



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

Case Reference	: CHI/00HN/LSC/2022/0126
Property	: San Remo Towers, Sea Road, Bournemouth, BH5 1JT
Applicant	: West Ella Holdings Limited
Representative	: Simon Bladon
Respondents	: San Remo Towers Freehold Limited
Representative	: Julian Tawn
Type of Application	: Liability to pay service charges
Tribunal Members	: Judge N Jutton, Amanda Clist MRICS
Date and Venue of Hearing	: 27 April 2023 Determination on the papers
Date of Decision	: 27 April 2023

DECISION

1. **Background**

2. San Remo Towers, Sea Road, Bournemouth (SRT) is a development of 183 residential flats understood to have been constructed in the 1930s. The tribunal is told that the property is grade II listed, is of a 'Spanish mission' style and was designed by the architect Hector O Hamilton. The property is divided into five interlinked blocks known as A B C D and E. There is a central courtyard, beneath which is a basement car parking area which includes provision for 77 car parking spaces.
3. The Applicant is the lessee of 11 flats, the Respondent is the freeholder. By an application dated 17 November 2022 and made pursuant to section 27A of the Landlord and Tenant Act 1985 the Applicant seeks a determination as to whether certain service charges claimed by the Respondent are recoverable under the terms of the leases held by Applicant and if so in what proportion.
4. There are in essence three different types of leases at SRT. The first is a lease of just a flat without a parking space (the Flat lease). The tribunal is told there are 174 Flat leases. The second is a lease of a flat together with a parking space (the Flat and Parking Space lease). The tribunal is told that there are 11 such leases. The third is a lease solely of a parking spaces (the Parking Space lease). In fact, the Applicant says there are two types of Parking Space leases those granted prior to 2010 and those granted post-2010. The Respondent says there are three types of Parking Space leases which it describes as 'early garage leases' granted between 2005 and 2007, 'interim garage leases' granted between 2011 and 2019 and 'bulk issue garage leases' granted in April 2019.
5. It is understood that certain major works are required to the roof of the garage area and to the courtyard surface above. These are described by the Respondent as 'garage roof repair and associated courtyard works' (the Works). It is anticipated that the Works will cost several hundred thousand pounds. The Respondent has suggested a figure in the region of £385,000 albeit in the paperwork before the tribunal a figure as high as £750,000 plus VAT is mentioned. The crux of this application is that both parties seek a determination as to how the costs of the Works should be apportioned between the three different types of leases and recoverable there under by way of service charges (the Main Issue).
6. In its application the Applicant has also raised issues in respect of professional fees incurred by the Respondent and in respect of the apportionment of certain expenses incurred by the Respondent in relation to the garage area. In addition the Applicant makes an application pursuant to section 20C of the Landlord and Tenant Act 1985 for an order that costs incurred by the Respondent in respect of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant (the Other Issues).
7. Directions were made by the tribunal on 27 January 2023. Those directions made provision for this application to be determined on the papers alone

without an oral hearing unless either party objected in writing to the tribunal within 28 days of the date of receipt of those directions. No objection has been received by the tribunal and accordingly the tribunal proceeds to determine this application on the papers alone without an oral hearing pursuant to rule 31 of the Tribunal Procedure Rules 2013.

8. The directions also made provision for each party to serve upon the other statements of case with supporting documents and for the provision of a bundle of documents.
9. There is before the tribunal a bundle of documents prepared by the Applicant which includes each party's statements of case, an example of a Flat lease, an example of a Parking Space lease and other supporting documents. The Applicant has also filed with the tribunal (because it was not included in the bundle) at the request of the tribunal an example of a Flat and Parking Space lease. References in this decision to page numbers are references to page numbers in the bundle of documents.
10. Reference is made by both parties to two previous tribunal decisions (the 2010 decision and the 2015 decision) copies of both of which are included in the bundle (121-147). Neither decision is binding on this tribunal although the tribunal may have regard to them. Neither decision is in the view of the tribunal of direct assistance to it in addressing the issues that now fall before it to be determined.

11. **The Law**

12. The statutory provisions relevant to applications of this nature are to be found in sections 18, 19, 20C and 27A of the Landlord and Tenant 1985 Act. They provide as follows:

13. **The 1985 Act**

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.*

i. (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.*

ii. (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.*

(c) 19 (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;*
1. *and the amount payable shall be limited accordingly.*
- ii. (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*
- (d) 27A (1) *An application may be made to the appropriate 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*
- i. (2) *Subsection (1) applies whether or not any payment has been made.*
- ii. (3) *An application may also be made to the appropriate 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.*
- iii. (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.*
- iv. 5 *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*
- (e) 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 leasehold valuation tribunal, or the First-Tier 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.*
- i. (2) *The application shall be made –.....*
 - 1. (b)(a) *in the case of proceedings before the First-Tier Tribunal, to the Tribunal.*
 - ii. (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.*

14. The Main Issue

15. Both parties agree that the cost of the Works (provided that the costs are reasonably incurred) can be recovered by the Respondent from the lessees as part of the service charge (described in the various leases as the 'maintenance charge'). In summary, and at the risk of over simplification, the Applicant says that 100% of the cost of the Works are payable solely by the lessees of the Flat leases and of the Flat and Parking Space leases in the proportions determined by those leases (i.e. in the 'Lessee's Share of Maintenance Fund' as defined in those leases). That the lessees of the Parking Space leases are not liable to contribute anything by way of maintenance charges as regards the Works nor are the lessees of the Flat and Parking Space leases liable to pay an additional sum over and above that payable by the lessees of the Flat leases. The Respondent agrees that 100% of the costs of the Works can be recovered under the terms of the Flat leases and of the Flat and Parking Space leases from the lessees of those leases. That however in addition the Respondent contends that a further 100% of the cost of the Works can be recovered under the terms of the Parking Space leases and the Flat and Parking Space leases combined (so that the lessees of the latter type of lease are in effect charged twice). The Respondent therefore proposes, that to avoid over collection, that the lessees of the Flat leases and of the Flat and Parking Space leases pay 50%, and the lessees of the Parking Space leases and the lessees of the Flat and Parking Space leases between them pay a further 50%. To put it another way the Respondent proposes that the cost of the Works are divided equally between the lessees of the flats and the lessees of the parking spaces (the Flat and Parking Spaces leases falling into both camps).

16. The Flat Lease

17. There is a copy of a Flat lease at pages 42 to 88 of the bundle. It is a copy of the lease of flat 4D. It is assumed that all flat leases are in like form. By clause 3.1 the lessee covenants to observe and perform the covenants set out in Part 1 of the Fifth Schedule. By clause 2 of Part 1 of the Fifth Schedule the lessee covenants to pay the 'Maintenance Charge' in the percentage specified in paragraph 9 of the Particulars to the lease '*.....of the expenses which The Lessor shall in relation to the Property reasonably and properly incur in each Maintenance Year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned)...*'.
18. 'The Maintenance Charge' is defined at clause 10 of the First Schedule as '*... the amount or amounts from time to time payable under clause (2) of Part 1 of the Fifth Schedule and shall include any Value Added Tax payable thereon.*'
19. 'The Property' is defined in clause 5 of the First Schedule as '*...the land and buildings of which The Demised Premises form part and which is specified in Paragraph 5 of the Particulars and reference thereto includes any building erected thereon*'. Paragraph 5 of the Particulars defines the

Property as *'San Remo Towers Sea Road Boscombe Bournemouth as the same is shown edged green on plan 1.'*

20. *'The Maintenance Fund'* is defined at clause 12 of the First Schedule as *'...the amount from time to time unexpended from the payments of The Maintenance Charge made to The Lessor by The Lessee and from similar payments made to The Lessor by the lessees of Other Units'*.
21. The Eighth Schedule sets out costs and expenses payable from the Maintenance Fund. Those include at clause 1 *'The cost incurred by The Lessor in complying with its obligations contained in Part 1 of the Sixth Schedule'*.
22. Part 1 of the Sixth Schedule sets out the covenants on the Lessors part. Clause 1 states:
'Subject to the payment by The Lessee of the rents The Maintenance Charge and The Interim Maintenance Charge to maintain repair and redecorate and renew and replace (including by way of modern substitutes therefore) as and when The Lessor may from time to time consider necessary the Property (excluding The Demised Premises and Other Units) including:-
 - 1.1 *The roofs and foundations*
 - 1.2 *All the walls whether external or internal*
 - 1.3 *The main timber joists and beams of the floors ceilings and roof*
 - 1.4 *The chimney stacks gutters rainwater and soil pipes*
 - 1.5 *The Conduits in under and upon The Property not exclusively serving The Demised Premises or Other Units (except those Conduits which are the property of a public utility supply authority or of a person or company supplying television aerial rediffusion service internal telephone system or door porter system)*
 - 1.6 *The boundary walls and fences of and in the curtilage of The Property (unless included in this demise or in the demise of Other Units)*
 - 1.7 *Any flat or flats or accommodation as made in the discretion of The Lessor be occupied or used by any caretaker porter maintenance staff gardener cleaner or other person or persons employed by The Lessor in accordance with the provisions of Paragraph 7 of Part 1 of this Schedule*
 - 1.8 *All other parts of The Property (excluding The Demised Premises and Other Units) not expressly mentioned in this clause*
23. The term *'Other Units'* is defined at clause 13 of the First Schedule to mean:
'... any part or parts of The Property being a flat garden roof garden patio balcony terrace attic garage shed parking space cellar store or cupboard which are or are intended to be demised on leases containing covenants on the part of The Lessee similar to those herein contained'
24. So in summary the Lessor is responsible for the maintenance repair redecoration renewal etc of SRT but excluding those parts which are demised by or intended to be demised by a lease (the Other Units). The costs of complying with those obligations can be recovered from the lessees by way of the Maintenance Charge (provided that such costs are reasonably

incurred). The tribunal understands that the Maintenance Charge percentages (*Lessee's Share of Maintenance Fund*) identified in each of the Flat leases and the Flat and Parking Space leases combined total 100%.

25. It is not disputed that the cost of the Works (provided that they are reasonably incurred) can be recovered in full by the Respondent from the lessees of the flats (being the 174 lessees of the Flat leases and the 9 lessees of the Flat and Parking Space leases). The tribunal agrees.

26. The Flat and Parking Space Lease

27. As stated there are 9 Flat and Parking Space leases. The tribunal has been supplied with a copy of the lease to flat E 41 which includes the parking space numbered 36. As might be expected the provisions in respect of the Maintenance Charge and the lessors maintenance and repairing covenants exactly mirror those contained in the Flat lease. It follows that the lessees of the Flat and Parking Space leases are liable to pay the percentage specified in their respective leases of the Maintenance Fund (*Lessee's Share of Maintenance Fund*) by way of the Maintenance Charge which will include such charge as may be levied by the Respondent in respect of the cost of the Works (provided that such costs are reasonably incurred). That is accepted by both parties.

28. However the Respondent argues that the lessees of the Flat and Parking Space leases are liable to pay an additional contribution by way of Maintenance Charge over and above that paid by the lessees of the Flat leases. That's because it is contended that such lessees make use of the communal garage in a way that the lessees of the Flat leases do not. That the parking space included within the demise of a Flat and Parking Space lease is part of the 'Other Units' as defined in the lease. As such the Respondent contends that by implication the Maintenance Fund (contribution) payable by the lessee of a Flat and Parking Space lease extends beyond that payable by the lessees of the Flat leases.

29. The tribunal does not agree with the Respondent. The Third Schedule to both the Flat lease and the Flat and Parking Space lease sets out rights that are included for the benefit of the lessee and persons authorised by the lessee. Those include rights to use the common entrance halls staircases passages etc and any common external pass driveways staircases and forecourts. Those form the 'common areas' the cost of maintaining repairing cleaning decorating lighting etc are payable from the Maintenance Fund (see Part 1 of the Sixth Schedule and clause 3 of the Eighth Schedule of both types of lease).

30. The tribunal in the 2010 decision, whilst making no decision in respect of the application before it, took the view that the garage was not part of the common parts (at least to the extent of the parking spaces that were subject to leases). It expressed the view that the cost of the supply of electricity to the garage area should be borne as to 90% by the Lessor and 10% to form part of the Maintenance Charge. This tribunal does not seek to comment upon or to interfere with that decision. It is, as stated, of no assistance to this tribunal in addressing the issues before it.

31. The term 'Other Units' as defined in both types of lease is simply used as a mechanism to clarify the extent of the lessors maintaining and repairing obligations. The lessor is responsible for the repair and maintenance of the Property excluding those parts of the Property (the 'Other Units') which are otherwise demised or intended to be demised under the terms of a lease (which include a flat or a parking space).
32. The Works are proposed works which are the responsibility of the Respondent under the terms of both the Flat lease and the Flat and Parking Space lease to undertake. They are not works to 'Other Units'. The leases of the flats (the Flat lease and the Flat and Parking Space lease) taken together allow for the recovery by the Respondent by way of the Maintenance Charge of 100% cost of carrying out the Works (provided they are reasonably incurred). There is no basis to support the Respondent's contention that by implication the definition of 'Maintenance Fund' should be extended beyond that contained in the Flat lease. The terminology and definitions used in both types of leases are identical. There is no need to imply or to apply a different definition in order to give the Flat and Parking Space efficacy. The terms of that lease are in the view of the tribunal clear. The lessee pays a Maintenance Charge in the percentage provided for by the lease of the total expense reasonably incurred by the Respondent in complying with its maintenance and repairing obligations and no more.

33. The Parking Space Lease

34. There is an example of a Parking Space lease at pages 89 to 120 of the bundle. It is a lease for a term of 99 years from 1 January 2003 of parking space 46. The demised premises are defined in the second schedule as shown edged red on an annexed plan and are stated to include the surface of the floor of the parking space but excluding any parts of the Property lying below the surface of the floor, the main timber joists and other structural parts of the Property and the external and internal load bearing walls of the demised premises.
35. The Parking Space lease is not the lease of a dwelling. The tribunal's jurisdiction to address issues in relation to service charges is limited to service charges payable by the tenant of a dwelling (section 18 of the Landlord and Tenant Act 1985). The term 'dwelling' is defined by section 38 of that Act to mean: *'a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it'*.
36. The tribunal appreciates that the lack of jurisdiction to address the service charge provisions contained in the parking space lease is not helpful to the parties.
37. Rule 9 (2) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 provide that the tribunal must strike out the whole or part of the proceedings or case if the tribunal –

- (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and
 - (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.
38. In the circumstances the tribunal invites the parties or either one of them to, if they so wish, make an application to this tribunal for the issue as to whether or not, and if so to what extent, the lessees of the Parking Space leases are required to contribute by way of Maintenance Charge to the cost of the Works, to be transferred to the County Court for determination. (In that event it is possible that the County Court may decide to make an order transferring the issue back to the tribunal for determination by a tribunal judge sitting as a county court judge).
39. Both parties will no doubt wish to very carefully consider the terms of the Parking Space lease (and if need be take legal advice) before making such an application.
40. If such an application is not received by this tribunal by 4pm on 31 May 23 then the part of these proceedings that relate to the said issue shall be struck out without further order.

41. The Other Issues

42. From the application form and the other papers before it the tribunal has identified three further issues which it is asked to determine. They are:

1. Whether legal costs that have been incurred by the Respondent can be recovered under the terms of the lease (the Flat lease and the Flat and Parking Space lease) and if so whether they have been reasonably incurred. (The Legal Costs Issue).
2. As to how expenses identified in the 2010 tribunal decision in relation to the garage should be apportioned. (The Apportionment Issue).
3. Whether an order should be made pursuant to section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the Respondent in connection with these 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 Applicant. (The Section 20C Issue).

43. The Legal Costs Issue.

44. In the application the Applicant prefers to £5499 of legal fees that it says appear in the service charge accounts for the year ending 31 December 2022. In its statement of case the Applicant refers to a figure of £18,330 in relation to 2021 and early 2022. At pages 189 and 190 of the bundle there appears to be document purporting to be a summary of legal costs incurred between June 2021 and March 22 which total £18,330. There are at pages 193 to 202 what appear to be service charge accounts for the year ending 31 December 2021. There is reference in that account to professional fees of £15,419. It is

not clear to the tribunal whether the Applicant wishes to contend that legal fees incurred by the Respondent to seek advice in respect of the issues before the tribunal as set out above cannot be recovered under the terms of the lease as part of the Maintenance Charge and/or that such costs have not been reasonably incurred.

45. The Respondent says that it has taken professional advice in respect of waterproofing repairs to the garage roof and associated courtyard works and also as to the potential division of such expenses between the Flat lessees and the leases that include garage parking spaces. It said that the total of those professional costs incurred between August 2021 March 2022 total £18,330. In the absence of further detail in particular of the service charge accounts for the year ending 31 December 2022 the tribunal is not in a position to identify how those costs are apportioned between legal costs and other professional charges such as surveyors' fees.
46. Nor does the tribunal have sufficient evidence before it to determine as to whether or not those costs and fees are reasonable in amount.
47. The relevant costs that the Respondent can recover from the lessees as part of the Maintenance Fund are those set out in the Eighth Schedule to both the Flat lease and the Flat and Parking Space lease. In the view of the tribunal, professional fees incurred with a surveyor or structural engineer to advise in respect of proposed works of maintenance and repair such as the Works are fees that are recoverable as part of the Maintenance Charge (provided that they are reasonably incurred). They are fees that the Respondent may necessarily and reasonably incur in order to comply with its covenant to maintain and repair etc the Property. Where in order to comply with its covenants the Respondent is required to carry out works to the Property which may be of a substantial and possibly structural nature, it is reasonable, and no doubt advisable, in such circumstances for it to incur the costs of seeking professional advice and guidance to ensure that such works are properly carried out.
48. As to legal costs which may have been incurred by the Respondent to seek legal advice in respect of the issues before this tribunal, clause 11.1 of the Eighth Schedule to both the Flat lease and the Flat and Parking Space lease allows for the recovery of all legal and other popular costs incurred:
49. *11.1 in the running and management of The Property and advising on and in the enforcement of the covenants on the part of The Lessee and the conditions and regulations contained in this Lease and the leases granted of the Other Units insofar as the cost of enforcement are not recovered from the lessee in breach.*
50. In the view of the tribunal that provision is sufficiently wide to cover costs reasonably incurred by the Respondent in seeking legal advice in respect of the meaning and extent of the covenants on the part of the lessee to include advice as to the apportionment of Maintenance Charges between lessees by reference to the different leases. That the said provision allows for the recovery of legal costs both in advising on the covenants on the part of the

lessee and in respect of the enforcement of such covenants. Further, that the costs of obtaining such advice are costs incurred that are sufficiently connected to the running and management of the Property.

51. The Apportionment Issue

52. At paragraphs 43 to 50 of its 2010 decision the tribunal sought to address the apportionment of certain expenses that related to the garage and storage areas being areas which that tribunal determined were not common parts (at least to the extent of the car parking spaces) but were part of the building. The issue being, presumably, that the supply of electricity was of benefit both to parts of the building for which the lessor was not responsible ('Other Units') and to a remaining albeit smaller area for which it was responsible. The 2010 tribunal took the view that electricity charges for the area should be apportioned so that 90% was paid for by the lessor (not recoverable as part of the Maintenance Fund) while 10% would fall into the general Maintenance Fund (described in the 2010 decision as 'the service charge account'). It is understood that apportionment has in practice been adopted since. This tribunal has insufficient information to address that particular issue, if it were required, and in the circumstances has no reason to and is not minded to depart from or revisit the 2010 decision. The decision of the tribunal in 2010 did not address or make a determination as regards the apportionment of the Maintenance Fund and thus the amount of Maintenance Charge that the lessees whose leases consisted of or included a car parking space should pay in respect of relevant costs reasonably incurred or to be incurred by the Respondent as set out in the Eighth Schedule to both the Flat lease and the Flat and Parking Space lease.

53. The Section 20C Issue

54. In the view of the tribunal it was reasonable for the Applicant to make this application. The Applicant has succeeded to the extent that the tribunal agrees that the Respondent is not entitled to require the lessees of the Flat and Parking Space leases to pay an additional form of Maintenance Charge solely by reason of the fact that their demise includes a parking space.

55. In the circumstances the tribunal determines that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge (Maintenance Charge) payable by the Applicant.

56. Summary of Decision

57. The Respondent is not entitled to recover from the lessees of the Flat and Parking Space leases an additional amount of Maintenance Charge by reason of the fact that the demise of those leases includes a car parking space.

58. The tribunal does not have jurisdiction to determine issues in respect of the payment and reasonableness of service charges (Maintenance Charges) that may be payable under the terms of the Parking Space leases. The tribunal

invites the parties or either of them if they so wish to make an application to the tribunal by **4pm on 31 May 2023** for an order that that issue be transferred to the County Court for determination. If an application is not made by that date and time the said issue shall be struck out without further order.

59. The Respondent is entitled to recover as part of the Maintenance Charge legal costs and other professional fees that are reasonably incurred that relate to the issues identified in this decision. For the avoidance of doubt the tribunal does not make a determination as to whether such costs which have been incurred are reasonable in amount.
60. The tribunal does not seek to revisit or interfere with the decision of the Leasehold Valuation Tribunal dated 30 July 2010 case reference CAM/00HN/LSC/2010/0026 as regards the apportionment of certain internal expenses that relate solely to the garage at the Property.
61. The tribunal determines pursuant to section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge (Maintenance Charge) payable by the Applicant.

Dated this 27th day of April 2023

Judge N Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



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

Case Reference : CHI/00HN/LSC/2022/0126

Property : San Remo Towers, Sea Road, Bournemouth,
BH5 1JT

Applicant : West Ella Holdings Limited

Representative : Simon Bladon

Respondents : San Remo Towers Freehold Limited

Representative : Julian Tawn

Type of Application : For an Order to transfer a particular issue to
the County Court

Tribunal Members : Judge N Jutton

Date of Decision : 24 May 2023

DECISION

1. In its decision dated 27 April 2023 the tribunal determined that it did not have jurisdiction to address certain issues in relation to the service charge provisions contained in the Parking Space Lease.
2. It invited the parties at paragraph 38 of its decision to make an application to the tribunal for an order that the issue as to whether or not, and if so to what extent, the lessees of the Parking Space Leases were required to contribute by way of maintenance charge to the costs of the proposed works, to be transferred to the County Court for determination.
3. The Applicant has submitted a request to the tribunal for it to make such an order.
4. The tribunal has considered that request in light of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013 and in particular rules 9(2) and 6(3)(n).
5. Rule 9(2) provides that the tribunal must strike out the whole or part of proceedings before it if it doesn't have jurisdiction and does not exercise its power to transfer to the court under rule 6(3)(n)(i).
6. Rule 6(3)(n)(i) provides for a transfer of proceedings because of a change in circumstances since the proceedings were started such that the tribunal no longer has jurisdiction. That is not the case here. The reason for the tribunal not enjoying jurisdiction in respect of this particular issue arises by reason of the restricted wording of section 18 of the Landlord and Tenant Act 1985. It does not arise because of a change in circumstances since the proceedings were started. It has always been the case that the tribunal did not enjoy jurisdiction to address this particular issue.
7. Accordingly applying rule 9(2) the tribunal must strike out this part of the application before it because it does not have jurisdiction and has not exercised a power to transfer under rule 6(3)(n)(i).
8. Accordingly, the tribunal orders that the application to determine issues in respect of the payment of maintenance charges arising under the Parking Space Lease is struck out.
9. As the issue is struck out it is no longer before the tribunal and therefore not capable of being transferred (for example under rule 6(3)(n)(ii) on the basis that the court is the more appropriate forum). It follows that the Applicant's request to transfer to the County Court is dismissed.
10. The tribunal appreciates and is conscious of the fact that this may appear as particularly unhelpful to the parties and that the tribunal may be felt to be taking an unnecessary dogmatic approach to its interpretation of its own rules of procedure. However, the tribunal must properly apply those rules as drafted.
11. It is a matter entirely for the parties but if it remains the case, as presumably it is, that one or both of the parties wish the issues in respect of the payment

of maintenance charges arising under the Parking Space Lease to be addressed by the court then they will need to institute fresh proceedings in the County Court to address those issues. As stated at paragraph 38 of the tribunal's decision dated 27 April 2023 it is possible that there after the County Court may make an order transferring the matter back to the tribunal for determination by a tribunal judge sitting as a County Court judge. That however is entirely a matter for the County Court. (It is perhaps unfortunate, not least in the particular circumstances of this case, that there would not appear to be at this time a legal mechanism which would allow for such an order to be made save for an order by the County Court). If one of the parties decides to institute proceedings in the County Court then they may take the view that it would be of assistance to the court to furnish the court with a copy of the tribunal's decision of 27 April 2023 and of this decision.

12. Summary

1. The application before the tribunal to determine issues in respect of the payment of service charges arising under the provisions of the Parking Space Lease is struck out.
2. The Applicant's application to transfer those issues from the tribunal to the County Court for determination is dismissed

Dated this 24th day of May 2023

Judge N Jutton