FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00AG/LBC/2025/0643 and LON/00AG/LSC/2025/0867**
Property	**:**	**Flat 2, 34 Frognal Lane, London NW3 6AG**
Applicant	**:**	**Manorfair Limited**
Representative	**:**	**Amir Malik, director**
Respondent	**:**	**Lee Bali**
Representative	**:**	**Ms C Fairley of Counsel**
Type of applications	**:**	**(1) Determination of an alleged breach of covenant and (2) Service Charge application under section 27A Landlord and Tenant Act 1985**
Tribunal member	**:**	**Judge N O'Brien , Mr Richard Waterhouse FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Determination	**:**	**16 December 2025**

Decision

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(1) The Respondent is not liable to pay more than 20% of the Applicant's cost of insuring the premises for the years 2020 to 2025.
(2) The Applicant's application for a determination that the Respondent has breached of the terms of his lease is dismissed.

Introduction

1. The Applicant is the freeholder of 34 Frognal Lane London NW3 6AG (the building). The building consists of a substantial Victorian semi-detached villa which has been converted into 5 flats. The Applicant is a company that is wholly owned by the leaseholders. The Respondent has been the leasehold owner of flat 2 since 2016.

2. On 23 June 2025 the tribunal received two applications from the Applicant. The first (LON/00AG/LSC/2025/0867) was an application for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) in respect of the Respondent's liability to contribute to the Applicant's costs of insuring the building by way of a service charge. The second (LON/00AG/LBC/2025/0643) was an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) for a determination that the Respondent had breached the terms of his lease by (1) failing to keep the garden demised with Flat 2 in good condition and by (2) initiating a claim against the building insurance without the consent of the Applicant. Both applications were consolidated by order of Judge Korn on 18 July 2025, and the matter was listed for a final hearing on 10 November 2025.

The Hearing

3. At the hearing the Applicant was represented by Mr Amir Malik, the leasehold owner of Flat 5. There was some dispute as to whether Mr Malik was duly authorised to represent the Applicant. Mr Malik told us he was the company secretary for the Applicant company. Ms Fairley for the Respondent told us that according to the information held at Companies House the Applicant presently has no secretary. It is common ground that Mr Malik is a director of the Applicant, as is the Respondent, and at our request he undertook to file written confirmation from the other directors that he is duly authorised to represent the Applicant in these proceedings. The hearing was also attended by Mr Robert Jehan, the leasehold owner of Flat 4. Mr Bali was represented by Ms Fairley of Counsel.

4. We were supplied with a 264-page bundle by the Applicant and a supplemental bundle prepared by the Respondent consisting of 96 pages. Both the Applicant and the Respondent prepared skeleton arguments for the hearing.

Factual Background

5. The dispute between the parties originates from an insurance claim intimated in 2019 in respect of subsidence affecting the rear of the building. Mr Bali's flat, which is situated on the raised ground floor, is

the most severely affected, however this is not the only part of the building affected. The problem first manifested in an extension to Flat 2 which was constructed by Mr Bali's predecessor in title in 2013. The extension consists of an elevated glass and brick conservatory which extends beyond and above the rear building line of the original building, and is in part supported by steel posts inserted into the ground in the rear garden. Mr Malik accepted in the course of the hearing that the Applicant expressly gave its consent to the construction of the extension, which replaced a glazed wooden veranda which was also partially elevated above ground level and had been supported by wooden posts.

6. It is common ground that in or about 2019 the Respondent notified the building's insurer of subsidence affecting the rear of Flat 2. Investigations into the cause of the subsidence by Crawfords, the loss adjustors nominated by the building's then insurers, indicated that the cause of the subsidence was soil heave/shrinkage attributable to trees near the building, two of which were located within Flat 2's demise. The Respondent had those trees removed in Spring 2020. Crawfords subsequently discovered that subsidence had caused widespread stress fractures in the rear wall of the original building. All of the flats in the building were affected by movement in the rear building wall to some extent or other.

7. The Applicant believes, or at least Mr Malik believes, that the claim brought against the building's policy of insurance has prejudiced the Applicant by leading to higher insurance costs and a reduced choice of insurers in the years following 2019. It considers that the Respondent alone should pay the increased costs of buildings insurance as a service charge. It further seeks a declaration that the Respondent has breached the terms of his lease by (1) failing to keep the garden which forms part of his demise in good order and (2) by making a claim on the building insurance without the Applicant's consent, thus leading to an increase in the premium paid by the Applicant from 2020 to 2025. The Applicant has additionally made various claims for damages and compensation in the course of these proceedings.

Legal Framework

8. The tribunal's statutory power to determine variable service charges is contained in the Landlord and Tenant Act 1985 (The 1985 Act). 'Service charge' is defined in section 18 of the 1985 Act as 'an amount which is payable directly or indirectly for services repairs maintenance improvements or insurance or the landlords costs of management, the whole or part of which varies or may vary according to the relevant costs'. Section 19 provides a service charge is only payable insofar as it is reasonably incurred and the services are works to which it relates are over reasonable standard.

9. Section 27A of the 1985 Act gives the tribunal jurisdiction to determine by whom to whom how much when and how a service charges are

payable. It does not give the tribunal power to order the payment of compensation or damages of any kind. By subsection (4) the tribunal may not make a determination in respect of any matter agreed or admitted by the tenant.

10. Section 168 of the 2002 Act provides;

> *(1)A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*
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> *(2)This subsection is satisfied if—*
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> > *(a)it has been finally determined on an application under subsection (4) that the breach has occurred,*
> >
> > *(b)the tenant has admitted the breach, or*
> >
> > *(c)a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*
>
> *(3)…*
>
> *(4)A landlord under a long lease of a dwelling may make an application to the (First-tier Tribunal) for a determination that a breach of a covenant or condition in the lease has occurred.*

The Service Charges Application

11. Under the terms of the Respondent's Lease, the tenant is required to pay a fixed proportion of the landlord's costs, including the cost of buildings insurance, by way of a service charge: see clauses 2 and 3 and paragraph 2 of the Sixth Schedule. Paragraph 2 of the Sixth Schedule expressly fixes the proportion payable by the leaseholder at 20% of the landlord's costs. We were told that the leases relating to the other four flats in the building have similar clauses, with the result that the Applicant's costs of providing services are split equally between the five flats. There is no mechanism in the Respondent's lease to vary the proportion payable in respect of Flat 2.

12. The Applicant appears to consider that the tribunal has the power to vary the proportions payable by the Respondent. In its statement of case it suggests that the Respondent should pay an increased portion of the insurance costs. There is no discernible legal basis for this proposition. It seeks to argue that the tribunal should order the Respondent to pay a higher proportion than his lease requires because he has breached his lease by causing the premiums to increase and because the extension to Flat 2 is not a part of the building which the Applicant was required to insure as it was not part of the original structure. Both submissions are misconceived. Even if the tribunal were to conclude that there had been a breach of the lease by the Respondent, this would not give it the power

to vary any part of it. As to the proposition that the Applicant was not obliged to insure the extension, as Ms Fairly submitted it it is settled law that additions to land which is subject to a lease become part of the demise. Further even if the Applicant had insured parts of the building which it was not actually liable to insure, it could still only claim 20% of that increased cost from the Respondent as a service charge.

13. Additionally the Applicant in its reply asserted that the Respondent had agreed to pay a higher proportion of the insurance costs. Had that been the case that would be relevant to our jurisdiction because we cannot determine any matter that has been agreed or admitted by the tenant (see section 27A(4) of the 1985 Act). Mr Malik relies on a number of emails dating from 2022 and 2023 passing between the Respondent's father Mr Nori Bali and other leaseholders notably Mr Malik and Mr Jehan, and the minutes from the 2022 AGM. It is correct that there was an offer made by the Respondent's father to pay more than 20% of the cost of insurance at a time when it is apparent that the other leaseholders, or some of them, had convinced themselves that the conservatory was not a part of the building which the freeholder was obliged to insure. There was no concluded agreement as far as we can see. We have not been referred to any correspondence which contains a concluded agreement, nor does Mr Malik specify what years were subject of any such agreement or even what specific increased proportion the Respondent agreed to pay.

14. In the circumstances we are satisfied that there was no agreement that the Respondent was liable to pay a higher proportion of the costs of insurance than that provided for by his lease for the years in dispute. We are also satisfied that the Respondent's liability to contribute to the cost of insurance was limited to 20% of the total cost incurred by the Applicant as provided by his lease.

Breach of Covenant

15. The case for the Applicant is that the Respondent has acted so as to cause the insurance premiums to increase. The Applicant asserts that this amounted to a breach of paragraph 7 of the Sixth Schedule to the lease which provides that "*the lessee will not do or permit to be done in or upon the premises or any part thereof anything which may render any policy or policies of insurance effected in respect of the property by the lessors void or voidable or may render payable any increased premium…*

16. The Applicant asserts firstly that by notifying the buildings' insurers of the presence of subsidence affecting the building the Respondent has caused the cost of the insurance premium to increase. Secondly the Applicant asserts that the subsidence was itself caused by trees growing in the rear garden demised with Flat 2. It submits that this amounted to a breach by the Respondent of paragraph 7 of the Sixth Schedule set out

above. Thirdly the Applicant submits that the Respondent breached paragraph 17 of the Sixth Schedule which obliged the lessee to keep the garden demised with Flat 2 '*in good order free from weeds and in a proper state of cultivation'*.

17. As regards the first proposition this is misconceived. According to the terms of the insurance policy included in the Respondent's supplemental bundle, the Applicant was itself *obliged* to inform the insurer about any occurrence which might give rise to a claim for property damage which might give rise to a claim. The directors, including the Respondent, were obliged to pass this information to the insurer. Secondly paragraph 6 relates to '*things done in or on the premises'*. It does not make any sense to characterise the act of notifying the insurer of property damage as 'a thing done in or on the premises'. Thirdly we have not been shown any evidence that the insurance premiums have gone up as a result of the insurance claim. The Applicant has provided us with a schedule of premiums paid since 2015. While it is correct to say that the cost of the same increased from £3,703 in the year 2018-2019 to £6819 in 2023-2024, there is no evidence that this was even partially due to the subsidence claim intimated in 2019.

18. As regards the second proposition, firstly it is not supported by the evidence. The report prepared by Crawfords in November 2019 implicated a number of trees close to the building, including two lime trees in the Respondent's garden. It is common ground that the Respondent removed these two trees in 2020. This has not prevented further subsidence to the building as noted in further surveys carried out by the loss adjustors in 2022 and 2023. In 2023 the loss adjustors recommended that a root barrier be installed in the rear garden to prevent further damage, with a view to completing repairs in 2024. This was 3 years *after* the lime trees in the Respondent's garden had been removed.

19. As regards the third proposition in our view the Respondent did all that was required of him to comply with paragraph 17 of the Sixth Schedule by removing the two lime trees in his garden once it had been confirmed that they were contributing to clay heave/shrinkage which in turn was causing structural damage to the building.

20. For these reasons the application for a declaration that the Respondent is in breach of his lease is dismissed.

21. There is no application before the tribunal for an order under section 20C of the 1985 Act or under paragraph 5A of the 2002 Act limiting the Applicant's ability to recover its costs as a service charge or as an administration charge. At the end of the hearing Ms Fairley indicated that her client wished to make submissions in relation to costs once the determination had been issued. In the event that either party wishes to make an application for costs pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) Rules 2013 they must do so in writing within 28 days of the date of this determination. Any response must be

sent to the tribunal and to the other side within 14 days of the application if it is made.

22. We further direct that the Applicant must forthwith file and serve written confirmation that Mr Malik is authorised to represent it in these proceedings, if this has not already been done.

Name : Judge N O'Brien **Date : 16 December 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