



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

Case reference

CAM/26UJ/LSC/2022/0035

**Mr Selwyn Michael Langley acting for
himself and also for:**

Applicants

**Ms J Child and Ms J Anderson (No. 5)
Mr M Hale (No.10)
Ms Carroll (No.12)
Ms M Kelly (No. 15)
Mr S Miles (No. 3)**

Respondents

**1. Beechcroft Foundation Ltd
2. The Beechcroft Foundation**

Property

**Durrants House, Gloucester Court,
Croxley Green, Rickmansworth
Hertfordshire WD3 3FT**

Application

Specific costs-related applications

Tribunal members

Judge David Wyatt

Date of decision

16 January 2025

DECISION

Decision

The tribunal decides:

- 1) not to make any order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002; and
- 2) not to make any order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

This decision leaves the sole remaining matter in these proceedings (CAM/26UJ/LSC/2022/0035) the application under section 20C of the Landlord and Tenant Act 1985 about the costs of these proceedings, which is to be decided at the same time as the new proceedings brought by Mr Langley (CAM/26UJ/LSC/2024/0028).

Reasons

1. On about 29 October 2024, the tribunal wrote to the parties as set out in Schedule 1 to this decision. Mr Langley responded for all applicants, referring to his new proceedings. On about 26 November 2024, the tribunal wrote to the parties as set out in Schedule 2 to this decision.
2. I understand there has been no objection to the approach proposed in Schedule 2. Accordingly, I make this decision to dispose of all other outstanding matters, for the reasons given in those Schedules.
3. On 11 December 2024, the tribunal gave case management directions for the new proceedings and the remaining section 20C application to be decided at the same time. The parties must continue to comply with those directions to prepare for the hearing of the new proceedings and that remaining application, and should include a copy of this decision in the bundle for that hearing.

Judge David Wyatt

16 January 2025

Rights of appeal

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).

Schedule 1 - directions given on 29 October 2024

In these proceedings to determine payability of disputed service charges, the substantive decision of the tribunal panel (Judge Reeder sitting with a wing member) was sent to the parties on 2 December 2022. It provided for any application in relation to the costs of the proceedings (under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and/or Rule 13) to be dealt with on paper, after 14 days for written representations from the parties.

On 16 December 2022, submissions were produced by counsel for the respondents, accepting that the criteria for an unreasonable costs order under Rule 13 against the applicants were not made out and it was doubtful there was a contractual entitlement to recover the costs of the proceedings from the applicants as administration charges. Their submissions opposed the making of any order under section 20C of the 1985 Act.

On 28 December 2022, the applicants' representative produced written submissions. These were late and are not entirely clear, but accept that the tribunal decided largely in favour of the respondents and do not seek any order in respect of costs. Instead, they make what appears to be a new argument that only Beechcroft Foundation Limited (the management company under the lease(s), said to be a dormant company) could recover its costs because, they say, any costs would have been incurred by Beechcroft Developments Limited (the landlord under the lease(s)).

It appears these submissions were sent to Judge Reeder, but he has not yet been able to deal with this. The tribunal apologises for the delay and the matter has been referred to me to seek to avoid further delay.

In the interim, the tribunal has received correspondence from a leaseholder who was not one of the applicants, expressing concern that the respondents appear to be seeking to recover through the service charge their costs of the proceedings from all of the leaseholders, including those who had no part in the proceedings. The tribunal will disregard this correspondence for the purposes of these proceedings, since the parties will not have seen it, but replied in August 2024 that the tribunal cannot advise and the enquirer may wish to take advice on whether to make their own application under section 27A and/or section 20C of the 1985 Act or otherwise.

Based on what has been produced by the parties, I am minded to decide on paper:

- 1) not to make any order under paragraph 5A of Schedule 11 to the 2002 Act, since no relevant administration charges have been identified or sought;*
- 2) not to make any order under Rule 13, because it appears that even if an application was made under Rule 13 it is not being pursued; and*

3) not to make any order under section 20C of the 1985 Act in favour of the applicants, because their only real argument for this appears to be a new one about payability by reference to one of the provisions in the lease referring to costs incurred by the Foundation, which is likely to require evidence about whether legal costs have been incurred by the Foundation and/or the arrangements between the respondents in relation to how costs are incurred/recharged and does not deal for example with paragraph 5.4 of Schedule 5 to the lease (which may enable the Landlord to be entitled to provisions for the Foundation). Since this cannot be determined summarily, it does not appear in accordance with the overriding objective to seek to determine this for the purposes of the section 20C application by these applicants because if the costs are payable under the terms of the lease(s) it appears that it would not be just and equitable to make any section 20C order in favour of these largely unsuccessful applicants.

For the avoidance of doubt, this would not preclude any leaseholder from making a new application to the tribunal for a determination under section 27A (and/or section 20C, in the case of the leaseholders who were not parties to these proceedings) of the Landlord and Tenant Act 1985. The tribunal should not be taken to be encouraging or discouraging any such application; all concerned may wish to take their own independent legal advice.

If the parties are aware that any such new application has been made, or have any objection to the approach proposed above, they should send an update note to the tribunal (a single concise document from any party, copied to the other parties) by 22 November 2024, asking that this be referred to Judge Wyatt. If they do so, the applicants must by 29 November 2024 produce a single electronic PDF bundle of relevant documents, including their original applications, the substantive tribunal decision, these further directions and anything produced by the parties following these further directions. Otherwise, the tribunal proposes to after 22 November 2024 make a decision in the above terms to conclude the current proceedings.

Schedule 2 - directions given on 26 November 2024

Since Mr Langley states that a service charge payability determination application was made in April in relation to the legal costs which were the subject of the remaining applications in these proceedings, I am minded to leave the section 20C application to be decided at the same time as that application.

However, for the reasons given in the letter from the tribunal dated 29 October 2024 I am minded to decide as set out in 1) and 2) of that letter, not to make any order under paragraph 5A of Schedule 11 to the 2002 Act and not to make any order under Rule 13, so that only the section 20C application remains. If any party has any objection to this, they must send this with their reasons to the tribunal (ensuring their communication makes it clear that it has been copied to the other parties) by 13 December 2024. The tribunal would then decide these matters after that date.