



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

**Case Reference** : **MAN/00CX/LIS/2019/0001**

**Property** : **1-30 Hennymoor House, Manor Row,  
Bradford BD1 4PB**

**Applicant** : **Simon Collins**

**Respondent** : **Perseus Gr Limited**

**Type of Application** : **Landlord and Tenant Act 1985, section 20C**

**Tribunal Members** : **A M Davies LLB  
J Jacobs MRICS**

**Date of Decision** : **18 September 2019**

**Date of  
Determination** : **24 September 2019**

## **ORDER**

No order is made pursuant to Section 20C of the Landlord and Tenant Act 1985

## **REASONS**

### **BACKGROUND**

1. The Applicant holds a long lease of each of the apartments at Hennymoor House, Bradford (“the Property”). The Respondent owns the freehold of the Property.
2. A difference having arisen over service charges, the Applicant made a s.27A application on 15 January 2019. During a hearing on 30 May 2019 the parties settled all issues between them save the Applicant’s application for an order under s.20C of the Landlord and Tenant Act 1985.
3. That application was referred back to the Tribunal for a paper determination.

### **THE ISSUES**

4. The only issues currently before the Tribunal are (a) whether under the terms of the lease of the apartments the Respondent’s costs of this application are relevant costs recoverable through the service charge account and (b) if so, whether it is just and equitable in the circumstances of this case for the Respondent’s costs not to be regarded as relevant costs so recoverable.
5. The Tribunal has been informed of the amount of costs incurred by the Applicant and the Respondent respectively, but those figures are not relevant to this decision.

### **THE LEASE**

6. At clause 1.1 of the lease (the definitions) “Services” are defined at (a) to (h) as cleaning, heating, lighting and maintaining the various common parts and amenities of Hennymoor House. At (i) there is a final provision as follows:

*“any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building”.*

This definition does not directly include management of the building.

7. The Tenant is required to pay a proportion of the Service Costs, which are defined as the total of:

*“(a) all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:*

- (i) providing the Services; and*
- (ii) complying with all laws relating to the Retained Parts;*

(b) *the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services;.....*

It is under this provision that tenants are liable to contribute to management charges through the service charges.

8. “*Building*” is defined not only as the structure of the building itself, but as the whole land and property of the Landlord on which the building stands, as registered at the Land Registry.
9. The lease also contains provisions for direct payment by the Tenant of the Landlord's costs and expenses (a) incurred in connection with or in contemplation of the enforcement of any of the Tenant Covenants (Schedule 4, paragraph 7) and (b) arising out of or in connection with any breach of the Tenant Covenants or any act or omission of the Tenant (Schedule 4, paragraph 16). These provisions are not relevant to the current application.

#### THE PARTIES' CASES

10. The parties' representatives have supplied the Tribunal with their written arguments for and against an interpretation of the lease which allows the costs of this application to be included in the definition of Service Costs.

#### INTERPRETATION OF THE LEASE

11. The Tribunal finds that opposing a s.27A application is not included in the definition of Services, since firstly the extension of the definition at (i) quoted at paragraph 6 above would not be *eiusdem generis* with the previous sections of the definition and secondly opposing a service charge application is not a service “*provided for the benefit of the tenants....*” but, rather, contrary to their interests.
12. On balance, the Tribunal finds that the cost of opposing a s.27A application is a Service Cost, on the basis that it is a reasonable cost incurred in acting “*on the Landlord's behalf in connection with the Building.*” It has already been established that part (b) of the definition of Service Costs extends (for example, by including management charges) the definition of Services. The Tribunal considers that the wording allows for a wide interpretation both of the type of service that might be provided in relation to the whole of the Landlord's property at the site, and of the “*other person*” that the Landlord might retain to provide it, such as a legal team.

## S.20C APPLICATION

13. The Tribunal finds that much of the Applicant's case (in understanding and opposing which the Respondent had incurred substantial time and costs) was withdrawn "at the door of the court", and his point as regards sinking fund contributions had been conceded by the Respondent prior to issue. Moreover, the reduction in management fees that he negotiated was appreciably smaller than the amount he had claimed. Comparing this result with the original application, the Tribunal concludes that it would be unfair to prohibit the Respondent from recovering an appropriate level of its costs through the service charge account.

**A M Davies LLB**