



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

<b>Case reference</b>	<b>:</b>	<b>HAV/00ML/LSC/2024/0610</b>
<b>Property</b>	<b>:</b>	<b>Flats 14 &amp; 24 Pavillion Court, Grand Parade Mews, William Street, Brighton, BN2 9RU</b>
<b>Applicant</b>	<b>:</b>	<b>Pauline Schellerup Flat 14 and Gerald Rampersad Flat 24</b>
<b>Representative</b>	<b>:</b>	<b>None</b>
<b>Respondent</b>	<b>:</b>	<b>Retirement Lease Housing Association (RLHA)</b>
<b>Representative</b>	<b>:</b>	<b>None</b>
<b>Type of application</b>	<b>:</b>	<b>For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985</b>
<b>Tribunal members</b>	<b>:</b>	<b>R Waterhouse FRICS</b>
<b>Venue</b>	<b>:</b>	<b>FTT (Property Chamber) Residential Property, Havant Justice Centre, Elmleigh Road, Havant, Portsmouth.</b>
<b>Date of decision</b>	<b>:</b>	<b>11 August 2025</b>

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal makes the determination, that the extent of the property to which the landlord can provide services and make service charge demands is set out in the lease and described as Land Registry title number ESX146748.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 nor paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, preventing the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years
2. The Applicant concerns " the landlord's eventual share of eventual expenditure on the repair/maintenance of the access road to the building and whether that expenditure is recoverable from leaseholders under the Service Provision. No expenditure has been incurred as yet but repairs to the road are necessary and the landlord considers their share is recoverable from the leaseholders under the lease."

## **The Determination.**

3. The matter was determined on the papers before the tribunal, contained within a bundle of 138 pages.

## **The background**

4. The tribunal issued directions on 4 March 2025 listing the application for a case management and dispute resolution hearing on 25 April 2025. The issue to be determined is whether the Applicant is liable to contribute towards expenditure relating to the access road.
5. Further Directions were issued on 25 April 2025. Those Directions indicated a preliminary opinion that the application was likely to be suitable for determination on the papers. There have been no objections to this approach.

6. In Directions dated 21 July 2025, Judge Lumby reviewed the bundle and directed the matter remained suitable for determination on the papers and that it should be undertaken in a timely manner.
7. The properties which is the subject of this application are two, two-bedroom flats in a private purpose built sheltered housing complex for over 55s , comprising forty –five one and two bedroom flats (Flat 1 is reserved for the Resident Estate Manager) , plus office, guest suite, residents’ lounge and kitchen, disabled toilet and shower room, car park and garden. The development is Known as Pavillion Court.
8. Pavillion Court is located on a private access road, known as Grand Parade Mews. When the building was constructed, in the early 1990s, it was anticipated that the road would be adopted. However, that did not happen and the access road has remained a private road.
9. 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.
10. The Applicant’s holds a long leases of the Flats 14 and Flats 24 respectively, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issue**

11. The issue before the tribunal is whether the Respondent is permitted to demand a service charge for the maintenance of an access road to the development.

### **The Applicant’s Submission**

12. The Applicant submits that under an agreement dated 14 April 1988 the Respondent purchased land on which to construct the property, the Respondent covenanted with the vendor (the transferor) to contribute towards the maintenance of the future access road until such time as it was adopted.
13. The Applicant assert the Transferor covenanted to construct the access road as well as to build an office block (which became 1 Edward Street) on the land they retained. The access road has not yet been adopted.
14. The Applicant say that in September 2022, leaseholders informed the Respondent that the drainage grille at the bottom of the access road (northwestern corner) was damaged, and a leaseholder or visitor risked

serious injury if they should trip in the resulting hole. The current freehold owner was established by leaseholders last year at their own expense and the information communicated to the Respondent. The Title Plan clearly shows the access road forming part of that freehold title. [ 97].

15. The Applicant acknowledge that the Respondent does not own the access road and therefore cannot unilaterally carry out repairs. This is stated to be not in dispute. The Application to the Tribunal is simply to establish that leaseholders are not required under the lease to contribute towards any eventual repairs.
16. The Applicant submits the Respondent has maintained that their share of any repairs to the road are recoverable under the Service Provision.
17. The Applicant asserts that the leases define the property excluding the access road. Additionally, that the Respondent's freehold land [121] does not include the access road.
18. The Applicant submits that the Third Schedule of both Applicant's leases states under clause 3 [50] that "The expenditure to be included in the Service Provision shall comprise all expenditure of RLHA in connection with the repair management maintenance and provision of services for the Property and shall include (without prejudice to the generality of the foregoing):-"
19. The Applicant submits a reasonable person would not conclude from either ; The Third Schedule or the other clauses of their lease that they were obliged to contribute towards the Respondent's share of any eventual repairs to the access road.
20. Reference is made to the Upper Tribunal decision RLHA v Pauline Schellerup & Phyllis Woodford [LRX/13/2020] para 38.[ 132] where the Deputy Chamber President observed that the lease contained no mechanism for determining the resident manager's accommodation. The Applicant's assert that the lease contains no mechanism for calculating leaseholder's share of any repairs to the access road and so that the leases do not provide for the recovery under the Service Provision of the Respondent's share of future expenditure on the access road.

### **The Respondent's submissions**

21. The Respondent submits "the property is reached via an unadopted road, Grand Parade Mews (the access road). "
22. At paragraph 6 of the Respondents Statement they assert that RLHA advised Leaseholders at Pavillion Court that they were unable to make

the repair themselves due to the road not falling within its demise or title number ESX146748.

23. The Respondent in their Reply at paragraph 9 asserts that until the situation occurs “it is a moot point” and would take legal advice at the time on whether repairs to the road could be recovered through the service charge.
24. The Respondent at paragraph 10 of their Statement, agrees that the demised property Pavillion Court does not form part of the access road, and that the development merely has a right of access to the property and the underground garages.
25. The Respondent does not see the relevance of citing RLHA V Pauline Schellrup and Phyllis Woodford which related to whether an accommodation fee was recoverable.

### **The tribunal’s decision**

26. The tribunal has considered all the submissions placed before it. The tribunal does not take guidance from RLHA v Pauline Schellerup and Phyllis Woodford, whilst the case relates to the same Property, it is argued on a different point.
27. At no point in the papers is the extent of the “access road” specifically.
28. The parties , however, agree in their submissions that the “access road” does not form part of the freehold title for the development known as ESX146748.
29. The tribunal has had reference to the lease. The lease at clause 4 states “RLHA is the registered proprietor of the freehold land and buildings at Pavilion Court, Grand Parade Mew , Brighton, East Sussex registered at HM Land Registry with Title Absolute under Title Number ESX146748 comprising 45 self-contained units of accommodation together with an underground garage area driveways outbuildings footpaths and gardens and known as Pavilion Court (the property).
30. The lease in the Third Schedule - “The Management Service Charge” at paragraph 3 states “The expenditure to be included in the Service Provision shall comprise all expenditure of RLHA in connection with the repair management maintenance and provision of services for the Property and shall include...”
31. The leases are drafted for the leaseholder to pay for services which the landlord provides to the Property. The extent of the “Property” is that shown in the Land Registry title number, ESX146748. By definition

therefore the landlord can provide services to the property and subject to the normal considerations of reasonableness and payability, payment can be demanded by the landlord.

32. The parties agree that the “access road “known as “Grand Parade Mews” does not form part of the landlord's property. Whether or not any or part of what is known as “Grand Parade Mews” forms part of the land included in the title number ESX146748, is outside the tribunal’s remit.
33. In summary therefore the plan attached to the Land Registry title ESX146748 provides the extent of the Property for the lease. The service charge provisions applying there to.

#### **Application under s.20C and refund of fees**

34. The Applicant form includes an application for an Order, under Landlord and Tenant Act 1985 section 20, and the Commonhold and Leasehold Reform Act 2002, Paragraph 5A of Schedule 11, to prevent any costs incurred by the landlords to be passed on to the leaseholders either by way of service charge or administration charge.
35. Having read the submissions from the parties and taking into account the determinations above, the tribunal does not make such an Order.

#### **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).