



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

Case reference : **CAM/42UF/LIS/2024/0004**

Property : **Apartment 1 The Manor, Herringswell,
Bury St Edmunds, IP28 6SH**

Applicant : **Dr Melis Ozdel**

Respondent : **Herringswell Residents Company
Limited**

Representative : **Mrs Buckley – Encore Estates**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Adcock-Jones
Mr Thomas MRICS**

Venue : **Via CVP**

Date of hearing : **19 May 2025**

Date of decision : **9 June 2025**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sums payable by the Respondent in respect of service charge years 2022 to 2024 inclusive are as set out below.
- (2) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) and 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
- (3) The Tribunal dismissed the application to make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”) in respect of reimbursement of the Applicant’s Tribunal fees.

The Application

1. The Applicant is the leasehold owner of Apartment 1 The Manor which is where the premises is situated and seeks a determination pursuant to section 27A of the 1985 Act that the service charges are payable in respect of the service charge years from 2022 to 2025.
2. The Applicant further sought an order to limit the recovery of the Respondent’s costs of the proceedings through any service charge and/or administration charges pursuant to section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) and 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
3. The Applicant sought an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”) in respect of reimbursement of the Applicant’s Tribunal fees.

The Hearing

4. A remote hearing was held by CVP video. The Applicant represented herself and Mrs Buckley for Encore Estates represented the Respondent.
5. The approach taken by the Tribunal was to examine each disputed service charge item in turn with the parties addressing the Tribunal on each item with their s or their clients’ position. Witnesses were not formally called, although all parties helpfully assisted the Tribunal in answering any additional questions or providing further information during the hearing.

The Background

6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
7. The Lease requires the Respondent to provide services and the Applicant to contribute towards their costs by way of service charge. The specific provisions of the lease will be referred to below, where appropriate.
8. Directions were issued by Regional Surveyor Mary Hardman FRICS on 10 December 2024.

The Issues

9. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:
 - payability and reasonableness of service charges for 2022 – 2025;
 - whether the works (or services) are within the landlord's obligations under the lease/whether the costs of works (or services) are payable by the leaseholder under the lease;
 - whether the costs of works (or services) are reasonable;
 - whether an order under section 20C of the 1985 Act and/or administration charges under section 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should be made;
 - whether an order for reimbursement of application/hearing fees should be made
10. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

11. The Lease is dated 31 May 2007 and entered into between City & Country Residential Limited, Herringswell Residents Co. Ltd ("the Company") and David Walter Holt and Christl Holt. The relevant clauses are set out as follows:
 - "The Tenant's Proportion" means the percentage share stated in paragraph 9 of the Particulars. This is broken down as follows:
 - (1) 14.32 per cent of the total expenditure incurred by the Company in performing the covenants contained in Clause 4.1 (Fund A)
 - (2) 13.24 per cent of the total expenditure incurred by the Company in performing the covenants contained in Clause 4.2 (Fund B)

(3) 2.84 per cent of the total expenditure incurred by the Company in performing the covenants contained in Clause 4.1 (Fund E)

- Clause 3.13 makes provision for the Tenant to pay the demanded Tenant's Proportion
- Clauses 4.1 to 4.10 set out the Company covenants in respect to the various Funds set out above.
- The Tenants Covenants are set out at Clause 5.1 in relation to paying the Tenants Proportion.

Determination

12. The Tribunal determined that the application was to be considered under section 19 of the 1985 Act.

13. The disputed service charge items are listed in the table below.

| Year | Disputed Item | Value |
|--------------------|------------------------------------------|--------------|
| 2022 - 2023 | Electricity Schedules A+C | £8,654.00 |
| | Care Taking Schedules A+C+E | £43,427.00 |
| | General Maintenance Schedules A+B+C | £6,827.00 |
| | Health & Safety Schedule C | £0.00 |
| | Major Works Provisions Schedules A+B+C | £27,599.00 |
| | Building Insurance Premium Schedules B+C | £18,680.00 |
| | Insurance Excess Schedules B+C | £0.00 |

| | | |
|------------------|------------------------------------------|---------------|
| 2023-2024 | Electricity Schedules A+C | £2,800.00 |
| | Care Taking Schedules A+C+E | £50,813.00 |
| | General Maintenance Schedules A+B+C | £13,656.00 |
| | Health & Safety Schedule C | £1,499.00 |
| | Major Works Provisions Schedules A+B+C | £34,625.00 |
| | Building Insurance Premium Schedules B+C | £23,110.00 |
| | Insurance Excess Schedules B+C | £0.00 |
| | Resurfacing Major Works | £523.00 |
| 2024-2025 | Electricity Schedules A+C | £2,392.00 |
| | Care Taking Schedules A+C+E | £47,336.00 |
| | General Maintenance Schedules A+B+C | £8,900.00 |
| | Health & Safety Schedule C | £1,651.00 |
| | Major Works Provisions Schedules A+B+C | £26,125.00 |
| | Building Insurance Premium Schedules B+C | £55,081.00.00 |

| | | |
|--|-----------------------------------------|---------|
| | Insurance Excess Schedules B+C | £0.00 |
| | Cost of certificate of compliance | £250.00 |

14. The Tribunal notes the importance of service charges being paid promptly to ensure the effective management and protection of a building.
15. Save where indicated below, the parties repeated their position and submissions for each of the service charge years where there were repeated items of service charge.
16. The Tribunal considered the parties' statements of case and evidence produced in the bundle along with submissions made during the course of the hearing.

Electricity Schedules A + C

17. The Applicant referred to the spreadsheet setting out the proposed rates Flaxfields for management of the premises. She explained that Flaxfields attended the site and considered expected electrical consumption for the premises as a residential site. The Tribunal established that Flaxfields had attended the site in 2024 and gave their opinion retrospectively for 2022.
18. Flaxfields are a competing management company so a competitive quotation is not unexpected. The Applicant accepted that under the terms of the lease, the sums were payable but she did not consider them to be reasonable given the figures that she had been provided by Flaxfields.
19. The Respondent confirmed the actual expenditure as set out in the year end accounts and that the sums sought were based upon actual metre readings which the Tribunal were taken to within the bundle.
20. A utility broker had also been used to test the market; however, the costs had increased due to the utility crisis in 2022.
21. The Tribunal accepted that the figures which were based upon actual metre readings and the process followed by the Respondent against the estimates provided by Flaxfields. Accordingly, the Tribunal was satisfied that the sums as set in the table above are payable and reasonable by the Applicant.

Caretaking Schedules A+C+E

22. The Applicant referred to photos within the bundle which, in her submission, demonstrated the poor standard of the gardening service and general caretaking provided. The Applicant stated that the caretaker did not attend to the garden for number of weeks or even months and that effectively she did not get what she was paying for.
23. The Applicant considered that the Flaxfields figures were much more appropriate and as they were a reputable company, they should undertake the work. Effectively she was being charged unreasonably. It was noted from the Flaxfields schedule that no scope of work for caretaking or gardening had been provided.
24. The Respondent explained that a separate gardening contractor who provided advisory service services had been onboarded recently because landscaping is outside of the caretaker's general expertise.
25. The Tribunal was taken to photographs from February 2025 which showed the difference in the grounds following the use of this advisory landscaper. The premises consists of 8 acres of land although not all of this is required to be gardened or maintained such as the area known as the Meadow.
26. The Tribunal was further informed that it is going to be put out to tender to the leaseholders insofar as continuing with the current arrangement or employing a landscaper on a more permanent basis, though the latter will increase costs.
27. The current caretaker scope of works was enclosed within the bundle which the Tribunal considered. The Tribunal considered that the photographs provided by the Applicant provided for a reasonable standard of care and disagreed that they showed a poor standard as averred. The costs reflect the level of work done. Accordingly, the amounts set in the above tables are deemed payable and reasonable.

General Maintenance Schedules A+B+C

28. The Applicant referred to the figures provided by Flaxfields in respect to general maintenance highlighting again their reputation as a local company and that their figures were more reasonable.
29. The Respondent confirmed actual expenditure where appropriate. Ideally, the Tribunal would have benefited from being provided with all the invoices to substantiate the figures. However, the Tribunal was satisfied on the basis that the year-end accounts were prepared by the accountants with sight of the relevant invoices in terms of accuracy and that the figures were reasonable. Accordingly, the figures as provided for in the table above are deemed payable and reasonable.

Health & Safety Schedule C

30. The Respondent confirmed that for the year 2022 to 2023, a risk assessment had not been carried out due to a fire incident in March 2022 and therefore there was zero expenditure for the first year. In terms of the subsequent years, the Tribunal was referred to the risk assessments carried out within the bundle which were comprehensive.
31. The Applicant referred to the Flaxfields quotation for that year. However, there was simply insufficient information to substantiate their figure from the spreadsheet provided by the Applicant.
32. The Tribunal was satisfied that the figures sought by the Respondent in respect of the table set out above are payable and reasonable.

Major Works Provisions Schedules A+B+C

33. The Applicant referred to Flaxfields' figure provided in respect of major works. She submitted that this was a much more reasonable figure given by reputable company and therefore should be the figure that the Tribunal allows. No major works plan prepared by Flaxfields was provided.
34. The Respondent referred to the long-term maintenance plan within the bundle which provided for estimated major works for the next 10 years. Whilst the plan itself was not particularly detailed, it did clearly set out a projection for major works over the next decade and the Tribunal was satisfied that the Respondent intends to collaborate with an expert third party to formalise the plan.
35. The tribunal notes the nature of the building as a grade 2 listed building which naturally will require specialist major works over the next decade and beyond and was satisfied by the evidence provided by the Respondent against the lack of detail provided by the Applicant to support the Flaxfields figure. Accordingly, the figures are set out in the table above are deemed payable and reasonable.

Building Insurance Premium Schedules B+C

36. The Applicant referred to the quotation that she had obtained from Ecclesiastical and confirmed that they had been made fully aware of previous claims, the scope of the building and had been provided with a plan. The Tribunal understood that dimensions and floor plans were not provided.
37. Credit is to be given to the Applicant for obtaining such a comprehensive quotation, although it was clear that the quotation obtained was not exactly like for like with that obtained by the Respondent.
38. The Respondent repeated that there was a fire incident in March 2022, the resulting claim of which only settled in April 2025 and amounted to a claim of £1.2 million. The Respondent had consulted NFU and

Ecclesiastical who had both confirmed that they could not provide a quotation for mid-term particularly where there was an unsettled claim.

39. The declared value also increased from 2019 from circa £10 million to £17 million in June 2024. The Tribunal accepted the Respondent's submissions that as a matter of practicality, an insurer would not take on a policy mid-term where a considerable outstanding claim was ongoing
40. The Respondent did inform the Tribunal that the Applicant's quotation had been considered for future years and would approach Ecclesiastical again to see if a lower premium could be obtained.
41. The Tribunal therefore determines that the sums as sought in the above table are therefore payable and reasonable.

Insurance Excess Schedules B+C

42. The Respondent informed the Tribunal that no expenditure has been made in respect of this item for any of the years subject to the application. Accordingly, no determination was required to be made.

2023-2024 – Resurfacing Major Works

43. The Applicant submitted that large construction vehicles had caused damage to the access way and highlighted the narrow nature of the main gates and road itself. The Applicant was further concerned that this was an item payable by the leaseholders of the neighbouring premises The Mews under their estate schedule rather than the leaseholders of The Manor.
44. The Respondent informed the Tribunal of four areas which required repair and resurfacing and confirmed that the estate share contribution required by The Mews has been settled in full.
45. The Tribunal was satisfied that the lease made provision for such works under clause 4.3.5 which provides for the Respondent to keep "in good and proper repair and condition and keep neat and tidy in all materials respects Private Access Way and any areas of landscaping on grounds and trees within the Estate".
46. In respect to the allegation of such works being caused due to the construction work, the Tribunal was not satisfied that there was any evidence that any fault or negligence had occurred such as video or photographic evidence. In the absence of such, the provisions of the lease apply and the sum as set out in the above table are payable and reasonable.

Cost of issuing certificate of compliance

47. It was confirmed that this was a cost for each individual property and not paid through the service charge. Therefore, the Tribunal had no jurisdiction to consider this figure and makes no determination.

Increase in Service Charges

48. The Applicant expressed disquiet that her service charges had increased considerably since initially taking on the property and that her mortgage lender would never have agreed to her mortgage had they been aware of the subsequent increases in the service charges.
49. The Tribunal was referred to another leaseholder's service charge accounts and the Applicant submitted but she faced a higher rate of inflation than other leaseholders and that such increases should be proportionate. She considered that they were potentially discriminatory in nature. She accepted that the proportions as set out in the lease were correct.
50. The Tribunal's discretion is limited to assessing the payability and reasonableness of service charges only. Clearly, the Applicant's service charges have increased over the years. Regrettably many areas of service charge expense have increased for all leaseholders such as utility and insurance.
51. Moreover, and by its very nature, as the subject premises are a grade 2 listed building, there will be escalated associated costs and expenses which will be more than service charges for a property of a different nature. However, this simply forms part of the running costs of such property that the Applicant purchased. The Tribunal has found no evidence that anything other than the Applicant's proportions have been levied as service charges.

Application under section 20C and paragraph 5A of Schedule 11 and for refund of fees

52. The Applicant submitted that she had effectively been obliged to bring the current proceedings for the assessment of her service charges noting the work she had undertaken to obtain quotations and dealing with an AGM. Therefore, she should not be punished by paying for the Respondent's costs in addition to considerable service charges.
53. The Respondent submitted that the Applicant had not been charged for any more than her proportion under the terms of the lease and the reality was that she had the largest apartment and gardens and therefore paid the highest proportion. The Respondent confirmed that their costs to be estimated at £960.00 plus VAT.
54. In such circumstances, and as the Applicant has largely failed in her application, the Tribunal does not consider it just and equitable to make

an order pursuant to section 20C of the 1985 Act or in respect of section 5A of Schedule 11 of the 2002 Act.

55. In the same vein, the Tribunal also declines to make any award to the Applicant in respect of her Tribunal fees incurred.

| | | | |
|--------------|--------------------|--------------|-------------|
| Name: | Judge Adcock-Jones | Date: | 9 June 2025 |
|--------------|--------------------|--------------|-------------|

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 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).

Appendix of 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.

20 Limitation of service charges: consultation requirements

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

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.

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.