FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UE/LSC/2024/0030**
Property	**:**	**Abbotsley Country Homes Drewels Lane St Neots Cambridgeshire PE19 6XF**
Applicants	**:**	**Robert Charles Verdier (No. 10) Virginia Lynn Melesi (No.9) Paul Brennan (No.2) Laurence Antony Honeywill (No. 12) Carol Berwick (No.15) Valerie Anne Holliman (No. 22)**
Respondent	**:**	**Pheasantland Ltd**
Type of application	**:**	**Liability to pay service charges/ administration charges**
Tribunal	**:**	**Judge David Wyatt Judge A Arul Mr G F Smith MRICS FAAV REV**
Date of directions	**:**	**25 July 2025**

DECISION

Decision

(1) The sums sought from each Applicant for the legal costs of the High Court litigation, as described below, are not payable as service charges under the terms of their underlease.

(2) The charges sought from each Applicant by the Respondent's managing agents in respect of non-payment of those service charges are not payable as administration charges under the terms of their underlease.

(3) The costs incurred by the Respondent in connection with these 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 Applicants.

(4) No particular administration charge has been proposed in respect of the costs of these tribunal proceedings, so no order is made in this respect.

(5) No order is made for reimbursement of the tribunal fees paid by the relevant Applicant(s).

Reasons

The Chalet Land and the High Court litigation

1. The Abbotsley Country Homes site (the "**Chalet Land**") covers about six acres. It accommodates 20 holiday chalets, of which the Applicants and others hold individual underleases. About half of the underleases are owned by the shareholders of the Respondent, which purchased from developers the Superior Lease (described below) of the Chalet Land.

2. The freehold titles to the Chalet Land and surrounding land are owned by Abbotsley Limited ("**Abbotsley**"), of which Vivien Inez Saunders is sole director and shareholder. In these proceedings, the parties ask the tribunal to decide whether the Applicants are liable to pay service charges towards the substantial costs of defending the Respondent against High Court proceedings brought by Abbotsley and Ms Saunders.

3. The High Court proceedings began with injunctions in late 2022 and, following unsuccessful applications for summary Judgment, are ongoing. The first set of proceedings involve allegations that the (only) water pipe serving the Chalet Land is a trespass, and allegations of trespass and harassment made against the Respondent and individual defendants (including all but one of the Applicants). In the second, brought against the Respondent alone, Abbotsley seeks possession (forfeiture of the Superior Lease) for a range of alleged breaches including alleged failures to enforce the terms of the underleases, as outlined below.

4. As arranged with the parties, we have decided only the issue of payability under the terms of the relevant underleases. We recite, and make general comments about, what we have been told by the parties. None of this is a finding about anything to be decided in the High Court litigation, where we understand oral evidence was heard over some 20 days and the conduct of the parties appears a significant factor. Various interim Judgments from that litigation have already been published. We understand that, following written submissions, oral submissions are being heard this month and it may be some time before the final Judgment is handed down.

These proceedings

5. The First Applicant, Robert Verdier, made an application to the tribunal for determination of whether disputed service charges (and/or administration charges) were payable, under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**"), which was also treated as an application under Schedule 11 to the Commonhold and Leasehold Reform Act 2022 (the "**2002 Act**"). Mr Verdier also sought an order for the

limitation of the Respondent(s) costs in the proceedings under section 20C of the 1985 Act.

6. On 14 February 2025, the tribunal gave case management directions for involvement of any potentially interested parties and for the steps to be taken to prepare for a hearing. On 6 March 2025, the tribunal joined the other Applicants as requested by Leeds Day LLP. The tribunal has dealt with a number of case management applications. There is no need to recite these here beyond noting that the hearing was fixed for 14 July 2025 and notified to the parties on 14 March 2025, the hearing was conducted remotely as requested by the parties, a request by Abbotsley to join these proceedings was withdrawn, a request for adjournment was refused because the Applicants said they were being pressed for payment, and extensions of time were given for case documents and bundles. The Respondent was directed to produce the hearing bundles to assist the Applicants and did so, preparing clear bundles with some detailed reference material in case this was needed.

7. Mr Verdier did not attend the hearing. We understand that he called the tribunal office on the morning of the hearing to say that his computer was broken so he could not join by video and he was unable to join using the telephone number provided. We asked that he be encouraged to keep trying and waited for half an hour, but he did not join and no real explanation was given. We were satisfied that it was in the interests of justice to proceed in his absence. After the hearing had finished, we were given an e-mail which Mr Verdier had sent over lunch. He had not copied this to the other parties, but it said nothing relevant to our determinations below which had not already been said. It confirmed he did not wish to say anything further.

8. At the hearing, Virginia Melesi and Carol Berwick represented themselves and the other Applicants (Paul Brennan and Valerie Holliman) who were together in the same room. Laurence Honeywill attended by telephone and made brief submissions (adopting and supporting those made by the other Applicants). The Respondent was represented by Alan Walker, a director. Jill Beresford-Ambridge (another director, attending with Keith Blackall, the other director) and Rhiiannon Orrow (from HML, the managing agents) attended to give evidence if needed. Others from HML also attended to observe.

Superior Lease

9. By a lease dated 17 July 2003 and signed by Ms Saunders, Abbotsley (then named Abbotsley Golf & Squash Club Limited) let the Chalet Land (the "*Property*") for a term of 125 years (the "**Superior Lease**"). This permits use as holiday and second home residential accommodation in chalets together with all services ancillary thereto. It grants a right to the "*…free and uninterrupted passage and running of water … from the Adjoining Property* [the neighbouring and adjoining land owned by Abbotsley] *in and through any Conduits … in upon through under or over the Property*".

10. Clause 3.7 requires the tenant to put and keep the "*Conduits*" (defined to include pipes "*in under or over the Property or serving the Property*") in good and substantial repair and condition and when necessary to rebuild and renew the same.

11. The Superior Lease provided for underletting of plots once chalets were constructed. In each case, the chalet was to be connected to all Conduits and then capital payment(s) were to be made to Abbotsley in addition to the ground rent. In respect of any underlease, clause 3.14.6 requires the tenant "*strictly to enforce*" the obligations of the subtenant/to use all reasonable endeavours to procure the due performance of all of the subtenant's obligations. It also permits assignment of the Superior Lease to a management company owned by at least 75% of the subtenants, once all of the chalets have been completed.

12. Clause 3.10 requires the tenant to comply with all present and future legislation from time to time in force upon or in respect of the Chalet Land and/or its user. Clause 3.27 requires the tenant to indemnify Abbotsley for all costs and expenses payable by them in respect of the supply of water to the Chalet Land, plus on demand a management charge of 10% of such costs and expenses.

13. We were not provided with the relevant documents, but Mr Walker said in his correspondence with the freeholder that an agreement for lease had provided for the developer to arrange infrastructure works, including connection to the water main. His correspondence said that, following disputes between Abbotsley and the developers, it had been agreed in a deed of variation in 2010 that there were no outstanding obligations in respect of completion of the infrastructure works.

14. It appears that, following assignments to different developer companies (in 2004 and 2010), the Respondent purchased the Superior Lease at auction in 2017. Mr Walker said the shareholders at that time were the owners of 11 of the underleases, those who had provided the funds to purchase. He said that nine of the 10 current shareholders still hold underleases. He volunteered that annual ground rents of some £30,000 are payable (which are currently being used to help fund the legal costs), but said the only purpose of the Respondent is to run the site, with the managing agents (HML) appointed since 2018 and no other assets.

15. It appears that in 2018 Ms Saunders raised concerns about the water supply. Minutes of a "residents' meeting" from March 2019 record that Ms Saunders had asked Anglian Water to cut off the relevant water supply, saying she was not obliged to supply water, only to allow its passage over her land. Several options were suggested, including seeking an independent supply (which was opposed by some of the subtenants).

16. Correspondence with Ms Saunders later in 2019 include indications from Ms Saunders that the golf course and related businesses were now "*redundant*". There were disagreements about calculation of the water supply charges which Abbotsley had billed; Mr Walker said all appropriate

water supply charges were paid throughout. In this correspondence, Mr Walker explained that the subtenants did not wish to incur substantial costs of "*connecting directly to the water main using the route you proposed a few months ago*" when they believed the established arrangement was that Abbotsley was obliged to supply the water and the Respondent was obliged to pay for it. He invited discussions and confirmed willingness to arrange an alternative supply if Abbotsley were willing to pay the installation/connection costs. He made it clear the Respondent would not seek any "profit" from a change.

17. It seems the Respondent's position with the underlease holders had been that it was simply obliged to pay the freeholder's costs of supplying water. We gather that matters came to a head in 2022, first with the water supply turned off by Abbotsley and then alleged trespass on Abbotsley's land to repair and reinstate the water pipe when it was cut/disconnected. It appears an attempt was made to drill a borehole on the Chalet Land, hoping to find an independent water supply, but this was unsuccessful. Mr Walker told us that the Chalet Land is completely surrounded by Abbotsley's land.

18. In December 2022, interim injunctions were obtained forbidding the Respondent and other defendants from entering the redundant golf course and hotel complex, the land which includes the Manor occupied by Ms Saunders and other areas, from causing nuisance or annoyance to Abbotsley or Ms Saunders, and other matters. The injunctions made limited provision for access. We have not seen the particulars of claim which followed. We gather these alleged the water pipe serving the Chalet Land is a trespass, and alleged trespass and harassment by the Respondent and individual defendants (J90PE914).

19. A notice under section 146 of the Law of Property Act 1925, dated 3 January 2023, was also served on the Respondent. This alleges that chalets 1, 3, 4, 5, 6, 8, 9, 12, 14, 15, 16, 17, 18, 19 and 22 were being occupied as "permanent" accommodation, chalet 4 was being occupied for commercial purposes, chalets 6, 9, 16 and 20 had large shed(s) on their plots, and the leaseholders of chalets 7, 9, 11, 12, 15, 16 and 17 had failed to enter into a deed of covenant with Abbotsley. It also alleged that the Respondent had brought machinery onto the Chalet Land to drill for a borehole, that a (director indemnity) insurance policy did not note the interest of Abbotsley, and that nuisance, damage and disturbance had been caused by trespass in relation to Abbotsley's water supply and by individuals on various dates in 2022. It appears the Respondent engaged with the notice, liaising with the subtenants to seek to ensure compliance (or obtain evidence of compliance, such as the deeds of covenant said to have been provided at the relevant times but said by Abbotsley not to have been received).

20. In May 2023, Abbotsley issued its claim against the Respondent for possession of the Chalet Land (K00LU633). Again, we have not seen the documents, but we understand a detailed defence was filed and Abbotsley applied for summary Judgment, which was refused in the summer of 2024.

Abbotsley was given permission to appeal, but it seems the hearing of the appeal was delayed by various further applications made by Abbotsley and Ms Saunders across the two claims, and other matters. For reasons explained in a Judgment dated 17 March 2025, HHJ Karen Walden-Smith confirmed the claim was not suitable for summary determination. We understand the matter proceeded to trial and the final Judgment may be several months away, as noted above.

The disputed service charges

21. Mr Verdier had suggested that in 2019/2020 the Respondent had sought service charges for the costs of installing an alternative water supply. No such charges were identified. Mr Walker said none had been sought, but the Respondent had reserved any right it may have to seek any such costs through the service charge if that became necessary.

22. Mr Verdier disputed an ad-hoc demand which had been made in 2023 for £600 for costs of instructing Counsel to deal with the hearing(s) of the injunction applications in December 2022 (the service charge years are calendar years). The relevant cost must form part of the total actual cost shown in the accounts for 2023, described below, because the figures for 2022 (noted in the 2023 accounts) do not include any such costs.

23. For 2023, the Applicants disputed the £110,809 for legal and professional fees shown in the accounts. £5,540.45 (1/20) had been demanded from each of them.

24. For 2024, the Applicants disputed the £401,632 shown in the accounts for legal and professional fees. £20,081.60 (again, 1/20) had been demanded from each.

25. The Applicants sought to add the estimated charge for the 2025 service charge year and the Respondent did not oppose this. It was not disputed that the budget for this year estimated a further £20,000 for the legal costs of the High Court litigation, and £1,000 had been demanded from each of the Applicants.

26. Ms Berwick agreed that the Respondent should have defended the High Court claims vigorously, and has done so. She observed that the Respondent had paid for its own defence, leaving the individuals sued in their own names to defend themselves at their own cost. Mr Walker said that the Respondent's lawyers could not act for others but had in effect done the bulk of the work. The Respondent had indicated that individuals had been helping restore the water supply at the Respondent's request, so it was hoped relevant individuals could rely on the same matters to minimise their own costs. It was noted that the costs had been controlled by the High Court through the budgeting process. It was not disputed that it was prudent to instruct lawyers, given the gravity of the claims.

27. Ms Melesi/Berwick confirmed the amounts of the costs were not regarded as unreasonable, property specialists were needed and there were no concerns about the solicitors or the "excellent" barrister. Mr Walker said

that the cost awards from interim decisions in favour of the Respondent had been offset by the costs of the extra time needed for oral evidence and submissions. The Respondent had agreed (since they first sought the legal costs through the service charge) to make immediate refunds if/to the extent they are successful and able to recover their costs in the High Court proceedings. It was agreed that one of the leaseholders has paid no service charges at all, leaving the Respondent out of pocket.

Payability – preliminary points

28. Those attending the hearing agreed there was no difference in the relevant substantive terms of the underleases to the Applicants. As arranged, we will refer to the provisions of the underlease of "Plot 9" (clause numbering in other underleases may be slightly different). This underlease was granted on 23 March 2011, for a term of 125 years (less one day) from 17 July 2003. The underlease describes the Chalet Land as the "*Estate*" and leases the "*Plot*".

29. As noted at the hearing, the underleases are to be interpreted using the principles confirmed in Arnold v Britton [2015] UKSC 36 and the other, similarly well-known, authorities mentioned by Mr Walker. Mr Walker also referred to Assethold v Watts [2014] UKUT 537 (LC). He noted the different (sweep-up type) wording in that case, but observed there were some factual similarities, with works started by a neighbour before a party wall award. In that case, although the words "*all … acts matters and things … necessary or desirable for the proper maintenance safety amenity and administration of the* [building]" were general, they were clear enough to include the cost of engaging solicitors to take reasonable steps to ensure the protection of a party wall award would not be lost.

30. The parties also referred to 89 Holland Park Management Limited v Dell [2023] EWCA Civ 1460. In that case, costs of all professional persons (including solicitors) as may be necessary or desirable for the *proper maintenance safety and administration* of the building (and similar sweep-up wording adding "*amenity*" to that list), did not include the legal costs of litigation brought (voluntarily, as Mr Walker said) by the landlord against a neighbour about a planning dispute, seeking to stop their proposed building. Falk LJ observed that some litigation costs might fall within that type of general wording, particularly if they relate to "*…something for which the Lessor has clear responsibility under the Lease*", giving examples such as a dispute about poor workmanship on a repair. The decision emphasised that the specific categories of recoverable cost described in a lease may provide the "*strongest indication*" of the types of expenditure intended to be included in general provisions.

31. Clause 1.2(i) of the underlease provides for the estimated service charge to be specified in a certificate and then paid by the tenant within 14 days. Clause 1.2(ii) has similar provision for a statement of the actual amounts spent, with any shortfall to be paid within 14 days and any surplus to be credited to the tenant's account. Clause 1.2(iii) sought to provide for expert determination of disputes about the statement or the Fifth Schedule (which

sets out the matters which may be included in the general service charge, as discussed below).

32. Mr Walker's first argument referred to Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd [2023] UKSC 2. He argued that the amounts certified must be paid, quoting "*pay now, argue later*" from the decision. That decision was dealing with very specific lease wording which generally made such certificates conclusive. We were not taken to any wording in the underlease which would have a similar effect (or indeed the relevant certificates, only various demands and the final accounts). Further, the Sara & Hossein decision was about the machinery in a commercial, not residential, lease. Here, the parties agree that the Applicants are tenants of dwellings. As such, section 19 (and other provisions) of the 1985 Act limit payability and section 27A(6) would render void any agreement insofar as it purports to provide for determination in a particular manner or on particular evidence of any question which may be the subject of an application to the tribunal under s.27A. Accordingly, even if clause 1.2(iii) might otherwise point towards the interpretation sought, it will not have that effect. That is not to say that nothing is payable until the tribunal makes its determination, only that the underlease wording/landlord's certificate cannot oust the limits in the 1985 Act or the jurisdiction of the tribunal to determine what is, or was, payable.

33. Next, Mr Walker referred to clause 3(b) of the underleases. This includes a covenant by the subtenant: "*…in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the Estate of which the Plot forms part to pay a proportionate part of such rates taxes assessments charges impositions and outgoings but excluding any payable in respect of the receipt of rents payable hereunder or any disposition or dealing with any reversionary estate or interest in the Plot or the Estate*".

34. Mr Walker recognised that this might be said only to deal with taxes and the like. He pointed out that the Fifth Schedule includes at paragraph (10) all rates (including water rates), taxes and outgoings (if any) payable in respect of the Estate other than those for which lessees of Plots are solely responsible. He suggested the part of clause 3(b) quoted above was pointless if it meant only the same thing, so must have a wider meaning. He also referred to a First-tier Tribunal decision which commented (in passing) on a similar clause, as something intended to catch "external" charges (CAM/00KF/LSC/2020/0050). He argued the legal costs were external charges, forced on the Respondent by the freeholder's litigation against them.

35. The drafting of clause 3(b) is wider, or more torrential, than paragraph (10) of the Fifth Schedule. Further, as Mr Verdier had already pointed out, there is no provision in the underleases for ad hoc demands for general service charges. If a tax or other external charge was imposed unexpectedly after estimated service charge demands had been made, the relevant part of clause 3(b) would allow prompt recovery without having to wait until final accounts were prepared after the end of the year. So it may not be

pointless even if the scope is similar to paragraph (10). Moreover, as we discussed at the hearing, Mr Walker is right that this clause is intended to cover taxes, charges or outgoings assessed or imposed by an external authority, or at least someone other than the Respondent. There may have been no sensible alternative to instructing lawyers to advise on and defend the proceedings brought against the Respondent by Abbotsley/Ms Saunders, but that does not turn the corresponding fees billed privately by the Respondent's lawyers into charges or outgoings (etc) within clause 3(b).

Payability – the Fifth Schedule

36. Mr Walker made more persuasive arguments by reference to paragraphs (5) and (9) of the Fifth Schedule to the underleases. The "Service Charge" includes such sums as the Respondent or its managing agents may reasonably expend in respect of "any of the matters" and "the costs and expenses" referred to in the Fifth Schedule.

37. Most of the paragraphs in the Fifth Schedule describe quite specific categories of cost, with no sweep-up provision. Paragraph (1) provides for fees and expenses of managing agents in respect of the Estate and in connection with the collection of ground rent and service charge. Paragraph (2) provides for fees and expenses of any accountant, solicitor or professional person in relation to such collection, preparation, auditing and certification of accounts and the like. Paragraphs (3) and (4) provide for pest control and refuse collection.

38. Paragraph (5) concerns legislation, orders or statutory requirements, and is considered below. Paragraph (6) provides for security equipment and (with consent of 50% of the subtenants) further such equipment and security staff. Paragraph (7) provides for lighting.

39. Paragraph (8) specifically provides for "*Any expenses costs or fees … in relation to … any proceedings or contemplated proceedings or disputes between two or more of the lessees of the Other Plots*".

40. Paragraph (9), considered below, relates to various matters including quiet enjoyment and compliance with the tenant covenants in the Superior Lease.

41. Paragraph (10) provides for rates, taxes and outgoings, as noted above. Paragraph (11) provides for maintenance of the rustic roads and any car parks, but requires consent of 50% of subtenants for any resurfacing not required to comply with "*statutory*" obligations. Paragraphs (12) to (18) deal with "noxious substances", weeds, firefighting and fire prevention equipment, landscape contracts relating to and the irrigation of the Estate, repair of any private access road, maintenance of the sewage treatment plant, insurance and VAT.

<u>Paragraph (5)</u>

42. Paragraph (5) of the Fifth Schedule provides for (with emphasis added):

"*The cost of taking all steps deemed desirable or expedient by the Lessor for complying with and making representations against or otherwise contesting the incidence of the provision of any legislation or orders or statutory requirements thereunder concerning planning public health highways drainage or other matters relating or alleged to relate to the Estate or any part thereof*".

43. We do not accept the first argument made by the Applicants about this. The sole existing water supply (from elsewhere) to the Estate relates, or is alleged to relate, to the Estate.

44. We recognise the force of Mr Walker's argument that if the Respondent had not defended the High Court proceedings any right to the existing water supply (with or without everything else) would have been lost automatically. We were not satisfied by Mr Walker's argument that the costs were incurred to comply with the Building Regulations 2010. When the chalets were constructed, we assume any Building Regulations which applied at the time required appropriate provision for wholesome water, or the like. However, nothing was produced to suggest any continuing obligation to comply with Building Regulations. Nor are we satisfied that the costs were incurred to comply with the Housing Health and Safety Rating System (or the Housing Act 2004). We assume lack of a water supply would be a category 1 hazard under that regime, as Mr Walker said. However, the relevant parts of the 2004 Act do not impose automatic statutory requirements; they provide for assessment of hazards and equip/oblige local authorities to take enforcement action.

45. This leaves Mr Walker's main argument. He relied on the terms of a site licence dated 1 June 2018 which states that it is granted under section 3 of the Caravan Sites and Control of Development Act 1960 (the "**1960 Act**"), replacing earlier licence(s). References to caravans or mobile homes seem odd, when the interim Judgments in the High Court proceedings note that the chalets are heavy fixed structures, not chattels. It appears this may result from the relevant planning permissions for holiday "lodges" on the Chalet Land, aimed at enabling the planning authority to retain control over the development (copies of the planning consents/agreements were not produced to us).

46. The site licence is expressed to be subject to the conditions attached to it. One of those, condition 9, requires that every "mobile home" shall be "*…supplied with mains water suitable for drinking and to meet the reasonable demands of the residents*."

47. This condition is not itself a statutory requirement. Mr Walker's argument was that compliance with this condition was, directly or indirectly, compliance with "legislation" or "statutory requirements thereunder". He referred to section 1(1) of the 1960 Act, which requires that no "occupier" of land (here, the Respondent) shall cause or permit any part of the land to be used as a "caravan site" unless he is the holder of a site licence (a licence under the relevant part of the 1960 Act authorising use as a caravan site). It would be an offence to do so (s.1(2)).

48. It is not obvious why any of these chalets is a "caravan" (as defined in s.29), and so why this is a "caravan site" (as defined in s.1(4)). If they are, s.1 requires a site licence. But there are no indications that failure to comply with a condition of a site licence would (by itself) immediately end the licence, so it is not clear that compliance with the condition is compliance with s.1. The 1960 Act simply gives the local authority power to impose/alter conditions in site licences (s.5), makes it an offence not to comply with such conditions (for which the "occupier" can be fined) and provides that repeated such offences may result in an order revoking the site licence (s.9). These seem to be provisions for potential consequences of failure to comply (rather than a statutory requirement to comply) with whatever conditions may be imposed by a local authority in a site licence.

49. That said, we can see at least superficial force in an argument that legislation is (in effect if not expressly) requiring compliance with something if it creates criminal liability for failure to comply.

50. Even if some steps for preserving or procuring a water supply could be said to be desirable or expedient for complying with the 1960 Act (i.e. if this is a "caravan site" and those words are read widely to include steps seeking to avoid potential offences or revocation of the site licence to ensure compliance with s.1), we are not satisfied that the legal costs of defending the High Court proceedings would fall within paragraph (5).

51. Mr Walker made the fair point that, although paragraph (5) does not refer expressly to lawyers, it may go without saying that lawyers may be needed for some of its components (such as making representations against or contesting any legislation or order). We recognise that some types of legal advice might fall within this paragraph in some circumstances.

52. However, as noted above, many of the categories of cost in Schedule 5 are narrow and even the wider categories are rather limited. The parties did not take us to any clear responsibility in the underleases to supply water. Paragraph (8), in providing specifically for costs/fees in relation to any proceedings between subtenants of plots, suggests the parties would have referred to costs of proceedings if they had intended to include these in paragraph (5) or elsewhere.

53. Clearer wording would be required to bring into these service charge provisions the legal costs of defending substantial litigation with a third party to seek to preserve the existing water supply. Further, a large part of the relevant costs seem to be of defending trespass and harassment allegations (and the corresponding allegations in the forfeiture proceedings) which followed steps taken to reinstate the water supply, not themselves of steps to comply with legislation or statutory requirements thereunder, and other alleged breaches in relation to the underleases.

Paragraph 9

54. Mr Walker also relied on paragraph (9) of the Fifth Schedule. This provides for the reasonable and proper expense incurred in carrying out the obligations in clause 6 of the underlease. Clause 6 provides for quiet

enjoyment (i), insurance, forms of underlease of other plots, repair and cleaning of the Estate and enforcement of covenants entered into by subtenants of other plots subject to an indemnity and security (viii). It also provides, in 6(iv), for the lessor to pay the rents and other sums payable under and perform and observe all of the tenant's covenants and obligations contained in the Superior Lease save to the extent the lessee is liable to perform and observe them pursuant to its obligations under the underlease.

55. First, Mr Walker relied on the covenant for quiet enjoyment in clause 6(1), focussing on the words "*…shall peaceably hold and enjoy the Plot during the term…*". We are not satisfied that carrying out the obligations in this clause can include the costs of defending the High Court proceedings. The extract above has to be read with the following words "*…without any interruption by the Lessor or any person or body rightfully claiming under or in trust for him*". In the usual way, this is a covenant by the Respondent that it (and any below it) will not interfere with the demised property, not a guarantee to defend against interference by the superior landlord, let alone to defend legal proceedings in relation to matters outside the demise.

56. Mr Walker relied mainly on the obligation to perform and observe clause 3.10 of the Superior Lease. As noted above, this requires the Respondent to comply with all present and future legislation from time to time in force upon or in respect of the Chalet Land and/or its user. For the same reasons explained above in relation to paragraph (5) of the Fifth Schedule, we are not satisfied that the legal costs of defending the High Court proceedings can be costs of compliance with the legislation identified by Mr Walker.

57. We asked whether it was being said that any of the relevant costs were of:

    a. repairing, rebuilding or renewing the "*Conduits*" (defined to include those serving the Chalet Land, as noted above) as required by clause 3.7.1 of the Superior Lease; or

    b. complying with the obligations in clause 3.14.6 of the Superior Lease to procure the due performance of the subtenant's obligations under each of the underleases (when responding to the section 146 notice, for example).

58. Mr Walker said that he was not seeking to rely on the former, at least. It seems to us that he was right not to do so and that neither point would be enough for the costs sought by the Respondent in any event. We understood that costs incurred in physically reinstating water pipe(s) were paid and those might have been within the scope of repair of the Conduits (although that seems conceptually odd if the superior landlord had disconnected them). However, the costs incurred by the Respondent in defending the High Court proceedings were not costs of repairing the Conduits.

59. Similarly, no real case was made and we were taken to no evidence that any of the relevant legal costs were incurred in procuring compliance with the

underleases. We have seen correspondence from the Respondent to the subtenants seeking to ensure compliance, but as with other matters they seem helpfully to have been carrying out this work themselves, not through their lawyers, to seek to minimise the costs. Further, it seems likely that at least some of the relevant work by the Respondent and any relevant advice from their lawyers was, in relation to matters said to be continuing, obtaining evidence that they had been complied with and there was no breach, as Ms Berwick argued.

Conclusions

60. The legal costs sought are not payable under the terms of these underleases. While better (or differently) drafted underleases might provide (or provide more clearly) for some costs of maintaining essential services and perhaps some legal advice in this respect, it would be unusual for costs of substantial litigation of this type to be recoverable through the service charge.

61. The remaining question from Mr Verdier, about whether the costs of installing an alternative water supply might in future be payable through the service charge, is vague and cannot be answered in these proceedings. The Respondent is not currently proposing to demand any such charges and there are too many variables. What would the alternative be? For example, if at the request of any person Anglian Water used its statutory powers to install a new water supply over the freeholder's land, or simply charged for connecting to the mains whatever other pipes the parties might be able to arrange, would the statutory charges Anglian Water impose for this fall within clause 3(b) of the underleases? Would it make any difference if they or any other authority were using enforcement powers? Might any other costs of a new supply fall within any of the general service charge provisions noted above, or be matters of compliance with any planning consents? We cannot make any determination without a proper case about this.

Administration charges/costs

62. The Applicants had been directed to identify the specific administration charges they wished to challenge. They had not done so, but their case documents made it clear they wished to dispute all alleged late payment charges and the like in relation to the service charge demands for the legal costs.

63. The service charge demands produced in the bundle include charges described as "arrears management fee", "instruction fee" and "debt collection fee" for various sums, mainly modest (£108, for example) but some larger (£300 or £420, for example). To the extent these relate to non-payment of the legal costs claimed through the service charge, these are not payable, because such costs are not payable through the service charge and no provision of the underleases was identified which would allow such fees to be recovered from an individual lessee as administration charges. Mr Walker rightly confirmed that these would not fall within clause 3(g),

which provides only for costs incidental to the preparation and service of a section 146 notice.

64. Mr Walker observed that it seemed unfair for the underleases not to provide for appropriate administration charges to be paid by a defaulting leaseholder, rather than potentially by all leaseholders through the service charge. That may be (we make no determination that such charges would be payable through the service charge), but generally these underleases do not provide for such administration charges. As Mr Walker pointed out, clause 3(n) does provide for interest on late payments, but the service charges for the legal fees were not payable.

65. As to the applications under section 20C of the 1985 Act, Mr Walker confirmed that no legal fees had been incurred. The only cost incurred had been preparing the bundles (a little over £560, because paper copies had been required by Mr Verdier and the tribunal). He confirmed these were not payable, and would not be claimed, through the service charge. Accordingly, as discussed at the hearing, it appears just and equitable to make an order under section 20C in respect of all costs incurred, to avoid any possible dispute about this in future.

66. No particular administration charge had been identified by any of the Applicants (or sought by the Respondent) for costs of these tribunal proceedings. Accordingly, we make no order under paragraph 5A of Schedule 11 to the 2002 Act, but this does not preclude a new application for such an order if any such administration charge is sought in future.

67. The Applicant(s) sought reimbursement of the tribunal fees they had paid. It appears these were both paid by Mr Verdier (a total of £330) and he has been successful on the issue of payability of the legal costs. However, the tribunal had directed the Respondent to produce the bundles, without which the tribunal could not have made a determination, for Mr Verdier and the other Applicants. Applicants normally have to produce bundles at their own cost. These bundles were substantial, with each set across four lever-arch files. Although much was reference material, it was helpful to include this and far more could have been included. Mr Verdier and the tribunal required hard copies of the bundles and the Respondent will not be able to recover through the service charge their costs of over £560 of producing these. Accordingly, we make no order for reimbursement; the parties should each bear their own costs of these tribunal proceedings.

Comments

68. In these proceedings, we can form no view about Abbotsley or Ms Saunders, or the merits of the High Court litigation. Our impression, right or wrong, was that the Applicants and those attending for the Respondent are in a truly invidious position but have in these tribunal proceedings behaved reasonably and cooperatively.

69. We understand that sadly there have been disagreements with Mr Verdier. He has indicated that he would not be willing to pay a share of the costs of putting in an alternative water supply. It is not clear whether he

understands any risks that he may lose his property (or be without a water supply) if the freeholder is successful. Mr Walker agreed this was a very distressing situation and expressed sympathy for all of the leaseholders, including Mr Verdier.

70. We recognise that the Applicants are upset about pressure put on them to make substantial payments (which some of them said they simply could not afford) towards the Respondent's legal defence costs. We do not criticise the Respondent for seeking contributions through the service charge. First, they had an arguable case. Second, as Mr Walker said, it was the freeholders who sought to change the existing water supply arrangements. Whether or not some subtenants were right to oppose paying for an alternative supply/easement as demanded by the freeholder, disputes escalated alarmingly quickly and have turned into what Mr Walker described as an existential threat. As Ms Berwick noted, if the freeholder is successful all of the leaseholders may lose everything. If some of the leaseholders had not been able to lend sufficient funds to the Respondent to enable it to continue defending the perhaps surprisingly difficult, lengthy and hard-fought litigation in the High Court, all of the leaseholders might already have lost everything, subject to any applications for relief from forfeiture (which might have come at an impossible price even if granted).

71. We recognise that some (at least Ms Melesi, Mr Honeywill and Ms Berwick) may have even more cause to be aggrieved than others, having only purchased their underleases in late 2021 and 2022 respectively. Mr Honeywill said in his witness statement that the water had been cut off a matter of days after his purchase in March 2022. These Applicants said their sellers had failed to disclose the dispute about the water supply but had been unable to afford to pursue claims against them, and were unhappy about information provided by the Respondent or their service providers in response to whatever enquiries were raised by their solicitors. We can only suggest that they take independent legal advice about this.

72. We do not know, but it may be in the interests of the parties to put aside their differences and support each other in respect of the challenges they are currently facing, at least until the outcome of the High Court litigation and, if need be, to find a solution to the practical problem of the water supply they all need.

Judge David Wyatt **25 July 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).