FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UC/LSC/2024/0023**
Property	**:**	**1 Blaydon Place, Mepal Road, Sutton Ely, Cambs, CB6 2BS**
Applicant	**:**	**Simon Barham**
Representative	**:**	**Simon Barham**
Respondent	**:**	**Ground Rent Trading**
Representative	**:**	**Mr Mendelsohn, Solicitor for Moreland Property Group Limited**
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 Adcock-Jones** **Mr Thomas MRICS**
Venue	**:**	**Via CVP**
Date of hearing	**:**	**17 March 2025**
Date of decision	**:**	**24 March 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sums payable by the Applicant in respect of service charge year 2023 to 2024 are as set out below.

(2) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, there being no need to do so.

(3) The Tribunal allows the application to make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") in respect of reimbursement of 50% of the Applicant's Tribunal fees.

The Application

1. The Applicant seeks a determination pursuant to section 27A of the 1985 Act as to whether service charges are payable in respect of the service charge year 2023 to 2024.

2. The Applicant further sought an order to limit the recovery of the Respondent's costs of the proceedings through any service charge and/or administration charge and for an order for reimbursement of their Tribunal Fees pursuant to rule 13(2) of the Tribunal Rules.

The Hearing

3. A remote hearing was held by CVP video. The Applicant represented himself and the Respondent was represented by Mr Mendelsohn, Solicitor.

4. The approach taken by the Tribunal was to examine each disputed service charge item in turn with the parties addressing the Tribunal on each item with their clients' position. Witnesses were not formally called, although all parties helpfully assisted the Tribunal in answering any additional questions or providing further information during the hearing.

The background

5. The Applicant is the leasehold owner of a one-bedroom ground floor flat and garden. The building consists of two self-contained one-bedroom flats.

6. It is noted that the Applicant wanted an inspection. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute. It was however noted that Mr Thomas had inspected the property in 2010 as part of a previous application.

7. The Lease 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 will be referred to below, where appropriate.

8. The Application for determination of payability of service charges were made on 3 April 2024 and received by the Tribunal in the same month. Directions were issued by Judge Wayte on 6 November 2024.

Procedural Issues

9. The directions provided for an agreed bundle to be prepared. However, the Tribunal were provided with documents by each party. During the course of the hearing it was established that the Respondent had sent a further, significantly sized bundle to the Tribunal at 4:40 on Thursday 13 March 2025.

10. The Tribunal noted that this was a breach of the directions; however, upon the Applicant confirming that he was familiar with the documents produced, the Tribunal considered that there was no significant prejudice. Therefore in the exercise of its case management powers and in furthering the overriding objective pursuant to Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), the Tribunal accepted the admission of the late documents.

11. The Tribunal repeats that it is imperative that parties comply with directions regarding the exchange of documents and provision of bundles to assist the Tribunal in the expedient use of time in reviewing the matter in advance of the hearing and to ensure that hearing time is not wasted on unnecessary procedural issues.

12. At approximately 10:48 during the hearing, it was brought to the Tribunal's attention that a member of the public wished to attend to observe proceedings. This observer was not known to the parties and in accordance with Rule 33 of the 2013 Rules which provides that all hearings are to be held in public unless directed otherwise, the observer was permitted access to the hearing and did not take part in the hearing.

The issues

13. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:

- The payability of the disputed charges;

- Whether they are payable by the leaseholder under the lease;

- Whether costs are reasonable, in particular in relation to the nature of the services and the charge of insurance;

- Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made;

- Whether an order for reimbursement of application/hearing fees should be made.

14. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

15. The Lease is dated 17 January 2008 entered into between Hazlemere Homes Limited and Simon Peter Barham (the Applicant). The relevant clauses are set out as follows:

    - Clause 1.1 "Additional Rent" being sums payable by the tenant in accordance with clauses 5.1 and 9 of the Lease.

    - Clause 1.9 sets out the "Insured Risks" and includes such other risks as the Landlord from time to time in his absolute discretion require insuring.

    - Clause 1.21 "Service Charges' mean the charge the Tenant must pay to the Landlord in respect of the Landlord's costs and anticipated costs in providing services.

    - Clause 3.1 rent to be paid on the days and in the manner set out in the Lease which is prescribed by Clause 2 is in advance, without any deduction on the usual quarter days.

    - Clause 5.1 provides for the Landlord's obligation to insure the property and for the Tenant to reimburse a fair and reasonable proportion of the insurance premium.

    - Clause 9 provides for the services to be provided by the Landlord and that the Tenant pursuant to Clause 9.2 is to pay 50% of the costs and expenses by way of service charge.

    - Clause 9.2.4 confirms that such service charge can include the cost of "administering and managing the building and the estate and preparing statements or certificates of and auditing expenses."

16. The Tribunal notes that the Lease does not set out a mechanism for calculating the amount of service charge to be paid in advance, or how and when that is to be adjusted in accordance with actual expenditure.

Determination

17. The Tribunal determined that the application was to be considered under section 19 of the 1985 Act.

18. Section 19(1) limits the amount payable for a service charge to the extent that it is "reasonably incurred" and that services or works are "of a reasonable standard".

19. The disputed service charge items are listed in the table below.

Disputed Item	**2023 - 2024**
Building Insurance	£425.00
Health and Safety Fee	£175.00
Insurance Buildings Reinstatement Cost Assessment	£250.00 plus VAT
Legal Requirements under The Fire Safety (England) Regulations 2022	£275.00 plus VAT

20. The Tribunal notes the importance of insurance premiums and service charges being paid promptly to ensure the effective management and protection of a building.

Insurance Buildings Reinstatement Cost Assessment

21. The Applicant was concerned as his mortgage valuation stated that his property was 53 square metres external floor space which contradicted the figure shown in the Rebuild Cost Assessment Report carried out in 2019 which reported 65 square metres. A previous mortgage valuation in 2007 recommended insurance reinstatement costs of £50,000 with no outbuildings. He was concerned that the photograph included within that report of the property was taken quite a while ago and that this was a desktop re-evaluation.

22. His position was the fee of £600.00 was therefore unreasonable for a property of this size and nature and was concerned about the potential connection between Dunphys Chartered Surveyors and Moreland Estate Management. The Applicant stated that this fee had been paid but no evidence was presented to confirm that it had been.

23. The Respondent submitted that pursuant to clause 5.1.1 of the Lease, the Respondent was obliged to insure the building *"for such sum as the Landlord shall reasonably consider adequate to cover the cost of rebuilding works"*, that pursuant to clause 5.2 of the Lease, the Respondent must reinstate the building in the event of destruction or damage and at clause 9.2 of the Lease covering service charge includes providing undertaking the services and performing the obligations in the Lease.

24. Under clause 9.2.1, the Respondent could recover service charges for employing necessary people to perform the services and the Respondent's other obligations under the Lease and pursuant to clause 9.2.2 reasonably necessary services not specifically mentioned in the Lease under clause 9.2.5.

25. The Respondent submitted that the reinstatement cost assessment was required every three to five years and the previous assessment was done in 2019. The assessment was done in April 2023 at a cost of £500 plus VAT and the Respondent believed this to be a reasonable fee for this type of work.

26. The Respondents admitted that the cost was included in the service charge account for the year ending 31 December 2023 and its inclusion in the 2024 service charge budget was an error and this would be reflected in the service charge account for the year ending 31 December 2024 and therefore was not in issue before the Tribunal. The Respondent confirmed that no copy of the assessment, despite requests by the Applicant, had been provided, as he was not entitled to it under any provision of the Lease. The Respondent further confirmed that Dunphys was a separate legal entity with its own surveyor.

27. The Tribunal notes that such narrow approach to the provision of documents does not assist parties in dispute and had not been provided as part of the Respondent's disclosure documents before the Tribunal. The Tribunal was therefore unable to consider the contents of the assessment but accepts that if falls due in the subsequent year for which accounts have not yet been prepared.

28. The Tribunal expresses concern that an amended budget had not been prepared and sent to the Applicant and that the error had only been brought to his attention in e-mail correspondence on the 12 April 2024 after his application to the Tribunal had been issued.

29. The Tribunal therefore did not have enough information before it to decide either way in so far as the budget has not yet been raised and there was no evidence that payment had been made by the Applicant.

30. On the face of the matter, the fee does appear high given the limited detail provided as to what was done and if it does transpire that a desktop valuation was carried out, the likelihood is that this will be unreasonable.

31. Insofar as then this cost was not within the Tribunal's remit because it falls within the subsequent year and the accounts have not yet been prepared and sent to the Applicant, the Tribunal can make no determination on this fee. However, the Tribunal encourages open communication and disclosure between the parties to avoid future dispute.

Building Insurance

32. The Applicant was concerned that the property was over-insured and noted that the upstairs flat at No 2 Blaydon Place was up for sale with a guide price of £169,000. He was concerned about the reinstatement cost of £493,349.29 and the increase without reason being provided to him.

33. He noted that his own property was 53 metres square and believed that the upstairs flat may well be less because of the way the windows were built into the gable roof. He was concerned about the uncomplex nature of the property and its location. To his credit, the Applicant had obtained his own quotations which provided for a much lower estimated rebuild cost. He was also concerned about the figure provided for the landlord contents cover of £1,580,000 and submitted this figure was very high. He therefore considered that there was sufficient evidence to show that adequate insurance could be obtained at a much lower price.

34. The Respondent relied on the contents of its statement of case which provides that under clause 5.1 of the Lease, the Respondent is obliged to insure the building and the policy obtained is specific to the building.

35. The Respondent does not recover any remuneration, commission income or other benefit in respect of the building insurance. It has a preferred broker who tests the market, and this resulted in 2024 to a change in insurance provider from AXA Insurance UK plc to First Underwriting Limited.

36. The Respondent submitted that the insurance policy ran from 24 August to the 23 August and the policy for 2023 to 2024 cost £749.24. The Respondent acknowledged that this premium was £142.99 more than the previous year. However, the building was only insured for £331,920 and the April 2023 reinstatement cost assessment meant the building was insured in 2023 to 2024 for £493,349.29 and this figure was recorded on the summary of insurance before the Tribunal.

37. The Respondent had therefore budgeted £850.00 expenditure for insurance across the whole of 2024 as a policy for 2023 to 2020 at a cost of £749.24. In 2024, the Respondent negotiated a 13-month policy that covered the building from 24 August 2024 to 12 September 2025 for £897.61. The monthly difference between the costs of the two policies was £6.61. The Respondent paid the insurance policy in 10 equal interest free instalments paying £524.44 in respect of the 2023 to 2024 policy and £897.67 in respect to the 2024 to 2025 policy. The Respondent therefore submitted that it was reasonable to budget expenditure of £850.00 for insurance during 2024.

38. Whilst credit is given to the Applicant for being proactive and obtaining his own quotations, it is unlikely that such quotations obtained were like for like for what the Respondent has obtained. The Tribunal notes that building costs and indeed rebuilding costs have increased substantially in the last five years and especially since the COVID-19 pandemic.

39. The Tribunal also notes that there can be a difference between market value and reinstatement value and that market value alone is not indicative of relevant values for insurance purposes as often there is no correlation. The Tribunal was satisfied that there was some market testing of the insurance and in respect of content thresholds, the Tribunal notes that these simply set thresholds rather than actual determinations and that actual sums for recoverability may fall anywhere within that threshold for insurance purposes. The Tribunal noted that there was a large increase between 2022 to 2023 for which a reason had not been clearly provided.

40. The Tribunal therefore accepts that insurance is payable under the provisions of the Lease and whilst the insurance premium obtained may be at the upper limit of what could be expected for a property of this nature, nevertheless the Tribunal does not consider it outside the realms of reasonableness.

41. The Tribunal therefore determines that the sum of £425.00 for insurance for 2023-2024 is payable and reasonable by the Applicant.

Legal Requirements under The Fire Safety (England) Regulations 2022

42. The Applicant disputed the reasonableness of the fee and considered it high for sending a couple of letters to him. He submitted that many of the things included within the letter received did not apply to his property which has no communal areas such as stairways and entranceways and no fire doors within.

43. The Respondent relied on the provisions of clauses 9.2, 9.2.1, 9.2.2, 9.2.5 and 9. 2.7 of the Lease in respect of the payability of this fee. The Respondent submitted and indeed recorded in its statement of case at paragraph 15 that £330.00 (being £275.00 plus VAT) was the cost

incurred by the Respondent of writing to the leaseholders (including the Applicant) on an annual basis in relation to fire doors and fire safety and for taking any other steps, during the course of a financial year, to ensure that the building was safe.

44. The Respondent submitted that the cost was reasonable given the amount of work and the level of risk required to be undertaken. Mr Mendelsohn submitted that the landlord must comply with the Regulations and referred to the letter sent to the applicant at pages 36 to 47 of the Respondent's bundle.

45. Upon the Tribunal inquiring as to what work was done and what was involved to incur such fee, Mr Mendelson was unable to assist in any detail and confirmed that there may or may not have been a visit to the property.

46. The Tribunal noted that there was no further evidence produced by the Respondent to elaborate any action taken in respect of this particular property and that the letter produced was a generic letter and not a copy of the letter sent to the Applicant.

47. Accordingly, whilst the Tribunal accepts that the fee would be payable under the Lease, there was a lack of information provided by the Respondent to support what had been done to incur the fee and the reasonableness of the same.

48. Therefore, the Tribunal determines that whilst a fee is payable, it is reasonable, in circumstances where no information was provided as to work done, to limit the fee insofar as the Applicant should pay £150.00 plus VAT in respect of this service charge for 2023-2024.

Health and Safety

49. The Applicant highlighted the size and nature of the property which had no communal areas such as a shared entranceway beyond the roof and external walls and noted that in his previous property which is located less than half a mile from this property, he was only charged bi-annually for health and safety.

50. He had queried several times why he was charged every year for health and safety over, in his view, a much smaller and much less complex property and had never received an answer to this. He had attempted to liaise with the Respondent to obtain a copy of the report and was told eventually that there was no such report. The Applicant had not been told who the "Responsible Person" was to contact in respect of Health and Safety.

51. The Respondent relied again on the provisions of clause 9.2, 9.2.1, 9.2.2, 9.2.5 and 9. 2.7 of the Lease in respect of the payability of this fee. The Tribunal was referred to paragraph 27 of the Respondent's statement of case which provided for the cost incurred by the Respondent for having

a person nominated to be and assume all associated risks and liability of a "Responsible Person" in accordance with The Regulatory Reform (Fire Safety) Order 2005.

52. The Respondent believed the fee of £175.00 was reasonable, considering the burden placed on that person. The Respondent submitted that this was a not-for-profit cost and confirmed during the hearing that the "Responsible Person" was the managing director of the Respondent's representative Moreland Property Group Limited.

53. Upon further questioning by the Tribunal, it was confirmed that there was nothing within the Respondent's bundle to show what work was done in respect of this fee and there was nothing further to elaborate on what the "Responsible Person" did.

54. Accordingly, whilst the Tribunal accepts that such fee is payable under the Lease, the Tribunal was dissatisfied with the paucity of information provided in respect of the work done to incur the cost.

55. The Tribunal determines that the fee of £75.00 is payable and a reasonable sum for the Applicant to pay for the service charge year 2023 to 2024.

56. The Tribunal noted, as is often the case in such matters, that the Applicant had requested information prior to the issue of his Application and such requests had not been addressed. The Tribunal encourages the parties to maintain an open line of dialogue to develop an effective working relationship. As a matter of good practice, the provision of documents for which a fee is deemed payable, may assist a leaseholder in understanding for what he's being asked to pay to avoid further dispute.

Application under section 20C and paragraph 5A of Schedule 11 and for refund of fees

57. The Applicant applied for an order under section 20C of the 1985 Act to limit recovery of the Respondent's costs of the proceedings through the service charge and under section 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 through administration charges.

58. The Respondent confirmed that there was no provision in the Lease pursuant to which the Respondent was entitled to recover the costs of the proceedings as a service charge or as an administration charge and therefore it was not necessary for the Tribunal to consider such application any further as any order made would be superfluous.

59. In respect of his Tribunal fees, as the Applicant has been partially successful in his application, the Tribunal considers it to be just and equitable to exercise its discretion to order reimbursement of 50% of the Applicant's Tribunal fees for the application and hearing fees in the sum of £160.00.

Name:	Judge Adcock-Jones	**Date:**	24 March 2025

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 of relevant legislation

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.

20 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) 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) **t**he 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.

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.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.