FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/45UH/LSC/2024/0522
Property	:	2 Chatham Road, Worthing, West Sussex, BN11 2SP ("the premises"
Applicant	:	Mr F Wilson & Miss J Callaway
Representative	:	David Quelch solicitor
Respondent	:	Mr T Holter
Representative	:	None
Type of Application	:	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Member	:	Tribunal Judge H Lederman Professional member: Ms T Wong Surveyor member P Cliffe-Roberts FRICS
Date of hearing	:	2nd July 2025
Date of Decision		**12 September 2025**

DECISION AND REASONS

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

Decision

The Tribunal determines that:

1. **The Applicants as leaseholders under the lease dated 14th July 1987 of Flat 2 Chatham Road Worthing West Sussex ("the premises") are liable to pay as service charge a 50% share of the costs incurred by the Respondent as landlord for the following items:**

    1.1 Fire proof letter box (the 50% share being estimated at £100.00);

    1.2 Fire risk assessment for the building in which the premises are located (the 50% share being estimated at £250.00);

    1.3 Cost of repair to soil stack pipe (50% currently estimated at £600.00)

    1.4 Legal costs insurance taken out by the landlord in the relevant service charge years (the 50% share being £163.85).

2. **The Respondent is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from the consultation requirements imposed on the landlord for works to the soil stack pipe undertaken in the 2024 service charge year.**

3. **The Respondent is not required to reimburse the Applicants for any application or hearing fees relating to these proceedings.**

4. **The Tribunal will consider submissions by the parties about whether an order should be made under section 20C of the 1985 Act whether the costs incurred or payable in respect of this application for dispensation or complying with the directions in this Decision are relevant costs to be included in service charge payable by the Applicants or whether an order should be made extinguishing or reducing any liability to pay litigation costs under Schedule 11 of the Commonhold and Leasehold Reform Act 2002. A decision will be made following**

written comments on this issue which should be sent to the Tribunal within 14 days of receipt of this Decision

REASONS

Background

1. The Applicants have made an application for determination of liability to pay and reasonableness of service charges for the years 2018 to 2024, received on 6 September 2024. The Applicants also ask the Tribunal to make orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

2. The application only specifically identifies issues in relation to 2024 service charge year relating to a fire risk assessment, a fire proof letterbox, major works to a soil stack pipe and the Landlord's legal insurance. It is only these issues which Tribunal's Directions of 21st February 2025 and 27th June 2025 directed would be considered at this hearing.

Structure of these reasons

3. In these Reasons where narrative, facts or descriptions are recited, they should be treated as the Tribunal's findings of fact unless stated otherwise. These reasons address in summary form the key issues which the Tribunal considers it necessary to determine consistently with the overriding objective. Page references are to the Hearing Bundle prepared by the Applicants unless stated otherwise or to the supplemental bundle prepared by the Respondent of documents omitted from the Applicants' hearing bundle.

4. The premises comprise a ground floor flat being part of a semi-detached house converted into two flats in 1986. The leaseholders' share of the service charge expenditure provided in the lease is one half unless provided otherwise: see clause 4(ii)(a) of the Lease. This is a 99 year lease commencing on 25th December 1986.

The Fire proof letter box

5. Mr Holter the Respondent landlord gave evidence that the letter box was old and the interior tube required replacement to minimise the risk of spread of fire due to arson and similar misconduct. The Tribunal sees no reason to doubt this evidence consistently with the fire risk assessment commissioned on behalf of the Respondent found at pages 119-221 dated 10 11 2024. The letter box was probably more than 20 years old as there was no evidence of when (if ever) it was last replaced or installed and would have been expected to have deteriorated. The cost is reasonably incurred. The cost is payable as service charge under paragraph 3 of the Fourth Schedule to the Lease. The Tribunal was not

persuaded by the Applicants' evidence that the letter box was in good condition or that the inner tube did not need repair which appeared to be unsupported by any independent evidence photographic or otherwise. The Applicants' case amounted to little more than bare assertion. It seemed inherently unlikely the Respondent would undertake such work if it was not a necessary step to remedying an issue of disrepair and the landlord retained the upper flat at the premises.

The Fire risk assessment

6. The Applicants objected to this service charge item on the ground that it was not expressly mentioned in the Lease. It is correct to note that there is no expressed mention or a clause enabling the costs of complying with statutory obligations in the Fourth schedule to Lease or in any other part.

7. The Respondent through his solicitor drew attention to paragraph three of the fourth schedule to the Lease. This authorised service charge expenditure upon "All other expenses (if any) incurred by the landlords in and about the maintenance and *proper and convenient management and running of the property*...". (emphasis added) This paragraph must be read together with the other expenses listed in the Fourth schedule.

8. In interpreting paragraph 3 of the Fourth schedule to the Lease, the Tribunal bears in mind the guidance in the Supreme Court from decisions such as *Arnold v Britton* [2015] A.C. 1619 that interpretation of a contract such as a lease involves identifying what the parties had meant through the eyes of a reasonable reader. It has been stressed that this is a single exercise, which considers the practical consequences of possible readings:

> "This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated." (*Wood v Capita Insurance Services Ltd* [2017] A.C. 1173

9. With this guidance in mind the Tribunal turns to consider the landlord's obligation to insure the premises in clause 5(b) of the Lease. This is an example of a relatively old form of insurance obligation. A copy of the insurance policy for the building as a whole including the premises is found at pages 93 – 131. In common with many other insurance policies it is a policy condition (a requirement of the insurer) that the insured in this case the landlord, will take all reasonable precautions to prevent loss destruction or damage to the insured property and will comply with all legal requirements and safety regulations and conduct the business (that is to say the landlord's business) in a lawful manner.

10. The Service Charge Residential Management Code (an approved statutory code of guidance contains the following passage at paragraph 8.4:

> “The Regulatory Reform (Fire Safety) Order 2005 came into force in October 2006 and replaced over 70 pieces of fire legislation. It applies to all non-domestic premises in England and Wales, including the common parts of blocks of flats and houses in multiple occupation (HMOs). Under this Order, the ‘responsible person’ must ensure that a fire safety risk assessment has been undertaken by a ‘competent person’ and must implement and maintain a fire management plan. This may be included within the generic risk assessment, or undertaken separately by a fire safety specialist. You should ensure that assessments have been undertaken and an up-to-date fire management plan has been implemented for every scheme. Article 3 of The Order defines the ‘responsible person’ as • an employer, if the workplace is under his or her control, • a person who has control of the premises in connection with trade or business, or • the owner of the property.”

11. That passage accurately summarises the landlord’s obligations. The Tribunal considers it clear beyond any shadow of a doubt that the proper and convenient management of the building and the premises requires complying with reasonable requirements of the insurers and complying with the Regulatory Reform (Fire Safety) Order 2005. The Applicants did not dispute the accuracy or content of the fire risk assessment. The cost of this item is reasonably incurred and is authorised by the Lease. 50% of the cost is payable by the Applicants.

Cost of repair to soil stack pipe (50% currently estimated at £600.00)

12. The Applicants’ objection to payment of this cost by way of service charge appears to be twofold. Firstly it is said that the landlord’s repairing obligations under clause 5(d) does not extend to repairing waste pipes. Secondly it is said that very clause only permits the landlord to charge service charge for repairs and maintenance of drains in “under and upon the building whether enjoyed or used by the lessee in common with the owner occupier or less of the other flat”: see their statement at page 52.

13. The applicants contend that the soil stack removes wastewater from the upper floor of the building and has no impact or significant role in relation to in relation to the underground Drainage system. They point to a vent pipe at the end of the drive to the front of the property which they say connected to the main drain at the manhole cover which they believe admits air into the main underground drainage system. They say that this other vent fulfils the function of ventilation. This is repeated in their letter of 1st April 2023 at page 155.

14. The Tribunal has carefully considered the photographs in the hearing bundle referred to by the Applicants. The vent at the end of the drive is depicted in a photograph of page 154. Confusingly the photographs at pages 161 – 163 are of an entirely different property and of no assistance at all to resolving this issue. A photograph of the exterior of the property is found in the fire risk assessment report of February 2025 at page 225.

15. There is a letter of 22nd April 2025 from J Cooper the contractor who carried out the works to the soil stack pipe. This is at page 165. That letter confirmed his opinion and that of others that the soil pipe operated as a vent for underground pipe work to prevent gases entering the building. Mr. Cooper did not attend the hearing to give evidence. To that extent his evidence is of limited weight.

16. Neither of the Applicants had any qualifications or relevant experience in building construction or specialist knowledge relating to drainage systems. Miss Callaway was an intelligent and articulate witness. She was unable to refer the Tribunal to any documentary or independent confirmation of the Applicants' belief that the soil pipe did not assist in venting the drainage system. At pages 152 – 153 of the bundle the Respondent landlord included some excerpts from the NHBC standards on drainage systems and the need for ventilation of such systems. Photographs of the corroded stack pipe before repair work was carried out at pages 157 to 160 are consistent with this point being in place before the conversion into two flats took place.

17. In addition to the available evidence in the hearing bundle the tribunal used its expertise and background knowledge of drainage systems. On the balance of probabilities, the Tribunal is clear that this soil pipe serves both the premises and the upper floor flat at the building for the purposes of ventilation and preventing the build-up of unpleasant and unhealthy gases. The Applicants did not dispute the amount spent on this work. The cost was reasonably incurred. The costs were authorised as a service charge item relating to the drains under paragraph 1(b) of the Fourth Schedule to the Lease. A 50% share of the cost is payable by the Applicants as service charge

Dispensation from compliance with the consultation requirements soil vent pipe costs

18. The Respondent made an application for dispensation from compliance with the Consultation Requirements imposed by section 20 of the Landlord and Tenant Act 1985 which is at pages 171- 188. At page 181 the Respondent Landlord explained that in 2023 he was concerned about the condition of the vent soil pipe and obtained 3 quotations for the works. A notice of intention to carry out qualifying works with quotations was served on 17th June 2024: see pages 167 -170. The Respondent landlord says there was a further inspection on the 16th July 2024 there was movement in the vent and the work needed to be completed urgently. The work was carried out on the 22nd July 2024.

The overall approach to application to dispense with the statutory consultation requirements

19. The Tribunal may grant dispensation if satisfied that it is reasonable to dispense with the requirements (section 20ZA(1) the 1985 Act). The Tribunal only has to be satisfied that it is reasonable to dispense with the requirements; it does not have to be satisfied that the landlord acted reasonably. The correct approach to the grant or refusal of dispensation has been held by the Supreme Court to be as follows: a) the consultation requirements are not an end in themselves, but a means to the end of the protection of tenants in relation to service charges: their purpose is to ensure that tenants are protected from paying for inappropriate works, or from paying more than would be appropriate; b) in considering dispensation requests, the tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements; c) it is neither convenient nor sensible to distinguish between a serious failing and a minor oversight, save in relation to the prejudice it causes; d) the financial consequences to the landlord of not granting dispensation are not a relevant factor, and neither is the nature of the landlord; e) while the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the tenants: once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

20. The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application; g) insofar as the tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

21. That conclusion does not enable a landlord to buy its way out of having failed to comply with the consultation requirements, because it will still face significant disadvantages for non-compliance, namely (i) it must pay its own costs of making and pursuing an application to the tribunal for a dispensation; (ii) it must pay the tenants' reasonable costs of investigating and challenging that application, and (iii) it must accord the tenants a reduction to compensate fully for any relevant prejudice, knowing that the tribunal will adopt a sympathetic (albeit not unrealistically sympathetic) attitude to the tenants on that issue. (Woodfall: Landlord & Tenant, 7.199.8; citing *Daejan Investments v Benson and Others* [2013] UKSC 14)

22. The Applicants did not point to any financial or other prejudice which they suffered by reason of the Respondent's failure to comply with the consultation requirements. The Tribunal has no hesitation in granting dispensation in the circumstances of this case. The Applicants did not refer to any costs of investigation or other costs associated with this dispensation application and the tribunal does not consider it

appropriate to make dispensation conditional upon payment of any costs.

Legal costs insurance taken out by the landlord in the relevant service charge years (the 50% share being £163.85).

23. The Respondent landlord refers to an earlier tribunal decision in 2015 which he says approved the reasonableness and payability of an insurance policy in materially identical terms to that which is in issue in these proceedings. He excerpts parts of that decision at page 74 – 75 of the bundle. Unfortunately the entirety of that decision is not included in the hearing bundle and the tribunal was unable to locate the original decision from 2015. Accordingly the Tribunal is unable to derive any assistance from that earlier decision. The Tribunal however has no reason to doubt what is said about that decision.

24. The Applicants' principal objection to the cost of this insurance was that there was no provision in the lease under clause 5(b) for the cost of legal expenses or legal costs to be included in service charges under the lease. There appeared to be a secondary objection on the ground that any discount applied should also apply to the cost of this insurance: see page 51.

25. The Respondent landlord says the insurance policy is for legal cover as well as legal advice needed when trying to manage a leasehold building. He accepts that it might include the costs of advice and proceedings against the Applicants but that it also covers advice about issues with contractors or with managing agents. He says that he applied all relevant discounts: see page 56. The Tribunal so finds.

26. A copy of the part of the insurance policy providing cover for legal expenses is found at pages 132-144. It is clear from the definition of "cover" in paragraphs 2a, 2b, 2c and 2 d on page 139-140 that the cover encompasses property legal disputes with leaseholders, health and safety prosecutions and tax protection. It also covers rent recovery and eviction.

27. Clause one of the Lease at page 26 requires the leaseholder to pay 1/2 of the amounts which the landlord expends in effecting or maintaining insurance of the property or any part against loss or damage by fire and such other risks as the landlord think fit. This cost falls within the definition of service charge in section 18 the 1985 Act. The Tribunal is clear that that the cost of this policy is authorised by that clause.

28. The Applicants have been unable to demonstrate that the inclusion of cover for legal costs of rent recovery eviction or disputes with them has to any extent, increased the premium or any other cost associated with this insurance. In other words, had these aspects of the cover of this policy been omitted, there was no reason to believe that the cost of insurance would be any lower. The Applicants have not produced any other quotations or evidence about insurance policies available or the

costs of such policies. The Tribunal finds the costs of this legal expense section of the policy are reasonably incurred because they provide the Respondent landlord, with legal cover which he clearly requires in the context of management of this building and the cost was reasonably incurred.

Application and hearing fees

29. The Applicants have not succeeded to any extent in their challenges to the service charges. For this reason alone The tribunal would not find it just or equitable to order the Respondent landlord to reimburse these fees. In addition however the Applicants displayed an obstructive and difficult attitude in relation to preparing the hearing bundle, refusing to include documents which the Respondent wished to include leading to further directions issued in June 2025. This entailed further unnecessary use of the party's resources and that of the Tribunal and is to be deprecated.

H Lederman

Tribunal Judge

12th September 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.