



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

Case reference : **LON/00AW/LSC/2024/0696**

Property : **Flat 5, 33 Lexham Gardens, W8 5JR**

Applicant : **33 and 35 Lexham Gardens Limited**

Representative : **Mr Madge Wylde of Counsel
instructed by Thrings LLP**

Respondent : **Pinghua Wang**

Representative : **n/a**

Type of application : **An application under section 27A
Landlord and Tenant Act 1985**

Tribunal : **Judge N O'Brien
Tribunal Member Duncan Jagger
MRICS**

**Date of
Determination** : **20 February 2026**

DETERMINATION

- (1) The Tribunal determines that service charges in the sum of £4230.81 are payable by the Respondent in respect of the service charge year 2024 to 2025.
- (2) The Applicant must serve a copy of this determination on any person who is noted on the Register of Title as having registered a charge on the Respondent's leasehold interest in the property within 14 days of receipt of this determination.

The Proceedings

1. By an application sent to the tribunal on 24 October 2024 the Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in respect of the service charge years 2019 to 2025. The total value of the dispute was said to be £18,640, being all service charges demanded by the Applicant in that period.

The hearing

2. The hearing took place on 15 January 2026. The Applicant was represented by counsel Mr Madge Wylde. There was no attendance by the Respondent.
3. The matter was originally listed on 4 April 2025. At that hearing the Tribunal adjourned the application because the Respondent did not attend. The Tribunal was provided with evidence in the form of an Accuity report with links to news reports indicating that the Respondent was in custody in China following an arrest for bribery. The Tribunal considered that all reasonable steps had not been taken to make the Respondent aware of the hearing. Consequently the Tribunal ordered the Applicant to contact the Chinese Embassy in London to ascertain whether they could provide an address where Mr Wang could be served with the proceedings. On 17 April 2025 the Applicant’s solicitors wrote to the Chinese Embassy in such terms. No response was received.
4. At the start of the hearing we considered whether we should proceed in the absence of the Respondent. It is quite possible that he has not been notified of the proceedings, however given the situation outlined above, it is not possible to see how realistically the Applicant could ascertain whether or not he had notified of them if he is still detained in China, or how they can notify him of any hearing. The reality is that he has not been in communication with the Applicant since 2018 and has not paid any service charges since that date. We note the contents of the first and second witness statements of the Applicant’s director Mr Holm, in particular paragraphs 12 to 15 of his first statement which set out in detail the efforts that the Applicant has made to contact the Respondent both regarding his service charge arrears, and these proceedings, with no response. These include contacting his estate agents and former legal representatives. We were satisfied that all reasonable steps have been taken to notify the Respondent of the proceedings and this hearing. Further we note that the Applicant is a leaseholder owned entity and that the Respondent appears not to have paid any service charges for some 7 years. Consequently we were satisfied that it was in the interests of justice to proceed with the hearing in the Respondent’s absence.
5. The Applicant sought to rely on a second witness statement of Mr Holm dated 12 January 2026 which related to the efforts that the Applicant had made to comply with the directions of the tribunal regarding service and service of the most recent service charge demand. We were content to

permit the Applicant to rely on that statement notwithstanding the fact that it was signed and served shortly before the hearing.

The background

6. The Applicant is the registered freehold owner of 33 Lexham Gardens, London, W8 5JR, being the building in which Flat 5 is situated. It is also the registered freehold owner of the adjacent building, 35 Lexham Gardens. Historically, it was also the freehold owner of 37 Lexham Gardens but ceased to be the owner of it from 16 February 2015 after the lessees of 37 Lexham Gardens acquired the freehold following a collective enfranchisement.
7. The Respondent has been the registered leasehold owner since 2 June 2017.

The Issues

8. Initially the Applicant sought a determination in respect of the actual service charges for the years 2019/2020 to 2023/2024 and the estimated service charges for the year 2024/2025. Prior to the hearing listed on 15 January 2025 the Applicant served a revised demand for payment in respect of the actual charges for 2024/2025. At the hearing the Applicant sought a determination in respect of the actual charges for 2024/2025 only and did not pursue a determination in respect of the service charge years 2019-2024.
9. The Respondent has not defended the proceedings. Nevertheless the Applicant bears a burden of proving its case. The potential issues which the Applicant has identified as requiring particular consideration are;
 - (i) Whether the actual charges for 2024/2025 were correctly calculated pursuant to the terms of the Respondent's lease; and
 - (ii) Whether those service charges had been properly demanded pursuant to the terms of the Respondent's lease.

The Lease

10. The Respondent's lease (being a surrender and re-grant of an original lease dated 21 February 1981) is for a term of 999 years. The original lease has been subject of two deeds of variation dated 16 December 1986 and 22 May 2017 respectively.
11. By clause 2(1) of the original lease the tenant covenanted

"To pay the reserved rent as provided in the Fourth Schedule hereto"

12. The Fourth Schedule provides (as varied):

“2. The yearly rent shall be the relevant proportion of the yearly operating costs

3. The Committee [i.e. the Association’s Management Committee] shall at the commencement of each financial year of the Association [which includes its successors in title] (hereinafter called “the Financial Year”) estimate the yearly operating costs for that year and at the end of the financial year shall finally determine the same and shall have the same certified by the Association’s auditor

4. The yearly rent shall be payable in advance by the Member to the Association by equal monthly instalments to be made on the first day of every month the commencement date shall be the first day of October 1978. The said instalments shall be determined by the Committee at the commencement of each financial year (and/or such other items as may be covenanted or appropriate) by reference to their estimate of the yearly operating costs any difference between the total of the instalments and the yearly rent as thereby determined by the Committee of the Association and certified by the auditor at the end of the financial year shall in the event of an overpayment by the Members be credited or repaid to them as the Committee of the Association may direct and in the event of an underpayment be payable by the Member on demand”

13. The relevant proportion is set out at paragraph 1 of the Fourth Schedule. It is;

“the initial net rateable value of the demised premises bears to the aggregate of the initial net rateable value of all the flats (including the demised premises) comprised in the Property” [p.96]. The Property is defined in the preamble to the lease (at C) as “33 35 and 37 Lexham Gardens London W8”

14. The flat’s rateable value is 555. The aggregated rateable value of flats in 33, 35 and 37 Lexham Gardens is 18939. However the aggregated rateable value of the flats in 33 and 35 Lexham Gardens only, excluding 37 Lexham Gardens, is 12626.

15. The yearly operating costs is defined as meaning:

“the total of the actual costs for a financial year of the Association incurred by the Association in respect of:-

(i) complying with the Association’s obligations as to rates repairs to structure and common parts insurance provisions of services and any other matters for which the Association may from time to time be responsible

(ii) doing all such acts as may in the discretion of the Committee of Management of the Association ... being reasonably necessary for the proper maintenance of the Property (including (a) the

provision of a reserve or sinking fund against the cost of financing future purchases future repairs or outgoings and (b) the employment of and repayment of such servants or agents as the Committee shall think fit) whether or not such cats shall be required to comply with the terms of any lease in respect of the Property”

16. There is no provision in the lease or either deed of variation governing service of documents or notices required to be served under the lease.
17. On 3 April 2025, the Applicant’s managing agent served a demand for the payment of the Respondent’s portion of the Applicant’s actual service charge expenditure for the year ending 31 March 2025 being £4244.34. The demand was delivered by hand to the flat by Mr Holm and posted to an address in China which was noted as the Respondents address for service on the Register of Title, in addition to the premises address. A further copy was sent to an address noted on the Respondent’s passport. A second demand, following the production of revised service charge accounts for the lesser amount of £4,230.81, was served on the property by Mr Holm and by the agent at the Respondent’s addresses in China on 12 January 2026, i.e. 3 days before the hearing. Copies of the demands and the service charge accounts served in April 2025 are included in the bundle and copies of the revised accounts and subsequent service charge demands are exhibited to the second witness statement of Mr Holm.

Calculation of the Respondent’s Service Charge

18. The sum demanded on 12 January 2026 was £4230.81 which amounted to 4.3957% of the total expenditure shown on the revised accounts in the service charge year 1 April 2024 to 31 March 2025. This calculation was based on the rateable value of 33 and 35 Lexham Gardens only. The lease specifies that the lessee’s proportion is calculated by reference to the aggregate of 33, 35 and 37 Lexham Gardens, however the Applicant no longer owns the freehold to 37 and consequently has no obligation to provide services or right to collect services charges in respect of it. The Applicant submits that in circumstances where (1) the ownership of the freehold has been severed, (2) the landlord has ceased to be under an obligation to provide services to 37 Lexham Gardens and (3) there has been a reduction in the number of flats for which the landlord is entitled to recover a service charge, there is an implied term that the proportion paid by the lessees is increased to reflect this change, i.e. the proportion is the rateable value of the flat divided by the aggregate rateable value of the flats that remain liable to pay a service charge to the landlord. Mr Madge Wylde referred us to the case of *H Waites Ltd v Hambledon Court Ltd* [2014] EWHC 651 (Ch), in which a similar term (albeit in circumstances where the number of flats increased) was implied on the basis that it would have been obvious to the contracting parties that the apportionment would have to change in the event that there was a change in the number of lessees liable to contribute.

19. We are satisfied that such a term can be implied into the lease in this case. It would have been obvious to the original parties to the lease that the proportions would have to change in the event that there was a change in the number of flats liable to contribute. We therefore find that the sum demanded was correctly calculated in accordance with the lease.

Were the service charges properly demanded?

20. The Applicant did not serve the Respondent with notification of the estimated service charges for the year 2024/25 as envisaged by Paragraph 4 of the Fourth Schedule to the lease. It would therefore not have been possible for him to pay the estimated service charges monthly in advance. The Applicant submitted that where the estimated service charge is not paid in advance, the landlord is permitted to recover the entirety of the actual service charges on demand at the end of the service charge year, after it has determined the yearly actual expenditure pursuant to Paragraph 4 of the 4th Schedule. Mr Madge Wylde submitted that once the service charge year ended, this is the only manner in which the sum could have been demanded.
21. We are satisfied that it was permissible for the Applicant to demand the actual service charges in full after service of the certified accounts, notwithstanding the fact that no interim demands had been made. The lease obliges the lessee to pay on demand the difference between the actual cost and the total of the interim payments he has made in that financial year. In this case that total was nil. Paragraph 4 of Schedule 4 to the lease does not on its face require interim payments to be actually demanded or made before a final demand for the balance is made following service of the certified accounts.
22. The service charge demands were served by posting the same through the letterbox of the property. They were also sent by post to both of the Respondent's addresses in China. As far as the Applicant is aware, Flat 5 is unoccupied. It is unlikely therefore the copy of the second demand had come to the Respondent's attention as at the date of the hearing. Similarly it is not likely that the copies of the second demand sent through the post on 12 January 2026 will have even reached China, much less come to the attention of the Respondent if he remains in custody there.
23. Mr Madge Wylde referred us to the case of *Oldham MBC v Tanna* [2017] EWCA Civ 50; [2017] 1 W.L.R. 1970 as authority for the general proposition that service of a document relating to registered land will generally be properly served if addressed to the registered owner of the property at their address for service noted on the Register of Title. In addition we can see no reason why the Applicant cannot rely on s.196(3), and (5) of the Law of Property Act 1925, in respect of service of the demands at the property. Its operation is not excluded by any

term of the lease and the address in question is located within the United Kingdom.

24. We are therefore satisfied that the demands were properly served and the sum became payable by the Respondent once service was effected at the property.

Final Points

25. There are two final charging orders noted on the title registered in favour of the London Borough of Kensington and Chelsea who have not been notified of these proceedings by the tribunal. Mr Madge Wylde informed us that it is the intention of his client to notify the local authority if forfeiture proceedings are issued. Nevertheless we consider that the local authority's name address ought to have been supplied to the tribunal as a person who might be affected by the application as the premises are said to be unoccupied and as such may not have the protection of s.2 of the Protection from Eviction Act 1977. We therefore direct the Applicant to supply the local authority with a copy of this determination within 14 days of receipt.

Name: Judge N O'Brien

Date: 20 February 2026

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).

