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|  |  | **FIRST-TIER TRIBUNAL**  **PROPERTY CHAMBER (RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **CAM/22UG/LSC/2024/0011** |
| **Property** | **:** | **21-25 Eaglegate, East Hill, Colchester, Essex CO1 2PR** |
| **Applicants** | **:** | **Ray Harris, Heather Harris, David West, Vanessa West, Mark Patston, David Flavell and Jill Knight** |
| **Representative** | **:** | **Ray Harris** |
| **Respondent** | **:** | **Assethold Limited** |
| **Representative** | **:** | **Eagerstates Limited** |
| **Type of application** | **:** | **Permission to appeal** |
| **Tribunal member** | **:** | **Judge Hunt** |
| **Date of decision** | **:** | **11 June 2025** |

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| **DECISION** |

1. The Tribunal dismisses the application to set aside any part of its decision.
2. The Tribunal will not review its decision.
3. Permission to appeal is refused.

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| **REASONS** |

1. The Applicants sought a determination of the payability of service charges in accordance with section 27A of the Landlord and Tenant Act 1985 (the “Act”). They also sought an order pursuant to section 20C of the Act that the costs of the proceedings not be passed on to them via a service charge (the “s.20C Application”). The Tribunal decided both applications on 16 April 2025.
2. The Respondent seeks permission to appeal these decisions.
3. The Tribunal has determined this application “on the papers”, which is the basis on which all permission to appeal applications proceed, unless ordered otherwise. Although the application is stated to be brought only under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the “Rules”), the Tribunal may, in accordance with Rule 56, treat it also as an application for set aside. It has done so as the Respondent has raised an issue about procedural fairness, which is a potential ground for set aside in accordance with Rule 51. In accordance with Rule 53(1), on any application for permission to appeal the Tribunal must also decide whether to undertake a review of its decision.
4. In relation to the application to set aside, Rule 51 requires a Tribunal to be satisfied that it is in the interests of justice to set aside its decision. Furthermore (as far as relevant to this application), the Tribunal should only do so when there has been a “procedural irregularity in the proceedings”. The Respondent states that the Tribunal was biased against it due to its limited participation in the proceedings. The Tribunal accepts that, if that were so, it may well be in the interests of justice to set aside the decision. However, it finds that there was no procedural irregularity, either in relation to the procedure followed in the management of the case, or substantively, by the demonstration of any bias.
5. In relation to procedure, the Respondent had full opportunity to participate in the proceedings and was represented at the hearing, at which its submissions were heard and considered. The Tribunal made its decision on the basis of the evidence available, including the documents provided by the Respondent, which is its core function. Nothing prevented the Respondent from participating more fully in the proceedings. Accordingly, there was no procedural irregularity in proceeding to determine the applications without further Respondent input.
6. In relation to substance, the Respondent has said that the Tribunal’s statement that it “took little active part” in the proceedings and the “tone” of the decision betrayed the Tribunal making adverse inferences against it. It is clear from reviewing the decision as a whole that it did not. The Tribunal was given little assistance from the Respondent in making proper factual and legal determinations, as to, for instance, the location of the handrail that had been ordered to be fitted, the location and extent of fire safety checks conducted and the operation of the service charge provisions (none of which are matters on which the Applicants were able to shed any light). Where appropriate, the Tribunal placed weight on the Applicants’ evidence, notably when it was unchallenged and reflected the findings of the 2024 Decision. It was entitled to do so. The Tribunal addressed all issues it was required to, giving full consideration to the Respondent’s position (demonstrated, for instance, by departing from the 2024 Decision in the Respondent’s favour, when justified by further evidence), despite the Respondent providing little real assistance in that regard. In substance, therefore, there was no procedural unfairness that would justify setting aside the Tribunal’s decision.
7. Accordingly, there was no basis on which to set aside the decision.
8. As to the application for a review, the Tribunal may only review its decision if satisfied that a ground of appeal is likely to be successful. As explained below, the Tribunal is not so satisfied. Accordingly, it will not review its decision.
9. As to the application for permission to appeal, the Respondent raised several grounds. The Tribunal will take them in turn, in accordance with the numbering in the application.

**Ground 1**

1. The Respondent contends that the Tribunal was wrong to find certain costs to have been unreasonably incurred or unreasonable in amount. This amounts to re-arguing the merits of the case and the Tribunal has already given its reasons for its decision. The Respondent criticises the Tribunal for failing to rely on independent expert or technical evidence. It chose not to present any. The Tribunal is an expert body and considered photos of the work as well as the contractor’s own doubts as to the quality of the work. Its determination that only 50% of the costs of the work could be recovered was a fair and reasonable assessment.

**Ground 2**

1. Paragraphs 55-56 of the decision show that the Tribunal did not rely solely on the date of the invoice in determining that the service charge relating to the handrail was not payable. It was entitled to make its finding of fact but, whatever the date of receipt of the invoice, the decision must clearly stand for the other reasons given.

**Ground 3**

1. The Respondent contends that the Tribunal must “carry across” its decision regarding insurance contributions to other aspects of the service charge. It appears the Respondent has not read or understood paragraphs 44-48 of the decision. The Tribunal found that, in this case, the management decision to insure all areas the Respondent is responsible for under one policy is open to it, even if that means some tenants are contributing to insurance for areas in relation to which they have no repair liability. The policy demonstrates that this is what happened. No similar documents were provided in relation to any other charges incurred to demonstrate that costs were “shared” in a similar manner. When works or services are provided exclusively to one “set” of tenants, the usual position is that only those tenants will contribute to those costs, which is precisely what the Lease provides (see paragraphs 20-25 of the decision). There was therefore no inconsistency in the Tribunal’s decision.

**Ground 4**

1. The Tribunal provided a fully reasoned decision on this point. The Respondent fails to address the Tribunal’s conclusions. The Tribunal found that the provision of fire safety services related to Stopes House (so was not an item for which the Applicants were liable). In relation to the repair fund, the Tribunal found as a fact that there was no justification for imposing the cost under the Lease. The Tribunal accepted that that position may change in future. These were decisions that were reasonable and open to the Tribunal.

**Ground 5**

1. The Respondent challenges the Tribunal’s decision to allow the s.20C Application. The Tribunal’s reasons have been provided. The ground of appeal raises issues that the Tribunal has already considered in making its decision, which is a decision that it was entitled to make. It amounts to re-arguing the case, which is not a sound basis on which to grant permission to appeal.

**Ground 6**

1. This ground of appeal is largely addressed above in relation to the application to set aside. Read fairly and in context, the decision demonstrates that the Tribunal was not biased in reaching its decision. It is entitled to, indeed has to, make findings on the basis of the evidence available to it. It is entitled to place weight on unchallenged evidence. The Respondent had the opportunity to challenge the Applicants’ evidence, and to present contrary evidence, but it largely failed to do so. Where it did, the Tribunal afforded it appropriate weight. It is clear that the Tribunal did not adopt any evidence unquestioningly.
2. Accordingly, none of the grounds of appeal have any reasonable prospects of success and permission to appeal was refused.

**Further application for permission to appeal**

1. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber).  Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to him.
2. Where possible, you should send your further application for permission to appeal by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9710).

Judge Hunt

11 June 2025