FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at Hastings, sitting at Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL

Tribunal reference	**:**	**CHI/21C/LIS/2022/0001**
Court claim number	**:**	**HO1YY499**
Property	**:**	**Flat 5 Oakwood Court 11 Bolsover Road Eastbourne BN20 7JF**
Applicant/Claimant	**:**	**Oakwood Court Residents Association Limited**
Representative	**:**	**PDC Law**
Respondent/Defendant	**:**	**Mr Bruce Anthony Reekie**
Representative	**:**	
Tribunal members	**:**	**Judge Tildesley OBE**
In the county court	**:**	**Judge Tildesley OBE**
Date of decision	**:**	**7 February 2022 (Orally)** **2 March 2022 (Written reasons)**

DECISION

Summary of the decisions made by the FTT

1. The Defendant is liable to pay the sum of £3,870 in respect of a service charge demanded on 19 November 2019 for proposed works to refurbish the lift.

Summary of the decisions made by the County Court

2. The Court confirms the Decision of the Tribunal and the Orders the Defendant to pay the Claimant the sum of £3,870 by 7 March 2022.

3. No order for costs

4. This decision will act as both the reasons for the Tribunal decision and the reasoned judgment of the County Court.

Reasons

Background

5. The Applicant seeks, and following a transfer from the County Court the Tribunal is required to make a determination of service charge in the sum of £3,870.00 under section 27A of the Landlord and Tenant Act 1985 and administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002. These are matters within the jurisdiction of the Tribunal.

6. The original proceedings were issued in the County Court under Claim No.H01YY499 and were transferred to the Tribunal by District Judge Harper by order dated 16 December 2021.

7. The Applicant also claimed contractual costs and court fees. These are matters within the jurisdiction of the Court.

8. On 10 January 2022 the Tribunal directed a hearing on 7 February 2022 at Havant Justice Centre.

9. The parties attended the hearing by means of the Cloud Video Platform. Mr Shaheed Jussab of Counsel appeared for the Applicant. The Respondent attended in person. Mr Nigel Robert Puttergill the Company Secretary for the Applicant was also in attendance to give evidence in respect of his witness statement.

The Facts

10. Oakwood Court is a converted, self-contained block of flats constructed in the late 1800's consisting of eight dwellings located across three storeys. Flats 1 and 2 occupy the whole of the ground floor of the building; Flats 3, 4 and 5 are located on the first floor; and the second or top floor of the building consists of Flats 6, 7 and 8. Flats 1 and 2 are accessible via an entrance to the front of the building facing Bolsover Road. Flats 3 to 8 are accessible via a separate side entrance on the south-east facing side of the building. This entrance leads to a communal hallway, staircase and lift that serves all of the floors. This

communal hallway on the ground floor provides no means of access to Flats 1 and 2.

11. The building is constructed of a pitched tile roof with some small flat roof areas. The walls are constructed of brick and part-masonry finish. There is a communal driveway to the right-hand side of the property leading to garages and a shared turning area. The side entrance allowing access to Flats 3 to 8 can be accessed via a driveway to the left-hand side of the building. The communal hallways, landings and stairways in the building are all carpeted.

12. In the 1990's Flats 1, 2 and 5 were converted for use as a single dwelling. The Tribunal believes that around this time an internal staircase was constructed from the ground floor of Flat 1 directly into Flat 5 on the first floor. This meant that the owner of the converted Flat could access Flat 5 via the front entrance serving Flats 1 and 2 without using the side entrance giving access to Flats 3 to 8.

13. Although Flats 1, 2 and 5 were converted for use as a singe dwelling the leases for the individual Flats were not merged and remained as individual leases. The Tribunal understands that the leases for the eight Flats are all essentially in the same form. The hearing bundle exhibited the lease for Flat 5 which was made on 18 September 1981 between David Daniel and Michael Patrick Estates Limited of the first part Oakwood Court (Eastbourne) Limited of the second part, and Christine Ann Rudd of the third part.

14. The Respondent purchased the leaseholds of Flats 1, 2 and 5 in June 2015 and lives in the three Flats as a single residence. The Respondent accepted that the entrance door to Flat 5 on the first floor remains but he asserted it is kept permanently locked and not used for access.

15. Prior to the Respondent's purchase in 2015 a married couple owned Flats 1-5. Mr Puttergill explained to the Tribunal that the married couple used Flat 3 for their business, and let out Flat 4 on a short term tenancy. Mr Puttergill said that the married couple would access Flats 3 and 4 via the door for Flat 5.

16. On 19 November 2019 the Applicant demanded the sum of £3,870.00 in relation to proposed works for the replacement and refurbishment of the lift situated at the side entrance servicing Flats 3-8. Mr Puttergill stated the sum of £3,870.00 represented one sixth of the estimated costs for the refurbishment of the lift which was £21,600.00 inclusive of VAT plus a project administration fee of £1,620.00 making a total of £23,220.00. Mr Puttergill explained that the managing agent had undertaken statutory consultation on the proposed works. A "Notice of Intention" dated 23 August 2019 was sent to all leaseholders which was followed by a second statutory notice dated 8 October 2019 containing a statement of estimates from all contractors. A meeting of the

members of the Applicant company was held on 4 October 2019 to discuss the tenders and the members proposed East Sussex Lifts Limited as the preferred contractor. This decision was communicated to the leaseholders on 15 November 2019. The Respondent did not pay his contribution to the costs of the proposed works. As a result the works did not proceed, and the contributions from the other leaseholders have been held in the reserve fund until the Applicant is in a position to proceed with the works.

Decision

17. The Respondent's dispute was that he was not liable to make a contribution to the costs of the proposed works to the lease because he had no reason to use the side entrance and lift to access his property. The Respondent made no substantive challenge to the Applicant's compliance with the statutory consultation procedures. The Respondent said that he thought the lift quotation was on the high side and had now obtained quotations from two local lift companies which would result in savings of £5,000.00.

18. The Tribunal refers to the following provisions of the lease. Pursuant to Clause 3(1) of the Lease, the Respondent covenants with the Applicant:

> "To contribute and pay on account of the total service cost for each service year by equal halfyearly instalments in advance on the 24th day of June and the 25th day of December the first payment being a proportionate part calculated from the date hereof to the 25th day of December 1990 of the basic sum of £250.00 per annum ("the basic amount") PROVIDED THAT the Company or the managing Agent may at any time by notice in writing given to the Tenant require that as from the 24th day of June or the 25th day of December next after the service of such notice until further notice the basic amount shall be such amount as shall be specified in such notice such amount to represent a reasonable estimate by the Company or the Managing Agents of the service charge or the balance thereof for the relevant service charge year PROVIDED FURTHER THAT in the event of any unusual or unexpected expenditure being required for the performance of the Company covenants the Company or the Managing Agents may give notice in writing to the Tenant at any time requiring payment within fourteen days from the Tenant of the Tenant's contribution subject to prior due compliance with any appropriate statutory requirements in this respect".

19. Under Clause 1(n) of the Lease, the "total service cost" is defined as the aggregate of: (i) "The actual cost to the Company of the performance of the covenants and other obligations on the part of Company contained in the Fifth Schedule hereto in the relevant Service Year" (ii) "An annual sum (if any) to be determined from time to time by the Company or the Managing Agents as appropriate to provide a sinking fund in respect of the Company's said obligations"

20. Under Clause 1(o): "Service Year" means the year-ending 31 March in each year. In practice, however, the Claimant has operated an accounting period ending 30 November 2019.

21. Under clause 1(p): "Service Charge" is defined as 7.338% per year of the total service charge subject to the Fifth Schedule, Part 2, Clause 2.

22. The Fifth Schedule, Part 2, Clause 2 provides that:

> "In respect of any parts of the main structure of the Building (for example the lift flat roofs or balconies) and the driveway leading to the garages at the rear which are the responsibility of the Company under Part One of this Schedule but of which only a tenant or certain tenants have the use the Company may charge such tenant or those tenants either the whole or such part as the Company thinks fit or the cost of maintenance of those parts to reflect such use"

23. As per Clause 1(n)(ii) of the Lease, the total service cost can include an appropriate sum determined by the Claimant in providing a reserve fund required for the performance of its obligations under the Fifth Schedule.

24. The argument between the parties centred on the wording of The Fifth Schedule Part 2 Clause 2. The Applicant contended that in practice, the Respondent had access to the ground floor communal corridor via the side entrance to the building (for Flats 3 to 8) and via the door to Flat 5 and that there was nothing physical that prevented his access to this communal part of the building and the lift. The Respondent, on the other hand, argued that he did not have a key to the side entrance and that he never used the lift.

25. The Tribunal makes the following findings of fact:

a) The Applicant complied with the consultation requirements for major works as set out in section 20(1) of the 1985 Act.

b) The Applicant accepted the lowest tender in the sum of £21,600 from four tenders for lift refurbishment and one for lift replacement.

c) The Respondent supplied no documentary evidence to support his assertion that he could achieve savings of £5,000 on the lowest tender. In any event the Respondent had obtained the quotations after the demand for the disputed service charges, and, therefore were not relevant at the time the Applicant took the decision to require payment on account.

d) The Respondent if he chose to do so had access to the communal area serving Flats 3 -8 either through the side entrance or the door of Flat 5, and, could, therefore use the lift.

26. The Tribunal construes the phrase "have the use" in The Fifth Schedule Part 2 Clause 2 as "being able to use the lift". The Tribunal is satisfied that the Respondent is able to use the lift if he chose to do so. The Tribunal determines that the Respondent is liable to contribute to the costs of the proposed works to the lift. Next the Tribunal is satisfied that the sum of £23,220.00 is no greater amount than is reasonable Finally the Tribunal finds that the Respondent's decision to split equally the costs of the proposed works between the leaseholders of the six flats which had access to the lift is reasonable and fell within the Respondent's discretion to charge such amount as it thinks fit under the Fifth Schedule Part 2 Clause 2.

27. The Tribunal decides that the sum of £3,870.00 is reasonable and payable by the Respondent.

County Court

Costs

28. The Applicant produced a schedule of costs which was included in the bundle amounting to £6,903. The schedule of costs did not include an amount for court fees.

29. This case had been allocated to the Small Claims track. In order to recover its legal costs the Applicant would have to demonstrate a contractual entitlement under the lease. Counsel for the Applicant accepted that the conditions in Clause 10 (b) did not apply because the Applicant adduced no evidence that the costs had been incurred in contemplation of any proceedings in respect of the flat under section 146 of the Law of Property Act.

30. Counsel instead relied on paragraph 5 of Part One of The Fifth Schedule, which said that

> "To provide for the payment of all legal accountancy and other costs incurred by the Landlord or the Company including management fees charged by the Managing Agents in the running and management of the Building and in the enforcement of the covenants conditions and regulations contained in or affecting the Leases granted of flats in the building other than for the payment of rent or in complying with covenants affecting the freehold title to the Building and for the avoidance of doubt such costs may include the costs if any incurred by the landlord or the company in raising money for

supplementing the maintenance or sinking fund in the event that monies in hand are insufficient to cover the obligations of the Landlord or the company".

31. The Court pointed out that paragraph 5 related to the recovery of legal costs through the service charge against all the leaseholders including the Respondent. It did not provide the basis for a costs order against the Respondent alone.

32. The Court made no order for costs against the Respondent. This does not prevent the Applicant from recovering its costs through the service charge subject to the leaseholders' rights to contest on reasonableness.

Rights of appeal

Appeals in respect of decisions made by the Tribunal

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to rpsouthern@justicie.gov.uk .

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to an appeal judge in the County Court since No application was made to the Judge at the hearing.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues by proceeding directly to the County Court.