



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

Case reference : **CAM/33UF/LIS/2021/0014**

**HMCTS code
(audio, video,
paper)** : **P: PAPERREMOTE**

Property : **Trafalgar Court, 42 Cromer Road,
Mundesley, Norfolk NR11 8DB**

Applicant : **London Land Securities Limited**

Respondents : **Stephen Tearle and the other
leaseholders listed in the substantive
Decision (described below)**

Type of application : **Application for permission to appeal**

Tribunal members : **Judge David Wyatt
Mr G F Smith MRICS FAAV REV**

Date of decision : **28 January 2022**

DECISION

Covid-19 pandemic: description of decision

This has been a remote decision on the papers. The form of remote decision was P:PAPERREMOTE. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents we were referred to are those described in paragraph 4 below. We have noted the contents.

Decisions of the Tribunal

1. The tribunal has considered the request for permission to appeal based on the grounds of appeal provided and decided that:
 - (a) the tribunal will not review its Decision; and
 - (b) permission to appeal is refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, each party who applied for permission to appeal may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
3. Where possible, you should send any such further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

Reasons for this decision

4. The substantive decision was made on 20 December 2021 (the “**Decision**”). On 13 January 2022, the Applicant applied for permission to appeal with their grounds of appeal, comprising an e-mail which attached an electronic bundle of 145 pages. We have taken those documents, and those described in paragraph 4 of the Decision, into account.
5. We consider that none of the grounds of appeal have any realistic prospect of success. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (if any further application for permission to appeal is made), we have in the attached Appendix set out comments on two specific points raised by the Applicant in their grounds of appeal. Please read this document with the Decision, which explains the background and the expressions used. References below in [square brackets] are to those paragraphs in the Decision.
6. The other points canvassed in the Applicant’s documents are disagreements with the tribunal’s Decision and the 2013 Decision (described in the Decision), or further attempts to revisit historic grievances between the parties which have been addressed, so far as possible, in earlier decisions of the tribunal (or of other tribunals in this jurisdiction).

APPENDIX TO THE DECISION
REFUSING PERMISSION TO APPEAL

New evidence in relation to major works payments [24-31]

1. The Applicant landlord asserts (for the first time) that, acting on the directions in the 2013 Decision, the tribunal-appointed managers (Messrs Maunder-Taylor): “...allocated £30,490.37 of the Applicants financial contribution to the Respondents during the service charge period from 6 August 2013 to 5 August 2014.” In their longer document attached to that e-mail, the Applicant says this is “conclusively confirmed” by the service charge accounts produced by the accountants, Aston Shaw Limited, but those accounts give no such confirmation.
2. The Applicant produces (for the first time) copy bank statements for the period from 6 August 2012 to 15 September 2014. Using their analysis of these statements, they assert that:
 - a. the Applicant paid £421,593.98 towards major works for the period from 6 August 2012 to 5 August 2013 and £103,347.37 for the period from 6 August 2013 to 5 August 2014; and
 - b. the “independent Leaseholders/Respondents” paid £143,125.08 towards the major works for the former period and £21,967.53 for the latter period.
3. The Applicant says this corresponds with the figures in service charge accounts for the former period (£421,594 and £143,126 respectively) but in relation to the latter period the accounts show £72,857 received from “LLSL” and £52,438 received from “Residents”.
4. The Applicant argues (in essence) that it follows from this alleged difference that Messrs Maunder-Taylor must have: “allocated £30,470.73 of the Applicants contributions/funds to the independent leaseholders”. They make essentially the same assertion in several slightly different ways, all based on their analysis of the bank statements compared to these figures in the accounts. They do not explain precisely how their analysis fits the inference they are now asking us to draw. The difference between the payments said to be attributable to the Applicant of £103,347.37 and £72,857 (£30,490.37) is not the same as the alleged difference between the payments said to be attributable to the “Residents” of £21,967.53 and £52,438 (£30,470.47).
5. Nor does the Applicant explain how they say this alleged difference corresponds with the service charge proportions of the relevant “independent” leaseholders of the relevant initial major works invoices (or of the old major works fund of £119,870). It seems likely that the total of these would have been less than £30,000. However, we comment below on the argument the Applicant is now seeking to make.

6. It is a basic general principle that there has to be an end to litigation. In Ladd v Marshal [1954] 1 WLR 1489, in the Court of Appeal, Denning LJ said: *“In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive: thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.”*
7. The Applicant fails the first test. These proceedings were brought by the Applicant at a time of their own choosing. They applied to the tribunal on 18 June 2021 seeking determinations in respect of service charges (from 2011 and 2012) which were about 10 years’ old. They had apparently taken no recovery action in respect of such charges for years, despite being permitted by the relevant management order (from 2012) to do so. The case management directions given on 20 July 2021 referred to the No.18 Decision (which determined the service charges payable in respect of Flat 18 for the same periods). The Respondent leaseholders were directed to produce their case documents first, to show why they said different charges were payable.
8. It was obvious from the case documents produced by the Respondents pursuant to those directions that they were contending they had paid (or should based on the 2013 Decision and the correspondence they produced from Messrs Maunder-Taylor be treated as having paid) their service charge proportion of the relevant major works invoices. The Applicant then produced their case documents in answer. All the documents were exchanged between the parties in August and September 2021 and there was no request for more time. The Applicant had ample time to produce any case and evidence they wished to rely upon before the hearing on 11 November 2021.
9. Despite this, even at the hearing, the Applicant did not make the case they are now seeking to argue. The bank statements and analysis relied upon in seeking permission to appeal had not been mentioned before now, let alone included in the documents produced for the hearing. It appears the copy bank statements enclosed with the application for permission to appeal were already in the possession of the Applicant and could have been produced for the hearing.
10. As noted at [29], Mrs Sharma argued at the hearing that adjustments had been made by Messrs Maunder-Taylor so each leaseholder had already been given credit, in revised demands, for the major works invoices which had been paid from the £119,870 and the Applicant had paid a “huge amount” towards the major works. On the case and evidence produced, we were satisfied on the balance of probabilities that (as would be expected generally and from the 2013 Decision) the managers had treated the Applicant and the “*independent*” leaseholders in the same way. That is, they had reduced the amounts sought in the

managers' original demands to (following the 2013 Decision) treat everyone as having already paid their service charge proportion of the relevant initial major works invoices. They did so because the Applicant had paid those invoices from the old major works fund of £119,870 instead of handing over the entire fund to the managers.

11. It may help to explain that, even if the Applicant had not failed the first test, their analysis of the bank statements does not necessarily (and on the material produced seems unlikely to) support the inference they are seeking to draw. As explained below, they appear to be projecting what they wish to see onto the documents.
12. First, the Applicant relies on drawing an inference from what they say their analysis of their new evidence shows. It is inherently unlikely that the managers and accountants would have allocated payments to others. They would be expected to attribute payments to the relevant payers and give a clear statement or explanation if it was agreed that payments were to be attributed to others. No evidence of any such statement, explanation or agreement has been produced. The relevant service charge accounts were settled a long time ago. If the Applicant wished to challenge those accounts, they needed to do so promptly, not some eight years later. Further, no good reason has been given to explain why the managers and accountants might have allocated payments to others. Nothing in the 2013 Decision required that the "*independent*" leaseholders be treated differently from the Applicant or the leaseholders connected with it, let alone that payments from the Applicant be attributed to the "*independent*" leaseholders. On the contrary, it directed that they were each to be treated as entitled to their service charge proportion of the old major works fund of £119,870.
13. Further, the Applicant's analysis of the statements may not be reliable. We do not propose to attempt to examine the bank statements in detail, since further disclosure and examination, probably with a new hearing, would be necessary to attempt the assessment the Applicant seeks. However, we note the source of some payments is not clear from the statements which have been produced. We do not know whether payments were made outside the relevant accounting periods but attributed to them. An issue between these parties in other proceedings revealed that some leaseholders pay all charges into a general service charge account and the appropriate major works sums are later transferred into a major works account, which may or may not have been the case when Messrs Maunder-Taylor were managing the property. Even if the Applicant's analysis of the bank statements is correct, it does not follow that payments from the Applicant for the major works were attributed to the "*independent*" leaseholders. The Applicant is likely to have been making: (a) some payments in respect of the flats which were unfinished/unlet and flats leased apparently to the Applicant; and (b) some payments on behalf of other leaseholders connected with it, described as "family and friends", who are likely to have been described as "Residents".

14. Further, the Applicant's argument is inconsistent with the documents which were produced for the hearing. These include the e-mail of 31 July 2013 from Michael Maunder-Taylor which has been enclosed with the Applicant's grounds of appeal and referred to by the Applicant as if it supports their argument, referring as it does to an adjustment and an amount of £30,417.42. However, the relevant part of that e-mail (to Sonal Sharma for the Applicant) simply says: "...I have recalculated the balances due from each leaseholder as I had omitted to deduct the expenditure LLSL incurred prior to handing over to myself and Bruce. I attach the two statements hereto in respect of the outstanding monies. As you say, the amount is a little over £30,000; the total is £30,417.42. If you could make payment as soon as possible I would be very grateful...". Even now, the statements referred to in this e-mail have not been produced, but the e-mail gives no indication that Mr Maunder-Taylor had allocated payments from the Applicant to others. On the contrary, it is asking the Applicant to pay £30,417.42 (which was probably the reduced demand after the Applicant was given credit for their service charge proportion of the relevant major works invoices) to the managers. That obvious meaning of the e-mail is confirmed by the bank statements, which show receipt on 6 August 2013 of a payment of £30,417.37 from the Applicant.

New evidence in respect of the "legal costs" of £2,100 required from Alan Roper on sale of the lease of No.18 [21-23]

15. As noted at [22], no such service charge cost had been claimed in respect of the relevant period in these proceedings and no invoice or other contemporaneous evidence of any such costs had been provided. With their application for permission to appeal, the Applicant now produces copy invoices from Morrisons solicitors, which refer to a "service charge dispute" in connection with Flat 18, one dated 30 November 2017 for £1,380 and one dated 28 February 2018 for £652.80 (a total of £2,032.80, not £2,100).
16. In any event, this fails the same first test under Ladd v Marshall. Further, although the Applicant insists these "...legal costs were incurred during the Applicant's management period", they obviously were not. Tribunal-appointed managers have been exercising the management functions under the leases without interruption since 6 August 2012. Even if a case in relation to these invoices had been made and had merit, it would have been for 2.8% of £2,032.80/£2,100 (i.e. less than £60), not the £2,100 which was (in effect) required by the Applicant to allow the sale of No.18 to proceed. Even if the Applicant was entitled to the relevant amount (of less than £60) from Alan and Delia Roper, that would have made no difference to the outcome of these proceedings. Under the approach agreed with the Applicant, noted at [23], we set off only £917.39 from the £2,100 against the service charges we decided were otherwise payable by the relevant Ropers as leaseholders of No.25 (£854.95 plus £62.44, as set out in the table at the start of the Decision), bringing those down to nil.