FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	MAN/00BU/LSC/2024/0228
Property	Greenbank Hall, Eaton Road, Chester CH4 7EW
Applicants	Jo Canning and Pat Floate (1) Gary Stephan (2)
Respondent	Greenbank Hall (Chester) Management Company Limited
Type of Application	Application for determination of liability to pay and reasonableness of service charges (S.27A Landlord and Tenant Act 1985) Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A
Tribunal Members	Judge Rachel Watkin Surveyor Member – Susan Latham MRICS
Date of Hearing	17 July 2025
Date of Decision	17 July 2025

DECISION

DECISION

The Tribunal has considered the Application and determines pursuant to clause 1.1.28 of the Apartment Leases:

a. The costs of the lifts are to be divided equally between the seven apartment owners.
b. The costs of fire safety are to be divided equally between the seven apartment owners.
c. The management fees in relation to the Development are to be divided between the 13 dwellings on the Development.
d. The management fees in relation to the Building are to be divided equally between the seven apartment owners.

BACKGROUND

1. This is the decision of the Tribunal in the Application dated 22 May 2024 by Jo Canning and Pat Floate (1) and Gary Stephan (2) (the "**Applicants**") for determination of liability to pay and reasonableness of service charge.

2. Greenbank Hall is an impressive grand old historic building (the "**Building**") situated in its own grounds on the outskirts of Chester. The Building and the surrounding grounds (the "**Development**") was redeveloped by a company called Schemeglobal in 2014/2015 for residential purposes. Occupation of the Development for residential purposes commenced in early 2016. (information from the Applicant's Statement of Case).

3. The development is a mixed tenure development comprising 13 dwellings; 4 freehold houses, two semi-detached leasehold houses and five leasehold apartments within the Building and two leasehold dwellings within a single storey extension to the Building. The Applicants own apartments within the Building.

4. By the Application, the Applicants challenge the service charges for the years 2023 and 2024. They challenge the service charges in relation to three specific expenses:

   a. The cost of the Lifts
   b. The fire safety costs.
   c. The management fees.

In respect of each, the Applicants challenge the basis on which the expenses were allocated to the owners of the dwellings within the Development. They do not challenge the total sums charged and comparative estimates have not been obtained. Therefore, the Tribunal will not be considering the total sums, only the proportions charged.

5. The Applicants also apply under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 ("**CLRA 2002**") for an order that the Respondents not be permitted to recover litigation costs in relation to this Application as service charges.

DOCUMENTS

6. The Tribunal was provided with 323-page bundle (the "Bundle") which was difficult to navigate due to the lack of a complete index. The index provided referred to documents as appendices, enclosure or accompanying documents, rendering the index largely superfluous and unhelpful. Whilst a more helpful but partial index is to be found on page 155, attached to the Applicant's Statement of Case, and duplicated on page 232, to be useful, this would have needed to be at the front of the Bundle. The Bundle also contained a large amount of material that was not relevant to the allocation of the charges between the property owners.

7. Where page number are referred to within this decision, reference is to pages within the Bundle.

THE LEASES/TRANSFERS

8. The Tribunal was provided with:

   a. a copy of the lease to Apartment 2 dated 29 March 2016. It is agreed between the parties that all the leases to all the apartments were identical (the "Apartment Leases").
   b. a copy of the lease to number 9 which is one of the semi-detached leasehold properties and, with number 10, is part of the gatehouse. The Tribunal is informed that the leases to number 9 and 10 are identical (the "Gatehouse Leases")
   c. A copy of the Transfer of Part in respect of number 14 which is a freehold property. The Tribunal was informed that all of the freehold properties were subject to the same provisions.

9. The following key provisions are contained within the Apartment Leases:

a. Clause 1.1.6 defines Building as:

> *""Building" means the land and building within which the apartment is situated and forming part of the Development."*

b. Clause 1.1.12 defines "Other Apartments" as *"the Apartments within the Building other than the Property."*

c. Clause 1.1.22 defines Service Charge as:

> *"the Tenant's Proportion of <u>the costs and charges incurred under the provisions of the Seventh Schedule</u>."* (underlining added for emphasis)

d. Paragraph 6 of the Seventh Schedule states:

> *"Where any costs incurred by the Management Company are incurred by the Management Company in relation to part only of the development or not to any other part of the Development, then such part of that expenditure shall be divided between the tenants of the properties of that part of the Development in accordance with the Tenants Proportions."*

e. Clause 1.1.28 defines the Tenant's Proportion as the expenses to be paid for the Amenity Areas and the Shared Accessways and a proportion of the expenses in relation to the Building.

These Amenity Areas and the Shared Accessways defined as:

> *""Amenity Areas" means any area is within the Development which are not to be maintained at public expense and including (but not limited to) access ways footpaths walls fences hedges and other associated boundary structures and also areas of open space all lying within the land coloured blue on the Plan."*

> *"Shared Accessways" means roadways footpaths common car parking access areas cycleways and access roads forming part of the Development (and any roadways footpaths common car parking areas cycleways and access roads as may be substituted) including (by definition) the Amenity Areas and lying within the Development."*

Clause 1.1.28 then continues:

> *"SECONDLY the proportion of the Management Company's expenses and other heads of expenditures and reserves in relation to the Building. The proportion of such expenditure to be divided equally by the total number of properties in the Building."*

The Gatehouse Leases

10. By contrast, the Gatehouse Leases provides only that the Tenant's Proportion of expenses to be paid are those that relate to the Amenity Areas and the Shared Accessways. Thus, the Gatehouse leaseholders have no obligation to page for expenses relating to the Building.

The Freehold Properties

11. The Transfer of Part in relation to the freehold houses contain similar provisions to the Gatehouse Lease.

LAYOUT AND SITE INSPECTION

12. On the morning of 17 July 2025, the Tribunal panel attended the Development and, more particularly, the Building. The panel had the opportunity to view the exterior and common parts of the Building, as well as the interior of Apartments 1, 2, 4 and 8. This enabled the Tribunal to gain an understanding of the nature and layout of the Building.

13. The inspection was attended by the Applicants (albeit Pat Floate was not present for the whole inspection), Mr Paya, the leasehold owner of apartment 4 and director of the Respondent, Mr Edwards, one of the owners of one of the freehold houses (number 14) and director of the Respondent, and Mr Clay, who is one of the leasehold owners of apartment 8 and director. He also acted as managing agent for a period prior to the appointment of the present managing agents (page 141).

14. The Tribunal found it interesting to note that apartments three and four have their own access (do not require access to the communal hallway, stairs or lifts), and are structurally separate from the main house, save for the dividing wall between

Apartment 3 and Apartment 2. Apartments 3 and 4, even have their own roof. The Tribunal was also informed that, whilst connected by one wall, the occupiers of flats 3 and 4 would not be able to hear the fire alarm if it were to sound.

15. Apartments 1 and 2 are both situated on the ground floor of the main house and would not have any reason to use the lift. Interestingly, due to the layout of the house, Apartment 5 is only partially benefit by the lift as there is an additional flight of stairs from the lift on the first floor to Apartment 5.

16. It is noted from the layout plan of the Building and the apartments that were inspected, that the apartments are of varying sizes.

Submissions

17. Whilst eloquent and detailed submissions were made by both Ms Canning on behalf of the Application and Ms Zanelli, solicitor, on behalf of the Respondent, in essence, the position of the Applicants is that they are dissatisfied, as they feel that the basis for the division of the service charges has altered without any discussion or consultation. Whereas the Respondent's position is that the service charges was were not previously being shared in accordance with the terms of the Apartment Leases.

18. The Applicants consider that the lift costs and the costs of fire safety should be divided equally between the apartment owners, whereas the Respondent considers that the leaseholders of apartments 3 and 4 should not have to pay those particular expenses. The Respondent does not consider those apartments to be part of the Development to which the lift costs and the fire safety costs relate as they have no access to the common areas within the Building and they cannot hear the fire alarm.

19. The Applicants consider that management fees should be divided equally between all the property owners. The Respondent considers that the fees should be divided differently as more services are provided to the owners of the apartments.

Decision

20. The starting point for establishing how service charges should be divided between properties is the wording of any lease or leases governing any development. Therefore,

whilst the Tribunal's role is to consider the reasonableness and payability of service charges, in relation to the present matter, the Tribunal needs to consider the interpretation of the Apartment Leases.

21. The Tribunal is mindful that there are different ways in which service charges can be allocated fairly. For example, either an equal division between the number of properties on a development or a pro-rata division based on the floor area of each property may be considered fair - even though the sums paid by the property owners might vary significantly. However, the Tribunal is not able to vary any approach set out within the leases, and this can only be departed from where the leases allow for such departure.

22. Leases are generally interpreted in accordance with the basic principles of construction as set out by the Supreme Court in *Arnold v Britton* (2015) UKSC 36 where, at paragraph 15, Lord Neuberger said:

> *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffman in Chartbrook Ltd v Persimmon Homes Ltd (2009) UKHL 38, (2009) 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."*

23. Context is therefore very important. Lord Neuberger went on to emphasise at paragraph 17:

> *"the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g in Chartbrook (2009)* AC 1101, paras 16-26) *should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable*

reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again, save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

24. Starting with the ordinary and natural meaning of the Apartment Leases, the definition of the Tenant's Proportion shows that the expenses in relation to the Building are to be divided equally by the total number of properties in the Building. As each of the Apartment Leases defines "the Property" as the "apartment" let by each lease, and using refers to the "Building" in the same way, the definition of Tenant's Proportion appears to treat all seven apartments as being within the Building and, therefore, clause 1.1.28 shows an intention for the costs to be divided between all seven apartments.

25. As to the application of paragraph 6 of the Seventh Schedule to the Tenant's Proportion, the Tribunal does not consider it to be of effect in relation to the Building costs for the following reasons:

    a. Paragraph 6 contradicts clause1.1.28. The Tribunal considers that, where there is a direct conflict that cannot otherwise be reconciled, the meaning of any provision of a lease is more naturally taken from the main provisions of the lease and not from paragraphs within schedules at the back of the lease.

    b. It was appropriate for the parties to the Apartment Leases to be allowed to rely on the main provisions of the Apartment Leases.

    c. Paragraph 6 cannot and does not operate to alter the Tenant's Proportion. Clause 1.1.22 states that the "Service Charge" is the "Tenant's Proportion of <u>the costs and charges incurred under the provisions of the Seventh Schedule</u>" (underlining added for emphasis). The costs and charges are to be incurred under the Seventh Schedule. The Schedule only has the power given to it within the Apartment Lease and that is to guide any management company as to how the charges may be incurred.

    d. There is no provision within the Apartment Leases that stipulates that the Tenant's Proportion can be varied by paragraph 6 of the Seventh Schedule. By way of explanation, if 14% were read into the Service Charge definition (clause 1.1.22)

in place of the words "Tenant's Proportion", there would be no doubt that the Seventh Schedule cannot alter that 14 %. So that it would read "14% of the costs and charges incurred under the provisions of the Seventh Schedule", it can be more clearly seen that the Seventh Schedule is not empowered to alter that 14% or the meaning of the Tenant's Proportion.

e. The leases for apartments three and four are identical to the other Apartment Leases in circumstances where they could so easily have been different. They could have been worded in the same way as the Gatehouse Leases. As this is not the case, it would appear that the natural meaning of the Apartment Leases is for them each to pay a share in the costs of the Building.

f. In any event, paragraph 6 only applies where costs relate to part only of the Development. Whilst the Building could be considered to be part of the Development, the Tribunal does not accept that the intention is for the Building (or other parties of the Development) to be split further. If that were the case, the managing agent's role would be unduly onerous. For example, if the apartments three and four do not have to pay the costs for common areas within the Building, why would they have to pay for the parking area to the south of the Building, if they only use the parking area to the north? Alternatively, if parking spaces are allocated, it could be said that the owner of one apartment should not pay to repair a pothole in a parking space allocated to another apartment.

g. If the expenses for parts of the Building can be subdivided where the leaseholders do not benefit from or use part of the Building, consideration should be given to not charging apartments 1 and 2 for the cost of the lifts, apartment 3 and 4 for the cost of work to the main building or apartments 1 to 8 for the work to the roof of apartments 3 and 4. This becomes too onerous for the managing agents.

26. Therefore, whilst it could be argued that it makes commercial sense for the owners of apartments 3 and 4 not to have to pay for the cost of first safety and the lifts, in other respects, to interpret the Apartment Leases in this manner in other respects, the commercial common sense suggests otherwise. In any event, as set out above, commercial common sense "*should not be invoked to undervalue the importance of the language of the provision which is to be construed"* (Arnold v Britton, see above).

27. Therefore, based on the wording of the Apartment Leases, the Tribunal considers that the works to the Building are to be paid by the leaseholders of all of the apartments;

including apartments 3 and 4. This includes the fire safety costs and the cost of the lifts and the management fees in relation to the Building.

28. In relation to the management fees, the owners of the properties on the Development share the costs of the Shared Accessways (which include the Amenity Areas), based on the definition of Tenant's Proportion in all of the leases and the transfers of part. Therefore, the management fees incurred in relation to the Development (excluding the Building and private gardens) is divided by 13, and each should pay 7.7%.

29. Equally, for the reasons set out above, due to the second part of the definition of Tenant's Proportion in the Apartment Leases, the management fees in relation to the Building are to be shared equally between the 7 apartments.

30. The difficulty that arises is that the managing agents do not charge a separate fee for the Building and a separate fee for the Development excluding the Building.

31. At the hearing, Jane Shaw, who works for the management company indicated that they charge a set amount for freehold houses (£90) and a set amount for apartments (£253). They had then allowed £197.50 for apartment 3 and 4. Ms Shaw stated that this amount was the same irrespective of how many dwellings there are within any development. She stated that this was because each property represented an individual, or individuals, with whom they must liaise. This seemed peculiar as liaising with leaseholders is only one part of a managing agent's role; the other parts include inspections, procurement, administration etc.

32. However, the Tribunal is mindful that the Application does not relate to the reasonableness of the sums charged. The sums themselves are not challenged. The Applicants challenge only the proportions, and no comparative evidence has been provided in relation to the sums claimed. Therefore, the Tribunal does not determine the reasonableness of the amounts.

33. Whilst the managing agents have not broken the sum charged by them down in the manner anticipated by the leases and transfers, if they were to indicate that all the owners are charged £90 for the management of the Shared Accessways and that all leaseholders of the apartments are charged and additional £163 (£253 - £90) each in relation to the management of the Building, the result is the same, save for apartments 3 and 4. However, this would result in an increase to the managing agents fees by £55 for apartments 3 and 4 which does not seems appropriate where the work to be carried out by the managing agents is the same. Therefore, based on the figures given, if the

freeholders and the Gatehouse leaseholders are each to pay £90, then the balance should be divided by 7, with the apartment owners each paying £237.14.

Summary

34. Therefore, the Tribunal determines that, pursuant to clause 1.1.28 of the Apartment Leases:
    a. The costs of the lifts are to be divided equally between the seven apartment owners.
    b. The costs of fire safety are to be divided equally between the seven apartment owners.
    c. The management fees in relation to the Development are to be divided between the 13 dwellings on the Development.
    d. The management fees in relation to the Building are to be divided equally between the seven apartment owners.

Order under Paragraph 5A of Schedule 11 CLRA 2002

35. At section 10 of the Application, the Applicants indicate that they wish to make an application for an order that the Respondents should not be permitted to recover the costs of this Application from the leaseholders as a service charge.

36. Paragraph 5A of Schedule 11 states:

> *"(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.*
>
> *(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.*
>
> *(3) In this paragraph—*
>
> *(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and*
>
> *(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings."*

37. First-tier Tribunal proceedings are mentioned in the table with the relevant court or tribunal being named as the First-tier Tribunal.

38. This matter is not straightforward as, whilst the Applicants have succeeded in obtaining a determination of the Tribunal that varies the previous practices of the Respondent, the reality is that the Apartment Leases were not clearly drafted, paragraph 6 of the seventh schedule is problematic and confusing. It is this which has caused the difficulties. This is not the fault of either party.

39. However, the Tribunal is concerned that the method of calculating the service charges was reviewed and a new system adopted in circumstances where the parties were not in agreement. In these circumstances, in light of the clear issue in the interpretation of the Apartment Leases, an application should have been made to the Tribunal for a determination. Therefore, the Tribunal considers that some costs would have been incurred and could have fairly charged to the owners of the properties. However, the Tribunal considers that additional fees have been incurred due to the contested nature of the matter.

40. Whilst the Tribunal does consider that the site inspection was worthwhile and informative, the Tribunal does not consider that a hearing would have been necessary if the matter had not become contentious, as it could have been a simple request to the Tribunal for a decision on the interpretation of the Apartment Leases Indeed, the Applicants had requested that the Application be determined on paper prior to the hearing.

41. Therefore, whilst the Tribunal will not make an order preventing the Respondent from recovering the litigation costs in relation to the work done in preparing the case for hearing, the costs of attending the hearing should not be recovered as a service charge. The Tribunal also considers that each party only needed to state its case once in to enable the Tribunal to form a view based on the opinions put forward. Therefore, it was not necessary for the Respondent to provide a Reply to the Applicant's Statement of Case. Furthermore, as stated above, the Bundle provided was of limited assistance due to the lack of an index. Therefore, any costs incurred by the Respondents in relation to the preparation of the Bundle are not to be recovered as service charges. However, the Respondent may recover as part of their management expenses the reasonable costs of considering the application, providing initial advice, considering the directions, preparing the initial statement of case, considering the Applicant's statement of case and considering/advising in relation to this decision.

APPEAL

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

Tribunal Member Latham MRICS