



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

Case reference : **LON/00AR/LSC/2023/0010**

Property : **Queenwood Lodge, 61A Main Road, Romford,
RM2 5EH**

Applicant : **The Leaseholders of Flats 2 to 13 (as per the
application)**

Representative : **Mullis & Peake LLP**

Respondent : **Assethold Limited**

Representative : **Eagerstates Ltd**

Type of application : **Determination of payability and
reasonableness of service charges – section
27A of the Landlord and Tenant Act 1985**

Tribunal : **Judge Tagliavini
Mr R Waterhouse FRICS**

Date of decision : **27 June 2023**

DECISION

The tribunal's summary decision

- (1.) The tribunal determines the applicants have no liability to pay the sum of £82,016.79 and £23,427.99 (costs) totalling **£105,444.78** paid by the respondent to the London Borough of Havering in satisfaction of the s.106 Agreement dated 15 December 2005. Further, the tribunal determines the applicants have no liability to pay the sum of **£112,183.24** now demanded by the respondent from the applicants in respect of the same transaction.
 - (2.) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the respondent landlord's costs can be passed on to the applicants.
 - (3.) The tribunal directs the respondent to reimburse the applicants with the application fee of £100 and any hearing fee paid by the applicants within 28 days of the date of this decision.
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The application

1. This is an application by the applicant leaseholders seeking the tribunal's determination as to the liability to pay and reasonableness of service charges demanded by the respondent freeholder in the total sum of **£112,183.24** for the service charge years 2019 to 2022 (inclusive). The applicants also seek an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 limiting payment of the landlord's costs.

Background

2. On or around 19 February 2010 the respondent acquired the freehold of the subject property from the then Owner developer Phase Four Developments Limited. On acquisition of the freehold, the respondent acquired the liability to pay to London Brough of Havering ("LBH") an Educational Contribution in the sum of £68,744.00 pursuant to a section 106 Agreement under the Town and Planning Act 1990 dated 15 December 2005 and made between The Mayor and Burgesses of The London Borough of Havering ("the Council") and Rosemary Ann Mason ("the Owner") and Phase 4 Developments Ltd (" the Developer") Phase Four Developments Limited and LBH and executed as a Deed. At the date of the respondent's acquisition of the freehold the Educational Contribution remained unpaid.
3. In 2012 the Queenswood Lodge RTM Company Limited acquired the Right to Manage the subject property.

4. The s.106 Agreement made it a condition that the Educational Contribution was to be paid before any of the 13 two-bed flats (completed by 6 December 2007) were occupied or permitted to be occupied. However, in breach of the s.106 Agreement which stated the applicants' flats were let on long leases between October 2007 and March 2008 and the Educational Contribution remained unpaid until in or around 2019 when the debt of £68,744.00 including interest of £59,119.84 had risen to £127,863.84 plus LBH's costs.
5. Subsequently, LBH accepted the respondent's offer made on 1/4/2019 to settle the claim for payment of the Educational Contribution in the sum of £82,016.79 and LBH sought costs of £23,427.99 totalling £105,444.78.
6. In demands made by the respondent between November 2019 to February 2020 the respondent sought recovery of the sum of £112,183.24 from the applicants.
7. Consequently, 12 of the leaseholders of the 13 flats no make this application the tribunal.

The hearing

8. The application was determined by the tribunal on the papers as no party requested an oral hearing. In making its decision the tribunal took into account the information provided by the applicant by way of a bundle comprising 196 electronic pages comprising both parties' documents.

The issues

9. The tribunal identified the following issues:
 - (i) Whether an outstanding debt owed by the landlords in respect of a section 106 agreement between Phase 4 Development Limited (the former freeholder) and the London Borough of Havering is payable by the leaseholders under the lease.
 - (ii) Whether the said outstanding debt is a valid service charge.
 - (iii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.
 - (iv) Whether an order for reimbursement of application/ hearing fees should be made

The tribunal's decision and reasons

10. The tribunal determines the applicants have no liability to pay the sum of £82,016.79 and £23,427.99 (costs) totalling **£105,444.78** paid by the respondent to LBH in satisfaction of the s.106 Agreement dated 15 December

2005. Further, the tribunal determines the applicants have no liability to pay the sum of **£112,183.24** now demanded by the respondent from the applicants.

11. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the respondent landlord's costs can be passed on to the applicants.
12. The tribunal directs the respondent to reimburse the applicants with the application fee of £100 and any hearing fee paid by the applicants within 28 days of the date of this decision.

Reasons

13. The tribunal finds the s.106 Agreement requiring payment of the Educational Supplement before any of the flats were occupied or permitted to be occupied, operates to exclude the applicants' liability to pay or contribute to this sum as the applicant lessees or their predecessors in title were not and were not intended to be parties to the s.106 Agreement.
14. The tribunal finds all sums demanded from the respondent as a result of settling the claim made against it by LBH are not service charges within the meaning of the applicants' lease.
15. In the alternative, the tribunal finds the sums now demanded by the respondent were incurred by the respondent in 2010 when it acquired the freehold of the property or alternatively, on 1 May 2012 when LBH first demanded payment from the respondent. In any event the tribunal finds the respondent's demands for payment are 'out of time and fail to comply with s.20B of the Landlord and Tenant Act. Consequently, the Educational Contribution of £82,016.79 (as settled by the respondent) and all associated legal and administration costs are not payable by the applicants.
16. The tribunal finds the provisions of the lease relied upon by the respondent at The Third Schedule; The Fifth Schedule and the Sixth schedule do not make provision for the recovery of the Educational Contribution from the applicants. The tribunal finds the Educational Contribution was payable by the freeholder/owner before the applicants or their predecessors occupied or were permitted to occupy the premises and therefore is not binding upon or payable by them.
17. The tribunal finds The Third Schedule relate to charges incurred in respect of the demised premises and that the Educational Contribution cannot properly be described as '*[R]ates taxes charges duties burdens assessments dues outgoings and imposition whatsoever whether parliamentary parochial local or any other description whatsoever which are now or shall be at any time hereafter during the Term be charged rated assessed or imposed upon or in respect of the Demised Premises....*'
18. Further, and in the alternative the tribunal finds the respondent's conduct in delaying payment to LBH having admitted its liability to pay the Educational

Contribution, to be unreasonable and the amount of interest this delay in payment generated, to be unreasonable and not payable by the applicants.

Name: Judge Tagliavini

Date: 27 June 2023

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).