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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BU/LIS/2012/0019**
Property	:	**Apartments at Woodfield Road, Altrincham, WA14 4RN**
Applicant	:	**The Riverside Group Limited**
Representative	:	**Ms L Walsh (27 September 2013) and Mr M Donnellan (6 & 7 May 2014) of Trowers and Hamlins LLP**
Respondent	:	**Budenberg Haus Projekte Management Company Limited**
Representative	:	**Mr S Armstrong of Counsel instructed by J B Leitch LLP**
Type of Application	:	**Application for a determination of liability to pay and reasonableness of service charges**
Tribunal Members	:	**P J Mulvenna LLB DMA (chairman)** **Mr J Faulkner, FRICS** **Mrs H Clayton**
Date and venue of Hearing	:	**27 September 2013 and 6 & 7 May 2014 at the Residential Property Tribunal Service, 5 New York Street, Manchester, M1 4JB**
Date of Decision	:	**11 May 2014**

DECISION

DECISION

1. **That the service charges generally levied by the Respondent for the years ended 31 December 2006, 2007, 2008, 2009, 2010, 2011 and 2012 are reasonable and payable by the Applicant, save for the management fees which shall be reduced by 25% for each of those years.**

2. **That the management fees for the years in question are thus reduced as follows:**

   (i) for the year ended 31 December 2006 from £25,193 to £18,895;

   (ii) for the year ended 31 December 2007 from £44,380 to £33,285;

   (iii) for the year ended 31 December 2008 from £52,480 to £39,360;

   (iv) for the year ended 31 December 2009 from £53,419 to £40,064;

   (v) for the year ended 31 December 2010 from £55,400 to £41,550;

   (vi) for the year ended 31 December 2011 from £56,300 to £42,225; and

   (vii) for the year ended 31 December 2012 from £56,580 to £42,435,

   and that the amounts due from the Respondent be recalculated accordingly.

DETERMINATION AND REASONS

INTRODUCTION

1. The Riverside Group Limited ('the Applicant') made an application to the Tribunal on 25 July 2012 for the determination of the reasonableness and payability of the service charges for the years ended 31 December 2006, 2007, 2008, 2009, 2010, 2011 and 2012 demanded by Budenberg Haus Projekte Management Company Limited ('the Respondent') in respect of Apartments 100, 200, 205, 207 and 306 Budenberg, Apartments 2103 to 2109 and 2111 to 2113 Haus 2 and Apartments 3101 to 3104, 3110 to 3112, 3308, 3322 and 3324 Haus 3, which are all situated in a development at Woodfield Road, Altrincham, WA14 4RN ('the Property').

2. The Property comprises 25 self-contained, one and two bedroom apartments in three blocks (named Budenberg, Haus 2 and Haus 3, together 'the Development') constructed in or around 2005 and in total containing 249 apartments with 253 parking spaces. The Budenberg block was a refurbishment project - of the former Budenberg factory - and Haus 2 and Haus 3 were purpose-built. More particularly, five of the 25 apartments comprising the Property are in the Budenberg block, which has a total of 33 apartments; ten are situated in Haus 2 and a further ten in Haus 3, both Haus 2 and Haus 3 having a total of 108 apartments each, although one apartment in Haus 3 is used for caretaking purposes. The Development is situated on the periphery of a predominantly residential area, separated from a commercial/industrial area by the Bridgewater Canal, which is now predominantly used for leisure purposes. The design of the Development takes advantage of the canal-side setting by rising from three to nine storeys as it approaches the canal and is then cantilevered over the canal so that some apartments sit over the canal. There are extensive landscaped/garden areas. The internal common areas include secure entrance halls, together with lifts, stairs and landings (via deck access in Haus 2 and Haus 3) in each Block giving access to all floors; boiler and plant rooms; and bin stores. The Property has reasonable access to public transport and to local shops and other facilities and amenities.

3. The Applicant has a leasehold interest for a term of 999 years from and including 1 January 2003 in each of the apartments comprising the Property held under identical leases. The Tribunal has seen a representative Lease (in respect of Apartment 306, Budenberg) made on 31 March 2005 between (1) Urban Splash Limited, (2) Budenberg Haus Projekte Management Company Limited and (3) Riverside Housing Association ('the Lease').

4. The Applicant is a registered provider and has granted sub-leases of a number of apartments to tenants on a shared ownership basis. The service charges paid by the Applicant in relation to these apartments are recharged through the sub-leases. Other apartments are let on general needs tenancies in respect of which the Applicant remains responsible for bearing the cost of the service charges.

5. The Respondent is said to be a resident controlled management company, although the voting rights in the company are held exclusively by Urban Splash Limited ('Urban Splash'), the freeholder, who, on 10 February 2012, transferred its freehold interest in the residential elements of the Development to US SPV 2 Limited (subsequently renamed E & J 4 US Limited). The Respondent has responsibility for providing services and has an entitlement to recover the cost of such provision by way of service charges. The Respondent has engaged Mainstay Residential Limited ('Mainstay') as the managing agents for the Development. A copy of a Management Agreement ('the Management Agreement') expressed to have been made between (1) Urban Splash Limited, (2) Budengerg Haus Projekte Management Company

Limited and (3) Mainstay Residential Limited on 1 April 2006 was produced to the Tribunal. The Tribunal has found, for the reasons given in paragraphs 33 to 40 below, that the Management Agreement was not, and never has been, put into effect.

THE INSPECTION

6. The Tribunal inspected the common parts of the Development externally and internally on the morning of 27 September 2013. The Applicant was represented by Ms L Walsh, Solicitor, of Trowers and Hamlins LLP, together with Ms F Morear and Ms L Wood who are, respectively, the Applicant's Finance Manager and Assistant Finance Manager. The Respondent was represented by Ms J Roebuck, Mainstay's Area Property Manager. The Tribunal found the Development to be maintained to a reasonable standard.

DIRECTIONS & FIRST HEARING

7. Directions were issued by Mr L J Bennett, sitting as a procedural chairman, on 17 April 2013 and subsequently amended at the parties' request. The parties complied with the Directions.

8. The first substantive hearing of the application was held on 27 September 2013 at the Residential Property Tribunal Service offices, 5 New York Street, Manchester, M1 4JB. The Applicant was represented by Ms Walsh, together with Ms F Morear and Ms L Wood. The Respondent was represented by Mr S Armstrong of Counsel instructed by J B Leitch, together with Mr N Gaskell, Mainstay's Head of Operations, North, Mr T Blodwell, Mainstay's Area Property Manager and Ms Roebuck.

THE ADJOURNMENT

9. It became evident during the course of the hearing that it was not going to be possible for the Tribunal to determine the issues in dispute without making assumptions or giving the parties an opportunity to raise speculative questions or give equally speculative evidence on matters which might ultimately prove not to be in dispute. It was considered that the fairer and more equitable way forward would be to invite further evidence and/or submissions on the issues. In these circumstances, the Tribunal decided, having heard the parties' submissions on the matter, to give Further Directions, then to adjourn the proceedings to a later date at which the disputed issues could be considered with the benefit of the further evidence and submissions.

THE FURTHER DIRECTIONS

10. The Tribunal accordingly issued the following Further Directions.

    10.1 The parties shall carry out a joint inspection of the Development with a view to establishing the full extent and nature of the services for which charges are made and formulating reasoned views on necessity and reasonableness. The Applicant shall, no later than 18 October 2013, raise specific questions (e.g. unit costs, frequency, tendering requirements, etc.) seeking information from the Respondent in relation to those matters in which such information is required to enable the Applicant to assess the reasonableness of the service charges.

    10.2 The Respondent shall, no later than 8 November 2013, provide the information so requested.

10.3 The Applicant shall, no later than 29 November 2013, raise any challenges to the reasonableness of the service charges and provide the Respondent with a reasoned statement of such challenges.

10.4 The Respondent shall respond to such challenges no later than 20 December 2013.

10.5 It would assist the Tribunal if the parties could prepare an agreed Scott Schedule to the date of the reconvened hearing in relation to the challenged service charges.

10.6 Unless otherwise indicated, the provision of any evidence or submissions shall be by way of providing three copies of such evidence to the Tribunal and one copy to the other party or parties, as the case may be. It shall be open to the parties to prepare witness statements which shall stand as evidence-in-chief at the reconvened hearing.

10.7 It shall be open to either party to request an amendment, addition or variation to these Further Directions.

10.8 The Tribunal does not intend to carry out a further inspection of the Property and intends to determine all of the issues in dispute without a further oral hearing unless there is a request to the contrary by either or both of the parties.

10.9 The reconvened hearing shall be listed for two days.

11. The parties have complied with the Further Directions as subsequently amended at the parties' request.

THE RECONVENED HEARING

12. The reconvened hearing of the application was held on 6 & 7 May 2014 at the Residential Property Tribunal Service offices, 5 New York Street, Manchester, M1 4JB. The Applicant was represented by Mr M Donnellan, Solicitor, of Trowers and Hamlins LLP, together with Ms L Wood, Ms S Nelson and Mr S Coward. The Respondent was represented by Mr S Armstrong of Counsel instructed by J B Leitch, together with Mr N Gaskell, Mr T Blodwell, and Ms J Roebuck.

THE LAW

13. The material statutory provisions in this case are as follows.

(i) The Landlord and Tenant Act 1985

Section 27A (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

Section 19(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to the appropriate tribunal for a determination whether an administration 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.

THE LEASE

14. The Tribunal had before it a copy of the Lease which has been read and interpreted as a whole. In reaching its conclusions and findings, the Tribunal has had particular regard to the following matters or provisions contained in the Lease, none of which were the subject of dispute or argument by or on behalf of the parties:

a. The definition of 'Service Charge', 'Services' and related expressions in Clause 1.

b. The Tenant's covenants in Clause 3.

c. The Management Company's covenants in Clause 4.

d. The Landlord's covenants in Clause 5.

e. The service provision matters contained in the Schedule 4.

f. The maintenance expenses provisions in Schedule 5.

g. The sinking fund provisions in Schedule 8.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

15. The Applicant has asked for a determination of the reasonableness of the service charges for the years 2006, 2007, 2008 2009, 2010, 2011 and 2012. The Tribunal had before them the service charge demands for those years which complied with The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.

16. The Tribunal heard oral evidence from Ms Wood and Ms Nelson and oral submissions from Mr Donnellan on behalf of the Applicant, together with oral evidence from Mr Blodwell, Ms Roebuck and Mr Gaskell and oral submissions from Mr Armstrong on behalf of the Respondent. The Tribunal also had before them the written evidence (including witness statements on behalf of the Applicant from Mr N Cox and Ms M Kearns, neither of whom attended to give oral evidence before the Tribunal) and submissions of the Applicant and the Respondent.

17. The Tribunal has considered the issues on the whole of the written and oral evidence and submissions now before them and has had regard to their own inspection and, applying their own expertise and experience, has reached the following conclusions on the issues before them.

18. The issues initially raised by the Applicant were confined to a number of questions and requests eliciting information from which it might be expected that there would be an evaluation of the reasonableness of the charges leading to reasoned challenges to be advanced in support of their case. There was some difficulty in the provision of that information which led to the adjournment of the first substantive hearing and the Further Directions referred to in paragraph 10 above. It was hoped that the

Further Directions would identify any sustainable challenges to the service charges in question and give both parties adequate opportunity to produce evidence to support their respective viewpoints.

19. Regrettably, that has not proved to be achievable. The Respondent has consistently failed to produce information on a range of matters which will give the Applicant a reasonable opportunity fully to assess the position and address any issues which might arise. That is particularly important given the Applicant's stated purpose for bringing the proceedings, namely,

'...to enable [the Applicant] to understand the service charge accounts and be satisfied that services were being delivered in a cost effective and transparent manner.'

That arose because

'...the Applicant has received a number of complaints from their shared owners in relation to the level of maintenance at the [Development]'.

20. At first blush, it appeared that the Applicant was simply asking a wide range of questions, almost on a scattergun basis, in the hope that the answers might give rise to information which might disclose grounds for a sustainable challenge in circumstances where they otherwise had no objective evidence to support a contention that the service charges were unreasonable. Having reviewed the whole of the evidence now available, however, the Tribunal has considerable sympathy with the Applicant. It is evident that the Respondent has continually failed to supply relevant information which could reasonably be expected to be readily available to a competent managing agent with full control of the commissioning and delivery of the services for which charges are demanded.

21. The Tribunal has no doubt that the Respondent's inability to produce the whole of the information (even up to the date of the reconvened hearing) was as a result of the irregular relationships between the Respondent, Mainstay and Urban Splash, which will be explored in detail later in this Determination. Those relationships have led to a position which has compromised transparency in the processes for the commissioning and delivery of, and charging for, some services. There is no evidence that there has been deliberate obfuscation, but the effect, nonetheless, has been to create a lack of clarity in relation to decision making, responsibility and accountability.

22. Similarly, the Applicant has made reference to Urban Splash's continued, exclusive voting rights in relation to the Respondent company and to the rectification of the leases held by Urban Splash so as to avoid payments into the sinking fund on disposal. These are not matters upon which the Tribunal has jurisdiction to adjudicate as they are not included in the application. There is no evidence before the Tribunal of any bad faith which impacts on the reasonableness or payability of the service charges, but the effect is a further erosion of the transparency which is essential for the good of the relationship between the parties.

23. Despite these difficulties, the Applicant has identified a number of issues upon which the Tribunal has been invited to adjudicate, namely:

(i) The status of the Management Agreement;

(ii) Insurance;

(iii) Caretaking, cleaning and grounds maintenance;

(iv) Window cleaning;

(v) Day to day maintenance;

(vi) Utilities;

(vii) Management fees.

24. Before addressing these particular issues, the Tribunal has considered two general matters which were raised and argued by the parties: the burden of proof and the extent of the Tribunal's jurisdiction.

25. The Tribunal has reviewed the cases cited by the parties in relation to the burden of proof. In *Schilling & Others -v- Canary Riverside Development PTD Limited (LRX/26/2005 LRX/31/2005 LRX/47/2005)*, it was held that the burden of proof was upon an applicant, although His Honour Judge Michael Rich QC went on to say that

'In civil cases, where the standard of proof is only the balance of probabilities, the burden matters only where either there is no evidence or, in the very unusual circumstance that, having heard all the evidence, the tribunal is unable to make up its mind.'

26. He found that such an approach was consistent with the 'practical approach' adopted in *Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25*, in which it was held (per Wood J) that there is no presumption for or against the reasonableness of standard or of costs as regards service charges. If a defence to a claim for maintenance costs is that the standard or the costs of the service are unreasonable, the tenant will need to specify the item complained of and the general nature – but not the evidence – of his case; once the tenant gives evidence establishing a prima facie case, it will be for the landlord to meet those allegations.

27. The Tribunal has borne these principles in mind in assessing, and determining the weight to be given to, the whole of the evidence. The Applicant has submitted evidence of comparable charges in respect of the challenged aspects of the service charges. It was acknowledged on behalf of the Applicant that the comparables were not based with any certainty on services at properties which could be said to be of the same nature and extent of the Development. It was submitted that this was due to the constraints placed upon them by the inadequacy of the information provided by the Respondent. The Respondent submitted that it was possible to obtain comparables and that those provided did not compare like with like and should be rejected.

28. The Tribunal accepts that the comparables provided by the Respondent were inadequate, but finds that, in any event, given the unusual construction and design of the Development (part conversion, part new build and, more particularly, the cantilevered building over a canal) it would be difficult in the extreme to find a comparable development, particularly within reasonable proximity so as to ensure similar market forces. In these circumstances, the Tribunal has given little weight to the comparables (being evidence only of service charge levels which might inform, but not determine, an assessment of inherent unreasonableness) and has decided the issues on the basis of the evidence available.

29. It was submitted on behalf of the Respondent that the Tribunal should only determine the issues included in the application. It was suggested that, as the matter had progressed and information exchanged, the Applicant's case had encompassed other issues. The Tribunal has taken account of the decision in *Birmingham City Council -v- Keddie & Hill [2012] UKUT 323 (LC)* in which it was held that a tribunal had no jurisdiction to determine issues not raised by the application. The Tribunal has, accordingly, limited its consideration to the

reasonableness of the service charges, although other aspects have been taken into account insofar as they might impact on the assessment of reasonableness.

30. The Tribunal does not accept the submission made on behalf of the Applicant that the Respondent's defence should be subjected to similar constraints. The rationale for the restriction was addressed in *Keddie* and it was said that

> 'Those documents, whether they be described as pleadings or statements of case or whatever, set out the nature and scope of the issues in dispute. They operate to limit the issues in respect of which the parties must adduce evidence in support of their respective cases. They also operate to define the issues in respect of which they seek resolution by the [Tribunal]. They therefore serve five functions. First, to identify the issues. Secondly, to enable the parties to know what issues they must address their evidence to. Thirdly, to vest the [Tribunal] with jurisdiction, and focus the [Tribunal's] attention on what needs to be resolved. Fourthly, setting the parameters of, and providing the tools within which, the [Tribunal] may case manage the application. Fifthly, by confining the issues requiring resolution to what is actually (as distinct from what might theoretically be) in dispute between the parties they will be assured economical and expeditious disposal of their dispute whilst also promoting efficient and economical use of judicial resources at first instance and appellate levels.'

31. It is true that the Respondent has amended or expanded defences to certain issues, but they do address the identified issues and do not widen the scope of the dispute. There is no sustainable reason to reject the amended or extended defences.

32. Reference has been made in the Applicant's statement of case to complaints by residents as to the quality of service provided but these were, by and large, unspecified and unquantified, save for complaints from two tenants. The first complained that a 'jet wash [of] the exterior walls has blown all the mud and debris out of the planter bed and into my garden area.' The second referred to a general lack of care giving rise to disrepair and unsightliness. The complaint was supported by photographic evidence which was not dated or annotated to assist in verifying the location. The Tribunal's inspection did not reveal evidence of the existence of the subject matter of the complaints. In these circumstances, the Tribunal has no reliable, objective evidence upon which to base sustainable assessments and conclusions as to the quality of the services provided.

33. The Tribunal has considered the substantive issues which were raised by the Applicant and has reached the following conclusions, based on an assessment of the whole of the evidence, for the reasons stated:

The Status of the Management Agreement

34. It was submitted on behalf of the Applicant that the Management Agreement was a qualifying long term agreement ('QLTA') which required consultation to have taken place with the tenants in accordance with section 20 of the Landlord and Tenant Act 1985 prior to its being entered into. In those circumstances, it was argued, the service charge for the services provided under the Management Agreement was limited to £100.00 per annum.

35. The Respondent first submitted that the Management Agreement was not a QLTA because no lease had been entered into at the date noted on the Management Agreement (1 April 2006). It is plain that such was not the case and that the Respondent had misread the record of the leases granted as noted in the registers by HM District Land Registry. The Respondent then submitted that the Management

Agreement had not, in fact, been brought into effect and could not, therefore, be a QLTA.

36. The Applicant objected to the defence being amended. The Tribunal decided, however, that, for the reasons given in paragraph 29 above, that the Respondent's amended response should be admitted and considered.

37. It is beyond doubt that, if the Management Agreement had been brought into effect, it would have been a QLTA. It was expressed to be for a duration of three years.

38. Having considered the whole of the evidence, however, the Tribunal has determined that the Management Agreement has not been brought into effect and is not, therefore, a QLTA for the following reasons. First, the document before the Tribunal is a copy of an unexecuted agreement and there is no evidence that an executed agreement exists or ever existed. Secondly, the Management Agreement was expressed to commence on the Estate Handover to Mainstay. That has still not occurred and the commencement has not, therefore, been triggered. Thirdly, Mr Gaskell gave evidence that the management of the Development has been conducted on an ad hoc basis with broad reference to the terms of the Management Agreement. Fifthly, he gave unchallenged evidence that Urban Splash could at any time have terminated the arrangement.

39. There was no evidence to challenge the fact that there was an informal arrangement. Mr Donnellan's submission that it is not credible that there should be an informal arrangement for around eight years is not entirely without merit, but it is based on suspicion rather than evidence and it is by no means inherently implausible that there should be such an arrangement.

40. Although the Tribunal has found that there was an informal arrangement, there is no doubt that the absence of formality has contributed significantly to a blurring of responsibilities and the creation of the lack of management control and lack of transparency which has hindered the Respondent in providing the information requested by the Applicant over the last two years or so.

41. The position has now been remedied by the execution of a Management Agreement on 1 February 2014. It does not appear to be a QLTA on the face of it, but that is not a question for determination by this Tribunal. Moreover, the Tribunal has no evidence upon which, as urged on behalf of the Applicant, to infer a sinister motive or draw any other adverse inference from the timing of the execution of the Agreement.

Insurance

42. The Applicant has challenged the reasonableness of the service charges relating to the insurance premiums on two bases. First, the accuracy of the declared reinstatement valuations and, secondly, the level of the charges sought to be recovered, with particular reference to the absence of evidence as to the payment of premiums and the adjustment of the amounts due from the leaseholders to take account of credits.

43. Before turning to the substantive challenges, it is relevant and appropriate to refer to the unsatisfactory means by which the insurance has been effected. The Lease requires the Respondent to insure. It has, however, been put into effect by Urban Splash. It appears that there is a breach of the Respondent's covenants under the Lease, but that is not before the Tribunal and reasonableness must be considered on the evidence available. In this respect, there is a further example of irregular activity causing the Respondent to be unable to provide information in relation to the service charges which is a cause for disquiet.

44. The insurance certificates do not note the interests of the lessees (including the Applicant) and that raises the question as to whether or not they actually benefit from the insurance. The Tribunal observes that the insurance is for reinstatement. In these circumstances, it is likely that the insurers would satisfy any claim by staged payments to secure the application of the monies for reinstatement. In these circumstances, the lessees (including the Applicant) are not disadvantaged by the present arrangement. It is, nonetheless, totally unsatisfactory and presents a lack of transparency and accountability. The matter, as such, is not before the Tribunal for determination, but the position should be regularised and insurance effected in accordance with the Lease with the lessees interests being noted.

45. The Tribunal finds that there is no merit in the Applicant's challenge based on the accuracy of the declared reinstatement valuations. That challenge is predicated on the considerable difference between the declared reinstatement valuations for insurance purposes and the reinstatement valuations which appear in the sinking fund accounts. The two valuations serve different purposes and are calculated in different ways. The declared reinstatement valuation is the estimated cost of reinstatement at the date of the insurance. It is based on known or anticipated current costs. The sinking fund valuation is a longer term estimate of reinstatement costs which takes account of inflation in forecasting future costs of replacement based on anticipated life.

46. The Applicant has submitted three alternative methods for the calculation of reinstatement value, estimation of premiums and apportionment of costs. Two are based on the Applicant's own practices in respect of properties managed by the Applicant and one is based on the Applicant's perception of the Respondent's practice. It was submitted that these could be used to test the reasonableness of the service charges. The Tribunal finds that this approach does not assist. The methods are hypothetical and cannot with any certainty be applied to the Development with its unusual construction and design (see paragraph 27 above).

47. The Respondent produced, late in the proceedings, evidence as to the payment of premiums and the adjustment of the amounts due from the leaseholders to take account of credits. The parties were invited to discuss the evidence and to make further submissions to the Tribunal if necessary. No further submissions have been received. The Tribunal finds that the Respondent's evidence addresses the Applicant's challenge based on this particular issue.

48. Having considered the whole of the evidence, the Tribunal has concluded that the insurance costs included in the service charges for the years in question are reasonable and payable by the Respondent.

Caretaking, Cleaning and Grounds Maintenance

49. The Respondent has challenged the reasonableness of the charges for caretaking, cleaning and grounds maintenance on the basis that the Respondent has been unable to provide details of the costs incurred or other information upon which reasonableness might be assessed. In particular, the Respondent has submitted that there is no evidence as to why a contractor in the same group as Mainstay (Mainstay Facilities Management Limited ('MFM')) has been engaged; there was an element in MFM's charges for management and profit which gave rise to the possibility of double charging; and there was no evidence of market testing.

50. The Applicant has submitted evidence of comparable caretaking, cleaning and grounds maintenance charges at other developments. The Tribunal did not find this evidence to be of assistance because of the clear difficulties in providing sustainable

comparables with the Development with its unusual construction and design (see paragraph 27 above).

51. The Respondent said that there was a direct contractual relationship between the Respondent and MFM which was based on purchase orders. Whilst that might not be the most satisfactory way of conducting the service provision, creating further problems for lack of transparency and accountability, it is not so unsatisfactory as to be unreasonable. The Respondent has benefited from the work undertaken and there is no sustainable evidence that the charges made are inherently unreasonable. It is plain, however, that Mainstay have no management role in respect of the provision. It was submitted that they dealt with complaints, but there is no evidence to support that submission and, in any event, it is more likely than not, given the close relationship, that complaints would simply have been passed on to MFM.

52. In these circumstances, the Tribunal finds that the Applicant had the benefit of the services provided by MFM and that the inclusion of the costs incurred by the Respondent were reasonably included in the service charge, although they must be assessed on the basis that they included a charge for management of those particular services.

53. Having considered the whole of the evidence, the Tribunal has concluded that the caretaking, cleaning and grounds maintenance costs included in the service charges for the years in question are reasonable and payable by the Respondent.

Window Cleaning

54. The Applicant has challenged the charges for window cleaning on the basis that there have been significant changes over the years in dispute in respect of the level of charges and that no explanation has been given by the Respondent.

55. The Respondent has indicated that, 'over the past six years Mainstay has obtained quotes from several contractors namely, Tudor, Techserve, Blade Access and Cleanall in order to assess market costs. The reason for the reduction in 2009 was that there were initially six cleans per annum, however for 2009 onwards there have been only two cleans per annum. The reduction in costs simply relates to the reduction in frequency.' There is no evidence to rebut this assertion.

56. The Applicant has submitted evidence of comparable window cleaning charges at other developments. The Tribunal did not find this evidence to be of assistance because of the clear difficulties in providing sustainable comparables with the Development with its unusual construction and design (see paragraph 27 above). This is particularly so because of the cantilevered design over the canal which will present difficulties in providing window cleaning services.

57. Having considered the whole of the evidence, the Tribunal has concluded that the window costs included in the service charges for the years in question are reasonable and payable by the Respondent.

Day to Day Maintenance

58. The Applicant has challenged the reasonableness of the day to day maintenance charges on the basis that 'the Respondent has failed to provide evidence of the costs incurred, or, having provided evidence, the cost is considered unreasonably high, or the Apportionment Schedule does not provide an adequate explanation of various transfers, apportionment, accruals etc.'

59. The Applicant has submitted evidence of comparable day to day maintenance charges at other developments. The Tribunal did not find this evidence to be of assistance because of the clear difficulties in providing sustainable comparables

with the Development with its unusual construction and design (see paragraph 27 above).

60. The Respondent has submitted a number of invoices as being representative of the costs incurred but has submitted that it would be unreasonable to expect the production of all invoices, many of which are for small and/or inexpensive items such as light bulbs. The Tribunal accepts that the representative invoices are sufficient to demonstrate that there has been active and effective day to day maintenance of the Development. This was also evidenced by the Tribunal's finding following the inspection of the Development that it was maintained to a reasonable standard. There is no sustainable evidence that the costs incurred were inherently unreasonable.

61. Having considered the whole of the evidence, the Tribunal has concluded that the day to day maintenance costs included in the service charges for the years in question are reasonable and payable by the Respondent.

Utilities

62. The Applicant has challenged the reasonableness of the charges for electricity on the basis that charges have fluctuated without explanation and that the Respondent has been unable to provide basic information to enable the reasonableness of the charges to be assessed.

63. The Applicant has indicated that, when the company which was appointed to oversee administration and billing to the tenants went into receivership in 2009, Urban Splash entered into a direct contract with the energy supplier which is renewed annually. The servicing of plant, billing and administration for electricity have since been provided by EneryG/ Switch2 as appointed by Urban Splash. Each month there is a bill from the electricity supplier for the electricity consumption for the whole development. The electricity used by the apartments is removed from the single invoice and billed individually to the occupiers with the balance being charged to the communal supply. The electricity is passed on at cost 8.106p per unit day rate, and 5.420p per unit night rate, standing charge £29.01 per month, capacity charge of £4350 per annum.

64. The Tribunal accepts the Respondent's indication as to the position and, in the absence of any sustainable evidence that the charges are inherently unreasonable and having considered the whole of the evidence, the Tribunal has concluded that the utilities costs included in the service charges for the years in question are reasonable and payable by the Respondent.

Management Fees

65. The Applicant has challenged the unreasonableness of the management fees on a general basis. The Respondent has submitted that they are, in all respects, reasonable. The Tribunal heard evidence from Ms Roebuck as to the nature and extent of the management services provided.

66. The management fees included in the service charge are those levied by Mainstay. The Tribunal find that, if Mainstay were to undertake the whole of the management for the services provided, the charges made would, in the absence of any sustainable evidence to the contrary, be reasonable.

67. However, it is evident from the Tribunal's analysis of the provision of the individual services included in the service charge demands that Mainstay do not provide the whole of the management for such services.

68. In particular, the Tribunal has found, as a matter of fact, that Mainstay do not provide the whole, if any, of the management relating to the following:

(i) Insurance – the insurance is effected by Urban Splash; there is no evidence that the Respondent, let alone Mainstay, has any involvement whatsoever with the provision of insurance; it was submitted on behalf of the Respondent that Mainstay were involved in dealing with claims, but there is no evidence to support that submission.

(ii) Caretaking, cleaning and grounds maintenance – these services are the subject of a direct contract between the Respondent and MFM; the Tribunal has already found (at paragraphs 51 and 52 above) that Mainstay have no management role in respect of the provision and that the charges must be assessed on the basis that they included a charge for management of those particular services by MFM.

(iii) Utilities – the provision of electricity is solely commissioned and administered by Urban Splash and there is no evidence of any involvement by the Respondent or Mainstay.

69. The Tribunal is fortified in these findings by the continued failure of the Respondent, or Mainstay acting on their behalf, to provide the basic information requested by the Applicant to enable an assessment to be made of the reasonableness of the charges for these services. The Tribunal has already indicated (at paragraphs 20 and 21 above) that it is evident that the Respondent has continually failed to supply relevant information which could reasonably be expected to be readily available to a competent managing agent with full control of the commissioning and delivery of the services for which charges are demanded and that the Tribunal has no doubt that the Respondent's inability to produce the whole of the information (even up to the date of the reconvened hearing) was as a result of the irregular relationships between the Respondent, Mainstay and Urban Splash.

70. In addition, it is clear from the evidence before the Tribunal that Mainstay have not exercised some of the basic management functions that might be expected. There is scant evidence of any quality control measures or of competitive tendering for some of the services provided, its being considered, in the words of Ms Roebuck with particular reference to MFM, that historic expertise and knowledge, regular presence on site and working relationships were sufficient safeguards. It is trite to say that such measures of suitability and cost-effectiveness are inadequate in any case, but they become indefensible when applied to contractors in the same group.

71. The Tribunal finds, for all the above reasons, that the management fees for each of the years in question are unreasonable. There is a significant and unacceptable shortfall in management delivery of the services for which charges are made. The Tribunal finds that such shortfall merits a reduction of 25% for each of the years in question, that being the Tribunal's estimate, based on its experience of management fees in other developments in the immediate area or in the wider area of the Residential Property Tribunal's Northern Region and RICS guidance, of the fees which might reasonably be charged for the services not provided. The Tribunal is also satisfied on the same basis that the amount payable following the reduction is that which is reasonably due for the management services actually provided.

72. The management fees for the years in question are thus directed to reduced as follows:

(j) for the year ended 31 December 2006 from £25,193 to £18,895

(ii) for the year ended 31 December 2007 from £44,380 to £33,285

(iii) for the year ended 31 December 2008 from £52,480 to £39,360

(iv) for the year ended 31 December 2009 from £53,419 to £40,064

(v) for the year ended 31 December 2010 from £55,400 to £41,550

(vi) for the year ended 31 December 2011 from £56,300 to £42,225

(vii) for the year ended 31 December 2012 from £56,580 to £42,435

and that the amounts due from the Respondent be recalculated accordingly.

COSTS

73. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:

'(1) The Tribunal may make an order in respect of costs only –

... (b) If a person has acted unreasonably in bringing, defending or conducting proceedings in –

... (ii) A residential property case...

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.'

74. Neither party has made an application for the award of costs, although there is still an opportunity to do so (see Rule 13(5)). The Tribunal has, however, considered the position on its own initiative and has determined that, on the basis of the evidence at the time of the Determination, there was no circumstance or particular in which either of the parties had acted unreasonably. The Tribunal concluded that it would not be appropriate or proportionate to award costs to either party or to make an order for the reimbursement of any fees.

75. The Applicant requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Respondent has acted unreasonably in any respect and the Respondent has, in any event, succeeded before the Tribunal in relation to some of the issues. It would not be reasonable or proportionate to make an order.