



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

**Case Reference** : **LON/00BG/LSC/2022/0160P**

**Property** : **304 Maypole Court, 44 Geoff Cade  
Way, London E3 4RP**

**Applicant** : **Mahesh Bhadresha**

**Representative** : **Not represented**

**Respondent** : **Poplar HARCA**

**Representative** : **Roythornes Solicitors**

**Type of Application** : **For the determination of the  
liability to pay a service charge**

**Tribunal Members** : **Judge P Korn  
Mr S Mason FRICS**

**Date of determination** : **30 August 2022**

**Date of Decision** : **30 August 2022**

---

**DECISION**

---

## **Description of hearing**

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that he would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in three electronic bundles, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

## **Decision of the tribunal**

(1) The amount payable by the Applicant towards horticultural expenses for the service charge year 2020/21 is £84.09 (reduced from £168.18).

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent in connection with these proceedings can be added to the Applicant’s service charge.

(3) The tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under his lease.

## **Introduction**

1. The Applicant seeks a determination pursuant to section 27A of the 1985 Act as to the reasonableness and payability of the horticultural expenses in the sum of £168.18 charged for the 2020/21 year.
2. The Property is a two-bedroom flat in a purpose-built block of flats.

## **Applicant’s case**

3. The Applicant states that he has strong reservations regarding the timesheet data that the Respondent has provided as evidence of the work performed. The timesheets suggest that 64 hours were spent on the Estate between 6 April 2020 and 10 May 2020 which coincided with the first national lockdown. He and his fellow residents were working from home during this time and did not witness any work taking place. He adds that the Respondent cannot provide any details of the work performed and questions whether he has received value for money.
4. He also states that the timesheets suggest that a combined 395 hours were spent on the square during the two weeks between 2 August 2020 and 16 August 2020, which is a material increase in the hours

compared to any other week and is the equivalent of 56 people working one full day or more than 5 people working every day over the period (based on a 7-hour day). Again, the Respondent has not been able to provide any detail on exactly what work was performed.

5. The overall condition of the estate during the relevant period is in his view not commensurate with the total amount spent. The grass in the communal gardens has been worn/eroded and not replaced. Shrubs have died and not been tended to or replaced. Grass is mowed less than once a month. A total of £59,913 was spent for the year on the estate, and for this amount of money one could, in his view, hire a gardener for a generous £30,000 per year to work every day on the estate and still have almost £30,000 for materials.
6. The Applicant states that he and his fellow residents have witnessed gardeners not working and spending time on their phone for long periods during the workday, not including lunch breaks, and he believes that the minutes logged on the timesheet could be inaccurate, especially in the absence of any other formal checks versus the actual work performed. The Respondent has provided nothing other than a timesheet, and he does not have confidence that there is a process in place to ensure that the minutes logged as part of the timesheets are challenged and scrutinised sufficiently.
7. The Applicant has also provided photographic evidence of the state of one of the communal gardens during the service charge year and says that the condition of the garden has remained the same all the way through to date of his statement of case. The hearing bundles include witness statements from Peta Cornish (Flat 304 Lariat Court), Stephen Smith (Flat 104 Bight Court), Shaamal Patel (Flat 303 Maypole Court), Alessandro Vecchi (Flat 28 Nellie Cressall Way), Pinar Coktas (Flat 502 Shackle Court) and Katherine Woodfine (Flat 305 Shackle Court) – not all of which have been signed – supporting his concerns about the amount of time spent on gardening and the quality of the work done.

### **Respondent's case**

8. The Respondent has filed a witness statement from Matthew Mitchell, Homeownership Officer, summarising how the horticultural charges are calculated. He disagrees with the proposition that the state of the gardens has not improved and points to a photograph attached to his statement showing some weeds growing next to a round wooden log and then to other photographs showing that the weeds are no longer there. On the question of whether the Respondent could employ an operative full time at £30,000 per year, he states that this ignores the on-costs of employing someone such as employer's national insurance contributions, pension contributions, training and upkeep of best practice, sickness pay and public liability insurance and the costs of managing that person. It also does not account for equipment hire/

purchase or storage of that equipment, insurance for that equipment etc.

9. The Respondent has filed a witness statement from Scott Gosling, Assistant Director of Estate Services, who states that time spent is recorded in minute form by line management on a weekly basis and is verified by work allocations and site visits. He also states that workers were having staggered breaks and that there were telephone calls between operatives and other members of staff on work-related issues, all of which might have given a false picture of inactivity. He does not accept that the Applicant's photographs shown disrepair and service failings.

### **Tribunal's determination**

10. The Applicant does not dispute the Respondent's right in principle, under the Applicant's lease of the Property, to charge for horticultural work. The bases of challenge are (a) a perception that the Respondent's operatives were not spending the full extent of the time recorded on timesheets, (b) that the operatives were often not working when physically present on the estate, (c) that it was unnecessary to employ these operatives for the stated number of hours and (d) that the quality of the horticultural work was sub-standard.
11. This case was set down as one which was appropriate to deal with on the papers alone. In our view this was a sensible decision, taking into account the overriding objective of the tribunal's procedural rules, as it would have been disproportionate to conduct a hearing to determine the payability of the sum of £168.18. However, it does mean that the tribunal has been unable to test the credibility of the witness evidence by cross-examination.
12. We note the Applicant's submissions regarding the time recorded and the use of time, but in our view these are not the key issues. Instead, the key issue is whether a charge of £168.18 is a reasonable charge for the service provided. There is insufficient evidence before us to enable us to determine how much work needed to be done overall, but we do not need to do this as the Respondent is not arguing that the amount charged is low and nor is it conceding that the quality of the horticultural works is sub-standard. It would seem to follow that the Respondent considers £168.18 to be a reasonable charge on the assumption that the horticultural works have been carried out to a reasonable standard.
13. On the issue of the standard of work, we have competing witness statements before us. The Respondent denies that the work was sub-standard and has provided some photographic evidence, but on balance we prefer the Applicant's evidence. Whilst some of the witness statements in support of the Applicant's position have not been signed,

taken together the witness statements in support of his position are persuasive of a strength of feeling and are plausible indicators of genuine concerns on the part of residents of an estate as to the quality of the horticultural works undertaken during the relevant period. We therefore consider that the charges should be reduced.

14. As for how much the charges should be reduced by, there is insufficient information before us to make it possible for us to calculate a precise figure and we are therefore forced to take a 'broad-brush' approach. Based on the witness evidence before us and the tribunal's general expertise and experience, we consider that it would be appropriate to reduce the charges by 50%. Accordingly, they are reduced from £168.18 to £84.09.

### **Cost applications**

15. The Applicant has applied for cost orders under section 20C of the 1985 Act ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

16. The relevant parts of Section 20C read as follows:-

*(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ..."*

21. The relevant parts of Paragraph 5A read as follows:-

*"A tenant of a dwelling in England may apply to the relevant ... tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs"*

23. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the tenant as an administration charge under the Lease.

24. The Applicant's substantive application has been successful, in that we have reduced the disputed charges. He has also not tried to suggest that nothing is payable. Accordingly, we consider it appropriate (a) to make a Section 20C order that none of the costs incurred by the Respondent in connection with these proceedings can be added to the Applicant's service charge and (b) to make a Paragraph 5A order that

none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under his lease.

**Name:** Judge P Korn

**Date:** 30 August 2022

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

## **APPENDIX**

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985 (as amended)**

##### **Section 18**

- (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.

##### **Section 19**

- (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 provisions 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.

##### **Section 27A**

- (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.