



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

Case reference : **CAM/22UB/LAC/2022/0005**

HMCTS code : **P:PAPERREMOTE**

Property : **Regency House, 1 Station Court,
Radford Way, Billericay, Essex
CM12 0DZ**

Applicant : **The leaseholders flats 1-6**

Respondent : **Assethold Limited**

Type of application : **Application for permission to
appeal**

Tribunal member : **Judge Wayte**

Date of Decision : **14 July 2023**

DECISION

Decision

1. The Tribunal has considered the Applicant's request for permission to appeal to the Upper Tribunal Lands Chamber dated 10 July 2023 and determines that:
 - a. It will not review its decision; and
 - b. permission be refused.
2. The Respondent may make a further application for permission to appeal directly to the Upper Tribunal (Lands Chamber). Any such application must be made no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
3. Where possible, the Respondent should make any further application for permission to appeal online using the Upper Tribunal's online document filing system, called CE-File. This will enable the Upper Tribunal to deal with it more efficiently and will enable the parties to follow the progress of the application and submit any additional documents quickly and easily.
4. Information about how to register to use CE-File can be found by going to the following web address:

[https://www.judiciary.uk/wp-content/uploads/2021/07/Practice-Note-on-CE-filing-Lands-Chamber-17.6.21 .pdf](https://www.judiciary.uk/wp-content/uploads/2021/07/Practice-Note-on-CE-filing-Lands-Chamber-17.6.21.pdf)
5. Alternatively, it is possible to submit an application for permission to appeal by email to: Lands@justice.gov.uk.
6. The Upper Tribunal can also be contacted by post or by telephone at: Upper Tribunal (Lands Chamber), 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (Tel: 020 7612 9710).

Reasons

7. The relevant provisions in respect of appeals are set out in the Practice Directions of the Upper Tribunal (Lands Chamber) dated 19 October 2020 (the "Practice Directions") which can be found at the following link:

<https://www.judiciary.uk/guidance-and-resources/upper-tribunal-lands-chamber-practice-directions/>
8. Paragraph 10.14 of the Practice Direction provides that permission to appeal will be granted if the Tribunal considers that the proposed appeal has a realistic prospect of success, unless the sum or issue involved is so modest or unimportant that an appeal would be disproportionate. Permission to appeal may also be granted if the Tribunal considers there is some other good reason for an appeal.

9. The respondent seeks to appeal the determination made on 23 May 2023 that the rent collection fee of £60 demanded from each leaseholder on 30 November 2022 is not payable as an administration charge. The respondent also wishes to appeal the orders made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2022 and section 20C of the Landlord and Tenant Act 1985 preventing the landlord from seeking their costs of the application from the leaseholders either as a service or administration charge.
10. The respondent argues that the lease provides for recovery of the fee as a service charge. In those circumstances *“it was not wrong of the respondent to charge this fee”* and *“it is unfair to have to pay any application fee to the applicant or not to recover their costs in dealing with the matter”*. The respondent submits that the tribunal had made assumptions that the rent collection fee was an administration charge rather than a service charge and that they had clearly showed it was payable as a service charge under the lease.
11. As explained in paragraph 1 of the decision, the application was made under the 2002 Act for a determination as to whether the rent collection fee was payable as an administration charge. Naturally, the first issue to decide was whether the fee was claimed as an administration charge. Despite being ordered to set out their case on that point, the respondent’s statement of case failed to address the issue. The tribunal found as a fact that the demand was for payment as an administration fee, as set out in paragraph 18 of the decision. That finding relied on the description of the charge by the respondent as an “Admin fee” and the failure to follow the service charge machinery in the lease, assuming the respondent was able to do so following the acquisition by the leaseholders of the no-fault right to manage (RTM). The respondent claims that paragraph 17 of the decision acknowledges that the fee can be recovered as a service charge, which is clearly incorrect.
12. As to the orders in respect of the respondent’s costs and the reimbursement of the application fee, the reasons are set out in paragraph 21 of the decision. This application was caused by the failure of the respondent to be clear about the legal basis on which the rent collection fee was sought, both in the demand and in the proceedings. The applicants were successful. In the circumstances there is nothing “unfair” about the orders made against the respondent.
13. In the circumstances the Tribunal does not consider that there is any realistic prospect of a successful appeal in this case. The Tribunal also does not consider that there is any other good reason for an appeal and therefore permission to appeal is refused.

Name: Judge Wayte