FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UB/LUS/2025/0002**
Property	**:**	**12 & 12A High Street, Dereham, Norfolk**
Applicants	**:**	**The Flats 12 High Street RTM Company Ltd**
Represented by	**:**	**Mr Stevenson (solicitor)**
First Respondent	**:**	**Stephen James Banham and Michael and Samuel Edmund Fleming**
Represented by	**:**	**Mr Fleming**
Second Respondent	**:**	**K Gray Plumbing & Heating Engineers Ltd**
Represented by	**:**	**Miss Fisher (Counsel)**
Type of Application	**:**	**Application for determination of accrued uncommitted service charges, s.94(3) of CLRA 2002**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mr Roland Thomas FRICS** **Mr Sheilen Dhanani**
Date and venue of Hearing	**:**	**27 April 2026, by video**
Date of Decision	**:**	**13 May 2026**

DECISION

DECISION

(1) The amount of accrued uncommitted service charges by way of reserve fund as at 1 February 2024 for the whole Development was £76,158.88.

(2) The sum which must be paid by the Second Respondent to the Applicant pursuant to s.94(1) of the 2002 Act is 17.18% of £76,158.88, namely £13.084.09.

Introduction

1. The Tribunal is asked to determine the amount of any service charge funds payable to the Applicant right to manage company pursuant to the duty under s.94(1) of the Commonhold and Leasehold Reform Act 2002.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

Parties

3. The Applicant acquired the right to manage on 1 February 2024 when the Respondents failed to file a counternotice to the Applicant's claim notice dated 21 September 2023.
4. The extent of the right to manage is still disputed by the Second Respondent (see below) but the Applicant contends it has the right to manage the whole of 12 and 12a High Street, Dereham, including the commercial premises on the ground floor as well as the 3 flats above.
5. The First Respondent holds a 999 year headlease of 12 and 12a High Street, registered under title number NK 124221. The headlease is dated 6 March 1992, and the First Respondent acquired it on 22 August 2003. At this time unit 12 and 12A High Street was in fact a single retail unit.
6. The Second Respondent is the freeholder of Aldiss Court, High Street Dereham (the Development) which includes the building which is 12 and 12a High Street, Dereham, under title number NK 22355. There are multiple other properties on site.

Background

7. In or about 2004/2005, the First Respondent converted 12 and 12A High Street into 2 retail units on the ground floor and the 3 residential flats on the upper floors.
8. On 21 September 2023 a claim notice was served seeking to acquire the right to manage 12 and 12A High Street, Dereham, Norfolk, NR19 1DR pursuant to the Commonhold and Leasehold Reform Act 2002, by the Applicant, in

relation to which all the leaseholders were declared as both qualifying tenants and members of the company.

9. The date stated on the notice as being the date on which the right to manage would be acquired was 1 February 2024.

10. Each Respondent was served with this claim notice. It is accepted that neither Respondent replied to the claim notice.

11. In service charge proceedings before this Tribunal under case reference CAM/33UB/LSC/2024/0003 (decision dated 6 May 2025), the First Respondent had questioned the validity of right to manage. However, that was not a matter within the Tribunal's jurisdiction at the time, and no further mention was necessary. For reasons which are apparent below, the extent of the premises acquired is relevant to the arguments in these proceedings.

The Application

12. On 8 August 2025 the Applicant made the instant application.

13. On 27 November 2025 directions were given by the procedural judge, later amended several times.

14. Statements of Case have followed from all 3 parties, plus witness statements from Mr Rice (for the Applicant) and Ms Ocetek-Gromski for the Second Respondent.

15. On 24 April 2026 (the Saturday before the hearing on the Monday), a Supplemental Witness Statement from Ms Ocetek-Gromski was filed and served. No objection was taken by Mr Stevenson or Mr Fleming to this late evidence.

The Leases

The Headlease

16. The headlease requires the First Respondent to pay a service charge by way of further and additional rent, pursuant to clauses 4 (a) and 5(1)(b) thereof. The service charge is said to be a proportionate part of the following:

    (i) the landlord's and agents' costs of general administration and supervision of the Development (the whole of Aldiss Court) in respect of or incidental to the performance and exercise of the obligations and powers in clause 6 in the Fifth Schedule (excluding the covenant to give quiet enjoyment) only main heads of expenditure set out in Schedule 5, Part 1;

    (ii) The cost of other works carried out or services provided for the benefit of the Development etc (i.e. a sweeper clause)

    (iii) Any reserves considered necessary.

17. By clause 4(b) the proportionate part of the service charge expenditure payable by the First Respondent is calculated and to be paid in accordance with the provisions of the Fifth Schedule, Part 2.

18. Schedule 5, Part 2 paragraph 3 provides:

> "The amount of the service charge payable by the tenant in respect of each and every accounting period as herein provided shall be SEVENTEEN POINT ONE EIGHT PER CENTUM (17.18%) of the total expenditure as herein calculated or such other fair and proper proportion as may from time to time be specified by the landlord in consequence of any change in the number or size of the units or Flats comprised in the Development."

The Underleases

19. The terms of the underleases are not in contention in these proceedings, but a short summary appears in the service charge decision dating from last year.

The hearing

20. This was conducted by video. Mr Stevenson, a solicitor, represented the Applicant.

21. Mr Fleming spoke for the First Respondent.

22. Miss Fisher of Counsel represented the Second Respondent, and was joined by Ms Ocetek-Gromski, witness.

23. The Tribunal had a bundle of 263 pages plus the supplemental witness statement and exhibit already mentioned.

Issues

24. During the course of the hearing the parties sensibly made concessions and narrowed issues as the case proceeded.

25. By the end of the hearing, just 2 main issues remained:

    (1) What was the amount of accrued uncommitted service charges by way of reserve fund as at 1 February 2024 for the whole Development?

    (2) Which percentage of that should be applied to represent the proportion payable to the RTM Company in relation to 12 and 12a High Street?

Discussion and Determination

(1) What was the amount of accrued uncommitted service charges by way of reserve fund as at 1 February 2024 for the whole Estate?

26. The Applicant contended that it was unclear what the reserves were at 1 February 2024. The bank statements exhibited by the Second Respondent ended on 26 January 2024, and in any event the bank account was not for Aldiss Court alone, but contained entries (redacted) for multiple other properties.

27. The sheet anchor for the Applicant was p184, 185 and 187 of the bundle, being draft financial statements prepared by Moore Chartered Accountants on behalf of the Second Respondent for the year ending 31 March 2024, showing reserves in both 2023 and 2024 in the sum of £96,465.

28. The Tribunal notes that while these were draft financial statements for 2024, it is a reasonable inference that the figure for 2023 is "correct" (also £96,465) as it must have been included in signed accounts the previous year.

29. Mr Stevenson's final position in closing submissions was that the Applicant is entitled to 17.18% of £96,465 = £16,572.68. (His reason for that percentage is discussed under the next issue).

30. Mr Fleming did not make any representations on this issue.

31. Miss Fisher's primary position, for the Second Respondent, was that the correct figure was £76,158.89. In this regard, she relied on:

(1) Paragraph 18 of the Second Respondent's Statement of Case;
(2) Paragraph 12 of Ms Ocetek-Gromski's first witness statement (albeit the figure therein is £76,15<u>9</u>.89);
(3) Paragraphs 7c and 7j of her second witness statement (albeit the figure therein is £76,159.8<u>8</u>);
(4) Oral clarificatory evidence from Ms Ocetek-Gromski.

32. In a nutshell, the Second Respondent agreed that property management software had calculated the sum of £96,465 relied on by the Applicant, but there needed to be deducted from that sum the figure of £20,306.12 for roof works to 12 High Street. An invoice in that sum is exhibited to Ms Ocetek-Gromski's second statement, and is dated 7 April 2020. Ms Ocetek-Gromski gave oral evidence that this invoice was received by the Second Respondent, and moreover it was paid by the Second Respondent in May 2020.

33. Miss Fisher contended this was therefore a *committed* service charge payment, so there was no duty to pay it over to the Applicant pursuant to section 94(1) of the Act.

34. Miss Fisher added it was clear from a proper reading of Ms Ocetek-Gromski's second witness statement at paragraph 7c that, since 2011, there have been no payments either demanded of or received from leaseholders in relation to the

reserve fund. That did not mean that payments out had not been made (i.e. the material roof invoice).

35. Miss Fisher's fallback position was that the correct sum was £79,969.99, being the figure Ms Ocetek-Gromski told the Tribunal was the figure for 1 February 2024 on bank statements which had been disclosed to the Applicant, albeit not exhibited to her witness statements. Mr Stevenson did not gainsay there had been disclosure of the relevant bank statement showing entries for 1 February 2024, and did not object to that figure going before the Tribunal, even though there was no application to adduce further documentary evidence in support at the hearing.

36. Mr Stevenson contended it was remarkable that the invoice for £20,306.12 had only been discovered, according to Ms Ocetek-Gromski, while she had been preparing for this tribunal hearing; and that 6 years had gone by since the invoice without the reserves figure being corrected in the accounts to show a deduction of over £20,000. There had not even been 1 working day between the revelation of the reason for the figure of £76,159.88 and the hearing. He also criticised the inability of Ms Ocetek-Gromski to explain the breakdown of the £76,158 in her exhibit MJO2, which reveals that £14,072.65 of that sum purports to represent credit from 1 April 2010 onwards.

37. Mr Stevenson did not address directly the argument that the invoice of £20,306.12 was a *committed* service charge. Instead he contended it could not be a deduction for the purposes of section 94(2) because it was "not required to meet the costs incurred before the acquisition date in connection with matters for which the service charges were payable."

38. At the conclusion of the hearing, the Tribunal retired to discuss the case. During the course of those discussions, the Tribunal looked up the bundle for the service charge hearing, and found a relevant document, being a spreadsheet showing service charge income into the reserve fund of 202,82727.56 and a balance at 26 October 2021 for the reserves. That balance at the bottom was £76,158.89.

39. Moreover, this document showed reserve fund itemised expenditure of £126,668.67, the last item reading:

"83357 New Roof high street T.CGARR/BD/A 20,306.12"

40. In the light of this discovery, we invited representations in writing from the parties on the document. Representations from the Applicants and Second Respondent were made on 5 May 2026 and have been considered. The parties were not afforded the opportunity to adduce fresh submissions or evidence on existing documents.

41. In the Tribunal's determination, Miss Fisher's primary submission is the preferable one in this case (save for taking a penny off the figure in paragraph 31 above). We have reached this conclusion for essentially 3 reasons:

42. Firstly, we accept the written and oral evidence of Ms Ocetek-Gromski (including statements signed on more than 1 occasion with a statement of truth). Despite Mr Stevenson's dogged cross-examination, the Tribunal's view is that the accounts figure even for several years cannot be determinative, if as we accept, there was a failure to provide the details of the roof invoice to the Chartered Accountants.

43. Secondly, the entries in the document referred to in paragraphs 38 and 39 above are corroborative of Ms Ocetek-Gromski's evidence. The document pre-dates the accounts relied on by Mr Stevenson. But more than that, it is logically probative of the contention that the roof invoice was a reserve fund expenditure and not a general repairs item, and which reduced the reserves to their present figure of £76,158.88. (The penny difference is likely to result from a rounding up or down of the figure of £94,465, but in any event is *de minimis,* we find).

44. Thirdly, we agree that the roof invoice, having been presented for payment and paid, was indeed a committed service charge item.

45. Accordingly, we determine that the amount of accrued uncommitted service charges by way of reserve fund as at 1 February 2024 for the whole Development was £76,158.88.

(2) Which percentage of that should be applied to represent the proportion payable to the RTM Company in relation to 12 and 12a High Street?

46. As noted above, the Applicant contended the correct percentage should be 17.18, because that was the percentage the Tribunal had determined the leaseholders and the First Respondent had objectively agreed (see paragraph 62 of the service charge decision).

47. The Second Respondent's argument was for 8.47%, based on paragraph 76 of the service charge decision, which records what the First Respondent's assertions were at that hearing (the 17.18% was split between the flats (8.47%) sand the commercial units (8.71%). Miss Fisher could not point to a determination in our decision that the First Respondent's apportionment of 8.47% for the residential units was correct, but nonetheless she rested on it.

48. Miss Fisher did not expressly rely on Ms Ocetek-Gromski's evidence, perhaps because unfortunately that witness had mistakenly put the percentage under the headlease at 17.8% (not 17.18%) in both paras 12 and 22 of her first

witness statement, thereby leading her to give a different percentage for the commercial units (9.33%).

49. Miss Fisher valiantly tried to argue that the percentage of 8.47 was correct because the right to manage included only the residential flats, despite the Tribunal taking her to section 72(3) of the Act, and the intention of the legislature not to create flying freeholds. She contended that section 96 should be interpreted separately to section 72(3), such that the real question is whether it was necessary for the RTM Company to manage the commercial premises. She could not provide authority on the cases for such a proposition, but accepted the case cited in the Respondent's Statement of Case, *Settlers Court RTM Co Ltd v FirstPort Property* [2022] 1 WLR 519, SC, was dealing with a different issue of shared estate facilities.

50. We decline to follow Miss Fisher's interpretation. If she were right, it would run a coach and horses through sections 96 and 97 of the Act. It is clear, applying *Settlers Court*, that in the instant case the whole of 12 and 12a High Street was acquired under the right to manage, including the commercial units, and not just the flats. Moreover, the reference to "premises" in sections 96 and 97 must be to the premises acquired on the relevant date circumscribed by section 72. Here that was 12 and 12a High Street, including the commercial units, because that was the self-contained vertical division of part of the greater whole. The Development is roughly rectangular, and if it were a cake, the slice acquired under the right to manage was *whole* of the bottom right hand corner of the "cake".

51. It follows that only the Applicant can exercise "management functions" in relation to the commercial units and flats in 12/12a High Street. Any landlord (whether the First or Second Respondent) cannot do so, except by agreement with the RTM Co: see s.96(2) and 97(2) - albeit any person can insure the premises at their own expense: s.97(3). However, Mr Steveson made it clear to all at the hearing that the Applicant wished to exercise management functions over the commercial units as well as the flats.

52. Mr Fleming did not make any submissions under this issue but only sought clarification on 2 points.

53. Accordingly, given that we reject the Second Respondent's argument, we prefer the Applicant's contention that the percentage of the reserves to be paid pursuant to s.94(1) of the Act which is attributable to 12 and 12a High Street is 17.18%.

Conclusions

54. It follows that we determine that the sum which must be paid by the Second Respondent to the Applicant is 17.18% of £76,158.88, namely **£13.084.09**.

Judge:

S J Evans

Date:

13/5/2026

ANNEX – 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 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 to 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.

Appendix 1

<u>CLARA 2002</u>

94 Duty to pay accrued uncommitted service charges

(1)Where the right to manage premises is to be acquired by a RTM company, a person who is—

> (a)landlord under a lease of the whole or any part of the premises,
>
> (b)party to such a lease otherwise than as landlord or tenant, or
>
> (c)a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2)The amount of any accrued uncommitted service charges is the aggregate of—

> (a)any sums which have been paid to the person by way of service charges in respect of the premises, and
>
> (b)any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3)He or the RTM company may make an application to [F1the appropriate tribunal] to determine the amount of any payment which falls to be made under this section.

(4)The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

96 Management functions under leases

(1)This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.

(2)Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.

(3)And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.

(4)Accordingly, any provisions of the lease making provision about the relationship of—

> (a)a person who is landlord under the lease, and

(b)a person who is party to the lease otherwise than as landlord or tenant,

in relation to such functions do not have effect.

(5)“Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.

(6)But this section does not apply in relation to—

(a)functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or

(b)functions relating to re-entry or forfeiture.

97 Management functions: supplementary

(1)Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.

(2)A person who is—

(a)landlord under a lease of the whole or any part of the premises,

(b)party to such a lease otherwise than as landlord or tenant, or

(c)a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.

(3)But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.

(4)So far as any function of a tenant under a lease of the whole or any part of the premises—

(a)relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and

(b)is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,

it is instead exercisable in relation to the RTM company.

(5)But subsection (4) does not require or permit the payment to the RTM company of so much of any service charges payable by a tenant under a lease of the whole or any part of the premises as is required to meet costs incurred before the right to manage was acquired by the RTM company in connection with matters for which the service charges are payable.