



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	CAM/12UE/LSC/2018/0052
Property	:	17 Lavenham Court, Peterborough PE2 7ZF
Applicant	:	Mr A C Mathieson & Mrs I D Mathieson
Representative	:	Andrew Mathieson
Respondent	:	Holding & Management (Solitaire) Ltd
Representative	:	Rebecca Ackerley (counsel), instructed by J B Leitch Ltd
Original Application	:	for determination of reasonableness and payability of service charges for the years 2014–2018 [LTA 1985, s.27A] for an order limiting liability for the landlord's costs incurred in connection with these proceedings [LTA 1985, s.20C]
Tribunal Members	:	G K Sinclair, G F Smith MRICS FAAV REV & C Gowman BSc MCIEH MCMi
Date and venue of Hearing	:	Monday 26 th November 2018 at Peterborough Magistrates Court
Date of substantive decision	:	22 nd February 2019
Date of this decision	:	8 th April 2019

DECISION REFUSING PERMISSION TO APPEAL

Decision of the tribunal

1. On 22nd February 2019 the tribunal issued its decision following the hearing and determination of this application. On 22nd March 2019 the tribunal received a letter dated 21st March 2019 from the respondent's solicitors asking the tribunal to "amend and review" certain aspects of its decision.
2. Rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 deals with the concept of reviewing the tribunal's decision :
 - (1) The Tribunal may only undertake a review of a decision—
 - (a) pursuant to rule 53 (review on an application for permission to appeal); and
 - (b) if it is satisfied that a ground of appeal is likely to be successful.
3. The respondent's letter does not expressly ask for permission to appeal nor set out any grounds for appeal beyond reciting the three points which it invites the tribunal to amend and review (without saying precisely how).
4. That is sufficient to dispose of the application but, for the sake of completeness, were the tribunal to treat the letter as implicitly including an application for permission to appeal then upon considering it the tribunal determines that :
 - a. it will not review its decision; and
 - b. permission be refused.
5. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the proposed appellant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

Reasons for this decision

6. The tribunal's decision was based on the evidence put before it and submissions made by the respective parties at the hearing.
7. The respondent challenges three elements :
 - a. The amount allowed (and disallowed) for gutters [para 38 d]
 - b. The amount disallowed for electricity [para 38 e]
 - c. The amounts disallowed in respect of fire risk assessment and general risk assessment for the years 2016 [para 41 b] and 2017 [para 42 b].
8. *Gutters* — It is said that the amount was reduced to £732 as it was mostly a block charge, yet it is the solicitors' understanding that neither party made submissions on the point. The respondent management company sought £1 660 in respect of gutter cleaning. It was the applicant's steadfast position, orally and in written statements of case, that this was a block charge and not recoverable. In the 2014 accounts £742 is included as an estate charge for guttering and drain repairs and a further £1 026 as a block charge. The tribunal reasonably determined on the evidence before it that much of the guttering formed part of the block and the cost of cleaning was irrecoverable, but the guttering to the bin store was properly an estate charge (as claimed in the accounts) and so was cleaning of drains. The

respondent is also referred to para 39 of its statement of case, which sought to resist disallowance of the entire £1 660 if wrongly allocated. The tribunal agrees.

9. *Electricity* – The respondent claims that this was credited in the 2016 accounts, and so disallowing this figure would give rise to an unwarranted rebate. On an examination of the 2016 accounts there is no such reference. It is only obliquely, and very unsatisfactorily, mentioned in the respondent’s statement of case. The tribunal, which includes one member actively engaged in property management and cognizant of RICS accounting procedures and collectively has substantial experience in assessing service charge claims, stands by its observation that this was poor accounting practice on the respondent’s part.
10. *General risk assessment* – The passages challenged expressly refer to the charge for carrying out a general risk assessment (and not a fire risk assessment) as being the only estate charge element. This is one of the tasks included within the tasks forming part of the general management of the property, for which the normal management fee is incurred. Were it not to be included, contrary to RICS Blue Book practice, then some discounting of the annual management fee would be warranted.
11. The tribunal is therefore satisfied that, in accordance with the criteria for appeals adopted by the Upper Tribunal, there are no reasonable grounds for arguing :
 - a. That the tribunal wrongly interpreted or applied the relevant law
 - b. That it took account of irrelevant considerations, or failed to take account of a relevant consideration or evidence, or
 - c. That there was a substantial procedural defect.

Dated 8th April 2019

Graham Sinclair

Graham Sinclair – Tribunal Judge