



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

Case Reference : CHI/29UD/LSC/2024/0028

Property : 17A Childs Crescent, Swanscombe, Kent,
DA10 0EA

Applicant : Lauren O'Brien

Representative :

Respondent : Dartford Borough Council

Representative : John Wenham

Type of Application : For the determination of the
reasonableness of and the liability to pay a
service charge

Tribunal Member(s) : Regional Surveyor Clist MRICS

**Date and Venue of
Hearing** : On the papers – 17 March 2025

Date of Decision : 17 March 2025

DECISION

Decision of the Tribunal

1. **The Tribunal determines that the following sums are both reasonable and payable:**

Service Charge Year 2023/24:	
Existing Lease (The Flat)	£127.09
Supplementary Lease (The Loft Space)	£48.02
Total	£175.11

Background

2. The Applicant seeks a determination as to whether certain items of service charge are payable by her and if so are reasonable in amount. The Applicant refers to 3 items of expenditure for the year 2023/2024 which total £40.51. The Applicant is querying why she is being charged twice for the same building.
3. The Applicant also makes applications pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. On 11 July 2024 the Tribunal issued directions for a remote conciliation hearing which took place on 21 August 2024. The Applicant was present at the hearing. John Wenham and Butta Singh attended on behalf of the Respondent Council.
5. The Tribunal noted that the property in question had two leases; one for the maisonette and another relating to a subsequent loft conversion at the property.
6. Discussion ensued between the parties and it was agreed that the Tribunal should determine the matter on the papers. The Applicant confirmed that she was challenging three items (fees relating to the repair and maintenance of the building, the maintenance of the communal grounds and the management fee).
7. The Tribunal requested that in its statement of case, the Respondent Council should address why the Applicant was liable to be charged for the three amounts which were being challenged in respect of the loft conversion lease and further, how those amounts were calculated and how reasonable they were.

The Leases

8. The Applicant holds two leases for the subject property, the first being for a flat/maisonette with the second relating to the loft space above which has subsequently been converted.

9. The Supplementary Lease for the loft space is dated 13 March 2023, incorporating terms of the 'Existing Lease' (maisonette lease) which was granted for a term of 125 years from 9 January 2017. An undated copy of the same has been provided.
10. Clause 2(1)(e) of the Supplementary Lease provides for the '...tenant paying to the landlord the service charge in respect of the Property in accordance with the incorporated terms'.
11. The Respondent's repair obligations are found within Clause 4(2)(b) of the Existing Lease:
 - (b) the Council will at all times during the said term maintain the external main walls foundations and roof of the building and the pipes including the gas supply pipes from the rising main to the meter cables including the electric supply cables from the rising main from the Electricity Board's fuses to the input side of the meters and wires (excluding meters) and the water drainage gas and electricity services serving the building and used in common with the owners lessees or occupiers of the other flats in the building (other than the pipes cables wires services and apparatus serving the demised premises alone) the main entrance passages landings staircases enjoyed or used by the Lessee in common with the other owners Lessees or occupiers of the flats at the building and (where applicable) the accessways paths forecourts gardens boundary fences and walls thereof adjoining the building and part of the Council's estate in good and substantial repair and condition except as regards damage caused by or resulting from any act or default of the Lessee or the occupier of the demised premises or of the other flats at the building **PROVIDED ALWAYS AND IT IS EXPRESSLY AGREED** that the Council shall not in any way be held responsible or liable for any damage caused by any neglect or failure to effect such maintenance or in respect of any damage caused by any defect of or any want of repair to the building or any part thereof gardens fences or walls or in or to any such pipes cables wires drainage services or apparatus unless and until notice in writing of any such neglect failure want of repair or defect as aforesaid has been given to the Council by or on behalf of the Lessee and the Council have failed to make good or remedy such neglect failure want of repair or defect as aforesaid within a reasonable time of receipt of such notice
12. The Applicant's obligation to pay a service charge is contained within Clause 3(2) of the Existing Lease:

- (2) Contribute and pay by equal quarterly payments on the first day of January April July and October in every year an appropriate contribution (including VAT where applicable) towards (a) the annual costs expenses outgoings and matters mentioned in the Fifth Schedule hereto and (b) the cost of providing and maintaining communal TV aerials other communal facilities or services and cleaning of communal areas including windows which the Council may from time to time in their absolute discretion provide (the matters mentioned in paragraphs (a) and (b) hereof being hereinafter referred to as "the said costs and expenses") the first payment thereof being apportioned as necessary for the period from the date of this Lease to the next quarter day as aforesaid next An account shall be kept by the Council of all the said costs and expenses arising in each period of twelve months ending on the 31st day of March during the said term **AND** the Council's Head of Housing Services for the time being shall certify the total amount of the said costs and expenses for the period to which the account relates and the proportionate amount due from the Lessee to the Council pursuant to this sub-clause **AND** the certificate of the Council's Head of Housing Services in this regard shall be conclusive and binding upon the Lessee
13. The fifth Schedule refers to the costs of which the Lessee is to contribute, of particular relevance is paragraph 3:
3. A fair and reasonable proportion of the cost of the upkeep maintenance repair and cultivation of the forecourts grassed landscaped and garden areas amenity areas play areas and parking areas which may belong to or be used for the Council's housing estate on which the demised premises is situated together with the cost of management of the estate and the building and the Council's general administration expenses

The Applicant's Case

14. Ms O'Brien describes her property as a one bedroom flat with a two bedroom loft conversion "(maisonette)" with the application relating to service charge years 2023 and 2024, in addition to the future years of 2024-2027. Ms O'Brien identified the total value of the dispute to be £121.93 at the time of the application, although made subsequent submissions to the Tribunal following receipt of further quarterly service charge estimates to amend such.
15. On 27 September 2024 the Applicant contacted the Tribunal stating that she had received a service charge statement for the period of 01 July 2024 – 30 September 2024 which adds £43.67 to her claim, now totalling £253.14. No case management application was received.
16. On 14 October 2024 the Tribunal received a case management application from the Applicant. The Applicant stated that she had received another service charge statement for the period 01 October 2024 – 31 December 2024 adding another £43.97 to her claim which totalled £297.11. The Applicant also stated that an insurance charge of £77.57 had been added to her Actual service charge statement, stating '...which is a policy agreed and accepted, terms do not change until renewal.'

17. On the 16 January 2025 the Tribunal received a second case management application from the Applicant, stating that she had received another service charge demand for £43.97 taking the total value of dispute to £418.65.

18. Supporting evidence includes:

- a lease relating to the loft space, dated 13 March 2023
- a lease relating to 17a Childs Crescent (undated and unsigned)
- a position statement received 15 July 2024
- a service charge statement for the loft space dated 15 July 2024
- an estimated quarterly service charge for the period of 1 July 2024 – 30 September 2024 in relation to the loft space
- an estimated quarterly service charge for the period of 1 October - 31 December 2024 in relation to the loft space
- Communication exchanges between the Applicant and Respondent
- A decision from the Housing Ombudsman following a complaint made by the Applicant in relation to the customer service received by the Respondent.
- The Applicant's response to the Respondent's Statement of Case, dated 20 September 2024.

19. The Applicant states that her challenge relates to the three items of service charges expenditure, those being Repair and Maintenance of buildings, Maintenance of Communal Grounds and Management Charge.

20. The application form includes the following statement:

I pay two sets of quarterly service charges for one property, my one bed masonette [sic] and its loft conversion – two sets of insurance aren't an issue as there's more to be covered. The above I'm already paying in my lease which hasn't reduced to justify two payments at the same cost i.e. less payments with added (persons) to building (two persons is myself i.e. two properties allegedly).

21. The applicant has expanded upon this initial statement within her response to the Respondent's Statement of case, effectively querying the apportionment of the costs:

*"In response to Dartford Borough councils response regarding lease charges. They have again offered no explanation as to how and why the charges are doubled for the same sized property on the exterior ie 'Buildings repair and maintenance', nor the same sized communal grounds, nor management fee...
...They do go on to say how the service charges have been calculated, but again with no calculations as to how they managed to cover the costs before adding more to my charges by way of the interior loft, as previously stated, the charges for the property 17a Childs Crescent or any other neighbour in the*

building have not reduced to allow for a 5 way split between tenants instead of a 4 way split...”

22. The applicant has included within her evidence a decision from the Housing Ombudsman following her complaint in relation to customer service received by the Respondent, whereby £50 compensation was ordered to be paid to the Applicant by the Respondent. It is said by the Applicant that the compensation has not been received and as such she requests that her service charge balance is reduced by the same.

The Respondent's Case

23. The Respondent has provided a statement of case to which it is said addresses the applicant's four main questions and include a breakdown of estimated service charges for both leases.
24. Firstly, the Respondent states that the Applicant is liable for service charges under her existing lease and the supplementary lease under clause 2.1(e) of the latter, incorporating the terms of the former. It is said that the Applicant was legally represented at the time of signing the supplementary lease and agreed to such terms.
25. Secondly, the Respondent provides an explanation of how the charges have been calculated, providing a breakdown of estimated charges with a description of each charge and percentage change from the previous year. It is said that the repair and maintenance of the building is any cost incurred of the same, including common parts. The estimated cost of £75 has not changed from the previous year. With regards to maintenance of communal grounds, the Respondent explains that the charge is a contribution to the costs of maintaining the same, to which the estimated amount of £41.76 has increased by 9.2% on the previous year. The Respondent explains that the Management Charge is always 15% of the charges.
26. Thirdly, the Respondent states that the charges are reasonable as they are standard across all leaseholders to which Dartford Borough Council is landlord.
27. Fourthly, the Respondent explains that the estimated charges for repair and maintenance of the building and maintenance of communal grounds are the same (£18.75 and £10.44) respectively across both service charge accounts as they are standard amounts applied across all leaseholders to which Dartford Borough Council acts as Freeholder. As the Applicant has two leases, the charges are replicated across both accounts.
28. The Respondent states that the Applicant ought to be liable for all service charges relating to the supplementary lease according to the terms entered into.
29. The Respondent's breakdown of estimated service charges show that the charge of £75 for Repair and Maintenance of Buildings has not changed

compared to the last year, remaining at £75. It is explained that 'any expenditure incurred by the Council in maintaining the building or common parts is recharged back to leaseholders during the year end reconciliation process'.

30. With regards to the maintenance of communal grounds, the Respondent explains that it is a 'contribution towards the costs of maintaining the communal grounds in that area. This has been increased by 9.2% compared to last year'.
31. It is said that the Insurance is calculated based on the previous year's actual cost.
32. Finally, the Management Fee is said to always be 15% of the charges.
33. On 28 October 2024 the Respondent emailed the Applicant and the Tribunal with Actual Service Charge Statements for the Flat and the Loft Space for 2023-24, in addition to estimated charges for both leases for the same year. The Respondent also provided Estimated and Actual Statements for the 2021-22 service charge year. The Respondent gave the following explanation:

Dear Ms O'Brien,

Thank you for your email.

Please see attached a copy of estimated service charges and actual service charges for 2023-24 for both the flat and loft space. As you can see, no repairs were carried out at the property, the £75.00 already paid towards this was apportioned across the remaining cost for that year, in this case, the amount for the Flat had an increase in Insurance and this is where the money was apportioned.

With the loft space, no repairs were carried out and the insurance was not as high so this money will be credited to your service charges account within the supplementary lease.

Another example of the money for the repairs going back to the you is attached, this is for your Actuals 2021-22, the Repairs cost came in lower and the rest was refunded.

I hope this clarifies things further.

34. The Applicant provided a response to the Respondent on the 20th November 2024:

Thank you for trying to clarify the issue however the relevance is not present. The issue was with insurance, actual charges, when an insurance policy on anything is for the upcoming year and does not change until the next policy is agreed. Therefore the insurance 'estimates' would of been the 'actuals'.

35. It is noted that the Respondent did not make a Case Management Application for the admission of such evidence.
36. The 2023-24 Actual Service Charge Statements can be summarised as follows:

	Flat ('Existing Lease')	Loft Space
Repair and Maintenance of Buildings	Nil	Nil
Maintenance of Communal Grounds	£41.76	£41.76
Insurance	£527.08	Nil
Communal Lighting	Nil	Nil
Communal Cleaning	Nil	Nil
Water Tank Clean and Chlorination	Nil	Nil
Provisions for future liabilities	Nil	Nil
Management Fee	£85.33	£6.26
Actual Service Charge 2023/24	£654.16	£48.02
Total Estimated Service Charge Invoiced	£576.60	£347.13
Adjustment to Account	£77.57	-£299.10

Consideration

37. As a preliminary matter, I have considered the evidence provided by the Respondent on the 28 October 2024 which was not subject to a case management application.
38. Given the Applicant's response to the evidence on 20 November 2024, it appears as though the submission of the evidence was unchallenged. Furthermore, the evidence provided assists the Applicant and Tribunal in the making of a determination which is on the papers and without a hearing. I note that the Applicant made reference to a charge on her Actuals statement within her case management application on 14 October 2024. On balance, I find it just and proportionate to admit the evidence and have given it due consideration.
39. On that basis, I make my determination using the Actual Service Charge Statements as these relate to service charge costs *actually incurred* rather than those estimated which are subject to adjustment to at the end of the year.
40. It is those estimated costs based on the quarterly demands to which the Applicant bases her value of dispute upon. I note that the total value of the dispute on the Application form is £121.93 which does not accord with the breakdown of service charge costs for Repair and Maintenance of Building (£18.75), Maintenance of Communal Grounds (£10.44) and Management Fee (£11.32), even when doubled for both service charge accounts. Furthermore, the running totals of the value of dispute (based upon quarterly estimates) submitted by the Applicant are unclear as to how they have been calculated. The sums do not seem to equate.

41. This provides further support for basing this determination on the Actual Service Charge Statement for the year 2023/24.
42. I further limit my determination to the service charge year 2023-24, as agreed at the conciliation hearing, as the charges for future years have yet to have been incurred and as such I cannot make a determination as to the reasonableness of such. This decision of course does not preclude the Applicant from challenging those service charge costs in the future, once incurred.
43. This determination relates to the three items identified at the conciliation hearing on the 11 July 2024 – Repair and Maintenance to Buildings, Maintenance of Communal Grounds and the Management Fee.
44. The Applicant makes mention of insurance costs in her case management application received on 14 October 2024, seemingly adding the value of £77.57 as an insurance charge calculated on her Actuals Service Charge Statement to her total claim. I decline to make a determination on the matter of insurance as firstly, the Applicant's challenge to insurance has not been well made out. The only statement made by the Applicant is that the insurance cost should not be estimated but based on the actual cost as it is known in advance for the forthcoming year. This does not challenge the cost itself which appears to have been appropriately balanced in the Actuals statement. Secondly, the Applicant's application form was limited to the three heads of expenditure outlined in the above paragraph. It was said on the form that 'Two sets of insurance aren't an issue as there's more to be covered'. Thirdly, it was agreed at the conciliation hearing on the 11 July 2024 that the application should relate to those three items of expenditure and the parties should base their statement of cases on the same. Indeed, the Respondent complied with the agreement and their statement of case is primarily based upon such. To permit the challenge of insurance costs would therefore prejudice the Respondent. I therefore decline to make a determination on insurance costs. I would add however, that the issue appears to relate to how the insurance cost is estimated each quarter and when the policy is entered in to. This is likely to be best resolved through the Respondent providing customer service to the Applicant rather than a matter for determination.
45. I firstly find that the Respondent has an appropriate repairing obligation under the terms of the lease (as per existing and incorporated into the Supplementary Lease for the Loft Space) at Clause 4(2)(b).
46. Secondly, I make the finding that the Applicant is liable for service charges under Clause 3(2) of the existing lease, as incorporated into the Supplementary Lease at Clause 2(1)(e).
47. I therefore turn to each head of expenditure for such:

Repair and Maintenance to Buildings

48. I find that repair and maintenance to buildings is a service charge cost that the applicant is liable for under the terms of the lease at Clause 3(2) and the fifth schedule.
49. The Actual Service Charge statement however, shows that there were not any costs incurred in the repair and maintenance to buildings. The Statement shows nil costs charged to either account (The Flat or the Loft Space). Any previous estimated charges (£75 per lease) have apparently been adjusted for and offset against other items of expenditure. As no cost has been incurred there is no dispute to determine on this item of expenditure.
50. Notwithstanding the above, the premise of the Applicant's challenge is perfectly valid, affectively questioning the apportionment of the charges. The lease merely states at clause 3(2) that the lessee will pay an 'appropriate contribution...' with '... the Council's Head of Housing Services for the time being shall certify the total amount of said costs and expenses for the period to which the account relates and the proportionate amount due from the lessee to the Council pursuant to this sub-clause...'.
51. It is an entirely reasonable request to make to a freeholder to understand what an 'appropriate contribution' is and how that 'proportionate amount' has been calculated - whether that be the number of units (properties) in a building, size of each property, number of bedrooms or another basis.
52. It is also entirely reasonable for the Respondent to apply an estimated charge to both service charge accounts, of which are modest amounts which have been adjusted for at year end against other costs actually incurred.
53. The Applicant's challenge, however, was more nuanced than the Respondent appears to address. It was not as plain as to why she has been charged twice. The question was to apportionment of such charges, and whilst none for this head of expenditure have been incurred for the service charge year in question, the Respondent ought to have addressed the point which would no doubt will assist in the understanding of service charge costs in future years where there may indeed be costs incurred for the repair and maintenance of the buildings.

Maintenance of Communal Grounds

54. As above, I find that maintenance of communal grounds is a service charge cost that the applicant is liable for under the terms of the lease at Clause 3(2) and the fifth schedule.
55. I have had regard to the wording within the Fifth schedule which relates to the '...fair and reasonable proportion of the cost of the upkeep maintenance repair and cultivation of the forecourts grassed landscaped and garden areas amenity areas play areas and parking areas which may

belong to or be used for the Council's housing estate on which the demised premise is situated...'.

56. It is said by the Respondent that the cost of £41.76 per lease is a 'contribution towards the costs of maintaining the communal grounds in that area'. It is further stated that the cost is standard across all leaseholders to which the Respondent is landlord.
57. The Applicant has not provided any evidence as to the extent of the communal grounds within the estate. Nor has the Applicant stated that the cost has been unreasonably incurred or provided to an unreasonable standard.
58. The apportionment of charges for communal grounds is seemingly more of a complex matter than the apportionment of costs to repair and maintenance of the building as the charge is estate wide rather than being specific to the building to which the property is situated. I can identify two main issues with proportioning costs for communal grounds given the nature of the landlord, the first being that of the demarcation of grounds/boundaries between estates where presumably labour is employed by the Respondent to provide ongoing maintenance and therefore difficult to allocate specific time and costs to and secondly that the number of leaseholders are likely to be ever changing. In such a case, a standardized approach to costings across all leaseholders is not an unreasonable one to adopt.
59. Furthermore, the Applicant has not challenged the level of cost for the service provided, nor provided any evidence as to what would be a reasonable cost for each lease.
60. I find that the charge for maintenance to the communal grounds to be modest, even as the sum of both leases. I consider there is some value gained from the nature of the Respondent's capacity as a Borough Council with employees. There is clearly some advantage gained as to 'economy to scale'.
61. Having established that the leaseholder is liable to pay a service charge in respect of maintenance for communal grounds for both leases and that the allocation of costs is a fair and reasonable proportion in accordance with the lease, I find that the costs incurred for the maintenance for communal grounds is reasonable and payable.
62. Notwithstanding the above, in the same vein as to the comments regarding the information provided by the Respondents in relation to repair and maintenance of the building, I consider that the Respondent's explanation as to how those costs have been incurred unsatisfactory. The Applicant has queried apportionment with the explanation provided being that they are standard costs across all the Respondent's leaseholders. The 'breakdown' of costs provided is not considered to be a full detailed breakdown whereby the full cost incurred for the provision of the service ought to have been supplied to the Applicant along with the division of leaseholders.

Management Fee

63. As with the two other heads of expenditure, I find the Applicant is liable for service charge costs relating to a management fee, as per the terms of the lease at Clause 3(2) and the fifth schedule. As I have established above, as the Supplementary Lease for the Loft Space incorporates the terms of the Existing Lease for the flat, the Applicant is liable for two charges.
64. The Respondent has stated that the management fee is charged at 15% of the total of service charge costs, applied to each account accordingly. The Applicant has not challenged the percentage point of the fee charged.
65. Having found that the Applicant is liable for this element of service charge under the terms of both leases, with the percentage point of the fee itself being unchallenged, no costs incurred for repair and maintenance of the buildings for the 2023/204 service charge year and finding that the charges for maintenance of communal grounds is reasonable, it follows that I find the management fee is reasonable and payable by the Applicant.
66. Finally, the Applicant states that the Housing Ombudsman has awarded her £50 compensation to which has been unpaid by the Respondent. The Applicant seeks the compensation figure to be deducted for her service charge account(s) and seeks a determination for the same. This is beyond the scope of a service charge determination as it is clearly not an item of service charge expenditure. The Applicant ought to seek further redress from the appropriate body, the Housing Ombudsman. I therefore make no determination on this matter.

The Tribunal's Decision

67. I determine that the Applicant is liable for the service charge costs of the maintenance of communal grounds and the management fee for the service charge year 2023/24. No service charge costs have been incurred for the repair and maintenance of the building and as such I can make no determination on that element.
68. Accordingly, the Applicant is liable for the following service charges:

	The Existing Lease (the Flat)	The Supplementary Lease (the Loft Space)
Maintenance of Communal Grounds	£41.76	£41.76
Management Fee	£85.33	£6.26
Total	£127.09	£48.02

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking