



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

Case Reference	: HAV/23UC/LSC/2024/0648
Property	: (1) The Livery, 2 The Waterloo, Cirencester, Gloucestershire GL7 2PZ (2) Talliers Cottage and The Smithy, 2 The Waterloo, Cirencester, Gloucestershire GL7 2PZ
Applicant	: RM Residential Limited
Representative	: Charles Auld of counsel (Hughes Paddison solicitors)
Respondents	: (1) Westacre Estates Limited (2) Bellrise Designs Limited
Representatives	: No attendance.
Tribunal Member(s)	: Judge M Loveday Mr B Bourne MRICS Mrs J Playfair
Date of hearing/venue	: 9 May 2025 (Gloucester & Cheltenham County Court)
Date of decision	: 29 May 2025

DETERMINATION

Introduction

1. This is an application to determine liability to pay service charges under s.27A Landlord and Tenant Act 1985 (“LTA 1985”). The issues formed part of a claim for payment in the County Court (claim no. L06ZA462) and they were transferred to the tribunal for determination by an order of DJ Ashford on 24 October 2024 under s.176A Commonhold and Leasehold Reform Act 2002.
2. The application was dealt with under flexible judicial deployment, with the Tribunal Judge sitting as a judge of the County Court to decide the aspects of the claim which were within the court’s exclusive jurisdiction.
3. A hearing took place on 9 May 2025. The applicant was represented by counsel, Mr Charles Auld. The respondent did not attend, and the Tribunal proceeded to hear the application in the absence of the respondent. At the conclusion of the hearing, the tribunal gave its decision orally in accordance with Rule 36(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
4. The Tribunal determined under s.27A of the 1985 Act that:
 - 4.1 The first respondent (Westacre Estates Ltd) is liable to pay to the applicant (RM Residential Ltd) service charges of £78,631.50 due under the lease of The Livery dated 14 February 2005.
 - 4.2 The second respondent (Bellrise Designs Ltd) is liable to pay to the applicant (RM Residential Ltd) service charges of £19,657.88 due under the lease of Talliers Cottage dated 22 December 2006.
 - 4.3 The second respondent (Bellrise Designs Ltd) is liable to pay to the applicant (RM Residential Ltd) service charges of £19,657.88 due under the lease of The Smithy dated 22 December 2006.
5. These are the written reasons for the above determination. For the avoidance of doubt, the time to apply for permission to appeal under Rule 52(2) does not run until these reasons are provided to the parties.

Facts

6. The premises known as 2, The Waterloo, Cirencester GL7 2PZ is a mixed-use block comprising four self-contained commercial units on the ground floor and six residential units on the first and second floors. In this instance, the three material flats are known respectively as “The Livery”, “Talliers Cottage” and “The Smithy”.
7. Each flat is subject to a lease originally granted by a developer Eastacre Estates Ltd:
 - 7.1 By a lease dated 14 February 2005, Eastacre demised the first and second floors of the Livery to the first respondent for a term of 125 years from 2 January 2004. The lease continues to be vested in the first respondent.

- 7.2 By a lease dated 22 December 2006, Eastacre demised Talliers Cottage to the second respondent for a term of 125 years from 1 January 2006. The lease continues to be vested in the second respondent.
- 7.3 By a lease dated 22 December 2006, Eastacre demised The Smithy to the second respondent for a term of 125 years from 1 January 2006. The lease continues to be vested in the second respondent.
8. The leases included conventional service charges covenants. In the case of the flat at the Livery, the lessee was obliged to contribute 50% of the costs of maintaining and managing the Livery. In the case of the Talliers Cottage and The Smithy, the lessees were each obliged to contribute 12.5% of the costs of maintaining and managing the two buildings. Other than that, the service charge provisions were in similar form.
9. The premises were evidently in a poor condition. There are reports and emails in the hearing bundle prepared in early 2021 which suggest the structure is leaning significantly towards the road in front and that immediate work was required to install a structural steel framework to arrest the movement. The applicant has carried out substantial work to the Property and incurred costs of £157,263 (including £5,014 for work on the fire alarm system). The claim for service charges represents the respondents' apportioned contributions to these costs.
10. Although not directly relevant to the application, the applicant sought dispensation from the consultation requirements in relation to the works under s.20ZA LTA 1985. A previous F-tT refused to dispense, but this decision was reversed on appeal by the Upper Tribunal (Lands Chamber) (*RM Residential Ltd v Westacre Estates Ltd* [2024] UKUT 56 (LC); [2024] L. & T.R. 19).

The hearing

11. On 8 May 2025, the Tribunal received an email from Mr JR Waites on behalf of both respondents. Mr Waites detailed various remedies which he asked from the court. He concluded that "my presence on the 9th of May will simply provide the applicant undue advantage over my exhausted abilities" and that "In the absence of my attendance this week, I respectfully request the Court to consider the Order proposed herein". The tribunal advised Mr Waites that a formal application would be necessary, to which he replied that this advice "confirms my involvement will be ignored and abused as in all previous hearings". Mr Waites later emailed that he wished to "withdraw my emails of today".
12. On the morning of the hearing, no-one appeared for the respondents. In the light of Mr Waites's emails, the Tribunal was satisfied that the respondents had been notified of the hearing. It was also in the interests of justice to proceed because (a) the Tribunal and the applicant had been put to considerable cost in preparing and attending the hearing (b) the non-appearance by the respondents was deliberate. The Tribunal therefore dealt with the hearing in the absence of the respondents under rule 34 of the Rules.

The applicant's case

13. Mr Auld of counsel took the Tribunal through the service charge provisions of the leases and referred to the service charge demands. He also relied on witness statements from Ms Melanie Meigh (a Director of the applicant) and Mr Richard Payne (a Chartered surveyor and also a Director of the applicant). Both dealt with the need for the works and any issues of reasonableness under s.19 LTA 1985.
14. The Tribunal is satisfied that the sums are recoverable under the terms of each of the three leases, and that the respondents are *prima facie* liable to pay the sums claimed.

The respondents' case

15. The respondents have not been represented at any stage in the proceedings. On 14 May 2024, their Director, Mr Waites filed a Defence which alleged various breaches of duties and obligation on the part of the applicant. On 17 January 2025, Regional Tribunal Judge Dobson (sitting as a judge of the County Court) ordered them to provide an amended Defence or other statement of case setting out clearly their response to the applicant's claim and Particulars of Claim.
16. The amended Defence was contained in an email of 6 January 2025, although it was not supported by a statement of truth.
 - "4. From end of 2020 In the name of freehold Landlord the Claimant breached obligations of each lease contract to its loss of all benefits therein by removal of elements of the building, previously installed at cost of the Defendants in pursuit of statutory compliance to the safety and permit of human occupation. The 100yr proof of stability of the building was lost upon the Claimant's reckless severance of lateral restraint of the street wall structure that since is seen to require additional support. That failure, together with the Claimant's prior theft of the leaseholders fire safety and utility conduit installations, determined the 6 residential Titles uninhabitable since March 2021, confirmed by the Valuation Office Agency of Gov.UK.
 5. The Claimant having failed to consult with defendants in any manner, including refusal of the Defendants amicable request to qualify their presence and intent, made false claim of "qualifying works" for the purpose of section 20 of the Landlord and Tenant Act 1985.
 6. The 1st Tier Tribunal in 2022 rightly refused the Claimants' application for dispensation.
 7. The Claimants, having breached the Landlords obligations under lease contract, prevented lawful occupation since March 2021 to the loss of any claim of rent or service charge since. The works listed by the claimant, having been previously fulfilled by contractors of the leaseholders to the satisfaction of all consenting authorities granting human occupation, have no foundation for repetition.

8. The Defendants deprived safe occupation of and access to the building since March 2021 have no liability to pay Rent and Service Charge since.
9. The Defendants bill the claimant for lost rent of 11 units until and together with repayment of each Title price at today's value."
17. Paras 5 and 6 of the amended Defence were plainly dealt with by the Upper Tribunal in *RM Residential Ltd v Westacre Estates Ltd*.
18. Paras 4 and 7-9 of the amend Defence are not altogether easy to follow, and the respondents did not attend the hearing to explain what they intended. There is some suggestion that damage was caused to the flats when the applicant "reckless[ly]" removed structural elements of the building, that this rendered the three flats uninhabitable since March 2021 and that the respondents have thereby suffered a loss of rent from the flats during that period. However, these arguments are not formulated as a proper set-off or counterclaim, despite the opportunity given to re-plead the Defence. The Tribunal is bound by the pleaded cases of the parties in the County Court, and it is no part of its role to plug holes in those pleaded cases. Moreover, the respondents have not supported any of their allegations with witness or expert evidence. The Tribunal therefore has no hesitation in finding the respondents have not made out any other arguable defence¹.
19. Mr Auld rightly observed that the amended Defence did not contain any other challenges under LTA 1985 s.19(1)(a) or (b) or any challenge to payability under the terms of the Lease.
20. In short, the respondents have not raised or made out any arguable defence to payability of service charges.

Conclusions

21. The Tribunal therefore makes the determinations in para 4 above.

Tribunal Judge Mark Loveday
29 May 2025

1. That does not of course mean the respondents have no remedies in damages for their perceived losses outside these proceedings. But they are strongly advised to take further proper legal advice if they choose to pursue them.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.