FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AD/LSC/2023/0275**
Property	**:**	**Flats 1, 2 and 4 Sycamore Court, Sandcliff Road, Erith DA8 1NB**
Applicants	**:**	**(1) Jamel Kennedy (Flat 2)** **(2) Adebowale Tinubu (Flat 4)** **(3) Richard Last (Flat 1)**
Respondent	**:**	**Abacus Land 4 Limited**
Representative	**:**	**Craig Sheehan, Managing Agent**
Type of Application	**:**	**Liability to pay service charges**
Tribunal	**:**	**Judge Nicol** **Mr M Cairns**
Date and Venue of Hearing	**:**	**21st March 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**24th March 2025**

DECISION

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(1) The service charges challenged in the application and discussed in the reasons below are reasonable and payable.

(2) There is no order under section 20C of the Landlord and Tenant Act 1985 in respect of the current proceedings.

Relevant legislative provisions are set out in Appendix 1 to this decision.

Reasons

1. The Applicants are lessees of 3 ground floor flats. The Respondent is the freeholder of the block. Their current managing agents are, and have been since 1st January 2020, Craig Sheehan Block Management Ltd.

2. The Applicants have brought an application under section 27A of the Landlord and Tenant Act 1985 challenging the reasonableness and playability of service charges for the 4 years 2020 to 2023 inclusive.

3. The application was heard on 21st March 2025. The participants were:

- The Applicants, all of whom spoke during the hearing;
- Mr Fitzgibbon, counsel for the Respondent; and
- Mr Craig Newell of Craig Sheehan, the Respondent's witness.

4. The relevant documents were contained in a bundle of 1,241 pages, although there was some repetition. Included was a Schedule of the items in dispute, supported by statements of case from both parties and a witness statement from Mr Newell. Despite being provided for in the Tribunal's directions, there was no witness statement or reply to the Respondent's case from the Applicants. Both sides provided skeleton arguments.

Applicants' position

5. Over the years, the Applicants have seen their service charges rise from, they say, £800 per year to £4,000, a figure comparable with better-appointed blocks closer to central London. They have struggled to accommodate the increased charges while seeing little in return. Being on the ground floor, they have experienced sewage backsurges and damp penetration from above – Mr Kennedy said how his ceiling had collapsed and the insurance company is insisting he pays a large excess.

6. Unfortunately, the Applicants have not taken any legal advice, either on their legal remedies or the procedure used in the Tribunal. Although the Tribunal had directed them to produce the hearing bundle, it was compiled by the Respondent. The Applicants did not bring a copy to the hearing (they borrowed the witness bundle) and were not familiar with it – indeed, it appeared that they were unfamiliar with the Respondent's case and documents and had to be taken through them. They claimed they had more evidence than was in the bundle so the Tribunal explained why it would be unfair to allow them to produce and rely on that evidence at the hearing. Similarly, their skeleton argument sought to introduce new issues but the Tribunal limited the hearing to the matters in the Schedule and their statement of case. Those issues are considered in turn below.

Year end adjustment

7. As happens on most developments, lessees pay an advance service charge based on estimates for the coming year and if there is a surplus or deficit on actual expenditure at the end of the year, the lessees get either a credit or an additional demand for their share of the balance. The Applicants complained that they did not understand the year-end adjustment for 2022 but this challenge has been subsumed under the heads of challenge to particular service charges.

Car Park Management

8. The block has two car parks. One is outside the block and is easily accessible by passers-by as well as residents. There is also a basement car park which has not been used for several years now.

9. The Applicants set out what they understood the charges were for each year under this head but, in fact, when adjustments were made for actual expenditure, the correct figures were different:

Year	*Applicants' figures*	*Accounts*
2020	£1,000	£2,280
2021	£250	0
2022	£950	0
2023	£950	0

10. The invoice for the 2020 expenditure showed it was for rubbish clearance and cutting back overgrown foliage, requiring 8-10 loads of collected waste. On being directed to the relevant documents, Mr Kennedy's immediate reaction was to claim that the work had not been done. When it was put to him that photos showed there had been at least one rubbish clearance in the last 5 years, he said that it had been done by the local council. It turned out he was referring to something which happened years later. In fact, the Applicants had no grounds, let alone evidence, to suggest that the expenditure was not properly and reasonably incurred.

Gates & Barrier Maintenance

11. The picture in relation to the next head was similar. Again, the Applicants had sought to challenge budgeted, instead of actual, expenditure:

Year	*Applicants' figures*	*Accounts*
2020	£250	0
2021	£250	0
2022	£250	£564
2023	£250	0

12. The expenditure in 2022 was for 2 call-outs, both by the same company, one for work to the lock securing the basement car park and the other to repair a pillar at the entrance to the estate.

13. On being directed to the documents, the Applicants' reaction was to complain about how the car park was insecure and that the communal areas are insufficiently maintained, both arguments in favour of, not against, the expenditure. The Tribunal pointed out that, if the Applicants' complaint was insufficient maintenance, their remedy lay elsewhere whereas, in terms of their remedy from the Tribunal, a lack of maintenance meant there was no maintenance charge to challenge.

14. On the available evidence, the Tribunal is again satisfied that the expenditure is reasonable and the resulting service charge is payable.

Reserve Fund

15. When Craig Sheehan took over the management of the property from their predecessors, SDL, they took over a budget with considerable major works planned and a sizable reserve fund. They consulted the residents, as a result of which they cancelled or put off the major works and credited back to the lessees most of the reserve fund. Since then, they have done some internal decorations but no major works.

16. However, the Respondent has continued to collect contributions to the reserve fund. It currently stands at £82,000. The Applicants claim this is too much and should be refunded. However, there are major works which need to take place and, although Mr Newell explained that works were again put off this year to allow the reserve fund further growth, expenditure will have to be incurred next year.

17. Mr Newell said the roof, windows and external structure need work along with the boundary walls and the refuse area. Since the site abuts a railway line, he reckons the scaffolding will cost extra. He has made a rough estimate of the likely cost at around £60-80,000. He intends to start with a meeting with the residents to consider which items should have priority.

18. Mr Tinubu questioned forcefully why the reserve fund could not be reduced but he had no reason to question Mr Newell's approach. The thing about a reserve fund is that the money remains the lessees' until it is used. If money is not kept in the reserve fund, the lessees will simply have to pay the same money later for any major works. The Tribunal is satisfied that the reserve fund is properly maintained and the contributions to it are reasonable.

Ground Maintenance and Cleaning

19. The Respondent claims they have provided a fortnightly grounds maintenance (monthly during the winter) and cleaning service, including bulk refuse removal, throughout the relevant period.

Year	*Grounds maintenance*	*Cleaning*
2020	£1,080	0
2021	£1,392	0
2022	£3,374	£1,511
2023	£3,653	£1,535

20. Mr Fitzgibbon pointed out that the charge for the basic grounds maintenance was £90 per month throughout the 4 years and there were some additional charges, such as for the supply and fitting of a new gate. The cleaning cost £126 per month for a development with 24 flats and 8 mews houses.

21. The Applicants' objection was not to the amounts but the quality of the outcome. They said rubbish stayed for weeks and grass was allowed to grow knee-high. They had provided some photos which were consistent with this but they were far too few to establish anything more than that there was a rubbish problem sometimes between contractor visits and that the grass-cutting was not done every visit. They claimed to have more photos but they did not include them in the bundle. The Tribunal invited them to show any further evidence supporting their claims of inadequate maintenance or cleaning but they were unable to do so.

22. In the circumstances, the Tribunal had no basis on which to find that the charges were anything other than reasonable and payable.

Various invoices

23. The Applicants objected to 3 invoices, for £240, £520 and £4,918, which they alleged related to damage inside other flats. The Respondent replied that the first two were for investigating water ingress and drain repairs respectively while only the insurance excess of £400 was payable in relation to the third. They all related to problems on or originating from the areas the Respondent is obliged to repair. The Applicants did not provide any reason or evidence to gainsay this. Therefore, the charges are reasonable and payable.

Costs

24. The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent be prohibited from recovering their costs of the current proceedings through the service charge.

25. Mr Tinubu claimed that the litigation was partly the result of Craig Sheehan's failure to answer their queries about the service charges so that they should not have to pay the costs. However, communication is a two-way street. When the Respondent does provide information, such as they did during these proceedings, the Applicant should be reading and absorbing that information. As referred to above, they gave the strong impression that they had never read any of the material provided by the Respondent – if they had, there must be a strong likelihood they would have withdrawn some of their objections, enabling the proceedings to be more succinct.

26. The application has failed. The Tribunal is satisfied that it would not be just or equitable to deny the Respondent their right under the lease (assuming such a right exists) to recover their costs.

Name: Judge Nicol **Date:** 24th March 2025

Appendix 1 – 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.

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.

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.

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).