



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

Case reference : **CHI/29UH/LSC/2023/0091**

Property : **16 C, London Road, Maidstone, Kent,
ME16 8QL**

Applicant : **Lukasz Wrobel**

Representative : **In Person**

Respondent : **Castle Lane Securities Limited**

Representative : **HML Group**

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 : **Valuer Chair Waterhouse, Mr D Jagger
FRICS, Ms Wong.**

Venue : **Havant Justice Centre**

Date of decision : **23 May 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of;

£1110.24 is payable by the Applicant in respect of the service charges for the year ending 2022.

£3262.00 is payable by the Applicant in respect of service charges for the year ending 2023

£3770.75 is payable by the Applicant in respect of service charge for the year ending 2024
- (2) The Tribunal determines that there is no provision in the lease to collect for a reserve fund.
- (3) The Tribunal finds that the lease provides that reasonable service charge can be collected at the start of the service charge period for reasonably expected items of cost, if such funds are not already in the service charge accounts.
- (4) The Tribunal determines that the lease has no provision which requires the freeholder/managing agent to return unspent sums at the end of the service charge year that are unspent.
- (5) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985, so the landlord's costs, if any, of the tribunal proceedings may be passed to the lessees through any service charge.
- (6) The Tribunal determines that the Respondent shall pay the Applicant, half the amount that the Applicant paid by way of Application fee and Hearing fee. This amounting to £150.00 payable within 28 days of the receipt of decision.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), an Order under section 20 C and an Order under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years of ; 2021-2022, 2022-2023 and 2023-2024.

Background

2. The Tribunal is grateful for the way the parties conducted themselves during the hearing. The hearing was a hybrid hearing with the Chair and

the Lay Panel Member in the Havant Justice Centre and the Valuer member and the Applicant and Respondent joining remotely via video link.

3. An Application, was received from the Applicant Lukasz Wrobel, on 15 August 2023 in respect of Flat C, 16 London Road, Maidstone, Kent, ME16 8QL.
4. Directions were provided by the Tribunal on **1 December 2023**, which gave Intention to Strike Out the Application, because it was not signed and dated. Representations were requested of the parties by **18 December 2023**.
5. Further Directions were provided by the Tribunal on **26 January 2024** which proposed a Case Management and Dispute Resolution Hearing, on **28 February 2024**.
6. The Case Management and Dispute Resolution Hearing went ahead on **28 February 2024** and a further and final set of Directions were issued on **1 March 2024**.
7. The case relates to the service and administration charges for Flat C at number 16 London Road Maidstone, Kent, ME16 8QL. The flat is within an end of terrace Victorian house converted into 4 flats.
8. The Applicant holds Flat C, on a long leasehold interest from 23 June 1978, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
9. The property has been neglected for many years and is in poor condition, this is evidenced by a 10 Year Planned Preventative Maintenance Report commissioned by the Freeholders managing agents HML Group.
10. It is common ground between the parties that the lease does not provide for the accumulation of a reserve fund to tackle one off large item.
11. There are significant service charge arrears at the property.

The hearing

12. The Tribunal was furnished with the Applicants bundle of 68 pages, and The Applicant's Case of 17 pages. The Respondent submitted a bundle of 142 pages with an additional 9 pages headed Respondents case.

13. The Applicant, Mr Lukasz Wrobel appeared in person, at the hearing and the Respondent Freeholder, Castle Lane Securities Limited was represented by Mr Stephen Stidworthy, and their managing agent HML was represented by Mr Oliver Judge.

The background

14. The building within which the subject property is within, is a mid-nineteenth century house end of terrace, which has been converted into four flats. The building comprises a lower ground flat, raised ground flat, first floor flat and finally a second floor flat which is Flat C.
15. Photographs of the building were provided in the respective parties hearing bundles. Neither party requested an inspection, and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
16. The Applicant holds a long lease of the property Flat 16 C, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

17. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) The payability and/or reasonableness of service charges for the years ending;

30 June 2022 amounting to **£1110.24**

30 June 2023 amounting to **£3262.00**

and the 30 June 2024 of **£ 3770.75 relation** all years in respect of Flat 16 C

- (ii) The **section 20 C** Application
- (iii) An Application under **Paragraph 5A of Schedule 11**
- (iv) Refund of the **Application and hearing fees.**

The Law

18. The law applicable in the present case was limited. It was essentially a challenge to the payability of the sums sought under the lease.

19. *The Landlord and Tenant Act 1985 S 1 states the following:*

19.-Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of 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 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.

20. *The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and tenant 1985 which states the following:*

27A Liability to pay service charges: jurisdiction

a. 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.

b. Subsection (1) applies whether or not any payment has been made.

c. An application may also be made to [the appropriate tribunal] for 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.*

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

The Lease

21. The Tribunal was supplied with copy of the lease dated twenty Seventh October 1998.

22. The relevant provisions within the lease pertaining to the service charge are set out as follows;

“The lessee hereby covenants with the lessor as follows;

3. To pay on demand by the lessors or their successors in title;

1(b) a yearly insurance rent equal in amount to one quarter of the sum which the lessors shall from time to time pay by way of premiums for keeping the building insured against loss or damage in accordance with the covenant on their behalf herein after contained such last mentioned rent to be paid on the quarter day immediately following the outlay by the lessors.

2(3)(i) To pay on demand by the Lessors or their successors in title one eighth of all costs and expenses of keeping the road or way coloured green on the plan annexed hereto in good order and proper repair and condition and well and sufficiently drained.”

(ii) “one quarter of such sum as the lessors shall incur in painting and decorating the exterior of the Building and repairing cleansing building and maintaining the main walls roof and all-party walls fences pathways passages sewers drainpipes watercourses and other easements serving the Flat and the Building”

3 The Lessors Hereby Jointly and severally Covenant with the Lessee as follows-

(1) Subject to the Lessee paying the contribution towards the cost thereof in accordance with clause 2(3)(ii) to keep in tenable repair order and contain the main walls roof together with all party walls, fences ,pathways , sewers , drains pipes, water courses and other easements serving the flat and the Building.

(2) To keep the Building insured against loss or damage by fire and such other risks in the amount determined by the lessors to the full reinstatement value thereof in some reputable insurance office and upon request of the Lease or his agent produce the policy of such insurance and the receipt for the last premium.

Discussion

Operation of the service charge account

23. The Applicant and Respondent agree that the lease does not provide for a Reserve fund.
24. The Respondent notes that; in the event that service charge monies are not expended, and the accounts detail a surplus at the year-end then a credit is applied to the leaseholders’ service charge accounts.
25. The Applicant argues monies have been collected but minimal work carried out and so the balance should be available to be returned.

The Decision

26. The Tribunal is grateful for the parties who both agreed that there was no provision for a reserve fund in the lease.
27. The Tribunal first needs to consider whether the budgeted service charge is reasonable, second whether if there was a surplus or deficit what the lease provisions require.

28. A budgeted service charge represents the items which the managing agent believes expenditure is anticipated on in the year ahead. In determining whether an item in a budget service charge is reasonable, the Tribunal needs to consider whether the item is an item which the freeholder has responsibility for and the ability to recover the sum for, additionally that, that sum is reasonable. The Tribunal determines the lease provides for the collection of service charge in advance of reasonably anticipated spending in the service charge year ahead.
29. Turning to the year ending 30 June 2022 which comprises a demand of £ 1110.24 for the estimated or budgeted service charge for the year 30 June 2022

Item	2022 Actual	2022 Budget
General Repairs	£395	£1000
Gardening	£0	£150
Cleaning	£0	£150
Fire and health & safety risk assessment	£454	£455
Asbestos survey	£0	£360
Building Insurance	£944	£1000
Out of hours cover	£48	£48
Management fees	£888	£888
Administration fees	£223	£150
Bank charges	£5	0
Independant accounts fees	£240	£240

Source Respondents Bundle p123

30. The Respondent explained each item in the 2022 Budget. The Applicant sought to query the “Out of hours service”. The Respondent explained this was an emergency line which could be called by the leaseholders if an emergency for example a leak occurred out of hours. The call centre to which the call would be placed would then send out a contractor to address the issue.
31. The Tribunal having heard from the Respondent and the Applicant in respect of each item determine that each item in the 2022 Budget service charge is properly an item the Freeholder has responsibility for, and the budget sums are reasonable.
32. The rectification of the budget and actual spending produces a notional surplus. The Respondent asserted that whilst on paper there was a surplus, service charge arrears within the building meant that in reality there was little money available.

33. The Tribunal is concerned not with the extent of service charge arrears but with how the Freeholder should treat the difference between service charge demanded under the annual budget and the service charge actual expenditure.
34. The parties have agreed that the lease does not provide for a reserve fund. The lease is also silent on how differences between budget and actual service charges should be treated.
35. Given the lack of lease provisions, the Tribunal will interpret the lease to allow the most practical construction. The Tribunal determines that the difference between budgeted and actual service charge should be credited to the individual leaseholders' service charge accounts. The Tribunal does not determine that any surplus funds should be returned,
36. Turning to the year ending 30 June 2023

Service charge year ending 30 June 2023 ACTUAL and BUDGET are set out for whole building below

Item	2023 Actual	2023 Budget
General repairs	£0	£10,000
Fire doors	£0	£300
Gardening	£0	£100
Fire and health & safety assessment	£0	£0
Asbestos survey	£0	£360
Building insurance	£1055	£1000
Out of Hours	£48	£48
Management fee	£1250	£1250
Administration fees	£140	£140
Bank charges	£0	£0
Independant Accounts fee	£240	£240

Source : Respondents Bundle p 131

37. The Respondent explained each item in the 2023 budget service charge and the actual spending for that year.
38. The Applicant took issue with the figure of £10,000 for general repairs in the building, querying why the sum had not been spent given the amount of outstanding maintenance issues in the building. The

Respondent explained that whilst £10,000 was the budgeted figure for repairs across the whole building, based upon the Capital Expenditure Plan prepared by Coastal Surveyors and Consultants, service charge arrears meant that the amount actually collected was considerably below the amount requested. This difference, combined with the uncertainty as to how and when the outstanding service charge could be collected made it very difficult to prepare the necessary S20 Notices and thereafter instruct contractors to carry out the work.

39. The Applicant requested the “Fire Doors” item. The Respondent expanded that item more accurately referred to a fire door risk assessment. The work was not carried out in the service charge year of 2023.
40. The Applicant had been marketing his property for sale. He contended that an agreement had been reached with the HML that service charge may be paid on completion from the proceeds of the sale of Flat C. The Applicant referred the Tribunal to their Bundle and Reply, there is an exchange evidenced between the Applicant and his solicitor. There was no evidence of such undertaking though with the Freeholders managing agent. Mr Judge stated he had no record of such an undertaking. Notwithstanding this exchange. The jurisdiction of the Tribunal is very restricted , limited to payability of the service charge under section 27a. Such an undertaking would not impact on this and the Tribunal therefore has no jurisdiction or need to make a finding on this matter.
41. Further the Applicant referred the Tribunal to three figures, illustrated in his Statement of Case, paid by him during June 2023. These were; £742.00 (15 June 2023) , £1894.00 (15 June 2023), and £1116.12 (27 June 2023). Upon further questioning the Applicant confirmed these were payments made during the County Court proceedings. This is outside the jurisdiction of the Tribunal to determine payability under section 27A, and the Tribunal has no regard to them in its decision.
42. The Tribunal determines that the budget service charge for year ending 2023 comprises items properly the responsibility of the Freeholder and that the sums for those items are reasonable.
43. The Tribunal in line with its finding in paragraph 37 determines that any surplus should remain in the individual leaseholders service charge accounts as a credit
44. Turning to the year ending 30 June 2024 Budget

Item	Amount
Building Insurance	£1200
Garden	£100
General Repairs	£10,000
Fire Door	£300

Accountant	£240
Accounts preparation	£180
Health , Safety Risk assessment	£455
Asbestos Survey	£360
Out of Hours	£48
Management fee	£1250
Admin fee	£150
Capital and Contingency	£800

Source : Respondents Bundle p139

45. The Tribunal asked the Applicant and Respondent whether there were any contentions or issues in respect of the Budget service charge Account for 2024 that had not already been covered in the two previous years. The Applicant and Respondent indicated that there were none.
46. The Tribunal determines that the 2024 Budget service charge properly comprises items the Freehold has responsibility for and may recover by virtue of the service charge from the leaseholders, and that the sums in respect of the items are reasonably.
47. The Tribunal notes that service charge accounts, both budget and actual can be difficult to interpret , and a perceived lack of transparency and collaboration on behalf of the managing agent. In this situation it is apparent that there was an understandable misunderstanding that the sums requested for collection were only notional until actually collected. Given the considerable service charge arrears in the building the ability to carry out works was very curtailed. The Tribunal hopes that the parties would benefit from explanation and clarity in what the various accounts are intended to convey.
48. The Tribunal notes the leaseholders have applied to manage the property through a Right to Manage Application.

Application under s.20C and refund of fees

49. At the end of the hearing, the Applicant made an Application for a refund of the fees that he had paid in respect of the Application/ hearing¹. The Respondents contended that they should not be required to refund the Applicant their hearing or Application fee. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal considers that a lack of meaningful communication has contributed to the need for this hearing. The Tribunal determines that the Respondent should pay the Applicant half the Application and

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Hearing fees, which amounts to £150.00 , within 28 days of receipt of the decision.

50. In the Application form, the Applicant applied for an order under section 20C of the 1985 Act. By way of clarification, the Applicant had checked both yes and no boxes in the Application Form. The Applicant clarified with the Tribunal that they did indeed seek a section 20C Order. The Respondent stated to the Tribunal that they would not seek to recover the sums incurred for the hearing from the leaseholders. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines , although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances, particularly with the perceived lack of explanation or transparency , for an Order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Rights of appeal

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.