FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference: CAM/26UJ/LSC/2022/0035
CAM/26UJ/LSC/2024/0028
CAM/26UJ/LDC/2025/0609

Property: 6 Durrants House, Gloucester Court, Croxley Green, WD3 3FT

Applicant: Selwyn Michael Langley (for himself in relation to both applications, and for others in relation to the earlier application)

Respondent: (1) Beechcroft Developments Limited (2) The Beechcroft Foundation Limited

Representative: In person

Type of Application: Liability to Pay Service Charges

Tribunal members: Judge Granby, Dr Wilcox FRICS

Date of Decision: 23 May 2025

DECISION

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Introduction

1. This decision concerns three matters that are before the Tribunal.

2. The first in time are proceedings CAM/26UJ/LSC/2022/0035 ("the 2022 Application"). A substantive decision in respect of the 2022 Application has already been made – it is dated 22 November 2022 and was made by a panel consisting of Judge Reeder and Mr Thomas MRICS ("the 2022 decision").

3. An application under s.20C of the Landlord and Tenant Act 1985 in respect of the 2022 Application remains undetermined, such matters are usually determined by the panel that made the substantive decision. Directions in the hearing bundle dated 11 December 2024 (Judge David Wyatt) record that the Chair from the original panel has been unavailable and that directions have been made for the panel hearing the second application (described further below) to determine the outstanding s.20C application following the 2022 decision).

4. The second in time are proceedings CAM/26UJ/LSC 2024/ 0028 ("the 2024 Application"). The 2024 Application overlaps, in part, with the outstanding s.20C application from the 2022 Application insofar as it concerns the legal costs incurred by the Second Respondent in respect of the 2022 Application. As the Tribunal had failed to issue a decision in respect of the 20C application in the 2022 proceedings it is understandable that the Second Respondent issued demands in respect of its costs and that the Applicant included those costs in the 2024 Application.

5. The third matter is an application for dispensation and in respect of costs (CAM/26UJ/LDC/2025/0609) made by the Second Respondent

in respect of major works challenged in the 2024 Application ("the dispensation application"), this is described further below.

6. During the hearing it became clear that one of the matters challenged was an administration charge within the meaning of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, the Respondent, sensibly, did not object to the Tribunal dispensing with a formal application in respect of administration charges – the matter (described below) was squarely raised in the statement of case and both parties had prepared to address it. The Tribunal accordingly dispenses with a formal application in respect of administration charges.

The parties

7. The lead applicant and representative in respect of the 2022 Application is Selwyn Langley FRICS ("the Applicant"). Mr Langley is a Chartered Surveyor of considerable experience and the leaseholder of the property known as 6 Durrants House pursuant to a lease between the Respondents on the one part and the Applicant on the other part for a term of 999 years from 1 January 2014 ("the Lease").

8. The First Respondent is the Freeholder of Durrants Court and the development in which it is situated. The Second Respondent is a management company which is a party to the lease; it is the Second Respondent that carries out the repair and maintenance functions under the Lease and which is entitled to demand service charges.

9. The Respondents are closely connected (although not, we were told, strictly Group Companies) and are ultimately in common control.

10. There are, of course, other applicants to the 2022 application but no submissions were made that would suggest any applicant to that

application should be treated differently to the Applicant or that any of their leases were in materially different terms.

The hearing

11. The hearing took place on 28 April 2025 via CVP, all present were comfortable making use of the remote platform.

12. The Applicant appeared in person.

13. The Respondents were represented by Mr Thompson a Director of both Respondents. The Tribunal also heard from Ms O'Sullivan MTPI AssocRICS of ELM – the Respondents managing agent and the person with day to day responsibility for the property. Both Mr Thompson (who adopted the Respondents' statement of case as his evidence) and Ms O'Sullivan were cross examined by the Applicant and gave clear and measured answers. The Tribunal has no hesitation in accepting the evidence given by either Ms O'Sullivan or Mr Thompson although both were inevitably limited to matters they were either present for or had documentary material in respect of.

14. Similarly the Tribunal accepted the factual evidence of the Applicant who was clearly very knowledgeable in respect of the construction and management of property.

The Lease

15. With one exception (addressed below) there was no challenge to the contractual payability of any of the items in the schedules. The Tribunal accordingly does not address the Lease further.

Matters in issue

16. The items in issue are set out in a Scott Schedule. The Tribunal was, correctly, save in one respect, not invited to depart from the pleaded cases of the party – the Tribunal's function is to resolve the dispute the parties have brought before the FTT on their pleaded case not to conduct an inquisition (see *Sovereign v Hakobyan* [2025] UKUT 115 (LC) (Per the President, para 195).

Year Ending 30 April 2023

17. Legal fees for FTT: £1,800. On receipt of the Respondents' explanation that these costs related to the preparation of the witness evidence for the 2022 proceedings the Applicant's challenge was refined to be that the costs should have been divided between the Respondents (the practical effect of that being that only half would then be recoverable from the leaseholders as the Second Respondent can recover its costs. through the Lease, the First Respondent, it was common ground, could not).

18. The prospect of a 50/50 division has its origin in the division of counsel's fees (counsel being Mr Gallegher) – it was said that if counsel's fees were divided equally between the Respondents then why should other charges not be?

19. It seems to the Tribunal to be one thing for the Respondents to economise by instructing one barrister to represent them at a hearing then engage in a rough and ready apportionment of his fees and quite another to suggest that all professional costs should be apportioned in this way.

20. The Tribunal is satisfied these costs were incurred by the Second Respondent. There was no challenge to the amount charged, the Tribunal finds them payable in full.

21. Professional fees FTT: £1,800. This related to ELM staff time for preparing witness statements and attendance at the hearing. The Applicant again accepted something was payable but submitted that the cost should be divided between the Respondents. The Respondents' response is that they have apportioned the cost equally between the Respondents. There was no challenge to the level of fees (including on an equal apportionment basis).

22. The Appellant finds the sum payable in full. The Tribunal is satisfied the fees have been apportioned appropriately and that the Second Respondent is liable to pay the sums it seeks to recover – in the absence of any free standing challenge to the amounts charged by ELM it follows that the sum is payable in full.

23. Legal fees: £4,440. These were counsel's fees, no challenge to these fees was maintained at the hearing, indeed the way in which they had been divided formed the basis of the Applicant's submissions as to how the other costs in respect of proceedings should be divided. The Tribunal accordingly finds them payable in full.

24. Surveyors report re beam: £600. The Appellant said this work was carried out under warranty and any fees should have been charged to the First Respondent. The Respondents replied that the sum had been "recharged" by the Second Respondent to the First Respondent and would be credited in the accounts for the year ending 30th April 2025.

25. Although possibly academic, as the sum is being credited, the Tribunal finds that this sum was not payable – if it is the First Respondent who is, in fact, agreed to be the party responsible for payment of this sum (whether as a matter of contract or management) then it seems that there was no sum that could be said to have been reasonably incurred or reasonable in amount.

26. Specification to major works: £4,605.42. These are surveyor's fees in respect of external decorations. The Applicant states that these sums should have been taken from the reserve fund – at the hearing the Applicant clarified that he was not challenging the payability of this amount per se but was raising the point because it was relevant to management fees (as to which see below). The Tribunal accordingly finds the amount to be reasonably incurred and reasonable in amount.

27. Exposed lintel: £396. These were works to a beam. The item was conceded (indeed it was said that the sum had been "recharged" by the Second Respondent to the First Respondent and would show as a credit in the next year's accounts). Again, although possibly academic, the Tribunal finds this item was not payable.

28. Management fees: £12,117. The Applicant says that there have been substantial breaches of the RICS Service charge residential management Code, breaches of s.21 of the Landlord and Tenant Act 1985 (by which was meant s.22 of the same Act) and a failure to properly allocate expenditure.

29. The Second Respondent's response was that the fees are reasonable (indeed being, it was said, lower than for comparable developments and the lowest in the industry). The Second Respondent was, it was said, a not for profit company who did not profit from the provision of services.

30. The second point did not, it seemed to the Tribunal, take matters very far – the Tribunal is concerned with whether the sums are contractually payable and (so far as they are) reasonably incurred and reasonable in amount. There is nothing wrong with a managing agent profiting from providing services and an absence of profit does not alter the tests to be applied. That said the Second Respondent appeared to be making a more general point that it was reasonable in what it charged across its portfolio – the Tribunal, applying its experience, but in the absence of

comparators, accepts that the management charge in respect of this development appears appropriate for this type of development.

31. That does not, however, meet the Applicant's point that the service provided is of a poor quality. Taking the Applicant's specific points in turn:

    a. Conflict of interest: this does not seem to affect the application of the test that the Tribunal is to apply. Insofar as the suggestion is that ELM's real loyalty is to the First rather than the Second Respondent that does not itself seem to affect either the contractual position or the quality of the service provided
    b. Breaches of the RICS Service charge residential management Code. The complaint here appeared to be that the accounts are confusing and/or there is a certain opacity in communications with ELM. The Tribunal did not find the accounts particularly confusing in the context of service charge accounts – it is true that there could have been more granularity to enable leaseholders to identify exactly what items related to but taken against a reasonable fee the work done did not fall below the standard that had been paid for (i.e. the work was of a reasonable quality when judged against the fee charged). The Tribunal did not see any opacity in the communications from ELM – there may have been an occasion, when information in minutes relayed at a leaseholders' meeting as to which Respondent was carrying the costs of works did not transpire to be accurate, but this appeared to be an isolated incident and not necessarily the fault of ELM (who act on instructions).
    c. The Appellant also complained about how a complaint he made had been handled and the length of time be spent in dialogue on the matter of the beam (as to which see above). The Tribunal has considered the complaint and the response and is satisfied that ELM have a complaints process and operated it – any

deficiencies do not appear to warrant a reduction in the management charge.

d. The Applicant also considered that too long was spent investigating the problem with the beam without considering whether this was defective. The Tribunal could not detect any fault with ELM in this – a managing agent is not required to have the technical skills that might be expected of a surveyor (or that the Applicant possesses), the beam issue was ultimately resolved to the satisfaction of the Applicant.

e. The Applicant also complained that works that could be funded from the reserve fund were instead funded from the regular fund. The Applicant submitted that there was a particular need for regularity in this development as many leaseholders were retired and so on fixed incomes. The Tribunal does not accept (insofar as it is claimed) that the Second Respondent has failed to operate the lease in accordance with its terms, there is no requirement that everything that could properly be called "major works" be funded from the reserve fund (and any sums taken from the reserve would need to be replaced if an appropriate reserve was to be maintained) – in any event while ELM will, no doubt, provide advice to the Second Respondent, it is the Second Respondent that is ultimately responsible for management decisions.

f. Failure to comply with s.22 of the Landlord and Tenant Act 1985. This concerned a request by the Applicant to inspect the invoices. The Applicant made this request to the Second Respondent via ELM. The Applicant was then referred to the local office, the ELM operative in this office claimed not to have the invoices to provide. When the Applicant expressed confusion he was then referred back to the local office. This appeared to the Tribunal to be unsatisfactory as the Applicant was frustrated in the exercise of his statutory rights which ELM appeared to have dealt with in a rather off hand way. Ms O'Sullivan's answer – that she did not know why the local office had said they did not

have the invoices to provide inspection of missed the point, no one had permitted inspection, exactly who within ELM had made a mistake is neither here nor there. The Tribunal finds that in frustrating the Applicant's statutory rights, and appearing to have no system to vindicate those rights, ELM did not provide a service of a reasonable standard.

32. The Tribunal accordingly reduces the management fee payable by 5% to £11,511.15.

Year Ending 30 April 2024

33. Only one item was in issue for this year - £5,010 described as "Decking to Flat 6". It will be appreciated that Flat 6 is the Applicant's flat.

34. The Applicant's case was that there was a latent defect for which the First Respondent not the Second Respondent was responsible. The decking concerned is situated in an area that is not demised to the Applicant but of which he has exclusive use.

35. Pausing there, the Lease does not attribute responsibility for latent defects to the First Respondent. The argument that the First Respondent was responsible for latent defects arises from the First Respondent being the developer. It appears that because of the close relationship between the Respondents and the operation of the warranty taken by the First Respondent (which was not in evidence but was described by Mr Thompson) matters that fell within the warranty (which *appeared* to be snagging issues or latent defects) would be dealt with by the Respondents without the leaseholders being charged.

36. As already stated – that is not the position under the Lease which, it is common ground, places all repairing obligations on the Second Respondent).

37. There were two further problems with the Applicant's argument.

38. Firstly the case is predicated on there being something wrong with the decking at the time it was installed – there is no significant evidence that the decking was defective when installed.

39.. The Applicant made submissions as to how long timber decking should last – while the Applicant is clearly very knowledgeable there had been no application for, and accordingly no permission for, expert evidence within the meaning of Rule 19 of the First Tier Tribunal (Property Chamber) Rules 2013. There was some evidence (in the form of a specification) that the decking in this case was failing a little sooner than might be expected but there was no evidence that would enable the Tribunal to conclude that a warranty concerning latent defects (even if the Tribunal had seen it) was engaged.

40. Secondly even if it were the First Respondent that was claiming service charges the Tribunal is only concerned (subject to contractual payability) with what sums it is reasonable to spend at the time they were/are to be spent – any claim for breach of covenant by the landlord is a matter for a counterclaim or set off (which the Tribunal can consider in an application under s.27A of the Landlord and Tenant Act 1985) it does not bear on the statutory question of reasonableness (*Continental Property Ventures Limited v White* [2007] L & TR 4)

41. The Applicant also complained that of the £5,010 £396 was a charge for the contractor clearing the area (it being common ground the Applicant had several potted plants on the decking). The Applicant says this should have been included in the primary charge.

42. The Respondent's case is that the Applicant was asked to move the pots and did not therefore the contractor needed to do it, increasing the cost, and that this sum can ultimately be recovered from the Applicant (as to which see below).

43. The Applicant has not produced any comparators – it is therefore impossible for the Tribunal to say that a sum of £5,010 is not reasonable for replacing the decking (the sum not being obviously excessive). It is not enough for the Applicant to simply be critical of the pricing, to find a charge unreasonable there must be some evidential basis, particularly where the Tribunal is being invited to consider invoices on a granular level.

44. There is a final issue concerning the service charge in respect of these works - dispensation. The effect of the addition of £396 work of contractor costs for moving pots was to push the works, narrowly, above the £250 threshold for consultation. It is common ground that there was no consultation – the Second Respondent's case is that it tried to get the Applicant to move the pots and that if he had done so the cost would have been below the threshold, the cost accordingly only rose at the last moment when the contractor had to move the pots.

45. The Tribunal grants dispensation – there is no relevant prejudice as (as set out above) there was nothing inappropriate about the works and there is no suggestion the Applicant would have behaved differently if there had been consultation (partially as the Applicant was already highly engaged in the works to be undertaken) (*Aster Communities v Chapman & Others* [2021] EWCA Civ 660)

46. The Tribunal accordingly finds the sum of £5,010 payable as a service charge.

47. That is, however, not quite the end of the matter of the decking. The Second Respondent has sought to "recharge" (in the words of the parties) £396 to the Applicant by way of an administration charge.

48. Shorn of management jargon the Second Respondent is saying that the Applicant has breached the terms of the lease and that the Second

Respondent has suffered loss as a result (in the form of an increased cost of works) which it demands from the Applicant.

49. The problem with this, from the Second Respondent's perspective, is that there is no express contractual basis for this claim nor did the Second Respondent suggest there was an implied term – on the face of the Lease the Applicant is not obliged to clear the decking of the chattels he was entitled to put there (there is no suggestion that these were excessive and it was implicit that the Applicant was entitled to put plant pots on the decking area- this was not a case where a leaseholder had encroached).

50. The Second Respondent relied on Paragraphs 3.7 and 3.8 of the Third Schedule of the Lease which, so far as is relevant, requires the Applicant to give access to the demised premises for inspection and repairs. Ms O'Sullivan accepted in cross examination by the Applicant that the Applicant has not refused access. In the absence of an implied term there is no contractual basis for the administration charge demand.

51. Accordingly the Tribunal finds that the administration charge of £396 is not payable.

20C- the 2022 proceedings

52. The Lease in this case makes provision for the Second Respondent to recover the costs of defending proceedings including before the Tribunal (paragraph 6.23 of the Sixth Schedule).

53. The Applicant fairly accepted that he had been unsuccessful in the substantive 2022 proceedings and realistically did not seek a 20C order on the basis that he had been substantially successful. The Applicant's point in undated submissions provided following the decision was simply that the costs would have been incurred by the First rather than

the Second Respondent. The Applicant fairly accepted that there was no distinction between the s.20C application and the points made in respect of legal costs in the Second Application.

54. The Tribunal declines to make a s.20C order in respect of the 2022 proceedings, it would not be just and equitable to do so, the Respondents were overwhelmingly successful – the Tribunal is also persuaded on the evidence that there is no attempt to pass off the First Respondent's costs as being costs of the Second Respondent.

20C – the 2024 proceedings

55. The Tribunal declines to make a s.20C order in respect of the 2024 proceedings, it would not be just and equitable to do so. The Applicant has been almost completely unsuccessful. Relative success is not the only factor relevant to a s20C application, the Tribunal can also consider the conduct of the parties before and during the application- in this case there were some failings on the part of the Second Respondent in providing information to the Applicant (and the issues may have been narrower at case management stage had the Second Respondent been more forthcoming) but in this case the Tribunal considers that that, and the small successes the Applicant has had in the litigation do not outweigh the Second Respondent again being, clearly, the successful party in this application. For the same reason the Tribunal will not order that the Respondents repay the Applicant the fees he has paid.

Appeals

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 rpeastern@justice.gov.uk .

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.

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.

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.