



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

Case reference : **LON/00AE/LSC/2024/0070**

Property : **30 Drayton Waye, Kenton, Harrow,
HA3 0BT**

Applicant : **Mr Aatish Patel**

Representative : **-**

Respondent : **Mr Veer Shah**

Representative : **-**

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 : **Judge D Brandler
Mr S Mason, FRICS**

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

Hearing : **11 November 2024**

Date of decision : **14 November 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £0 is payable by the Applicant in respect of the service charges for roof replacement works in 2024
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (4) The tribunal determines that the Respondent shall pay the Applicant £320 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant/leaseholder of flat 30 Drayton Waye, Kenton, HA3 0BT “30 Drayton Waye”, Mr Patel, seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by him in respect of the service charge year 2023/24. The service charges claimed from him by the Respondent, Mr Shah, are for a contribution to the replacement flat roof covering the commercial unit on the ground floor of the building. The estimated contribution by the Applicant was originally said to be £4,000 but that was increased to over £7,000 when the Respondent changed the contribution proportion from $\frac{1}{4}$ to $\frac{1}{3}$ of the total cost.
2. The Applicant asserts that he is not obliged by any of the terms in the lease to contribute to the remedial flat roof works over the commercial unit, and that if the Tribunal are against him on that, that the Respondent failed to properly carry out s.20 consultation and that the Respondent is therefore limited by that to seek a maximum of £250.

The inspection

3. The Tribunal inspected the property on the morning of 11 November 2024 in the presence of the applicant Mr Patel and the respondent Mr Shah.
4. The subject property, 30 Drayton Waye is a 2-bedroom 2nd floor flat situated in the building known as 209 Kenton Road, Harrow, Middlesex (“the building”). The ground floor consists of an extended commercial unit which is being used as a funeral parlour. 30 Drayton Waye is accessed via a service road known as Drayton Waye which runs parallel to Kenton Road. Some metres from that service road is a metal staircase that leads up to the first floor level. There is then a large expanse of flat

roof over the commercial unit, with a walkway which leads on that level to flat 29 Drayton Way, which is situated below 30 Drayton Way, and another flat which occupies the first floor of no. 207 Kenton Road (207 and 209 are adjoining, owned by the same freeholder and both have commercial units on the ground floor. The Respondent freeholder had both 207 and 209 flat roofs replaced at the same time). Before reaching those flats there is another metal staircase that leads up to the 2nd floor flats, that is 30 Drayton Way and the 2nd floor flat which forms part of 207 Kenton Road (which is not part of this application).

5. The walkway access from the first metal staircase across the expanse of flat roof has been partially paved with tiles and has been sectioned off by way of metal balustrades designed to stop people gaining access to the main area of the flat roof.
6. Items are nevertheless stored next to the balustrades on the walkway. The tribunal noted an electric bike, a bicycle and under the base of the upper metal staircase is a box of plastic items which may well belong to the tenants at the first floor.
7. Mr Patel acquired the lease of 30 Drayton Way in 2016. The Respondent acquired the freehold several years ago from his father who had originally purchased the property and put it in trust for his son. The lease dated 14 May 1987 was entered into between (1) Arif Hafiz and Siraj Khot and (2) John Bernard Dolman and Catherine Galletely Dolman, for a term of 125 years from 14 May 1987.

The lease

8. *Clause 1: IN pursuance of the said agreementthe Lessor hereby demises unto the Lessee ALL THOSE Flats known as Numbers 29 and 30 Drayton Way Kenton*

- (i)
- (ii) *all roofs windows window frames doors and door frames and all walls above the level of the joists supporting the floor of the flat known as Number 29 Drayton Way*
- (iii) ...

Clause 3 “THE Lessee HEREBY COVENANTS with the Lessor and with the owners and lessees of the other premises comprised in the Property that the Lessee will at all times during the said term:

...

(vii) To observe the restrictions set forth in the Third Schedule hereto

(viii) Subject to the contribution by the Lessor hereinafter mentioned to maintain repair and as necessary replace the water tank situate on the roof of Number 30 Drayton Way and the pipes leading thereto and therefrom”

(ix) Subject when necessary to the agreement of the owners of the adjoining property known as Number 207 Kenton Road aforesaid to maintain (including renewal when necessary) in a good state of repair and safe for use at his own expense the iron staircase leading from the rear yard of the property to the roof of the rear shop extension of the property

(x) ...

(xi) To pay a fair proportion of the expenses of making repairing maintaining cleansing replacing the footpath leading from Drayton Way and all sewers drains cables wires downpipes gutters channels supply pipes watercourses gas and water pipes used in common with the Lessor

Clause 4 THE Lessor HEREBY COVENANTS with the Lessee as follows:

- (a) ...*
- (b) ...*
- (c) To maintain repair redecorate renew amend and clean (a) the structure of the Property up to an including the level mentioned in clause 1(ii) hereof and in particular but without prejudice to the generality thereof the foundations and external walls below the said level and timbers (including the timbers joists and beams of the floors ceilings thereof) gutters and rain water and soil pipes below the said level and the common access way across the roof of the ground floor shop extension coloured brown hatched green on the plan marked ‘B’ annexed hereto (b) the sewers drains channels watercourses gas and water pipes electric cables wires and supply lines in under and upon the property where used in common and (c) (if any) the boundary walls and fences of and in the curtilage of the Property*
- (d) To pay to the Lessee on demand one-third of the costs and expenses incurred by the Lessee in carrying out the works mentioned in Clause 3(viii) hereof*

The hearing

9. The Applicant, Mr Patel, appeared in person at the hearing and the Respondent, Mr Shah appeared in person.

The background

10. Mr Patel confirmed at the start of the hearing that both flat 29 and flat 30 had been held under the same lease and that when he had purchased flat 30, his father in law had purchased flat 29. Mr Shah confirmed that a sub lease had been created for flat 29 under the headlease. Only the headlease for flat 30 had been provided to the Tribunal. The parties agreed that they were both bound by the terms of that lease for this application.

11. At some point in 2023 a leak into the commercial funeral parlour occurred and the history of correspondence is as follows:

12. On 14 November 2023 Mr Shah wrote to Mr Patel to advise him that the roof would need replacing, that they obtained a *“first estimate (excluding boards and rafter replacement) we have received is £32,400 of which your portion would be c£4,000 (final value to be confirmed once works are undertaken). As winter is approaching and the rain is persistent, we will likely require the works to be carried out as soon as possible. If you wish to see any quotes/ require any further information please email me... and I will provide the necessary information”* . There were also suggestions that the roof problems were caused or exacerbated by tenants storing items on the flat roof.

13. On 26 November 2023 Mr Patel responded by letter asking why there had been reference to 29 Drayton Way, why the insurance was not covering damage, and asking for an explanation as to how the charge of £4,000 had been calculated.

14. Mr Shah responded on 5 February 2024 , when the works had already been completed, confirming that the tenants in both 29 and 30 had left items on the roof and that the insurance did not cover wear and tear. In response to the question of calculation of proportion, Mr Shah’s response was that the total cost as per the invoice was £42,096, the cost for 209 Kenton Road was £21,048 and of that the apportionment was:

- (i) Ground floor (50%) £10,524
- (ii) First floor (25%) £5,262.00
- (iii) Second floor (25%) £5,262

15. The invoice for the works is dated 01/02/2024 from J & J ASPHALT Ltd to replace the flat roof over the commercial units at both 207 and 209 Kenton Road in the sum of £42,096 inclusive of VAT.
16. There was no other consultation and the respondent stated that he was unable to obtain more than one quotation for the mastic asphalt that the roof required.
17. In oral evidence Mr Shah stated that he had got the apportionment wrong. He had no basis for the apportionment originally requested, and now sought a contribution from the Applicant in the sum of 1/3 of the total expenditure. This he based on clause 4(d) of the lease. It was pointed out to him at the hearing that the 4(d) relates to the amount the Lessor has to pay to the Lessee in the case where clause 3(viii) came into play, if the Lessee had to carry out works to the water tank only.
18. Although Mr Shah accepted that point, he considered that the reference to 1/3 was in the spirit of the lease and therefore it was right that the Lessee should pay to the Lessor 1/3 of the cost expended by him. There is nothing in the lease to support that. The only reference to recharging the Lessee appears in Clause 3(xi) which states : *“To pay a fair proportion of the expenses of making repairing maintaining cleansing replacing the footpath leading from Drayton Way and all sewers drains cables wires downpipes gutters channels supply pipes watercourses gas and water pipes used in common with the Lessor”*
19. There is no explanation of what *“the footpath leading from Drayton Way”* refers to. Mr Shah says that covers the pathway from Drayton Way, the metal staircase up to the first floor flat roof, the entire extent of the flat roof and the metal staircase to the 2nd floor.
20. The difficulty with that interpretation is that it is inconsistent with clause 4(c) by which the Lessor must *“maintain repair redecorate renew amend and clean (a) the structure of the Property up to an including the level mentioned in clause 1(ii) hereof and in particular but without prejudice to the generality thereof the foundations and external walls below the said level and timbers (including the timbers joists and beams of the floors ceilings thereof) gutters and rain water and soil pipes below the said level **and the common access way across the roof of the ground floor shop extension** coloured brown hatched green on the plan marked ‘B’ annexed hereto (b) the sewers drains channels watercourses gas and water pipes electric cables wires and supply lines in under and upon the property where used in common and (c) (if any) the boundary walls and fences of and in the curtilage of the Property*
21. The Tribunal had great difficulty reconciling the specific description in 4(c) with reference to the “common access way across the roof of the ground floor shop extension” as opposed to the mere reference to the “pathway from Drayton Way” in 3(xi). If the requirement in 3(xi) was

for more than the pathway on ground level, it would have repeated the phrase from 4(c), which it did not.

The issues

22. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the terms of the lease permit the Respondent to recover charges in relation to the flat roof over the commercial unit
 - (ii) If so, did he comply with s.20 of the Landlord and Tenant Act 1985
23. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

24. The tribunal determines that the amount payable by the Applicant in respect of the replacement of the flat roof covering the commercial unit is £0.

Reasons for the tribunal's decision

25. The tribunal rejected Mr Shah's assertion that the "*pathway*" mentioned in clause 3(xi) means the pathway from Drayton Way leading up the metal staircase across the flat roof leading to the 2nd metal staircase. That cannot be interpreted from the terms of the lease as it is written.
26. The tribunal determined that the "*pathway*" referred to is merely the pathway from Drayton Way to the base of the metal staircase at ground level. To conflate "*pathway*" in clause 3(xi) with "*the common access way across the roof of the ground floor shop extension*" in clause 4(c) would be to re-write the terms of the lease. The Tribunal finds that the lease is ambiguous and under the contra proferentem rule the tribunal must, where there is doubt about the meaning of the contract, find that the words will be construed against the person who drafted them for their benefit, in this case the Respondent freeholder who acquired the freehold interest.
27. In the event, that the tribunal are wrong on this point, the tribunal determine that the Respondent has failed to correctly consult under s.20 and the most he could recover would be £250.

Application under s.20C and refund of fees

28. 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 and the hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
29. In the application form, the Applicant did not apply for an order under section 20C of the 1985 Act.

Name: Judge D Brandler

Date: 14 November 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).

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

Legislation Annexe

s. 20 Landlord & Tenant Act 1985

Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) **[F2**except in the case of works to which section 20D applies,**]** dispensed with in relation to the works or agreement by (or on appeal from) **[F3**the appropriate tribunal**]**.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the

works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

s.27A Landlord & Tenant Act 1985

Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]