



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

**Case Reference** : **CAM/22HU/LSC/2018/0073**

**Property** : **Warren Hill House, Warren Hall,  
Manor Road, Loughton IG10 4RP**

**Applicant** : **Warren Hill Mansion Amenity Limited**

**Representative** : **Ms Ayesha Omar Counsel**

**Respondent** : **South Shoreditch Development Limited**

**Representative** : **Mr Peter Magri**

**Type of Application** : **S27A Landlord and Tenant Act 1985 –  
determination of service charges  
payable – court referral**

**Tribunal Members** : **Judge John Hewitt  
Ms Marina Krisko BSc (EstMan) FRICS  
Mr N Miller BSc**

**Date and venue of  
Hearing** : **11 February 2019  
Hallmark Hotel London Chigwell  
Prince Regent  
Manor Road, Chigwell  
IG8 8AE**

**Date of Decision** : **13 February 2019**

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**DECISION**

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### **The issue before the tribunal and its decision**

1. The sole issue before the tribunal was the liability of the respondent to pay to the applicant service charges in the sum of £5,399.80 being the balance said to be due set out in a demand or Application for Payment dated 5 March 2018 issued by the applicant's managing agent, Colin Cohen [6] to the respondent.
2. The decision of the tribunal is that as at the date of the issue of the court proceedings the amount of £5,399.80 in respect of service charges was due and payable by the respondent to the applicant.

Since that time the respondent has made a number of payments to the applicant. At the hearing the parties were agreed that the sum claimed - £5,399.80 had now been paid in full.

### **Report to the court**

3. The tribunal reports to the County Court at Central London (Claim Number EOQZ11D5) that when the claim was issued the service charge arrears of £5,399.80 were payable by the respondent to the claimant.

As noted above, since the issue of the claim, the sum claimed has been paid in full.

4. [Not used]

5. In the court proceedings the applicant/claimant also claimed:

- 5.1 Statutory interest pursuant to s69 County Courts Act 1984;
- 5.2 Court fee £410.00;
- 5.3 Legal Representative's costs £100; and
- 5.4 Costs (unspecified)

These claims are referred back to the court because the court has exclusive jurisdiction to determine them.

As to the claim to interest the court may wish to note that the lease does not contain a provision for the payment of interest on sums not paid by a due date.

6. The reasons for our decision are set out below.

**NB** Reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for our use at the hearing.

### **Background**

#### **The Property and the title structure**

7. On 20 November 2000 the freehold title of Warren Hill House, Warren Hall was registered at HM Land Registry with title number EX652164 [41]. The Schedule of notices of leases in the Charges Register [46]

records that between December 1976 and January 1980 six leases of flats within Warren Hill House, Warren Hall were granted, each for a term of 999 years from 1 January 1977.

On 20 November 2000 the applicant was registered as proprietor [43].

8. The lease of flat 2 is dated 30 June 1978. It is registered at HM Land Registry with title number EX212260. On 10 October 2012 the respondent was registered as proprietor [49].
9. The material provisions of the lease are set out in the Schedule to this decision. For the moment, the service charge regime set out in the lease may be summarised as follows:
  - 9.1 The service charge year is the calendar year – 1 January – 31 December;
  - 9.2 The landlord's managing agents are to prepare a budget and to ascertain a provisional proportion payable by the lessee which is payable in advance by two half yearly payments on 1 January and 1 July in each year. If the sum payable has not been notified to the lessee by 1 January, then the sum due is payable 14 days after it is notified to the lessee;
  - 9.3 After the year-end the managing agents are to calculate the actual amount of the service charge payable for that year. Any shortfall between the provisional service charge and the actual service charge is payable 14 days after notification of it. Any surplus may be carried forward by way of a credit to the account or repaid to the lessee at the discretion of the landlord.
10. There are two parts to the service charge – the property (the building) and the pleasure grounds (the estate). As to the property the lease specifies the lessee's proportion is a one-fifth part. It appears that it was originally intended that the property would be adapted to create five self-contained flats.

Evidently there are six flats within the property and six long leases have been granted. The papers before us show that the sum demanded is a one-sixth share of the budget and that proportion is not in dispute.

11. The property was originally constructed in about 1900 as a rather grand mansion house. Subsequently it was adapted to create six self-contained apartments. The property stands in about five acres of land and the estate includes mature woodland (with rare trees) adjacent to Epping Forest, parkland, landscaped areas, an outdoor swimming pool with patio, a communal car park for 12 vehicles and a garage forecourt which give access to six garages,

The property is reached by a 250-metre long private driveway entry to which is controlled by an entry-phone system.

There are two houses adjacent to (or perhaps within) the estate, the owners of which have the benefit of enjoyment of the estate and its amenities.

The six leaseholders and the two house owners are all members of the applicant, a company limited by guarantee. At present the company has four directors, Mr Simon Brody, Mr Stuart Cooper, Mr Jonathan Hunter and Mrs Linda Wilkinson.

### The claim and the court proceedings

12. The budget for 2018 was set and it comprised:

| Expense                     | The Property      | The Pleasure Grounds |
|-----------------------------|-------------------|----------------------|
|                             | Warren Hill House | External Amenity     |
| Insurance                   | £8,500            | £1,300               |
| LEB (Electricity)           | £700              | £2,300               |
| Cleaning                    | £3,300            |                      |
| Lift                        | £1,250            |                      |
| Health & Safety             | £880              |                      |
| Repairs & maintenance       | £2,320            | £3,010               |
| Gardening                   |                   | £7,400               |
| Swimming Pool               |                   | £3,600               |
| Security                    |                   | £2,000               |
| Audit & Man Co              |                   | £700                 |
| Managing Agents             |                   | £3,300               |
| Reserves                    | £50,000           | £4,800               |
| <b>Total</b>                | £66,950           | £28,410              |
| Share (6/8)                 | £11,158.33        | £3,551.25            |
| Each half-yearly instalment | £5,579.17         | £1,775.63            |

13. An Application for Payment dated 6 February 2018 was sent to the respondent by the applicant's managing agent, Colin Cohen [166]. It claimed £8,784.80 made up as to:

| Date       | Description  | Debit £  | Credit £ | Balance £ |
|------------|--|----------|----------|-----------|
|            | Balance brought forward  | 1,700.00 |          | 1,700.00  |
| 01.12.2017 | Interim Service Charges (Externals)<br>01.12.2017 – 31.12.2017 | 200.00   |          | 1,900.00  |
| 01.12.2017 | Interim Service Charges (Internals)<br>01.12.2017 – 31.12.2017 | 300.00   |          | 2,200.00  |
| 22.12.2017 | Payment received   |          | 385.00   | 1815.00   |
| 01.01.2018 | Interim Service Charges (Externals)<br>01.1.2018 – 30.06.2018  | 1775.63  |          | 3,590.63  |

|            |  |          |        |          |
|------------|--|----------|--------|----------|
| 01.01.2018 | Interim Service Charges (Internals)<br>01.01.2018 – 30.06.2018 | 5,579.17 |        | 9,169.80 |
| 25.01.2018 | Payment received   |          | 385.00 | 8,784.80 |

14. By a letter dated 23 February 2018 [168], solicitors – Northover Litigation - wrote to the respondent at the request of applicant. The letter referred to an earlier letter dated 16 February 2018 (which we have not seen) and enclosed a further copy of the Application for Payment dated 6 February 2018. The letter stated that the applicant required immediate payment of £8,784.80.
15. On or about 12 March 2018 the applicant issued the court proceedings. The claim was for £5,399.80 being “... *the provisional service charge in the sum of £5,399.80 in accordance with the Statement attached hereto.*”

The statement is at [6] and provides:

| Date       | Description  | Debit £  | Credit £ | Balance £ |
|------------|--|----------|----------|-----------|
|            | Balance brought forward  |          |          | 1,815.00  |
| 01.01.2018 | Interim Service Charges (Externals)<br>01.1.2018 – 30.06.2018  | 1775.63  |          | 3,590.63  |
| 01.01.2018 | Interim Service Charges (Internals)<br>01.01.2018 – 30.06.2018 | 5,579.17 |          | 9,169.80  |
| 25.01.2018 | Payment received   |          | 385      | 8,784.80  |
| 16.02.2018 | Payment received   |          | 3,000    | 5,784.80  |
| 26.02.2018 | Payment received   |          | 385.00   | 5,399.80  |
|            |  |          |          |           |

16. A defence was filed.
17. By an order made 18 September (and drawn 31 October) 2018 [29] Deputy District Judge Gillman ordered that: “*The case is transferred to the First Tier Tribunal.*”
18. The tribunal received the court file on 15 November 2018 and gave directions on 28 November 2018 [30].

### **Inspection**

19. At 10:00 on Monday 11 February 2019 the members of the tribunal had the benefit of an external inspection of Warren Hall. The applicant was represented by Ms Omar of counsel, her instructing solicitor and Mrs L Wilkinson, a director. The respondent was represented by Mr Peter Magri, a property consultant.
20. The focus of the case was a major works project concerning external repairs and redecorations (the project). As we went around the outside of the building, a number of defects and wants of repair were drawn to our attention.

## Hearing

21. The hearing commenced at 11:15.

Ms Omar presented the case on behalf of the applicant. Ms Omar handed in a skeleton argument. Ms Omar called Mrs L Wilkinson to give oral evidence. Mrs Wilkinson was cross-examined by Mr Magri and also answered questions put to her by members of the tribunal.

Mr Magri presented the case on behalf of the respondent. Mr Magri gave oral evidence. He was cross-examined by Ms Omar and also answered questions put to him by members of the tribunal.

At the conclusion of the evidence both representatives made closing submissions.

## The nub of the issue

22. The nub of the issue was the inclusion in the 2018 budget of the allocation of £50,000 to the sinking fund in respect of the project. There is a bit of history to the project. For reasons which will become clear shortly we need not recount that history in any detail.
23. The applicant held an AGM on 11 July 2016. The minutes are at [69]. They record Mr Magri was present on behalf of Flat 2. Amongst other things some roof repair works were discussed. Mrs Wilkinson reported that additional external works were needed the cost of which estimated at £32,000. At that time the agreement or consensus of the meeting was that each lessee would contribute a one-off levy of £5,000 to provide a fund for the cost of the works. These works included masonry works and redecoration. The managing agent recommended that a building surveyor be instructed to prepare a condition survey. This was duly done. A copy of the report dated 10 October 2016 is at [72]. In broad terms this indicated that slightly more extensive works were required. It was evident that the cost would exceed the initial estimate of £32,000. The directors decided to obtain fresh estimates for budgeting purposes. Five potential contractors were invited to tender for the works, but only three tenders were submitted. The tenders ranged from £69,000 to £141,000 excluding VAT and professional fees.
24. The potential cost of the project was much higher than anticipated. The managing agent convened a meeting of the lessees to discuss the project. This was held on 28 March 2017. The minutes are at [100]. It is recorded that Ms Jo Hosler (a director of the respondent) had sent apologies for absence. It is recorded it was contemplated that a 5/7 and 10-year forecast “... *for contribution to sinking fund from the service charge with the aim of avoiding future levys and to comply with the terms of the lease.*” [sic] would be prepared.

In general discussion about the project there was a notion that there should be a main contractor to include the scaffolding sub-contract because that would simplify project management be undertaken by Ms

Hasler and Mrs Wilkinson, at no cost to the applicant. The minutes record that there was consensus to proceed and award a contract to Gemini and also to investigate the inclusion of some additional works to the portico.

25. An AGM was held on 28 June 2017. The minutes are at [102]. The respondent was neither present nor represented. The project was discussed. The minutes record that stage 1 and stage 2 s20 consultation notices had been issued. The managing agent reported that a levy had been raised on the six lessees, four had paid and that payment from the fifth was expected imminently. The minutes make no reference to the sixth lessee, but we infer the sixth lessee is the respondent and that it had not paid the levy. The minutes also record the advice of the managing agent that if the contract could not be placed by the summer and the works were deferred to the next year, the cost of the works will increase.
26. At [105] there is a two-page letter sent by Ms Hosler to the managing agents. So far as material, it draws attention to certain terms of the lease and asserts that the 2017 budget issued in December 2016 did not make reference to the costs of the project and that it was not open to the applicant to impose a levy part-way through the year. It was suggested that if the works were carried out in 2017 the cost could be included in the year-end statement and any balancing debit would be payable within 14 days of demand.
27. In the event a contract was not placed. Those lessees who had paid the £5,000 levy were refunded. At some point, it was not entirely clear to us when, a representative of the respondent suggested that the project ought to be supervised by a project manager and a surveyor. The applicant agreed to this suggestion, even though it increased the cost of the project.
28. The directors of the applicant met in the autumn of 2017. They decided that in the absence of funds it would not be wise to place the contract for the works. They considered the costs involved, including the additional costs of the project manager and the surveyor, the urgency of some of the works, the possible increase in costs due to inflation and further deterioration if there was too much delay to the project and affordability for the lessees and came to the decision to raise £100,000 to cover the costs and for this to be funded by an allocation of £50,000 to the sinking fund in the 2018 budget and £50,000 in the 2019 budget with a view to the works being carried out in late 2019 or in 2020.
29. The 2018 budget was duly prepared on that basis. The budget was sent out to lessees under cover of a letter dated 11 December 2017 [109]. A copy of the budget is at [110].

The budget as regards the property - Warren Hall - includes the £50,000 allocation to the sinking fund for the costs of the project. The budget totals £66,950.00. Each lessee's contribution is £11,158.58

which means that each half-yearly instalment (due 1 January and 1 July) is £5,579.17.

A demand for the instalment due on 1 January 2018 was sent to the respondent on 6 February 2018 [166].

### **The respondent's position**

30. Mr Magri confirmed that the only entry on that demand which is in issue is the £5,579.17 – and that is because it includes a contribution to the allocation of £50,000 to the sinking fund.
31. Mr Magri agreed that in broad terms the works comprising the project need doing, and that they should be done sooner rather than later because if left too long there will be much more deterioration.
32. Mr Magri had no objection to a reserve fund of £100,000 being built up to fund the project. His main complaint was that to raise £100,000 over two years was unreasonable and that it should have been raised over three years. Mr Magri sought reliance on the opening sentence of paragraph three of the Third Schedule to the lease to the effect that allocations to the sinking fund should be phased so as avoid 'abnormally high charges in any year'. He said that a £50,000 allocation in one year was a 'spike' and the lease terms were that such a spike should be avoided.
33. Mr Magri was also critical that the directors had never properly got to grips with a 5/7 or 10-year plan for the property, whether as regards the project or other costs recurring costs that inevitably arise in a historic and prestige property such as Warren Hall. Further, he was critical that major expenditure was incurred on internal redecorations and refurbishment in 2016 and argued that the external works should have taken precedence.
34. Mr Magri also drew attention to paragraph 7 of the Third Schedule to the lease which provides for disputes in relation to the service charge or the provisional service charge should be decided by the managing agent. He said that he had drawn this provision to the attention of Mr Cohen in a telephone call prior to the court proceedings being issued.

### **Discussion**

35. With no disrespect to the parties' final submissions or to Ms Omar's skeleton argument, we need not cover ground that was not in issue.

The applicant asserts that the decision to allocate £100,000 to the sinking fund over two years was a reasonable decision.

The respondent says there is no dispute over the £100,000 but it asserts it should have been raised over three years, and not two years. Arithmetically, that would amount to £33,333 each year although during the hearing Mr Magri mentioned £30,000 per year.



36. It is not for the tribunal to impose its decision in place of that of the applicant. It is not for the tribunal to decide what another landlord might have decided. What we have to decide is whether the actual decision of this landlord in context and circumstanced as it was, was so unreasonable that no landlord in such circumstances, acting reasonably, would have arrived at it.
37. On the evidence before us we find that it was not unreasonable for the applicant to have decided to collect the funds over two years. The reasons given by Mrs Wilkinson and set out in paragraph 28 are compelling. The directors were acting on professional advice about the urgency of the works and the risk of increased costs if there was delay. These points were not in dispute. The applicant is a company limited by guarantee. It does not have shareholders. The leases are for 999 years at the rent of a red rose. There is little, if any, value in the freehold. The applicant is not in a position to raise a loan because there is little it can offer by way of security. It is entirely reliant on the lessees putting it in funds. It is also wise that the directors should not place a substantial contract unless and until it was holding funds in a significant amount.
38. In these circumstances we cannot find that the subject decision was unreasonable or perverse.
39. We accept Ms Omar's submission that paragraph 3 of the Third Schedule entitles the managing agent to allocate sums to a sinking fund with a view to avoiding abnormally high charges in any one year, but it does not impose an obligation on the managing agent to do so. There is, of course, a major difference between an entitlement to do something and an obligation to do something.
40. We also accept Ms Omar's submission that paragraph 7 of the Third Schedule is void by virtue of s27A(6) Landlord and Tenant Act 1985.
41. We have some sympathy with Mr Magri's criticism about a coherent 5/7 or 10-year rolling plan for the Property. Warren Hall is a substantial and sophisticated high-end building with services to match. To maintain it to the required standard will require careful and long-term planning. The financial consequences ought to be factored into the planning and such a course is to be preferred over ad hoc projects. However, that does not detract from the overall reasonableness of the budget set for 2018.
42. We also add, for avoidance of doubt, that we are aware the project was reviewed at the 2018 AGM and some modifications were made. We need not go into the detail. We have to decide the reasonableness of the budget for 2018 when it was set in the autumn of 2017 in the light of the information and advice available to the directors at that time and when the decision was made.
43. During the course of the hearing Mr Magri raised some concerns that the condition survey carried was not sufficiently detailed and in

consequence the tenders allowed for several 'provisional sums'. Mr Magri said that in his experience as a property consultant this was unsatisfactory and allowed for uncertainty over the final cost of a project. Mr Magri suggested that some less urgent works might be deferred and that a cherry picker instead of scaffolding might allow a saving to be made. In general discussion on these matters it became apparent that they can be picked up in due course when the project is to go ahead and when the applicant will give its further s20 consultation notices.

44. For the reasons set out above we find that arrears of service charges of £5,399.80 were due and payable by the respondent to the applicant in March 2018 when the court proceedings were issued.

Judge John Hewitt  
13 February 2019

### **The First Schedule (Extracts from the Lease)**

Recital (1)

Definitions

**'the property'** the building comprising five flats ... at Warren Hill...;

**'the pleasure ground'** the amenity land for ornamental and recreational purposes and access to the property shown edged yellow on the plan number 2 ...;

**'Grantees'** persons (not being tenants of a flat in the property) in whom a right of use and enjoyment of the pleasure ground is for the time being and from time to time vested;

**'the service charge'** the cost to the Landlord in a given year of complying with its obligations in sub-clauses 1, 2 and 4-12 (inclusive) of Clause 4 together with the costs referred to in ??? {wording omitted due to poor photocopying};

**'the provisional service charge'** the likely cost of the service charge in any given year;

#### **Clause 3**

The Tenant hereby covenants with the Landlord as follows:-

- (1) To pay the reserved rent (if demanded) on the day aforesaid and by way of further rent the Tenant's proportion of the service charge and provisional service charge allocated to the flat in the Second Schedule at the times specified in the Third Schedule

#### **Clause 4**

The Landlord ... hereby covenants with the Tenant as follows:-

- (1) To pay all ... rates ...
- (2) To insure and keep insured the property ...
- (3) ...
- (4) To keep the property and including the roof and foundation and common parts in good and substantial repair and condition and to redecorate the exterior of the property and the interior staircases halls and landings of the property ... whenever necessary and in any event at least once in every five years
- (5) – (6) ...
- (7) To keep the pleasure ground including grassed areas and shrubs and flower beds neat and tidy and properly cared for ... and to maintain in good repair (and working condition if appropriate) any ornamental or recreational structures or features ...

### **The Second Schedule**

1. As to that part of the provisional service charge and the service charge which shall be incurred wholly or partly in respect of the property each tenant of a flat in the property shall be liable for one-fifth part thereof;
2. As to that part of the provisional service charge and the service charge which shall be incurred wholly or partly in respect of the pleasure ground each tenant of a flat in the property and grantee shall be liable for the following proportion thereof:-
  - (i) One-seventh part until the event specified in sub-clause (ii) shall occur;
  - (ii) Eight sixty-third parts in the event that Derek Percy Ingle and his successors in title to Lodge Cottage shall become entitled to the use and enjoyment of the pleasure ground
3. For the purposes of Clauses 1 and 2 hereof any expenditure in respect of the property and the pleasure ground jointly shall be apportioned fairly between the property and the pleasure ground according to the nature of such expenditure ...

### **The Third Schedule**

1. The Landlord shall be entitled to appoint Managing Agents ...
2. The Managing Agents shall in respect of each year commencing on the First day of January determine the provisional service charge and notify the Tenant thereof and the Tenant shall pay his proportion of the same by two half-yearly payments in advance on the First day of January and the First day of July in question or if the same shall not have been notified to him fourteen days before the First day of January

in question then (so far as the first instalment is concerned) fourteen days after the same is notified to him.

3. In determining the provisional service charge and the service charge the Managing Agents shall be entitled with a view to avoiding abnormally high service charges in any year to include such sum (to be fixed them annually) as shall be estimated by them annually as necessary to provide a sinking fund for:
  - (a) the replacement of the lifts in the property;
  - (b) the cost to be incurred by the Landlord in redecorating the exterior and common parts of the property at the intervals referred to in clause 4 hereof and in carrying out repairs thereto when required; and
  - (c) the costs of complying with any of the Landlord's other obligations where substantial expenditure at intervals less frequently than annually is involved
4. At the end of each year to the Thirty-first day of December the Landlord's Managing Agents will calculate the service charge for that year and will provide the Tenant with a statement thereof. Any shortfall between the provisional service charge and the service charge for that year shall be payable fourteen days after the production of the statement. Any surplus may be carried forward and the provisional service charge for the following year or years accordingly reduced or may at the discretion of the Landlord be wholly or partly repaid to the Tenant and the other lessees at the property or grantees
5. [not used]
6. The Managing Agents shall where practicable put any sinking fund or monies held by them on account of the provisional service charge and not immediately required to be spent on deposit with a repayable bank to the intent that any interest earned thereon may be set off against the service charge for the year in question
7. Any dispute in relation to the service charge or the provisional service charge shall (where but only where Managing Agents have been appointed) be decided by the Managing Agents of the Landlord acting as experts and not as arbitrators and their decision shall be final and binding on all parties to the dispute. If Managing Agents shall not have been appointed then the same shall be referred to the decision of an arbitrator ...
7. Number Duplicated. Where Managing Agents shall not have been appointed by the Landlord the tasks allocated to them under this deed shall (subject to provision 6 of this Schedule) be exercised by the Landlord.

8. ...

## **The Second Schedule (Material Statutory Provisions)**

### **Landlord and Tenant Act 1985**

#### **18.— Meaning of “service charge” and “relevant costs”.**

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **19.— Limitation of service charges: reasonableness.**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(2A)-(3) (4) ... [repealed]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

**27A Liability to pay service charges: jurisdiction**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

.....

#### **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 Tribunal 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 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.
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.