FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/18UK/LSC/2026/0116
Property	**:**	College Close, Buckleigh, Bideford EX39 1BL
Applicant	**:**	Mintoncrest Limited
Representative	**:**	David Hearn
Respondent	**:**	The twelve leasehold flat owners
Representative	**:**	
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Members	**:**	Regional Judge Whitney Mr M Ayres MRICS
Date of Hearing	**:**	11 August 2026
Date of Decision	**:**	30 September 2026

DECISION

© Crown Copyright 2026

Background

1. The Applicant made an application for a determination of liability to pay and reasonableness of service charges for the year 2026. The application was received on 20 April 2026.

2. The application relates to a block of 12 leasehold flats within two blocks. The flats are part of a larger estate which also includes 21 houses. The houses are not part of the application being freehold but subject to various covenants.

3. The application relates to the costs of works to a swimming pool. The swimming pool is situated in an open green space on the estate. The landlord is proposing to incur costs of decommissioning the swimming pool. It is said that these costs would be significantly less than re-commissioning the swimming pool and the ongoing running costs. We are told all leaseholders support this course of events although a small number (one or two) freehold house owners do not.

4. Directions were issued on 5 May 2026 listing the matter for a case management hearing. That case management hearing took place on 25 May 2026 and directions were given listing the matter for this hearing.

Hearing

5. The hearing took place by video. It was recorded. Below is a precis only.

6. Mr Hearn appeared as appointed representative for the Applicant. The following leaseholders attended:

    - Mr & Mrs O'Reilly (8)
    - Mr Ditchburn (10)
    - Mr Lovelace (18)
    - Ms Gibbett (28)

7. The Tribunal had a bundle of 345 pdf pages. References in [ ] are to the pdf page numbers of that bundle. The Applicant supplied a three page skeleton argument.

8. Initially there were some connection issues but these were resolved and the hearing could proceed with all parties taking a full part in the same.

9. Mr Hearn presented his case. Essentially he suggested that the wording of the leases was sufficiently broad to allow the Applicant to decommission the existing swimming pool and landscape the area. He suggested the

© Crown Copyright 2026

wording of the lease would allow such works as being equivalent to a replacement.

10. Final costing of the works to decommission had not been finalised save for an email from a gentleman named "John" dated 7 May 2026 [216].

11. Mr Hearn confirmed his witness statement was true [57-61]. He was questioned by the leaseholders who were present.

12. Each of the leaseholders made submissions to the Tribunal.

13. Essentially all supported the decommissioning of the swimming pool due to the very high cost of now making the swimming pool useable although all were critical of the Applicant and its agent for allowing matters to reach this point. Various issues were flagged as it was believed certain of the objecting freehold houses were failing to comply with the covenants in respect of their houses. The leaseholders believed the Applicant could and should have taken action which may have helped ensure there was agreement from all freehold house owners also.

14. The leaseholders sought orders pursuant to Section 20C and Paragraph 5A. They suggested it would be unreasonable to expect them to bear the costs of this application. The leaseholders all believed there had been a failure of proper management.

15. Mr Hearn suggested that the Applicant was here as it had no choice. He accepted all the leaseholders agreed to the decommissioning of the pool but not all the freehold houses did and he understood he needed this application for certainty.

Decision

16. The situation is unusual. The Property we are tasked to consider is two blocks of flats which form part of a wider estate which also includes 21 freehold houses. In a communal grassed area is an outdoor pool.

17. We are told historically the pool was "managed" by a residents group. The Applicant and their managing agent supported and agreed this. It seems in fact the Applicant took no active interest in the swimming pool nor ensured it was properly maintained or run.

© Crown Copyright 2026

18. In or about the period of the pandemic it became clear significant work was required to the pool. This arose when consideration was being given to re-commissioning the pool post COVID. It appears to be suggested the costs could be very high (figures of £150,000 plus are referred to). As a result consideration was given to the way forward and the Applicant suggested the pool could be decommissioned and the area landscaped. This was believed to be a significantly cheaper solution without substantial ongoing running costs.

19. The Applicant has consulted all who are required to contribute towards the costs. The flat owners have unanimously agreed the decommissioning of the pool. The majority of freehold house owners also agree save for one (or possibly two). As a result the Applicant says it makes this application to obtain clarity. The Applicant refers to advice it has received and suggests an application to this Tribunal is required.

20. We must say we do not understand the reasoning of the Applicant. If all the flat leaseholders agree whether the lease allows or not then we would expect this could be achieved. A variation could be agreed or even an agreed application to vary pursuant to the Landlord and Tenant Act 1987. The issue here relates to the freehold houses who are not unanimous in supporting the proposed solution. As we explained to the parties this Tribunal has no powers over the freehold houses and the covenants applying to the same. Even if we find as the Applicant invites us this will not bind the freehold houses and the Applicant will still have the difficulty that its covenants with the houses may require it to provide a swimming pool? No explanation has been given by the Applicant as to what they propose to do in such circumstances. It does appear that the Applicant has put the cart before the horse.

21. The starting point is the lease [176-191]. All parties accepted for the purpose of this application all the relevant terms are the same. We have not had sight of the leases and determine the issue on the basis of the lease supplied and referred to by the parties.

22. The lease demises the Flat and pursuant to the Second Schedule para 7 [188]:

"7. The right to use in common with the Lessor and occupiers of all other dwellings on the said College Close Estate and their visitors the swimming pool the grounds gardens and pathways all forming part of the

© Crown Copyright 2026

Communal Area subject to such reasonable rules and regulations for the

common enjoyment thereof as the Lessor may from time to time subscribe

but the Lessor shall not be under any liability whatsoever for any

damage or injury sustained by the Tenant or by persons authorised by him

exercising such rights---- ----------"

23. Pursuant to clause 4(iv) of the lease the leaseholder is required to pay towards the cost of the swimming pool and the common grounds. The proportion is said to be at the discretion of the Applicant.

24. Under clause 5(d) the Applicant provides covenants as to its obligations:

"5. THE Lessor HEREBY COVENANTS with the Tenant as follows: -

(d) That • (subject to contribution and payment as hereinbefore provided)

the Lessor will maintain repair decorate renew (which shall include

replacement) and where appropriate keep in good cultivation

(v) the Communal Area forming part of the said College Close

Estate which .shall include the Swimming pool----------"

25. Mr Heard suggested that reference to renew and replacement could allow decommissioning the pool.

26. We do not agree. We referred the parties to Arnold v. Britton [2015] UKSC 36 being what is widely regarded as the leading authority on lease determination. We apply the principles of that case. Notably that one should apply the ordinary natural meaning when interpreting a lease.

27. In so doing we are satisfied that if one applies the normal meaning to the words within the lease this does not include decommissioning the swimming pool so that one no longer exisits. We are satisfied the use of the words "renew" and "replacement" have a common usual meaning that is

© Crown Copyright 2026

readily understood. This would be to ensure that there is at all times a properly functioning swimming pool, the costs for which can be levied to all who are obligated to contribute.

28. In our judgment to suggest that the clause can mean something else does not apply the test laid down in the Arnold case. For that reason we are not satisfied the lease allows the Applicant to recover the costs of decommissioning the pool and landscaping the area as proposed.

29. This determination means that any costs associated with such works are not payable under the terms of the lease and are not reasonable.

30. In so determining we make clear that if the Applicant has an agreement (and for the purpose of these proceedings that relates to the leaseholders) it would be possible for the Applicant to decommission the pool. How this may interact with the freehold houses and covenants it may have with them is outside our jurisdiction.

31. Turning to the quote relied upon on the face of it this appears to be a quotation. It does not appear that a complete section 20 consultation has been undertaken and it is less than clear as to what is included within the same. This being said the costs is significantly less than that of re-commissioning the pool which will also continue to have ongoing running costs.

32. This means the Applicant's application fails. This leases the question of Section 20C and paragraph 5A.

33. If the Tribunal was cynical it might think the Applicant knew this was the likely outcome and was seeking the same to pave the way so that it might say "well we have no choice but to replace/renew the swimming pool…". It is aware the costs of so doing may be large, although no actual costings have been obtained. We comment that it is unclear that all the work suggested is actually required and as for ongoing costs whilst there is reference to lifeguards and the like again it is not clear to this Tribunal that the same are actually required if suitable fencing/access is in place.

34. We are told that this issue is acting as a blight on the sale of properties at College Close. We can see that this would be the case pending resolution of a matter which appears to have been ongoing for the past 5 years. This length of time is in our judgment unreasonable for such an issue to be outstanding and reflects poorly on the Applicant and its managers.

© Crown Copyright 2026

35. We take account of the fact that it does seem the Applicant for many years simply ignored its management responsibility. Even since it became aware of the issues it has at best been very slow to engage and move forward.

36. Making orders in relation to the costs orders sort are matters of the Tribunal exercising our discretion. We did hear from the Applicant and a number of the leaseholders. The leaseholders have positively engaged with the Applicant throughout. It is still unclear why the application was before us and we left the hearing unclear as to what steps if any were being undertaken to resolve the position in relation to the freehold houses. It appeared to us pursuing the flats in this way was seen as an "easy" option.

37. Taking account of the submissions made by all this is a case where in our judgement we should make orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act and prevent the Applicant landlord from recovering any costs associated with this application from any of the leasehold Respondents.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

© Crown Copyright 2026