FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**BIR/00CS/LIS/2018/0020-26, 29 & 68**
Property	:	**Properties at Newton Gardens, Great Barr, Birmingham,B43 5DY**
Applicants	:	**Dr Paul Dudley and Mrs Annette Dudley and seven others, namely:** **Mr. Andrew Green** **Mr. Philip Charles Cross** **Ms. Emily Holmes** **Ms. Ann P Bourne** **Ms. Edith Pugh** **Mr. Mark Adams** **Mr. Derek Law**
Applicants' Representative	:	**Dr Paul Dudley**
Respondent	:	**Marston Green Estates Limited**
Respondent's Representative	:	**Mr J Stenhouse of Counsel**
Applications	:	**(1) Application for a determination of liability to pay and reasonableness of service charges pursuant to s27A Landlord and Tenant Act 1985 (the Act)** **(2) Application for an order that costs incurred by the landlord in connection with the first application are not to be regarded as relevant costs in determining the amount of any service charge payable by the tenant pursuant to s 20C Landlord and Tenant Act 1985**
Date of Inspection And Hearing	:	**23 January 2019**
Tribunal	:	**Judge P. J. Ellis** **Tribunal Member Mr.Robert Bryant-Pearson**
Date of Decision	:	**18 February 2019**

DECISION

© CROWN COPYRIGHT 2019

The Applicants are liable to pay service charges for the years 2013-2018 in the total sums set out below and more fully particularised in the Appendix:

	£
Mr. Andrew Green	***3964.20***
Mr. Philip Charles Cross	***3964.20***
Ms. Emily Holmes	***-27.06***
Ms. Ann P Bourne	***3964.20***
Ms. Edith Pugh	***3964.20***
Mr. Mark Adams	***3964.20***
Mr.Derek Law	***3964.20***
Dr. Paul Dudley	***3964.20***

The Respondent's costs of these 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 Applicants or any other person or persons specified in the application.

1. This is an application by Dr Paul Dudley and seven others who seek a determination of liability to pay and the reasonableness of service charges under s27A of the Act and a further application by all the Applicants for an order limiting payment of landlord's costs pursuant to s20C of the Act. Dr Dudley also issued an application under paragraph 5 of Schedule 11 Commonhold and Leasehold Reform Act 2002 relating to administration charges but did not pursue it at the hearing.

2. The Applicants by the number of their properties are Edith Pugh (55), Emily Holmes (57), Andrew Green (59), Mark Adams (61), Philip Charles Cross (63), Derek Law (65), Ann P Bourne (67) and Dr Dudley (69).

3. The service charge years in dispute are 2012/3, 2013/4, 2014/5, 2015/6, 2016/7, and 2017/8. The Service charge year is from 1 September to 31 August. The sums in dispute are set out in the Annex.

4. The Application relates to eight maisonettes forming part of an estate of flats and maisonettes on Newton Gardens, Great Barr, Birmingham. The estate comprises two blocks of maisonettes and three blocks of flats. Each maisonette block comprises four dwellings. The blocks of flats are separate from the maisonettes. Each block of flats comprises four dwellings making an estate of 20 dwellings in total.

5. The owners of the flats did not take part in these proceedings.

6. The Respondent is Marston Green Estates Limited of Minerva Hill, Station Road, Alcester, B49 5ET. It has retained Bollands Chartered Accountants and Business Advisers also of Minerva Hill Alcester as its managing agents. Mr David Delve is the principal of Bollands. He attended the inspection and hearing on behalf of the Respondent.

7. At the hearing the Applicants were represented by Dr Dudley by consent of all Applicants. He was assisted by Mr Stephen Law the son of Mr Derek Law (65). The Respondent was represented by Mr J Stenhouse of Counsel instructed under direct access.

Property and Inspection

8. The Tribunal inspected the estate on 23 January 2019. The Applicants' maisonettes are situated to the west of the three blocks of flats. All buildings on the estate were constructed of brick and tile in or about 1965. Garages were built with flat felted roofs. The maisonettes are in two blocks of four dwellings. The first block is immediately west of the flats. The second block is west of the first. On its western border is the Sandwell Nature Reserve.

9. The maisonettes have gardens front and rear. At the front the gardens are mainly lawns with shrubbery borders. The border with the Sandwell Nature reserve has a post and rail wooden fence largely covered by thick growth of cultivated shrubbery.

10. There are paths from Newton Gardens roadside pavement to the blocks of dwellings. The gardens to the rear have been fenced in.

11. The blocks of flats have lawns at the front. There is a noticeable difference in the quality of garden space between the flats and the maisonettes the relevance of which is discussed later.

12. At the rear of the maisonettes are five garages in good condition. Each garage is allocated to a maisonette. There are three further garages allocated to the maisonettes. They are accessed from the Stella Grove access lane shared with the nearby houses. They are in good condition. The remaining twelve garages are in generally poor condition and in some cases so dilapidated as to constitute a hazard.

13. The area is a very pleasant residential neighbourhood close to the nature park giving views of open country but there are good transport links and general amenities in the area.

14. The Tribunal observed the overall exterior of the estate, its paths and roadways and one stairway serving one block of flats. Entrances to the maisonettes are by doors at ground level.

The Leases

15. It was agreed that the relevant clauses in each lease was the same for each Applicant.

16. The leases were granted on construction of the estate is 1965. In 2010 new leases were granted to seven of the Applicants on substantially the same terms as the original lease further to the rights afforded to leaseholders under the Leasehold Reform Housing and Urban Development Act 1993. Mr Adams (61) did not obtain a new lease.

17. Mr Delve informed the Tribunal that on 31 January 1966 the Respondent granted a Head Lease to Newton Gardens Properties limited who in turn granted an underlease for 99 years from 25 March 1964 for each of the maisonettes.

18. In 1991 Newton Gardens Properties Limited was dissolved. The Respondent accepted an assignment of the rights and duties of landlord with effect from 31 December 1991 since when it has been landlord to each of tenants.

19. Mr Delve stated that Bollands were instructed only in connection with the flats at first and that fixed service charges for the flats were their responsibility from 2006. In 2012 Bollands were instructed to deal with service charges for all properties in the development including the maisonettes.

20. The lease provides at cl 1(c) of the Recitals that the Property means the property described in the First Schedule which provides
"all that piece or parcel of land situate in the County Borough of West Bromwich known as Newton Gardens Flats Together with the buildings erected thereon

known as Nos 31 - 69 Newton Gardens comprising 12 self-contained Flats eight Maisonettes and 20 garages"

at 1(d) *"the Flats means Flats and/or Maisonettes with the gardens and garages (if any) allocated to them forming part of the property and 'Flat' has a corresponding meaning"*

and at 1(e):

"The Reserved Property" means that part of the property not included in the Flats being the property more particularly described in the Second Schedule" being in summary all the garden entrances exits halls staircases landings garage roadway pedestrian way and other parts used in common by the occupiers of the Flats and secondly the main structural parts of the buildings forming part of the Property.

21. At clause 2 the lessee covenanted to observe and perform the obligations set out in the Sixth Schedule. At clause 3 the lessor covenanted to observe and perform the obligations on its part set out in the Seventh Schedule.

22. Clause 19 of schedule six provides

    "the Lessee shall keep the Lessor indemnified from and against five per centum of all costs charges and expenses incurred by the Lessor after the date of execution hereof in carrying out its obligations under the Seventh Schedule hereto (other than its obligations to pay the rent reserved by the Head Lease) including in such indemnity the fees and expenses of agents to whom the Lessor may delegate the management of the Property and all or any of the duties of the Lessor all under this Deed".

23. Clause 16

    " The Lessee shall perform and observe the covenants on the part of the Lessor and the conditions contained in the Head Lease so far as the same relate to the Premises and shall keep the Lessor indemnified against all claims damages costs and expenses relating thereto..."

24. The Seventh Schedule sets out the covenants on the part of the lessor. The obligations include insurance of the Property (cl 2), keeping the Reserved Property in good and tenantable state of repair (cl 4) and keeping the gardens and drives paths and forecourts properly planted and in good order and condition and the hedges and boundary walls in good repair and condition (cl 6).

25. The schedule also set out a procedure for quantifying and certifying the sum due by way of service charges. The Applicants did not challenge the procedure adopted by the Respondent for calculating service charges.

The Parties' Submissions

26. Dr Dudley made his submissions on behalf of all the Applicants.

27. It was common ground that the maisonettes had not received service charge invoices from inception of the leases until 24 March 2014 when Bollands wrote to each of the Applicants with a service charge invoice for the year to 30 September 2013 and on account payments for 2014. The sums claimed for that and all subsequent years are set out in the Appendix.

28. The service charge demands were submitted without prior warning from Bollands causing the Applicants considerable surprise and resentment.

29. The Applicants contended that the failure to make such demands for in the region of 47 years amounted to an intention not to require payment of such charges at any future time. The Applicants referred to answers to pre-contract enquiries given to solicitors representing Miss Holmes and Mr Cross in connection with their purchase of their maisonettes.

30. Miss Holmes acquired her maisonette on 22 February 2014. Her solicitors pre-contract enquiries of October 2013 asked among other questions:

"Please supply copies of the last three years maintenance accounts"

"Please confirm the current annual maintenance charge"

"Please confirm when the last maintenance demand was made"

and

"Please confirm that there are currently no arrears of maintenance charge"

31. The answers given to those questions were

"No accounts have been prepared for a number of years. There are non available for the last three years"

"At this juncture, no maintenance charge is being demanded"

"Many years ago"

and

"No demand for maintenance charge has been made nor is expected to be made in the immediate future".

32. Other answers indicated that insurance of the property was dealt with by the tenants and also that no items of major expenditure on the building were anticipated but that it may change when the properties on the estate had been inspected.

33. Mr Cross acquired his maisonette in September 2011. His solicitor's pre-contract enquiries elicited similar responses. He was told through his solicitors that tenants dealt with their own maintenance and by a letter dated 6 July 2011 from the Respondent to his solicitors he was informed that *"The maintenance on the maisonette properties has always been dealt with by the leaseholders and consequently no standard maintenance charges imposed."*

34. Dr Dudley also referred to correspondence which Mr Derek Law produced with his statement relating to a structural issue affecting 65 Newton Gardens. On 1 December 1995 Mr Law wrote to the Respondent regarding a structural issue affecting the floor of his ground floor maisonette. He referred to the terms of the lease and pointed out that maintenance of the structure was an issue for the landlord. By letter dated 29 December 1995 the Respondent replied rejecting his claim. The letter stated
"In 1965 when the maisonettes in Newton Gardens were completed and of which the above property forms one the maisonette owners have carried out their own maintenance and effected their own insurance and accordingly no maintenance charges were paid. This arrangement continues today and I am not prepared to vary the procedure of 30 years standing for the sake of this property." (sic)

35. Mr. Law protested this response and even threatened proceedings to compel the landlord to take responsibility under the lease. In fact he took no further action because his insurers dealt with the claim and his only expense was the excess on the policy. The tribunal was told that the cost of repairs was in excess of £11,000.00 of which Mr. Law's contribution, being the excess, was in the region of £1000.00.

36. Dr. Dudley asserted that the owners of the maisonettes have for many years accepted responsibility for the general maintenance and insurance of their maisonettes. It was therefore inappropriate of the landlord to now make claims for management and service charges.

37. His second proposition was that if the tenants are responsible for service charges the services rendered were not worth the sums claimed. He asserted that none of the applicants had seen any trades people attending to the maisonettes and specifically denied that the landlord had arranged any gardening services for the benefit of the maisonettes. In answer to a question from the tribunal Dr Dudley admitted the landlord had arranged insurance for the maisonettes as part of its block policy but six of the applicants maintained their own insurance.

38. Dr Dudley and Mr Law both agreed the sums claimed for the service charges were of themselves reasonable apart from the garden service invoice. Their complaint was that the owners of the maisonettes should not be required to make maintenance and service charge payments having regard to the number of years in which no payments were required.

39. The Tribunal was referred to the invoices from a garden service contractor. The invoice did not particularise the work done other than a description of lawn cutting, tidying and clearance of rubbish. Mr Delve insisted the lawn cutting included the grass in front of the maisonettes although he could not confirm it included the grass at the rear of the properties. Dr Dudley stated the Applicants had maintained their gardens without assistance from the Respondent.

40. The Applicants were generally critical of the Respondent's management of the development in any event citing the absence of notice of the imposition of charges and neglecting to organise a meeting with the leaseholders until some years after the first service charge invoice. The lack of meaningful communication from Bollands added to their frustration.

41. Mr Stenhouse on behalf of the Respondent did not substantially dispute the facts asserted by the Applicants. On questioning the Applicants he ascertained that they did not have any evidence regarding the service charges with which to rebut their assertion the charges were unreasonable.

42. In answer to the Applicants' assertions that the Respondent had effectively abandoned the right to claim service charges he submitted that there could only be two reasons in law to deny the landlord the right to now serve management and service charge invoices. The two reasons were either that the landlord was now estopped by convention from pursuing such charges or that it had waived the right

to do so. On the facts of the case he submitted that there was neither an estoppel nor a waiver.

43. Although the Respondent admits that no service charge invoice had been submitted until March 2014, nothing in the evidence presented by the Applicants amounted to a promise that what had happened in the past would continue for the future. He referred to the response to the pre-contract enquiries given to Miss Holmes and Mr Cross and contended the plain words used simply described the present and past position and could not be relied upon by either of the Applicants that the position as described would continue. He further stated in relation to Miss Holmes that notwithstanding the information supplied by the Respondent only a short while before sending the first service charge demand she paid and continued to pay all sums claimed by the service charge invoices without any challenge or qualification.

44. As far as the exchange between Mr Derek Law and the Respondent in 1996 is concerned Mr Stenhouse referred to a letter of 29 January 1996 from the Respondent to Mr Law. In that letter the Respondent threatens to impose service charges in response to the demand from Mr Law that the terms of the lease are satisfied.

45. Accordingly, he submitted that after a textual analysis of the documents relied upon by the Applicants it is apparent that no promise to refrain from ever imposing service charges was ever made by the Respondent.

46. Further he asserted that although the demand of March 2014 came without notice the Respondent has since rendered invoices each year. The Applicants have had time to adjust to the new situation in which the Respondent submits service charge demands in accordance with the lease. Although the Respondent had submitted demands to the tenants of the flats since 2006 the delay in making similar demands of the Applicants does not release them from the obligations of the lease.

47. In relation to the Applicants submission that they had not received services he referred to the terms of the lease which provides for payment by all leaseholders of the same percentage of the service charges incurred pursuant to the obligations imposed on the landlord by schedule seven.

48. Moreover the invoices disclosed in support of the service charge demands relate either to a direct or indirect benefit to the Applicants. He gave the example of an

invoice for garden services. Whether or not the gardener attended the area in front of the Applicants maisonettes the overall appearance of the development is an advantage to them if it is tidy and free of rubbish. The Applicants have not lost a benefit by the failure to deliver service charges they have gained an advantage as all costs are shared by twenty occupiers.

49. He referred to a number of cases in support of his submissions that are not fully recorded in this Decision but in particular he referred the Tribunal to *Clacy v Sanchez [2015] UKUT 0387(LC) and Elysian Fields Management Company Limited v Nixon [2015] UKUT 421(LC)* and *Pendra Loweth Management Limited v North [2015]UKUT 91(LC)* in support of his contention that on a true construction of the lease the auditor's certificate was not a condition precedent to serving a service charge demand and so invoices prepared by Bollands but not audited were not a bar to recovery of the charges. The Applicants had withdrawn their objection to the demands for service charges because of procedural irregularity.

50. In summary he denied that the Applicants had established the necessary facts to deny the Respondent's right to service charges by reason of an estoppel. They had not shown that the various assumptions made at the time in response to either the answers to pre-contract enquiries or the correspondence involving Mr Law in 1996 had given rise to an understanding shared by all the Applicants.

51. Mr Stenhouse argued that the effect of *Clacy v Sanchez, Admiralty Park V Ojo [2016]UKUT 412, Bucklitsch v Merchant Exchange[2016] UKUT 527* and *Jetha v Basildon[2017]UKUT 58* is that an estoppel by convention may arise in service charge cases but in this case the facts required to satisfy an estoppel are not made out. He described the principles of Lord Steyn in *Republic of India v India Steam Ship Company Limited [1998]AC 878* and the recital for the principles by HHJ Behrens in the *Jetha* decision:

"Estoppel by convention is described by Lord Steyn in Republic of India v India Steam Ship Co Limited ("the Indian Endurance and The Indian Grace") [1998] AC 878 at 913–914: "[A]n estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption. It is not enough that each of the two parties acts on an assumption

not communicated to the other. But ... a concluded agreement is not a requirement."

52. He contended that none of the Applicants had satisfied the burden of proof upon them to establish the estoppel.

53. Although waiver was not specifically raised by the Applicants he refuted the possibility of waiver on the same or substantially similar grounds in that the Applicants could not show the Respondent had permanently given up the right to recover service charges.

54. In answer to the allegation that the Respondent and Bollands had neglected to communicate with the Applicants he stated that having had the first service charge invoice they were fixed with notice for the subsequent years that service charges would be delivered. Also the delay in arranging a meeting with leaseholders was simply because of the difficulty in finding a suitable date.

55. Finally he asserted that in any event Emily Holmes and Dr Paul Dudley had both made payments or provision for payment without qualification. The reason Dr Dudley had lost his purported right to deny the claim was because at the time he acquired the lease he held back from the purchase price the sum of £2100.00 against the risk of a possible claim for service charges.

56. In connection with the costs issue under s20C he referred to the terms of Schedule 6 paragraph 16 which he argued does not make recovery of legal costs by the lessor against the lessee conditional upon the lessor succeeding in any legal proceedings and that the lessor is entitled to costs win or lose.

The Statutory Framework

57. Sections 18 -30 of the Act provide a statutory framework for the regulation of the relationship between a landlord and tenant of residential property in connection with service charges.

58. S20(C) (1)provides

    (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 leasehold valuation tribunal or the First-tier 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.

59. S27A 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) 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.

Decision

60. The residents of the maisonettes forming part of the Newton Gardens development have for over forty years looked after their properties without any significant contribution from the landlord. They have tended the gardens, maintained their properties and garages and arranged insurances. As far as they were concerned the nearby flats and their common landlord had little to do with them.

61. That all changed on 24 March 2014 when Bollands served a notice of service charges under the terms of the lease. The invoice dated 1 December 2013 was for service charge year ending 30 September 2013. It itemised maintenance and service charges to 30 June 2013 and an estimate for the period of twelve months to 30 June 2014. It then specified quarterly payment dates.

62. Each invoice was accompanied by a standing order and a short form of accounts giving the basis of the charge and a statement of the individual tenant's 5% share of the total.

63. The Respondent had not given any notice of its intention to serve the demand. Although Bollands served a notice dated 20 March 2014 under s48 of the Act notifying the Applicants of the full name and address of the Respondent the Tribunal is satisfied the Respondent took no action to let the Applicants know that it intended to make service charge demands prior to 24 March 2014. It would have been reasonable to do so having regard to the history of the claims.

64. This is a service charge case not a 'Right to Manage' claim when the history between the parties and the situation of the two maisonette blocks would have been relevant. However, as the terms of the lease are clear and the actual sums are not in dispute the issue for the Tribunal is whether or not the Respondent is entitled to receive payment of the service charges invoiced since 2013.

65. The Tribunal is satisfied the replies to pre-contract enquiries in the case of Miss Holmes and Mr Cross do not amount to an estoppel upon which they can rely. In the case of Mr Cross the replies to enquiries taken as a whole do not amount to an express promise that no service charges will be served in the future. While confirming that at the date of making the response there is no history of service charges the words do not amount to a promise that there will be none in future. In response to the request for information about service charges the Respondent confirmed no demands had been made and stated none were expected in the immediate future. A later enquiry asked for information about planned works. The reply stated there were no plans for works at the time but 'this may change when the properties on the estate have been inspected'. The questions and responses were part of the normal exchange of request and information in a leasehold sale transaction. There was no promise that things would stay the same.

66. Mr Cross asserted in his statement that he relied upon the replies to make his decision to go ahead with the purchase. The Tribunal is not satisfied that had had the replies indicated otherwise Mr Cross would have refrained from making his purchase of the maisonette.

67. In the case of Miss Holmes, her solicitor advised her on the meaning of the replies to pre-contract enquiries and referred to the absence of service charges but advised that the landlords obligations 'could become the subject of a service charge in future'. Although the freeholder was not implementing charges at the date of purchase the solicitor advised 'this could change in the future'. Miss Holmes has

made payments in response to the service charge demands unlike the other Applicants without any protest until this application and now seeks reimbursement of those payments.

68. In 1996 Mr Derek Law asked the Respondent to deal with a structural defect. When refusing to make a contribution the Respondent threatened to implement service charges. No promise to refrain from invoking the charging clause was made.

69. In the case of Dr Dudley at the time he made his purchase of his maisonette he held back £2100.00 from the sale price against a possible claim for unpaid service charges which the vendor's solicitor had notified to Dr Dudley. No promise to refrain from invoking service charges was ever made to Dr Dudley.

70. The Applicants' case is that the Respondent has by inaction created a belief on their part that no charges would ever be raised. The Tribunal does not agree that the Respondent has made that promise.

71. Secondly the Applicants case that services were not rendered to them is flawed because the lease provides that all occupiers of the development are responsible for the costs incurred by the landlord in complying with its obligations under the Seventh Schedule. Those charges costs of maintaining the reserved Property such as the paths and grass. The Tribunal was shown invoices for services from various trades relating to work done at the development including gardening. As the lease provides for payment by all leaseholders and there is no challenge to the reasonableness of charges the invoices are properly included in the service charges.

72. The burden of proving the Respondent has made a promise that a term in the lease no longer applies is on the Applicant. In *Christopher Charles Dixon EFI (Loughton) Ltd v Blindley Heath Investments Ltd* [2015] EWCA 1023 at paragraphs 90 – 92 and referred to by Mr Stenhouse, the court explains the meaning of the evidential burden:

> *"90 Again, Dixon J's judgment in Grundt explains the position (and the evidential burden) clearly (see page 675):*
>
> *"The justice of an estoppel is not established by the fact in itself that a state of affairs has been assumed as the basis of action or inaction and that a departure from the assumption would turn the action or inaction into a detrimental change of position. It depends also on the manner in which the*

assumption has been occasioned or induced. Before anyone can be estopped, he must have played such a part in the adoption of the assumption that it would be unfair or unjust if he were left free to ignore it."

91.Briggs J (as he then was) elaborated on this in HMRC v Benchdollar Limited and Others [2009] EWHC 1310 (Ch) when summarising the principles he considered to be applicable to the assertion of an estoppel by convention arising out of non-contractual dealings, which he derived largely from another decision of this Court, namely Keen v Holland [1984] 1 WLR 251. His summary was as follows:

"It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them. The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely on it. The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter. That reliance must have occurred in connection with some subsequent mutual dealing between the parties. Some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position." 92. As to (i) above, we do not think there must be expression of accord: agreement to the assumption (rather than merely a coincidence of view, with both proceeding independently on the same false assumption) may be inferred from conduct, or even silence (see per Staughton LJ in "The Indian Grace" [1996] 2 Lloyds Rep 12 at 20). However, something must be shown to have "crossed the line" sufficient to manifest an assent to the assumption."

73. Further the Applicants' case depends upon the information given to three owners being used by all the Applicants when service charges are imposed upon all. The cases on estoppel and waiver refer to promises made in a bilateral context where one person makes a promise to another. Five of the Applicants were not party to any of the exchanges which formed the parties' debate.

74. However, the Respondent issued service charge demands without notice after so many years. It would have been reasonable to notify the Applicants that the terms of

the lease were operative and service charges will be imposed. S27A requires the Tribunal to determine *'whether a service charge is payable'*. The Tribunal is satisfied that the Respondent should have issued a notice of intention to serve demands after one year. Accordingly the Tribunal determines that the service charges for all of the Applicants is as set out in the Appendix after deduction of the charges for 2013.

75. The Applicants have applied for an order under s20C of the Act that the costs incurred in connection with this application are not relevant costs for the purpose of determining the amount of service charges payable. Subject to his argument relating to the terms of cl16 of Schedule 6 Mr Stenhouse agreed that the lease does not allow legal costs incurred in the conduct of this claim to be relevant costs. The relevant costs are those of Bollands incurred in connection with this claim.

76. The Applicants were unrepresented in these proceedings. Apart from Miss Holmes they have been consistent in their view that the charges should not be imposed after over forty years of inaction. Bollands were slow to address the frustrations of the Applicants. In this case the Tribunal directs that the costs associated with these proceedings are not relevant costs for the purpose of determining service charges.

Appeal

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

Tribunal Judge P J Ellis
Chair

APPENDIX
NEWTON GARDENS GREAT BARR
SERVICE CHARGE CLAIMS

APPLICANT	2013	2014	2015	2016	2017	2018	Paid	Balance	PAYABLE
Pugh	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2
Holmes	224.92	423.34	451.83	1746.7	567.33	775	3991.2	197.86	-27.06
Green	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2
Adams	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2
Cross	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2
Law	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2
Bourne	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2
Dudley	224.92	423.34	451.83	1746.7	567.33	775	nil	4189.1	3964.2