FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LAC/2020/0015** **CVP Remote**
Property	**:**	**Flat 338, Whitehouse Apartments, 9 Belvedere Road, London SE1 8YS**
Applicant	**:**	**Mr James Essery Gilpin and Ms Sinead Ni Mhuircheartaigh**
Representative	**:**	**Mr W E Gilpin in person**
Respondent	**:**	**Whitehouse Apartments Freehold Limited**
Representative	**:**	**Graham Eklund QC**
Type of application	**:**	**For the determination of the liability to pay an administration charge pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge Professor Robert Abbey** **Chris Gowman MCIEH MCMI BSc Professional Member**
Date of hearing and Venue	**:**	**Video Hearing on 26 April 2021**
Date of decision	**:**	**4 May 2021**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the legal and surveyor's fees for approving certain works to the property, the legal fees being £1000 plus (VAT and) disbursements of £9 and the landlord's surveyor's fees being £1,000 (plus VAT) are reasonable and payable by the applicant in respect of these claimed administration charges.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the applicant in respect of a property known as **Flat 338, Whitehouse Apartments, 9 Belvedere Road, London SE1 8YS** and being a 2-bedroom 600 square foot flat, situated on the 3rd floor in a block of approximately 370 residential flats. The lease of the property is dated 29 July 1998 and is for a term of 999 years from 1 January 1996. The applicant is the tenant and the respondent is the freehold reversioner. In June 2020 the applicant applied to the respondent for consent to alter their flat. In response, the respondent's solicitors sent the applicant a questionnaire and request for an advance payment of fees. The applicant refused to pay the fees, and the respondent has not therefore processed the applicant's request and has not incurred fees in relation to that request.

2. This is an application for a determination of the liability to pay an administration charge in respect of obtaining a licence for internal alterations. The landlord's legal adviser, Fairweather Law, stated that total fees of £5,409 were required in advance of the grant of the licence, and the leaseholder was required to confirm their agreement to pay these fees on submission of the licence request form. (continued on a separate sheet)

3. The total administration charges stated in the application to the Tribunal comprise:

   • £1,000 plus VAT in legal fees and £9 HM Land Registry disbursements (£1,209)

   • £2,500 plus VAT in fees payable to the landlord (£3,000) (a charge subsequently abandoned by the respondent, see below for details)

   • £1,000 plus VAT in fees payable to the landlord's surveyor (1,200)

4. On 9 February 2021 Judge Pittaway issued Direction to the parties that stated: -

> *"(5) At the hearing Mr Fairweather confirmed to the tribunal that the respondent had accepted that it was not open to the respondent to require a landlord's fee of £2,500 + VAT to grant approval for the proposed alterations. Accordingly, the issues before the tribunal were*
>
> - *Legal, management and surveyor's fees for approving certain works to the property, the legal fees being £1000 + Vat and disbursements of £9 and the landlord's surveyor's fees being £1,000 + VAT.*
> - *whether the fees are recoverable under the lease/ payable by the leaseholder under the lease given the provisions in the lease.*
> - *Whether a deed in the form of a Licence to Alter was necessary, or whether a letter of consent would be sufficient.*
> - *whether the fees are reasonable, in particular in relation to the nature of the proposed works, the form in which any approval might be given and the supervision and management that may be necessary.*
> - *The extent to which the respondent could charge the applicants VAT on any fees.*
> - *whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made*
>
> *(6) At the hearing the tribunal expressed its view that the applicants were asking the tribunal to determine certain issues which were outside the tribunal's jurisdiction. It is outside the jurisdiction of the tribunal to interpret specific provisions of the lease in isolation. It can however have regard to the terms of the lease in determining the liability to pay and reasonableness of administrative fees. The tribunal explained that its jurisdiction was limited to the current application by the current applicants. It did not extend to the recoverability of previously incurred fees by other tenants of Whitehouse Apartments. Further, it is not open to the tribunal to make a general declaration of policy for future application. Any decision made by the First-tier Property Tribunal is not binding on subsequent tribunals considering future applications, although future tribunals may have regard to such a decision."*

5. Accordingly, the Tribunal at the outset of the hearing confirmed to the parties that the above Directions properly identified the issues and in particular confirmed the limits of the Tribunals 's jurisdiction. It was therefore agreed by the parties at the start of the hearing that the landlord's fee of £2,500 plus VAT had indeed been abandoned and as such the Tribunal was not concerned with this original but now abandoned administration charge. Therefore, the Tribunal made no decision in this regard.

6. The relevant legal provisions are set out in the Appendix to this decision.

7. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

The decision

8. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVP with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The bundle was supplemented by some additional documents submitted in the week prior to the hearing.

Background

9. The property which is the subject of this application is a flat within a large converted office building containing some 370 self-contained flats. There are also internal common parts and other facilities such as a pool shared between the flats.

10. The Respondent holds a long lease of the property and the lease covenant which governs the right to undertake alterations to their premises is clause 6 that provides that the tenant is:

> "*Not without the previous written approval of the Landlord or the surveyor from time to time of the Landlord to make any structural alteration in or to the Flat or to the external appearance thereof (or to the fixtures and fittings and equipment therein) and to make only such alterations as are incorporated in the plans and specifications so approved and without prejudice to the generality of the foregoing not to make any alterations or changes of whatever nature to the services within or serving the Flat.*

It was pursuant to this clause that the applicant sought the respondent's written approval. The subsequent request for fees made by the respondent has caused this application before the Tribunal

The issues

11. At the start of this determination the tribunal identified and agreed with the parties the relevant issues for determination as follows:

    (i) The reasonableness and payability of the amended administration charges, the details of which are set out above;

    (ii) Whether the written permission, if issued, be by a deed of licence or letter of consent;

    (iii) Should VAT be charged on the legal and surveyor's fees listed above?

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Reasons for the tribunal's decision

13. The Tribunal will first deal with the claim for legal fees. The respondent confirmed that the sum of £1209 (inclusive of VAT) was an estimate based on past experience from some 25 previous applications of this type. The respondent required payment before the request for consent would be considered. It appeared from the papers before the Tribunal that the applicant did not dispute that legal fees should be paid. The applicant accepts therefore that they represent proper fees incurred in connection with the granting of the licence or consent. The issue therefore relates to the reasonableness of the expenses incurred.

14. The amount of the legal fees represents approximately four to five hours of work at rates between £200 and £250 plus Vat per hour. In

paragraph 10 (page 2) of their first statement of case, the respondent stated that "the landlord's solicitor will typically

- Send the application form to the tenant

- Receive the application form back, and take instructions from the landlord client

- Instruct the landlord's surveyor

- Liaise with the landlord's surveyor in connection with the conditions which should be attached to the consent

- Check the tenant's title

- Check the tenant's lease – while nearly all are in standard form this cannot be taken for granted

- Draft the licence to alter, taking the advice and recommendation of the landlord's surveyor into account

- Submit the draft licence to alter to the landlord's surveyor for comment, especially as regards the surveyor's advice and recommendations

- Submit the draft licence to alter to the landlord client for approval. If the works have implications for the management company, submit the draft to it and liaise with it as necessary

- Submit the draft licence to alter to the tenant or the tenant's representative for approval

- Undertake any negotiations required with the tenant or the tenant's representative on the landlord's behalf

- If required, obtained a schedule of condition of common areas and other flats which might be affected by the works

- Circulate signature copies of the licence, complete the licence, and notify the landlord, the landlord's surveyor and the management company of completion

- Undertake all necessary communication by way of telephone calls and emails with the landlord, the landlord's surveyor, the management company and the tenant or tenant's representative.

In this respect, most licences to alter involve between 50 and 100 emails sent and received – sometimes more, occasionally many more

15. This seemed to the Tribunal to be a reasonable summary of the work typically carried out by solicitors dealing with an application of the type under review by this Tribunal. The work which is required varies from application to application. It is not possible in advance of the work being done to know how much work will have to be done. That depends on issues which are thrown up with any application and the work which may be required as a result of negotiations undertaken with the applicant or objections made by the applicant.

16. Accordingly, in the light of the above, the estimate provided also seemed to the Tribunal to be reasonable bearing in mind it was based upon the experience of the respondent's solicitors who have acted in cases of this kind for some 20 years. The Tribunal take this view bearing in mind that the Tribunal could not find any convincing evidence to the contrary in the applicant's submissions to the Tribunal. The applicant expressed strongly held views about the charges and sought to advance information from other decisions of the First-tier Tribunal but there was little or no evidence to convince this Tribunal that an estimated charge of £1000 was unreasonable in this particular case. In the circumstances the Tribunal is satisfied that this administration charge is both reasonable and payable.

17. The Tribunal appreciated the statement made by Mr Eklund that *"As stated in paragraph 5 of the Respondent's second statement, if the properly incurred legal expenses are less then £1,209, the overpayment will be repaid. If they are more than £1209, the Applicant would be required to pay the balance, assuming the overpayment can be shown to be reasonable in extent….. The Applicant's protection is to make an application to the Tribunal after receipt of a demand from the Landlord to pay for the legal expenses incurred by the Landlord because only then can it be determined whether or not the legal expenses incurred were reasonable."*

18. There was also discussion about what information the respondent should provide to support the claim for legal and other fees. The applicant thought that they should receive copies of all invoices and supporting paperwork including time schedules to enable the applicants to verify the sums claimed. The respondent confirmed that copy invoices would be available but other information might be restricted by data confidentiality. The Tribunal simply indicated to the parties that it might need supporting documentation to confirm reasonableness and payability beyond a mere invoice and this would arise on a case-by-case basis. Clearly a very high charge would need

justification and support from additional documentation beyond a mere invoice.

19. The Tribunal then turned to the matter of the surveyor's fees. The respondent confirmed that the sum of £1200 (inclusive of VAT) was again an estimate based on past experience from some 25 previous applications of this type. The respondent required payment before the request for consent would be considered. It appeared from the papers before the Tribunal that the applicant did not dispute that surveyor's fees should be incurred/paid. (The applicants noted that the respondents wanted to instruct surveyors so that the matter could be considered "independently". The applicants then confirmed that this is reasonable.) The applicant accepts therefore that they represent proper fees incurred in connection with the granting of the licence or consent. The issue therefore relates to the reasonableness of the expenses incurred.

20. In paragraph 12 (page 4 of the trial bundle), the respondent stated that "the landlord's surveyor will typically:

> • Provide the landlord with a report on the plans and specification of the tenant's proposed alterations, including potential or actual interference with or acquisition of space belonging to the landlord
>
> • Advise the landlord or any amendments to the tenant's plans and specification which the surveyor considers appropriate or required
>
> • Consider whether the works will affect the structural integrity of the building
>
> • Advise on the requirement to instruct a structural engineer
>
> • Consider whether the works will affect the fire integrity of the building
>
> • Advise on the requirement to instruct a fire protection engineer
>
> • Advise the landlord of any specific conditions which should be included in the licence to alter
>
> • Inspect the property both before and after the works are completed

• Notify the landlord that the works have been completed to a satisfactory standard

21. Once again this seemed to the Tribunal to be a reasonable summary of the work typically carried out by surveyors dealing with an application of the type under review by this Tribunal. The work which is required varies from application to application. It is not possible in advance of the work being done to know how much work will have to be done. That depends on issues which are thrown up with any application and the work which may be required as a result of negotiations undertaken with the applicant or objections made by the applicant.

22. As Counsel for the respondent asserted, "Alterations undertaken to flats within the building have a variety of potential effects on the building itself. The applications are not standardised. Each application has to be considered separately. In the notes to intended applicants for consent to undertake alterations to premises (page 124 of the Applicant's bundle) sub-paragraph (5) on that page states: "*the Landlord or management company will usually wish to appoint a surveyor to approve plans for alterations and inspect the works after completion. In this case, you will also be required to pay the surveyor's costs.*" Such an appointment is protective of the Landlord and offers protection for other owners and residents and assists in the preservation of the integrity and safety of the building as a whole. It is entirely appropriate." The Tribunal agrees with this assessment.

23. Accordingly, in the light of the above, the estimate provided also seemed to the Tribunal to be reasonable bearing in mind it was based upon the experience of the respondents who have been involved in cases of this kind for some 20 years. The Tribunal take this view bearing in mind that the Tribunal could not find any convincing evidence to the contrary in the applicant's submissions to the Tribunal. The applicant advanced little or no evidence to convince this Tribunal that an estimated charge of £1000 was unreasonable in this particular case. In the circumstances the Tribunal is satisfied that this administration charge is both reasonable and payable.

24. The Tribunal's comments regarding the supply of information to support administration charges set out above relating to legal fees will apply to surveyor's fees as well. Furthermore, the applicant's protection is to make an application to the Tribunal after receipt of a demand from the Landlord to pay for the legal expenses incurred by the Landlord because only then can it be determined whether or not the surveyor's fees incurred were reasonable

25. The Tribunal then considered whether the written permission that gave rise to the administration charges being considered by the Tribunal should be by deed or in the form of a letter. The applicants were shown

the form of "model" licence used by the respondents and whilst they accept now that a form of licence is reasonable, they objected to the "model" licence. It therefore seems to the Tribunal that the applicants accept a form of licence by deed is reasonable they just don't like the "model" licence. Frankly this is a matter for negotiation between the parties and is not something that the Tribunal can assist with. Therefore, the Tribunal notes that a form of licence by deed is considered reasonable and makes no other determinations in this regard.

26. Finally, the Tribunal considered the involvement of VAT on the administration charges. In the respondent's second statement of case the respondent stated that it is unable to recover from HMRC the VAT it pays on expenses incurred in connection with the grant of consents pursuant to the terms of the residential leases. It says there is a limit of £7500 per annum. They also stated that it has not exceeded the limit for many years. So, while this continues it can recover from HMRC VAT (as an input) on expenses it incurs in connection with its provision of exempt supplies. So long as this is the case, it does not seek to recover VAT from the applicant but wishes to reserve the right to do so in the unlikely event that in the future the limit is exceeded. This seems to the Tribunal to resolve the issue of VAT without the need for the Tribunal to make a determination in this regard.

Application for costs

27. Counsel for the respondent confirmed that an application for costs will be considered by the respondent once this decision was issued and therefore there was nothing for the Tribunal to consider in regard to costs at the time of the hearing. The Tribunal did refer the parties to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) that deal with costs as well as the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type.

Name: Judge Professor Robert Abbey **Date:** 4 May 2021

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 of relevant legislation

Commonhold and Leasehold Reform Act 2002

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.

(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).