



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

Case reference : **LON/00AM/LSC/2024/0186**

Property : **5 Hensley Point, 41 Bradstock Road,
London E8 5BE**

Applicant : **London Borough of Hackney**

Representative : **Mr M Paget of counsel**

Respondents : **Mr J Williams**

Type of application : **Payability of service charges and
administration charges.**

Judge : **Judge S Brilliant
Mr J Naylor FRICS**

Date of decision : **03 October 2024**

DECISION

Summary

(1) The Tribunal determines that the Respondent is liable to make payment to the Applicant of service charges in the sum of £6,408.86 (this is the total sum demanded of £6,419.24 less four sums totalling £10.38 which we find are not payable).

(2) There was no challenge at the hearing before us to the claim made for costs in the sum of £201.09 under the lease.

(3) The matter will now be transferred back to the County Court for all other matters (including ground rent and interest) to be determined.

Introduction

1. The service charges in dispute in these proceedings, totalling £6,419.24, are for the three years:

(a) 01 April 2020 to 31 March 2021 (£1,905.27);

(b) 01 April 2021 to 31 March 2022 (£2,037.23);

(c) 01 April 2022 to 31 March 2023 (£2,476.74).

2. The Applicant commenced proceedings against the Respondent in the County Court in July 2023 to recover the balance of the service charges said to be due, together with ground rent, interest and costs pursuant to the lease.

3. On 18 April 2024, District Judge Sterlini transferred the claim to the Tribunal. The only matter challenged before us and within our jurisdiction was the amount of the service charges payable.

The hearing

4. Mr Paget of counsel represented the Applicant at the hearing. The Respondent appeared in person, together with his wife, Mrs Williams. As the dispute turned on the construction of the Lease, neither party called any oral witness evidence.

Background

5. The Respondent, together with Mrs Williams (who is not a party to these proceedings) is the long lessee of 5 Hensley Point, 41 Bradstock Road, London E8 5BE under a lease dated 29 July 2002 (“the Lease”).

6. Hensley Point (“the Block”) is one of a number of blocks on the Applicant’s Gascoyne Estate (“the Estate”). We were told Hensley Point has a total of 10 floors.

7. At the beginning of the hearing, Mr Paget showed us, without objection, a Google Map sheet showing the approximate area of the whole Estate which is of considerable size.

8. The area immediately around the Block, which includes other housing, is bounded by four roads (“the Immediate Area”). The Immediate Area is considerably smaller in size than the Estate as a whole. The Immediate Area does not for example include Gascoyne Road itself or the block named Gascoyne House.

9. The Lease provides in the usual way for the Applicant to provide services and for the Respondent to pay for such services by way of a service charge.

10. The dispute in these proceedings is a very narrow one. Is the Respondent contractually bound to pay the service charges demanded of him

by the Applicant?

11. There is no dispute as to the amount of the individual items charged, or the respective percentages applied.
12. The Lease in the usual way distinguishes between Estate costs and Block costs, with different percentages as appropriate.
13. The Respondent did not follow the directions to set out his objections to payment in a Scott Schedule. Instead, the Applicant provided A3 spreadsheets for each of the three years, and the Respondent marked with a yellow highlighter and a red font those items which were challenged. At the hearing we refused him permission to challenge further items not so marked.

The issues

14. The Respondent says firstly that the Estate, as defined in the Lease, consists of only the Immediate Area and not the whole Estate. So, Estate costs arising outside of the Immediate Area are not recoverable from him (“the first issue”).
15. He says secondly that the charges demanded for Block costs include costs relating to other blocks on the estate and not to the Block, and are therefore not payable (“the second issue”).
16. He says thirdly that he should not have to pay for hot water/ heating costs relating to other flats (“the third issue”).

The first issue

17. By clause (1)(G) of the lease, the Estate means the Estate as described in the First Schedule thereto.
18. The First Schedule provides:

The Estate

ALL THAT area of land shown for the purpose of identification only (our emphasis) outlined in green on the attached plan marked “A” comprising land garden(s) flats garages parking spaces stores known as Gascoyne Estate (our emphasis) in the London Borough of Hackney.

19. Plan A (“the Plan”) shows only the Immediate Area outlined in green, although there appears to be some bold but not coloured edging to the east and south east.
20. In each of the three service charge years the Respondent challenged a large number of the Estate costs claimed on the basis they related to costs incurred outside the Immediate Area.
21. We were not referred to any authorities on rectification by construction

or the interpretation of parcels clauses.

22. Whilst we have not found it an easy matter, we prefer the construction argued for by Mr Paget, namely that what is known as Gascoyne Estate should be given more weight than the Plan shown for the purpose of identification only.

23. The Respondent argued that part of the Estate had been sold off to Sanctuary Housing. That may be so but cannot alter the interpretation of the Lease granted many years ago. There is no credible suggestion that the Respondent is being charged for Estate costs incurred other than by the Applicant.

24. Accordingly, we find for the Applicant on the first issue.

The second issue

25. By clause (1)(H) of the lease, the Block means the property described in the Second Schedule thereto.

26. The Second Schedule provides:

The Block

ALL THAT piece or parcel of land being part of the Estate and known as 1-40 Hensley Point in the London Borough of Hackney.

27. It is readily apparent that Block costs only relate to the Block and not to other blocks on the Estate.

28. For the service charge year 01 April 2020 to 31 March 2021 there are four charges, totalling £10.38 which relate to other blocks and we disallow them. Other objections in that year relate to works we consider part of the Block.

29. Accordingly, to that limited extent, we find for the Respondent on the second issue.

The third issue

30. Block costs are apportioned amongst the lessees at 2.903226%, except for hot water/heating costs. These are spread over the four blocks in the Immediate Area as communal heating costs and are apportioned amongst the lessees at 0.725806%. This is exactly one quarter of the apportionment for a single block. No point was taken on this method of apportionment

31. The Respondent's argument is that he should not have to pay for hot water/ heating costs relating to other flats.

32. Paragraph 1(ii) of the Ninth Schedule places an obligation on the Applicant to keep in good and substantial condition (and whenever necessary

rebuild and re-instate and renew and replace all worn and damaged parts ... all pipes ... and conduits and any other services and conducting media and any other thing installed in the Block or serving the Block for the purpose of supplying water gas electricity heat (where applicable) .. save only such pipes ... and conduits and any other services ... any other things as are solely installed or solely used for the purpose of any particular flat and for which the owner thereof is responsible under any provisions in his lease corresponding to paragraph 5 of the said Seventh Schedule.

33. This is a reference to independent systems solely serving the demised premises.

34. As we understand it, although repairs regarding hot water/heating have been referenced to the individual flats concerned, the work required has been to a communal system, not to independent systems installed by individual lessees.

35. Accordingly, we find for the Applicant on the third issue.

Simon Brilliant

03 October 2024

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.