



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

**Case reference** : **LON/00AH/OCE/2024/0050**

**Property** : **20 & 20A Hawthorne Avenue, Thornton Heath, Croydon CR7 8BU**

**Applicant** : **20 Hawthorne Avenue (Freehold) Limited**

**Representative** : **Setfords London**

**Respondent** : **Assethold Limited**

**Representative** : **N/A**

**Type of application** : **Determination of the appropriate amount payable – paragraph 3 of Schedule 5 of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal member(s)** : **Judge Tagliavini  
Mr Duncan Jagger MRICS**

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

**Date of decision** : **1 October 2024**

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**DECISION**

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## **The tribunal's decisions**

1. The tribunal determines the appropriate amount that is payable by way of service charges by the applicant to the respondent pursuant to paragraph 3 of Schedule 5 of the Leasehold Reform, Housing and Urban Development Act 1993 is nil.
  2. The tribunal makes no order for costs under rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
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## **The application**

3. This is an application for a determination of the service charge payable by the applicant to the respondent pursuant to paragraph 3 of Schedule 5 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') after a vesting order was made in respect of the subject property at 20 and 20A Hawthorne Avenue, Thornton Heath, Croydon CR7 8BU ('the property').

## **Background**

4. A vesting order was made in respect of the freehold of the property on 1 September 1993 in the county court and the issue of the appropriate sum payable under the 1993 was transferred to the first-tier Tribunal.
5. The respondent has since been debarred by the tribunal by an Order of Judge Martynski dated 7 August 2024.

## **The applicant's case**

6. As per the tribunal's directions this matter has been determined on the papers provided and comprise a digital bundle of 59 pages. The applicant asserts that no sums are payable in respect of the service charges to the respondent and that the only sums due to the respondent are:

(i) £9,750 (agreed premium)

(ii) £2,400 (s.33 costs)

Less:

(iii) £6,818 costs awarded to the applicant in the county court

**Total due to respondent: £5,332.00**

7. After the debarring order was made by the tribunal, the respondent asserted that £32,004.08 is owed in respect of service charges but has provided no justification for or evidence to support this claim and served no valid demands for payment of this sum.
8. In *LON/00A~H/LSC/2021/0073* the tribunal made various determinations in respect of service charges in the period 2018 to 2021. However, since the tribunal's decision, the applicant asserts that no valid demands have been made of the leaseholders for the sums determined by the tribunal as payable but has in fact continued to provide a service (window cleaning), which the tribunal found was not within the respondent's obligation under the terms of the lease(s).
9. In addition to its assertion that no further sums are due to the respondent (other than the £5,332.00 above), the applicant also makes an application for costs under rule 13(1)(b) of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013. The applicant now seeks costs incurred in the tribunal of £2,496.00 (including VAT).
10. The applicant relies on the three- stage test set out in *Willow Court Management Company (1985) Limited v Mrs Raina Alexander* [2016] UKUT (LC) which requires the tribunal to answer the following questions:
  - (i) has a person acted unreasonably in bringing, defending or conducting proceedings...?
  - (ii) if so, should there be a costs order?
  - (iii) if so, what should be the terms of the cost order?
11. The applicant asserts the respondent has acted unreasonably in its conduct and has failed to comply with the tribunal's directions and has made untrue assertions in its statements to the tribunal when seeking to set aside the debarring order. The applicant asserts it has incurred costs because of the necessity of making a witness statement opposing the application to set aside the debarring order of 7 August 2024.

12. The respondent has made no representations in respect of the application for rule 13 costs, although it appears it has not seen the grounds for the application in light of the lateness of the submissions made in the Applicant's Statement of Case dated 19 September 2024.

### **The tribunal's reasons**

#### **The appropriate sum(s)**

13. The tribunal finds there is no evidence to support a claim or a valid demand or any amount of service charges from the leaseholders of the subject property. Therefore, without such evidence from the respondent, the tribunal finds there is no alternative to its determination that no (appropriate) sums are due pursuant to paragraph 3 of Schedule 5 of the Leasehold Reform, Housing and Urban Development Act 1993.

#### **Rule 13 costs**

14. Notwithstanding the respondent's lack of opportunity to make any submission on this application, the tribunal finds the applicant has failed to demonstrate the respondent has acted in such a way as to meet the high bar set in the otherwise 'no costs' jurisdiction of the First-tier Tribunal.
15. In any event, the tribunal considers the applicant has benefitted from the Order of 7 August 2024, debarring the respondent from playing any further role in this application, as it has not had to make any substantive response to the respondent's submissions, that might otherwise have been made and would necessarily have incurred costs for the applicant.
16. Further, the applicant has benefitted significantly from the order for costs made in the county court under the CPR and has benefited by the absence of the respondent's submission, in so far as the tribunal makes a finding that is advantageous to the applicant. Consequently, the tribunal also finds that any further order for costs would unfairly prejudice the respondent.

**Name: Judge Tagliavini**

**Date: 1 October 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).