



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

**Case Reference** : CHI/29UK/LSC/2019/0010

**Property** : 6 Ide Hill Hall, Phillipines Shaw, Ide Hill, Kent  
TN14 6EY

**Applicant** : Mr David Lloyd

**Respondent** : Ide Hill Assets Limited

**Representative** : Ide Hill Park Leasehold Management Company  
Limited

**Type of Application** : Service Charge

**Tribunal Members** : Judge S Lal

**Date and venue of  
Hearing** : 19 March 2019, Judge's home

**Date of Decision** : 19 March 2019

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**DECISION**

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**Application**

1. The Applicant seeks a determination by the Tribunal under section 27A of the Landlord and Tenant Act 1985 as to who is liable to contribute under the terms of the lease for the costs of felling and removing a large conifer tree. The Applicant states that the costs should be shared between the 14 leaseholders (the 7 leaseholders in Ide Hill Hall and the 7 leaseholders in Ide Hill Stables) and not be borne solely by the 7 leaseholders in Ide Hill Hall.
2. The Applicant also applies for an Order under section 20C of the 1985 Act preventing the landlord from recovering the costs incurred in these proceedings through the service charge.

3. Directions were issued on 5<sup>th</sup> February 2019. The application is to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
4. The Applicant is one of the leaseholders of the Property under a Lease dated 3<sup>rd</sup> August 2009 between (1) PJ Livesey South Eastern Limited (the “Landlord”) (2) Ide Hill Park Leasehold Management Company Limited (the “Management Company”) (3) Ide Hill Park Management Company Limited (the “Company”) and (4) Michael David Lloyd and Elizabeth Eileen Lloyd (the “Leaseholders”). The Lease is for a term of 999 years commencing on 1<sup>st</sup> January 2007.
5. The Applicant is claiming that the sum of £2352 for the removal of the conifer (which was paid by the seven leaseholders of Ide Hill Hall under the service charge for the period ending 31<sup>st</sup> August 2017) should have been shared with the leaseholders of Ide Hill Stables under the terms of the Lease.
6. The Applicant refers the Tribunal to the tenants’ obligation to pay service charge to the Management Company under clause 7.1(a) of the Lease in an amount equal to the “Tenant’s Proportion” which is defined as *“insofar as such expenditure relates to the Development that proportion of the expenditure described in sub-clause 7.1 and in part I of the Second Schedule that the square footage of the Property bears to the total square footage of all properties on the Development”*. The Development includes the Hall properties and the stable properties.
7. The Applicant asserts that as the conifer tree was in a communal area, the costs of its removal should be borne equally by all 14 leaseholders under the provisions of the Lease outlined in paragraph 6 above.

### **The Respondent’s Case**

8. The Respondent claims that the work to cut down the conifer tree was not authorised by a majority of the directors of the Representative or the stables residents. The Respondent claims that at no point was the work put to a vote of all 14 leaseholders. In addition, the Respondent asserts that the reason given for felling the fir tree was not because it was dangerous but rather the sap was falling on one of the hall leaseholder’s car and also blocking the light to one more of the hall properties. The Respondent notes that no report on the safety of the conifer was forthcoming and believes it was removed for aesthetic reasons. The Respondent asserts that the felling of the conifer should only be a communal expense if the tree was inspected by a tree surgeon and declared dangerous. No report from a tree specialist was supplied by the hall residents.

9. Furthermore, the Respondent asserts that at no time were the stable residents party to or advised of the visits of the freeholder to the Estate and have not been shown any evidence of freeholder consent to the felling of the conifer. Moreover, the Respondent notes that at no time did the stable residents agree to contribute to the costs of felling the tree.

### **The Decision**

10. The Tribunal has reviewed the documentation provided together with the statements from the Applicant and the Respondent in relation to this issue. The Tribunal has considered the terms of the Lease and the obligations of the parties thereunder. It is assumed by the Tribunal that the stable residents have leases in the same terms as the Lease. In which case, the stable residents are responsible for contributing towards the service charge in the 'Tenant's Proportion' as described in paragraph 6 above.
11. However, the key issue for the Tribunal to consider is whether the costs of felling the conifer tree should reasonably be included in the service charge for the whole of the Development as it was growing in the communal area or whether the costs of felling the conifer were outside the service charge provisions of the Lease and therefore a matter for the hall residents alone.
12. The Tribunal has taken into account the provisions of clause 7.8 of the Lease which prohibits the leaseholder from cutting down, lopping, topping felling or otherwise interfering with any tree or trees on the Development. It is implicit in the Lease that this does not apply if Landlord consent is obtained and it would be reasonable for a tree to be felled if it was dangerous. However, the Applicant has provided no evidence that the conifer was dangerous and the Tribunal considers that it was removed for aesthetic/light reasons. The consent of the freeholder does appear from the papers to have been obtained in an email but this was not communicated to the Respondent.
13. The Tribunal also finds it relevant that at the time the felling of the tree was being discussed, the Managing Agents did not make it clear that the stable residents would be liable to pay towards the costs. The paperwork suggests that the hall residents, apart from the Applicant, accepted it was a hall resident cost.
14. For the above reasons, the Tribunal finds in favour of the Respondent on the basis that it would be unreasonable in the circumstances to include the costs of felling the conifer within the service charge provisions of the Lease because this was done for aesthetic reasons for the hall resident's only.

15. The Tribunal makes no further Order. The Applicant's application under section 20C of the 1985 Act is refused and this reflects the Tribunal's decision.
16. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. 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.
17. 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.
18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S. Lal

Date – 19 March 2019