



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

**Case reference** : CHI/43UB/LSC/2022/0132

**Property** : 32 The Fairway, West Molesey, Surrey,  
KT8 1PB

**Applicant** : Nicholas Hancock

**Representative** : None

**Respondent** : Paragon Housing

**Representative** : None

**Type of Application** : Determination of liability to pay and  
reasonableness of service charges under  
Section 27A of the Landlord and Tenant  
Act 1985

Application for Order under section 20C  
of the Landlord and Tenant Act 1985

Application for Order under paragraph  
5A of Schedule 11 of the Commonhold and  
Leasehold Reform Act 2002

**Tribunal Members** : Mrs J Coupe FRICS  
Mr M Woodrow MRICS

**Date of Decision** : 7 August 2023

---

**DECISION**

---

© CROWN COPYRIGHT

## **Decision of the Tribunal**

- (1) The Tribunal has determined that the following service charges costs are not payable by the applicant:**
  - i. Grounds maintenance: Year 2020/21                      £137.31**
  - ii. Grounds maintenance: Year 2021/22                      £116.42**
- (2) The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985, preventing the respondent from charging the costs of the proceedings to the applicant through the service charge.**
- (3) The Tribunal makes an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, preventing any administration charges in relation to these proceedings being charged to the applicant.**
- (4) The Tribunal orders the respondent to refund the applicant the application fee within 14 days of the date of this decision.**

## **Application**

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) as to his liability to pay and the reasonableness of service charges for the service charge years 2017 - 2022 inclusive. The total value of the dispute was not, initially, quantified. The application was received by the Tribunal on 28 November 2022.
2. The applicant also seeks an order pursuant to section 20C of the Landlord and Tenant Act 1985 and an order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the respondent from recovering any costs incurred through these proceedings either through the applicant’s service charge or by way of an administration charge. The applicant initially sought to extend any s.20C order made to *“Other Residents within the block, PA have all details.”*

## **Background**

3. The development comprises a three storey purpose built block of twenty four flats, believed to have been constructed as local authority accommodation in or around 1950. Twelve of the flats provide two bedroom accommodation and the remaining twelve flats afford one bedroom accommodation. Flat 32 is located on the second floor.
4. On 6 February 2023 the Tribunal issued directions setting down a case management hearing for 15 March 2023 at which time the disputed issues were narrowed and the years in dispute clarified. The respondent stated that the applicant was not subject to any live applications in the county court for recovery of arrears. The applicant advised that he no longer sought to extend any s.20C order granted to other lessees. Further directions were issued on 20 March 2023.

5. In response to case management applications, two further sets of directions were issued in order to progress matters, dated 26 April 2023 and 5 May 2023 respectively.
6. Paragraph 22 of the directions dated 20 March 2023 required the applicant to particularise, within a Scott Schedule, the challenged costs. Paragraph 23 of said directions required the respondent to complete the Scott Schedule by providing a response to each item identified. The Tribunal limits its determination to those items contained within the Scott Schedule submitted.
7. The directions also required the respondent to provide a signed and dated statement of truth and any witness statements upon which they sought to rely. The respondent chose not to do so. However, further to the case management hearing, documentation was disclosed by the respondent and the respondent complied with the requirement to complete the Scott Schedule. Furthermore, on 6 July 2023 the respondent emailed the applicant and the Tribunal with the statement:

*“... I can confirm that I agree with the documents/bundle you have submitted along with your Scots schedule (sic) and the information provided by ourselves to be a true reflection of events and costs.*

*Whilst I understand this may be late for the Tribunals (sic) directions, we would not have submitted anything further. ...”*
8. Directions were given for a determination on the papers alone unless a party objected in writing and for steps to be taken to facilitate that. The parties were further advised that no inspection would be undertaken. Neither party objected.
9. Having reviewed the bundle comprising 84 pages and appended Scott Schedule, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
10. These reasons address in **summary form** the key issues raised by the parties. They do not recite each and every point referred to in submissions. The Tribunal concentrates on those issues which, it considers, are the fundamental points of the application. References to the electronic page numbers of the bundle are indicated as [ ].

### **The Law**

11. The relevant law is set out in sections 18, 19, 20C and 27A of the Landlord and Tenant Act 1985, as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002, as annexed to this decision.
12. The Tribunal has the power to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties.

13. Service charges are sums that are payable, or would be payable, by a tenant to a landlord for the costs of services, repairs, maintenance or insurance, or the landlord’s costs of management, under the terms of the lease. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. A service charge is only payable insofar as it is reasonably incurred or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

**The Lease**

14. The property is held under the residue of a Lease dated 18 September 1989 and made between Elmbridge Borough Council (“the council”) and Edith Elizabeth Austin (“the lessee”) for a term of 125 years commencing 18 September 1989 (“the lease”) [13].
15. The relevant clauses of the lease for the Tribunal’s determination were:

The lessee covenants with the council:

*“Clause 2(3)(a) To pay the Service charge and the Capital Expenditure Reserve Charge contributions set out in Part I and Part II of the Third Schedule hereto respectively at the times and in the manner there set out.” [16].*

The Council covenants with the lessee:

*“Clause 4(5) In accordance with the Council’s policies as amended from time to time to provide any of the following services (if any) at present enjoyed to or for the flat and the remainder of the building on a communal basis and to ensure so far as practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services namely:*

...  
(viii) maintenance of estate roads and paths

...  
(xi) maintenance of gardens or landscaped areas” [21-22].

Third Schedule. Part I: Annual Service charge

*“Clause 7(6) The maintenance and management of the building and the estate” [28].*

16. The respondent’s right to demand and to collect service charges pursuant to the lease was not challenged in final submissions, nor was any challenge raised as to the validity, or otherwise, of any demands. Accordingly, the Tribunal make no determination in such regard.

**The Issues**

17. The disputed and, in part, subsequently agreed, items of service charge expenditure were particularised in a Scott Schedule appended to the bundle, details of which are summarised below.

	YEAR	ITEM	COST	STATUS
1	2017/18	Electrical repairs	£45.24	Agreed by applicant <b>AGREED</b>
2	2017/18	Communal repairs	£68.20	Cost removed by respondent <b>AGREED</b>

3	2018/19	Fire Risk Assessment	£20.83	Agreed by applicant <b>AGREED</b>
4	2019/20	Emergency lighting	£35.17	Cost removed by respondent <b>AGREED</b>
5	2020/21	Cleaning	£76.00	Cost removed by respondent <b>AGREED</b>
6	2020/21	Emergency lighting	£34.30	Cost removed by respondent. <b>AGREED</b>
7	2020/21	Grounds maintenance	£137.00 <b>(Note: actual figure £137.31)</b>	In dispute
8	2021/22	Grounds maintenance	£116.42 (budget)	In dispute

18. The Tribunal note that following the case management hearing and disclosure of documentation, the dispute relating to six of the eight challenged costs were agreed by the parties prior to the Tribunal's determination. Accordingly, the Tribunal has no jurisdiction over these matters and makes no findings or decision in such regard. The remaining items, those being items 7 and 8, form the remainder of this determination.

### Submissions

19. The Tribunal finds it convenient to address submissions for items 7 and 8 of the Scott Schedule together as the applicant advances a similar argument for each:
- i. Year end 2020/21: Grounds maintenance invoice and contract  
Sum disputed £137.31
  - ii. Year end 2021/22: Grounds maintenance invoice and contract  
Budgeted sum disputed £116.42.
20. The applicant's Scott Schedule, in regard to both years in dispute, stated:  
*"Unable to verify account breakdown for amounts sought. No deduction noted for Areas A, B, and C. From memory garden contract is not being fulfilled ie overgrown but unable to verify due to contract not being provided. Full refund request."*
21. In response, the respondent completed the Scott Schedule with the following statement for both years:  
*"Estate inspection across 20/21 [and 21/22 for the second year]. Although we are unable to verify the areas you've listed as A, B and C, the estate inspection show that the Ground Maintenance has been completed throughout the year as (sic) a good standard (hedges are cut twice a year only). Please note, the Bulk rubbish is not part of the GM contract as is charged separately. I've included the map covering the GM contract. Upon review, we feel that residents at The Fairway should not ne (sic) charges the turf cutting in section 1. Due to this we're proposing to deduct the charge by 10%."*

22. The applicant rejected the respondent's offer of a 10% deduction on the ground that the respondent provided no method of calculating such deduction and an assertion that the curtilage of the development, as identified in the respondent's plan, was incorrect.
23. In a signed witness statement dated 6 April 2023 [48], the applicant stated that, contrary to the Tribunal's order of disclosure, the respondent had failed to furnish him with either the invoices or the garden maintenance contract for the relevant years. The applicant was therefore unable to ascertain, from the information provided by the respondent, the apportionment of the overall costs between each block in The Fairway. Furthermore, the respondent failed to evidence the deduction agreed following a previous Tribunal application in 2014.
24. The applicant argued that inadequate maintenance of the grounds was evident by the trees and hedging growing above ground floor windows; large areas of overgrown gardens; un-swept paths; overgrown path edging and discarded dead vegetation. Appended at NH11 [77-80] were nine undated photographs of the gardens and grounds which the applicant says he took on the 4 April 2023.
25. In a continuation of his witness statement the applicant submitted a further signed witness statement dated 30 May 2023 [52], in which he asserted that the excel spreadsheet of grounds maintenance as submitted by the respondent at appendix NH8 [63] was meaningless without any costings. Referring to the applicant's own annotated site plan at NH9 [65], the applicant repeated that the 10% deduction offered by the respondent was unacceptable due to a lack of method of calculation. The applicant further asserted that any costs associated with areas marked B and C on his plan and incurred since 2014, should be removed as residents of The Fairway were paying for services from which they derive no benefit or, in the alternative, were never delivered.
26. In response to the respondent's grounds maintenance inspection report dated 23 July 2021 upon which the respondent relies, the applicant referred to the findings at sections 2.16; 2.17; 2.26 and 2.28 which detailed deficiencies notified to the Estates team and the overall assessment of 'Bronze', which the applicant asserted "*is not an endorsement the grounds are well maintained.*" [53].
27. At paragraph 7 of his first witness statement [49], the applicant referred to cleaning costs as being in dispute, questioning the cost and time expended on such work.
28. At paragraph 12 of the same witness statement [50] the applicant asserted that the £400.00 cost, headed 'CERF' should be reduced. No further details were provided.
29. In addition to their response to the Scott Schedule, the respondent relied upon a schedule of maintenance works on the estate between 6 January 2020 and 16 December 2022, which provided site co-ordinates and showed units of work undertaken within various headings such as 'grass cut' and 'litter pick' [63].

30. The respondent further relied upon the findings of a Paragon Housing Inspection report undertaken by Catherine Goodchild on behalf of the respondent on 1 July 2021, as evidence to the upkeep and maintenance of the site [67].
31. Additional documents relied upon by the respondent extended to a garden maintenance invoice dated 18 September 2020 for the sum of £59,697.34 relating to “works for the month of July ‘20” and referenced ‘Richmond and Elmbridge sites’ [81]; a grounds maintenance budget listing ‘Journal line description’ [82-83]; and an ‘Overall credit’ spreadsheet [83-84].

## **Discussion**

32. Section 19 of the Act provides that relevant costs are only payable to the extent that they are reasonably incurred and if the services or works provided are of a reasonable standard.
33. To this end the applicant argued that the grounds maintenance costs had not been reasonably incurred as the respondent had failed to provide evidence of the works undertaken or the exact costs incurred and, furthermore, that where such services had been undertaken that they fell short of a reasonable standard.
34. In his witness statement [49-50] the applicant questioned the cleaning costs incurred and the provision of a sum of £400.00 under the heading Replacement funds/CERF. The only reference to cleaning costs in the Scott Schedule is at item 5 (see paragraph 17 above) where a cost of £76.00 is noted as “Agreed”. Accordingly, the Tribunal has no jurisdiction to determine such cost. Similarly, the Tribunal lacks jurisdiction to determine the £400.00 ‘Replacement funds/CERF’ cost as such expenditure did not form part of the applicant’s application or Scott Schedule and, as such, the respondent has not been afforded an opportunity to respond.

## **Determination**

35. **Item 7 Scott Schedule**  
**Grounds maintenance 2020/2021. Cost £137.31**  
The respondent stated that the grounds maintenance had been completed throughout the year to a good standard, with hedges cut twice during the period. The respondent offered a 10% reduction in charges in lieu of the boundary discrepancy. The respondent relied upon an invoice for c.£59,700 relating to costs incurred in the month of July 2020 for sites referenced as Richmond and Elmbridge.
36. The Tribunal find that the invoice relied upon provides insufficient and inadequate detail of the specific costs incurred by the respondent in relation to The Fairway, let alone any apportionment to each block within the estate. It is inconceivable to the Tribunal that this estate alone incurred costs just shy of £60,000 for a single month’s ground maintenance however no explanation is provided by the respondent as to any other sites included within the invoice or the apportionment of costs thereof.

37. The respondent further relied upon a schedule of attendance, which recorded 24 dates within the relevant period when works were stated to have been undertaken [63]. However, the Tribunal finds that the schedule lacks sufficient detail or clarity to unequivocally evidence the type and extent of work undertaken. The Tribunal further find that, with the exception of the July invoice referred to above, no evidence of the costs incurred were provided by the respondent.
38. Accordingly, the Tribunal finds that the respondent has failed to evidence the exact costs incurred during the relevant period and, where partial evidence has been provided it is insufficiently detailed to enable any identification of the property or the extent of work undertaken at such property. The Tribunal therefore find that the costs of £137.31 have not been reasonably incurred and are not payable by the applicant.
39. **Item 8 Scott Schedule**  
**Grounds maintenance 2021/2022. Budgeted cost £116.42**  
 The respondent again stated that the grounds maintenance had been completed throughout the year to a good standard, with hedges cut twice during the period. A 10% deduction was offered to the applicant.
40. As with the previous year, the respondent relied upon a schedule of attendance [63] which recorded 25 dates within the relevant period when works were stated to have been undertaken. In common with our findings at paragraph 37 above, the Tribunal finds the schedule lacking in sufficient detail to evidence the costs incurred.
41. The respondent also relied upon a single monthly inspection report undertaken by Catherine Goodchild on 1 July 2021 which, they state, demonstrates the site to be well maintained. The Tribunal disagrees. Although the report is positive in a number of respects and photographs included in the report show some areas adequately presented, Ms Goodchild’s narrative, in part, paints a somewhat different picture to that asserted by the respondent. In particular the Tribunal refer to the following comments by Ms Goodchild:
- 2.16 Report heading: ‘Lawns litter free and maintained’  
 Response: “*Very overgrown, reported to Estates*”
- 2.17 Report heading: ‘Shrub beds litter free’  
 Response: “*Very overgrown, reported to Estates*”
- 2.26 Report heading: ‘Grassed areas free from litter, cut and well maintained’  
 Response: “*Reported to Estates*”  
 Such response is repeated three times by Ms Goodchild, referring to three different areas.
- 2.28 Report heading: ‘Are all other areas clean’  
 Response: “*Needs full grounds maintenance, litter, leaves strewn. Reported to Estates*”  
 Ms Goodchild reinforced her comments in response to the question ‘Are



all other areas clean' by stating "No".

2.30 Report heading: 'Additional comments'

Response: "Needs some TLC in terms of grounds maintenance – reported over to the team".

42. The applicant relied upon a series of photographs, said to be taken in April 2023, to demonstrate a number of overgrown trees and bushes, some of which partially obscure windows. However, these photographs are taken some twelve months after the latest period in dispute and the Tribunal therefore finds that they are unable to be relied upon as evidence as to the level of maintenance or site presentation during the period 1 April 2021 and 31 March 2022.
43. Having regard to all of the evidence submitted the Tribunal finds that the respondent has failed to evidence the costs incurred during the relevant period. The Tribunal recognise that they are budgeted costs and that some twelve months has elapsed since the disputed period. However, the Tribunal considers that, by the date of this application, the respondent should have been well placed to provide such evidence for consideration. Furthermore, the Tribunal finds that the respondents' own evidence, included within the inspection report of Ms Goodchild in July 2021, weighs particularly heavily against them. Ms Goodchild identified numerous deficiencies in the grounds maintenance and made five referrals to the respondents' Estates team in such regard.
44. Accordingly, the Tribunal find that the costs incurred have not been proven by the respondent and, furthermore, that the standard of the services or works provided were not reasonable. As such, the costs of £116.42 are not payable by the applicant.

Application for an Order under Section 20C of the Landlord and Tenant Act 1985 and pursuant to Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

45. The applicant requested the Tribunal make an order preventing the respondent recovering their costs in regard to these proceedings through the service charge.
46. The respondent made no submissions in this regard.
47. The purpose of Section 20C is to give the Tribunal the power to prevent a landlord recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal.
48. In *Tenants of Langford (Sherbani) v Doren Limited* LRX/37/2000, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 in which the applicant tenants had been successful, the Lands Tribunal (Judge Rich QC), at paragraph 28, said:  
*"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and*

*circumstances of all parties as well as the outcome of the proceedings in which they may arise.”*

49. However, there is also guidance in other cases to the effect that an order under Section 20C is to deprive the landlord of a property right and it should be used sparingly (see for example, *Veena v Chong: Lands Tribunal (2003) 1EGLR175*).
50. The Tribunal has considered all the circumstances and evidence before it, and has determined that the applicant has been successful in a number of his challenges both in the Tribunal’s determination and in four of the disputed costs being withdrawn by the respondent prior to determination. It should be noted that the applicant agreed two items were payable. The applicant has therefore been successful in reducing the quantum of costs which the respondent is entitled to recover through the service charge.
51. The Tribunal is mindful that the applicant attempted to resolve his grievances through dialogue and correspondence with the respondent prior to applying to the Tribunal for a determination but was unsuccessful. On balance, the Tribunal therefore determines that it would not be just and equitable if the applicant were to be held responsible for the cost of these proceedings.
52. Accordingly, the Tribunal makes an order pursuant to Section 20C of the Act that none of the respondent’s costs of these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant.
53. The applicant also applied for an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the applicant’s liability to pay administration charges in respect of the respondent’s litigation costs. For the same reasons as explained above, the Tribunal finds it just and equitable to exercise our discretion and make such an order thereby preventing any administration charges in relation to these proceedings being charged to the applicant.
54. Furthermore, the Tribunal orders that the respondent pays the applicant the application fee of £100.00. Such fees to be paid within 14 days of the date of this decision.

## RIGHTS OF APPEAL

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](mailto: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.

### **Annex 1**

#### Application under Section 27A of the Landlord and Tenant Act 1985

Sections 18 and 19 provide:

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 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.

(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.

(3) For this purpose –

- (a) ‘costs’ include 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.

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 for the carrying out of works, only if the services are of a reasonable standard;

and the amount shall be limited accordingly.

(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.

Section 27A, so far as relevant, provides:

(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.

(2) Sub-section (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were included for services, repairs, maintenance, improvements, insurance or management of any 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 payable.

The ‘appropriate tribunal’ is this Tribunal.