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

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| **Case reference** | **:** | **Man/00BU/LSC/2019/0047** |
| **Property** | **:** | **Flat 3, Heather lea, Green Walk, Bowden, Altrincham, WA14 2SJ** |
| **Applicant** | **:** | **Miss Susan Goodman** |
| **Respondent** | **:** | **Heather Lea Services Ltd** |
| **Representative** | **:** | **Mr McCrum, Mr Stephen Lentin, Mrs Bernice Blankstone** |
| **Type of application** | **:** | **Decision in relation to Section S20C and 27A of the Landlord and tenant Act 1985 and amended to include Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (as amended by section 131 Housing and Planning Act 2016)** |
| **Tribunal member(s)** | **:** | **Judge J O White**<br>**Valuer S Latham** |
| **Venue** | **:** | **Property Chamber, Northern Residential Property first-tier Tribunal, 1st floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH** |
| **Date of decision** | **:** | **10 February 2020** |
| **Date of Determination** | **:** | **20 February 2020** |

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**DECISION**

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**Decision:**

The Respondent has properly incurred legal costs as set out in the invoice of JMW totalling £2,035.20.

The applicant to pay the respondent £1089.60 within 28 days of today's date as an administration charge.

The remainder of £945.60 is payable as a service charge and is recoverable in accordance with any service charge demand.

**Background:**

1. The tribunal received an application under section 27A of the Landlord and Tenant Act 1988 against two of the directors of the Respondent company.

2. Directions were issued on 19/7/19 and the Respondent was amended to be Heather Lea (Services) Ltd. The Respondent submitted a statement of case, a detailed response, a reply, an additional letter and application to strike out the application.

3. The tribunal made a paper determination to consider the application to strike out and issues raised by the documents submitted. The application to strike out was refused. Preliminary findings were made; primarily confirming that the sole respondent was Heather Lea (Services) Ltd and that Heather Lea (Services) Ltd had incurred the debt of £2,035.20 (Legal Fee).

4. The application under Section 27A of the Landlord and tenant Act 1985 ("LTA") was amended to include an application under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (as amended by section 131 Housing and Planning Act 2016) ("CLARA").

5. Directions were issued.

6. The Applicant disputed that it was the Respondent who had incurred the Legal Fee. She failed to comply with the directions. The Respondent attempted to agree a schedule of issues and bundle. The Applicant failed to respond and instead submitted her own bundle to the tribunal which in turn did not include all the documents. The Respondent made another application to strike out her application. At the oral hearing on 4/2/20 Ms Goodman agreed the Respondent bundle and submitted a schedule of issues. The Respondent submitted written arguments on most issues.

**The Issues**

7. The issues to be determined include:

   - Firstly: Should the application be struck out?
   - Secondly: Has the Management Company incurred the Legal Fee?
   - Thirdly: Is the Legal Fee payable as a service charge?

- Fourthly: Is the Legal Fee payable as an administration charge?
- Fifthly: Should the Legal Fee be reduced or extinguished?

8. The law in this area is complicated and set out in Appendix 2.

**Findings**

9. On 13/1/1981 the Applicant entered into a long Lease with the Lessor the Respondent as the Management Company acted on behalf of the Lessor.

10. The Applicant is a tenant of Flat 3, Heather Lea, Green Walk, Bowden, Altrincham, WA14 2SJ ("the Property"). There are 3 other flats and a basement area. Ms Blackstone is the tenant of Flat 1, Mr Lentin of Flat 2 and Mr McCrum of Flat 4.

11. The Property is a first floor flat and includes the garden of the Flat as defined by the second schedule of the Lease as set out in Appendix 1. It is one of four prestigious flats in a former Victorian mansion house. The grounds are substantial. The garden area boarders the tennis club on one side and Green Walk on another. There is currently no access to Green Walk via the garden area of the Property. It is separated by a wall retained by the Respondent company. It is described as an exclusive development with each flat being valued at between £700,000 and £1,000,000 each. The National Trust has imposed a restrictive covenant preventing any construction without its prior approval. The Property is in a low-density leafy conservation area with other mixed large properties.

12. As required by the lease, all the flat owners are now directors and shareholders of the Respondent company and of Heather Lea Freehold Ltd, the owner of the freehold and Lessor.

13. Without notice or permission from the Respondent the Applicant made an application for planning permission to build separate living accommodation within the curtilage of the building forming part of the Flat, that would require access through the retained parts [68]. This consisted of a substantial 4-bedroom house with access to be made via the external wall with Green Walk.

14. The Respondent company had not received notice of this application from the Applicant or the local authority planning department. In a letter dated 18/4/19, the planning department sent notification to each flat owner/occupier. They had until 9/5/19 to respond [67-68]. This clearly came as a complete shock to the remaining tenants as the Applicant had not previously discussed, requested permission or even informed the tenants individually or as a Management Company. They described it as a "bombshell" particularly as they had operated as a small community based on trust and partaking in social events.

15. At that time Mr McCrum mistakenly believed he was a director of the company. He had attended Management Company meetings as a director, making decisions. Mrs Goodman had not raised any concern or objection to this.

16. Mr McCrum and Mr Lentin met and agreed that they needed to do everything they could to prevent planning permission being granted. They contacted Ms Blackstone by email as she was at that time on holiday in the US. They all decided to personally instruct a specialist planning consultant to oppose the planning application at a total cost of £2500 plus VAT. They did so as each had individual objections. They decided that Heather Lea (Services) Ltd, had a duty to act quickly and instruct a lawyer. It was imperative to do everything they could to prevent planning permission and therefore building. There are no minutes of these meetings and the Applicant was not informed.

17. The Respondent company instructed JMW solicitors to advise and write to the Applicant, which they did on 7/5/19. This letter referred to potential breaches at 2(mistakenly referred to as 4) (12), (14) and (16) in the Lease and 4(1). These clauses are produced in Appendix 1. The letter stated "in addition to injunction proceedings restraining the proposed development our client also reserves the right to take action to forfeit your lease and take possession of your Property as a result of your breaches of covenant" [69-71].

18. The Applicant instructed her own solicitor who on 14 May 2019 denied there had been a breach and that she was entitled to build in the garden of her flat as it was not part of the Flat. It stated that any action in relation to an injunction or forfeiture was premature. It raised issue with Mr McCrum holding himself out as a director [72-74]. This was the first time it had been raised by the Applicant, though they had attended a number of directors meeting together. JMW replied on 28 May 2019 confirming they had been engaged by the Respondent company. They pointed out the definition of the Flat, that the boundary wall is clearly edged in blue and defines the Estate boundary, together with other matters [74-76]. On 5 June 2019 the Applicants solicitor responded stating that the decision of the directors to instruct solicitors were in breach of the Articles of Association in that Ms Goodman was not notified and any meeting was not quorate [77-8]. They did not respond to the issues in relation to any breach of covenants. Ms Goodman has not supplied a copy of the Articles of Association. JMW did not reply.

19. The chargeable work of JMW was completed by 28 May 2019 and amounts to £2035.20 (as set out in the invoice of JMW dated 31/5/19 and now referred to as "the Legal Fee"). The Respondent has recharged this fee to the Applicant. This application relates to the payability of the Legal fee.

20. At the same time this action revealed a number of flaws in the constitution of the management company that had to be resolved by numerous meetings and amendments to the article of memorandum. It transpired that Mr McCrum was not in fact a director, though the constitution required it, and everyone had been working under the assumption that he was. Mr McCrum instructed his own solicitors to resolve issues with the constitution and his position.

21. Ratification of decisions and actions by the directors were then made by a shareholder meeting on 20 June 2019 [46-117]. On 16 June 2019 an earlier meeting of the Lessor, Heather Lea Freehold Ltd, ratified the stance taken and authorised the Chair of Directors Mr Lentin to vote on behalf of the Lessor as a shareholder in the Respondent company. It set up a disputes committee. Mrs Goodman had been invited but was not in attendance at either meeting and did not vote [118-9]. It further appeared that there was an ongoing dispute in relation to proposed changes to the Articles of Association of the Respondent company. It agreed on a change in relation to a Directors meeting quorum, which must never be less than 2 except to appoint further directors.

**Determination of the First Issue.**

22. The Tribunal must seek to give effect to the overriding objective to be fair and just, in accordance with rule 3 of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 (S. I. 2013/1169) "the Rules". In accordance with Rule 9 (3)(e) the Tribunal may strike out an application if it considers that there is no reasonable prospect of the applicant's case succeeding.

23. The Tribunal reminds itself that striking out an application is a draconian act and the Tribunal has flexibility to enable parties to fully participate in the proceedings. The application to strike out the whole or part of the application fails for the following reasons:

- Though Ms Goodman had failed to comply with directions, or to accept that the remaining trustees were acting on behalf of the Respondent, she explained that she was thrown by the Respondent taking the initiative and providing a schedule of issues which showed her responses already completed and considered this to be unacceptable. It is clear that communication had broken down completely between the parties. She had attempted to contact the tribunal service for some direction and had produced a schedule at the hearing that was not out of line with the issues identified by the tribunal. She agreed the bundle at the hearing and that the Respondent was Heather Lea (Services) Ltd. The tribunal could find no prejudice or delay to proceedings as a result as a preliminary issue. However, it transpired throughout the hearing the Ms Goodman had failed to disclose documents in which she sought to rely, though did not produce them, and brought up new arguments that she had not made in her application and statement of case.

- There is a prima facia case that JMW was instructed by Mr Lentin, Mr McCrum and Ms Blackstone in their capacity as tenants rather than directors as Mr McCrum signed the retainer and there was no minute of a directors meeting authorising the expenditure.

- There is an arguable case to answer as it is unclear from the papers on what basis the Legal Fees of £2035.20 is recoverable from the Applicant, as identified by the issues set out above. Is the Legal Fee recoverable as a service charge or administration charge?

**Determination of the Second Issue**

24. Did the Respondent instruct JMW and so incur the debt as set out in the Legal Fee?

The Applications case:

25. Mr McCrum was not a director and so could not instruct JMW. Mr McCrum should have known he was not a director as he was not named in the March 2019 budget. She was not responsible for ensuring he was properly elected and she, through her partner, was only dealing with shares and not appointment as a director. That was in fact the job of Mr Lentin. The budget had not allowed for any legal fees. The instruction of JMW had been by Mr McCrum alone as only he had signed the retainer. JMW was used by Mr McCrum for his conveyance and he had invited Stuart Cartwright of JMW to participate in his annual conference. There was no meeting of the directors to agree the instruction and this decision had to be made by two directors at a meeting. Shareholders could not ratify directors' decisions. The correspondence between the party's lawyers confirms this. She had been bombarded with various correspondence in relation to directors and shareholders meetings, many of which had come from Mr McCrum himself and it was a personal vendetta.

The Respondents case:

26. Mr McCrum had thought he was a director when he signed the retainer as evidenced by his attendance at numerous directors' meetings with Ms Goodman and this had not been raised by her before. She had not declared her interest when arguing for a position in relation the boundary wall dispute with the tennis club. She was responsible for ensuring his appointment and he thought the email with her partner had confirmed this [ 66]. In any event two directors had instructed JMW. This was done by a meeting between and McCrum and Mr Lentin and then by email, as Mrs Blackstone was on holiday. Ms Goodman is therefore estopped from now arguing that this invalidated the decision.

That instructions were accepted from Heather Lea (Services) Ltd, after due diligence, is confirmed by the client care letter [160], letter to Mrs Goodman solicitors [75] and both solicitor's invoices [166 and 39]. Mr McCrum had gone to considerable personal expense to amend the constitution. There was no time to have a formal meeting and time was of the essence to ensure that it could not later be said that they had waived their right to object. They had to do everything in their power as directors to ensure Ms Goodman did not take further steps towards enabling the building of a new property in the grounds. This decision was properly ratified at a shareholders extraordinary general meeting on 20/6/19 [116].

Our determination:

27. The Respondent had properly instructed JMW in their role as directors of Heather Lea (Services) Ltd. However, it did not materially affect the instruction as two directors had instructed JMW on behalf of Heather Lea (Services) Ltd. Even if this should have been done at a formal meeting the decision was ratified at the shareholders' meetings of 16 and 20 June 2019 and so was valid.

28. It is accepted that at the time of the instruction Mr McCrum had mistakenly believed he was a director. There was no reason to doubt his credibility. He was a partner in a firm of solicitors and had taken immediate steps to resolve any difficulties as soon as he became aware of them at personal expense. He sought to assist the Tribunal and not widen the issues into other disputes between the parties. JMW had clearly accepted instructions from the Respondent company as evidenced from correspondence.

29. There was no evidence provided to the Tribunal to support Ms Goodman's contention that the decision had to be made at a directors meeting beyond what was said in her solicitors' letter. Previous decisions of this nature had been made at formal meetings, though they had not had to make a decision of such importance with such urgency. Other actions of the Respondent had been more informal, such as no serving formal service charge demands. Ms Goodman had ample opportunity to submit any documentation she was going to rely on and had failed to do so.

30. There is an argument that she is now estopped from relying on the constitution when she had wholeheartedly failed to be open and declare any interest she had in relation to the boundary dispute, the appointment of Mr McCrum as a director and her planning application. A planning application from instruction of architects takes a considerable amount of time. It is inconceivable that she was not aware that there would be objections to it and costs involved in relation to planning consent at the very least. This is particularly so as, during the

course of the hearing, Ms Goodman denied that building would breach any term of the lease but that if it had been another tenant she would have objected and served a s146 notice.

31. As a director she has a duty under the Companies Act 2006 to at the very least declare any interest and avoid any conflicts of interest. She also has a duty to promote the success of the company. Her contention that she was advised by her architect not to declare her interest is rejected. As a treasurer and professional involved in estate management she must be aware of her duties as a director.

32. In any event this was not fatal as shareholders can ratify decisions and actions of Directors. Ms Goodman provided no evidence to support her view that directors could not do so. The original decision was not dishonest or fraudulent.

**Determination of the Third Issue**

33. The Legal Fee payable as a Service Charge. This issue was conceded by the Applicant.

34. Once a determination had been made during the hearing that the Respondent was liable for the Legal Fee Ms Goodman conceded that the Lease allows the Respondent to recover the fees incurred from the tenants as a service charge in accordance with the s27A LTA 1985 and that they were reasonably incurred in accordance with s19. It was agreed that the Legal Fees incurred are payable under the Lease including under Clause 3 and the Seventh Schedule paragraphs 8 or 9 in accordance with the s18 LTA and so are payable.

**Determination of the Fourth Issue**

35. Part of the Legal Fee payable as an administration charge

The Applicants case:

36. The forfeiture clause 2(5) (a) allows the Lessor to recover administration charges incurred "in contemplation of proceedings" for forfeiture under s146 of the Law of Property Act 1925. As the Lessor is a dormant company they did not incur the charges and the Respondent has no authority to recover administration charges under this clause.

37. She has not breached any covenant or condition in the lease and so the demand for payment of the Legal Fee as an Administration Clause is invalid. The Flat does not include the garden and so there will be no breach even if the new house is built. She does not know if she will resubmit a revised planning application and she has to contend with obtaining the National Trust's approval of any plans. She relies on the two letters of her solicitors.

The Respondent case:

38. The Respondent acts on behalf of the Lessor in recovering administration charges.

39. Forfeiture was very much at the forefront of their mind due to the serious nature of the breach and the affect on the whole Estate, its value and the value of all the Flats. They needed to do everything possible to prevent the process continuing. It was not premature as they did not want to be seen as waiving their rights. Once planning had been obtained it would have been too late. Their property had already been affected by loss of value. They had a duty to do so, as the Management Company, to preserve the prestigious housing. Trust had completely broken down through the actions of Ms Goodman as set out above.

40. A valid demand for forfeiture was made on 19/11/19 [152]

The Determination

41. The part of the Legal Fee incurred by Management Company for the purpose of forfeiture is payable as a recoverable administration charge subject to reasonableness as set out below.

42. A tenant can make an application to determine the payablity of an administration charge is defined as:

> *"... an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly (d)in connection with a breach (or alleged breach) of a covenant or condition in his lease."*

43. The Lease at clause 2(5)(a) allows the Respondent to recover administration charges incurred "*in contemplation of proceedings"* for forfeiture under s146 of the Law of Property Act 1925. There was no dispute that if this clause applied then the Legal Fees are caught by it.

44. The Applicant raised the issue of who could recover the Legal Fee for the first time at the hearing and submitted no evidence in support of her claim. Her interpretation of the clause would mean that as the Lessor company is a dormant company and only it by its own action could recover under this clause, the clause could never be relied upon. By the ordinary meaning this would make this and other clauses in the lease otiose. She provided no argument or documents stating that Respondent did not have the authority to recover on behalf of the Lessor. Under Clause 2 she covenants with the Lessor and Management Company severally. The meeting of Heather Lea Freeholders Ltd (the Lessor) of 16 June 2019 gives authority for recovery of the Legal Fee by Heather Lea (Services) Ltd. The claim is not made out.

45. The Respondent clearly had in its mind forfeiture as evidenced by JMW's letters and invoices as set out above. The Legal Fee was incurred *in contemplation of* proceedings in accordance with 2.5.

46. The letter of 7 May 2019 sets out the clauses it considered will be breached. It could be said that we do not need to make a finding of an actual breach and no clause had in fact yet been breached. However, Ms Goodman contention that by building a large house in her garden would never be a breach of the lease we found to be wholly extraordinary. She informed the tribunal that she had planned to obtain planning permission and then sell it. That whoever purchased it would not be caught by any restrictions in the Lease. We note that she had told the local planning authority that it was intended for the use of three generations of her family. She only withdrew her planning application on the day of the hearing as she had only been informed a few days before that the recommendation was to refuse it as it was too large and there were 32 objections to the planning application. Furthermore, the NT had not given approval and so she would therefore breach a restrictive covenant on the land.

47. Ms Goodman's main contention that the garden was not part of the Flat and so was not caught be any the covenants in the seventh schedule was not supported. She relied solely on the letters from her solicitor to JMW. Ms Goodman then informed the tribunal that Mr Lentin had to obtain permission to build a garage on the side of his home. It is clear that under the second schedule her Flat includes the garden area. There can be no other interpretation, and none were provided by her or by her lawyers in correspondence. There are two areas marked on the plan as her Flat; the flat as part of the building and the garden area as part of the grounds.

48. It could be said that there had not yet been a breach of any part of clause 2 as she had not yet started building. However, there had been substantial acts undertaken by instructing architects and submitting a planning application all at some considerable time and expense to herself.

49. The relevant paragraphs of clause 2 are set out in Appendix 1. The tribunal has to give these clauses their ordinary meaning looked at objectively and taken as a whole given the context of the lease. She has made plans to carry out alterations to the Flat. She has not obtained permission or submitted her plans to the Lessor in accordance with 2.12. The plans contained an additional residence, which was not a flat and would have contained more than one family in breach of 2.14. By stating that she would sell the new property she would be assigning "*part*" of the Flat in breach of 4.1 Building would have caused damage, nuisance and annoyance to the owners and other parts of the Estate in breach of 2.16. It may be argued that taking everything together the application was an anticipatory breach serious enough to amount to a breach of these clauses as well as the other clauses quoted in the JMW letters. As Chitty on Contracts states;

"*Where the conduct of the promisor is such as to lead a reasonable person to the conclusion that he does not intend to fulfil his obligations under the contract when the time for performance arrives, the promisee may treat this as a renunciation…. [It] renders the breach legally inevitable and the effect of the doctrine of anticipatory breach is precisely to enable the innocent party to anticipate an inevitable breach and to commence proceedings immediately.*"

50. In addition, there is an actual breach of 2.16. By making the application for planning permission, *she was permitting to be done "anything"* in connection to the Flat which "*may be or tend to be a nuisance annoyance or cause damage to the Lessor the Management Company or the owner or occupiers of any other part of the estate or any of them or to any neighbouring adjoining or adjacent property or the owner occupier thereof*" (our emphasis).

51. The use of the word *anything* is sufficiently wide to cover the application for planning permission. The *damage* caused at that stage was substantial loss of value to the other Flats taking into account the character and value of the Estate and area as set out above. If any of the owners had tried to sell their Flat once an application for planning had been submitted, it is clear that the application in itself would have had a substantial impact on the value. This was so even if nuisance had not yet been caused by starting the construction that would have affected light, view and other amenity of the other owners. It could also be said that as a director Ms Goodman had additional responsibility which she had breached as set out above. There is a breach if *it may be* or *tend to be* only and so no actual damage need be shown. The nature of the issue and its importance to the other tenants as well as the objections made show clearly this low threshold has been reached.

52. The Tribunal had to establish whether the instruction of a solicitor was premature and thus too remote to be in contemplation of forfeiture. Forfeiture must be in the mind of the Respondent. The letter from JMW to the Applicant dated 7/5/19 refers to breaches of covenant and forfeiture, as well as an injunction. It was clearly in their mind, though no further steps were taken. The steps to obtain forfeiture are numerous and this was an initial stage. No further steps were required as planning permission was withdrawn on 11 July 2019, the day of the planning hearing. The Applicant argued that it was premature as planning permission had not yet been obtained.

53. The Tribunal must take everything together, including the value and loss at stake and Ms Goodman's high handed and secretive approach. She had attempted to steal a march by not disclosing her plans herself to the Respondent company (or any of its directors), waiting until the tenants were informed by the planning authority, not declaring an interest at directors meetings in relation to the tennis club boundary wall dispute, or at budget setting meetings, not raising the issue of Mr McCrum's directorship earlier. The Respondent had three weeks to respond to the

planning notification which had come as a complete surprise. The Tenants, shareholders and directors of the Lessor and Management Company were the same four individuals. At the hearing Ms Goodman stated she was intending to sell after obtaining planning permission, contrary to what was in the planning application. She stated that if one of the Tenants had applied for planning permission in the same way she would have objected to the plans, instructed solicitors and served a s146 notice.

54. In these circumstances a wait and see approach could have been taken to be a waiver of their rights to claim a breach of covenants in relation to the building of a new house within the garden.

55. A valid demand was made on 19/11/19 in accordance with CLARA.

**Determination of the Fifth Issue**

56. The amount of Legal Fee payable should not be reduced or extinguished. £1089.6 is recoverable directly from Ms Goodman as an administration charge. She must pay this amount within 28 days of this decision.

57. The remaining amount of £945.60 is payable as part of the service charge in accordance with the service charge demands.

Applicants case:

58. The invoice for the Legal Fee is supported by a schedule [166-7]. Though Ms Goodman had previously submitted the amount of the Legal Fee is unreasonable her only submission on this point at the hearing was that the Fee covered steps and legal advice not in relation to this issue but in relation to the constitution.

Respondents case:

59. The amount was reasonable as they instructed a local mid-sized firm at associate level. The fee structure was reasonable, and the work limited. They had obtained a quote for the work beforehand and it would have been in line with the quote had it not been for the Applicants actions. It was reasonable compared to the solicitor and charge rate. Ms Goodman had used, a partner in a national firm at a higher charge rate and cost to herself and had not challenged her bill of £2,394.

60. The Respondent conceded that anything after the call to clients on 15 May 2019 should properly be paid as a service charge as it was to resolve any constitution issues.

Our Determination:

61. The tribunal decided that the grade of fee earner and amount of work was reasonable taking into account what was at issue, consideration, advice, drafting and responding to the Applicant's solicitors.

62. The amount up to and including the call amounted to £1089.6 and is recoverable directly from Ms Goodman as an administration charge. It is broken down as follows:

- Profit cost £862
- Disbursements £46
- VAT £181.60
- Total £1089.6

63. The remaining Fee is reasonably incurred and is to be added to a valid demand has been made in accordance with the s27A and s19 LTA.

64. This amounts to £945.60 (£788 plus £157.6 VAT) and is payable as part of the service charge.

**Cost applications**

65. There were no costs of these proceedings.

66. The Applicant's own legal fees (of £2,394) incurred by instructing her own solicitors to respond to the two letters from JMW are not payable by the Respondent. There was no basis for recovery from the Respondents.

**Name:** Judge J White **Date:** 18/2/20

**Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Appendix 1 the Lease

Our emphasis added and underlined

"The Flat" means the property described in this Second Schedule. All that flat forming part of the Estate known as flat 3 Heather Lea, Green Walk Bowden aforesaid numbered one being edged in red on the plan annexed hereto TOGETHER with the garden area shown edged in red on the plan numbered 2 annexed hereto.

Clause 2 The Tenant hereby covenants with the Lessor and also covenants severally with the Management Company and with the tenants of the flats as follows:

(5) (a) To pay unto the Lessor all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Lessor incidental to the preparation and service of a notice under section 146 of the law of property act 1925 or incurred in or contemplation of proceedings under section 146 or 147 of that act notwithstanding that forfeiture may be avoided otherwise than by relief granted

(11) Not to do or permit or suffer to be done any act deed matter or thing whatsoever whereby the risk or hazard of the Flat or the Building or any other part of the Estate being destroyed or damaged in anyway should be increased or so as to require an additional premium for insurance of the Building or any other part of the Estate or which may make void or voidable any policy for such insurance.
(12) Not at anytime without the licence in writing of the Lessor nor except in accordance with plans and specifications previously submitted in triplicate to the Lessor and approved by the Lessor and to its satisfaction to make any alteration or addition whatsoever in or to the Flat either externally or internally or make any alteration or aperture in the plan external construction height walls timbers or architectural appearance there of nor to cut or remove the main walls or timbers of the Flat and less for the purpose of repairing and making good any defect therein nor to do or suffer in or upon the Flat any wilful all voluntary waste or spoil
(14) To use and occupy the Flat solely and exclusively as a self contained residential flat in one occupation only

(16) Not to do or permit to be done upon on or in connection with the Flat or the Building or any other part of the Estate anything which may be or tend to be a nuisance annoyance or cause damage to the Lessor the Management Company or the owner or occupiers of any other part of the estate or any of them or to any neighbouring adjoining or adjacent property or the owner occupier thereof

Clause 4 The Tenant hereby further covenants with the Lessor and Management Company

(1) Not at anytime during the term hereby granted to assign underlet or in anyway part with possession of any part of the Flat and not to underlet or otherwise part with possession of the entirety of the flat except by assignment

## Appendix 2 The Law

Landlord & Tenant Act 1985 (LTA)

Section 27A(3) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal (LVT), now the First-tier Tribunal in the Property Chamber (Residential Property), for determination of whether a service charge would be payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.

Section 18 of the Act defines 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.

Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

Commonhold and Leasehold Reform Act 2002 (CLARA)
Schedule 11, paragraph 1
(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly— (a) for or in connection with the grant of approvals under his lease, or applications for such approvals, (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant, (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration

charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither— (a) specified in his lease, nor (b) calculated in accordance with a formula specified in his lease.
(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.
Schedule 11, paragraph 2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
Schedule 11, paragraph 5
(1) An application may be made to the appropriate tribunal for a determination whether an administration 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.
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(2) Sub-paragraph (1) applies whether or not any payment has been made.
(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
(4) No application under sub-paragraph (1) 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.
(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination— (a) in a particular manner, or (b) on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).