



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

Case reference : **LON/00AT/LSC/2021/0406
LON/00AT/LSC/2021/0408**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **9 & 11 Wighton Mews, Isleworth,
Middlesex, TW7 4DZ**

Applicant : **Wighton Mews Residents Limited**

Representative : **Rajiv Jaitly**

Respondent : **Susan Siggins (11 Wighton Mews)
Anita Lucritia Brice and Jamal James
Brice (9 Wighton Mews)**

Representative : **-**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge D Brandler
Mr C Gowman MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **3 May 2022**

Date of decision : **5 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to were various documents with the application, various emails from the applicants and the respondents, and a letter from the Tribunal dated 30 November 2021 raising the issue that the Tribunal may not have jurisdiction to deal with the application. The contents of these documents we have noted. The order made is described at the end of these reasons.

Decision:

1. The Tribunal does not have jurisdiction to determine this application for the reasons stated below.
2. The Tribunal cannot transfer the matter to the County Court.

Background:

1. The tribunal received an application under section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges.
2. The respondents are the freehold owners of flat 9 and 11 Wighton Mews, Isleworth, Middlesex TW7 4DZ (“the flats”). The applicant’s claim is that the respondents have failed to pay what they refer to as rent charges.
3. The applicant company is owned by each of the 12 freehold properties situated in Wighton Mews, each property holding one share in the company. It is the applicant’s assertion that the deed of covenant entered into by each freehold property owner, which stipulates that from the “ultimate date” which is the date by which the property developer has transferred all the freeholds, the company shall discharge its obligations and comply with the provisions of section 18 to 30 of the Landlord and Tenant Act 1985 “*as if the rent charge was a service charge as if the estate was a building and the residential units were each a flat provided that this will not apply if there is any amendment or re-enactment of the said sections in the said Act shall apply to the schedule where this occurs. (Section 4 Fourth Schedule)*”. The applicant further asserts that “*It is because of this that the application is being brought in the first instance through the First Tier Tribunal. There are no leases issued in respect of any property but on contacting the First Tribunal we have been informed that the appropriate action for this sort of claim is though Form 3 and that is the basis of this application*”. [paragraph 3 of the applicant’s statement].
4. On 30 November 2021 the Tribunal wrote to the parties explaining that appeared that the Tribunal did not have jurisdiction to deal with the application because the “estate rent charge” complained of is not a “service charge” within the meaning of section 18(1) of the Landlord and

Tenant Act 1985 and that in order for the Tribunal to have jurisdiction, the relevant service charge must be payable “by a tenant...as part of or in addition to the rent”. Further that the obligation to pay “estate rent charge” would not be in the jurisdiction of the Tribunal in the circumstances set out in section 159 of the Commonhold and Leasehold Reform Act 2002, that is “estate management schemes” which have been approved by the High Court or the Tribunal.

5. A hearing was listed to hear arguments as to whether the Tribunal has jurisdiction.

The hearing

6. The Applicant was represented by Mr Jaitly who is a Director of the applicant company and is the legal owner of no. 5 Wighton Mews. Mr Krasso (no.4) attempted to join but appeared to be unsuccessful and Mr Neeraj Bhardwaj (no. 12) successfully joined as an observer.
7. Neither of the respondents were able to join the hearing due to other commitments.
8. Having heard the submissions from the applicant and considered all of the documents provided, the Tribunal has made determinations on the issues as follows.
9. Wighton Mews Residents Limited and its management scheme of the 12 freehold properties in Wighton mews has not been approved by the High Court under section 19 of the Leasehold Reform Act 1967, it has not been approved by a Tribunal pursuant to section 70 of the Leasehold Reform, Housing and Urban Development Act 1993 and is not Crown land. As such the scheme does not come within section 159 of the Commonhold and leasehold Reform Act 2002. The Tribunal does not have jurisdiction to make a determination under section 159(6) of the Act.
10. Mr Jaitly argues that the parties have contracted to comply with section 18 to 30 of the Landlord and Tenant Act 1985 and contracted to treat the rent charge as a service charge. The parties were of course entitled to contract freely but that does not confer jurisdiction on the Tribunal. Although the contractual documentation states that the rent charge is also to be called a service charge, this does not mean that the property owners become ‘tenants’ for the purpose of section 18 of the Landlord and Tenant Act 1985 or make the applicant company a landlord or superior landlord.
11. Mr Jaitly also relied on sections 155 and 72 of the Commonhold and Leasehold Reform Act 2002. The Tribunal could not see how these assist his case. Section 155 inserted section 27A into the Landlord and Tenant Act 1985 and section 72 is concerned with the Right to Manage.
12. Further, Mr Jaitly relies on the principles in *Cain v London Borough of Islington* [2015] UKUT 117 (LC) but again the Tribunal do not see how

this case can assist him given it was a case where the applicant was a leaseholder not a freeholder.

13. While the Government intends to legislate to give freeholders equivalent rights to leaseholders and extend sections 18 to 30 of the Landlord and Tenant Act 1985 to freeholders, this has not happened (paragraph 4.15 *Implementing reforms to the leasehold system in England Summary of consultation responses and Government response June 2019*)
14. Mr Jaitly further seeks the Tribunal to exercise its discretion under Rule 6(3)(n) to transfer the case to the County Court. However, that would require the County Court to have jurisdiction to determine the question that the Tribunal has been asked to adjudicate on. The County Court does not have jurisdiction under section 159 or section 27A either so a referral under Rule 6(3)(n) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 would not be appropriate and the Tribunal's position is that proceedings will have to be commenced afresh in the County Court, if so advised.

Name: Judge D Brandler

Date: 5 May 2022

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).