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

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| **Case reference** | **:** | **LON/00AY/LSC/2024/0608** |
| **Property** | **:** | **Flat 7, Surridge Court, Clapham Road, Stockwell, London, SW9 9AG** |
| **Applicant** | **:** | **Dean Byerley** |
| **Representative** | **:** | **In person** |
| **Respondent** | **:** | **Hyde Housing Association** |
| **Representative** | **:** | **Mr Bunzl, Counsel, instructed by Hyde Housing Association** |
| **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 Bernadette MacQueen**<br>**Mr Waterhouse, FRICS** |
| **Venue** | **:** | **10 Alfred Place, London WC1E 7LR** |
| **Date of hearing** | **:** | **16 May 2025** |
| **Date of decision** | **:** | **23 June 2025** |

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**DECISION**

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## Decision of the Tribunal

(1) The Tribunal determines that the sum charged by the Respondent for Grounds Maintenance: Contracted Works and Ground Maintenance: Responsive Works for the years 2017/2018 to 2023/2023 is payable under the lease. This amount the Respondent has charged for these service charges is £586.83, and the Tribunal determines that this amount is payable and reasonable.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or an order under Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 for the reasons set out in this Decision.

## The Application

1. The Applicant sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of service charges in respect of apportioned grounds maintenance contracted works, and ground maintenance responsive works. These are shown in the service charge account as:

    - Grounds Maintenance: Contracted Works
    - Grounds Maintenance: Responsive Works

2. The Application related to past years 2018 to 2023 and future years 2024 forward.

## The Hearing

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Bunzl, Counsel.

4. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. Within the Applicant's bundle, seven photographs were provided (pages 60 to 63), along with a map which showed the position from where the photographs were taken.

5. At the start of the hearing, the Tribunal was asked to consider preliminary matters as follows:

**Respondent's Application for the Applicant's Application to be Struck Out**

6. The Respondent made an application to strike out the Applicant's application. This was made on two grounds, namely:

   (i) The Applicant had failed to comply with paragraph 9 of the Directions dated 7 October 2024, as amended on 15 January 2025 ("the Directions) by not providing an agreed bundle in the correct format. The Applicant therefore asked the Tribunal to strike the application out under paragraph 9(3)(a) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules").

   (ii) The application was frivolous and vexatious and should be struck out under paragraph 9(3)(d) of the Rules.

7. In relation to non-compliance with the Directions, the Respondent submitted that the Directions required that:

> "the applicant must seek to agree the contents of a hearing bundle with the other parties, and must then prepare a digital, indexed and paginated hearing bundle, in Adobe PDF format, which must be emailed to all other parties, and to the tribunal, at London.Rap@justice.gov.uk … by 16 April 2025". (This date had been amended by the Tribunal from 17 February 2025, the date set in the original Directions).

8. The Respondent submitted that the Applicant had not complied with this Direction and instead had provided to the Tribunal and the Respondent loose papers without an index. Further, these papers had been submitted one month late and had not been agreed with the Respondent.

9. Regarding the application being frivolous and vexatious, the Respondent stated that prior to the hearing, the Respondent had taken what it described as a commercial decision to adjust the Applicant's service charge account to remove the disputed amounts from the Applicant's account, even though the Respondent maintained that the amounts were payable under the Lease. It was the Respondent's submission that by continuing with the application, the Applicant was being frivolous and vexatious given that the disputed charges had been removed from the Applicant's service charge account.

10. In reply, the Applicant submitted that the application should not be struck out on either ground. With regard to non-compliance with the Directions, the Applicant stated that he had provided documents to the Respondent and there had been a delay because the Respondent had not provided account information to him. The Applicant further submitted that the fact that an index had not been provided was not a reason for the application to be struck out.

11. As to the application being frivolous or vexatious, the Applicant told the Tribunal that whether the disputed service charges were payable by him had been an issue for several years and without resolution; the issue would continue each year given that the Respondent's view remained that he was liable to pay the disputed service charges. The application therefore needed to be determined and he was not being frivolous or vexatious by continuing with it.

**Tribunal Decision - Respondent's Application for the Applicant's Application to be Struck Out**

12. The Tribunal did not strike the application out on either ground put forward by the Respondent. Whilst the Tribunal noted that an agreed bundle had not been provided in accordance with the Directions, the Tribunal had before it a bundle of documents provided by the Applicant and this bundle had been sent to the Respondent prior to the hearing. Further, the Respondent had provided the Tribunal and the Applicant with its own bundle. Each party and the Tribunal therefore had documents that set out both parties' positions and there was consequently no prejudice to either party. In light of this, the Tribunal did not consider it in the interests of justice to strike the application out because of the Applicant's non-compliance with Direction 9. In reaching this decision ,the Tribunal considered Rule 3 of the Rules and in particular 3(2)(b) – the need to avoid unnecessary formality – and 3(2)(c) – ensuring, so far as practicable, that the parties are able to participate fully in the proceedings.

13. Turning to the Respondent's second ground, the Tribunal did not accept the Respondent's position that the application was frivolous and/or vexatious. The Respondent stated that the disputed service charge had been removed from the Applicant's account because it had made a commercial decision to avoid costs of a hearing, but its position remained that it still believed that the disputed amount was payable. On this basis, there remained a live issue that the Applicant was reasonably asking the Tribunal to determine. Further, the Tribunal took into account that the Applicant and Respondent had an ongoing relationship as landlord and tenant and it would therefore not benefit either party to have to revisit this issue year on year.

## Respondent's Bundle

14. The Respondent provided its own bundle to the Applicant and the Tribunal. As set out above, this was submitted as it was the Respondent's position that the Applicant had not complied with the Tribunal's Directions to seek to produce an agreed bundle.

15. The Applicant reiterated his position that he had not provided the bundle in accordance with the Directions because the Respondent had not provided him with relevant accounts and receipts.

16. The Tribunal allowed the Respondent's bundle to be included and noted, as set out above, that the Applicant's bundle had not been agreed with the Respondent. The Respondent's bundle was largely a duplicate of the information contained within the Applicant's bundle, namely application form, Schedule, photographs and map, correspondence that had passed between parties, as well as applications made to the Tribunal, all of which the Applicant was aware of. The exception to this was the witness statement of Donna Jones, the Respondent's rent and compliance manager. However, this statement provided background information as to how the service charge was calculated under the Lease rather than providing any new or additional information on the issues in dispute. The Tribunal was therefore satisfied that there was no prejudice to the Applicant by including this statement.

17. Further, the Tribunal noted that the Applicant had not provided the Tribunal with a complete copy of the Lease. The Applicant's bundle did not include the Lease at all and the copy of the Lease the Applicant had sent with his application form had pages 15, 21, and 27 missing. Without the Respondent's bundle, the Tribunal would not have before it a complete copy of the Lease.

18. The Tribunal therefore allowed the inclusion of the Respondent's bundle. In reaching this decision the Tribunal considered the overriding objective contained within rule 3 of the Rules, and in particular rule 3(2)(c), which requires that, so far as practicable, the Tribunal should ensure that parties are able to participate fully in proceedings. The Tribunal was satisfied that there was no prejudice to the Applicant as the bundle had been sent to him in advance of the hearing; however, the Tribunal allowed 30 minutes (and longer if required by the parties) for the Applicant to look at the complete copy of the Lease, the witness statement of Donna Jones, and also to allow parties the opportunity to discuss the issues in dispute. Parties returned to the hearing room after 30 minutes without requesting further time and the hearing commenced.

## Documents before the Tribunal

19. The Tribunal therefore had before it a bundle consisting of 265 pages prepared by the Applicant, and a bundle consisting of 336 pages prepared by the Respondent.

**The Background**

20. The subject of this application was Flat 7, Surridge Court, Clapham Road, Stockwell, London, SW9 9AG ("the Property). The Property was a 2 bedroom flat in a purpose-built block of flats above a row of retail units.

21. The Applicant in his application form stated that the years in dispute were service charge years 2018 to 2023 and future year 2024 and all future years, with the total value of the dispute stated as £860.70.

22. The Tribunal had made Directions dated 7 October 2024 which required the Applicant to complete a schedule and identify specific years which were disputed. The Applicant completed a schedule ("the Schedule") which included the years 2018 to 2023; however, the Tribunal noted that whether the disputed service charges were payable under the Lease would be relevant for all future years whilst the Lease remained as currently drafted. The Schedule was at pages 32 to 50 of the Applicant's bundle, and at pages 85 to 103 of the Respondent's bundle.

**The Lease**

23. The Applicant holds a long lease for the Property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

24. The relevant lease is dated 14 November 1988 and was made between The Mayor and Burgesses of the London Borough of Lambeth(1) and Sheila Joan Winterburn ("the Lease"). The term of the Lease was for 125 years commencing on 14 November 1988.

25. The relevant provisions of the Lease will be set out in this decision. However, for completeness the relevant provisions of the Lease are as follows:

26. The Fourth Schedule of the Lease relates to "The Council's expenses and outgoings and other heads of expenditure in respect of which the tenant is to pay a proportionate part by way of service".

27. Part 1 states:

"<u>AS TO THE BUILDING IN WHICH THE FLAT IS SITUATED</u>

All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements rebuilding cleansing and decoration to or in relation to the Building and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following…"

28. Part 1 continues by setting out the service for the Building which includes, amongst other things maintenance, redecoration, insurance and so on.

29. Part 2 is written in similar terms but is relevant to the Estate as follows:

"AS TO THE ESTATE UPON WHICH THE BUILDING IS SITUATED

All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements rebuilding cleansing and decoration to or in relation to the Estate and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following:-

1.The reasonable costs incurred by the Council in the management of the Estate including all fees and costs incurred in respect of the annual certificate of account and of accounts kept and audits made for the purpose thereof such management costs being not less than 10% of the total Service Charge

2. The cost and expense of making repairing maintaining rebuilding lighting and cleansing all ways roads pavement sewers drains pipes watercourses party walls party structures party fences walls or other conveniences which may belong to or be used for the Building in common with other premises on the Estate.

3.The upkeep of the gardens forecourts unadopted roadways and pathways within the curtilage of the Building

4. The cost of installing maintaining repairing and renewing the television and radio receiving aerials (if any) installed or to be installed on the estate and used or capable of being used by the Tenant in common as aforesaid

5. All charges assessments and other outgoings (if any) payable by the Council in respect of all parts of the Estate (other than income)

> 6. The cost of insuring and keeping insured throughout the term hereby created those parts of the Estate used or capable of being used by the Tenant in common as aforesaid and landlord's fixtures and fittings thereon and all the appurtenances apparatus and other things thereto belonging against the insurable risks described in Clause 3(5) hereof and also against third party risks and such further or other risks (if any) by way of comprehensive insurance as the Council shall determine including loss of rent and architects' and surveyors' fees."

30. (2) provides definitions for expressions within the Lease. (2)(g) states:

> "'the Estate' means the property described in the First Schedule hereto and its extent may from time to time be determined or extended by the Council's Director of Housing and Property Services for the time being whose decision shall be final and binding save in the event of manifest error".
>
> (2)(f) provided that "the Building" means the property referred to as the Building in the First Schedule hereto".
>
> (2)(e) provided that "the Flat" means the property described in the First Schedule…"

The First Schedule states:

> "ALL THAT Flat shown hatched red on the plan annexed hereto (and for the purposes of identification only shown coloured pink on the said plan) and numbered 7 on the first floor of the Building known as 1-18 (cons) Surridge Court Studley Estate SW9 which for the purpose of identification only is shown edged blue on the said plan such Flat and Building being located on the Council's Estate"

Clause 2(2) and 3 set out the obligation to pay service charges and the leaseholders obligation is set out at clause 2(2) of the Fifth Schedule.

Clause 2 states:

"The Tenant hereby covenants with the Council as follows:-

(1) To pay the reserved rent…

(2) To pay to the Council at the times and in manner aforesaid without any deduction by way of further and additional rent a rateable and proportionate part of the reasonable expenses and outgoings incurred by the Council in the repair maintenance renewal and insurance of the

Building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further and additional rent (hereinafter called the Service Charge) being subject to the terms and provisions set out in the Fifth Schedule hereto …"

Clause 3 states:

> "3. The Council hereby covenants with the Tenant as follows:-
>
> > (1) The Tenant paying the rents and the Service Charge herein reserved and performing and so observing the several covenants on his part and the conditions herein contained shall peaceably hold and enjoy the Flat during the said term…

The Fifth Schedule states:

"TERMS AND PROVISIONS RELATING TO SERVICE CHARGE

(d) The annual amount of the Service Charge payable by the Tenant as aforesaid shall be calculated as follows:

(i) by dividing the aggregate of the said expenses and outgoings incurred by the Council in respect of the matters set out in Part 1 of the Fourth Schedule hereto…by the aggregate of the rateable value (in force at the end of such year) of all the flats (excluding caretaker's accommodation if any) in the Building and then multiplying the resultant amount by the rateable value (in force at the same date) of the Flat (hereinafter called "the Building Element").

(ii) by dividing the aggregate of the said expenses and outgoings incurred by the Council in respect of the matters set out in Part 2 of the Fourth Schedule hereto…by the aggregate of the rateable value (in force at the end of such year) of all dwellings on the estate and then multiplying the resultant amount by the rateable value (in force at the same date) of the Flat (hereinafter called "the Estate Element") and

(iii) by adding the Building Element to the Estate Element".

## Applicant's Case

31. The Applicant told the Tribunal that it was his view that the Lease did not permit the Respondent to charge him a service charge for grounds maintenance contracted works or grounds maintenance responsive works. The Applicant stated that the reason for this was the wording at page 32 of the Lease, namely the Fourth Schedule, and Part 2 thereof

(page 47 of the Respondent's bundle). Specifically, the Applicant stated that Part 2 of the Fourth Schedule set out the charge for the estate on which the building was situated and this was confined to the curtilage of a block. Given that his block did not have grounds or access ways, he was not required under the Lease to pay for the grounds maintenance. The Applicant stated that the wording of the Lease, and in particular paragraph 3 of Part 2 was key to this as this required payment for:

> "The upkeep of the gardens forecourts unadopted roadways and pathways **within the curtilage of the Building**" [emphasis added].

32. The Applicant told the Tribunal that the block where he lived was the only one that did not have gardens, forecourts, unadopted roadways, and pathways within the curtilage of the Building. It was his understanding that because of this, specific wording had been negotiated for his Lease by the original parties.

33. The Applicant provided at pages 52 and 59 of his bundle a map of the estate which showed the blocks which had individual garden areas, their access pathways and council maintained public roads and pavements. Further on the map the Applicant marked the positions where he had taken sample photographs of fenced off areas for individual blocks. These photographs were at pages 60 to 63 of the Applicant's bundle.

34. The Applicant submitted that the photographs and map showed that Surridge Court did not have any gardens, forecourts, or access pathways attached to it. The forecourts, access pathways and gardens were attached to the other blocks and were enclosed by fences meaning that they were fenced off to their associated blocks. It was therefore the Applicant's position that this meant that these areas were related to specific blocks and as such he could not be charged for them. The Applicant emphasised this point by explaining to the Tribunal that he could not even see any of the green foliage from the windows of his Property. It was therefore the Applicant's position that he was not required under the Lease to pay for facilities that he was not entitled to access.

35. The Applicant provided further detail as to the layout of the area by stating that his block was surrounded on one side by Clapham Road and on the other side by the retail shops garbage/service area and Binfield Road. The Applicant stated that both Clapham Road and Binfield Road were managed by Lambeth Council and not by the Respondent. It was the Applicant's position that all major pavement areas and roads which constituted public access through the estate were adopted and maintained by the Local Authority and not by the Respondent housing association. He was therefore not liable for payment for this.

36. In light of the above, it was the Applicant's position that the grounds maintenance contracted works and the grounds maintenance responsive works were not payable under the Lease as the Respondent may only claim for costs within the curtilage of the Building and the Building where the Applicant resided did not have any areas that required grounds maintenance.

37. The Applicant stated that the only exception to this was the play area as this was for families in his block, and therefore he should contribute. The Applicant stated that the maintenance for this area was a separate charge on the service charge accounts and could therefore be identified.

38. Finally, the Applicant stated in his Schedule that he was willing to forego the negligible amounts that were charged for responsive maintenance for the years 2018 to 2020, these amounts being 15 pence in 2018, £1.17 in 2019, £3.15 in 2020.

39. The Applicant therefore asked that the Tribunal determine that he was not responsible for paying the disputed grounds maintenance costs.

**Respondent's Case**

40. Counsel for the Respondent submitted that the obligation on the Respondent to provide services generally and levy a service charge was set out at clauses 2(2) and 3 and the Fourth Schedule of the Lease. Further that the leaseholder's obligation to pay a service charge for the provision of services was set out at clause 2(2) and the Fifth Schedule of the Lease.

41. Further, Counsel submitted that the Fourth Schedule set out the costs the leaseholder must contribute to by way of service charge, which included the cost of the Respondent complying with clauses 3(3) and 3(4) of the Lease. The Fourth Schedule was divided into 2 parts. Part 1 listed the services which the Respondent provided in respect of the Building, whereas Part 2 was concerned with the Estate.

42. Counsel submitted that the Estate was defined in the Lease to mean the estate upon which the Building was situated as owned by the Respondent, the extent of which may from time to time be determined by the Respondent. The Estate services included the costs incurred by the Respondent in providing any service or carrying out any maintenance, repairs, renewals, reinstatements, rebuilding, cleansing and decoration to or in relation to the Estate including the cost of managing the Estate, making, repairing, maintaining, rebuilding, lighting and cleansing all ways roads and pavements, which may be used in common with other premises on the Estate.

43. The Fifth Schedule set out the calculation of the service charge payable by the Leaseholder and provided that the service charge was to be calculated:

(i) by dividing the total cost of providing the Building services by the current rateable value of all the flats in the Building (excluding any flats occupied by a caretaker) and multiplying this amount by the current rateable value of the Property (the Building Element)

(ii) by dividing the total cost of providing the Estate Services by the current rateable value of all dwellings on the Estate and then multiplying the current rateable value of the Property (the Estate Element)

(iii) by adding together the Building Element and the Estate.

44. Counsel submitted that Part 2 of Schedule 4 of the Lease related to "**All** costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council… in or about the provision of **any** services or the carrying out of maintenance…" [Emphasis added]. The Applicant was therefore liable to pay the service charge relating to grounds maintenance contracted works and the grounds maintenance responsive works.

45. Addressing the specific point raised by the Applicant that Part 2 of Schedule 4 related to the upkeep of the gardens, forecourts unadopted roadways and pathways within the curtilage of the building, the Respondent submitted that Part 2 was constructed by having a general provision for all charges followed by specific examples. These examples were prefaced with the wording "without prejudice to the generality of the foregoing". This meant that paragraph 3 of the Schedule on which the Applicant relied did not override the general provision within the first few lines of Part 2 of Schedule 4.

46. The Respondent confirmed that these Estate costs were apportioned across 1,070, with each property, including the Property, paying 1/1,070 of the total charge given that Surridge Court was part of the Estate.

## The Tribunal's Decision

47. The Tribunal determines that the apportioned grounds maintenance contracted works and grounds maintenance responsive works are payable under the Lease. The Respondent has charged £586.83 for the

service charge years 2018 to 2023 and the Tribunal therefore finds this amount is payable.

48. In reaching this decision the Tribunal has considered the terms of the Lease and in particular Part 2 of Schedule 4 as set out above. The Tribunal finds that the wording of the Lease means that the Respondent can recover from the Applicant the cost of grounds maintenance for areas other than those within the curtilage of the block where the Respondent lives, namely 1-18 Surridge Court.

49. The Tribunal makes this determination as Part 2 of the Fourth Schedule of the Lease sets out the provisions for the Estate costs. Part 2 of the Fourth Schedule begins with a general provision that provides that all costs, charges and expenses incurred by the Respondent in the provision of any service or the carrying out of maintenance, repairs, renewal, reinstatements rebuilding cleansing and decoration to the Estate are included, as follows:

> "All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements rebuilding cleansing and decoration to or in relation to the Estate…"

50. Part 2 then continues by giving six specific examples of costs and expenses, without prejudice to the generality of what has already been said, as set out below:

"…and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following:-

> 1.The reasonable costs incurred by the Council in the management of the Estate …
>
> 2. The cost and expense of making repairing maintaining rebuilding lighting and cleansing all ways roads pavement sewers drains pipes watercourses party walls party structures party fences walls or other conveniences which may belong to or be used for the Building in common with other premises on the Estate.
>
> 3.The upkeep of the gardens forecourts unadopted roadways and pathways within the curtilage of the Building
>
> 4. The cost of installing maintaining repairing and renewing the television and radio receiving aerials …

> 5. All charges assessments and other outgoings (if any) payable by the Council in respect of all parts of the Estate (other than income)
>
> 6. The cost of insuring and keeping insured throughout the term hereby created those parts of the Estate used or capable of being used by the Tenant in common as aforesaid…"

51. It is therefore necessary to read all of the wording of Part 2 of Schedule 4 as the format is to set out a general provision and then give particular provisions. The wording "in particular and without prejudice" provides a link between the opening general provision and the following 6 particular circumstances. This means that Paragraph 3 of Part 2 of Schedule 4 cannot be read in isolation. Whilst this paragraph does indeed refer to gardens, forecourts, unadopted roadways and pathways within the curtilage of the Building, this does not cancel out the general provision at the start of Part 2 which relates to "all" costs, charges and expenses:

> "All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements rebuilding cleansing and decoration to or in relation to the Estate and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following:-
>
> 1. The reasonable costs incurred by the Council in the management of the Estate …
>
> 2. The cost and expense of making repairing maintaining rebuilding lighting and cleansing all ways roads pavement sewers drains pipes watercourses party walls party structures party fences walls or other conveniences which may belong to or be used for the Building in common with other premises on the Estate.
>
> 3.The upkeep of the gardens forecourts unadopted roadways and pathways within the curtilage of the Building
>
> 4. The cost of installing maintaining repairing and renewing the television and radio receiving aerials …
>
> 5. All charges assessments and other outgoings (if any) payable by the Council in respect of all parts of the Estate (other than income)

6. The cost of insuring and keeping insured throughout the term hereby created those parts of the Estate used or capable of being used by the Tenant in common …"

52. The Estate is defined as the property described in the First Schedule and its extent may from time to time be determined or extended by the Council's Director of Housing and Property Services for the time being whose decision shall be final and binding save in the event of manifest error. The First Schedule defines the Property as being located on the Council's Estate. The Tribunal accepts the Respondent's position that the grounds maintenance works they have charged as Estate charge fall within the Estate as defined by the Lease. The Fifth Schedule of the Lease provides that the service charge is calculated by adding the Building Element to the Estate Element.

53. The Tribunal therefore finds that the Respondent has correctly applied the cost of the grounds maintenance contracted works and grounds maintenance responsive works as a service charge payable under the Lease by the Applicant.

54. There was no dispute that the Lease provides for the Respondent to collect service charges that are payable. For completeness the Tribunal finds that the obligation to provide services is set out in clause 2(2) and 3 and the Fourth Schedule of the Lease (as set out above) and that the Applicant's obligation is pay a service charge is set out a clause 2(2) and the Fifth Schedule.

55. As to the reasonableness of the charge, the Applicant did not specifically challenge any amount that was payable but rather submitted that it was not fair or reasonable for the Respondent to pay for something that he said he did not have the benefit of. Whilst the Tribunal understands the point made by the Applicant and notes that he stated that the garden areas were not seen by him from his flat, the garden areas do enhance the estate where the Applicant lives and ultimately the Lease makes provision for a charge for the grounds maintenance.

**Application under s.20C and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002**

56. In the application form the Applicant applied for an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002.

57. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not make these orders. In reaching this decision the Tribunal has taken into account the decision that it has made and determines that it is not just and equitable in the

circumstances for an order to be made under section 20C of the 1985 Act.

58. The Tribunal does not make an order under paragraph 5A of Schedule 11 of the Commonhold and Leaseholder Reform Act 2002 (an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs) as this does not appear to be applicable to this case under the terms of the Lease. For the avoidance of doubt, the Tribunal would not make this order in any event for the same reasons as set out above for the section 20C order.

**Judge Bernadette MacQueen Date: 23 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).