9338

FIRST - TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/40UB/LSC/2012/0180.**
Property	:	**Flats at Pennard House, Marlborough House, Dulcott House, Dinder House, Draycott House and 9 and 10 Nalder Close, Shepton Mallet, Somerset, BA4 4HG.**
Applicants	:	**The leaseholders of the flats at the above property listed in Schedule 1 to the decision.**
Representative	:	**Mr. Victor Watts, Mrs. Elaine Elliott and Mr. David Lainton appeared in person.**
Respondents	:	**Wallace Estates Limited and Cherrybase Properties Limited.**
Representative	:	**Mr. Hoskins, a trainee solicitor employed by Stevensons, solicitors.**
Type of Application	:	**Determination of reasonableness of service charges, S27A of the Landlord and Tenant Act 1985 (as amended).**
Tribunal Members	:	**Judge J G Orme (Chairman)** **Mr. S Hodges FRICS (Member)** **Mr. M R Jenkinson (Member).**
Date and Venue of Hearing	:	**16 to 18 September 2013.** **Crossways Hotel, North Wootton, Somerset.**
Date of Decision	:	**4 October 2013.**

DECISION

For the reasons set out below, the Tribunal:

1. **Determines that the service charges payable by the leaseholders of Pennard House, Marlborough House, Dulcott House, Dinder House, Draycott House and 9 and 10 Nalder Close, Shepton Mallet for the years ended 31 December 2007, 31 December 2008, 31 December 2009, 31 December 2010 and 31 December 2011 and for the period from 1 January 2012 to 24 March 2013 to the Respondents, Wallace Estates Limited and Cherrybase Properties Limited, are as set out in the spreadsheets attached to this decision at Schedule 2.**

2. **Is unable to determine the liability to pay of individual leaseholders as the Tribunal has not been provided with information as to the period during which the individual leaseholders have held the leases of their respective flats and the amounts if any which have been paid on account of their service charges. The Tribunal anticipates that individual leaseholders will be able to agree their individual figures with the Respondents' managing agents as a result of the determination of the annual service charges. The parties have permission to apply to the Tribunal if they are not able to reach agreement on those issues.**

3. **This decision is not binding on the leaseholders of Flats 2, 4 and 6 Dinder House for the years ended 31 December 2007, 31 December 2008 and 31 December 2009 as their liability to pay service charges for those periods has already been determined by the Leasehold Valuation Tribunal under case reference CHI/40UB/LIS/2010/0105 and CHI/40UB/LAC/2011/0003.**

4. **Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended), that all costs incurred by the Respondents, Wallace Estates Limited and Cherrybase Properties Limited in connection with these proceedings (including any costs incurred as a result of paragraph 5 of this order) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants except that the Respondents may recover the sum of £40 from each leaseholder as a contribution towards the cost of preparing the bundle for the Tribunal.**

5. **Pursuant to rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169, orders the Respondents, Wallace Estates Limited and Cherrybase Properties Limited, to reimburse to the Applicants the sum of £500 being the fees paid by them in respect of these proceedings.**

SCHEDULE 1

List of joined applicants

Mr. H N Dearden	1 Pennard House
Mr. N & Mrs. S Callard	2 Pennard House
Mr. V J Watts	3 Pennard House
Mrs. J H Draycott	4 Pennard House
Mr. J Dearden	5 Pennard House
Mr. M Crouch & Miss E L Day	6 Pennard House
Mr. A Guthrie & Ms C Dionne	1 Draycott House
Mr. I L & Mrs. C A Ellis	2 Draycott House
Mr. R & Mrs. D Meen	3 Draycott House
Mr. D Kierl	4 Draycott House
Mr. G N Salmon	7 Draycott House
Mr. J N Horton	8 Draycott House
Mr. A K & Mrs. P M Hopper	1 Dinder House
Mr. J M J Clifford	2 Dinder House
Mr. B Lainton	4 Dinder House
Ms C Hallett & Ms L Hallett	5 Dinder House
Mr. D J Lainton	6 Dinder House
Mr. J Wenglorz	22 Marlborough House
Mr. A D M Guthrie & Ms C Dionne	24 Marlborough House
Mr. N A & Mrs. S H Callard	26 Marlborough House
Mr. J N Horton	32 Marlborough House
Ms E A Elliott	1 Dulcott House
Mr. R Gillard & Ms K Hardwell	2 Dulcott House
Mrs. P M Roberts	3 Dulcott House
Mr. S C & Mrs. S J Hayter	4 Dulcott House
Mr. D P Peck & J Peck Tomanova	5 Dulcott House
Mr. & Mrs. Jones	6 Dulcott House
Mrs. A J Phillips	7 Dulcott House
Mrs. M Lock	8 Dulcott House
Ms C V Christensen & Ms L V Elston	9 Dulcott House
Mr. T Hill & Ms A Huot	10 Dulcott House
Ms G W Barrow	11 Dulcott House
Mr. R J Patch	12 Dulcott House

Schedule 2

Amounts allowed.
See spreadsheets attached.

Reasons

Background

1. To the south of the town of Shepton Mallet in Somerset, there is an area of modern housing development known as Tadley acres. It consists of a mixture of freehold and leasehold dwellings with some commercial units. Included within this development are the blocks of leasehold flats which are the subject of this application, namely Pennard House, Marlborough House, Dulcott House, and a complex consisting of Dinder House, Draycott House and 9 and 10 Nalder Close. There is an adjoining block known as Cranmore Court which is not part of this application but which is referred to in the evidence. These blocks were constructed in about 2005 to 2006 by J S Bloor (Swindon) Limited.

2. There are 6 flats in Pennard House, 6 in Marlborough House, 12 in Dulcott House, 6 in Dinder House, 8 in Draycott House and one in each of 9 and 10 Nalder Close making a total of 40 flats. There are 6 flats in Cranmore Court.

3. The freehold interest in Pennard House and Dinder House, Draycott House and Nalder Close was transferred to Cherrybase Properties Ltd on 14 December 2006. The freehold interest in Marlborough House and Dulcott House was transferred to Cherrybase Properties Ltd on 20 June 2007. From a letter produced to the Tribunal by Mr. Lainton, it appears that Chilton Estate Management Limited ("Chilton") was appointed to act as managing agent for the freeholder in respect of Dinder House with effect from 1 January 2007. It is likely that Chilton was appointed to act as managing agent for the freeholder for the other blocks at about that time. Chilton remained as managing agent until December 2011.

4. On 13 December 2010, the leaseholders of Flats 2, 4 and 6 at Dinder House applied to the Leasehold Valuation Tribunal for a determination of their liability to pay service charges. On 8 June 2011, that tribunal issued its decision in case number CHI/40UB/LIS/2010/0105 and CHI/40UB/LAC/2011/0003 by which it determined that no service charges were payable by those leaseholders for the periods ended 31 December 2007, 31 December 2008 and 31 December 2009. What became apparent, as a result of that application was that Chilton had not been preparing service charge accounts strictly in accordance with the terms of the leases of the various flats, which required separate service charge accounts for each of 4 separate estates. Dinder House, Draycott House and 9 and 10 Nalder Close form one estate together. Pennard House, Marlborough House and Dulcott House form independent estates.

5. In about March 2012, the freeholder appointed Greenslade Taylor Hunt ("GTH") to act as its managing agent in place of Chilton. At about the same time, the freehold in the blocks was transferred to Wallace Estates Ltd.

6. On 3 December 2012 an application was made to the Leasehold Valuation Tribunal for a determination of liability to pay and reasonableness of service charges in respect of the 4 estates. The applicants were the leaseholders of 27 flats who are named in the application. The respondents named in the application were Cherrybase properties Ltd, Wallace Estates Ltd, Simarc Property Management Ltd, Chilton and GTH. The application asked the Tribunal to consider the service charges for the years 2007 to 2012 and the estimated service charges for 2012 to 2017. The application included an application for an order to be made pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act").

7. A pre-trial review was held on 13 February 2013. The applicants were represented on that occasion by Mr. Watts and Mrs. Elliott. At that hearing, the parties agreed that the correct respondents to the application were Wallace Estates Ltd and Cherrybase Properties Limited ("the Respondents"). The parties agreed that there were 4 separate estates and that there should be separate service charge accounts in relation to each estate. It was agreed that the service charge accounts which were in dispute for each of the estates were the accounts for the years ending 31 December 2007, 2008, 2009, 2010, 2011 and the estimated service charge for the period from 1 January 2012 to 31 March 2013. The Respondents were directed to draw up and to provide to the applicants service charge accounts or estimated service charge accounts for each of the estates for each of those periods. The parties were then directed to meet to go through the accounts and supporting vouchers, so far as they were available, in an attempt to identify those items in the accounts which were agreed and those which were disputed.

8. A further pre-trial review was held on the 13 June 2013. By that time, a number of other leaseholders had applied to be joined as applicants to the application. They were joined as applicants on that occasion. The applicants to the application ("the Applicants") are those persons named and listed in schedule 1 to the decision. They are the leaseholders of 33 out of the 40 flats in the 4 estates. By the time of the pre-trial review the parties had prepared written statements setting out details of their positions. The Applicants were directed to prepare a schedule identifying the items in the service charge accounts which remained in dispute, the amount which was disputed and the reason for the dispute. Permission was given for the parties to file further witness statements if required. The Tribunal directed that the application be listed for hearing over a period of 3 days. It was agreed that the Applicants would be represented at the hearing by Mr. Watts, Mrs. Elliott and Mr. D Lainton. The Respondent's solicitors agreed to prepare a bundle of documents for use by the Tribunal at the hearing. It was agreed that any question about the costs of preparing the bundles would be dealt with by the Tribunal at the hearing. It was directed that the application for an order to be made pursuant to Section 20C of the Act should be determined at the hearing.

9. The application was listed for hearing on 16, 17 and 18 September 2013.

The Law.

10. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20, 20ZA, 20C and 27A of the Act.

11. Section 18 of the Act provides:

1) In the following provisions of this act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent
a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
b) the whole or part of which varies or may vary according to the relevant costs.
2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
3) For this purpose
a) "costs" includes overheads, and
b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

12. Section 19 of the act provides:

1) Relevant costs shall be taken into account in determining the amount of the 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.
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.

13. Section 20 provides that the relevant contributions of tenants are limited if the section applies to any qualifying works or qualifying long-term agreement unless certain consultation requirements have either been complied with in relation to the works or agreement or dispensed with by the appropriate tribunal under section 20ZA. A qualifying long-term agreement is defined by section 20ZA as *"an agreement entered into, by or on behalf the landlord or a superior landlord, for a term of more than twelve months."* In relation to a qualifying long-term agreement, the contribution which may be required from each tenant in relation to that agreement is limited to the sum of £100

during each accounting period if the consultation requirements have not been complied with or dispensed with by a tribunal.

14. Section 27A 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.

Subsections 3 to 7 are not relevant in this application.

15. Section 20C 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, ... leasehold valuation tribunal or the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

2) ....

3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Leases

16. The Tribunal had before it copies of the leases relating to Flat 26 Marlborough House, Flat 6 Dulcott House, Flat 4 Dinder House and Flat 3 Pennard House. Those leases appeared to be substantially in the same form in all material respects. The Tribunal was informed that the leases of the other flats were all in similar form. The extracts quoted below are taken from the lease relating to Flat 26 Marlborough House ("the Lease").

17. The Lease is dated 21 December 2006 and was made between J S Bloor (Swindon) Ltd as landlord and Neil Antony Callard and Susan Helena Callard as tenants. The Lease demises Flat 26 Marlborough House to the tenants for a term of 125 years from 21 June 2006 at an annual rent of £150 per year. The Lease provides that the service charge is payable as additional rent.

18. Clause 1.7 of the Lease defines "*The Estate*" as *"the land shown edged green on the Plan comprised in the title numbers above mentioned being the buildings and gardens and grounds surrounding the same for use of the owners and occupiers thereof."* The Tribunal was

provided with a plan showing the extent of the land included in each of the 4 separate estates.

19. Clause 1.15 of the Lease defines "*The Service Charge*" as *"the Service Charge Percentage of the Annual Maintenance Provision as calculated in accordance with the Fifth Schedule"*. Clause 1.16 defines *"The Service Charge Percentage"* as *"16.67% of the expenditure incurred by the Landlord in performance of its obligations under the Fourth Schedule (or such other proportion as may be determined pursuant to part II of the Fifth Schedule)"*. The service charge percentage for Pennard House is also 16.67%. The service charge percentage for Dulcott House is 8.33%. The service charge percentage for Dinder House with Draycott House and 9 and 10 Nalder Close is 6.25%.

20. Clause 1.18 defines *"The Services"* as *"the services set out in the Fourth Schedule hereto."*

21. By clause 5 of the Lease, the tenants covenanted with the landlord and separately with every other tenant of the premises forming part of the estate

> *"5.1 To pay to the Landlord on the date hereof a proportionate sum on account of Service Charge to the next following 24 March or 28 September and thereafter on 25 March and 29 September in each year such sum as the Landlord shall consider is fair and reasonable on account of the Service Charge and forthwith on receipt of the Certificate (as hereinafter defined) to pay to the Landlord any balance of the Service Charge then found to be owing PROVIDED ALWAYS that any overdue Service Charge may be recovered by the Landlord as if the same were rent in arrears."*

22. The landlord's covenants are set out in clause 6 of the lease. At clause 6.1 is a covenant "*To provide and perform the Services*". Clause 6.1.1 allows the landlord to employee managing agents to manage the estate. At clause 6.2 the landlord covenants

> *"As soon as practicable after the end of each financial year (as hereinafter defined) of the Landlord to furnish the Tenant with an account of the Service Charge payable for that year due credit being given for the advance contribution relevant to that year and amounts carried forward from previous financial years (if any) and to carry forward to the next financial year any amount which may have been overpaid by the Tenant as the case may require and for the purpose of this clause:*
> *6.2.1* ... (defines financial year)
> *6.2.2 The amount of the Service Charge shall be ascertained and certified annually by a certificate of the annual expenditure ("the Certificate") signed by the Landlord or the managing agents so soon after the end of the financial year of the Landlord as may be practicable and shall relate to such years in manner hereinafter mentioned.*
> *6.2.3 The Certificate shall show the Annual Maintenance Provision as calculated in accordance with the Fifth Schedule*

6.2.4 A copy of the Certificate of each such financial year shall be issued to the Tenant and the Tenant may by prior appointment with the Landlord within 28 days of the issue of the Certificate inspect the vouchers and receipts in respect of the expenditure and outgoings for the year.

23. Clause 7 contains a covenant by the landlord to insure the buildings on the estate. It was accepted by the Respondents for the purpose of this application that the leases do not contain provision for the cost of insurance to be recovered as part of the service charge.

24. The 4th schedule to the Lease sets out the services to be provided and obligations to be discharged by the landlord. The landlord is responsible for maintaining and keeping in good repair the main structure of the buildings, the service media, the main entrances, passages, landings and staircases, the bin stores and the common parts of the estates. The landlord is responsible for maintaining any gardens comprised in the common parts, to keep clean and lighted the main entrances, forecourts, passages, landings and staircases of the buildings and to maintain any entry phone systems. The landlord is responsible for the external decoration of the buildings and for cleaning the windows of the common parts. Paragraph 11 provides for the landlord:

"To keep full accounts and records of all sums expended in connection with the matters set out in this part of this Schedule and to prepare and serve upon the tenants of all the apartments in the Buildings from time to time the Certificate and such other documents as are required to be served by the Landlord on the Tenant."

25. Paragraph 13 requires the landlord:

"To take reasonable steps to enforce a proper contribution to the Landlord's expenses by all persons required to contribute."

26. Paragraph 17 requires the landlord:

"To provide an account not less than once in every 12 months showing the amount expended by the Landlord and the performance of its obligations hereunder during the previous 12 months (or if less, since the date of the account last produced) and to credit the Tenant with any overpayment made."

27. There is a proviso to the schedule which permits the landlord to employ contractors or agents including auditors to audit the service charge accounts if it thinks fit. A further proviso to the schedule provides that:

"the expenditure and outgoings properly incurred by the Landlord (and included in the Service Charge) in any financial year shall include:

a) The cost of performing the covenants on the part of the Landlord contained in this part of this Schedule

b) The cost of any managing agents employed to carry out the functions of the Landlord in respect of this part of this Schedule

c) *Provision for such anticipated future expenditure of a periodic or recurring nature in respect of this part of this Schedule as the Landlord shall in its sole discretion allocate to the financial year in question as being fair and reasonable in the circumstances.*

28. The 5th schedule to the Lease provides for variation of the service charge percentage and for computing the annual maintenance provision. Paragraph 1 provides for an estimated service charge account to be prepared not later than the beginning of March immediately preceding the commencement of the maintenance year. Paragraph 2 provides that:

The annual maintenance provision shall consist of a sum comprising:

i. *the expenditure estimated as likely to be incurred in the maintenance year by the Landlord for the purposes mentioned in the Fourth Schedule together with*
ii. *an appropriate amount as a reserve for or towards those of the matters mentioned in the Fourth Schedule as are likely to give rise to expenditure after such maintenance year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year during such unexpired term ...*
iii. *a reasonable sum to remunerate the Landlord for its administrative and management expenses....*

29. Paragraph 3 provides:

i. *After the end of each maintenance year the Landlord shall determine the Maintenance Adjustment calculated as set out in the next following subparagraph*
ii. *The Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2(i) above shall have exceeded or fallen short of the actual expenditure in the maintenance year.*
iii. *The tenant shall be allowed or shall on demand pay as the case may be the proportion of the Maintenance Adjustment appropriate to the Demised Premises.*

The Inspection.

30. The Tribunal inspected the property on 16 September 2013. The Applicants were represented by Mr. Watts, Mrs. Elliott and Mr. D Lainton. The Respondents were represented by Mr. Hoskins, Mr. Clarke, an employee of GTH who is now responsible for managing the property on behalf of the Respondents and Mr. Norman, an employee of GTH who was able to provide access to the property.

31. The Tribunal was shown the boundaries of each of the 4 estates. The Tribunal inspected the external common parts of each estate including the parking areas and the bin stores. The Tribunal inspected the internal common parts of each estate which were all in similar condition. The floors were covered with carpet, the walls and ceilings

were painted plaster. There were service cupboards on each floor, those on the ground floors containing meters for services. The internal common parts were equipped with lighting, smoke sensors, fire alarm systems and emergency lighting. There were individual postboxes in each block. Each estate had its own bin store. In each of the bin stores there was a tap. The water supply to the taps had been disconnected. There were no drains beneath the taps.

32. The internal and external communal areas of each of the estates appeared to be maintained in a reasonable condition.

33. Pennard House consisted of 6 flats arranged on 3 floors with 2 flats on each floor. Mr. Watts pointed out that the internal lights appeared to be on permanently even during the day. A rear door leads to the parking area which is surfaced with tarmac. There were 2 uncovered parking spaces and 3 covered parking bays. There appeared to be living accommodation over the parking bays which was not included in the estate.

34. Dinder House and Draycott House form part of the same building but have separate entrances. Dinder House consists of 6 flats arranged on 3 floors with 2 flats on each floor. Draycott House consists of 8 flats arranged on 4 floors with 2 flats on each floor. Both houses have external doors leading to the same parking area which is surfaced with tarmac. There were 9 uncovered parking spaces and 6 covered parking bays. There were 2 external stores, one used as a bin store and the other used as a cycle store. There was no tap in the cycle store. Flats 9 and 10 Nalder Close are located above the covered parking bays and the stores. They have their own separate individual entrances. Mr. Clarke pointed out the communal aerial on Dinder House which serves the estate.

35. Marlborough House consists of 6 flats arranged on 3 floors with 2 flats on each floor. In the front of the building there is an uncovered parking area with 6 spaces which is covered with tarmac. Immediately in front of the building is a narrow strip of hedging surrounded by metal railings. To the rear of the building there is an area of lawn with 2 trees surrounded by metal railings. Marlborough house has no rear door. The bin store is incorporated within the building but has a separate access door at the side of the building.

36. Dulcott House consists of 12 flats arranged on 3 floors with 4 flats on each floor. There is a parking area in front of the building surfaced with block paving. There were 9 uncovered parking spaces. The bin store forms part of another building and has its access door across the parking area. On the west side of the building is a small area of grass surrounded by metal railings. Mrs. Elliott drew the Tribunal's attention to the peeling exterior paintwork on several of the ground floor windows of the building.

The Hearing and the issues.

37. The hearing took place at the Crossways Hotel, North Wootton, Somerset on 16, 17 and 18 September 2013. Mr. Watts, Mrs. Elliott and Mr. D Lainton presented the case on behalf of the Applicants. Mr. Hoskins appeared on behalf of the Respondents. Mr. Clarke gave evidence on behalf of the Respondents.

38. A large number of issues were raised in the application, many of which were no longer relevant by the time of the hearing. The main contention of the Applicants was that the Respondents had failed to provide sufficient information about the service charge accounts to allow them to decide whether or not the service charges were fair and reasonable. It appeared to the Tribunal that much of the distrust existing between the Applicants and the Respondents arose from the lack of information provided by Chilton and the fact that some of the information provided was inaccurate such as charging for gardening services when there were no gardens and charging for water when there were thought to be no external water taps.

39. During the course of the hearing, the main issues to emerge were:
    a. Should the Respondents be able to recover expenditure which they could demonstrate had been incurred but for which they had no invoice or other detail describing the work undertaken or the estate on which the work was carried out?
    b. Should payments for services which were provided across all estates, such as cleaning, be treated differently?
    c. If so, was the method of apportionment used by the Respondents fair?
    d. In respect of cleaning services, were the sums paid to Carter Cleaning Limited ("Carter") reasonable? If not, what sum should be allowed? Was the service provided to a reasonable standard?
    e. In respect of managing agents fees, were the sums paid to Chilton reasonable? If not, what sum should be allowed? Was the service provided to a reasonable standard?
    f. Was it reasonable for the Respondents to claim for the cost of 2 Fire inspections each year?
    g. Was it permissible for the Respondents to include as part of the service charge the cost of repairs arising from water damage to flats in Draycott and Dinder House in 2008 which was subject to an insurance claim?
    h. Were the costs for gardening services at Dulcott and Marlborough House reasonable?
    i. Was there a requirement for consultation in respect of the agreements made between the Respondents and Chilton and/or GTH?
    j. Should the Tribunal make an order under Section 20C? Should there be a separate order in respect of the costs of preparation of the bundle for the hearing?

40. A number of other minor issues arose during the course of the hearing which will be dealt with as they arise.

The Evidence and the Submissions.

41. If Chilton produced any accounts, they were not submitted in evidence before the Tribunal. It was accepted by the parties that if Chilton had produced any accounts, they did not comply with the terms of the Lease. Following the first pre-trial review, the Respondents instructed accountants to prepare new service charge accounts based on the evidence which the Respondents had been able to recover from Chilton. The Respondents were unable to produce any invoices for expenditure incurred in 2007, 2008 and part of 2009. For those periods, the Respondents relied solely on the nominal account ledgers maintained by Chilton and copies of the bank passbooks. From those documents, it was possible to ascertain what payments had been made on behalf of the Respondents. Some entries in the ledgers and the passbooks were annotated to indicate the nature of the item for which payment had been made and, occasionally, to indicate to which estate the payment related. From that information, the accountants had drawn up accounts based on payments which they could establish had been made. The accountants included only those items for which there was an entry in the nominal account ledger and a corresponding entry in the passbooks. Where it was not possible to identify the estate to which the payment related, the payment was apportioned between all estates according to the number of flats in the estates which were occupied at any particular time. Cleaning costs were apportioned in a different manner based on the apportionment of the current cleaning costs. Invoices were available for the majority of items from the middle of 2009 onwards. Where those invoices indicated the estate to which the cost related, the cost was allocated to that estate. Otherwise, the cost was apportioned across all estates in the same manner.

42. Having considered the accounts, the Applicants produced a long and detailed written statement, challenging large parts of the accounts. GTH responded in writing. The Applicants produced a further written statement in reply. GTH then responded again. That response included 30 appendices to the challenges in response to Pennard House alone.

43. Copies of the leases, the service charge accounts and the written statements of the parties were put before the Tribunal in a bundle which consisted of 1082 pages. There was a considerable amount of duplication in the bundle.

44. At the hearing, the Tribunal went through the accounts item by item, taking note of those items which remained in dispute and taking oral evidence in relation to those items where appropriate. Where it is relevant, that evidence will be referred to in the conclusions below.

45. In relation to issues (a), (b) and (c), Mr. Lainton for the Applicants relied on paragraph 11 of schedule 4 of the Lease. He said that as the

Respondents had not produced invoices, it was impossible to verify that funds had been properly expended. If there was no invoice, the Applicants should not be under a liability to contribute. Where the estate was not identified by an invoice, the cost should not be apportioned. He submitted that there was no difference in treatment between specific items of repair and items such as cleaning, which might take place across all estates.

46. For the Respondents, Mr. Hoskins said that the Respondents accepted that the lack of invoices did not put them in a good position. However, he submitted that the evidence of the nominal account ledgers and the passbooks showed that payments had been made. There was no allegation by the Applicants that such payments were fraudulent. The payments had been allocated as shown on the working papers. Only those items which were shown on both the nominal account ledgers and passbooks were included in the accounts. It is clear that services had been provided and that the Applicants had had the benefit of those services. It was only fair and reasonable that the Applicants should bear part of the cost. Where there was an indication that some of the cost might relate to Cranmore Court, 20% of the cost was allocated to that building, which was more than its fair proportion. Where the nominal account ledgers did not indicate to which estate the payment related, then it was fair and reasonable to allocate the cost across all estates. The Respondents do not seek to make a profit from the service charge account. They had already committed to returning payments made in respect of insurance premiums and to make good any deficiencies in the reserve funds. If the Respondents were required to make further large repayments, it may impact on their ability to manage the properties in the future. Mr. Hoskins submitted that when the service charges were viewed overall, they were reasonable for the size of the estates.

47. In relation to cleaning costs, the Applicants submitted that the costs were unreasonable. The present cleaning contractors, Mistletoe Maintenance, had demonstrated that the cleaning service could be provided at a reasonable cost and to a reasonable standard. The Applicants accepted that the Tribunal should make a comparison between the charges made by Carter and by Mistletoe. Mr. Lainton said that the quality of service provided to the internal parts of Dinder House had led to the leaseholders agreeing with Chilton that they would do their own cleaning from 2009. Mr. Watts confirmed that his complaints as to the standard of cleaning related to lack of cleaning in the external common parts and not to the internal parts. Mr. Lainton said that since January 2012, there were no invoices for cleaning the external common parts and, therefore, it was questionable what work needed to be done in previous years in that respect.

48. Mr. Hoskins submitted that there was no evidence of comparable cleaning costs for the period from 2007 to 2011. In those circumstances the Applicants were unable to show that the actual costs incurred were unreasonable. A direct comparison between the costs of

Carter and Mistletoe shows that there is little difference once the effect of VAT and external cleaning was excluded. He also submitted that as the proprietor of Mistletoe was Mr. D Lainton, the costs charged by Mistletoe do not represent a fair independent comparable. As to the quality of service provided, Mr. Hoskins said that there was no real evidence from the Applicants that the service was poor. He submitted that the burden of proof is on the Applicants to show that the cost was unreasonable and that the service was poor. He pointed to the fact that no application was made until December 2012 as an indication that there was no evidence of a poor service. As for the external cleaning, some work must have been done over a 6 year period, otherwise it could reasonably be expected that the properties would be in a considerably worse state.

49. In relation to managing agents' fees, Mr. Lainton said that the Applicants had demonstrated that Chilton did not provide a reasonable standard of management. The Respondents had not policed the level of service provided. Chilton had not provided supporting documentation to justify their accounts. That resulted in the Respondents having to employ accountants to draw up accounts subsequently. Mr. Lainton accepted that some management had been carried out but said that there had been a failure to maintain records and answer questions raised by the leaseholders.

50. Mr. Hoskins accepted that some services provided by Chilton were inadequate especially in the early years of 2007, 2008 and part 2009. He accepted that all of the invoices and accounts should have been available for inspection. However, he submitted that Chilton must have provided some management services, namely arranging contractors, ensuring that work was undertaken, paying the contractors and issuing demands for interim service charges. The management fees for 2007 were considerably lower than those in later years. The Applicants had challenged fewer items in the accounts in later years and therefore a higher management fee was justified in those years. Again, Mr. Hoskins pointed to the fact that the Applicants had waited until December 2012 before making their application as evidence that they were not complaining about the level of service. Mr. Hoskins accepted that it would be reasonable for the Tribunal to determine a reasonable fee for management on the basis that the service was provided properly and then apply a percentage discount to take account of inadequate services.

51. In relation to fire inspections, the Applicants said that it was only necessary for there to be one fire inspection each year. The Respondents had produced no evidence to show that two inspections were required by the insurance policy. Mrs. Elliott had given evidence of making enquiries of the service provider and having been told that only one inspection was required but two were recommended.

52. For the Respondents, Mr. Hoskins said that it was reasonable to have two inspections each year. The Respondents had a duty of care to the

occupiers to ensure that the premises were safe and complied with the terms of the insurance policy. He relied on the evidence given by Mrs. Elliott to support the suggestion that two inspections were recommended. Mr. Hoskins said that bi-annual inspections were in line with good management practice.

53. During the course of the examination of the accounts, certain items of expenditure on repairs were challenged by the Applicants on the basis that they represented the costs of repairing damage caused by a water leak in Flat 8 Draycott House which resulted in damage to that flat and other flats including Flat 6 Dinder House. Mr. Lainton gave evidence about the incident and said that he understood that all the costs had been recovered from the insurance company. Mr. Hoskins submitted that this had been raised for the first time at the hearing. The Applicants had had the accounts since 12 April 2013 and had had a meeting with the managing agents and the accountants on 10 May in order to go through the accounts. They had not raised this issue on that occasion. Mr. Hoskins submitted that this objection should not be taken into account or, alternatively, the Respondents should be allowed an adjournment to provide further information in relation to the claim.

54. During the examination of the accounts, some items were noted where costs had been apportioned between all estates when it was clear that part of the cost should not have been allocated to one or more estates. For instance, some costs relating to grass cutting had been allocated to Pennard House and Dinder House, neither of which have any grass. The Respondents accepted that, in those circumstances, the cost should be deleted from the estate to which it did not apply and that the additional cost should not be added back to the accounts of those estates to which they apply.

55. At a very late stage in the hearing, Mr. Watts argued that there had been no consultation in relation to the agreements reached between the Respondents and Chilton and GTH for management of the property. He said the consultation was required as the agreements were qualifying long-term agreements. He had originally raised this argument in a document which he had sent to the Respondents on 4 September 2013. Mr. Watts accepted that there was no evidence before the Tribunal as to the terms of the agreements on which the Tribunal could make any finding that the agreements were qualifying long-term agreements. In the circumstances, he did not pursue the argument.

56. In relation to section 20C, Mr. Watts relied on the submission in the application. He said that it would not have been necessary for the Tribunal to consider the matter if the accounts had been properly prepared in the first place. The Respondents had continued to charge insurance notwithstanding the earlier decision of the Tribunal in 2011.

57. Mr. Hoskins submitted that the Tribunal should not make an order under section 20C. He gave details of the substantial costs incurred by the Respondents in dealing with the application. The service charge

accounts did not include any element of costs for preparation of the accounts. The costs incurred by the Respondents represented less than £500 per estate per year. He submitted that the Respondents had acted in a reasonable and fair way and had assisted the Applicants to come to a fair conclusion. The Respondents had conceded on the insurance issue at the earliest possible opportunity. The Respondents had provided all the evidence available in the accounts following the Tribunal's directions and had tried to work with the Applicants. If the Applicants had made an application in a timely manner in relation to the years 2007 to 2009, the invoices would have been available and costs would have been less. The Respondents had not been aware of the previous tribunal application. As soon as they became aware of the issues, Chilton were removed as managing agents. It would be unfair to the Respondents if they were not able to recover their costs incurred in connection with the application.

58. Neither party applied for an order for costs against the other. For the Applicants, Mr. Watts asked for an order for reimbursement of the fees incurred by the Applicants. Those fees amounted to £500. The fees had been incurred as a result of Chilton's failure to prepare accounts. The Applicants did not know about the Tribunal until a year ago and the application was as a result of Chilton's failure to answer requests.

59. Mr. Hoskins said that the Applicants ought to have been aware of the existence the Tribunal. They could have made their application earlier. He submitted that there should be no order for reimbursement of fees.

Conclusions

60. The Tribunal will first state its conclusions on the general issues and then deal with any specific issues which remain. Any reference to a page number is a reference to a page in the bundle of documents before the Tribunal.

61. **Invoices and apportionment.** The Tribunal does not lose sight of the fact that if Chilton had done its job properly in the first place by keeping proper records and drawing up proper service charge accounts, there would have been no need for the Respondents to instruct accountants to recreate the accounts once this application had been made. Chilton was employed by the Respondents as their managing agent. The Respondents must accept responsibility for the default of Chilton. The Tribunal does not accept the submission made on behalf of the Respondents that there was an obligation on the Applicants to have raised the issue earlier so as to avoid the complications which now exist.

62. The Lease requires the Respondents to keep proper records and to draw up service charge accounts. That is set out at paragraphs 11, 13, 17 and 18 of the 4th schedule to the Lease. Where the Respondents have been unable to produce an invoice for costs incurred, there is no evidence as to what work needed to be carried out, what work was actually done, to which estate the work was done or the service

provided. Without that information, the Tribunal is unable to assess whether the cost was reasonably incurred nor whether the work was carried out to a reasonable standard. The evidence contained in the nominal account ledgers and the bank statements merely provide evidence of a payment having been made. It does not provide the information required by the Tribunal. There are some instances where the nominal account ledger provides some evidence about the estate to which the work related but it still does not provide the other information required. For those reasons, with some exceptions, the Tribunal determines that, where the Respondents have been unable to produce an invoice for the cost alleged to have been incurred, that cost will be disallowed.

63. The Tribunal accepts that there may be some exceptions to that general rule where the name of the payee makes it self-evident what services were provided and the Applicants do not dispute that such a service was provided (even though the standard of service may be disputed). In particular, this applies to cleaning services, fire inspections and managing agents' fees.

64. The Tribunal does not accept the Respondents' submission that where they have shown that a payment has been made but they are unable to identify the estate to which the work or service related then it is fair and reasonable to apportion the cost between all the estates. In relation to each separate service charge estate, the Respondents must demonstrate that a specific cost has been incurred for that estate in order to be able to recover the cost through the service charge.

65. Where the Respondents have been unable to produce an invoice but the Tribunal accepts that the cost applies across all estates and is an exception to the general rule or where the Respondents have been able to produce an invoice for services provided across all estates without the invoice specifying the apportionment, the Tribunal accepts the method of apportionment applied by the Respondents as being fair and reasonable. That method was not challenged by the Applicants.

66. There are some items of expenditure (principally relating to gardening) where the cost has been allocated across all estates and the Respondents now accept that the full cost should have been allocated to one or two estates only. In those cases, the Tribunal will disallow that part of the cost allocated to the estates were no service was provided but it will not add back the extra cost to the estates where the cost was provided. That was accepted by the Respondents.

67. **Fire inspections**. In relation to fire inspections, the Tribunal accepts the Respondents' submissions that bi-annual fire inspections represent good management practice. The Tribunal determines that the cost of bi-annual fire inspections was reasonably incurred.

68. **Cleaning.** In relation to cleaning of the internal communal areas of the estates, there is evidence that a contract was in place for the

cleaning of all estates and that some cleaning was being carried out. The Applicants accept that fact.

69. Mr. Watts expressed dissatisfaction with the standard of cleaning services provided and said that he could produce many letters and emails and give evidence of many telephone calls in which complaints were made to the managing agents about the standard of service provided. However, he did not produce any actual evidence of that fact and in submissions accepted that his complaints related to external areas only. The only real evidence was in relation to Dinder House when Mr. Lainton gave evidence that an agreement was made between the leaseholders of Dinder House and Chilton in 2009 for the leaseholders to do their own cleaning from 1 July 2009 until the end of 2011. The Tribunal accepts that evidence. However, the Tribunal notes that the leaseholders of Draycott House continued to use the cleaning services provided by Chilton, as did the other estates. On the basis of the evidence before the Tribunal, the Tribunal does not accept the evidence of an unsatisfactory service except in relation to Dinder House.

70. The Tribunal finds as a fact that the Respondents employed cleaners to clean the internal common parts of the estates and that the reasonable cost of that service is recoverable except in relation to Dinder House for the period from 1 July 2009 to 31 December 2011. The Tribunal accepts that it is reasonable to apportion the total cost of that service between the estates in the manner carried out by the Respondents, namely 17% each to Pennard and Marlborough, 28% to Dulcott and 38% to Dinder. The Applicants did not dispute that method of apportionment.

71. Chilton employed Carter to provide the cleaning service. The amount charged by Carter was reduced in about July 2009. It may be that that was due to removing Dinder House from the contract and including Cranmore Court. However, there was no clear evidence to that effect. The Respondents have continued to apportion part of the cost of cleaning to Dinder House (as opposed to Draycott House) even when no service was provided. Therefore, that part of the cost allocated to Dinder House when no cleaning was provided must be disallowed with no corresponding increase in cost for the other estates.

72. GTH now employ a firm called Mistletoe Maintenance to provide cleaning services. Mistletoe charge £130 to clean the internal communal parts of the 4 estates including cleaning the internal surfaces of communal windows. Mistletoe is not registered for VAT. Mistletoe cleans once every fortnight. The evidence before the Tribunal shows that Carter charged £161.96 plus VAT for a fortnightly clean of the internal communal areas in April 2009 (page 509). That was reduced to £144.86 plus VAT in October 2009 (page 516) to include Cranmore Court and to exclude Dinder House.

73. The Applicants contended that Carter was very expensive, partly because it had to travel from Colerne and partly because it was registered for VAT and VAT was payable in addition. Neither party produced any evidence as to the availability of other cleaning companies in the area during the period 2007 to 2011, whether those companies were or were not registered for VAT nor what those companies might have charged. The Tribunal takes note of the fact that the proprietor of Mistletoe is Mr. David Lainton, who is an interested party. There must therefore be a possibility that Mistletoe has agreed a preferential rate. There is no evidence before the Tribunal as to what other cleaning companies might have charged in 2012. The Tribunal determines that it was reasonable for Chilton to employ a contractor who was registered for VAT. There is no evidence before the Tribunal to satisfy the Tribunal that the cost charged by Carter was excessive or unreasonable. The Tribunal determines that the cost charged by Carter was reasonable. The reduction of costs in 2009 may have been due to change in areas to be cleaned or competition but the Tribunal has no evidence of that fact.

74. In relation to cleaning of the external surfaces of communal windows, the invoices show that Carter carried out a quarterly clean of the communal windows. There was no evidence before the Tribunal of any comparable charges. There was no suggestion by the Applicants that the price was not reasonable nor did they suggest that the service was not carried out to a reasonable standard. There was no evidence before the Tribunal as to the present arrangements for external window cleaning. The Tribunal determines that the charges made by Carter for cleaning external windows was reasonable. The Tribunal accepts the method of apportionment between the estates as being fair. There is no evidence that Dinder House was excluded from the exterior window cleaning at any stage and the Tribunal accepts that a proportion of the cost should be applied to Dinder House.

75. An analysis of the Carter invoices which have been produced by the Respondents for 2009 to 2011 shows that although the clean of internal areas was described as fortnightly there were, in fact, only 2 cleans per month or 24 per year. Likewise, the external window cleaning is described as quarterly but it appears that only 3 cleans were carried out each year. There was no other evidence to the contrary.

76. In relation to cleaning of external communal areas, the invoices show that Carter charged £75 plus VAT for a monthly clean of the external areas. Chilton caused a considerable amount of confusion by referring to this work as gardening when 2 of the estates have no gardens. That confusion has now been removed. The total cost of the service for all estates was £900 per year plus VAT. The Respondents produced no evidence as to what work was actually carried out but the Tribunal accepts that there would have been occasional rubbish to pick up, some weeds to remove from cracks in paving during the summer and some leaves to be removed in the autumn. Mr. Watts gave evidence that he had never seen anyone doing any external cleaning. GTH do not have a

regular contract for external cleaning and arrange for work to be carried out as and when it is needed. The Tribunal considers that the amount charged was very high for a service when it is questionable whether it was required and whether it was actually carried out. The Tribunal is not satisfied that the cost was reasonably incurred or that the service was provided to a reasonable standard. The Tribunal determines that the total cost of external cleaning is disallowed.

77. **Managing Agents' fees.** In relation to managing agents, both parties agreed that it would be reasonable for the Tribunal to proceed on the basis of determining what would be a reasonable fee to charge on the assumption that the work had been carried out properly and then to apply a percentage reduction to provide for any deficiency in the standard of service.

78. On the basis of the evidence before the Tribunal, it appears that the actual cost charged by Chilton was £506.66 per month in 2007 (page 605), £550.74 per month in 2008 (page 678), £574.06 per month in 2009 (page 691), £725.06 per month in 2010 (page 705) and £776.03 per month in 2011 (page 719). The figures for 2007, 2008 and 2009 related to the 4 estates. The figures for 2010 and 2011 included Cranmore Court. Those figures all include VAT.

79. By multiplying those figures by 12, it is possible to obtain the total amount charged by Chilton in each year. Dividing the total figure by the number of flats managed, produces a figure for the management charge per flat per year including VAT. On the basis that the figures for 2007, 2008 and 2009 related to 40 flats and for 2010 and 2011 related to 46 flats, the resulting figures are £151.99 in 2007, £165.22 in 2008, £172.22 in 2009, £189.15 in 2010 and £202.44 in 2011. That compares with the figure charged in 2012 by GTH of £150 plus VAT making a total of £180 per flat per year. The Applicants did not dispute GTH's charge.

80. There was no evidence before the Tribunal as to what a reasonable charge might be in each year. The Tribunal accepts that more work is involved in managing each block as a separate service charge estate, particularly in relation to administration and accounts. On the other hand, there ought to be economies of scale resulting from the estates being adjacent. Using its own experience, the Tribunal considers that a reasonable fee in 2007 would have been in the region of £125 plus VAT, which equates to a total of £146.88 per flat per year. That is only £5 less than the charge made by Chilton. In the circumstances, the Tribunal accepts the figure charged by Chilton in 2007 as a reasonable charge. It equates to £129.35 plus VAT.

81. The Tribunal accepts the figure of £150 as a reasonable charge in 2012. It is reasonable to allow annual increases between those dates. On that basis, the Tribunal determines that the reasonable charge per flat per year was £130 in 2008, £135 in 2009, £140 in 2010, £145 in 2011 and £150 in 2012. To those sums must be added VAT at the appropriate

rate, which was 17.5% to 30 November 2008, 15% from 1 December 2008 to 31 December 2009, 17.5% from 1 January 2010 to 3 January 2011 and 20% from 4 January 2011.

82. It would be normal for the managing agent's fee to include the cost of keeping records and preparing the service charge accounts. There is no evidence before the Tribunal that Chilton did not include those services in their fee. The Tribunal noted that the hearing proceeded on the basis that Chilton ought to have prepared the service charge accounts. The figures quoted in the preceding paragraph are on the basis that the charge includes the cost of keeping proper records and preparing the service charge accounts.

83. The Tribunal accepts the Respondents' submission that Chilton carried out some work as managing agents. It is clear that it appointed contractors, it ensured that work was carried out, it paid contractors, it demanded payments on account of service charges and it arranged insurance. However, it is also clear that there were serious deficiencies in the service which it provided. Chilton failed to understand the terms of the leases, it failed to keep proper records of expenditure (although there are more records for later years), it failed to prepare appropriate service charge accounts for each estate and there is evidence that it failed to communicate satisfactorily with the leaseholders. The Tribunal considers that those failings were very serious both for the freeholder who wanted its expenditure to be recovered from the leaseholders and for the leaseholders who wanted to know what they were being asked to pay for. The Tribunal considers that the appropriate reduction to make is 50% of the managing agents' fees. That reduction will apply to each of the years 2007 to 2011. Notwithstanding the fact that there were more records available for later years, Chilton still failed to produce proper service charge accounts for all of the years.

84. In 2007 it appears that Chilton raised charges for 9 months only for Pennard and Dinder and for 4 months for Marlborough and Dulcott. For that year the managing agents' fees will be reduced accordingly. For the remaining years, the Tribunal has multiplied the annual rate per flat by the number of flats to get the maximum amount chargeable per year. The Tribunal has then compared that amount with the amount actually claimed and adopted the lower figure.

85. **Insurance claim.** In relation to the insurance claim, the Tribunal accepts the evidence from Mr. David Lainton that the items of expenditure for Hydro-Dynamix and David Lainton on 24 September 2008 and for 21st Century on 24 October 2008 (page 271) relate to an event when there was a flood at Flat 8 Draycott House which was the subject of an insurance claim. The Respondents have been unable to produce any invoices in relation to these items and therefore they are disallowed in any event. However, if the expenditure related to the internal parts of flats, the cost would not be recoverable as part of the service charge as it was not a cost provided for by the 4th schedule of

the Lease. Although it is not necessary for the Tribunal to make any determination in this respect, in so far as Chilton received a payment from the insurance company and that payment was paid into the service charge account, the Tribunal can see no reason why that payment should not now be taken out of the service charge account to set against the expenditure to which it related.

86. **Reserve funds.** It should be noted that in the application, the Applicants raised issues in relation to the treatment of the reserve funds. They did not dispute the fact that a reserve fund could be established and be funded through the service charge. Their concern was that Chilton had not properly accounted for the contributions which had been collected for the reserve funds. The Respondents confirmed that no payments had been made which ought properly to have been paid for out of the reserve funds although they accepted that moneys collected may have been used to meet other existing liabilities. The Respondents agreed that once the correct amount of service charges had been established and on the assumption that all leaseholders pay their service charges in full, then the amounts standing to the credit of the reserve funds would be as shown as a general reserve in the balance sheet in the service charge accounts for the period ended 24 March 2013 for each estate. On that basis the Applicants did not dispute the amount of the contributions to the reserve funds.

87. Having reached those general conclusions, the Tribunal has prepared spreadsheets, which are attached as Schedule 2 to the decision, showing the service charges claimed for each estate for each year and showing the service charges which are allowed for each estate for each year. Where there are specific issues in relation to a particular item, they are dealt with below.

2007

88. For 2007 the Tribunal has disallowed all items claimed for repairs and maintenance and "other" on the basis that no invoices were available. The water charges were agreed.

89. For cleaning, the Tribunal has taken the cost of an internal clean at £161.96 and window cleaning at £128.44. That has been apportioned 17% to each of Pennard and Marlborough, 28% to Dulcott and 38% to Dinder. That results in a cost per internal clean of £27.53 for each of Pennard and Marlborough, £45.35 for Dulcott and £61.55 for Dinder. The cost per window clean is £21.83 for each of Pennard and Marlborough, £35.97 for Dulcott and £48.81 for Dinder.

90. Allowing 24 cleans of the interior and 3 window cleans for Pennard and Dinder and 8 cleans of the interior and 1 window clean for Marlborough and Dulcott and adding VAT at 17.5% results in maximum allowable costs of £853.30 for Pennard, £1,907.77 for Dinder, £284.43 for Marlborough and £486.55 for Dulcott. As the

amounts claimed in the accounts are less, the amounts claimed have been allowed.

91. For management fees, the rate allowed is £129.35 per flat reduced by 50% to £64.68. With VAT, that amounts to £76.00 per flat. 9 months have been allowed for Pennard and Dinder and 4 months for Marlborough and Dulcott. That results in total allowable charges of £342.00 for Pennard, £912.00 for Dinder, £152.00 for Marlborough and £304.00 for Dulcott.

2008

92. For 2008, the Tribunal has disallowed all repair and maintenance items (because there were no invoices) except for the costs of Bristol Fire which related to fire inspections, the costs of which have been apportioned using the Respondent's method. The Applicants did not dispute that the inspections had been carried out. As previously indicated, the Tribunal considers bi-annual inspections to be reasonable. The charges for heat, light and water were agreed.

93. For cleaning the Tribunal has done the same calculation as at paragraphs 89 and 90 using the same base costs but allowing for 24 internal cleans and 3 window cleans on each estate. Although VAT was reduced to 15% on 1 December 2008, the Tribunal has worked on the basis of VAT at 17.5% for the whole year as the reduction in VAT for one month would make no substantial difference to the figures. That results in maximum allowable costs of £853.30 for Pennard and Marlborough, £1,405.66 for Dulcott and £1,907.77 for Dinder. As those are less than the amounts claimed, those amounts have been allowed.

94. For management fees, the Tribunal has done the same calculation as at paragraph 91 but based on a rate of £130 per flat and allowing for the full year on all estates. That results in total allowable charges of £458.28 for Pennard and Marlborough, £916.56 for Dulcott and £1,222.08 for Dinder. The Tribunal has disallowed any fees charged in relation to the insurance claim as there was no evidence as to what work was done by Chilton.

2009

95. For 2009, the Tribunal has disallowed all repair and maintenance items for which there was no invoice except the cost of Bristol Fire paid on 28 January (page 290) which is allowed for the reasons set out in paragraph 92. Some invoices were available for the latter part of the year. The Applicants agreed some items but disputed others on the basis that the invoices did not indicate where the work was carried out. Where there was no invoice, the cost has been disallowed. Where the invoice was agreed by the Applicants the cost has been allowed. Of the 2 disputed invoices, one refers to repairs to the rear door of Dulcott House. The Tribunal noted that there was no rear door. That cost has been disallowed. Mr. Lainton disputed the cost of £60 on 1 October and suggested £40 as being reasonable. The Tribunal has accepted that argument. The following items have been allowed apportioned as

shown on the working papers at pages 290 and 291: 28.01.09 Bristol Fire; 17.06.09 Casa Bella; 20.08.09 Case Bella; 20.08.09 Bristol Fire; 01.10.09 Casa Bella (£40 only allowed); 14.10.09 Energy Comms; 26.10.09 Casa Bella; and 27.10.09 Casa Bella.

96. For cleaning the Tribunal has undertaken the same calculation as at paragraphs 89 and 90 but it is complicated by the fact that the rate charged by Carter was reduced with effect from October and the charge for internal cleaning and window cleaning included Cranmore Court but excluded internal cleaning at Dinder House (but not Draycott House). For internal cleaning, the rate was reduced to £144.86. As Cranmore Court replaced Dinder House and they are both of a similar size, that cost has been apportioned as before resulting in a cost per clean of £24.63 for Pennard and Marlborough, £40.56 for Dulcott and £55.04 for Dinder/Draycott. As Dinder was not being cleaned, only half of that amount is allocated to Dinder/Draycott, namely £27.52.

97. For window cleaning, the rate was reduced to £102.54. Dinder House was still included in that work as was Cranmore. Deducting 20% for Cranmore (as adopted by the Respondents) leaves £82.03 to be split between the other estates in the same proportions. That results in a cost per clean of £13.95 for Pennard and Marlborough, £22.97 for Dulcott and £31.16 for Dinder.

98. For Pennard and Marlborough, there were 18 cleans at £27.53, 6 at £24.63, 2 window cleans at £21.83 and 1 at £13.95. With VAT at 15% that amounts to £806.07. The same calculation for Dulcott using the appropriate rates amounts to £1,327.76. For Dinder/Draycott the calculation is 12 cleans at £61.55, 6 cleans at £30.78(half £61.55), 6 cleans at £27.52, 2 window cleans at £48.81 and 1 at £31.16. With VAT that amounts to £1,399.76. Those are the amounts which are allowed.

99. For management fees, the Tribunal has followed the same calculation as at paragraph 91 allowing £135 per flat reduced by 50% and adding VAT at 15% resulting in a figure of £77.63 per flat. That results in a total allowable cost of £465.78 for Pennard and Marlborough, £931.56 for Dulcott and £1,242.08 for Dinder.

100. Mr. Watts disputed the amount of £57 claimed under the heading of "other". The Respondents were unable to produce an invoice to support this sum and the amount is disallowed. For the other estates, the amounts claimed under the heading "other" were not disputed in their points of dispute and the amounts claimed in the accounts are allowed.

2010

101. For 2010, the Respondents produced invoices for all items of repair and maintenance and they were all agreed except for 2 invoices for Pennard House. Both invoices were from JD Electrical Contractors. The invoice dated 23 November was for £60 whereas £90 was claimed. The invoice dated 25 November for £30 did not specify the estate where the work

was done although the nominal account specified Pennard. The Tribunal has accepted both points and disallowed £60 from the total for Pennard.

102. Included in the accounts for Dulcott House is a cost of £1,333.63 for external decorating work on the doors and windows. Mrs. Elliott said that she had no evidence to show that the work was actually carried out and she pointed to the existing condition of the paintwork (which the Tribunal noted to be peeling) as evidence of the fact that the work, if it was carried out, was not done to a reasonable standard. The Respondents relied on the invoice as evidence that the work was carried out. There was no positive evidence before the Tribunal that the work was not carried out as indicated on the invoice. It is impossible for the Tribunal to determine solely by an inspection of the area 3 years later whether or not the work was carried out to a reasonable standard. On the basis of the evidence before the Tribunal, the Tribunal finds that the work was carried out and that there is no evidence to show that it was not carried out to a reasonable standard. The cost is allowed.

103. For cleaning, the Tribunal has allowed for 24 cleans in each block and 3 window cleans. The rates were the same as in the last quarter of 2009. The rate for internal cleaning for Dinder/Draycott has been halved to take account of no cleaning being carried out at Dinder House. VAT has been added at 17.5%. The calculation results in total allowable costs of £743.74 for Pennard and Marlborough, £1,224.76 for Dulcott and £885.90 for Dinder.

104. Management fees for 2010 are allowed at £140 per flat reduced by 50% plus VAT at 17.5% resulting in a charge of £82.25 per flat.

2011

105. For 2011 the Tribunal has disallowed from the charge for repairs and maintenance the invoices for £130 by AB Maintenance on 29 June, for £85 by AB Maintenance on 14 September and £78 by Bath and Bristol on 7 December as the invoices do not show the estate on which the work was carried out. The charges of £84.20 by JD Electrical on 23 November and £65 by MC Electrical on 30 November have been disallowed as there was no invoice. The remaining charges were agreed except that Mr. Lainton challenged an invoice from MC Electrical for £255 on 2 September. As Mr. Watts accepted that invoice and there did not appear to be any substance to Mr. Lainton's challenge, the Tribunal will allow the cost. This results in reductions of £45.26 for Pennard and Marlborough, £112.20 for Dulcott and £164.04 for Dinder.

106. For internal and window cleaning, the charges allowed for Carter are the same as in 2010 except that VAT is charged at 20% resulting in costs of £759.56 for Pennard and Marlborough, £1,250.82 for Dulcott and £904.75 for Dinder. Carter made an additional charge of £66 for fitting an ashtray at Dulcott. That was incorrectly apportioned across

all estates and the cost has been disallowed except for £14.52 allocated to Dulcott.

107. Also included in the cost of cleaning were 4 invoices from Jeff Avis for a total of £470 for mowing and gardening services. The invoices appear to show 1 visit in July when some weed killer was sprayed in addition to mowing, 2 visits in August, 2 in September and 1 in October. The charge was £75 for each visit except the first which was £95. Where the cost has been allocated to estates other than Dulcott and Marlborough, the Respondents accepted that that was incorrect. Mrs. Elliott said that the grass was cut very rarely and as a result the lawn is no longer in a good condition. The only direct evidence as to the reasonableness of the cost is the evidence of what was charged for cutting grass and hedges in 2012. That evidence is not directly comparable because the lower cost charged by Green & Gorgeous does not include the cost of trimming hedges and spraying weed killer. In the absence of other directly comparable quotes, the Tribunal accepts the costs of Jeff Avis as reasonable. If the lack of mowing has resulted in the quality of lawns deteriorating, the costs charged reflect the frequency of cutting. The Tribunal allows the costs claimed. This adds £178 to Marlborough and £196 to Dulcott.

108. The charges for heat, light and water were agreed. The charges for "other" were agreed except for Pennard. As they relate to land registry charges and general administration fees and no detail was available, they are disallowed for Pennard.

109. Management fees for 2011 are allowed at £145 per flat with a 50% reduction plus VAT at 20% resulting in a charge of £87 per flat.

2012/13

110. For 2012/13, all items of repair and maintenance were agreed except that the Respondents agreed that the figure for Dinder should be reduced by £2 and there was a dispute about the charges for the gardener. On the last morning of the hearing, GTH produced copies of estimates which they had obtained for gardening services together with a written explanation as to how the gardening charges were calculated. As a result, the gardening charges were immediately agreed except that it was agreed that £18 had been incorrectly charged to Dulcott for hedge trimming and should be deducted.

111. For this period, GTH had entered into a new contract with Mistletoe for cleaning services. The Applicants agreed the costs incurred and did not criticize the standard of service. Mr. Watts suggested that 2 items (pages 570 and 583) were charged under the wrong heading as they related to repairs. Mr. Lainton supported that complaint. The Tribunal considers that the charge of £42 for clearing rubbish is properly claimed under cleaning costs. It accepts that the charge of £25 for replacing broken bolts should properly be allocated under repairs but as it makes no difference to the total amount claimed, the Tribunal will allow the cost as claimed. All other items in the accounts were agreed.

Costs

112. **Section 20C.** In relation to the application for an order to be made under section 20C of the Act, the Tribunal finds that the application has resulted from the failure by Chilton to understand the terms of the Lease, to keep proper records and to draw up proper service charge accounts for each of the estates. Chilton were the managing agents appointed by the Respondents and for whom the Respondents were responsible. If Chilton had performed their job properly, it is likely that this application would not have been necessary. It was only after the issue of the application and the first pre-trial review that the Respondents agreed to prepare proper service charge accounts for consideration by the Tribunal. The Applicants were entirely justified in pursuing their application to the Tribunal and they have been largely successful in their application. Without it they would not have known what sums were properly due in respect of service charges. In the circumstances, the Tribunal considers that it is just and equitable that the Respondents should bear the cost of this application and should not be able to recover that cost from the leaseholders through the service charge.

113. There is one exception to that and that relates to the costs of preparing the bundles for the hearing of the application. That was a procedural matter. The bundles would normally be prepared by the Applicants and normally they would not be able to recover any costs for doing so. The Respondent's solicitors agreed to prepare the bundles for the benefit of the Tribunal and have saved the Applicants time and expense by doing so. The Respondents have incurred an extra cost of £2,274 plus VAT. The Tribunal takes into account the fact that it would not have been necessary for bundles to have been prepared if accounts had been properly drawn in the first place. The Tribunal considers that it is just and equitable that the Applicants should bear some part of the cost of preparation of the bundles. The Tribunal considers that the sum of £40 per flat is reasonable.

114. For those reasons, the Tribunal makes an order under section 20C, preventing the Respondents from recovering any part of their costs incurred in connection with this application through the service charge with the exception of £40 per leaseholder.

115. **Fees.** Exactly the same arguments apply in relation to the application by the Applicants for reimbursement of their fees. The Tribunal considers that it is just and equitable to make such an order and makes an order for reimbursement of £500. The Respondents should ascertain from Mr. Watts and Mrs. Elliott who of the Applicants incurred that cost and make reimbursement accordingly. For the avoidance of doubt, the order made under section 20C applies to this cost as well.

Right of Appeal

116. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 231C of the Housing Act 2004 or section 11 of the Tribunals, Courts and Enforcement Act 2007.

117. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.

118. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

J G Orme
Judge of the First-tier Tribunal
Dated 4 October 2013

Dukes Rise, Shepton Mallet,
Case No. CHI/40UB/LSC/2012/0180
Schedule 2 to the decision of the First-tier Tribunal

Reconstituted service charge accounts for the year ended 31 December 2007

Item	Pennard House		Marlborough House		Dulcott House		Dinder, Draycott & Nalder		Comments
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	
	£	£	£	£	£	£	£	£	
Repairs and Maintenance	57.00	0.00	32.00	0.00	65.00	0.00	151.00	0.00	No invoices available
Cleaning	721.00	721.00	240.00	240.00	395.00	395.00	1608.00	1608.00	See para 90 of reasons
Heat and light	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Water	102.00	102.00	0.00	0.00	0.00	0.00	96.00	96.00	Agreed
Other	9.00	0.00	0.00	0.00	0.00	0.00	23.00	0.00	No invoices available
Managing Agents	522.00	342.00	304.00	152.00	608.00	304.00	1392.00	912.00	See para 91 of reasons
Reserve Fund	500.00	500.00	400.00	400.00	550.00	550.00	0.00	0.00	Agreed
Total expenditure	1911.00	1665.00	976.00	792.00	1618.00	1249.00	3270.00	2616.00	
Amount per flat	318.50	277.50	162.67	132.00	134.83	104.08	204.38	163.50	

Dukes Rise, Shepton Mallet,
Case No. CHI/40UB/LSC/2012/0180
Schedule 2 to the decision of the First-tier Tribunal

Reconstituted service charge accounts for the year ended 31 December 2008

Item	Pennard House		Marlborough House		Dulcott House		Dinder, Draycott & Nalder		Comments
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	
	£	£	£	£	£	£	£	£	
Repairs and Maintenance	937.00	173.61	726.00	173.61	2295.00	188.59	3877.00	410.08	No invoices. Fire inspections allow
Cleaning	1032.00	853.30	1032.00	853.30	1700.00	1405.66	2307.00	1907.77	See para 93 of reasons
Heat and light	1233.00	1233.00	925.00	925.00	611.00	611.00	2007.00	2007.00	Agreed
Water	34.00	34.00	63.00	63.00	0.00	0.00	33.00	33.00	Agreed
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Managing Agents	1007.00	458.28	1007.00	458.28	2014.00	916.56	2686.00	1222.08	See para 94 of reasons
Reserve Fund	500.00	500.00	500.00	500.00	800.00	800.00	950.00	950.00	Agreed
Total expenditure	4743.00	3252.19	4253.00	2973.19	7420.00	3921.81	11860.00	6529.93	
Amount per flat	790.50	542.03	708.83	495.53	618.33	326.82	741.25	408.12	

Dukes Rise, Shepton Mallet,
Case No. CHI/40UB/LSC/2012/0180
Schedule 2 to the decision of the First-tier Tribunal

Reconstituted service charge accounts for the year ended 31 December 2009

Item	Pennard House		Marlborough House		Dulcott House		Dinder, Draycott & Nalder		Comments
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	
	£	£	£	£	£	£	£	£	
Repairs and Maintenance	386.00	306.49	727.00	593.79	1174.00	485.12	1297.00	881.09	See para 95 of reasons
Cleaning	961.00	806.07	961.00	806.07	1561.00	1327.76	2122.00	1399.76	See para 98 of reasons
Heat and light	543.00	543.00	227.00	227.00	599.00	599.00	1135.00	1135.00	Agreed
Water	50.00	50.00	12.00	12.00	1051.00	1051.00	31.00	31.00	Agreed
Other	57.00	0.00	375.00	375.00	135.00	135.00	338.00	338.00	Not disputed except Pennard See para 100 of reasons
Managing Agents	994.00	465.78	994.00	465.78	1987.00	931.56	2650.00	1242.08	See para 99 of reasons
Reserve Fund	500.00	500.00	500.00	500.00	800.00	800.00	950.00	950.00	Agreed
Total expenditure	3491.00	2671.34	3796.00	2979.64	7307.00	5329.44	8523.00	5976.93	
Amount per flat	581.83	445.22	632.67	496.61	608.92	444.12	532.69	373.56	

Dukes Rise, Shepton Mallet,
Case No. CHI/40UB/LSC/2012/0180
Schedule 2 to the decision of the First-tier Tribunal

Reconstituted service charge accounts for the year ended 31 December 2010

Item	Pennard House		Marlborough House		Dulcott House		Dinder, Draycott & Nalder		Comments
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	
	£	£	£	£	£	£	£	£	
Repairs and Maintenance	678.00	618.07	593.00	593.00	1913.00	1913.00	1040.00	1040.00	Agreed apart from Pennard
Cleaning	786.00	743.74	786.00	743.74	1235.00	1224.76	1684.00	885.90	See para 103 of decision
Heat and light	899.00	899.00	671.00	671.00	590.00	590.00	788.00	788.00	Agreed
Water	112.00	112.00	73.00	73.00	273.00	273.00	173.00	173.00	Agreed
Other	1.00	0.00	152.00	152.00	2.00	2.00	3.00	3.00	Only Pennard disputed
Managing Agents	1044.00	493.50	1044.00	493.50	2088.00	987.00	2784.00	1316.00	See para 104 of decision
Reserve Fund	327.00	327.00	327.00	327.00	545.00	545.00	654.00	654.00	
Total expenditure	3847.00	3193.31	3646.00	3053.24	6646.00	5534.76	7126.00	4859.90	
Amount per flat	641.17	532.22	607.67	508.87	553.83	461.23	445.38	303.74	

Dukes Rise, Shepton Mallet,
Case No. CHI/40UB/LSC/2012/0180
Schedule 2 to the decision of the First-tier Tribunal

Reconstituted service charge accounts for the year ended 31 December 2011

Item	Pennard House		Marlborough House		Dulcott House		Dinder, Draycott & Nalder		Comments
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	
	£	£	£	£	£	£	£	£	
Repairs and Maintenance	1215.00	1169.38	528.00	482.64	899.00	786.92	1933.00	1768.98	see para 105 of reasons
Cleaning	856.00	759.56	1016.00	937.56	1512.00	1461.34	1843.00	904.75	see para 106/7 of reasons
Heat and light	1144.00	1144.00	604.00	604.00	439.00	439.00	626.00	626.00	Agreed
Water	42.00	42.00	42.00	42.00	319.00	319.00	78.00	78.00	Agreed
Other	2.00	0.00	26.00	26.00	91.00	91.00	122.00	122.00	Agreed except Pennard
Managing Agents	1117.00	522.00	1117.00	522.00	2235.00	1044.00	2980.00	1392.00	See para 109 of decision
Reserve Fund	500.00	500.00	500.00	500.00	800.00	800.00	950.00	950.00	
Total expenditure	4876.00	4136.94	3833.00	3114.20	6295.00	4941.26	8532.00	5841.73	
Amount per flat	812.67	689.49	638.83	519.03	524.58	411.77	533.25	365.11	

Dukes Rise, Shepton Mallet,
Case No. CHI/40UB/LSC/2012/0180
Schedule 2 to the decision of the First-tier Tribunal

Reconstituted service charge accounts for the period 1 January 2012 to 24 March 2013

Item	Pennard House		Marlborough House		Dulcott House		Dinder, Draycott & Nalder		Comments
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	
	£	£	£	£	£	£	£	£	
Repairs and Maintenance	220.00	220.00	545.00	545.00	907.00	889.00	825.00	823.00	see para 110 of reasons
Cleaning	517.00	517.00	527.00	527.00	738.00	738.00	1571.00	1571.00	agreed
Major Works							1243.00	1243.00	agreed
Heat and light	1603.00	1603.00	496.00	496.00	716.00	716.00	388.00	388.00	agreed
Water	-205.00	-205.00	60.00	60.00	-778.00	-778.00	120.00	120.00	agreed
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Managing Agents	270.00	270.00	810.00	810.00	1620.00	1620.00	720.00	720.00	agreed
Reserve Fund	300.00	300.00	300.00	300.00	300.00	300.00	600.00	600.00	
Total expenditure	2705.00	2705.00	2738.00	2738.00	3503.00	3485.00	5467.00	5465.00	
Amount per flat	450.83	450.83	456.33	456.33	291.92	290.42	341.69	341.56	