

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0035/12/21

In the Matter of The Woodlands Chalets Owners Association,

In the matter of an Application under Section 27A and 20C of the Landlord and Tenant Act 1985

Applicant: (1) The Woodlands Chalet Owners Association  
(2) Colin and Joanne Marsh  
(2) Mrs J Lane  
(4) Mr G Morris  
(5) Mr and Mrs E Coles  
(6) Mr M Simcoe and Mr M Tew  
(7) Mrs C Miles, Mrs B Morgan and Mrs M Allison.

Respondent: Multispan (Cardiff) Limited

Tribunal:  
Tribunal Judge Richard Payne Legal member.  
Mr Hefin Lewis FRICS Surveyor member.  
Mrs Juliet Playfair Lay member.

Hearing date: 11<sup>th</sup> August 2022.

Upon hearing Mr Richard Mynott for the Applicant and Ms Robyn Cunningham, Counsel, instructed by Darwin Gray solicitors, for the Respondent.

## DECISION

### BACKGROUND

1. The Woodlands was originally developed by the late Mrs Gill Worrell and her late husband Glyn Worrell in 1971, the mother and step-father of the current directors of the Respondent company, siblings Mrs Lindsey Conn and Mr Nick Mabbitt. The site is said to be 6.2 acres in area, around two acres of this being woodland. There are 54 chalets on site which are all two bedroomed and semi-detached, sold originally on 99-year leases in 1971. Many of the freeholds of the chalets have been sold so that there now remain 19 leasehold chalets.

2. The application is made by the Woodlands Chalets Owners Association (WCOA or “the Association”) and various leaseholders/qualifying tenants who are members of the Association. The Applicants contend that the application to the tribunal is necessary because previous attempts to engage the Respondent landlord company as to how the service charges have been made up and determined, have either resulted in no response or an inadequate response. The application was dated 4 December 2021 and sought a determination as to the payability and reasonableness of service charges for the years 2018 – 19, 2019 – 20 and 2020 – 21.

## **INSPECTION**

3. On 10th August 2022 the tribunal judge and surveyor inspected the site in the presence of Mr Richard Mynott and Mrs Cheryl Quick of the Applicants, and Mrs Lindsey Conn and Mr Nick Mabbitt of the Respondent company. It was a hot, clear summer day.
4. The Tribunal members noted that the site was well presented and attractively laid out, largely to closely cut lawns and grassed banks, with many attractive mature trees in evidence.
5. The correct use of the refuse/waste disposal area appeared not to be properly observed. The bin was overflowing with incorrect disposal of refuse bags.
6. The tribunal noted the wooded area behind some of the chalets on the site which is not used as part of the leisure amenity of the site. The woodland appeared to be used for disposing of garden waste and grass cuttings.

## **THE HEARING**

7. The tribunal was grateful to the parties who, in preparing for the final hearing and in compliance with earlier directions orders made by the tribunal, had prepared a comprehensive hearing bundle that comprised 331 numbered pages which included witness statements, evidence and a distillation of the issues in the form of Scott schedules and replies to the same, upon which the parties wished to rely. The bundle and the parties’ approach to it was of considerable assistance in narrowing down the issues that remained at the final hearing. In this decision, where reference is made to a document within the hearing bundle, this will be indicated by the page number in the bundle contained within square brackets [...]. The tribunal was also grateful to Ms Cunningham for the skeleton argument she provided on behalf of the Respondent company.
8. Mr Mynott, the treasurer of the Association, said that there had been an increase in costs during the late spring and early summer of 2020 which did not correspond to any exceptional work being undertaken and several individuals had approached the Respondent about this. He set out some historical events that led to the formation of the Association in late August/early September 2020 and whilst there is no need for the tribunal to repeat all that information, suffice to say that relations between certain leaseholders and the Association on the one hand, and with Mrs Conn and Mr Mabbitt of the Respondent company upon the other, were poor. The leaseholders and Association

felt that they were given either inadequate information or no information that would allow them to see how the service charges had been calculated and/or how such charges were reasonable, which ultimately resulted in the application to the tribunal, which the Applicants say that they would prefer to have avoided.

9. Ms Cunningham in her opening remarks said that whilst the Applicants had repeatedly referred to the costs of services increasing, what made this case unusual was that the previous services charges were themselves unreasonable because in fact they were exceptionally low. This was as a result of Mrs Worrell originally setting up the site with her husband and working for almost nothing in order to sustain the park. The services to the site were funded by selling off the freeholds of chalets, the proceeds of which went back into running the site. This was not a sustainable way of running the site and was akin to a personal loan. The services had historically been provided at very low cost and whilst the charges had recently gone up, the service charges remained reasonable.
10. Mr Mynott said that the increase in costs was not adequately explained and further that the directors of the respondent company had started drawing salaries for the work undertaken which he argued could not be drawn under the lease and the deed of variation. He argued in the alternative that if salaries could be drawn under the lease, then the number of hours work that was being paid for was not commensurate with the nature of the work that was undertaken. He referred to the salary and payroll survey of similar roles across the UK undertaken by the applicant which identified that the average hourly rate for similar roles in July 2021 was £9.59. He said that the Respondent quotes a net figure of £15 per hour which when grossed up with National Insurance etc would be around £18.50 per hour which is double the amount for such work. Helpfully, Mr Mynott clarified that the quality of the work and services provided was not in dispute, but what was being challenged was the number of hours being charged to undertake the work, which it was argued was grossly in excess of what was actually required.

### **The Lease.**

11. A copy of an original lease dated the 31st day of July 1972 [21] and a copy of a Deed of Variation dated 24th of September 1985 [27] were included in the bundle. The Deed of Variation contained the following relevant clauses that had replaced their equivalents in the original lease. In clause 2(3) of the original lease the tenant covenanted to contribute a due proportion of certain expenses that were described, and this was replaced by the following wording in the Deed of Variation that set out how the service charge was to operate.

*“to pay to the Landlord without any deduction by way of additional rent a proportionate part of the expenses and outgoings incurred by the Landlord (“the service charge”) as hereinafter calculated in making repairing re-building and maintaining and cleansing **the common parts of The Woodlands estate** including drains cesspools pipes sewers roads pathways pavements fences watercourses and other conveniences and also cultivating plants mowing and maintaining the grassed area and in endeavouring to maintain and maintaining the services of a Site Warden (including the cost of providing accommodation for the said Warden) and workmen to repair and maintain the estate **PROVIDED THAT:***

- (i) *The amount of the service charge shall be ascertained subject as hereinafter provided and certified by a Certificate (hereinafter called "the Certificate") signed by the Landlord's Auditors Accountants or Surveyors (at the discretion of the Landlord) acting as experts and not as arbitrators half yearly or at such other periods as the Landlord may in its discretion from time to time determine*
- (ii) *A copy of the certificate shall be supplied by the Landlord to the Tenant on written request and without charge*
- (iii) *The certificate shall contain a summary of the Landlord's said expenses and outgoings incurred by the Landlord together with a summary of the relevant details and figures forming the basis of the service charge and the certificate shall be conclusive evidence for the purposes hereof and the matters which it purports to certify*
- (iv) *The proportionate part of the service charge payable by the Tenant shall be calculated by dividing the aggregate of the said expenses and outgoings incurred by the Landlord by the number of Units erected on the estate as at the date of the half- yearly or other calculations as aforesaid (but excluding any Unit for the time being occupied by any Site Warden)*
- (v) *The expression "the expenses and outgoings incurred by the Landlord" as hereinafter used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which shall be naturally disbursed incurred or made by the Landlord during the period in question but also such reasonable part of all such expenses outgoings and other expenditure hereinafter described which are of a periodically recurring nature whether occurring by irregular or regular periods whenever disbursed incurred or made and including sum or sums of money by way of reasonable provision for anticipated expenditure in respect whereof as the Landlord or its Accountants or Surveyors as the case may be in their discretion allocate to the year in question as being fair and reasonable in the circumstances.*
- (vi) *As soon as practical after the signature of the certificates the Landlord shall furnish the Tenant or his representative with an account of the service charge payable by the Tenant for the period in question and upon delivery of such account the Tenant shall pay to the Landlord the amount of the service charge as aforesaid forthwith*
- (vii) *In the event of the Tenant being dissatisfied with the amount of the service charge (as being fair and reasonable in the circumstances) ascertained by the certificate then the Tenant shall have the right in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force for the certificate to be referred to a single arbitrator to be chosen by the parties respective surveyors or in default of agreement to be chosen by the President for the time being of the Royal Institution of Chartered Surveyors and the decision of that arbitrator so appointed shall be final and binding on all parties"*  
[Our emphasis].

12. The Deed of Variation also substituted the previous Landlord's covenants at clause 3 (ii) of the Lease with the following.

*“The Landlord hereby covenants to use its best endeavours to make repair re-build maintain and cleanse **the common parts of The Woodlands estate** including drains cesspools pipes sewers roads pathways pavements fences watercourses and other conveniences and also to cultivate the plants mow and maintain the grassed area and to maintain the services of a Site Warden and workmen to supervise and maintain the estate subject to contributions by the Tenant to the cost thereof as hereinbefore provided” [Our emphasis].*

13. The Applicants noted that the original lease indicated that the service charge would be £40 annually for the first 33 years and would then be reassessed. As can be seen the Deed of Variation replaced the annual charge and provided for a different mechanism for the calculation of the annual variable service charges. The Applicants contend that the new wording contained no clause relating to payroll and/or salaries for the directors of the Respondent. The Applicants noted that since at least 2006 the role of Site Warden has not existed, and the Respondent had sold the chalet which had previously been used as accommodation for the Site Warden.
14. The service charge was to be divided by the number of units on the site excluding any unit for the time being occupied by the Site Warden. The Respondent had been dividing the aggregate service charge costs by 53, whereas the Applicants argued that since there was no site warden occupying accommodation upon site, that the aggregate service charge costs should be divided by 54. This point was conceded by the Respondent who accept that the appropriate divisor is 54.

#### **REASONABLENESS OF THE SERVICE CHARGES.**

15. The Applicant’s had also been concerned about the addition of a £6000 ‘loan’ from the directors of the Respondent to the service charges, and that chalet owners were being asked to pay this back although this amount had not appeared in the service charge demands for 2019 – 20. The Respondent conceded that there was no service charge machinery for the loan, and it was not recoverable as a service charge. Accordingly, this £6000 was no longer in issue.

#### **Service charge year 1<sup>st</sup> April 2018- 31<sup>st</sup> March 2019.**

16. The Applicant’s two areas of challenge were what they described as the 45% increase in labour costs to provide the site maintenance services, and secondly the annual charge for a van.
17. The Applicants say that the Respondent unilaterally commenced adding extra payroll costs to the service charges in the year 2018-19 when there were no additional expenses or outgoings actually incurred in the maintenance of the site. [75]. They argue that the costs are not reasonably incurred and that the number of hours charged was grossly excessive given the nature of the work undertaken, particularly when compared to previous years charges, and that the hourly rate of pay was excessive. The Applicants say that there was a £10,309 increase in labour costs which equated to a 45% rise from the costs in 2017 – 18. The Applicants contends that historically the maintenance of the site grounds and other

work was satisfactorily undertaken by a handyman whose average weekly working time was between 16 and 20 hours.

18. The Applicants also point out that between 1 November and 28 February each year, owners can only spend seven days at their properties in each of those calendar months and that during this period of late autumn to early spring there is very limited requirement for grass cutting or other grounds maintenance.
19. The Applicants note that in the statement of site expenditure for the year ended 31st of March 2019 prepared by Bevan Buckland LLP, chartered accountants [35], that of a total of £49,588.46, what is described as "Salary and nominal fee including national insurance" totals £33,015.98. The description for this expenditure says that this was paid to Mrs G Worrell, Mrs L Conn and Mr N Mabbitt, although a note on the statement says, "Director's salary re-Mrs G Worrell included in this sum is the amount of £2000 which was not charged by the company for tax reasons but is included in this statement to reflect services provided Mrs L Conn and Mr N Mabbitt."
20. Mr Mynott said that it was important to remember that the service charge was dealing with the common parts of the estate, and he argued that there were a number of individual requests from the chalet owners the costs of which were included in the total, but which are not recoverable under the service charge.
21. The Applicants obtained a quote from Tim Brookes Garden Services for garden maintenance at the site which equated to £24,700 annually [44], £475 per week and £2058.33 per month. The quote said that the figures stand for a period of 3 years before any negotiations prior to any increase which was not to exceed 10%. Whilst the quote was undated, the Applicants referred to it in relation to the costs for all of the three years that were under consideration by the tribunal.
22. Returning to the statement of expenditure for the year ended 31 March 2019, the total charges were £49,588.46. If the Applicants quote for gardening services of £24,700 is deducted, then this leaves £24,888.46. Mr Mynott made it clear that the quote from Tim Brookes Garden services was for weekly visits. Mr Mynott looked at the other duties of the landlord set out in the new clause 2 (3) which included items such as maintaining the pipes and other conveniences. He said that none of those items would be daily or weekly issues and although there is currently a problem with the bitumen pipes on the sewage system, the repairs to the roads upon site he described as a once a decade repair, and although the pavements on site will be repaired upon occasions this is not something that is required on a consistent short-term basis. Mr Mynott noted that liaising with various contractors was presented in the Respondent's skeleton argument as a duty, but he maintained that this liaison was because of requests from individual chalet owners. Mr Mynott felt that the role of the site warden would be somebody who lived upon the site and who is available at defined times of the day and there would also be a mobile phone contact to deal with any issues which someone might have with the common parts of the land.
23. Ms Cunningham suggested to Mr Mynott that the role of Mr Mabbitt and Mrs Conn carrying out the role of site wardens and landlords is hard to pick apart. Mr Mynott said that "I think that it is easy to pick it apart, work on the common parts is something that is chargeable to the service charge, and the work for chalet owners is something else."

24. With regard to £1,000 for the van, this was described in the statement of site expenditure for the year ended the 31<sup>st</sup> of March 2019 as “annual charge on van”. This was challenged by the Applicants who relied upon a letter dated April 2018 [43] from the Respondent to chalet owners which said *“We have also purchased a van (at no cost to owners apart from the running costs i.e. petrol, tax and insurance) as we feel this will be an important addition to maintaining the site, insofar as getting rid of all manner of items that are either broken or left outside chalets to rot, i.e. garden seats, broken storage boxes etc. This will then stop the need for fly tipping of unwanted items in the woods. As most of you will realise costs on this site have never truly reflected the service that has been provided by us for you, many of who have enjoyed these benefits for over 40 years.”*
25. The Applicants point out that notwithstanding the above letter, that the annual charge for the van appeared in the statement of expenditure for 2018 – 19 separately to the site costs for petrol, oil etc which are included as a separate item with a cost of £5989.69. The Respondent says that the van was purchased in 2017 for £4000 as it was considered to be a reasonable way of assisting with the provision of services, and that upon the advice of the Respondent’s accountant the cost of the van was spread over four years via the service charge. In her statement, Mrs Conn [155] says that the cost of the van was actually £4800 but only £4000 was claimed back by the service charge. She says that the van is used pretty much on a daily basis and she lists numerous examples of such use. She says that the jobs could not be done without the van and that it is not reasonable to expect her or Mr Mabbitt to use their own private vehicles for some of these tasks. She says that the van is essential to deliver the services that the Respondent is obliged to provide.

**Service charge year 1<sup>st</sup> April 2019 – 31<sup>st</sup> March 2020.**

26. The Applicants also challenge the increase in what they describe as payroll costs for this service charge year. The Applicants say that there is a further 39% increase in payroll costs on top of the 45% increase in the previous service charge year. This is an increase of £23,309 from the 2017 – 18 year. Again, the Applicants make the same points that there was no additional or exceptional work undertaken and that the main issues are the number of hours charged to the site and the hourly rate of pay applied. The Applicants say that the range and volume of flora at the site has been significantly reduced over the last few years and that consequently there is less work required for site maintenance than 10 or 15 years ago. The statement of expenditure [36] shows the sum of £46,016.01 paid as salaries and national insurance to Mrs L Conn and Mr N Mabbitt. The total expenditure for this service charge year was £55,345.39.
27. The Applicant’s refer to their own survey that they undertook of grounds maintenance/site type roles in July 2021, in which they contended that the average hourly pay rate was £9.59 gross, and that for context the national minimum wage for 2019 – 20 was £8.21 per hour. They repeat their contention that the Directors salaries do not relate wholly to work carried out in relation to the maintenance of the site and in the alternative that the costs and time spent are excessive and would amount to an hourly rate of £15 per hour which is not commensurate with the nature of the work undertaken. The Applicants contended that 20 hours site maintenance and 6 hours administration per week at an appropriate gross hourly rate would be reasonable.

28. The Applicant's continued to dispute the £1,000 charged for the van on the same basis as for the previous year.
29. The Applicant's also dispute the £1,000 that is charged for the use of a quad bike. They argue that there is no reasonable need for the use of a quad bike on site when the Respondent are already charging chalet owners for the use of the van and sit on lawnmower. The Respondent say that this item was charged on the advice of their accountants and was used extensively on site. Such use is not accepted by the Applicants.

**Service charge year first of April 2020 – 31<sup>st</sup> of March 2021.**

30. The Service Charge Statement [38] shows Site warden and site management costs of £47,198. The notes to this service charge statement say that the site warden/management role is effectively shared between the two directors of the company, Lindsey Conn and Nick Mabbitt. It adds "the salary taken is based on a six-day week and equates to net pay of £2000 per month (based on a notional four-day week) for Nick Mabbitt and £1000 per month (based on 2 days per week) for Lindsey Conn. It equates to approximately £15 per hour. The time actually spent is considerably greater from March to October and over the winter months." [39]
31. The Applicants continue to challenge this cost which they consider to be unreasonable and observe that 88% of the total site costs come under the heading of "site warden and site management costs". The Applicants say that on the quoted £15 per hour for the directors, this suggests that they worked 2400 hours a year, 1600 hours of maintenance and 800 hours of administration. They say that reducing this to weekly hours equates to an average of 31 hours of maintenance and 15 hours of administration every week of the year which is not what happens in reality even in the busier summer months. The Applicants therefore contend that these costs are in reality Directors' salaries, and they repeat their points about low occupancy of the site between 1 November to 28 February each year and the limited requirement for grass cutting and other maintenance activity between late autumn to early spring. The Applicant remarked that the payroll costs have increased by 156% since March 2017 with no additional or exceptional work being undertaken.
32. The Respondent company do not accept that the costs are unreasonable. In her witness statement and in her evidence, Mrs Conn referred to the numerous tasks undertaken by herself and Mr Mabbitt. She also pointed out that the Respondent had obtained their own estimate from a local firm Bevan lawn care [235] for £27,500 for the grounds maintenance work (lawn cutting, and tree and bush work and so forth). She says that this is a quote for a basic site gardening service, and does not come close to covering all of the extra work that she and Mr Mabbitt do on site. She says that that is also the case for the quotation obtained by the Applicants. Mrs Conn points out that there is nothing in the quotes which deal with the roads and paths or car parking areas and nothing that deals with drainage issues or the other warden -type duties such as dealing with refuse.
33. Mrs Conn also notes that the Applicants' quote from Tim Brookes gardening service, if divided by £10 per hour would equate to 47.5 hours per week just for doing that part of



the site maintenance which the Applicants have contended can be done in 20 hours per week. This would mean an hourly rate for Tim Brookes of £26.35.

34. Mrs Conn said that she and Mr Mabbitt have carried on and provided the services that their parents previously did. She stressed that she only lives two minutes away and is on hand. She gave an example that approximately two or three weeks before the hearing, she had a call from a chalet owner saying that there were four cows in the bottom car park that had broken through onto the site. She telephoned local farmers until she had located the farmer responsible who came to the site at 10:40 PM in the evening and she said that by 11:20 PM she was walking home having dealt with the problem. Mrs Conn also explained that when there was storm damage in 2021 there were approximately four or five families whose chalets had suffered such damage and she would take photographs of the debris and make matters safe. She said that residents/chalet owners could call them at any time for example Mr Mabbitt was texted at 6 AM to say that a battery was beeping on a smoke alarm, and he is frequently called to deal with sewerage blockages.
35. Mrs Conn estimated that the proportion of the services that she and Mr Mabbitt provide as a site warden service were around 50%. She said that they were on call 24/7 to provide a service to those owners. They do not charge individual fees to owners for callouts, but they do have a list of costs for services that they provide for cleaning individual chalets, a fascia clean, full clean and gutter cleaning. Mrs Conn also gave examples of work undertaken by Mr Mabbitt. He was asked to take down wardrobe doors and remove them at his convenience from one chalet, which he did. A barbecue had been left fly -tipped and Mr Mabbitt removed that. Mrs Conn said that she and Mr Mabbitt know where the majority of things upon site come from.
36. Asked by Mr Mynott if she charges for such matters separately Mrs Conn said “no, we see it as part of our site warden services.” Mr Mynott pointed out that the deed of variation refers to the maintaining of common parts of the site but not to undertaking individual requests and asked Mrs Conn if she is charging for time undertaken on individual request to the service charge and she answered “we see it as part of the site warden duties”. She confirmed that they do not charge separately for matters such as dealing with the smoke alarm in the chalet and do not specifically itemise any service that they provide, but if asked to do something “we will carry it out the best of our ability.”
37. In closing submissions relating to all of the service charge years in question, Ms Cunningham accepted that the role of the site warden was not defined in the lease but submitted that Mrs Gill Worrell and her husband had originally been living upon site in the 1970s and the 1980s providing site warden services and the work that she did has now been adopted and continued by her children. This was not limited to maintaining the communal areas. She compared this to a lease with a concierge service and said that for example a fire alarm going off and being dealt with by the Respondent company directors is precisely the sort of thing that would come within site warden services if the owner of the chalet lives two hours away. This service has been provided for many years. Ms Cunningham said that you can't by analogy be a tenant of a lease with a concierge service, say that you do not use that service and therefore the cost of the service is unreasonable, and she said that this was the argument being deployed here by the Applicants.

38. Ms Cunningham referred to the Applicant's argument that the role of the site warden has been stopped due to estoppel by convention. She refuted this argument and said that the site warden services are still provided, that the current Directors of the Respondent live next door rather than in the original chalet provided for the site warden. She also submitted, as per her skeleton argument, that the wages paid to the Directors are "expenses and outgoings incurred by the Landlord" in accordance with the lease.
39. Ms Cunningham submitted that the original service charge costs had been unreasonably low owing to the way in which Mrs Worrell had managed the site for many years and that there are more demands for services now. Looking at the site warden and site management costs for the year ending 31st of March 2021, namely £47,198, she noted that the Applicants concede that a reasonable sum for undertaking the gardening maintenance work is £24,700. If this figure was subtracted then it would only leave an additional £22,498 for all other aspects of the service provided which she submitted was a "fantastic deal" when the site warden role was factored in and there was someone that was available to call at all times about sewers, drains and other matters such as the incursion of the cows.
40. Ms Cunningham submitted that both the van and the quad bike were needed to run the site and it was unrealistic to think that all of the work on site could be carried out by using only the lawnmower. She said that renting the van continuously would be more expensive than purchasing it. Although there was an upfront cost for the purchase of the van, in the future once it was paid for there would only be running costs.
41. Mr Mynott said that the site warden service in the lease [30] was to repair, maintain and rebuild and so forth the common parts of the site and not to deal with individual requests from chalet owners. Mr Mynott said that the annual charge for the van had not been communicated by the Respondent and they had had problems ascertaining why it had been charged in light of the original letter saying that there would be no charge. He said that the Applicants appreciate that there will be rising costs over time but the dramatic change in the salary and payroll costs is unwelcome and disproportionate to the work that the Respondent is covenanted to deal with under the deed of variation in relation to the common parts.
42. Mr Mynott said that payments under the service charge are being made for salaries rather than the work actually undertaken, and he again referred to the Applicants pay rate survey which found an average hourly rate of £9.59 across the UK.

#### **Decision on the reasonable amounts of the service charges per year.**

The tribunal has carefully considered all the written and oral evidence and submissions. The same broad issues have been raised in relation to the three service charge years at issue and the tribunal's findings upon the figures are summarised in the document headed "Woodlands Park – Analysis of Costs" which can be found at Appendix One to this decision.

43. The tribunal accept, upon the evidence, that the way in which the late Mrs Worrell had run Woodlands Park resulted in service charges being artificially and unreasonably low. However, at the crux of this case are what are described as the Site Warden and site management costs in the service charge statement for the year ending 31<sup>st</sup> of March 2021 and described as Salary and national insurance in the statements for the years ended March 2020 and March 2019. The tribunal find that in accordance with the lease as varied, the wording in clause 2 (3) relates to the lessee's obligation to pay to the landlord a proportionate part of the expenses and outgoings incurred by the Landlord in repairing, rebuilding, maintaining, cleansing and so forth "**the common parts of the Woodlands estate**". That clause also refers to "endeavouring to maintain and maintaining the services of a Site Warden (including the cost of providing accommodation for the said Warden) and workmen **to repair and maintain the estate.....**". [30,31]. [Our emphasis]. As a matter of fact, there is no Warden living upon site and the accommodation that had previously been occupied by the warden is no longer so occupied.
44. Clause 3 (ii) relates to the Landlords covenants [30] and again refers to the "common parts of the Woodlands estate", and to the landlord using its best endeavours "**to maintain the services of a Site Warden and Workmen to supervise and maintain the estate** subject to contributions by the Tenant to the cost thereof as hereinbefore provided". [Our emphasis].
45. The tribunal find that the reference to the Woodlands estate in the lease, the service charge clauses and the landlord and tenant's covenants, relate to the common parts of the Woodlands estate. The lease refers to the services of a site warden and workmen repairing and maintaining the estate and there is no definition within the lease of the specific role of functions of a site warden.
46. The tribunal accept and agree with Mr Mynott's submission that the costs comprising the service charge, a proportion of which is payable by a tenant, relate to the costs of maintaining and so forth the **common parts** of the estate. The tribunal also find that whether styled as salaries or site warden and site management costs, such expenditure as is set out in the Respondent's statements of site expenditure [35,36] and Service Charge Statement [38] does not in practice relate solely to meeting the Landlord's covenants in relation to the common parts of the estate but also includes significant expenses in providing services to individual chalets which are not properly chargeable to the service charge. It appears to the tribunal, upon the evidence, that the services provided by Mrs Conn and Mr Mabbitt are of a high standard and are of considerable use to chalet owners, occupiers, and their guests.
47. The tribunal heard for example of Mrs Conn being called late at night to deal with an incursion of cows upon common parts of the site and a car park. Her time and expenses in dealing with this matter would be properly incurred service charge costs. By contrast, checking for example the smoke alarm and an individual chalet, or removing refuse or old furniture from an individual chalet, or checking the locks or access for an individual chalet

do not relate to the Landlord's obligations to the common parts of the estate and are services that should be directly charged to that individual chalet owner/leaseholder or occupier. Paragraphs 22- 28 of Mrs Conn's statement [148,149] give numerous examples of services provided that should be so charged to individuals and that are services whose charges should not be included in the service charge relating to the common parts, but which have been included.

48. Mrs Conn, to her credit gave frank evidence about such matters. She said that she does not keep records of her working time on site, and she accepted for example that when waste and rubbish generated by the refurbishment of chalets 21, 27 and 29 was removed by Mr Mabbitt, that there were no individual charges made to those chalets for Mr Mabbitt's services. Mrs Conn said that they deal with all these problems because the owners live a distance away and that she maintains that the services that they provide are for the good of the site and they see this as part of their site warden duties. Mrs Conn estimated that around 50% of the services are what they called site warden services or duties. She accepted that she does not keep a record of individual tasks that she and Mr Mabbitt carry out for people nor for the cost of the same. On Mrs Conn's evidence therefore, the tribunal find that 50% of the services relate to individual chalets (not the common parts of the estate) and are not properly chargeable to the service charge. The tribunal again stresses that it appears that Mrs Conn and Mr Mabbitt are providing a good service, but the tribunal recommend that proper records are kept of time and work undertaken in relation to the common parts of the estate, and likewise that clear records are kept in relation to duties undertaken at the request of specific chalet owners or occupiers. The tribunal recommend that the Directors have a clear and unambiguous list of costs for their services that are charged to the individual chalet owner or occupier.
49. Whilst there has been much argument about whether or not the services are being provided as site wardens or not, the tribunal does not consider that it is required to make a definitive ruling upon this point, because, as Ms Cunningham submitted, there is clear authority in the lease for leaseholders to pay the service charge for their proportionate part of the expenses and outgoings incurred by the Landlord in undertaking its covenants in relation to the common parts of the estate.
50. In relation to the **annual charge being levied for the van**, the tribunal find that this is reasonably incurred although the method of charging is unusual. However, by year 5 the cost of the purchase of the van will have been repaid in full and it will not be reasonable to levy any further charges in relation to the van other than general running costs. The tribunal find that the use of the van in meeting the Landlord's obligations for the common parts of the estate is reasonable. There are many materials that will require transport in the van, and it would not be reasonable to expect Mr Mabbitt to use his personal vehicle for the same.

51. With regard to the **charge for the quad bike** in the service charge year 2019 – 20 the tribunal find that these costs are unreasonably incurred. There is a van and a sit on lawnmower and the tribunal find that the evidence did not support the reasonable need for a quad bike in addition in order to meet the landlord's covenants. The amount of £1000 included in the service charges for this item is therefore considered to be unreasonable and will need to be reimbursed or shown as a credit in the future accounts.
52. With regard to the major expense through the three service charge years in question, namely the **increase in labour costs/directors salaries/site management costs**, the tribunal has taken the following approach. Both the Applicant and the Respondent provided their own quotations that they considered were reasonable for site maintenance services, from Brookes and Bevans gardening services respectively. The tribunal consider that this is helpful evidence and indeed is the only other comparative external evidence of the costs involved in maintaining the common parts of the site. The average of those two comparable quotes is £26,100. However, since those external companies will have their own equipment and incur their own overheads such as insurance, plant, machinery and fuel costs, adjustments should be made to the service charge costs claimed in order to create a like-for-like comparison.
53. With reference to the Analysis of Costs at Appendix One, the tribunal has therefore adjusted the service charges to include the other costs or overheads to the salaries and NI, based upon the Respondent's figures, to provide an adjusted gross service charge figure for each year.
54. There are no comprehensive records detailing the way in which the site management fees/site warden duty fees have been calculated and given the tribunal's finding that the overall figures contain costs relating to individual chalets and occupiers rather than matters that are properly attributable to the service charge, the Respondent's initial salary and NI costs include site management/warden matters that are not properly attributable to work on the common parts of the estate.
55. The effect of Mrs Conn's oral evidence was to concede that 50% of the site management fees could relate to matters other than the common parts. Her statement said that what the Applicants consider to be reasonable based on the quote from Tim Brookes, probably only covers about 60% of the site maintenance obligations and none of the site warden services [155, paragraph 15].
56. The tribunal accept that the quotes from Tim Brookes and from Bevan relate largely to the grounds and site maintenance. The tribunal also accept that there will be other elements, other than the sort of site maintenance and gardening tasks set out in the Brookes and Bevan quotations, that do relate to the common parts and are properly incurred by the Respondent as service charges. The difficulty for the Respondent is that their lack of accurate records as to how costs have been incurred means that it will not be possible to provide a precise breakdown of such matters. Mrs Conn accepted as much. This means

that the tribunal is required to exercise its judgement based upon the totality of the written and oral evidence.

57. The tribunal notes the large number of tasks undertaken by Mr Mabbitt and Mrs Conn that are summarised in Mrs Conn's witness statement at paragraphs 18 – 21 [145,146,147] but also notes from the totality of the evidence that a large part of the site management/warden costs do not relate to the common parts and relate to individual chalets. Using its judgement and based upon the totality of the oral and written evidence, the tribunal find that the cost of services included in the salary/site management/site warden costs that is applicable to dealing with the common parts is 25% for the years 2018/2019 and 2019/2020 and is 15% for the year 2020/2021. The latter figure, at 15%, is a lower percentage owing to the effect of the Covid 19 restrictions and the far more limited occupancy of the site.
58. Turning to the Analysis of costs at Appendix One, the tribunal has calculated an adjusted gross service charge for each of the three years in question. It has then deducted the cost of the site warden/site management costs applicable only to the common parts and which are not provided by the comparable quotes, in order to provide a net adjusted service charge. The net service charges are then compared to the average of the comparable quote from Brookes and Bevan (£26,100).
59. **For the service charge year 2018/2019, this leaves an overpayment of £6205.25, for 2019/2020 an overpayment of £10,975.43 and for 2020/2021, an overpayment of £16,229.15.** These figures that constitute the overpayment for the three service charge years in question, will need to be credited back to the service charge payers. **The tribunal find, as per Appendix One that the reasonable service charges payable for 2018/19 are £43,382.75, for 2019/20 are £44,369,57 and for 2020/21 are £37,489.85.**
60. It should be noted that the basis of the tribunal's findings is not that the work undertaken and charged by the Directors is unreasonable in amount of itself, but that in essence the Respondent has included significant costs in the service charge which in reality did not relate to the landlord's covenants to maintain and repair etc, the common parts of the estate but instead related to individual services. The Respondent is entitled to charge individual chalets and their owners/occupiers for the personal site warden type services (that do not relate to the common parts) and it is a matter for them whether and if they choose to do so to recoup any shortfall.

#### **Application under section 20 C.**

61. Section 20 C (1) of the Landlord and Tenant Act 1985 states that;

*“a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal,.....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.”*

The application in the case of proceedings before a leasehold valuation tribunal is to be made to the tribunal before which the proceedings are taking place and the tribunal may make such an order on the application as it considers just and equitable in the circumstances.

62. Mr Mynott submitted that the tribunal hearing was taking place because of lack of engagement by the Respondent. He alleged that not only had there been a reluctance to engage but there had also been intimidation of people who he said had previously attended a meeting and supported the application. He said that the feeling of fear with some people has been quite great and there had been a number of complaints made to the Association about the attitude and behaviour of the Respondent.
63. Ms Cunningham said that the Directors took over their mother’s business and in relation to speaking of them as if they were terrifying, she said “they are not the Cosa Nostra”. She submitted that it would be rare for the tribunal to make a section 20C application if an application has not been successful and that there was no automatic expectation that the tribunal should make such an order and that it was entirely within the tribunal’s discretion. She submitted that the Association did not have the standing to make such an application and questioned whether Mr Mynott was able to do so.
64. The tribunal note however that Mr Mynott was representing the Association and the named Applicants, and as the representative of the tenants and acting on their behalf he is entitled to make such an application. Having carefully considered all representations upon this matter and the totality of the evidence, the tribunal considers that it **would be just and equitable to make an order under section 20 C**. There was evidence within the hearing bundle of intimidatory behaviour when Mr Mabbitt parked his van in such a way as to prevent a member of the Association leaving the site on 24<sup>th</sup> August 2021 and money was demanded from that member [304, 305]. In her evidence, Mrs Conn accepted that this had happened, and it was “unacceptable”. It was also put to her by the tribunal that a neutral observer considering the correspondence and the sequence of events before the application to the tribunal was made, might conclude that there was a reluctance upon her part to answer legitimate questions. Again, to her credit, Mrs Conn said that she had thought the matter would go away and it had not. The tribunal note that matters such as the £6,000 loan and the proportionality calculations of the service charge had not initially been admitted and had been wrongly applied to the service charge even if corrected before the hearing.
65. Upon the basis of the entirety of the evidence, including that of Mrs Conn, the tribunal find that the attitude of the Respondent company and its directors did hinder open communication about the Association’s legitimate concerns and contributed to the need

for an application to be made to this tribunal. Whilst Mrs Conn and Mr Mabbitt have endeavoured to continue to run and manage the site the way that their parents had done, their lack of effective record-keeping and their blurring of costs that should be charged to individual chalets owners/occupiers, with the costs properly attributable to the service charge, has been at the root of the difficulties that have led to this case. The tribunal therefore makes an order under section 20C that all of the costs incurred by the Landlord (Respondent) in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the service charge.

DATED this 11<sup>th</sup> day of January 2023

A handwritten signature in black ink, appearing to be 'R Payne', written in a cursive style.

Tribunal Judge Richard Payne



## Woodland Park – Analysis of Costs

**1 Director salaries, N.I. etc require adjustment to incorporate machinery, fuel and other plant costs to create 'Like for Like' comparison to quotations from Brooks and Bevan.**

**2 As a matter of judgement, Site Warden costs associated with the common parts only are estimated at 25% for years 2018/2019 and 2019/2020 and 15% for year 2020/2021 to reflect 'covid' restrictions**

**3 Average of Comparable Quotes from Brooks and Bevan is £26,100**

	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/2021</b>
<b>Relevant 'Multi Span' Service Charge Costs</b>			
Salary and NI	£33,015.98	£46,016.01	£47,198.00
Plant/Machinery Costs	£5,989.69	£1,631.23	£2,601.00
New Mower	£469.00		
John Deer Mower		£750.00	
Van	£1,000.00	£1,000.00	
Bike	£0.00	£0.00	£0.00
Grass cutting and ground works	£2,550.00	£36.67	
Protective Clothing	£48.99		
<b>1 Adjusted Gross Service Charges</b>	<b>£43,073.66</b>	<b>£49,433.91</b>	<b>£49,799.00</b>
<b>2</b>			
Less cost of services provided by the 'Site Warden' applicable to common parts only @ 25% for years 2018/2019 and 2019/2020 and 15% for year 2020/2021	£10,768.42	£12,358.48	£7,469.85
<b>Net Adjusted Service Charge Costs</b>	<b>£32,305.25</b>	<b>£37,075.43</b>	<b>£42,329.15</b>
<b>3</b>			
Less Average Quote	£26,100.00	£26,100.00	£26,100.00
<b>Over Payment</b>	<b>£6,205.25</b>	<b>£10,975.43</b>	<b>£16,229.15</b>

### SERVICE CHARGE SUMMARY

<b>ACCOUNTING YEARS</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/2021</b>
Service Charges Statement	£49,588.00	£55,345.00	£53,719.00
Over Payment	£6,205.25	£10,975.43	£16,229.15
<b>SERVICE CHARGES REASONABLY PAYABLE</b>	<b>£43,382.75</b>	<b>£44,369.57</b>	<b>£37,489.85</b>