FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2023/0287**
Property	**:**	**Flat 3, 47 Clapham Common Northside, London SW4 0AA**
Applicant	**:**	**47 Northside Limited**
Representative	**:**	**Ms Robyn Cunningham (counsel, instructed by Taylor Rose solicitors)**
Respondents	**:**	**Margaret Gillian Philippa O'Neill** **David Christopher Wyatt**
Representative	**:**	**In person**
Type of application	**:**	**Application under S.27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Rosanna Foskett** **Mr Richard Waterhouse MA LLM FRICS**
Date of hearing	**:**	**12 February 2024**

DECISION

SUMMARY OF DECISION

1. The Tribunal has made findings in relation to the payability and reasonableness of service charges, as set out in this Decision.
2. The overall decision is that:
   a. The costs of the refurbishment works to the lift set out in the Application Notice are recoverable as service charge under the terms of the lease and are payable in full;
   b. The costs of electricity supplied to the lift in the service charge years ended 31 December 2022 and 2023 set out in the Application

Notice are recoverable as service charge under the terms of the lease in principle, but were not reasonably incurred (within the meaning of that term in section 19 Landlord & Tenant Act 1985) and therefore £445.31 and £559.69 claimed from the Respondents for those years respectively are not payable;

c. The legal costs set out in the Application Notice are recoverable as service charge under the terms of the lease and are payable in full.

BACKGROUND

3. The Applicant landlord seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.

4. The dispute concerns the building at 47 Clapham Common Northside ("**the Property**"). The Property is Grade II listed and divided into 8 residential flats.

5. The Applicant is the freeholder of the Property.[1] It was registered as such on 19 December 2002. The freehold title number is SGL272980.

6. As to the leasehold interest relevant to this dispute:

   a. The Respondents are the long leaseholders of Flat 3, 47 Clapham Common Northside ("**the Flat**") pursuant to a Deed of Surrender and Lease dated 17 December 2014 between the Respondents as "the Tenant" and the Applicant as "the Landlord" ("**the 2014 Lease**").

   b. The 2014 Lease involved a surrender of the residue of the Respondents' originally acquired lease dated 6 February 1984 between Lennox Walker, Michael Camps and Helen Camps as "the Lessor" and Geraldine l'Anson as "the Lessee" ("**the 1984 Lease**"[2]) and the grant of a new lease of the Flat of 999 years.

   c. The 1984 Lease had been for a term of 99 years from June 1978. The Respondents acquired that leasehold interest in 2004[3] and had previously lived in the Flat as renters for about a year before buying it.

   d. The 2014 Lease adopted the same terms as the 1984 Lease and, accordingly, what is recoverable as a matter of service charge and the mechanism for its calculation, apportionment and collection are as set out in the 1984 Lease. The two leases are therefore referred to together in this Decision as "**the Lease**".

[1] See Office Copy Entry at pages 1-2 of the pdf Core Bundle.
[2] Pages 18-63 of the pdf Core Bundle.
[3] See historic Office Copy Entry at pages 50-51 of the pdf Tenants' Bundle of Supporting Documents.

e. Solicitors, Streathers Clapham LLP, appear to have drafted the 2014 Lease.[4]

f. The Respondents' existing mortgage over their leasehold interest under the 1984 Lease appears to have been transferred to charge their new leasehold interest under the 2014 Lease.[5]

7. The Respondents were registered as proprietor of the leasehold interest of Flat 3 on 2 April 2004, under title number SGL396989.[6] As explained above, following the 2014 Lease, the Respondents were registered as proprietor of the new 999-year leasehold interest in the Flat on 18 December 2014, under title number TGL414210.[7]

8. The issues between the parties as can be seen from the Scott Schedule[8] helpfully completed by both parties are:

a. Whether the costs of refurbishing a lift in the Property which were incurred during the 2022 service charge year (amounting to £6,885.71 for Flat 3's share) were properly recoverable as service charge under the terms of the Lease;

b. Whether the costs of the electricity supply to the lift incurred in the 2022 and 2023 service charge years (amounting to £445.31 and £559.69 for Flat 3's shares in those two years respectively) were properly recoverable as service charge under the terms of the Lease and whether the sums claimed were reasonably incurred;

c. Whether the legal costs which were incurred during the 2022 and 2023 service charge years (amount to £1,714.29 and £532.46 for Flat 3's share in those two years respectively) were properly recoverable as service charge under the terms of the Lease.

9. The hearing took place from 10am to 1pm at 10 Alfred Place, London on 12 February 2024. The Applicant was represented by Ms Robyn Cunningham, counsel. Two witnesses attended (Dr Smith and Mr England) and gave oral evidence, in addition to their written witness statements included in the Core Bundle. A representative from the Applicant's solicitors and from the Applicant's managing agents were also present in the hearing room and the managing agent representative was helpfully able to give instructions on a small number of matters which arose during the hearing. The Respondents attended themselves.

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[4] Their name appears on the Deed (see page 65 of the pdf Core Bundle) and their signature appears as the signature of the conveyancer in the AP1 form submitted to HM Land Registry in 2014 for a change to the register (see page 57 of the pdf Tenants' Bundle of Supporting Documents).

[5] Deed of Substituted Security at page 60 of pdf Tenants' Bundle of Supporting Documents.

[6] See historic Office Copy Entry at pages 50-51 of the pdf Tenants' Bundle of Supporting Documents and the Report prepared for the Respondents by Parker Bullen solicitors prior to their purchase of the Flat (page 113 of the same bundle).

[7] Pages 4-5 of the pdf Core Bundle.

[8] Pages 69-82 of the pdf Core Bundle.

10. The Tribunal had before it, and has read, three PDFs – a Core Bundle, a Bundle of Supporting Documents from the Landlord and a Bundle of Supporting Documents from the Tenants.

11. Ms Cunningham, for the Applicant, produced a helpful skeleton argument and made oral submissions on behalf of the Applicant. She asked a very small number of questions by way of cross-examination of Ms O'Neill, based on certain points which were raised orally at the hearing. The Tribunal also asked some questions of clarification of Ms O'Neill.

12. Ms O'Neill, for the Respondents, made helpful and clear submissions as to the Respondents' position and also gave some evidence orally, in addition to the Statements of Case and the Scott Schedule which were included in the Core Bundle. Ms O'Neill was given the opportunity to cross-examine Dr Smith and Mr England on matters in their witness statements relating to the lift costs (refurbishment and electricity) and legal costs. The Tribunal also asked some questions of clarification of both witnesses.

REASONS FOR THE TRIBUNAL'S DECISION

Relevant terms of the Lease

13. The terms of the Lease that are relevant to the issues before the Tribunal are set out in this section (with page numbers showing where these terms appear in the pdf Core Bundle).

14. The "*Property*" is the building at 47 Clapham Common Northside (p18). The "*Building*" is defined as the same (p18).

15. The "*Flat*" is Flat 3 at the Property (p18).

16. The "*Demised Premises*" means the Flat (p20).

17. The "*Common Parts*" means "*all main entrances passages landings staircases (internal and external) gates access yards and footpaths means of refuse disposal (if any) and other areas included in the Title above referred to provided by the Lessor for the common use of residents in the Building and their visitors and not subject to any lease or tenancy to which the Lessor is entitled to the reversion including also the garden at the rea of the Building or such par or parts of that garden as the Lessor shall not require for the erection thereon of garages or the provision thereon of parking spaces"* (pp21-2).

18. The Applicant is the "*Lessor*" in the 1984 Lease (with the definition of "*Lessor*" including the original Lessor's successors in title) and the "*Landlord*" in the 2014 Lease. The Lessor's freehold title is SGL272980 (p19).

19. The Respondents are the "*Lessee*" in the 1984 Lease (with the definition of "*Lessee*" including the original Lessee's successors in title) and the "*Tenant*" in the 2014 Lease.

20. The "*Service Charge*" is defined at para 1(2) of the Fifth Schedule as "*such fraction of the Total Expenditure as is specified in Paragraph 7 of the Particulars*" (p59).

21. Paragraph 7 of the Particulars defines the "*Lessee's Share of the Service Charge*" as 1/7th of the "*Total Expenditure*" as defined in the Fifth Schedule of the Lease (p19).

22. The "*Total Expenditure*" means: "*the total expenditure incurred by the Lessor in any Accounting Period in carrying out their obligations under Clause 5(5) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the reasonable cost of employing Managing Agents (b) the proper cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Lessee hereunder*" (p58).

23. Under clause 3(1), the Respondents covenant to: "*Pay the rents hereby reserved at the times and in the manner provided without deduction*" (p23).

24. Under Clause 4(4), the Respondents covenant to: "*Pay the Interim Charge*[9] *and the Service Charge at the times and in the manner provided in the Fifth Schedule with both such charges being recoverable in default as rent in arrears.*" (p32).

25. The Landlord's obligations in Clause 5 "*subject to and conditional upon payment being made by the Lessee of the Interim Charge and the Service Charge at the times and in the manner hereinbefore provided"* include:

    a. Clause 5(5)(a)(iii): "*to maintain and keep in good and substantial repair and condition … the Common Parts*" (pp34-5);

    b. Clause 5(5)(a)(v): "*to maintain and keep in good and substantial repair and condition … all other parts of the Building not included in the foregoing subparagraphs (i) to (iv)*[10] *and not included in this demise or the demise of any other flat or part of the Building*" (p35);

    c. Clause 5(5)(e): "*To pay and discharge any rates (including water rates) taxes duties assessments charges impositions and outgoings assessed charged or imposed on the Building …*"

    d. Clause 5(5)(g)(ii): "*To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be reasonably necessary or desirable for the*

[9] The "*Interim Charge*" is defined at para 1(3) of the Fifth Schedule as: "*such reasonable sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or its Managing Agents shall specify at their discretion to be a fair and reasonable interim payment in accordance with the provisions of the Housing Act 1980 so long as the same may be in force*" (p59 of the pdf Core Bundle).

[10] In summary, sub-paragraph 5(5)(a)(i) relates to the main structure of the Building, sub-paragraph (ii) relates to gas and water mains, pipes, drains etc and electric and tv and radio equipment and sub-paragraph (iv) relates to the boundary walls and fences.

proper maintenance safety and administration of the Building" (p39);

e. Clause 5(k) states: "*Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building*" (p40).

26. Clause 6 makes provision for forfeiture (p49) and clause 3(9) contains a covenant that the Lessee pay the Lessor "*all reasonable costs charges and expenses including proper Solicitors' Counsels' and Surveyors' costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such reasonable costs charges and expenses of and incidental to the preparation and service of a notice under the said Sections and of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidations such reasonable costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court*" (p27).

Previous proceedings: March 2022

27. The parties were involved in a previous section 27A application, which was determined on 14 March 2022 (LON/00AY/LSC/2021/0171). That application involved a challenge to the recoverability of a number of items of service charge for the service charge years 2017-2021 (with the Decision referring to a 110-page Scott Schedule). It included the lift works and lift electricity costs for that period, which the Tribunal found were payable by the Respondents.

28. It may well be the case that the arguments run in the previous proceedings have been repeated in the instant proceedings, but the previous Decision did not record all the arguments run on the lift specifically and the decision on the lift works was stated briefly, in light of the huge number of issues before the Tribunal on that occasion. The Tribunal has therefore allowed the parties to run the arguments they wished to about the lifts and records its Decision and reasoning here.

Lift refurbishment works

29. There is no dispute between the parties that there is a lift at the Property. There is also no dispute that the lift suffered significant problems at least during the 2010s and possibly earlier, with at least one fire in 2016 and numerous breakdowns. It stopped working during 2018 and was only refurbished (with new car, new cables, new doors and new mechanisms but with no alteration to the brick-built shaft

structure in which it is housed[11]) and put back into action on 10 July 2023. The 2023 works (which started on 4 April 2023) followed a section 20 process during which 5 contractors tendered for the works.[12]

30. The Applicant submitted that the costs associated with lift works were recoverable under the terms of the Lease as service charge.

31. The Respondent submitted that those costs were not recoverable because:

    a. The lift is not specifically mentioned in the 1984 or 2014 Lease;

    b. The lift was installed originally after the 1984 Lease without planning permission or listed building consent;

    c. The new lift mechanics installed in 2023 were done without planning permission or listed building consent;

    d. The 1984 Lease does not permit installations at the Property because of clause 7(2) ("*Nothing in this Lease shall impose an obligations on the Lessor to provide or install any system or service not in existence at the date hereof*" (p43);

    e. Accordingly, costs associated with the original lift and the new lift were effectively incurred in connection with an "illegal" installation (i.e. one which did not have relevant planning or listed building consent) and should not be recovered – this appears to be the repetition of an argument run during the previous proceedings (see paragraphs 31 to 33 of the previous Decision dated 14 March 2022).

32. The reasonableness of the actual figures charged for the lift works were not challenged by the Respondents. The challenge, as explained above, was to their recoverability under the Lease as a matter of principle.

33. There was some debate about whether the lift existed at the Property at the time of the 1984 Lease:

    a. There does not appear to be any extant record of the date on which a lift was first installed at the Property.

        i. The Applicant suggested that no one knows when the lift was installed.[13]

        ii. The lift expert, Ardent Lift Consultancy, instructed by the Applicant in 2018 following a lift fault considered that it was probably of 1980s construction and had been added within a brick-built lift shaft at the Property.[14]

[11] This was the evidence given by Mr England as to what works had been done and was not challenged. The Tribunal accepts it.
[12] The Section 20 documents appear in the pdf Landlord's Bundle of Supporting Documents starting at page 72. The Statement of Estimates dated 10 September 2021 set out the 5 contractors' quotes (page 75).
[13] For example, para 25 at page 103 of the pdf Core Bundle
[14] Page 70 of the pdf Landlord's Supporting Documents

iii. The Respondents say that it was illegally installed after the Lease was created in 1984,[15] an allegation Ms O'Neill repeated orally at the hearing.

b. However, the Tribunal noted Lambeth Council's website contained historic planning documents which showed that an application for planning permission and listed building consent was made on 17 July 1979 and granted on 3 October 1979 in relation to the Property for "*the extension of the rear lift shaft*" to extend to the 4th and 5th floors in 1979. This document was brought to the parties' attention by the Tribunal and both accepted that it was relevant to the issue in dispute.

i. The Applicant submitted that this document demonstrated that the lift must have been installed prior to 1979 (given the use of the word "*extension*" in the planning and listed building consent).

ii. The Respondents submitted that: (i) the document was not evidence that the lift was installed at the Property prior to 1979 and pointed to the fact that the application appeared to have been made by a Mr John Dickinson of 44 Clapham Common Northside, who was not the freeholder of the Property at that time and did not reside there; and (ii) the permission would expire 5 years later if the works were not commenced by then and the lift was not installed until some time after 1984 by Mr Lennox, one of the then freeholders of the Property.

c. Further, the location of the lift is shown on the plan attached to the 1984 Lease of the Flat – it is at the rear of the Property.[16]

d. There was no dispute between the parties that the lift existed at the Property and was known to the Respondents by the time they purchased the Flat in 2004 and, accordingly, also by the time they were granted their new 999-year lease in 2014. The Respondents had paid their service charges in full between 2004 and 2017 and, as far as they could remember, such service charges included lines for lift maintenance during that period.

34. The Tribunal finds on the balance of probabilities that:

a. A lift was installed in the brick-built rear lift shaft prior to 1979 because of the wording of the planning permission/listed building consent on Lambeth Council's website dated 1979; the use of the wording "*extension to the rear lift shaft … to serve the 4th and 5th floor flats*" only makes sense if there was already a lift inside the rear lift shaft covering floors below the 4th and 5th floors at the time the application was made (July 1979); the Tribunal does not consider that there is any relevance to the fact that the 1979 application was made by a Mr Dickinson who may not have been the freeholder at the time – planning and/or listed building consent

[15] For example, pages 85 and 135 of the pdf Core Bundle
[16] Page 63 of the pdf Core Bundle.

applications can be made on behalf of freeholders (see, for example, the recent application made in 2022 for the Property in relation to surface mounter meter boxes and copper outlet pipework at page 222 of the pdf Tenants' Bundle of Supporting Documents – the applicant is listed as Southern Gas Networks plc, not the freeholder of the Property).

b. Whilst there is no specific evidence as to whether planning or listed building consent was granted or, indeed, required whenever the lift was first installed at the Property, Lambeth Council did not consider that any further planning or listed building permissions were required in relation to the original installation of the lift, because, in 1979, it was content to grant planning and listed building permission to extend the lift shaft. The only sensible inference is that Lambeth Council would not have done this, if they had considered that the original installation was somehow in breach of any applicable requirements.

c. The lift was installed at the Property by the time the 1984 Lease was entered into - the lift is specifically shown and marked in the plan attached to the 1984 Lease for the Flat.

35. The Tribunal accepts the submission that the lift was part of the "Common Parts" as defined in the 1984 Lease (and adopted in the 2014 Lease) and that the Applicant, as landlord, is accordingly obliged to maintain it and keep it in good and substantial repair and condition (under clause 5(5)(a)(iii)) and can recover the costs of doing so under the terms of the Lease as service charge.

36. In the alternative (i.e. if the lift was not part of the "Common Parts"), the lift falls within the definition of "*all other parts of the Building not included in the foregoing sub-paragraphs (i) to (iv) and not included in this demise or the demise of any other flat or part of the Building*" in clause 5(5)(a)(v) and the Application is accordingly obliged to maintain it and keep it in good and substantial repair and condition and can recover the costs of doing so under the terms of the Lease as service charge.

37. The Tribunal notes that no planning permission or listed building consent was sought by the Applicant for the 2023 works to the lift. Mr England's evidence was that his understanding, whether right or wrong, was that none was needed and he and Dr Smith gave evidence that they had relied on the Applicant's managing agent and the reputable appointed lift company carrying out the works to assess whether any such permissions were needed and apply for them if necessary. The Tribunal makes no finding on whether any such permission/consent was required. That is not something within its remit in this dispute as it does not affect the payability under the lease of service charges or their reasonableness. It would be a matter between the Applicant and Lambeth Council's Planning Enforcement.

Lift electricity costs

38. An electricity supply, covered by 3 separate electricity meters, supplies the lift. Bills were incurred and paid for all 3 of those electricity meters throughout the period when the lift was not operational (i.e. between 2018 when it stopped working and 2023 when the refurbished lift was put back into action).

39. As a matter of principle, the Tribunal considers that these electricity costs were recoverable as service charge under the terms of the Lease, for the same reasons as set out above in relation to the lift refurbishment works. The incurring of costs for electricity used by the lift (which was part of the "Common Parts" at the Property, alternative covered by clause 5(5)(a)(v)):

    a. Constituted part of the Applicant's obligation to maintain and keep the lift in good and substantial repair; and

    b. Was covered by the Lessee's covenant in clause 5(5)(e) to pay and discharge any rates charged on "*the Building*" as opposed to in relation to any flat within the Building.

40. However, the Tribunal considers that the electricity costs were not reasonably incurred in relation to part of the time for which the lift was not operational.

41. Very little evidence was adduced in relation to this matter by either party.

    a. Neither director who gave evidence recalled having any conversations with each other or with the Property's managing agent about the lift electricity bills and/or whether to disconnect the lift from its electricity supplies;

    b. No documentary material was provided by the Applicant or the managing agent to show whether any consideration was given to the relative costs of the options of (i) leaving the electricity connected and paying the bills across the 3 meters even though the lift was not operational or (ii) disconnected the lift from an electricity supply whilst not operational and reconnecting it when the lift was back in working order;

    c. The bills that were provided by the Applicant were stated to include standing charges each month (based on the number of days in each month) and be based on "*estimated meter reads*" in the case of Ecotricity;[17]

    d. The Respondents paid some service charge relating to these electricity bills during 2018-2021, because their challenge was only to sums incurred during the service charge years 2022-2023 and because of the Decision made in March 2022 in the previous Tribunal proceedings.

[17] See, for example, the Ecotricity bill dated 10 March 2022 at page 85 of the pdf Landlord's Bundle of Supporting Documents. And see, for example, the SSE Southern Electric bill for Q2 of 2022 at pages 104-107 of the same pdf bundle.

42. Bearing in mind that the Applicant had appointed managing agents and that the Applicant's board of directors decided to "*mothball*" the lift refurbishment project in 2018 due to other commitments (to use the word used in oral evidence by Mr England), the Tribunal notes the apparent lack of engagement with whether this supply should be continued or not with some surprise. Significant sums have been incurred on behalf of the Applicant and recharged to leaseholders as service charge for a period of 2018 - July 2023 when the lift was finally put back into action and, whilst there are no comparables to show what the costs would have been of disconnecting and reconnecting the supply, the Tribunal finds that the incurring of the electricity costs without proper consideration of whether such a course was appropriate in the circumstances means that the costs were not reasonably incurred. Doing the best it can, the Tribunal therefore disallows the proportions of the electricity costs for 2022 and 2023 that have been recharged to the Respondents (noting that the Applicant has already recharged and been paid the costs for 2018-2021, when the lift was out of action).

Legal costs

43. The Applicant seeks to recharge the legal costs incurred in bringing Tribunal proceedings for recovery of service charges from the Respondents at a hearing in 2022 (for the period 2017-2021) and at the hearing in February 2024 (for the period 2022-2023). It submits that it is entitled to do so under the terms of the Lease, relying on clause 5(5)(g)(ii) and clause 3(9).

44. The Respondents submit that the costs are not recoverable and that the Tribunal would be setting a dangerous precedent by allowing them to be recoverable because, in their view, the legal fees are all being incurred in order to cover up the allegedly illegal works done on behalf of the Applicant in relation to the lift. Ms O'Neill said that if the Tribunal allowed the Applicant to "get away with" charging its legal fees back as service charge that the Applicant would keep pursuing the Respondents for service charges and that it would eventually bankrupt them.

45. In relation to the scope of the legal fees which the Applicant seeks to recharge as service charge, Dr Smith and Mr England gave evidence, which the Tribunal accepts, that the legal fees sought to be recovered in these proceedings relate to the two Tribunal applications under section 27A. This evidence accords with the Taylor Rose invoices provided in the pdf Landlord's Bundle of Supporting Documents starting at pages 111 and 185 – the invoices provide (limited) narrative showing to what they relate and several refer to "hearings", which must be the Tribunal hearings in light of the dates given.

46. The Tribunal does not accept that the costs fall within clause 5(5)(g)(ii), in light of the conclusion of the Court of Appeal on a materially

identical clause[18] in Sella House Ltd v Mears (1989) 21 HLR 147 at pages 154-156, *per* Dillon and Taylor LJJ. The reasoning in that case was approved and applied again by the Court of Appeal in No.1 West India Quay (Residential) Ltd v East Tower Apartments Ltd [2021] EWHC Civ 1119 at paragraphs 70-71, *per* Henderson LJ, with whom Underhill and Dingemans LJJ agreed.

47. However, the Applicant has made it clear in the Application Notice that the collection of service charges from the Respondents in these proceedings has been pursued in contemplation of forfeiture proceedings.[19] The previous proceedings (determined in March 2022) also led to the Respondents' mortgagee paying the outstanding service charges in order to protect its security,[20] which indicates that forfeiture was at least in contemplation when those proceedings were brought. Ms O'Neill herself also mentioned several times that the Applicant's intention was to forfeit the lease, although she considered that this was unjustified, and had made the same argument in her written documents.[21]

48. The Tribunal considers that the costs incurred by the Applicant in relation to the two sets of Tribunal proceedings are in contemplation of forfeiture within clause 3(9) and are therefore recoverable under the terms of the Lease.

49. The Tribunal rejects the Respondents' submission that this approach sets a dangerous precedent. It may well be the case that if the Respondents do not pay service charges again in the future the Applicant will take further action in the Tribunal. The Respondents need to consider very carefully their position in relation to the refusal to pay service charges – if they run unmeritorious arguments or arguments which, whatever their merit, are not within the jurisdiction of the Tribunal to determine (such as allegations that criminal offences have been committed and/or that their leasehold interest in the Flat was stolen from them in 2014[22] and that their signatures have been

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[18] The clause in Sella Mears was identical to clause 5(5)(g)(ii) in the 1984 Lease, save that it did not contain the word "reasonably", highlighted here: "*To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be **reasonably** necessary or desirable for the proper maintenance safety and administration of the Building*."

[19] See pages 13 and 14 of the pdf Core Bundle.

[20] The Applicant's Statement of Case, verified by a statement of truth, makes this point (see para 30 at page 104 of the pdf Core Bundle). The Respondents' Reply dated 25 January 2024 also states that their new mortgage provider paid the service charges outstanding following the previous Tribunal proceedings (see page 131 of the pdf Core Bundle).

[21] See, for example, pages 87, 95, 125, 131, 136 and 139 of the pdf Core Bundle.

[22] In any event, the Tribunal does not understand the submission made here. The 2014 Lease involved the surrender of the residue of the Respondents' originally acquired leasehold interest under the 1984 Lease and the grant of a new lease of the Flat of 999 years (Recital 2.3 in the 2014 Lease reads "*It has been agreed between the parties hereto that the residue of the said terms of 99 years shall be surrendered and that a new term of 999 years shall be granted to the Tenant in substitution therefore at an annual rental of one peppercorn*" – see page). It is therefore not surprising that there is a new title number for the Respondents' new 999-year lease and the old leasehold interest under the 1984 Lease no longer exists – one would expect the leasehold register to close when a lease comes to an end (eg by surrender).

forged on documents[23]) or try to re-run arguments that have failed in previous proceedings, then it is likely that the result of that will be that significant legal fees are incurred by the Applicant which are then recharged to leaseholders under the terms of the Lease. If the Respondents believe that they have firm evidence in relation to the serious allegations which they have referred to in their Statements of Case in these proceedings, they will need to have that matter determined in proceedings in a court/tribunal of competent jurisdiction.

Name: Judge Foskett, Mr Waterhouse

Date: 14 February 2024

This is supported by the AP1 Application to change the register form dated 17 December 2014 and signed by the conveyancer (solicitors) dealing with the 2014 Lease and the surrender/new lease (see page 53 to 57 of the pdf Applicant's Bundle of Supporting Documents). It was also confirmed in a Deed of Substituted Security dated 17 December 2014 and signed by both Respondents by which the mortgagee of the Respondents' original leasehold interest transferred its security to the new leasehold interest (page 60 of the pdf Applicant's Bundle of Supporting Documents).

[23] See, for example, the allegation at page 127 of the pdf Core Bundle in the Respondents' Reply dated 25 January 2024.

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).

Appendix

Landlord and Tenant Act 1985 (as amended)

Section 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.

(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" 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.

Section 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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable 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

(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) Subsection (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 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.

(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.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.