged specified items of budgeted service charge expenditure for the service charge years 2018 and 2019. However, with the advent of the 2018 service charge accounts, the issues in dispute became, first, the legitimacy of those accounts in that they were prepared in a manner that departed from previous practice secondly, the 'reasonableness', or otherwise, of each of the items of actual expenditure incurred in the service charge year 2018 and recorded in those accounts, and, thirdly, the 'reasonableness', or otherwise, of the specified items of budgeted service charge expenditure for the service charge year 2019.

The first and second issues were addressed at the substantive Hearing (see below, paragraphs 29 - 40). However, at that hearing, the Applicants decided not to proceed with their challenge to the specified items of budgeted service charge expenditure for the service charge year 2019, but reserved their right to make an application to the Tribunal for an order relating to the payability and reasonableness of the service charge expenditure incurred in the service charge year 2019 as and when that expenditure is presented in the final end of year service charge accounts for that year.

16 The Applicants also seek an order of the Tribunal that the second Respondent be obliged to pay the Applicants' 'tribunal costs', namely £300.00.

Relevant Law

17 The relevant law comprises sections 18, 19 and 27A of the 1985 Act and those Court and Tribunal decisions that relate to the interpretation and operation of those provisions.

18 Sections 18 and 19 of the 1985 Act provide:

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 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' include 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.

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 provision of services for the carrying out of works, only if the services are of a reasonable standard;

and the amount 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 way of repayment, reduction, or subsequent charges or otherwise.

19 Section 27A of the 1985 Act, so far as material, provides:

(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) Sub-section (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 included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, 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.

20 The 'appropriate tribunal' is this Tribunal.

21 In the ordinary course of events, the payment and recovery of the service charge is governed by the terms of the lease which sets out the agreement that has been entered into by the parties to the lease. However, these important statutory provisions in the 1985

Act provide additional protection to tenants/leaseholders, broadly, through the application of a test of 'reasonableness'.

22 The construction of provisions in a lease and, hence, the meaning to be attributed to those provisions is a matter of law whilst the 'reasonableness' or otherwise of the service charge for the purposes of the 1985 Act is a matter of fact. There is no presumption either way in deciding the 'reasonableness' of a service charge.

If a leaseholder provides evidence which establishes a *prima facie* case for a challenge to a service charge, the onus is on the landlord to counter that evidence. Consequently, a decision is reached on the strength of the arguments made by the parties. Essentially, a Tribunal decides 'reasonableness' on the evidence which has been presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100).

23 With regard to the test of establishing whether a cost was reasonably incurred, the usual starting point is the Lands Tribunal decision in *Forcelux Limited v Sweetman* [2001] 2 EGLR 173 ('*Forcelux*'), which concerned recovery of insurance premiums through a service charge, in which Mr PR Francis said:

"[39]…The question I have to answer is not whether expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

[40] But to answer that question, there are in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. The second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market."

24 Subsequently, in the Lands Tribunal decision in *Veena v Chong* [2003] 1 EGLR 175, Mr PH Clarke FRICS observed:

"[103]…The question is not solely whether costs are 'reasonable' but whether they are 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were reasonable."

25 Recently, the Court of Appeal analysed the concept of 'reasonably incurred' in section 19(1) of the 1985 Act in *The London Borough of Hounslow v Waaler* [2017] EWCA Civ 45 ('*Waaler*') in the course of considering whether the cost of replacing windows by Hounslow was reasonable where those windows could have been repaired at a cost that was substantially less than the cost of replacing the windows. The court said that in applying the test of establishing whether a cost was reasonably incurred the landlord's decision making process is not the 'only touchstone'. A landlord must do more than act rationally in making decisions, otherwise section 19 would serve no useful purpose. It is particularly important that the outcome of the decision making process is considered. As HHJ Stuart Bridge said in the Upper Tribunal in *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC):

"[47] If, in determining whether a cost has been 'reasonably incurred', a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in Waaler. I agree with the Court of Appeal that this cannot be the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed

previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in Forcelux, necessarily a two-stage test.

[48] Context is, as always, everything, and every decision will be based upon its own facts…"

26 Further, in approaching the question of 'reasonableness', the following cautionary words of HHJ Mole QC in *Regent Management Limited v Jones* [2010] UKUT 369 (LC) are important:

"[35] The test is whether the service charge that was made was a reasonable one; not whether there are other possible ways of charging that might have been thought to better or more reasonable. There may be several different ways of dealing with a particular problem…All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT [The Tribunal] may have its own view. If the choice had been left to the LVT, it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable."

Discussion

27 As indicated above (see, paragraph 15), the issues in dispute to be determined by the Tribunal are the legitimacy of the 2018 service charge accounts and the 'reasonableness', or otherwise, of each of the items of actual expenditure incurred in the service charge year 2018 and recorded in the aforementioned accounts.

The Tribunal is also required to consider the Applicants' request for an order by the Tribunal that the second Respondent be obliged to pay the Applicants' 'tribunal costs', namely £300.00.

28 The Tribunal's examination of these matters in the light of the evidence submitted by the parties and its findings follow.

2018 service charge accounts – legitimacy

29 In their response to the 2018 service charge accounts and accompanying documentation, the Applicants raised, *inter alia*, an initial fundamental objection to the legitimacy of those accounts which included in Schedule 4 a designated service charge expenditure account for apartments 55-74 at Mitchell's Brook. The Applicants submitted that the amalgam of apartments 55-66 and 67-74 in this schedule was unjustified and contrary to the Land Registry plans for these two blocks. In support of this submission, the Applicants pointed out that each of the blocks, containing apartments 55-66 and 67-74 respectively, has a private entrance and electric meter and there are no internal communal buildings or entrances. In addition, invoices issued from the time when the building was built made separate charges for the block within which the subject property is located, namely the block comprising apartments 67-74.

The Applicants indicated that this 'arbitrary re-allocation of the blocks' i.e. the amalgam of blocks 55-66 and 67-74 for service charge purposes had been instigated by Principle Estate Management in the amended budget for the service charge year 2018 that it had introduced in March 2019. This amounted to a significant departure from the practice

followed, previously, by Centrick Property during its tenure as managing agent. In the Applicants' opinion, this change had led, in particular, to block 67-74 bearing a disproportionate proportion of expenditure incurred (mainly, in relation to block 55-66) and making a disproportionate contribution to the reserve fund. Consequently, the Applicants suggested that the general credibility of the 2018 service charge accounts should be further questioned on the basis that they followed and perpetuated this unfounded approach and its consequences. The Applicants concluded that there should be a reversion to the conventional block allocations. The block comprising apartments 67-74 should treated as a separate and distinct entity with the consequence that it should not be required to share service expenditure incurred in respect of other blocks.

At the substantive Hearing, Mr Smallman explained the basis upon which the 2018 service charge accounts had been prepared. He also alluded to the approach which had been adopted by Centrick Property in relation to the budgeted service charge accounts for 2018.

Initially, Mr Smallman pointed out that it was the responsibility of Principle Estate Management when acting as managing agent on behalf of the second Respondent to manage matters relating to the service charge. The Mitchell's Brook development included a number of apartment blocks and maisonettes. The responsibility for managing the service charge in respect of those apartment blocks which fell within its remit included a determination of how such apartment blocks might be regarded for the purpose of the attribution of the service charge.

Mr Smallman informed the Tribunal that the approach to this matter which had been adopted by Principle Estate Management was based on its interpretation of the lease. In this respect, Mr Smallman referred to the definition of 'Building' in the particulars of the lease, namely 'the building within the Estate comprising the block of flats which includes the Flat' (see above, paragraph 12). Within the context of the Application, he submitted that the phrase 'the block of flats' in this definition should be interpreted to mean the blocks of apartments comprising apartments 55-74. This was essential to reflect the physical configuration of the blocks, notably the existence of three, rather than two, core areas, and also, notwithstanding separate entrances to each of these blocks, to acknowledge that these blocks constituted one 'building' within the meaning given to that term in the lease. Mr Smallman added that, in his opinion, the plan of Mitchell's Brook attached to the office copies of the Applicant's title to the subject property and indicating the location of that apartment within that development was sufficiently imprecise as not to detract from this approach. Mr Smallman affirmed that the treatment of the blocks comprising apartments 55-74 as one building had informed the preparation and presentation of the 2018 service charge accounts and had been instrumental in the prior adjustments made by Principle Estate Management to the budgeted service charge accounts for that year.

Mr Smallman recognized that this approach was a departure from the practice followed by Centrick Property when these blocks had been treated separately for the purpose of the attribution of the service charge. However, he indicated that the approach introduced by Principle Estate Management had also led to a reassessment of what constitutes a 'fair and reasonable proportion' of the service charge. Again, he said that this was a matter that was governed by the lease which provided for such 'fair and reasonable proportion' to be decided by the landlord (see above, paragraph 11). Mr Smallman stated that, historically, this proportion had been 12.5%, but this was now determined to be 3.3% and 5.0% of those pertinent service charge costs referable to the estate and the building (in this case, the blocks comprising apartments 55-74) respectively.

30 The Applicants' objection to the 2018 service charge accounts raises two questions – first, what is the meaning of the operative words in the definition of 'Building' in the lease,

namely 'the block of flats', and, secondly, the related question of whether the present determination of the 'fair and reasonable proportion' of the service charge was made 'by the Landlord (acting reasonably) by reference to the number and size of flats within the Estate obliged to contribute to the Service Charge' which, in this case, means the second Respondent acting through Principle Estate Management.

31 With regard to the first question, it is evident to the Tribunal that the lease when construed as a whole does not provide any particular guidance as to the meaning for the purposes of the Application of the phrase 'the block of flats' as employed in the definition of 'Building'. Clearly, the parties differ as to what that meaning should be. In the event, the Tribunal is persuaded that these words are capable of being interpreted in either of the ways advocated by the parties. Whilst the meaning employed by the Applicants and implemented by Centrick Property during its tenure as managing agent i.e. treating the blocks comprising apartments 55-66 and 67 and 74 separately for the attribution of the service charge might, arguably, be regarded as the more natural meaning, nevertheless the meaning adopted by Principle Estate Management, on behalf of the second Respondent, leading to the amalgam of those blocks for that purpose is one which the words are capable of bearing and also sustainable in that, as the Tribunal acknowledges from its inspection, it is consistent with the physical layout of these blocks. In this circumstance, the Tribunal finds that the meaning attributed to the phrase by Principle Estate Management was an act that, to borrow the words in *Forcelux*, was 'appropriate and properly effected in accordance with the requirements of the lease'. In turn, the 2018 service charge accounts, which were prepared on that basis, similarly comply with the terms of the lease.

32 As Mr Smallman intimated, the assessment of what constitutes 'a fair and reasonable proportion' of the service charge is according to the lease a matter for the landlord, that is, in this instance, the second Respondent. However, the lease also provides that in making that assessment the landlord (the second Respondent) must act reasonably 'by reference to the number and size of flats within the Estate obliged to contribute to the Service Charge' (see above, paragraph 11).

33 In *Shersby v Grenehurst Park Residents Co Ltd* [2009] UKUT 241 (LC)('*Shersby*'), one of a number of issues before the Upper Tribunal was the exercise of a power in a lease by a landlord, acting in the capacity of a manager, to alter the percentage proportions of a service charge payable by tenants. The lease provided that this power was exercisable where the landlord (manager) reached a genuine and bona fide opinion that it had become equitable to recalculate the percentage proportions. HHJ Huskinson framed the question for the Tribunal in that case as follows:

"[36]…whether the Respondent [landlord] reached a lawful decision on the point, being a decision which was within the range of reasonable decisions (as opposed to a perverse decision) and whether the Respondent took into consideration relevant matters and did not take into consideration irrelevant matters…the question is not whether the Tribunal considers that some other equitable basis should have been adopted or would have been more equitable. The question is whether this was a bona fide decision being one within the range of reasonable decisions and being reached taking into account relevant and ignoring irrelevant matters."

34 It is clear from Mr Smallman's evidence that the catalyst in this case for the change introduced by Principle Estate Management to the apportionment/percentage proportions of the service charge was the review of the budget that was undertaken following Principle Estate Management's assumption of management responsibilities. The budget review, itself, took into account, in particular, the composition of the second Respondent's interest in Mitchell's Brook. It also led, as has been seen, to the contested re-allocation of the blocks comprising apartments 55-74. The budget review and

consequent re-allocation, which has been upheld in this determination, are clearly material and relevant considerations to be taken into account in assessing the percentage proportions of 3.3% and 5% which were then adopted by Principle Estate Management. In adopting those percentages, there is no compelling evidence to suggest that Principle Estate Management was, otherwise, influenced by any matters that may be regarded as irrelevant to that determination. In these circumstances, whilst it is possible that others may have reached a different conclusion about the percentage proportions (or either of them) that might have been adopted, this is immaterial if the determination made by Principle Estate Management falls, as postulated in *Shersby*, within the range of reasonable decisions that could have been made, which the Tribunal, using its knowledge and experience as an expert Tribunal, so finds.

2018 service charge expenditure - payability and reasonableness

(i) Introduction

35 Having established the legitimacy of the 2018 service charge accounts and the reasonableness of the related percentage proportions of the service charge, the evidence presented by the parties in relation to the service charge expenditure in the 2018 service charge year must be examined, principally, but not exclusively, in the light of those accounts with the consequence that the materiality of evidence adduced and arguments made prior to the issue of Directions No. 3 in relation to that service charge year is diminished to the extent that it relates, specifically, to budgeted expenditure for 2018 and/or involves challenges to budgeted figures for that year where those figures are superseded by the figures for actual expenditure found in the 2018 service charge accounts, for example, the Applicants' contention that 2018 budgeted costs were disproportionately attributed to the block containing the subject property.

Nevertheless, as intimated above, this is not to say that the evidence in the Application and other written submissions, including the respective statements of case, submitted prior to the issue of Directions No. 3 and relating to the 2018 service charge year is to be disregarded because, as will be seen, it may be possible to extrapolate from that evidence statements and observations which may have a bearing on the determination of the question of whether the items of expenditure incurred in that year were reasonably incurred and reasonable in amount.

36 For the purposes of the Application, the 2018 service charge accounts set out in the service charge income and expenditure report the income and the pertinent expenditure incurred in that year in an Estate Schedule (Schedule 1) and in a schedule that relates to apartments 55-74 (Schedule 4), that is, the building for service charge purposes.

37 The above income and expenditure in the Estate Schedule (Schedule 1) are as follows:

Schedule 1 – Estate Schedule

	Actual 2018 £
Income	
Service charges demanded	15,274.33
Other income	-
Interest received	3.75
Total income receivable	**15,278.08**

Expenditure		
	Waste management	1,150.50
	Grounds maintenance	3,173.55
	External maintenance	853.16
	Out of hours service	326.90
	Replacement lamps	127.68
	Drainage jetting maintenance	-
	Pest control	270.60
Utilities:		
	Electricity	-
Administration:		
	Health and safety	360.00
	Management fees	4,851.00
	Professional fees	1,284.00
	Accountancy fee	842.00
Allocation to general reserve fund		1,000.00
Total expenditure		**14,239.39**
Surplus/(Deficit) for the year		**1,038.69**

38 Further, the income and expenditure referable to apartments 55-74 (Schedule 4), the Building, are as follows:

Schedule 4 – Apartments 55-74

		Actual 2018 £
Income		
	Service charges demanded	13,979.00
Total income receivable		**13,979.00**
Expenditure		
Maintenance and services:		
	Cleaning	3,112.04
	Window cleaning	1,549.53
	Fire alarm testing and maintenance	274.28
	Internal maintenance	612.18
	Replacement lamps	-
Utilities:		
	Electricity	780.86
Administration:		
	Insurance	2,228.69
	Professional fees	-
Allocation to general reserve fund		3,428.00

Total expenditure	**11,985.58**
Surplus/(Deficit) for the year	**1,993.42**

39 The determination of the 'reasonableness', or otherwise, of each of the items of expenditure in these schedules rests, primarily, on the evidence given by the parties following the presentation of the 2018 service charge accounts (see above, paragraph 35). This evidence includes the documents submitted by Principle Estate Management in support of those accounts and the Applicants' written response filed on 30 May 2019. It also includes the oral evidence proffered by the parties at the substantive Hearing. Most pertinently, this oral evidence relates to a systematic examination of each of the items of expenditure which was undertaken at the hearing in accordance with the designation given to each item of expenditure in the 2018 service charge accounts to which the Applicants acceded. The examination was assisted by Mr Smallman who informed the Tribunal in each instance of the actual cost to the Applicants when the appropriate percentage proportions were applied. In the course of this examination, the Applicants indicated those instances in which they accepted that the expenditure was 'reasonable' for the purposes of the Application.

In a letter dated 18 June 2019 and written at the request of the Tribunal, Mr Smallman confirmed the actual costs so apportioned to the Applicants.

(ii) Expenditure – 'reasonableness'

40 Consideration of each of the items of expenditure under the generic heads of estate expenditure and apartments 55-74 (Building) expenditure follows.

Estate expenditure

(a) Waste management - £1,150.50

At the substantive Hearing, Mr Smallman informed the Tribunal that the invoices submitted with the 2018 service charge accounts relating to this expenditure concerned costs incurred in connection with the collection and removal of bulk waste that had been dumped at Mitchell's Brook and related to items which would not ordinarily be removed by refuse collectors. He added that the invoices pre-dated the time when Principle Estate Management assumed management responsibilities. The Tribunal noted that the invoices were presented to Centrick Property by Centrick Maintenance Limited and related to various bulk waste collections undertaken by the latter company between January and May 2018. Mr Smallman also reiterated a view, which he had expressed in his witness statement, that littering (to which regular attention was given) and the dumping of large bulky items was an on-going issue at Mitchell's Brook – a view with which the Applicants agreed and related these problems and others to the inner city area in which the subject property is located which they described in the Application as not affluent. Some photographs of littering in the forecourt were adduced in evidence, but there were no photographs of the type of bulky items that may have been the subject of these collections.

The Applicants submitted that this was not expenditure to which they were liable to contribute through the service charge. This submission was in keeping with the stance taken by the Applicants, on occasions, in their written evidence, towards invoices featuring Centrick Property which they disregarded.

In view of the acknowledged on-going nature of this problem, it is unclear to the Tribunal why there is no provision in the 2018 service charge accounts for any costs incurred in relation to collection and removal of bulk waste from Mitchell's Brook between May and December 2018. However, be that as it may, the issue for the Tribunal is the 'reasonableness', or otherwise, of the expenditure actually incurred in the collection and removal of the bulk waste as evidenced in the invoices. In this respect, it is immaterial, without more, that the expenditure relates to work undertaken or a service provided for a managing agent by an affiliated company of that agent as is the case with this expenditure where the service i.e. the collection and removal of the bulk waste was provided by Centrick Maintenance Limited for Centrick Property. There is no suggestion that the expenditure was not, otherwise, reasonably incurred. Further, the Applicants did not contend that this expenditure, either in whole or in part, was unreasonable in amount nor did they provide any alternative costings for the collection and removal of the bulk waste in question.

Accordingly, the Tribunal relying upon its knowledge and experience as an expert tribunal finds that this expenditure (£1,150.00, including VAT) was reasonably incurred and reasonable in amount.

(b) Grounds maintenance - £3,173.55

In their written evidence, the Applicants stated that minimal garden maintenance was required, because there were no gardens on the development and the grounds only contain a few bushes and patches of grass. They added that, in fact, little grounds maintenance was undertaken in 2018. A photograph adduced in evidence by the Applicants showed some of the bushes which border the paved forecourt to the rear of the subject property. The Applicants submitted that in view of the limited work that was required the charge for grounds maintenance was unjustified. This statement and submission were re-iterated by the Applicants at the substantive Hearing.

The invoices relating to grounds maintenance that accompanied the 2018 service charge accounts show that the responsibility for grounds maintenance during 2018 was shared by Centrick Maintenance Limited (January–May) and 2CleanPlus (June–December). These invoices were presented to Centrick Property, as agents for the first Respondent, and the second Respondent, respectively with charges at a monthly rate of £308.25 (including VAT) by Centrick Maintenance Limited and charges at a monthly rate of £327.60 (including VAT) by 2Clean Plus. Again, the Applicants were inclined to disregard the invoices featuring Centrick Property.

At the substantive Hearing, Mr Smallman said that there were common lawns to the front and rear of buildings within the Mitchell's Brook development, bushes in 'garden' areas and hedges throughout the development. He assured the Tribunal that grounds maintenance does take place, and added that, in his opinion, the cost incurred for this work was reasonable with the actual annual cost to the Applicants being £104.73.

The Applicants did not submit any alternative quotations for this work and indicated in their initial written submission that they would rely upon the Tribunal to determine what might be regarded as an acceptable charge for this work. Further, notwithstanding the Tribunal's request in Directions No. 3 for copies, *inter alia*, of pertinent contracts of work and/or services, the Tribunal was not furnished with copies of those contracts relating to grounds maintenance which would, ordinarily, set out the terms of engagement of Centrick Maintenance Limited and 2CleanPlus and, in particular, the nature and extent of the grounds maintenance work which these companies had contracted to undertake. In other words, what grounds maintenance work had these companies agreed to carry out for the sums charged?

In the absence of compelling evidence in each of these spheres, the Tribunal is somewhat handicapped in its examination of the 'reasonableness', or otherwise, of the charges made for grounds maintenance in 2018. Suffice it say, however, the Tribunal does have the benefit of the evidence gleaned from its inspection. In this respect, it was clear to the Tribunal that the grounds were devised with a view to low maintenance and that the nature and extent of the maintenance required varies with the seasons. It was also evident that grounds maintenance had been carried out in a satisfactory manner. In these circumstances, the Tribunal finds that the expenditure incurred in 2018 for grounds maintenance was reasonably incurred and reasonable in amount in that this expenditure is not inconsistent with expenditure for grounds maintenance that might reasonably be expected to be incurred.

(c) *External maintenance - £853.16*

At the substantive Hearing, the Applicants accepted that this expenditure (£853.16), which was evident in a number of disparate supporting invoices, was reasonably incurred and reasonable in amount and the Tribunal so finds.

(d) Out of hours service - £326.90

At the substantive Hearing, the Applicants accepted that this expenditure (£326.90) was reasonably incurred and reasonable in amount and the Tribunal so finds.

(e) Replacement lamps - £127.68

At the substantive Hearing, the Applicants accepted that this expenditure (£127.68), which was supported by an invoice presented by Centrick Maintenance Limited and dated 1 May 2018, was reasonably incurred and reasonable in amount and the Tribunal so finds.

(f) Pest control - £270.60

At the substantive Hearing, the Applicants accepted that this expenditure (£270.60), which was supported by an invoice presented by Pestbusters (Midlands) Ltd and dated 1 February 2018, was reasonably incurred and reasonable in amount and the Tribunal so finds.

(g) Health and safety - £360.00

At the substantive Hearing, the Applicants accepted that this expenditure (£360.00), which was supported by an invoice presented by Fire Compliance Services Limited and dated 28 February 2018, was reasonably incurred and reasonable in amount and the Tribunal so finds.

(h) Management fees - £4,851.00

In their written evidence, the Applicants sought evidence of management and breakdowns that would justify the management fees charged. They described those fees as 'excessively high in comparison to average prices of local management companies'. In the latter respect, the Applicants had obtained and adduced in evidence an 'alternative' service charge quotation for the subject property by HML Property Management for £820.76 per annum, and this included provision for an annual management fee of £1,000.00. This quotation was supplemented by the sale particulars of a two bedroom apartment in Herbert James Close, Smethwick advertised on Rightmove which cited a service charge of £852.60 per annum for that property. In his witness statement, Mr Smallman acknowledged the latter comparable service charge, but stated that 'I am

unable to comment on this without seeing the full budget detailing costs and likewise, actual expenditure being incurred/year end accounts'. He did not allude to the 'alternative' quotation. The Applicants did not otherwise provide evidence of management fees with which the management fees charged for the subject property might be compared and indicated that they would rely on the Tribunal to determine the acceptable fee for the management service provided.

The invoices relating to maintenance fees that accompanied the 2018 service charge accounts comprise invoices presented by Centrick Property and Principle Estate Management with due account taken of the transfer of management responsibilities following the purchase of the freehold title by the second Respondent. The management fees of Centrick Property were charged at a monthly rate of £404.26 (including VAT) and those fees of Principle Estate Management were charged at a variable monthly rate not exceeding £458.63.

The Tribunal does not find the evidence to be gleaned from the 'alternative' quotation and the sale particulars persuasive. In the former respect, the quotation was not in terms of its component elements a strict comparator with the 2018 service charge accounts for the subject property and did not give any indication of how the various items of expenditure which were included were quantified, whilst there was no indication in the particulars of sale of the breakdown of the service charge to which reference was made. It is not enough, without more, to infer because blocks of apartment are similar in structure and design and situated in the same inner city area that the respective service charges relating to those blocks must necessarily be proximate. Notwithstanding this finding, it remains for the Tribunal to determine whether the expenditure incurred in respect of management fees in 2018 is reasonable. In this respect, it appears to the Tribunal that many of the concerns expressed by the Applicants in their written submissions and at the Hearings could have been resolved or, at least, been ameliorated by better communication and provision of information by Principle Estate Management following its assumption of the responsibility for management. This is particularly the case with the change that was introduced to the accountancy practice in relation to the service charge and its consequences for the Applicants; a change which was also an important consideration in this decision. Further, the Tribunal expected much closer attention to be paid by Principle Estate Management to the specific requirements of Directions No. 3 as has been made clear at various points in the determinations made in the course of this decision. These shortcomings should be reflected in the quantum of the management fee for 2018. Accordingly, the Tribunal finds that it is reasonable to quantify that fee at £3,850.00 for that year.

(i) Professional fees - £1,284.00

At the substantive Hearing, the Applicants accepted that this expenditure (£1,284.00) supported by an invoice of Centrick Property for £150.00 (including VAT) dated 19 January 2018 presented to the first Respondent and relating to the preparation of accounts for the period 1 January 2018 to 31 December 2018 and by an invoice of Cardinus Risk Management for £1,134.00 (including VAT) dated 30 April 2018 also presented to the first Respondent and relating to a reinstatement cost assessment for insurance purposes was reasonably incurred and reasonable in amount and the Tribunal so finds.

(j) Accountancy fee - £842.00

In their written evidence, the Applicants contended that there should be no discrete charge for accountancy costs, but rather that such costs should be subsumed within the management fees. They intimated that this would accord with the practice followed by other service companies, but did not provide any corroborative evidence in support of

this statement. The Applicants also drew attention to the fact that the invoice for accountancy costs that accompanied the 2018 service charge accounts and which had been presented by JW Hinks LLP, Chartered Accountants, for £714.00 (including VAT) for the preparation of service charge accounts, related to the service charge year 2017. Subsequently, Mr Smallman provided an invoice for £842.00 (including VAT) from Bennett Whitehouse Limited, Chartered Accountants, and dated 31 May 2019 for the preparation of the 2018 service charge accounts.

The lease obliges the landlord in paragraph 6 of the Fourth Schedule to arrange for service charge accounts to be prepared for each service charge year (see above, paragraph 12). It also provides in paragraph 5 of the Fifth Schedule that provision may be made by the landlord for payment out of the service charge of all costs and expenses incurred by the landlord or its appointed agents 'in the preparation and audit of the Service Charge accounts' (see above, paragraph 14). The preparation of service charge accounts requires particular expertise, and, consequently, the Tribunal finds that it was not unreasonable for Principle Estate Management, as agents for the second Respondent, to engage the services of a firm of chartered accountants, Bennett Whitehouse, which might reasonably be expected to have that expertise, in the expectation that its reasonable costs for preparing those accounts would be recoverable in accordance with these provisions of the lease through the service charge. The Applicants did not adduce in evidence any alternative quotations for the preparation of the service charge accounts nor did they suggest to the Tribunal what might be regarded, in their opinion, as a reasonable charge/fee for the work undertaken by Bennett Whitehouse. In these circumstances, the Tribunal taking some account of the costs charged by JW Hinks LLP for the preparation of the corresponding service charge accounts for 2017, although noting that this firm was not instructed by Principle Estate Management and that each set of accounts is peculiar to a particular year, finds that the sum of £842.00 (including VAT) falls within the range of charges/fees which might reasonably have been charged for the preparation of the 2018 service charge accounts, and, consequently, that this expenditure is reasonably incurred and reasonable in amount.

(k) Allocation to the Reserve fund - £1,000.00

In their written evidence, the Applicants opined that this provision is made as a reserve in case management costs exceed the service charge, and stated that there was no evidence that this contribution to the reserve fund was necessary or utilised in 2018. Consequently, the Applicants claimed that this sum should be refunded.

This is not a viewpoint that the Tribunal endorses. A reserve fund may be established for the purpose of meeting recurring expenditure, often over many years, when it acts as a security for the manager of the building(s) that funds are available to meet that expenditure and where payments may be spread for the benefit of leaseholders. Its creation may also facilitate the contribution by all leaseholders towards the long term cost of maintaining the building(s) and this may include, in particular, the accumulation of monies in the reserve fund to cover irregular and expensive works which may be required at some undefined future date. In these circumstances, the notion that monies in a reserve fund should be repaid to leaseholders as envisaged by the Applicants is counter intuitive and mistaken.

At the substantive Hearing, the submissions of the parties focused on the allocation to the reserve fund in 2018 in the context of building expenditure (see below, paragraph (r)) and it was not submitted by the Applicants that the allocation of this sum (£1,000.00) *per se* was unreasonable.

Accordingly, the Tribunal finds that this allocation is a reasonable provision and reasonable in amount.

Apartments 55-74 (Building) expenditure

(l) *Cleaning - £3,112.04*

In their written evidence, the Applicants stated that the block within which the subject property is located (apartments 67-74) has a small entrance and stairwell and that this communal area is vacuumed once a week – work which, in their opinion, takes less than 30 minutes. They added that no other form of cleaning is undertaken in this area.

The invoices relating to cleaning which accompanied the 2018 service charge accounts show that responsibility for cleaning during 2018 was shared between Centrick Maintenance Limited (January–May) and 2CleanPlus (June-December). These invoices were presented to Centrick Property, as agent for the first Respondent, and the second Respondent respectively, usually on a monthly basis, with charges at a monthly rate of £336.70 (including VAT) by Centrick Maintenance Limited and, for the months June to September, at a monthly rate of £364.00 (including VAT) and, for the months October to December, at a monthly rate of £364.04 (including VAT) by 2CleanPlus.

At the substantive Hearing, Mr Smallman said that, in his opinion, it was acceptable to vacuum this area once a week and that the cost incurred for cleaning was reasonable with the actual annual cost to the Applicants being £155.60.

The Applicants did not submit any alternative quotations for cleaning the communal area. Further, notwithstanding the Tribunal's request in Directions No. 3 for copies, *inter alia*, of pertinent contracts of work and/or services, the Tribunal was not furnished with copies of those contracts relating to cleaning which would, ordinarily, set out the terms of engagement of Centrick Maintenance Limited and 2CleanPlus and, in particular, the nature and extent of the cleaning work which these companies had agreed to undertake. It is fair to say, however, that the absence of copies of such contracts is mitigated to some extent by the evidence presented by the parties from which it is possible to infer that the cleaning for which the costs were incurred relates only to the obligation to vacuum the communal area once a week. Neither party submitted that cleaning was not required.

In these circumstances, the Tribunal finds that the expenditure to meet the cost of cleaning in 2018 was reasonably incurred. Further, whilst it would appear that the nature of the cleaning undertaken is limited in scope, the Tribunal relying on its knowledge and experience as an expert Tribunal and in the absence of compelling evidence to the contrary finds that the amount of the expenditure is within the bounds of what may be regarded as reasonable.

(m) Window cleaning - £1,549.53

In their written evidence, the Applicants stated that the charge for window cleaning was unreasonable because, first, the windows are only sprayed with water and not physically cleaned and, secondly, the windows are only cleaned once a year and not, as envisaged, at set times during the year. The Applicants re-iterated this view and these points at the substantive Hearing and Mr A Said added that during his occupation of the subject property he had only witnessed cleaning of the windows on one occasion between November 2017 and the end of December 2018.

The invoices relating to window cleaning that accompanied the 2018 service charge accounts show that the responsibility for window cleaning during 2018 was shared by Centrick Maintenance Limited and 2CleanPlus. These invoices were presented to Centrick Property, as agents for the first Respondent, and the second Respondent respectively with charges at a monthly rate of £211.50 (including VAT) by Centrick

Maintenance Limited and charges at a monthly rate of £360.00 (including VAT) by 2CleanPlus. There is no indication in those invoices of the manner in which window cleaning was undertaken.

At the substantive Hearing, Mr Smallman refuted the Applicants' contention that the windows were only cleaned once a year. The proximity of the subject property to the main road necessitated, in itself, regular cleaning of windows fronting that road. In his estimation, window cleaning was necessary at least eight times a year. He submitted that the actual cost to the Applicants for window cleaning in 2018 of £77.48 was reasonable.

The Applicants did not submit any alternative quotations for window cleaning, but they did opine in their written evidence that a charge of £537.00 which was budgeted in the revised budget for 2019 for apartments 67-74 might be 'adequate'. Further, notwithstanding the Tribunal's request in Directions No. 3 for copies of the pertinent contracts of work and/or services, the Tribunal was not furnished with copies of those contracts which would, ordinarily, set out the terms of engagement of Centrick Maintenance Limited and 2CleanPlus and, in particular, the nature and extent of the cleaning work those companies had contracted to undertake, for example, the manner in which the windows would be cleaned and the number of times they would be cleaned.

The Tribunal notes the Applicants' suggestion that an 'adequate' charge for window cleaning might be £537.00, but it records that this sum is only a part of the amount budgeted by Principle Estate Management for window cleaning in 2019 for service charge purposes in respect of the 'building' of which apartments 67-74 form a part. The Tribunal also notes the difference between the monthly charges of Centrick Maintenance Limited and 2CleanPlus when, in the absence of evidence to the contrary, it might be assumed that these companies were fulfilling the same, or similar duties. Neither party submitted that window cleaning was not required.

In these circumstances, the Tribunal finds that the expenditure incurred to meet the cost of window cleaning in 2018 was reasonably incurred. Further, whilst it is clear that the window cleaning may not always have been carried out to the Applicants' satisfaction, the Tribunal relying on its knowledge and experience as an expert Tribunal and in the absence of any compelling evidence to the contrary finds that the amount of the expenditure is within the bounds of what may be regarded as reasonable.

(n) Fire alarm testing and maintenance - £274.28

At the substantive Hearing, the Applicants accepted that this expenditure (£274.28, including VAT), which was evident in supporting invoices presented by Fire Compliance Services Limited and attributed to the Building, was reasonably incurred and reasonable in amount and the Tribunal so finds.

(o) Internal maintenance - £612.18

At the substantive Hearing, the Applicants accepted that this expenditure (£612.18), which was evident in a number of disparate supporting invoices and attributed to the Building, was reasonably incurred and reasonable in amount and the Tribunal so finds.

(p) Electricity - £780.86

In their written evidence, the Applicants pointed out that lighting for the stairs and landings for the block (67-74) in which the subject property was located was provided by twelve lamps that are sensor operated, one of which in February 2019 was out of order and in respect of which an undated photograph was adduced in evidence. They indicated that similar lighting was provided in the stairwells of other blocks. Further, the cost of

electricity for this lighting in 2018 had increased significantly when compared to the equivalent costs for 2017. In any event, the Applicants opined that this was a cost that was properly attributable to these blocks not to the estate as was intimated in some documents.

A selection of invoices and credit notes for 2017 and 2018 presented by SSE and relating to blocks 55-62, 63-66 and 67-74 respectively accompanied the 2018 service charge accounts. Each of the invoices sought payment of an estimated sum.

At the substantive Hearing, the Applicants added that there were separate meters for each of the blocks and that this was evident on the invoices submitted by SSE. They did not have access to the meters in blocks 55-62 and 63-66. Also at the substantive Hearing, Mr Smallman confirmed that for the purposes of the 2018 service charge accounts the cost of electricity was attributable only to the blocks comprising the building i.e. blocks 55-74. When questioned by the Tribunal, he acknowledged that the various invoices and credit notes adduced in evidence for 2017 and 2018 showed estimated sums. He could not explain why such documents, as might have been reasonably expected, did not reflect costs indicative of the actual consumption of electricity in these blocks. However, he assured the Tribunal that the above putative figure in the 2018 service charge accounts would be adjusted once the cost of the electricity which had actually been consumed, taking into account any pertinent credits, had been obtained. Mr Smallman also stressed that meter readings were now carried out on a monthly basis.

It is unsatisfactory that the actual expenditure for the consumption of electricity in 2018 was not made available to the Tribunal. However, that is not to say, of course, that no electricity was consumed and there is no evidence to suggest that the invoices for the estimated consumption of electricity have not been paid. Expenditure was incurred but it relates to a deemed consumption of electricity during the relevant period. In the ordinary course of events, this deemed consumption is made manifest in an estimate, which is not made in a vacuum but founded on evidence of previous actual consumption. In this instance, the Applicants did not challenge the 'reasonableness' of this deemed expenditure *per se* and there was no evidence presented to the Tribunal to suggest that it should otherwise be disregarded. Accordingly, the Tribunal finds that this deemed expenditure is reasonable in amount, but subject to the important proviso that it is subject to adjustment as and when the actual expenditure incurred by the second Respondent is ascertained leading to a corresponding change in the service charge.

(q) Insurance - £2,228.69

Initially in their written evidence, the Applicants drew attention to an increase in the property insurance premium from £2,327.99 in 2016/2017 to £2,856.00, and stated that there was no evidence to justify this increase or reports of insurance claims that may have contributed to the higher premium. Thereafter, the Applicants highlighted what they described as 'a number of highly concerning insurance-related matters' and indicated that these had been failings in the integral conditions of insurance relating to the use of correct addresses, the periods covered by insurance and the type of insurance cover taken out including coverage of an additional block of apartments, highly irregular insurance taken out for a period of two months rather than a year, no insurance certificate for the period 30 June 2017 to 29 June 2018 or for the period 1 September 2018 to 31 August 2019 in respect of cover for terrorism, and a plethora of errors in the insurance paperwork.

In its written evidence, Centrick Property explained that the increase in premium to which the Applicants had referred arose because of costs related to insurance premium tax and insurance cover for terrorism, although the Tribunal notes that invoices dated 29 June 2017 sent by Lorica Insurance Brokers to the first Respondent, which accompanied

the 2018 service charge accounts, and, which, apparently, related to renewal of the policy of property insurance with AXA with effect from 30 June 2017 required payment of £2,506.43.

At the substantive Hearing, Mr Smallman explained that the 'block' insurance taken out by the first Respondent had expired on 29 June 2018 and that the second Respondent had then taken out interim insurance cover with Zurich Insurance plc ('Zurich') for the period 30 June 2018 to 31 August 2018 at a premium of £434.43 (including insurance premium tax) which was then rolled over into an annual policy with Zurich running from 1 September 2018 to 31 August 2019 at a premium of £2,543.57 (including VAT). However, Mr Smallman added that the processing by Arthur J Gallagher in November 2018 of a reinstatement cost assessment undertaken by Cardinus Risk Management on the instruction of Centrick Property had led to a significant increase in premium. Earlier in his witness statement, Mr Smallman had indicated that the second Respondent raised queries with Zurich regarding the increase in the premium and the following transpired:

"The increase was as a result of the reinstatement cost assessment being undertaken by Cardinus Risk Management, as instructed by Centrick Property Management, on behalf of their client, Neon Property Investments LLP, in April 2018.

On a review of the reinstatement cost assessment, it was identified that additional plots had been included in the survey, (47-54) in error. This resulted in a declared value of £6,312,336. The original declared value was £2,529,001. Our client, Adriatic Land 8 Ltd, instructed the insurance company to amend the declared value accordingly and reduce the premium."

Mr Smallman had also adduced in evidence a letter from Arthur J Gallagher dated 14 February 2019 which confirmed this error and indicated that steps had been taken to correct it, namely excluding the block which had been included, erroneously, and by adopting the correct declared value. The letter also stated:

"The correct declared value for 55-84 Kinsey Road is £4,947,936 (prior to the RCA the declared value was £2,529,001) and we have reversed November's incorrect adjustment and processed the RCA on the correct declared value. I therefore enclose revised documentation and an invoice requesting the correct additional premium of £1,878.70 inclusive of IPT and terrorism.

In summary, the annual premium inclusive of terrorism and and IPT for 55-84 Kinsey Road is £4,422.27. The rebuild value has almost doubled following the valuation and has resulted in an increase in insurance premium."

At the substantive Hearing, Mr Smallman informed the Tribunal that following the amendment appropriate credits had been given. Further, Mr Smallman added that the sum of £2,228.29 in 2018 service charge accounts was properly attributable to apartments 55-74 and that, in his opinion, it was reasonable in amount.

No alternative quotations for equivalent insurance cover were provided by the Applicants and they gave no indication of what they regarded as a reasonable premium. Undoubtedly, there were significant shortcomings in the way in which insurance was secured latterly and these were admitted. Further, it is unfortunate that the insurance certificate for the period 30 June 2017 to 29 June 2018 was not made available to the Tribunal and that, therefore, the pertinent evidence had to be garnered from less robust sources and it is unclear to the Tribunal why the decision was taken to take out insurance for the two month period. Nevertheless, there is no evidence to suggest that the properties were not insured at any given time, and, notwithstanding the aforementioned shortcomings, it is possible to discern from the evidence before the Tribunal that the sum

of £2,228.29 is comparable with other premiums charged. Accordingly, the Tribunal finds that this expenditure was reasonably incurred and reasonable in amount.

(r) Allocation to the Reserve fund - £3,428.00

In their written evidence, the Applicants employed the same initial approach as they adopted towards the allocation to the estate reserve fund (see above, paragraph *(k)*, namely, in brief, that the allocation was a reserve in case management costs exceed the service charge, the reserve fund was not necessary or utilised in 2018 and that it should be refunded. For the Tribunal's treatment of these points, see above, paragraph *(k)*.

Latterly, the Applicants also drew attention to the position pertaining to the allocation of the reserve fund for 2018 as it affected the apartment blocks and the disparity in the contributions attributed to those blocks in the 2018 service charge accounts.

At the substantive Hearing, Mr Smallman drew the attention of the Tribunal to the 2018 service charge accounts in which an allocation of £6,000.00 was made for 2018, with £5,000.00 attributed to the apartment blocks. The allocation as it pertained to apartments 55-74 followed the designation of those apartments as a building for service charge purposes leading to an allocation of £3,428.00. Mr Smallman also referred for the benefit of the Tribunal to the reference in the 2018 service charge accounts to expenditure paid from the reserve fund which related to the building, albeit not apartments 67-74. This expenditure amounted in total to £2,310.00 and is supported by invoices presented by Fire Compliance Services, which accompanied the 2018 service charge accounts, for £1,230.00 (including VAT), £540.00 (including VAT) and £540.00 (including VAT).

In these circumstances and in light of its earlier findings in this decision, the Tribunal finds that this allocation (£3,428.00) is a reasonable provision and reasonable in amount.

(iii) Summation of findings

41 In summation of the Tribunal's findings, the service charge for the Applicants for 2018 is £1,036.15. Appendix A to this decision contains a breakdown of this figure.

'*Tribunal costs*'

42 This claim was not addressed by the Applicants at the hearings, but it would appear from the Applicants' written evidence that their claim for an order for £300.00 to cover the 'tribunal costs' which they have incurred encompasses the Application fee of £100.00 and the Hearing fee of £200.00. In relation to such costs, the Tribunal may make an order under Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 'requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party…' The making of such an order is a matter of discretion which is not exercised, therefore, as a matter of course. The Tribunal must be persuaded that taking into all the circumstances of the case it is appropriate to make an order. In this case, the Tribunal notes, in particular, that its findings were, save in one instance, not in the favour of the Applicants and finds that there was not otherwise substantial merit in this claim. Accordingly, the Tribunal makes no order under Rule 13(2).

Judge David R Salter

Date:

Appeal Provisions

43 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

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

45 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.