FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/24UP/LSC/2025/0608**
Property	**:**	**Flat 4, Austen House, Winchester, SO23 8DA**
Applicant	**:**	**Ventseslav Derzhitski**
Representative	**:**	**None**
Respondent	**:**	**Austen House Management Ltd**
Representative	**:**	**Rachel Bainbridge, (Director) Alan Gregory (Managing Agent)**
Type of application	**:**	**Determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**R Waterhouse FRICS** **C Davies FRICS** **S Mason FRICS**
Venue	**:**	**Havant Justice Centre, Elmleigh Road, Havant, Portsmouth.**
Date of decision	**:**	**15 September 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines the following service charge amounts are payable by the Respondent for the following years;

Service Charge Year 2022-23 (Actual)

Item	
Accountancy fees	£1048 (Flat 4 £80.62)
Freehold Company Accountancy Fees	£0
Caretaker's wages	£4,867 (Flat 4 £197.19)
Caretaker's wages	£4,867 (Flat 4 - £77.99)
Major Works/ Roof works	£4,845 (Flat 4- £372.69)

Service Charge Year 2023-24 (Actual)

Item	
Accountancy fees	£1121 (Flat 4 - £86.23)
Company Accountancy fees	£0
Staff Salaries	£6546 (Flat 4 - £251.77)
Staff Salaries	£6546 (Flat 4-£403.53)
Contribution to reserve fund	£22,650 (Flat 4 - £1742.30)

Service Charge Year 2024-2025 (Budget)

Item	
Accountancy fees	£1841 (Flat 4- £141.61)
Staff salaries	£5928 (Flat 4- £228)
Staff salaries	£5928 (Flat 4 - £356)
Contribution to the reserve fund	£22,650 (Flat 4 - £ 1742.30)

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 nor the Commonhold and Leasehold Reform Act 2002 Paragraph 5A of Schedule 11.

Background

1. The Applicant made an application for determination of liability to pay and reasonableness of service charges for the years for various items within the service charge 2022-2023, 2023-2024 and 2024-2025 (Budget).

2. The application was received on 9 January 2025.

3. The Applicant further seeks 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.

4. Directions were issued on 16 April 2025 where the application was reviewed and determined that it may benefit from a case management hearing, this was set for Friday 20 June 2025.

5. The case management hearing took place at Havant Justice Centre on the 20 June 2025 and was attended by Mr Derzhitski the Applicant and Miss Bainbridge for the Respondent.

6. It was agreed that the Applicant would supply their case to the Respondent by 11 July 2025 and the Respondent their case to the Applicant by 25 July 2025 and an opportunity for a reply by the Applicant by 1 August 2025.

7. The directions at paragraph 10 appeared to suggest that submission be limited to year 2023/2024 and year 2024/2025.

Preliminary Matter (s)

8. The Application sought to challenge three service charge years 2022-2023, 2023-2024 and 2024-2025 (Budget).

9. The Directions of 20 June 2025 issued following the case management hearing of 20 June 2025 stated at paragraph 10 that only two years of service charges were being challenged and sort submissions on these.

10. The parties had in fact produced submissions for the following years; 2022-2023, 2023-2024, AND 2024-2025 (Budget), AND 2025-2026 (Budget).

11. The tribunal asked for submissions on why the Directions differed from the years challenged in the Application. Neither party was able to provide any explanation why this was. The tribunal, given that both parties had prepared for the service charge years 2022-2023, 2023-2034 and 2024-2025 determined that all three years stated in the application form would be heard at the hearing.

12. A second preliminary matter was raised. The Applicant had submitted outside the dates identified in the Directions further evidence. The Respondent objected to its inclusion on the basis it did not relate to the service charge years challenged and that late submission was procedurally unfair.

13. The tribunal consider the objection and given the tribunal had previously determined the specific years that the tribunal would hear and that the late submission related to non-service charge matters, outside those dates, the tribunal determined that the evidence would form no part in the hearing.

The Determination

14. To support the Application a Bundle of 387 pages was provided. Additionally, the Respondent provided to the tribunal, a skeleton argument.

15. The bundle contained the Applicant's statement of case and the Respondent's statement of case.

16. Present at the hearing was the Applicant Mr Derzhitski , and for the Respondent; Miss Bainbridge and the freeholders managing agent Mr Gegory.

Service charge year 2022-23 (Actual)

Accountancy fees

17. The Applicant challenged the payability and the reasonableness of the service charge. In terms of payability the Applicant relied on the lease provision at 6.20.3

18. These provisions state at 6.20.3, contained within the Sixth Schedule, that provides for maintenance expenses reclaimable under the service charge.

19. 6.20.3 states “The preparation for audit of the Maintenance Expenses Accounts”

20. The Applicant's challenge is that the accounts are not the outcome of a formal audit and so the fees incurred should be not payable.

21. The Respondent contended that "audit" was a generic word and what was carried out on the accounts amounted to an audit. Further that these were carried out in accordance with a recognised accounting standard. The Respondent also noted that this was a standard applied across all the properties the managing agent managed.

22. The tribunal observed that the construction of the lease was the definitive basis to judge payability. The tribunal determined that the ordinary construction of the provision required an audit, not a particular type of audit but an audit. The tribunal drew comfort from the submission that the audit carried out was that carried out across the managing agent's portfolio and that this was in their view adequate and to an industry standard.

23. The tribunal determines that the work undertaken to provide an audit is covered by the provision and that in the absence of any specific challenge on cost this item is payable in full under the lease,

Company Accountancy fees

24. The challenge here from the applicant is one of payability, this is on the basis that the applicant contends there is no provision under the lease that allows recovery of the freeholder's company accountancy charges.

25. The Respondent submitted that when the leaseholders originally formed a company to purchase the Freeholder, the leaseholders in their capacity as shareholders voted to cease collecting the ground rent. As a consequence, the company that holds the freehold has no independent funds and so in order to pay for the required compilation of the company's accounts the money for this is charged by way of service charge,

26. The Respondent concurs there is no provision under the lease that allows this recovery to take place,

27. In the absence of a provision and given that both parties concur there is no provision then the tribunal following consideration of the lease determines this item is not payable because there is no lawful method of collection under the lease, so the amount payable is nil.

Caretakers Wages

28. The Applicant contends that the lease provides for the charging of maintenance services in respect of communal areas and the ability for

the freeholder to charge for the provision of services to private gardens. Specifically, this being within the lease at 6.9 “Maintaining the gardens as necessary.” The challenge is payability,

29. The Respondent states that the caretakers carries out maintenance of the communal areas which includes pruning shrubs, clearing leaves and pressure washing paths. The Respondent states that no occupant of any private garden has requested that their garden been maintained by the caretaker nor has the caretaker carried out such activity whether requested or not.

30. The tribunal considered the provision “6.9 Maintaining the Gardens as necessary”. The tribunal concludes the phrase describes gardens; this is in the plural. However, it is within general English usage that “garden and gardens are interchangeable expression. It is therefore possible to interpret the provision to mean the grounds of the building communal or not. It would however be rare for a provision to permit maintenance off a private garden and so the inclusion of the words “as necessary implies an exceptional situation perhaps where a leaseholder has neglected their garden, and it has become deemed a nuisance.

31. However given the only work carried out to the gardens is to the communal area, the tribunal does not need to consider a wider interpretation, as no costs had been incurred in the maintenance of private gardens. Given the work that has been done falls under the definition of 6.9 the costs incurred are payable in the absence of any contrary costs being provided.

Caretakers Wages £4867 (Flat 4- £77.99)

32. The Applicant explained that the caretaker had previously cleaned the communal areas. However, due to illness of the caretaker, the standard had fallen as had the frequency, the applicant contends that a deduction equivalent to 5 months is appropriate.

33. The Respondent concurred that there had been a diminution of service and that this had been a product of the caretaker's illness. The Respondent explained that the caretaker had been employed directly by the managing agent. The Respondent noted that a refund had been provided for the period that the works had been neglected. The Respondent in their statement of case stated “the caretaker was only paid for hours worked. The incumbent then was off sick for some time. Meaning that the cleaning was not undertaken, Belgarum [managing agent] undertook a review of the hours charged and refunded to the service charge where work was not undertaken. The costs charged to the service charge relate to hours worked and therefore we do not believe that a refund is due”,

34. The Applicant is not challenging that this is not a legitimate cost under the lease but that the standard was insufficient and so the charge was in itself unreasonable,

35. The tribunal considers the charge payable under the lease. The tribunal understands that a review was carried out of the hours worked and a proportionate deduction was made and only the hours actually worked were charged for. In the absence of any contradictory specific evidence on hours from the Applicant the tribunal finds that it is appropriate to apportion costs to hours worked which is sensible and that the amount therefore is reasonable and payable.

Major works

36. The Applicant challenged the works to the roof and in the absence of a section 20 process contended that the maximum that could be reclaimed was limited by statute to £250.

37. The Respondent outlined the course of events that had led to this situation. Storm damage was identified to the roof. The freeholder obtained a quote for repair. The quote was less than the amount required to undertake a section 20 consultation process. The works when under way identified further works to other items on the roof including gutters and the eventual cost when spread across the 13 flats exceeded the £250 maximum cost without consultation.

38. The tribunal considered whether the works constituted a single set of works all of the same nature or works of different nature where the amounts charged should properly form different charges. From the evidence heard the tribunal concluded that the totality of the works was of the same nature that is roofing works and so the works should have been consulted on.

39. The Respondent made a verbal application for dispensation under the Landlord and Tenant Act 1985 section 20ZA. The tribunal asked for representations from the applicant. The applicant contended that they were prejudiced because they were unable to obtain competing quotes and they felt their quotes would have been cheaper.

40. The tribunal is aware of the judgment in Daejan Investments Limited v Benson and others [2013] UKSC 14. The Application for dispensation is not challenged.

41. The Supreme Court (Lord Neuberger at para 50) accepted that there must be real prejudice to the tenants. Indeed, the Respondents do not oppose the Application. It is accepted that we have the power to grant dispensation on such terms as we think fit. However, the Landlord is entitled to decide the identity of the contractors who carry out the work,

when they are done, by whom and the amount. The safety net for the Respondents is to be found in Sections 19 and 27A of the Landlord and Tenant Act 1985.

42. Accordingly, the tribunal finds that unconditional dispensation should be granted for the totality of the roofing works.

43. The tribunal does not consider the Applicant has been prejudiced, and that whilst the Applicant could have sought competing quotes there was no evidence that the quote accepted by the Respondent was uncompetitive nor that the Applicant could have obtained more competitive quotes.

44. A challenge of payability under the lease is not made by the Applicant. The tribunal therefore is limited to the question of reasonableness. Given the work entailed roof repairs and the necessary scaffolding and given there were no competing quotes supplied by the applicant the tribunal considers the cost of these works reasonable and therefore payable in full.

Service Charge Year 2023-2024(Actual)

45. A number of the items challenged in this service charge year has commonality with the previous year,

46. Accountancy fees – as previous

47. Company accountancy fees – as previous

48. Staff salaries – gardening-as previous

Staff salaries – long term agreement

49. The Applicant contended the work undertaken for this amounted to a long-term contract and that there had been no consultation for such a long-term contract, in these circumstances the Applicant contended the amount payable should be limited to £100

50. The Respondent explained that the works were carried out by an employee of the managing agent and as such there was therefore no long tern agreement, which without consultation would have limited the amount chargeable to £100.

51. The tribunal found, there was no long-term agreement because the work was carried out by the managing agent and therefore the amount demanded was payable under this provision

Reserve fund -

52. The Applicant said that too great a sum was demanded for the contribution to the reserve fund and that in previous years the amount needed was much less

53. The Respondent said that the building was converted in 2011 and that as such the building had benefited from this level of maintenance and so the first years after the conversion the levels of maintenance would be lower than later. The Respondent had contracted a suitably qualified professional to carry out a maintenance plan for the next 10 years. This had identified potential costs of £632,000 over the 10 years. A meeting of the leaseholders had taken the decision that the amount required should be reduced to £500,000. As such the amounts demanded reflected this. The Respondent stated the lease provided for a reserve fund,

54. The tribunal notes the existence of a professionally drawn up maintenance plan which has been costed. The tribunal notes the reduction of the amount suggested by the plan by meeting of the leaseholders. The tribunal understands the Applicants' contentions that the amount expended by the freeholder on maintenance over the previous years is significantly lower than anticipated by the management plan. However, the tribunal considers this lower amount could reasonably be explained by the benefit of having a relatively recently converted building. There was no evidence to suggest the costings produced by the management plan were excessive and so the tribunal determines these amounts are payable.

Service Charge Year 2024-2025 (Budget)

55. The items which made up the budget service charge for 2024-2025 have been in terms of payability and reasonableness considered in the previous two years. The tribunal has heard no evidence to suggest the amounts proposed for this service charge year are unreasonable. The tribunal has considered the individual items in the context of the previous year's service charge and considers them reasonable.

56.

Application under Landlord and Tenant 1985 section 20C and Commonhold and Leasehold Reform act 2002 para 5A

57. Applicant requests the tribunal makes and Order under the Landlord and Tenant Act 1985 section 20C and Commonhold and Leasehold Reform Act 2002 paragraph 5a. The effect of such an order is to prevent the Respondent levying the cost of the proceedings as a service charge and administration charges.

58. Respondent says that the Applicant's challenges are vexatious

59. The tribunal notes, the Applicant has not been successful on their challenges, other than one area.

60. The tribunal does not see evidence that suggests the claims are vexatious but declines to make an order because the vast majority of the challenges have not been successful.

Chair: R Waterhouse FRICS

15 September 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).