



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

**Case Reference** : **MAN/00BL/LSC/2021/0042 and  
MAN/00BL/LSC/2022/0002**

**Property** : **493 and 495 Leigh Road, Bolton BL5 2JH**

**Applicant** : **Gateway Properties Limited**  
**Representatives** : **Ms Kerry Coleman**

**Respondent** : **Viabrook Limited**  
**Representative** : **Miss Barnes**

**Type of Application** : **Landlord and Tenant Act 1985 – s27A  
Landlord and Tenant Act 1985 – s20C**

**Tribunal Members** : **Judge K Southby  
Mr J Gallagher MRICS**

**In the County Court** : **Judge K Southby sitting as a District Judge**

**Date and venue of  
Hearing** : **10 October 2022  
Manchester Tribunal Hearing Centre**

**Date of Decision** : **7 November 2022**

**Date of  
Determination** : **21 November 2022**

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**DECISION**

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## **DECISION**

### **The Tribunal Orders**

- A. The service charges payable by the Respondents for the service charge years ending 24 March 2018, 24 March 2019 and 24 March 2020 shall be varied as shown in the Schedule to this order.
- B. The Applicant has failed to comply with the requirements under section 47 Landlord and Tenant Act 1987, but the Tribunal makes no order requiring the Respondent to re-serve the demands.
- C. The Applicant has failed to comply with the requirements under s21B Landlord and Tenant Act 1985, and is required to reserve the demand for administration charges
- D. The Tribunal is satisfied that the Applicants have not acted unreasonably in bringing or conducting these proceedings and it makes no order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
- E. BY CONSENT the Tribunal orders under s20C Landlord and Tenant Act 1985, that all costs incurred by the Applicant in connection with 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 Respondents.
- F. BY CONSENT the Tribunal orders under 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that all charges incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Respondents.

### **Summary of the decisions made by the County Court in claim number G66&J371**

1. The Court Orders that the ground rent claimed by the Applicant under this claim is payable by the Respondent. One payment of £50 having already been made, the remaining sum of £50 is payable by the Defendant to the Applicant.
2. There is no order for costs

## **REASONS**

### **Preliminary and background**

1. The Applicant is the registered proprietor of the leasehold land known as and situated at 1-3 Lower Leigh Road, Westhoughton, Bolton, BL5 2JP (the “Land”).
2. The Land was formerly a pub which has been converted into residential dwellings (two apartments and three terraced houses) by the previous owners of the leasehold title - M and S Project Development Ltd.

3. 493 Leigh Road, Westhoughton, Bolton, BL5 2JP and 495 Leigh Road, Westhoughton, Bolton, BL5 2JP (the Properties) are the two apartments within the Land. 495 Leigh Road is beneath 493 Leigh Road. Also within the development on the Land are 491 Leigh Road, 1 Lower Leigh Road and 3 Lower Leigh Road which are 3 terraced houses.
4. The Respondent is the leaseholder of the Properties pursuant to leases dated 21 December 2016. The Applicant is the Landlord.
5. The Applicant issued two sets of Court proceedings in the County Court dated 28 August 2020 and issued on 15 September 2020 seeking “[m]onies due and owing by way of Ground Rent & Service Charges” in the sum of £2,270.88 in respect of 493 Leigh Road (claim number G66YJ372) and £2,005.43 in respect of 495 Leigh Road (claim number G66YJ371) In each case the Applicant sought a “determination/declaration so as to satisfy the requirements of Section 81 of the Housing Act 1996 as to the amount of service charges and administration charges payable by the Defendant..”
6. Two Orders were made by District Judge Molineaux. Firstly, by an Order dated 25 May 2021 the claim in respect of G667J371, 495 Leigh Road was stayed and transferred to the First Tier Property Tribunal for determination. Secondly, by an Order dated 28 June 2021, the claim in respect of G66YJ372, 493 Leigh Road was stayed, and the case transferred to the First Tier Property Tribunal for adjudication in relation to the service charge and declaratory relief sought. Accordingly, the scope of the Tribunal’s jurisdiction at the hearing appears to be wider in respect of 495 Leigh Road than it is for 493 Leigh Road.
7. The Applicant set out in its Statement of Case dated 26 April 2022 the sum it considers to be due from the Respondent, namely service charges, ground rent, insurance monies, interest, late payment charges, administration charges and the Court fees.
8. The Tribunal with the agreement of the parties decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge in respect of the Service Charges and Administration Charges and Judge of the County Court (District Judge) in respect of the ground rent. The referral from the County Court in respect of 493 Leigh Road was limited to the service charge and declaratory relief and therefore did not transfer jurisdiction for the ground rent element of this claim. This element would need to be pursued back through the County Court if necessary, although we note that concessions in respect of this element were made during the course of the hearing which may render this unnecessary.
9. The hearing took place in person at the First-Tier Tribunal offices in Manchester.

10. The Tribunal is at the present time not generally carrying out physical inspections due to the coronavirus pandemic. Neither party requested an inspection, and, in all the circumstances of this case, the Tribunal did not consider it to be necessary or proportionate to carry out an inspection.
11. The documents that the Tribunal was referred to are in a bundle of 368 pages.
12. Ms Kerry Coleman, in House Solicitor attended on behalf of the Applicant. The witness was Mr Terry Robinson, Regional Manager of the Applicant. Ms Niamh Burnley, Property Manager of the Respondent also attended. Miss Barnes of Counsel represented the Respondent.
13. The hearing was a combined hearing for matters MAN/00BL/LSC/2021/0042 and MAN/00BL/LSC/2022/0002.

### **The Leases and the service charge machinery**

14. The Tribunal was provided with a copy of the Leases in respect of 493 and 495 Leigh Road [pages 75-113 and 123-162].
15. The Property is defined at Schedule 1 and excludes the Retained Parts.
16. The Service Charge is defined as a 'fair and reasonable proportion determined by the landlord of its Service Costs. The Service Costs are defined as the costs listed in Part 1 of Schedule 7.
17. The Tenant Covenants at clause 5 of the Lease to comply with the Tenant Covenants at Schedule 4 of the Lease. These include at paragraph 2.1 of Schedule 4:

*The Tenant shall pay the estimate Service Charge for each Service Charge Year in two equal instalments on each of the Rent Payment Dates*

18. The Landlord Covenants to provide the Services, and, as soon as possible after the start of each Service Charge Year, prepare and sent the tenant an estimate of the Service Costs for that Service Charge Year.
19. Schedule 7 sets out the Services and Service Costs. The Services are:
  - a. cleaning, maintaining, decorating and replacing the Retained Parts;
  - b. providing heating to the internal area of the Common Parts during such periods of the year as the Landlord reasonably considers appropriate and cleaning, maintaining, repairing and replacing the heating machinery and equipment;
  - c. lighting the Common Parts and cleaning, maintaining, repairing and replacing lighting, machinery and equipment on the Common Parts;
  - d. cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in the Common Parts;

- e. cleaning, maintaining, repairing and replacing security machinery and equipment (including closed circuit television) on the Common Parts;
- f. cleaning, maintaining, repairing, operating and replacing fire prevention detection and fighting machinery and equipment and fire alarms on the Common Parts;
- g. cleaning, maintaining repairing and replacing refuse bins on the Common Parts;
- h. cleaning the outside of the windows of the Building;
- i. cleaning, maintaining, repairing and replacing signage for the Common Parts;
- j. maintaining any landscaped and grassed areas of the Common Parts;
- k. cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts;
- l. and
- m. any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

20. Schedule 7 part 1 states:

The Service Costs are the total of:

- (a) All of the costs reasonably and properly incurred or reasonably and properly estimated by the landlord to be incurred of:
  - i. Providing the Services;
  - ii. The supply and removal of electricity, gas, water, sewage and other utilities to and from the Retained Parts;
  - iii. Complying with the recommendations and requirements of the insurers of the Building (insofar as those recommendations and requirements relate to the Retained Parts
  - iv. Complying with all laws relating to the Retained Parts, their use and any works carried out at them, and relating to any materials kept at or disposed of from the Common parts;
  - v. Complying with third party rights insofar as they relate to the Retained Parts;
  - vi. Putting aside such sum as shall reasonably be considered necessary by the landlord (whose decision shall be final as to questions of fact) to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services; and
  - vii. Taking any steps (including proceedings) that the Landlord considers necessary to prevent or remove any encroachment over the Retained Parts or to prevent the acquisition of any right over the Retained Parts (or the Building as a whole) or to remove any obstruction to the flow of light or air to the Retained Parts (or the Building as a whole);
- (b) The costs fees and disbursements reasonably and properly incurred of:
  - i. Managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same;

- ii. Accountants employed by the landlord to prepare and audit the service charge accounts; and
- iii. Any other person retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services

## **Law**

21. Section 27A(1) of the 1985 Act provides:

*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.*

22. The Tribunal is “the appropriate tribunal” for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

23. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It means:

*... an amount payable by a tenant of a dwelling as part of or in addition to the rent-*

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord’s costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

24. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

*Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*

- (a) only to the extent that they are reasonably incurred, and*
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*

*and the amount payable shall be limited accordingly.*

25. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

*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.*

1. Section 20B(1) of the 1985 Act provides:

*If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*

27. Section 20B(2) provides an exception from this principle for cases where, during the initial 18 month period, the tenant has been given written notice that the costs in question have been incurred and that he or she will subsequently be required to contribute to them.

28. Section 20ZA(2) provides that an agreement is a “qualifying long term agreement” if it is entered into by or on behalf of a landlord (or management company) for a term of more than 12 months. Statutory consultation requirements apply in relation to such agreements (pursuant to section 20 of the 1985 Act). If those consultation requirements are not complied with, then (unless they have been dispensed with by order of the Tribunal), the amount which a tenant may be required to contribute by means of service charges to relevant costs incurred under the agreement is limited to a maximum of £100 per annum.

29. Section 47 of the Landlord and Tenant Act 1987, (“the 1987 Act”) (1) Section 47(1) (a) of the 1987 Act provides that any written demand given to a tenant must contain, inter alia, the name and address of the landlord. Section 47(1)(b) provides that, where a demand does not contain such information: ...then...any part of the amount demanded which consists of a service charge...shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

30. Section 21B of the 1985 Act provides as follows:

A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

31. Section 21A of the 1985 Act provides as follows:

A tenant may withhold payment of a service charge if- (a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21...

32. Section 20C (1) Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord in connection with 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 or by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

### **Preliminary Issues**

33. The Respondent made a number of Procedural Submissions relating to the way in which the Applicant had pleaded their case, alleged non-compliance with Tribunal directions and alleged failure to explain the basis for the apportionment of service charge costs. The Tribunal was invited to strike out the Application pursuant to Rule 9(3)(a) and/or (b) and/or (d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
34. The Tribunal was unimpressed by these arguments. The suggestion that the proceedings (or a part of them) or the manner in which they are being conducted is frivolous, vexatious or otherwise an abuse of process of the Tribunal under Rule 9(3)(d) is a very high bar, and there is absolutely no suggestion that the Applicant is not entitled to bring a claim in respect of the reasonableness and payability of elements of service charge for which the Respondent has paid nothing. There is clearly a substantive dispute between the parties which needs resolution, and any elements of non-compliance with directions are minor. This is a case which is ready to be heard and needs to be heard. It would not be in the interests of justice to strike out the Applicant's case for trivial reasons, which appears to be what the Respondent is inviting the Tribunal to do. The Respondent's application in this regard is denied.

### **The Issues**

35. The Applicant's position is as set out in their Statement of Case [page 188]. The Applicant identifies items of service charge which they state have not been paid and assert that the sums comprising the service charges are properly payable under the terms of the Lease and are reasonable and reasonably incurred. These charges relate to the Service Charge years ending 24 March 2019, 24 March 2020 and 24 March 2021.
36. The Applicant also claims unpaid Ground Rent.
37. The sums claimed by the Applicant are as follows:

<b>493 Leigh Road</b>		
<b>Year in Dispute/item</b>	<b>Estimate</b>	<b>Amount outstanding</b>
Ending 24 March 2019	Estate £204.40 Apartments £380.00  20% of Estate 50% of Apartments	£584.40
Ending 24 March 2020	Estate £168.40 Apartments £334.00  20% of Estate 50% of Apartments	£502.40
Ending 24 March 2021	Estate £189.60 Apartments £134.50  20% of Estate	50% of £324.10 Being £162.05



	50% of Apartments	
Half Yearly Ground Rent 29 Sept 2019 to 24 March 2020		£50
Half Yearly Ground Rent 25 March 2020 to 28 Sept 2020		£50
Annual Buildings Insurance 1 July 2019 to 30 June 2020		£236.69
Annual Buildings Insurance 1 July 2020 to 30 June 2021		£265.44
Interest		£109.57
Late Payment Charge		£30
Admin Charge – issuing claim		£360
Court Fee		£115
<b>TOTAL</b>		<b>£2465.55</b>

38.

#### 495 Leigh Road

Year in Dispute/item	Estimate	Amount outstanding
Ending 24 March 2019	Estate £204.40 Apartments £380.00  20% of Estate 50% of Apartments	£584.40
Ending 24 March 2020	Estate £168.40 Apartments £334.00  20% of Estate 50% of Apartments	£502.40
Ending 24 March 2021	Estate £189.60 Apartments £134.50  20% of Estate 50% of Apartments	50% of £324.10 Being £162.05
Half Yearly Ground Rent 29 Sept 2019 to 24 March 2020		£50
Half Yearly Ground Rent 25 March 2020 to 28 Sept 2020		£50
Annual Buildings Insurance 1 July 2019 to 30 June 2020		£236.69

Interest		£102.15
Late Payment Charge		£30
Admin Charge – issuing claim		£360
Court Fee		£115
<b>TOTAL</b>		<b>£2192.69</b>

### **Non-Compliant Demands**

39. The Respondent denies that the charges claimed by the Applicant are recoverable and argue that the demands contained within the bundle do not comply with Section 47 of the Landlord and Tenant Act 1987. The Tribunal notes that they contain the name and address of the management company, the address being the same as the address for the Applicant, but not in a way that allows the Respondent to easily understand who its Landlord is.
40. The Respondent also submits that whilst there are copies of a “Service Charges – Summary of tenants' rights and obligations” document within the bundle, and it is confirmed at paragraph 12 that all demands were accompanied by such, there is however no reference to the same in relation to any “Administration Charges – Summary of tenants' rights and obligations” document, nor any copy document.
41. The Tribunal heard from Mrs Coleman on behalf of the Applicant that she accepted that the correct wording identifying the Landlord did not appear on the Service Charge demands, although she identified that the Ground Rent demands sent to the Applicant twice yearly since 2019 do identify the Landlord, and therefore queried the extent to which any prejudice had been caused.
42. In respect of S47 of the 1987 Act, the Tribunal finds that the purpose of s47 in the context of service charge demands was that a tenant knows the name and address of the person/entity responsible for the charging and collection of service charge.
43. The situation in this case was again of the kind identified by the President of the Upper Tribunal in paragraph 13 of the Beitov case (which concerned s47 of the 1987 Act), namely: “...there is nothing to suggest that the tenant wished to know the address of the landlord or was concerned that the address given in the demands might not be the right one or that he was prejudiced in any way by not knowing the address”;
44. We are not satisfied that the raising of this issue by the Respondents went “to the merits or justice” of the case, or that there was any evidence that the Respondents had been prejudiced by the failure of compliance;

45. The Tribunal is assisted by the view stated in the case of *Tedla v Cameret Court Residents Association Ltd* [2015] UKUT 221 (LC): “[a] demand which provides the name and address of two or more different companies without identifying which of them is the landlord does not, in my judgment, provide the required information”. Whilst we find that the wording on the face of the Service Charge demands does not adequately identify the landlord in accordance with s47, we also note from the same case that the effect of a failure of compliance is suspensory, and does not affect the validity of the service charge demands per se. Any service charge or administration charge is treated as not being due from the tenant to the landlord until the requisite information is furnished. i.e., all that is required is a notice to be given informing the Respondent of the identity of the Landlord and of its address. Indeed, it seems to us that this step has already been taken by the Applicant in the form of the demands for Ground Rent which correctly identify the Landlord in the demands dated 16 December 2019 [page 217] and 24 February 2020 [page 218].
46. Accordingly, the Respondent’s argument in respect of non-compliant demands does not advance their case, and the Tribunal has proceeded to determine the reasonableness and payability of the service charges themselves.
47. In respect of S21B non-compliance the Tribunal notes that it was common ground that there had been a failure of compliance with s21B by the Applicant in not serving a statement of rights and obligations in respect of Administration Charges. Unlike the situation above, there is no suggestion this information has been effectively provided by any other means, and therefore there is the possibility of prejudice to the Respondent. These charges are therefore not payable until this defect has been rectified. However, for the avoidance of doubt we find that in the circumstances, where no payment or offer of payment has been made in respect of e.g. insurance or management fees, the late payment charge and the issue fee charge are properly payable under the terms of the lease once the defect has been remedied.
48. We have not set out any interest due in the Schedule attached to this decision, as the date from which the interest flows may now be different as a consequence of our findings above, however we find interest is chargeable under the terms of the lease.

## **Insurance Rent**

49. The Tribunal heard from Miss Barnes on behalf of the Respondent that it was not disputed that the Property had been insured throughout, and it was accepted that the cost of insurance was properly recoverable under the terms of the lease through the Insurance Rent at paragraph 3 of Schedule 4, but that it was the Respondent’s position that the cost of insurance was excessive. Reference was made to previous insurance costs in 2016 and 2018. There was no alternative quotation put forward by the Respondent, and no explanation why their offer in the Scott Schedule in respect of Insurance was zero if they accepted that the property was insured throughout and that the cost of insurance was properly recoverable under the terms of the lease.

50. The Tribunal heard from Ms Coleman that the Applicant goes through an experienced independent Broker to test the market and arrive at the insurance cost.
51. The Tribunal notes that the obligation on the Applicant is to effect and maintain insurance of the Building with reputable insurers on fair and reasonable terms that represent value for money. This is not an obligation to obtain and accept the lowest quotation available, and nor is it an obligation to retain the cost of insurance at the same or similar level to that in previous years. Indeed, previous years may offer only very limited information as to a fair and reasonable cost as market circumstances or claims history may affect these. We considered the sum being charged for insurance and in our view this sum is both fair and reasonable. In the absence of any evidence to the contrary and in accordance with our own view as an expert Tribunal we therefore find this sum to be payable in full by the Respondent.

### **Service Charge**

52. The submissions from the Respondent in respect of the Service Charge were firstly that the clauses contained in the Lease are generic, poorly drafted and have wide definitions. For example, it is common ground between the parties that there are no Common Parts at the Property, although Common Parts are referred to in the Lease. Secondly the Respondent argues that any ambiguity should be construed in the Respondent's favour.
53. The Respondent argues that Leases have caused confusion and that one of the main purposes of the original project was to ensure that 493 Leigh Road and 495 Leigh Road were owned by one owner which meant that service charges and ground rent would not be applicable. Whilst this may or may not have been the original intention, the terms of the Lease are, in the view of the Tribunal not unclear and therefore in our view the Respondent's submission that any doubt in terms of the interpretation of the Leases should be resolved in its favour do not apply as there is no such doubt to resolve. We agree that there are references to Common Parts in the Lease when there are no such Common Parts in reality, but in our view, this does not create doubt and confusion, it simply means that those particular provisions do not apply. The Respondent's argument that the service charge is not payable because it is confusing or unclear is rejected.
54. The Respondent also argues that the sums claimed by the Applicant are not reasonable. The basis for this claim is that little if any service charges were levied on leaseholders prior to the sale by MSPD in December 2016 and there is no justification for the subsequent increase in costs

55. It is common ground that
- a. 493 Leigh Road and 495 Leigh Road have separate entrances;
  - b. There are no internal communal areas;
  - c. There are no boundary fence and/or fences that have been maintained by the Applicant;
  - d. Each of 493 Leigh Road and 495 Leigh Road has its own private garden space; and
  - e. There is no CCTV for the Land that requires maintenance.
  - f. No window cleaning has been carried out since 2017
56. The Tribunal considered the service charge budgets prepared by the Applicant and notes that the statement of anticipated Service Charge Expenditure [page 223] refers to a number of items which are not provided by the Applicant, including Window cleaning, Ground Maintenance and electricity to Common Parts. However, we also note that these charges are not included in the actual service charge expenditure for the Property [page 229] which is limited to Management and accountancy fees, bank charges, postage, out of hours emergency service, insurance and legal expenses. Therefore, whilst the anticipated charges are at best opaque, and equally unhelpfully continue to refer to these charges over multiple years, there is no evidence that the Applicant has been charging the Respondent for services to non-existent Common Parts or indeed for services such as window cleaning which the Applicant accept it has not been carrying out.
57. We next considered the reasonableness of those items which are included within the Service Charge and which have been demanded from the Respondent. We note that no query was raised by the Respondent about Account management fees, legal expenses, bank charges and postage and so we have not considered these any further, other than to satisfy ourselves using our own knowledge and expertise that they are reasonable and payable under the terms of the Lease.
58. We note that the service charge is split into two elements, the Estate, and the Apartments. The Respondent pays 20% of the Estate charges and 50% of the Apartments for each lease. We consider this to be a fair and reasonable apportionment given the way in which the totality of the estate is organised.
59. Under 'Apartments Only' there is an out of hours emergency service which the Respondents dispute, stating that this service is not provided. The Tribunal heard evidence from Mr Robinson that this is a 24hr service so that an Apartment owner can call a telephone number at 2am, if there is a burst water pipe. He stated that this goes to the telephone call centre of an outsourced contractor and tenants should have been notified of the number.

60. We note that there is no specific documentary evidence within the bundle regarding the out of hours service but nevertheless, were persuaded by the evidence of Mr Robinson who we found to be a convincing witness, that this service is provided, and we find the sum charged for this service to be reasonable, and therefore we find this amount of £42 (being £21 per apartment) to be payable by the Respondent.
61. There are management fees applied in respect of both the Estate and Apartment elements of the Estate. The Tribunal asked the Applicant to explain what it was that they were doing for their Management fee given the limited number of actual services being provided and the absence of any Common Parts. Mr Robinson gave evidence that they were preparing annual service charge accounts, preparation of a budget and interim service charge demands, were responsible for obtaining buildings insurance through the Broker, the Health and Safety report, managing any services and overseeing any debt recovery for non payment of the service charge. They were effectively on call for site inspections if required. He stated that there were 2 inspections in 2021. He would expect a minimum of twice yearly although in 2020 Covid had curtailed some normal operations. He was unable to explain why there did not appear to have been inspections in 2018 and 2019.
62. We are satisfied that there is a contractual basis for these charges under the terms of the Lease. Considering firstly the Estate charges, we find the management fees to be reasonable, having in mind the size of the Estate, and we accept that a managing agent has to be available to deal with issues which arise, in addition to performing the role as set out by Mr Robinson, and that they are entitled to charge a reasonable fee for doing so. We are presented with no evidence that it is not a reasonable fee – no alternative quotations having been provided - and we accept the evidence of Mr Robinson as to the extent of the work being carried out by the Management Company. Whilst this was not extensive given the size of the estate, nevertheless we accept that it is reasonable to charge for their services being provided and in our view this sum is of itself reasonable.
63. We considered the Accountancy fees, and whilst we were surprised that the accountants had not identified the anomaly in the anticipated charges as referred to above, we concluded that this was the responsibility of the management company, and not the accountants. We find the accountancy fees to be of themselves reasonable. Again, we have no conflicting evidence to suggest they are not, the work in preparing accounts has clearly taken place and we find the sum charged to be reasonable and recoverable under the terms of the lease.
64. In respect of the Apartment Management fees we take a less generous view of the conduct of the management company, as it would appear that their conduct in respect of the preparation of the anticipatory budget has done little other than confuse the Respondent. We consider that the level of management carried out on behalf of the Respondent in the years in question was below that which could reasonably be expected, and given that clear communication around service charge accounts was at the heart of the role of the management company, given the absence of other tasks which it fell to them to carry out, we

have reduced the Management fee for the Apartments for the years in question to an annual amount of £100 (being £50 per apartment) – in addition to the out of hours charge referred to above - as we do not consider the full amount to have been reasonably incurred.

## **Costs**

65. Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the Applicant in connection with 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 any leaseholder of the Development. We note that the Applicant has agreed not to seek any such costs and we give effect to this in the form of a Tribunal Order.
66. Similarly, we note that the Applicant has also confirmed that they do not intend to seek charges in connection with these proceedings as per paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and we give effect to this agreement in the form of a Tribunal Order.
67. Miss Barnes for the Respondent made an application for costs in the sum of £7444, which encompassed both the County Court proceedings and the proceedings in the First tier Tribunal. She makes the application, pursuant to Rule 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
68. The Residential Property Tribunal is primarily a non costs shifting jurisdiction. The Rule under which the costs application is brought only permits the Tribunal to make such an Order if person has acted unreasonably in bringing, defending or conducting proceedings. The Tribunal should adopt a 3-stage process in determining whether the Applicants had acted unreasonably, as follows:
  - a. Was their conduct objectively unreasonable?
  - b. Was it appropriate, in all the circumstances, for the Tribunal to make a costs order?
  - c. The quantum of any costs award was at the Tribunal's discretion.
69. Miss Barnes suggests that bringing the claim in the County Court originally was unreasonable as it should have been brought in the First Tier Tribunal and bringing two separate claims rather than combining them was unreasonable. Both of these approaches may have been preferable, however neither addresses the underlying issue which is that the Respondent/Defendant failed to pay sums which were clearly due under the terms of the Lease. Even had the Tribunal agreed that the Insurance Rent was too high, the sum payable would never have been the zero which was offered by the Respondent. The Ground Rent was conceded in the hearing itself. It is simply preposterous to suggest that the Applicant/Claimant has acted unreasonably in pursuing this claim, to the extent that costs should be awarded in the manner sought. The application for Costs is dismissed. We have however disallowed the Applicant's claim for

recovery of the Court Fee on the basis that the County Court was not the correct forum in which to pursue this claim.

### **The Court's Determinations**

70. The only issues which were to be determined by the Court are the Claimant's claim in respect of ground rent and any applications concerning costs.
71. The Defendant's Representative confirmed during the course of the hearing that it was accepted that ground rent was due in accordance with the terms of the Lease and therefore this aspect of the claim was conceded by the Defendant.
72. Accordingly, the half yearly ground rent of £50 for the period 29 Sept 2019 to 24 March 2020 and the half yearly ground rent of £50 for the period of 25 March 2020 to 28 Sept 2020 is payable by the Defendant to the Claimant in respect of 495 Leigh Road. It was accepted by the Applicant that one payment had been made and therefore one payment of £50 remains payable by the Defendant to the Applicant. We make an order to this effect in respect of 495 Leigh Road only, as I have jurisdiction in respect of this matter but not 493 Leigh Road, by reason of the nature of the County Court referral. However, I note in passing that the circumstances appear to be analogous.
73. There is no order as to costs in respect of the Court's determinations as this is a matter which would have been allocated to the small claims track and in my view no costs award is appropriate .

### **Rights of appeal**

Appeals in respect of decisions made by the FTT

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the casenumber), state the grounds of appeal and state the result the party making the application is seeking.



If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court

An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

Schedule 1 – 493 Lower Leigh Road

Year in Dispute/item	Estimate	Amount claimed	Amount Payable
Ending 24 March 2019	Estate £204.40 Apartments £380.00  20% of Estate 50% of Apartments	£584.40	£204.40 + £74.00  <b>=£278.40</b>
Ending 24 March 2020	Estate £168.40 Apartments £334.00  20% of Estate 50% of Apartments	£502.40	£168.40 + £71.00  <b>=£239.40</b>
Ending 24 March 2021	Estate £189.60 Apartments £134.50  20% of Estate 50% of Apartments	50% of £324.10 Being £162.05	£94.80+ £25.00  <b>=£119.80</b>
Half Yearly Ground Rent 29 Sept 2019 to 24 March 2020		£50	Not determined By the court or FTT
Half Yearly Ground Rent 25 March 2020 to 28 Sept 2020		£50	Not determined By the court or FTT
Annual Buildings Insurance 1 July 2019 to 30 June 2020		£236.69	£236.69
Annual Buildings Insurance 1 July 2020 to 30 June 2021		£265.44	£265.44
Interest		£109.57	
Late Payment Charge		£30	£30
Admin Charge – issuing claim		£360	£360
Court Fee		£115	£0
<b>TOTAL</b>		<b>£2465.55</b>	

Appendix 2 – 495 Leigh Road

Year in Dispute/item	Estimate	Amount claimed	Amount payable
Ending 24 March 2019	Estate £204.40 Apartments £380.00  20% of Estate 50% of Apartments	£584.40	£204.40+ £74.00  <b>£278.40</b>
Ending 24 March 2020	Estate £168.40 Apartments £334.00  20% of Estate 50% of Apartments	£502.40	168.40+ £71.00  <b>=£239.40</b>
Ending 24 March 2021	Estate £189.60 Apartments £134.50  20% of Estate 50% of Apartments	50% of £324.10 Being £162.05	£94.80+ £25.00  <b>=£119.80</b>
Half Yearly Ground Rent 29 Sept 2019 to 24 March 2020		£50	£50 Determined By the court
Half Yearly Ground Rent 25 March 2020 to 28 Sept 2020		£50	£50 Determined By the court
Annual Buildings Insurance 1 July 2019 to 30 June 2020		£236.69	£236.69
Interest		£102.15	
Late Payment Charge		£30	£30
Admin Charge – issuing claim		£360	£360
Court Fee		£115	£0
<b>TOTAL</b>		<b>£2192.69</b>	