10720

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BF/LSC/2014/0486**
Property	:	**4-10 Peaches Road, Sutton, London, SM2 7BJ**
Applicant	:	**Sutton and Cheam Leaseholds Limited**
Representative	:	**Montague Palfrey, Counsel, instructed by Carpenter & Co, Solicitors**
Respondents	:	**(1) PAYAM SEDIGHI POU** **(2) ALEKSANDRA DANUTA MORRISON** **(3) DAVID WILLIAM TABER AND CHANTAL CLAUDETTE TABER** **(4) FRANK WILLIAM SIPKINS AND MAUREEN SIPKINS** **(5) DOREEN MARGARET HOLLOWAY** **(6) JENNIFER WENMOUTH** **(7) ROGER BROWN** **(8) JEAN SEWEL** **(9) PAUL DURSTON** **(10) MR AND MRS R VASSEN** **(11) MR AND MRS A SIVINOV** **(12) MR R TOWNSEND**
Representative	:	
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – application of liability to pay and reasonableness of service charges.**
Tribunal Members	:	**Miss A Seifert FCIArb** **Mr L Jarero BSc FRICS**
Date of Decision	:	**25th March 2015**

DECISION

Preliminary

1. The property, which is the subject of this application, is 4-10 Peaches Road, Sutton, SM2 7BJ ("the property"). The property comprises a block of four maisonettes of even numbers 4 to 10 inclusive. It is part of an estate of 15 blocks. The subject block is block 15. The relevant statutory provisions are attached to this decision in **Appendix 1**.

2. The application was dated 25th September 2014. The Lessors sought a determination under Section 27A Landlord and Tenant Act 1985 of liability to pay and reasonableness of service charges. The details are set out in the application.

3. Directions were given by the tribunal on 1st October 2014. On 4th October 2014, respondents Mr and Mrs Taber wrote to the tribunal raising issues concerning the tribunal's jurisdiction to determine the application. A case management conference was held on 30th October 2014, following which directions were issued.

4. It was recorded in the directions that the Lessor sought a determination under section 27A of the Landlord and Tenant Act 1985 that relevant costs to be incurred in the service charge year 2014/2015 relating to the treatment / removal of Japanese Knotweed are payable by the lessees of flats 4 to 10 Peaches Close, or in the alternative, by all the lessees of the flats on the estate.

5. The tenants seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

6. A preliminary hearing was held on 10th December 2013. It was determined that the tribunal had jurisdiction to determine the amount of service charges payable under the leases pursuant to section 27(1) of the Act.

The issues

7.

(1) Whether the proposed works fall within the Lessor's obligations under paragraph 3 (ii) of the leases of flats 4, 6, 8, and 10 Peaches Close.

(2) Whether the proposed costs are reasonable and recoverable under section 19 of the Act.

(3) Whether payments in advance are payable by the lessees in respect of the proposed works.

(4) The proportions payable.

The hearing

8. Mr Roger Harris, the Lessor's managing agent provided a witness statement dated 15th December 2014 but was unable to attend the hearing. A request for an adjournment was refused prior to the hearing. The applicant did not renew that request at the hearing. The tribunal has had regard to the evidence in Mr Harris' witness statement subject to any submissions on the weight to be attributed to this in his absence.

9. Mr David Taber (Flat 6) provided a witness statement dated 2nd January 2015. He confirmed his witness statement, and gave additional oral evidence. Mr Holloway (Flat 10) and Mr and Mrs Sipkins (Flat 8) attended the hearing.

10. A witness statement was also provided by Mrs Sandra Ann Taylor, who attended the hearing, confirmed her statement and gave additional oral evidence. Mr Taylor also attended the hearing. Mr and Mrs Taylor are the owners of property adjoining the subject land.

11. The tribunal heard submissions from Mr Taber and from Mr Montague Palfrey of counsel.

The Tribunal's decision

12. Having considered the evidence and submissions as a whole, the tribunal finds:

12.1 That removal of 'weeds' from the area of land marked green on the lease plans of 4, 6, 8 and 10 Peaches Close falls within the Lessor's obligation under clause 3(ii) of the leases of each of those properties.

12.2 The works and costs proposed in the quotation and updated quotation of Environet UK Ltd (p240 to p255 of the hearing bundle) are reasonable and recoverable as part of the service charge (subject to compliance with section 20 Landlord and Tenant Act 1985 consultation procedures or dispensation therefrom).

12.3 The estimated costs of the proposed works are payable by equal quarterly payment in advance on the usual quarter days under clause 1 of the leases of 4, 6, 8, and 10 Peaches Close.

12.4 The proportions of the costs payable under the leases of 4, 6, 8 and 10 Peaches Close are 25% each of the total cost of the proposed works.

Reasons for the decision

The Background

13. Mr Roger Harris is the managing agent for the property who has been appointed by the applicant. He is responsible among other things for the day to day management of the common grounds in Peaches Close and for budgeting and collection of the service charges, payment to contractors, records for accountants and other general management duties. Mr Harris was appointed to the position of managing agent for the estate in March 2010.

14. The tribunal was provided with a copy of the Land Registry title documents and schedule of 56 leases for title number SY119889. The registered proprietor of the freehold title for that land was Sutton and Cheam Leaseholds Limited.

15. The tribunal was also provided with a copy of the Land Registry title documents and a schedule of 4 leases for title number SY153805. The registered proprietor of the freehold title was shown as Clockscreen Limited in the official copy of the entries on the register of title on 17th July 2014.

16. In his witness statement Mr Harris explained that the applicant was formerly known as Clockscreen Limited but the company changed its name in December 2009 to Sutton and Cheam Leaseholds limited and that company owns the freehold interest in both titles.

17. Peaches Close consists of 15 detached two-storey blocks, each containing 4 flats. Flats 4, 6, 8 and 10 are in block 15. The flats (or maisonettes) are subject to 999 years commencing 1956 on substantially similar terms.

18. Flats 4 and 8 are the lower flats and have rear gardens adjacent to each of the flats which was tinted blue on the plan the exhibit to Mr Harris' witness statement. 6 and 10 are upper flats and are demised the gardens backing on to the ground floor flats gardens. These gardens are printed yellow on the plan.

19. On the front and side of block 15 are gardens which were not demised with the flats. These were retained by the applicant and have been maintained as garden.

The leases

20. Copies of 4 leases were included in the applicant's bundle which can be summarised as follows:

4 Peaches Close (pp. 259 to 263 pf the hearing bundle)

- Lease for 4 Peaches Close, together with certain rights of way, paying the net yearly rent of £12-12s by equal quarterly payments in advance on the usual quarter days every year and

  Further Yielding and Paying by way of further rent therefor yearly during the said term by equal quarterly payments on the days hereinbefore fixed for payment of rent a sum of thirteen pounds (being the estimated amount required by the lessor at the date of this lease to carry out its obligations contained in Clause 3(ii) hereof, TOGETHER with a further sum (if any) which may from time to time be agreed between the Surveyors appointed by the Lessor and the Lessee for that purpose (and in the event of disagreement to be decided by an arbitrator under the provisions of the Arbitration Act 1950) being the amount which the Lessor may reasonably require in excess of the said sum of thirteen pounds to carry out its said obligations.

  The Lease for 4 Peaches Close contained in clause 3, covenants by the Lessor with the Lessee including the following:

  3(ii) At all times during the said term at its own expense to keep in good order and maintain as a garden the land shown on the said plan [the remainder of the clause which stated annexed hereto and coloured green etc. was deleted]

  It was submitted by the applicant that the 'said plan' was the plan at p. 261 of the hearing bundle. This showed the demised maisonette 4 Peaches Close, the area of garden demised with 4 Peaches Close, and an area coloured dark green.

6 Peaches Close (pp 264 to 271 hearing bundle)

- The provisions as to ground rent and further rent of £13 per annum as an estimated amount required by the lessor to carry out its obligations in clause 3(ii) of the lease are similar to those in the lease of no. 4. The provision continues *Together with a further sum (if any) which may from time to time be agreed between the Surveyors appointed by the Lessor and Lessees for that purpose (and in the event of disagreement to be decided by an Arbitrator under the provisions of the Arbitration Act 1950) being the amount which the Lessor may reasonably require in excess of the said sum of Thirteen pounds to carry out it said obligations.*

- Clause 3 contains covenants by the Lessor with the Lessee.

3(ii) At all times during the said term at its own expense to keep in good order and maintain as a garden the land shown on the said plan annexed hereto and thereon coloured green .....

8 Peaches Close (pp 275 to 279 haring bundle)

- This lease contains similar provisions to the above leases.

The Lessor's covenant in clause 3(ii) reads:

3(ii) At all times during the said term at its own expense to keep in good order and maintain as a garden the land shown on Plan annexed hereto and thereon coloured green.

10 Peaches Close (pp 283 to 291 of the hearing bundle)

This lease contained similar provisions.

Clause 3(ii) contains a covenant by the Lessor:

3(ii) At all times during the said term at its own expense to keep in good order and maintain as a garden the land shown on the said Plan annexed hereto and thereon coloured green.....

21. It was noted that the lease plan for No 6 Peaches Close shows one brown path leading to the front doors for No 4 and 6 and then to the fuel stores at the rear of the property. The gardens and other external areas of the other 14 blocks on the Peaches estate are not shown on the lease plans for 4, 6, 8 and 10.

22. Deeds of variation in respect of the leases were included in the bundle, but these did not directly impact on the issues.

23. Copies of the registered titles for the leasehold interests in the above properties were also included in the appellant's bundle.

The service charge history

24. The copy of a decision by the tribunal dated 13th June 2012 in respect of Flats 6 and 21 Peaches Close (LON/00BF/LSC/2011/0772/2011/0581) was included in the hearing bundle. The respondents were Mr David Taber and Mrs Chantal Taber, as lessees.

25. That decision contained a section headed: Apportionment of Gardening Expenses (General). This briefly set out the evidence and submissions that had been presented before that tribunal. It was the applicant's

(Lessor's) position that it had always apportioned the contributions for the upkeep and maintenance of the gardens equally between all flats at Peaches Close, so that each flat paid 1/60th of the garden expenses. It was the applicant's case in those proceedings that it was reasonable to apportion the total gardening expenses between all flats. The applicant had not attempted to apportion the garden expenses between the various blocks, based on the size of the respective gardens. The applicant considered that each block should contribute equally to the gardening expenses for the estate overall.

26. The respondents' (Lessees') case was that flat 6 was only liable to contribute to the upkeep and maintenance of the gardens to the front and sides of Block 15 and that there was no obligation to contribute to work to the other areas of garden.

27. The tribunal in that case determined in the above application in respect of 'Apportionment of Gardening Expenses (General)' that flat 6 was not liable to pay towards the maintenance of other garden areas than those of block 15. The reason given was that:

It is only the garden area around Block 15 that is coloured green on the lease plan for Flat 6. The plan does not show the garden area for the other blocks at Peaches Close. The Tribunal finds that the Respondent's liability to contribute to garden expenses for Flat 6, under clauses 1 and 3(ii) of the lease is limited to the green area shown on the plan. It follows that Flat 6 does not have to contribute to the maintenance of the other garden areas. The Tribunal is required to determine the gardening expenses that are attributable solely to Block 15 in each of the service charge years. However the various invoices for gardening at Peaches Close do not identify or apportion the work between each garden area. It is fair and reasonable to apportion the gardening expenses for Block 15 based on the surface area of the garden for this block as a proportion of the total of all the gardens. In the absence of alternative measurements from the Applicant, the Tribunal accepts the Respondent's evidence on the surface areas and finds that Block 15 should pay 6.67 of the total gardening expenses, which equates to 1.15th. Flat 6 should pay 25% of this contribution, namely 1.67% or 1.60th. In future it would be helpful for the Respondent and their gardener to separate out the gardening expenses that are solely attributable to Block 15.

The contentions in the current application

28. The Lessor's position in the current application was that although at the time of the previous proceedings the Lessor divided up the garden expenses and charged the Lessees an equal proportion, the Lessor's position had altered. It was submitted that the flats in Block 15 (No 4, 6, 8, 10) were liable to contribute to the upkeep and maintenance of the

gardens to the front and sides of Block 15 as shown on the lease plans only.

29. The respondent's submission in the current application was that the garden expenses relating to block 15 should be charged to all the lessees on the estate.

Recent events leading to the application – Japanese Knotweed

30. In his evidence Mr Harris referred to the problem of Japanese Knotweed. He stated:

In May of this year [2014] I was notified by the gardeners employed by the applicant of the existence of Japanese Knotweed "Fallopia Japanica" ("JKW") growing in the communal garden along the northern boundary with a neighbouring property known as The Studio, Old Barn Close ("The Studio"). I attended to inspect the area myself and found that there did indeed appear to be an area of ground from which shoots of JKW were growing. On inspection I discovered that in fact there was evidence of the weed also growing on the other side of the boundary, in the garden of The Studio, Old Barn Close.

31. Mr Harris contacted estate agents acting in the sale of the Studio and obtained the contact details of the owners of the Studio. He contacted a JKW removal contractor and they met on site. He also informed Sutton environmental health. Mr Harris obtained 3 quotations for the removal of the JKW which were provided with the application. It was decided to apply to the tribunal to seek a determination of the lessees' liability to pay for the cost of the JKW removal and the reasonableness of the intended charges. No section 20 consultation had been carried out in respect of the removal cost pending the tribunal's determination as to the liability under the leases of the respondents and the reasonableness of the proposed costs. Whether or not section 20 consultation process is required would depend on whether the proposed costs are to be spread between the 15 blocks or only block 15.

32. At page 130 of the hearing bundle was a copy of the lease plan for No 6 on which the suspected position of the JKW was indicated by crosses. Some of the crosses were on the area marked green on the plan which it is the Lessor's obligation to 'keep in good order and maintain as a garden' (clause 3(ii)).

33. Mr Harris did not know where the JKW came from originally. He considered that it is impossible to know at this stage which side of the boundary line the plant originated from. Some of the respondents had suggested that Clockscreen Limited in the 1990s instructed a gardener to move soil from a compost heap elsewhere to the location and claim

that the rhizomes must have been moved in that soil, but this was not supported by satisfactory evidence.

34. Mr Harris considered that due to the nature of JKW treating the weed on the applicant's side of the boundary only is 'useless' as this will continue to grow across the boundary. Mr Harris said an agreement had been sought with the owners of the Studio, Mr and Mrs Taylor, for works on their land and for them to contribute up to a 50% of the total cost of treatment and removal. Mr and Mrs Taylor had declined.

35. Mr Harris submitted that although the proposed work included work at the Studio which was outside the land coloured green on the lease plans it fell within the scope of the Lessor's obligation under clause 3(ii) as it was work *'to keep in good order and maintain as a garden the land shown on the said plan annexed...and thereon coloured green'*. In so far as the cost is not recoverable from the owners of the studio, the whole of the treatment and removal cost would be the basis of the lessees' contribution.

36. In evidence Mr Taber described his qualifications and experience. He held a range of qualifications in Horticulture and Arboriculture and set out details in his statement. The applicant does not accept Mr Taber as an expert witness and no expert witness direction was sought or obtained. Nevertheless he was able to provide helpful evidence in his role as Lessee of one of the subject properties. He and Mrs Taber have been the leasehold owners of flat 6 Peaches Close since April 1996 and flat 21 Peaches Close since July 1990.

37. Mr Taber gave evidence in respect of Japanese Knotweed including its history. He stated that control under the current legislation can be carried out by the homeowner and does not require a specialist company. He referred to Home Office guidelines and stated that the Royal Horticultural Society suggests communicating with neighbours before contacting the Council. He submitted that the Lessor was obliged under the leases to maintain the land in good order at its expense irrespective of recovery of the cost from the Lessees, and submitted that it was not reasonable for there to have been a delay pending the application to the tribunal. Mr Taber said that to the best of his knowledge the JKW had been growing in the border between Old Barn Studio and the amenity garden of flats 4, 6, 8 and 12 Peaches Close adjacent Old Barn Close for several years. It was not possible to know with any certainty how this came to be on the land.

38. Mr Taber said that until the appointment of the current managing agent the shrub borders were surface treated annually. This was stopped several years ago. He said that it was arguable that this had enabled the JKW to spread along the border and into neighbouring land. However, he said it was difficult to understand why it had spread under the concrete and paths in Old Barn Studio and not into the

adjacent lawn area. Mr Taber said that there are several chemical formulations on the market available to both domestic and professional gardeners which can either be applied as a folia spray in May, mid-summer and early autumn as the sap drops down the rhizomes. He outlines other methods. Mr Taber considered that the operation is not technical and the current gardeners should be more than capable of carrying out this treatment on the land coloured green within the current gardening contract with an estimated maximum time taken of three hours a year, this time being more than offset by not having to cut the grass 26 times throughout the season. He estimated the additional cost of the chemicals and applicator would be £30 per year. He submitted that to engage a contractor on the same site would incur disproportionate cost.

39. Mr Taber referred to the gardening contract a copy of which is in the hearing bundle, and suggested that this contains an express term that requires the borders to be 'kept weed free'. He suggested that the Lessor, once the problem had been brought to its attention, ought to have instructed the gardener to remedy the situation.

40. The 'gardening contract' referred to by Mr Taber was at p.177A of the bundle. This was for the period 1st February 2014 for 12 months and was to be reviewed annually. The works included: *The Works to mowing all communal front lawns, on a subject to growth and weather conditions basis. To maintain the flower beds and borders and plants in pillars and keep them weed free and tidy. To shaping and trimming of shrubs and hedges. To clearing of leaves. To removal of ivy in the winter months. To keeping the communal areas neat and tidy. To removal of all garden waste. The Hours March – October 12 hours a week. November – February 8 hours a week.* The cost of these works was £9,515.00 per annum, payment monthly in arrears. The tribunal noted that there was no specific mention of removal of JKW as there was for ivy. There were no special provisions for removal. This appears to be gardeners engaged to undertake the works, being normal garden work across the estate as the contract applied to 'Re: 1-109 including 4-10 Peaches Close and 4-12 Sandy Lane, Cheam'.

41. Mrs Taylor is the joint owner of the Old Barn Studio, Old Barn Close, which adjoins the subject properties. Mrs Taylor provided a statement dated 31st December 2012 which she said was written in response to a letter dated 17th July 2014 from Carpenter & Co on behalf of the Lessor, a copy of which was in the hearing bundle. She described how she and her husband had their property surveyed when they bought this in about 2001 and subsequently, and that there had been no sign of JKW. However, during the past 3-4 years they had noticed weeds appearing through a crack in their path which runs adjacent to the common boundary. They treated the path with ordinary domestic weed killer each year until April 2014 when the weeks growing in the adjacent flowerbed were identified as JKW. After some investigation and advice from Sutton Council Environmental Services on the treatment and

disposal of the weed Mr and Mrs Taylor treated this with a strong chemical weed killer (Roundup) for the specific purpose of eradicating it by injection and spraying. Mrs Taylor said she and her husband were happy to carry on treating an further growth appearing on their pathway on the understanding that the adjacent flowerbed is treated likewise. She pointed out that they have no garden, only a patio area to the back of the property. She explained that she and her husband are retired and was concerned at the suggestion in the solicitor's letter that they consider paying 50% of the cost of £6-7,000 and added that they could not afford this. She considered that the JKW could be treated safely and responsibly by themselves as they were currently doing.

42. A report by Environet UK Ltd headed Japanese Knotweed Management Plan dated 25th April 2014 was provided. The report related to the Studio Old Barn and Private Green. Two treatment options were described, herbicide treatment and physical excavation. It was noted that removing JKW from a property otherwise than in accordance with legislation is a criminal offence. Also a report was prepared by Japanese Knotweed Eradication Ltd dated 24th May 2014, and a report by The Knotweed Company Ltd dated 28th May 2014. Copies of the reports were included in the hearing bundle.

43. Environet UK's quote was £3,725 (excluding VAT) for recommended option 1 (Herbicide Treatment) with additional charges for voluntary items and various insurance. In an email dated 17th November 2014 to Mr Harris from Environet UK it was stated that the herbicide treatment cost was £2,175.00 (ex VAT) could be split between the two properties which equalled £1,087.50 (ex VAT). However to guarantee Peaches Close land and the Old Barn Close individual guarantees would have to be purchased (the cost was stated) as they can only issue one guarantee per property/land. He set out the cost of a 5 year insurance backed guarantee 10 year insurance backed guarantee. It was added: *The guarantee will still be valid if we only treat one side of the boundary however the guarantee will only cover you for one treatment of herbicide should any encroachment from the untreated side occur.*

44. An email dated 14th November 2014 from Japanese Knotweed Eradication Ltd stated that the costs remained the same (£2,760 including VAT) and that the warranty is not available if knotweed is left untreated.

45. An email from The Knotweed Company Limited dated 14th November 2014 stated that if only one side was treated and the other side left untreated that firm would not be able to offer a warranty on the contract. The quote had been £1,914.00 (including VAT). There was a further difficulty in that that firm had not visited the site and did not have precise measurements of the knotweed on each property.

46. The first issue was whether the proposed works fall within the landlord's obligations under paragraph 3 (ii) of the leases of flats 4, 6, 8, and 10 Peaches Close. Mr Palfrey submitted that the respondent's accepted that the control of weeds falls within the scope of clause 3(ii) in the leases. He referred to paragraph 9 of the statement by Mr Taber (which was presented as reflecting the views of the Block 15 respondents). Paragraph 9 Mr Taber stated: *It is agreed that the control of weeds fall within the meaning of "At all times during the said term at its own expense keep in good order and maintain as a garden the land shown on the said plan coloured Green".*

47. The tribunal, having considered the evidence, finds that the proposed works falls within the Lessor's obligations under paragraph 3(ii) of the leases of flats 4, 6, 8 and 10 Peaches Close.

48. The tribunal finds that the Lessor is under an obligation at all times during the term at its own expense to keep in good order and maintain as a garden the land shown green on the lease plans of 4, 6, 8, and 10.

49. The second issue was whether the proposed costs are reasonable and recoverable under section 19 of the Landlord and Tenant Act 1985.

50. Quotes for the work to remove or treat the JKW at Block 15 ranged from £1,1914.00 (including VAT) from The Knotweed Company Ltd, £2,760 (including VAT) from Japanese Knotweed Eradication Ltd, and £3,725 (excluding VAT, £4,500 inclusive) from Environet UK (p.216 and p.240 updated). Further figures were provided for treatment on the adjacent property owned by Mr and Mrs Taylor.

51. Since the issue of the application a number of other leaseholders of blocks on the estate have been joined in the proceedings. The tribunal was told that the leases of the flats or maisonettes in those other blocks are on similar terms including a clause similar to clause 3(ii) in the subject leases and referring to their own areas of land marked green for each block. However there was no evidence that JKW had been found in any other area other than at Block 15 (and the neighbouring land of the Studio which is not in the ownership of the Lessor).

52. In support of its application that the costs of treatment / removal of the JKW are recoverable under the service charge, Mr Palfrey relied on the provisions of Clause 1 of the various leases, which the tribunal was told are on very similar terms throughout the 15 blocks on the estate. This is set out in italics earlier in the decision at paragraph 13 above in respect of the lease of 4 Peaches Close. Mr Palfrey submitted that the words *which may from time to time be agreed between the Surveyors appointed by the Lessor and the Lessee for that purpose (and in the event of disagreement to be decided by an Arbitrator under the provisions of the Arbitration Act 1950,* are caught by section 27A(6) of the 1985 Landlord and Tenant Act, being a pre—dispute agreement

which provides for the determination in a particular manner of a question which may or could be the subject of an application under subsection 27A(1) or (3). The tribunal finds that in so far as clause 1 of the leases provides for a determination by surveyors and/or arbitration this is void under section 27A(6) of the 1985 Landlord and Tenant Act.

53. The tribunal therefore went on to consider whether the proposed costs are reasonable and recoverable under section 19 of the 1985 Landlord and Tenant Act.

54. The three quotations obtained have been referred to above. The Lessor's case was set out in the witness statement of Mr Harris dated 15th December 2014. Mr Harris considers that the JKW is not only growing on part of the Lessor's land but also on the adjoining land on the northern boundary at the Studio owned by Mr and Mrs Taylor. Mr and Mrs Taylor have started treatment of the JKW on their land and have expressed the view that they do not wish to contribute 50% of the cost of removal of the JKW if the works were undertaken to both properties. They deny any responsibility for the JKW on the Lessor's land. It is accepted by the Lessor that it is impossible at this stage to ascertain which side of the boundary the JKW originated from.

55. The tribunal considers that the Lessor's obligation '*to keep in good order and maintain as a garden the land shown on the said Plan annexed....*' could include the cost of treating both sides of the boundary as part of the same treatment. Mr and Mrs Taylor have not agreed to treatment by the applicant on their land at the contribution of 50% requested from them. Accordingly this is not currently an option.

56. The alternative is to treat to the boundary line but the tribunal was told that this carries with it a significant risk that the JKW will return from the other side of the boundary. However, in the absence of agreement by Mr and Mrs Taylor the tribunal has considered the reasonableness of the proposed costs for such work.

57. Mr Taber in his evidence said he was not objecting to the Lessor's proposal to remove the JKW from the green land. Mr Taber made a number of criticisms in respect of the quotes obtained. He said at the hearing that he did not accept any of the quotations. He considered that the JKW removal should be carried out within the normal gardening contract.

58. Mr Palfrey submitted that the Lessor is happy with the proposal and quote from Environet UK at £3,725 plus VAT with optional removal cost at £850 plus VAT and 5 years insurance.

59. Having considered the evidence as a whole, the tribunal considers the nature and complexity of the proposed works and removal

requirements do not fall within the ambit of the ordinary gardening contract referred to earlier in this decision. The tribunal considers that it is reasonable to engage a specialist firm to address the treatment and removal of the JKW. The tribunal considers that the quotation for works by Environet is reasonable.

60. On the information available the tribunal finds that the quotation by Environet UK Ltd (p240 to 255) of the hearing bundle to be reasonable.

61. It is unfortunate that agreement has not been reached between Mr and Mrs Taylor and the Lessor to permit carrying out of works on both sides of the boundary. If there was an agreement for the physical carrying out of the works on both sides, the tribunal would have considered that in the circumstances the total cost of the works (to both sides of the boundary) may have been regarded as works within the scope of clause 3(ii), if these works were necessary to the overall treatment / removal of the JKW on the green land. If so, this additional cost might have been a cost chargeable to the service charge.

62. The third issue was whether payments in advance are payable by the Lessees. In his submissions Mr Palfrey, addressing the question whether payments in advance are payable by the lessees in respect of the proposed works relied on the wording of the leases that £12 – 12s is payable by equal quarterly payments in advance on the usual quarter days. He submitted that this clause entitles the Lessor to payment on account.

63. The tribunal finds that the total estimated cost of the proposed works is payable by under the leases of 4, 6, 8, and 10 Peaches Close by equal payments in advance on the usual quarter days.

64. The fourth issue concerned the proportions payable by the Lessees.

65. Mr Taber submitted that if the costs of the JKW treatment / removal are recoverable by the Lessor through the service charge (which the tribunal considers that they are), then the cost should be apportioned between all 60 flats on the estate.

66. Mr Palfrey referred to the 2012 LVT decision. Prior to Mr Harris becoming the managing agent all expenses on the estate were divided equally between the 60 units. The apportionment of gardening costs was addressed in that decision so far as those parties were concerned. The tribunal found that the respondent's (in that case) liability to contribute to garden expenses for 6 Peaches Close under clause 1 and 3(ii) of the lease was limited to the green area shown on the plan. It followed that 6 Peaches Close did not have to contribute to the maintenance of other garden areas. It followed that the Lessees of the

other blocks did not have to contribute to the costs of the JKW treatment / removal at block 15.

67. The tribunal finds that the proportion of the total estimated costs of the works for treatment / removal of the JKW from the green land at block 15 is 25% each of the four flats.

68. The proposed work is subject to the consultation procedures under section 20 of the Landlord and Tenant Act 1985 or dispensation therefrom.

69. Section 20C Landlord and Tenant Act 1985

Mr Taber submitted that no costs of the proceedings should be added to the service charge. Mr Palfrey agreed, adding that there was nothing in the leases allowing this. However, for the avoidance of doubt, had it been necessary to do so, the tribunal would have considered that it was reasonable to make and would have made an order under section 20C in this case.

A Seifert

Judge of the First tier Tribunal (Property Chamber)

Date: 25th March 2015

Appendix

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(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, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in

determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Section 27A

(1) An application may be made to a leasehold valuation 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.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.