



Neutral Citation Number: [2025] UKUT 160 (LC)

Case No: LC-2024-714

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Ref: CHI/24UP/LSC/2023/0117 and CH/24UP/LVL/2024/0001

28 May 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND LESSEE – SERVICE CHARGES – construction of lease – liability for service charges in relation to common parts

BETWEEN:

ANNJA WEINBERGER (1)
HADRIAN TEASDALE (2)
LUCY TEASDALE (3)

Appellants

and-

BHRM LIMITED

Respondent

Flat 2, Brambridge House,
Brambridge Park, Eastleigh, Hants, SO50 6HL

Upper Tribunal Judge Elizabeth Cooke
Determination by written representations

The following case was referred to in this decision:

Arnold v Britton [2015] UKSC 36

Introduction

1. This is an appeal from a decision of the First-tier Tribunal (“the FTT”) about whether service charges are payable in respect of a leasehold flat; specifically, the issue is whether the appellants, as joint leaseholder of Flat 2, Brambridge House, are liable to pay service charges in respect of the common parts of the building. There is no challenge to the reasonableness of any charge and so the appeal turns on the construction of the lease. The respondent, BHRM Limited, is the freeholder and has chosen not to take part in the appeal, which has been decided under the Tribunal’s written representations procedure. The appellants were not legally represented.

The property, and the provisions of the lease

2. Brambridge House is a Grade 2* listed Georgian country house divided into 14 flats. It comprises a main house and a separate north wing. Flat 2 is in the north wing; the flat is described in the appellants’ lease as being on two floors and “adjacent to the Building” (clause 1 of the lease), and separated from the Building by a party wall (clause 7(a)). Access to all the flats except Flat 2 is via a main entrance, but Flat 2 has its own separate entrance with steps at the front and an external staircase at the back (paragraph 9 of the FTT’s decision).
3. The lease of Flat 2 was granted in March 1971, for a term of 99 years. The appellants purchased it in December 2020. The respondent purchased the freehold in 2018. The appellants applied to the FTT for a determination of their liability to pay service charges in respect of the common parts inside the main building, which the respondent has demanded from them but previous freeholders did not. The appellants say that their lease does not make them liable for such charges. As well as providing a copy of their own lease the appellants have set out clauses from the lease of Flat 3, which is in the main building and was granted in 1966, in order to demonstrate the difference between the service charge arrangements for flats in the main building, whose leaseholders have access to the common parts and have to pay for their upkeep, and the arrangements for Flat 2 which has neither access to nor liability for the common parts.
4. The lease of Flat 2 begins with the following recital:

“The Lessor is the owner in fee simple of the property known as Brambridge House ... (hereinafter called “the Building”) garages and the gardens and the grounds thereof (all which premises are hereinafter referred to as “the Mansion”).
5. The lease goes on to demise Flat 2, together with the easements set out in the Second Schedule. They include the right to pass with or without vehicles along the drive, to park, to use the garden, to lateral support from “other parts of the Mansion”, to the passage of water, sewage and electricity through the Mansion, and to enter “other parts of the Mansion” in order to repair and maintain Flat 2. The corresponding schedule in the 1966 lease of Flat 3 also grants the right to pass and repass on foot “over and along the main entrances of the Mansion and the passages landings and staircases leading the Flat”; thus Flat 3 has access to the common parts of the main building and Flat 2 does not.

6. The lease reserves a rent, of £10 per annum, and requires the lessee to pay the cost of the Lessor insuring Flat 2 against fire and other risks. Clause 3 sets out the lessee's covenants including:

“3(b) To pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed upon the Flat or the owner or occupier in respect thereof ...”

7. Clause 4 requires the lessee to keep Flat 2 in repair, and to:

“... pay one equal thirteenth part (but with a minimum of Fifty pounds per annum) of the costs expenses outgoings and matter mentioned in the Fourth Schedule hereto and of an amount required to provide a reasonable reserve fund.”

8. The Lessor's obligations are set out in Clause 5; they include covenants to insure the Mansion against fire etc, to maintain the pipes, drains, electric cables and wires and the boundary walls and fences of the Mansion, and to decorate the exterior of “the Mansion but not the Flat”. By contrast, the corresponding clause in the lease of Flat 3 requires the Lessor to insure the Building, rather than the Mansion, against fire etc, and includes additional obligations to maintain and repair the Mansion and “the main entrances, passages, landings and staircases enjoyed or used by the Lessee in common as aforesaid” and to keep those common parts “reasonably lighted” and the forecourt and gardens in good condition.

9. As noted above the Fourth Schedule sets out the costs of which the lessee is to pay one thirteenth of the cost. Here is the Fourth Schedule from the lease of Flat 2:

“1. The expenses of maintaining repairing and renewing (a) the water pipes drains and electric cables and wires in under or upon the Mansion and enjoyed by the Lessee in common with the owners and lessees of the other Flats and (b) the boundary walls and fences of the Mansion

2. The cost of keeping the forecourt garden way and other parts of the Mansion in good condition and (as to the garden) cultivation

3. All rates taxes and outgoings (if any) payable in respect of the forecourt garden way and other parts of the Mansion

4. The cost of insurance against third party risks in respect of the Mansion if such insurance shall in fact be taken out by the Lessor

5. The wages of the gardener and any other servants from time to time employed by the Lessor in connection with the running and maintenance of the Mansion

6.[an administration charge of ten percent in respect of all the costs listed in the schedule]

7. In this Schedule the word “Mansion” shall exclude the garages.”

10. The exclusion of the garages from the definition of the Mansion is explained by the fact that the garages were demised with some of the flats (although not with Flat 2) and therefore their upkeep was the responsibility of the individual lessee.
11. The Fourth Schedule of the lease of Flat 3 includes all the above provisions and in addition:
 - In paragraph 1, the cost of maintaining and repairing the Mansion and the “main entrances passages landings and staircases of the Mansion so enjoyed or used by the Lessee in common as aforesaid”
 - In paragraph 2 the cost of lighting the “passages landings staircases and other parts of the Mansion so enjoyed or used by the Lessee in common as aforesaid”
 - In an additional paragraph the cost of decorating the exterior of the Mansion
12. The FTT described the lease of Flat 2 as “old and poorly drafted” but I would say it does rather a good job of ensuring that the lessee of Flat 2 gets a different deal from that offered to the lessees in the main building, of which Flat 3 is an example. Flat 2 has its own entrance and does not need access to the common parts, and so the provisions for it to have access to the main entrance, passages and stairs inside the main house, and for it to contribute to their upkeep, are absent from the lease of Flat 2. Flat 2 does not have to contribute to the maintenance and repair of the Mansion; nor does the freeholder have to maintain and repair the structure and exterior of Flat 2.

The proceedings in the FTT

13. As I said above, the appellants’ challenge to the service charges in the years 2020 to 2024 was about whether they were payable, not whether they were reasonable in amount. Section 27A(1) of the Landlord and Lessee Act 1985 provides:

“An application may be made to [the FTT] 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.”

14. The appellants’ case was that certain charges demanded by the freeholder in the years in question related to the common parts, for which they were not liable under the terms of their lease. In summary the charges were for:

1. electricity costs - essentially lighting in the common parts
2. electrical installations
3. an asbestos survey, fire risk assessment and fire equipment

4. solar lamp-post and CCTV signs
 5. cherrypicker and annual safety check
 6. cleaning the common parts
 7. accounts costs for BHRM Ltd
 8. an administration charge for checking the lighting in the common parts
15. The FTT – a panel of three valuer or surveyor members - in its decision rightly focused on the construction of the lease. It said at its paragraph 15:
- “... it is the Tribunal’s function to interpret the lease in a way that is most in line with the overall intention of the original parties to the lease and in a manner that allows practical application.”
16. That is not an accurate summary of the law relating to the construction of leases and other documents, as to which the modern authority is the Supreme Court’s decision in *Arnold v Britton* [2015] UKSC 36. Lord Neuberger said at paragraph 15:
- “15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38 ... para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions.
17. So it is not for the tribunal to decide what was the intention of the parties and then interpret the lease in line with that. The tribunal must discern the intentions of the parties from the words of the lease in light of the provisions of the lease as a whole, as well as the facts and circumstances known to the parties at the time – which is why the provisions of the lease of Flat 3 are relevant. The appellants have also provided a copy of a new standard form of lease under which, they say, most of the flats are now held and – if I have understood correctly – all soon will be; I have had no regard to that document since it cannot shed light on the intentions of the parties to the lease of Flat 2 in 1971.
18. The FTT began the exercise of construction by stating that the lease of Flat 2 does not define the term “Mansion”. As we have seen, it does. The FTT went on to say that the parties agreed that the term means the whole building, including the north wing. The appellants now say that that is not what was agreed; but it will be apparent from the terms of the lease that I have set out above that that is the correct interpretation of the word. I acknowledge that the actual definition in the recital (paragraph 4 above) is ambiguous as to whether the north wing is included; but other provisions make it clear that it is, in particular: clause 5 requires the Lessor to decorate the exterior of “the Mansion but not the Flat”, and the exclusion would be unnecessary if the Flat were not part of “the Mansion”; and the Second Schedule gives the lessee of Flat 2 rights over “other parts of the

Mansion”, whereas if Flat 2 were not part of the Mansion the rights would be simply over “the Mansion”. However the fact that Flat “ is within the definition of “the Mansion” does not mean that the lessee of Flat 2 is liable for the common parts inside the main building, as we shall see.

19. The FTT correctly found, at paragraph 16, that the lease of Flat 2 does not require the Lessor to maintain the structure of Flat 2, and went on to say that the lease contemplated that the lessee of Flat 2 would pay “some of the wider ‘Mansion Costs’”. The difficulty with that statement is its imprecision; the lease does not use the term “Mansion Costs”, and more importantly the lease carefully limits the costs in respect of the Mansion to which the lessee of Flat 2 is to contribute. That is clear from the wording of the lease itself, and is even clearer when it is compared with the provisions of the pre-existing lease of Flat 3. The FTT failed to understand that limitation of the lessee’s covenants in the lease of Flat 2 and, as we shall see, as a result reached an incorrect conclusion about some (but not all) of the charges. It is easiest to see that by addressing the charges in issue, in turn; in doing so I set aside the FTT’s decision on the items where it misunderstood the provisions of the lease and substitute the Tribunal’s decision.

The FTT’s decision about the individual charges, and the decision in the appeal.

20. The charges in issue are listed above at paragraph 14 in the order in which they are addressed in the FTT’s decision.
21. *Electricity costs.* These charges related to the cost of lighting the communal hall and the exterior of the property. The FTT noted that the lessee of Flat 2 does not have or need a specific right of access to the main building but that it benefits from exterior lighting. It determined that the electricity costs, both interior in the communal hall and exterior, were payable by virtue of paragraph 3 of Schedule 4 because it took the view that the electricity costs were outgoings incurred for the running of “other parts of the Mansion”.
22. There are two reasons why that cannot be right. First, clauses requiring payment of “rates taxes and outgoings” are common in leases; the word “outgoings” takes its meaning from the other words in the clause and means outgoings of a similar nature, being charges “imposed” from outside (such as Council Tax), not incurred in providing a service. If “outgoings” meant “any expenditure on the Mansion incurred for any purpose” that would lead to absurd and obviously unintended results; the scheme of the lease is that the lessee pays for expenditure that the Lessor incurs in relation to the Mansion for the benefit of Flat 2 only. Second, the intention of the parties is clear from clause 5(e) of the lease of Flat 3, which contains an obligation on the Lessor to provide lighting in the common parts inside the main building and from paragraph 2 of the Fourth Schedule to the lease of Flat 3 (paragraph 11 above) where the lessee is specifically obliged to contribute to the cost of lighting the common parts. Only the lessees in the main building are entitled to lighting in the common parts and only they pay for them.
23. Accordingly the lease of Flat 2 does not provide for the lessee to contribute to the cost of lighting the common parts inside the main building. Furthermore I can see no provision for it to contribute to the cost of exterior lighting, probably because there is no obligation upon the freeholder to provide exterior lighting. The FTT’s decision about electricity costs is set aside; these charges are not payable.

24. That said, the appellants state in their grounds of appeal that they are content to share the electricity costs for the external installations. That is an obviously sensible arrangement by way of personal contract. It may be that the new form of lease under which most of the flats are now held (see paragraph 17 above) remedies the omission and makes proper provision for the external lighting.
25. *Electrical installations.* The FTT's decision does not say what these are, except that one example is lights and external wiring outside Flat 2 which were repaired by the respondent. According to the grounds of appeal they relate in large part to installations in the common parts inside the main building. The FTT decided that these charges were payable for two reasons. The first was that, irrespective of the date of installation the lights had become part of the freehold, and that the lessee of Flat 2 had to pay for them as part of their contribution to the respondent's repairing obligation. That is obviously wrong, (a) because without further reasoning – and without precise identification of the lights concerned – it is not possible to understand how any lighting installations had become part of the freehold, and (b) because the lease of Flat 2 does not oblige the freeholder to repair the Mansion, nor does it require the lessee of Flat 2 to pay for such repair.
26. The second reason why the FTT thought that the lessee of Flat 2 was liable to pay charges in respect of electrical installations was that paragraph 1 of the Fourth Schedule requires a contribution to the maintenance, repair and renewal of "electric cables and wires in under or upon the Mansion and enjoyed by the Lessee in common with the owners and lessees of the other Flats". That is correct only insofar as the charges relate to cables and wires, and it appears that some of the charges did indeed relate to wiring, but it appears from the grounds of appeal that some related to lights in the common parts, emergency lights, heaters in the common parts and so on.
27. Accordingly, except insofar as they relate to the repair or renewal of wires and cables, charges in relation to electrical installations are not payable under the lease of Flat 2, and the FTT's decision is set aside to that extent.
28. If it is the case that the respondent has repaired lights outside Flat 2, it was not obliged to do so under the lease; whether or not the appellants pay for those lights is a matter for discussion between the parties.
29. *Asbestos survey, fire risk assessment and fire equipment* Again no details are given in the FTT's decision, but the FTT noted that the appellants said these costs were incurred in respect of the main house. The FTT decided the charges were payable under paragraph 3 of the Fourth Schedule as part of "rates, taxes and outgoings". For the reasons given in paragraph 22 above, "outgoings" in this context means charges imposed by external authorities; this cannot justify a charge in respect of the main building, for which no provision is made in the lease of Flat 2. The FTT's decision on this point is set aside.
30. *Solar lamp-post and CCTV signs* According to the grounds of appeal these are security lights and sensors in the car park and on external walls of Flat 2. The FTT decided that the charges were payable, again, as "outgoings" under paragraph 3 of the Fourth Schedule. For the same reasons the FTT was wrong and the decision is set aside. The appellants are willing to pay for these installations and that is a matter of contract between the parties.

31. *Cherry-picker and annual safety check.* These charges relate to maintenance in the grounds. The FTT decided that the appellants were not liable to pay for them, and there is no appeal from that decision.
32. *Cleaning the common parts* This is a charge for the cleaning of the common parts inside the main building, and for treatment of the carpet for moth infestation. The FTT decided that the appellants were liable for cleaning costs both under paragraph 3 of the Fourth Schedule, as “outgoings”, and under paragraph 5 of the Fourth Schedule, “The wages of the gardener and any other servants from time to time employed by the Lessor in connection with the running and maintenance of the Mansion”, on the basis that a cleaner falls under “any other servants”.
33. In my judgment the FTT’s reasoning was wrong; the same observations on “outgoings” are relevant here. As to paragraph 5 of the Fourth Schedule, the point of the paragraph appears to be specifically to cover wages, rather than the cost of getting work done (which, in the case of the garden, was already chargeable under paragraph 2 of the Fourth Schedule). The FTT did not refer to any evidence that the respondent employed a cleaner; even if they did, it would be perverse to construe paragraph 5 as requiring the appellants to pay for an employee from whose work they derived no benefit. The FTT’s decision on this item is set aside; nothing is payable by the appellants in relation to cleaning in the main building.
34. *Account costs for BHRM Limited* This is a charge for the production of the respondent’s company accounts. The FTT decided, correctly, that this is not payable as a service charge and there is no appeal about that.
35. *Administration charge for checking the lighting in the common parts.* The FTT said that this related to “regular checks of the common parts including checking the lighting”, and that checks were done by “the regular representative of the freehold company”. The FTT decided that this work was chargeable under paragraph 5 of the Fourth Schedule by analogy with the wages of a gardener. Again this is incorrect for the same reasons as the decision about cleaning costs was incorrect. The decision is set aside; nothing is payable for these checks of the common parts in the main building.

Postscript: the service charge proportion

36. Together with the determination in respect of the service charges, the FTT heard an application by the appellants for the variation of their lease. It seems that originally 13 flats were let, while one was occupied by the estate gardener. Following his retirement that flat was let and so there are 14 flats altogether; yet the appellants’ lease still requires them to pay one thirteenth of the costs of the Lessor’s expenses under the Fourth Schedule. With the agreement of the respondent the appellants asked the FTT to vary the lease so that it provided for a one fourteenth cost, and the FTT made that order.
37. The appellants in the grounds of appeal asked for that order to be set aside. The new standard leases of the flats in the main house distinguish between a service charge, of which the lessees each pay one fourteenth of the lessor’s expenditure, and the “Mansion Charge” of which the lessees pay one thirteenth – obviously because only the lessees of the main house flats pay the charges relating to the common parts and the structure of the building. If the appellants as lessees of Flat 2 now have to contribute to the common parts

within the main building, the respondent will recover too much: thirteen thirteenths plus one fourteenth.

38. As I have decided that the appellants are not liable to contribute to the expenditure relating to the common parts in the main house, and as their lease contains no provision for them to contribute to the repair or maintenance of its structure and exterior, that variation remains unproblematic and there is no need for me to say anything further about it.

Conclusion

39. Accordingly as to the service charges the appeal succeeds. The FTT's decision is set aside insofar as it imposes any liability to pay for services and installations inside the main house, and for electrical installations out of doors.

Upper Tribunal Judge Elizabeth Cooke
28 May 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.