FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HE/LSC/2021/0040
Property:	4 Monument Way, Bodmin, Cornwall PL31 1NZ
Applicants:	Mr and Mrs Mark Gabriel
Representative:	Mr Gabriel
Respondent:	The Guinness Partnership
Representative:	Miss A Francis
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenants' application for the determination of reasonableness of service charges for the years from 1 April 2015 to date.
Tribunal Members:	Judge A Cresswell (Chairman) Ms J Coupe FRICS
Date and venue of Hearing:	28 September 2021 by Video and Telephone
Date of Decision:	29 September 2021

DECISION

The Application

1. This case arises out of the Applicant tenants' application, made on 30 March 2021, for the determination of liability to pay service charges for the years from 1 April 2015 to date.

Summary Decision

2. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has jurisdiction under Section 18 of the 1985 Act in relation to a variable service charge, but not in relation to a fixed service charge. The Tribunal has determined that the Applicants' service charge is a fixed service charge, with the consequence that the Tribunal does not have jurisdiction to hear this application.
6. The Tribunal allows the Applicants' application under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its costs in relation to the application by way of service charge.

Preliminary Issues

7. There was a preliminary issue as to the Tribunal's jurisdiction to hear this application.
8. The Tribunal has determined that preliminary issue after hearing all of the relevant evidence presented by and on behalf of the parties.

Inspection of Property

9. The Tribunal did not inspect the property, but saw photographs and saw the estate on the internet.
10. The Tribunal was told that the property is part of an estate of houses and flats owned and managed by the Respondent.

Directions

11. Directions were issued on various dates.
12. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

13. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Miss Alicia Francis, a member of the Respondent's legal team, by Mr Lee Coatham, a Customer Liaison Manger with the Respondent, and by the Applicant, Mr Mark Anthony Gabriel. At the end of the hearing, Miss Francis and Mr Gabriel told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

14. The Tribunal has regard in how it has dealt with this case to its overriding objective:

The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

. (a) exercises any power under these Rules; or

. (b) interprets any rule or practice direction.

(4) Parties must:

. (a) help the Tribunal to further the overriding objective; and

. (b) co-operate with the Tribunal generally.

The Law

15. Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18 Meaning of "service charge" and "relevant costs"

(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.

Home Group Limited v Mr A W Lewis and others LRX/176/2006, HH J Huskinson:

21. There is nothing in the tenancy agreements indicating that any altered rent is to be calculated in any particular manner, or linking an alteration in rent (including service charge) with an alteration in the costs of providing any relevant services. Accordingly, it seems to me that section 18(1)(b) is not satisfied. It is true that it can be said that the Appellant in deciding whether to serve a notice of increase and, if so, how much that increase should be may well inform itself (as indeed it accepts it does) by reference to the estimated costs of providing services in the forthcoming year. However the ability in someone to serve a notice increasing the rent, if it chooses to do so, and to calculate that proposed new rent taking into account increases in the costs of services does not enable it

in my judgment to be said that the rent (including service charge) is a payment "the whole or part of which varies or may vary according to the relevant costs". The sum payable does not vary in accordance with the relevant costs. Nor in my judgment can it be said that it "may vary" in accordance with those costs. There is no direct relationship between the amount of the costs as a cause and the amount of the service charge as a consequence. Interposed between the amount of the costs and the amount of the service charge is the independent decision of the landlord (here the Appellant) or of the Rent Assessment Committee as to how much the new rent/service charge should be. Of course it can be said that the Appellant and that Rent Assessment Committee may take into account the reasonably estimated amount of the service costs in the forthcoming year, but that in my judgment is at least one remove from a situation where a rent varies or may vary according to the relevant costs.

22. Further, if in a case such as the present the conclusion was reached that, by reason of the ability to increase the rent taking into account the estimated amount of the forthcoming service costs, section 18(1) of the 1985 Act was engaged, then it is difficult to see how any assured non-shorthold tenancy under which a payment was made for services could escape falling within section 18(1) of the 1985 Act, which would leave section 14(4) of the 1988 Act as effectively a pointless provision which could never apply. The fact that a new rent under an assured non-shorthold tenancy may be calculated by a landlord or by the Rent Assessment Committee paying regard to the amount of the estimated service costs in the forthcoming year is surely what is contemplated as something which may fall to be done under section 14(1) and (4) of the 1988 Act. It would be strange if the very circumstance which these provisions appear specifically designed to deal with were circumstances which automatically removed the jurisdiction to deal with the service charge payment from the Rent Assessment Committee under these provisions and left the jurisdiction with the LVT under the 1985 Act.

Arjun Chand v Calmore Area Housing Association Limited
LRX/170/2007 HH J Reid:

12. I have had the advantage that since the decision of the LVT there has been a decision of Judge Huskinson in the Lands Tribunal dealing with the same point:

Home Group Limited v Lewis and others LRX/176/2006. He covered the same ground as the LVT in the present case and came to the same conclusion. In my judgment his reasoning is convincing and I gratefully adopt it.

13. In the present case the Appellant's tenancy agreement contemplated, in accordance with the scheme under the Housing Act 1988 for assured non-shorthold tenancies which are periodic tenancies, that the rent can be altered by the Respondent on a yearly basis. The tenancy agreement expressly informed the Appellant of his right on receipt of a notice altering the rent to refer the matter to the Rent Assessment Committee. The Respondent was thus subject to the statutory code for the alteration of rents so far as concerns the contents of and restrictions upon notices of increase. Indeed the Appellant did apply to the Rent Assessment Committee in respect of the notice of increase for the year 2005-2006: the Committee fixed the rent at the amount sought by the Respondent.

14. There is nothing in the tenancy agreements indicating that any altered rent is to be calculated in any particular manner, or linking an alteration in rent (including service charge) with an alteration in the costs of providing any relevant services. It is true that it can be said that the Respondent in deciding whether to serve a notice of increase and, if so, how much that increase should be may well inform itself (as indeed it accepts it does) by reference to the estimated costs of providing services in the forthcoming year. However the ability in someone to serve a notice increasing the rent, if it chooses to do so, and to calculate that proposed new rent taking into account increases in the costs of services in my judgment does not enable it to be said that the rent (including service charge) is a payment "the whole or part of which varies or may vary according to the relevant costs". The sum payable does not vary in accordance with the relevant costs. Nor in my judgment can it be said that it "may vary" in accordance with those costs. There is no direct relationship between the amount of the costs as a cause and the amount of the service charge as a consequence. Interposed between the amount of the costs and the amount of the service charge is the independent decision of the landlord (here the Respondent) or of the Rent Assessment Committee as to how much the new rent/service charge should be. The Respondent and that Rent Assessment Committee may take into account the reasonably estimated amount of the service costs in the forthcoming year, but

that in my judgment is at least one remove from a situation where a rent varies or may vary according to the relevant costs.

15. In my judgment it cannot be said that the whole of part of the rent or service charge varied or might vary "according to the relevant costs" and section 18(1)(b) is therefore not satisfied. It follows inevitably from this that the LVT had no jurisdiction to deal with this application which was purportedly made under section 27A of the 1985 Act. The decision of the LVT that it did not have jurisdiction is correct and the appeal must be dismissed.

16. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.

Ownership

17. The Respondent is the owner of the freehold.

The Lease

18. The Applicants hold the property under the terms of a lease dated 5 August 1985, which was made between The Guinness Trust as lessor and themselves as lessees.
19. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).
20. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord

Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

21. Relevant parts of the lease:

Section 1 RENT

(1) Your rent is due weekly but may be paid in advance in multiples of whole weeks.

(2) Rent is paid to the Estate Superintendent at the estate office unless you are notified of other arrangements. All payments to the Estate Superintendent must be accompanied by your rent book and entered in it through the Superintendent's special receipt strips. Direct entries in the rent book are invalid.

(3) Rent arrears are not allowed and will lead to your losing your home. If, for genuine reasons, you do get into difficulties, please inform the Estate Superintendent. He may be able to help by putting you in touch with the appropriate agencies, but in any case it is essential that satisfactory arrangements are made with the Trust for any debts to be cleared, by instalments, if necessary.

(4) There are four "rent-free weeks" during the year to facilitate staff holidays.

(5) The rent does not include general rates, water rates, electricity or gas charges, or any other assessments for which you are separately responsible to the authorities concerned.

(6) The rent is variable upon the Trust giving you four weeks notice in writing, subject to paragraphs (7) and (9) below.

(7) The Trust may not charge more rent than the "Fair Rent" shown in a public register kept by the local Rent Officer (whose address can be got from your Council office, Citizens' Advice Bureau or telephone directory). If you think the Trust is not entitled to the rent being charged you may inspect the register and take advice from the Rent Officer

(8) ***The registered rent may include an element to cover some of the costs of landlord's services, such as grass cutting, cleaning or estate staff. The service element will be a fixed amount during the life of the registration.***

(9) The registered rent is normally fixed for two years and in any case cannot be changed without applying to the Rent Officer. If the rent is re-registered at a higher figure, increases are limited by law.

Section 2 REPAIRS AND MAINTENANCE

(1) The Trust is liable for structural and external repairs and decorations, and for the maintenance of the main sanitary water, electricity and gas fittings (including room heaters and water heaters) except those fittings, you install yourself and your own domestic appliances.

(2) If a repair is needed in your home or you see something outside that requires attention, please report it to the estate office.

Should the repair not be carried out within reasonable a period of time, or if it is not done properly, inform the estate office again. Only if there is a further long delay for which there is no adequate explanation should you write to regional office. If you are still dissatisfied, you have the right to complain to the Public Health Inspector at the Council that you think the Trust is failing in its repairing obligations.

(3) Repairs for which the Trust is responsible must be ordered through the estate office. If you give direct instructions to a builder without having authority you will have to pay for its cost unless, in an emergency, no one was available to authorise the repair.

(4) You are responsible for the internal decorations and general cleanliness of your home and for such small jobs about the house that come within your duty as a tenant. If, through age or infirmity, you cannot do these things, please ask for advice at the estate office.

(6) ***The Trust will be responsible for the grounds and other public areas on the estate but if you have a private garden you must maintain it satisfactorily.***

<u>The Service Charge</u>

The Applicants

22. The Applicants say that their agreement is that the registered rent *may* include an element to cover some of the cost but not 100%, and not an added-on new and separate service charge.
23. They read this element as a % cost of landlord's services such as grass cutting, cleaning or estate staff (there are no estate staff now and they do not pay for cleaning which is for the tenants in the shared flats to do) (only a housing officer).
24. The service element will be a fixed amount during the life of the registration. They don't pay for cleaning, so why should they pay for other private tenants' grass to be cut and the trees on their gardens to be maintained? (If their gardens are deemed to be private).
25. The Trust will be responsible (no mention of the tenant) for the "grounds" and other "public areas" on the estate but if you have a private garden you must maintain it satisfactorily (which they do)
26. Are the trees on public areas or on people's private front lawns, the grass and trees of which are maintained and cut at the moment by contractors? (paid for with this service charge). If the trees are on private lawns then the tenant should cut the grass and maintain the trees because they form part of their "maybe private garden" and use that area for their private own use including kids swinging from trees..... and as they do the trust maintain the trees. (paid for with this service charge). If this is so the trust should maintain their trees and cut the grass in their private garden because they own the land.
27. "grounds and or my private garden". If the tenants' lawns in front of their houses are public areas, they would be entitled to sit on them with no resentment from the tenants, or their landlord, and for example have a picnic/BBQ or even use their lawn as a car park.

28. Open grassed areas outside some of the homes are a public place and not controlled communal area. The general public can walk anywhere on the lawns without hindrance just like a public right of way.
29. In the case of Knox v Anderton [1982] 11 WLUK 98 the court held that the upper landing of a block of flats to which members of the public have access without hindrance can be a public place. Whereas the case of Williams v DPP [1992] 2 WLUK 69 in which it was held that the landing areas of a residential block to which access is controlled does not constitute a "public place".
30. It is therefore unlikely that communal areas of blocks of flats will be considered public places unless the prosecution produce evidence that the general public have access to them in their capacity as members of the public.
31. The Trust is responsible for grounds and public areas.
32. The lease says the service element will be a fixed amount during the life of the registration and not the variable one which is in place now.

The Respondent

33. The Respondent says that it is an obligation of the Applicants to pay the service charge as part of the weekly rent in accordance with Section 1 (8) of the tenancy agreement for the above Premises. In turn and upon agreement and payment of the services, the Respondent is obligated by the terms of the tenancy agreement to carry out the services detailed under Section 1 (8).
34. Their service charges include the cost of all legally eligible expenditure attributable to a scheme or home, to the extent that these costs are not included within the rent paid. The Respondent will account for the cost of all service chargeable services provided to the property. This will be done at scheme or block level, as appropriate to divide the cost between the properties that receive the service.
35. Costs covered by service charges include, but are not restricted to: the maintenance of communal areas e.g. gardens; the cost of facilities in communal areas, and fees for professional services such as management fees, account audits or certification (where they are provided).
36. The service charge may cover costs in connection with (but not exclusively) the following services; grass cutting, cleaning or estate staff, not all homes receive these services, and the service charge is for the services provided at the estate or block.

37. Adhoc costs such as fly tipping removal and environmental (including pest control) are responsive and are therefore difficult to predict and estimate accurately.
38. The Respondent will share costs between homes in a scheme or block as set out in the tenancy agreement or lease if this is specified in the tenancy agreement or lease. If it is not specified in the tenancy agreement or lease, they will use a fair method to share costs between homes in a scheme or block.
39. With reference to Estate/Scheme Staff, the Customer Liaison Service is jointly responsible with the maintenance team for carrying out scheme inspections on the Respondent's land. This may include, but is not limited to, services such as the following on a weekly, monthly, or annual basis:

    - Manage bin areas
    - Carry out minor repairs where necessary
    - Report any issues to the neighbourhood team
    - Inspect the buildings

40. Section 1 (6) of the tenancy agreement confirms that the rent is variable upon the Respondent giving 4 weeks' notice in writing subject to paragraphs 7 and 9 of the tenancy agreement.
41. The services provided as per the Respondents' obligation detailed in the tenancy agreement are variable and may from year to year change depending on the services anticipated and carried out by the Respondent. The amount charged will be adjusted according to the actual spend for that year.
42. The area mentioned is a communal area. This area is the responsibility of the Respondent to maintain regardless of whether the area has unrestricted or unimpeded access by the public. The fact that the communal grounds may be in a public location does not make it any less of a communal area to be maintained and taken care of by the Respondent.
43. As the landlord, the Respondent has a legal responsibility to ensure that such areas are safe and free of hazards, and are under an obligation to ensure this is carried out in order to comply with the Landlord and Tenant Act and Housing Act requirement to provide a safe and healthy living environment.

44. Communal areas relate to any type of property where there are shared areas. This can include, (but is not limited to) corridors, stairways, door entrances, communal rooms, lifts, shared gardens, pathways, parking areas, bin stores, drying areas, balconies, fire escapes, play areas, for courts and any other shared areas within an estate and block boundary. It is very common for many of these communal areas to be present in a place which may be deemed a "public space".
45. There is no single, legal definition of a "public place". Each Act contains their own definition for the purposes of that particular legislation. The cases which have been mentioned by the Applicants are for the purpose of The Prevention of Crime Act 1953 and would only be considered as a possible "public place" for the purpose of convicting an offence under this Act.
46. Knox v Anderton related to a different situation.

The Tribunal

47. The Tribunal was told by Mr Gabriel that his service charge was a fixed service charge in accordance with his lease.
48. Miss Francis said that even though the service charge was for a fixed amount, it is variable year to year. She submitted that it would be unfair not to reflect an underspend in one year of the estimated spend in the next year's service charge demand. She later accepted that the Respondent would also reflect an overspend in the next year's service charge demand.
49. She was unable to answer Mr Gabriel's question as to why the Respondent did not adhere to the words of the lease or tell him why it had never sought to inform the Applicants of the change in procedure. She was equally unable to tell the Tribunal what the estate consisted of, how the sum expended on services was apportioned (other than saying it was done fairly) or why the Respondent did not adhere to the terms of the lease by setting a fixed service charge to be included within the registered rent which was to remain unchanged for the 2 years of registration.
50. She told the Tribunal that all of the estate costs are charged to the residents of the estate.
51. The Tribunal has concluded that there is required here a fixed service charge in accordance with the terms of the lease.
52. The lease says that the ***rent may include an element to cover some of the costs of landlord's services,*** but there is no reference to this element being in

accordance with their costs, so that this cannot meet the test in Section 18 of **the whole or part of which varies or may vary according to the relevant costs**. Essentially, it is open to the Respondent, under the terms of the lease, to reduce this element when costs have increased or to increase it when costs have reduced, provided that the element does not exceed the actual costs.

53. Again, under the terms of the lease, the element chosen remains fixed for the 2 years of the rent's registration. There is no mechanism to reflect, in practice, the actual costs save by the detail of the reference made to the rent officer for the next registration and the rent officer's views as to the fairness of what is proposed.

54. Further, it is not possible for the rent to be increased so as to reflect actual costs higher than the registered rent because of the effect of clause 1(7), *The Trust may not charge more rent than the "Fair Rent" shown in a public register kept by the local Rent Officer*.

55. The service charge not being variable in accordance with the terms of Section 18 and the Tribunal, accordingly, having no jurisdiction to hear the matter, the application is struck out.

56. The rent is paid weekly (for 48 weeks of the year) and part of that rent is a sum fixed at registration of the rent. Part of the rent officer's function is to ascertain that the service charge element is supported by the terms of the lease and is supported by proof of expenditure and is fair in amount. The sum of service charge found to be fair by the rent officer is then registered as part of the rent by the rent officer for a 2-year registration period.

57. The tenant is permitted to challenge the registration and to have the issue determined by the Tribunal. The Applicants did challenge the registration. Mr Gabriel told this Tribunal that he used the same arguments then that he is using now. The issue came before the Tribunal and in a Decision of 7 April 2021, the Tribunal slightly altered the rent element but made no alteration to the service charge element.

58. Having determined that the Tribunal does not have jurisdiction to hear the application, the Tribunal does not need to go on to consider whether the application should also be struck out under Rule 9 **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** *as the proceedings or case are between the same parties and arise out of facts which are similar or substantially*

the same as those contained in a proceedings or case which has been decided by the Tribunal.

Comments

59. The Tribunal is conscious that there remains a number of issues between the parties and believes that the parties may benefit from some views of the Tribunal. These views are not a part of the Tribunal's Decision or its reasons.
60. The Tribunal reflects that Section 2(6) of the lease would cover the communal areas of grass outside some of the homes. The definition of a public place for the criminal law is not the best route to ascertain what is meant here by the lease to describe *the grounds and other public areas.*
61. It is the landlord's part of the bargain to do the estate works for which the tenant pays a service charge. Mr Gabriel hit the nail on the head when he reflected on the benefits to all residents of having a pleasant amenity; the landlord is supposed to provide that amenity and the tenants to pay for it. When a tenant signs a lease requiring such payment, it can sometimes feel a little unfair, such as when residents on the ground floor of a block of flats have to pay for the upkeep of the lift, but that is the bargain reached with the landlord when the lease is signed.
62. In terms of the lease terminology, the Tribunal reflects that "may" means the landlord "can" and that "some" includes "all", so that the landlord is entitled to demand all relevant service charge costs.
63. The Tribunal can also see the fairness in the landlord seeking to ensure that tenants pay for what benefits them, but, to accord with the terms of the lease, that exercise would be better undertaken 2-yearly to coincide with the registration of the rent and so as to involve the rent officer in the process.
64. It appeared to the Tribunal that instead of simply applying company wide policies to individual leases, the Respondent should have given a better explanation of what it intended to charge for and how the sums were apportioned. For instance, it could have supplied the estate plan to the tenants, showing what areas were part of the grounds and other public areas and have told them the mathematics behind the apportionment. That the Respondent first denied that there was a plan and appeared unaware of the number of properties involved and how the apportionment was made struck the Tribunal as being regrettable.

65. The Tribunal notes that the Respondent charges the Applicants far less than the registered rent. For instance, the registered rent for the 2 years from 11 January 2021 is £8160 per annum or £156.92 per week, after an objection to the rent proposed by the rent officer of £8180 per annum, yet the demand for the year 1 April 2021 to 31 March 2022 is in the sum of £80.45 per week, just over half the registered rent. An independent observer may well feel that a dispute about less than £3 per week pales into insignificance when a landlord is being so understanding with the level of the registered rent it actually charges.

Section 20c and Paragraph 5A Application

66. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.

67. Miss Francis told the Tribunal that the Respondent had no intention of seeking its costs by way of service charge and the Tribunal notes that the lease does not provide for recovery of the Respondent's costs. The Tribunal, accordingly, allows the application under Section 20c of the Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge or administration charge for the current or any future year.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

3. 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.

4. 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.