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May 23, 2026

Viridian Apartments v Notting Hill Genesis Housing Association — LON/00BJ/LSC/2024/0256: When the Lease Said “Block V1”, Not “Please Fund the Lifestyle Wing”

Various leaseholders of Viridian Apartments v Notting Hill Genesis Housing Association

First-Tier Tribunal Property Chamber (Residential Property)

LON/00BJ/LSC/2024/0256

Decision dated 7 July 2025

Key Words

Shared ownership; service charges; First-tier Tribunal; lease interpretation; affordable housing; Notting Hill Genesis; Viridian Apartments; headlease; sub-leases; estate charges; recovery of headlease liabilities; payment under protest; inaccessible amenities; leaseholder disputes; reasonableness of service charges; section 27A Landlord and Tenant Act 1985; section 20C costs protection order

1. **Headnote**
    1. The Tribunal determined that, on the proper construction of the shared ownership sub-leases, the landlord was not entitled to recover through service charges sums paid under its headlease in respect of parts of the wider development to which the leaseholders had no access or could not enjoy. [97]
    2. The Tribunal held that, although the sub-leases were poorly drafted and internally inconsistent, they nevertheless made sufficient sense and did not meet the threshold for correction by construction. [100], [102]
    3. The Tribunal held that “Estate” in the sub-leases referred to Block V1 and not to the wider development, and that the leases did not permit recovery of costs associated with the wider development. [101], [105]
    4. The Tribunal held that payment of service charges did not constitute agreement where leaseholders had demonstrated express and unequivocal protest. [111], [112]
    5. The Tribunal reduced management fees to reflect the more limited services provided and made an order under section 20C preventing recovery of the landlord’s litigation costs through the service charge or as administration charges. [114], [116]

2. **Background**
    1. The first respondent held a headlease of Block V1 at Viridian Apartments and granted long sub-leases of flats within that block to the applicants. [2]
    2. Block V1 formed part of a larger building and development comprising several blocks and shared facilities located outside Block V1. [3], [4]
    3. The Tribunal recorded that, other than part of the car park, it was not possible to access any other part of the Building or Development from Block V1. The communal garden was also inaccessible from Block V1. [4]
    4. From around 2014, the first respondent sought to recover from the applicants the entirety of the service charge it paid to the management company, including costs attributable to the wider development. [2]
    5. The applicants brought proceedings under section 27A of the Landlord and Tenant Act 1985 seeking a determination of payability. [1]
3. **Issues**
    1. The primary issue was whether the applicants' sub-leases permitted the landlord to recover sums paid under the headlease in respect of the wider development. [10], [11]
    2. That issue was principally one of construction of the sub-leases, including the meaning of "Estate" and the scope of the service charge provisions. [10]
    3. A further issue was whether payment of the charges constituted agreement or admission for the purposes of section 27A. [12], [93]
    4. Additional issues concerned the reasonableness and recoverability of specific categories of service charge and apportionment. [12], [108]–[115]
4. **Decision and Ratio Decidendi**
    1. **Construction of the sub-leases**
        1. The Tribunal held that the sub-leases did not permit recovery of sums paid by the landlord in respect of the wider development to which the applicants had no access or could not enjoy. [97]
        2. The Tribunal accepted that the sub-leases were poorly drafted but found that they were not an obvious nonsense and therefore could not be rewritten by construction. [100], [102]
        3. The Tribunal rejected the contention that "Estate" should be construed as the wider "Development". [101]
        4. The Tribunal applied the principle that contractual language can only be corrected where there is both a clear mistake and an equally clear correction. That threshold was not met. [101]
        5. The Tribunal found it was more likely that the draftsman intended to limit "Estate" to Block V1, consistently with the landlord's title. [103], [104]
    2. **Context and intention**
        1. The Tribunal relied on the sales particulars, which made clear that no concierge service, communal garden access, or gym access was provided to the applicants. [98]
        2. The Tribunal found that the parties' intention when entering into the shared ownership leases was to maximise affordability by limiting the services provided and the level of service charges. [99]
        3. The Tribunal found that this intention was reflected both in the lease terms and in the historic pattern of service charge demands, which, until 2012, had not included the disputed wider-development costs. [99]

3. **Scope of recoverable costs**
    1. The Tribunal held that the sub-leases permitted recovery only of the costs of repairing and maintaining Block V1, providing services to Block V1, and maintaining balconies and terraces enjoyed by the apartments in Block V1. [108]
    2. The applicants were not required to contribute to costs relating solely to the wider development, including the concierge, communal water and electricity, cleaning of common areas, litter picking and sweeping, emergency lift line, corridor heat removal system, PV meter hire, pest control, professional fees, management fees, directors' and officers' insurance, or other development-only costs. [109]
    3. The Tribunal did not accept the argument that indirect or aesthetic benefit from the wider development justified recovery under the wording of these sub-leases. [102], [105]
4. **Payment and section 27A**
    1. The first respondent argued that some or all applicants had agreed or admitted the charges by paying them. [93]–[96]
    2. The Tribunal found that certain applicants had expressly challenged liability from August 2018. [111]
    3. The Tribunal further found that all applicants had unequivocally demonstrated opposition to the service charges from January 2022 and had not accepted them from that date. [112]
5. **Reasonableness and specific items**
    1. The Tribunal held that the applicants were required to pay a fair proportion of lift maintenance, to be determined by the first respondent. [113]
    2. The Tribunal held that management fees charged to the applicants were excessive when compared with Blocks V2 to V7, given that the services and amenities provided under the sub-leases were considerably less. Those fees were to be reduced appropriately. [114]
    3. The Tribunal held that the applicants remained liable for costs relating to gullies, drains, balconies and terraces insofar as the sub-leases required such contribution and found that the evidential challenge to those works was not sufficiently made out. [115]
6. **Costs protection**
    1. The Tribunal made an order preventing the first respondent's costs from being added to the service charges or otherwise sought from the applicants as administration charges. [116]

5. **Conclusion**
    1. The Tribunal concluded that the sub-leases confined liability to costs associated with Block V1 and did not permit recovery of wider-development costs. [97], [108]
    2. The Tribunal concluded that the landlord could not pass through headlease liabilities which were not properly reflected in the sub-leases. [105]
    3. The Tribunal concluded that the applicants had not lost their right to challenge the charges by payment. [112]
    4. The Tribunal granted cost protection to prevent the landlord from recovering its litigation costs from the applicants. [116]

Key Takeaway

A landlord could not recover wider-development costs through service charges where the sub-leases, properly construed, limited liability to Block V1 and to services provided to that block. Defective drafting was not enough: absent a clear mistake and an equally clear correction, the Tribunal would not rewrite the leases to pass headlease liabilities down to shared ownership leaseholders. [97], [101], [105], [108]

Comment

The Tribunal's decision is admirably unsentimental. It did not award the Viridian leaseholders a victory because charging shared owners for concierge services, communal gardens and other wider-development amenities they could neither access nor enjoy felt absurd, although many observers may think it did. It awarded them a victory because the leases, defective though they were, did not say what Notting Hill Genesis needed them to say. [97], [101], [102]

That is the engine of the case. NHG had contracted under its headlease to pay wider-development costs. But that upstream liability did not automatically reappear in the shared ownership sub-leases. The Tribunal held that the applicants' sub-leases did not permit NHG to recover service charges for parts of the wider development "to which the applicants have no access or cannot enjoy". [97] It found that the recoverable costs were confined to repairing and maintaining Block V1, providing services to Block V1, and certain balcony and terrace costs. [108]

This matters because NHG's argument required the Tribunal to treat "Estate" in the sub-leases as meaning the whole "Development". The Tribunal declined. The leases were poorly drafted, yes, but not so obviously nonsensical that they could be rewritten by construction. The Arnold v Britton threshold was not met: there was no clear mistake with an equally clear correction. [100]–[102] In plainer terms, bad drafting is not a voucher redeemable against the pockets of shared owners.

The moral argument hovered over the case but the Tribunal did not decide the matter on that basis. It expressly rejected the proposition that it would be "morally wrong" to require leaseholders to contribute towards costs of the Development to which they had no access. The Tribunal made clear that, had the sub-leases required such contribution, the applicants would have been liable, even if they received no benefit. [110] That is a bracing reminder that the law of service charges is not a fairness machine. It is a machine for reading documents, and sometimes the documents are assembled with all the elegance of flat-pack furniture in a thunderstorm.

Even so, the wider point is unavoidable. Shared ownership is marketed as affordable housing, not as an invitation to subsidise services and amenities associated with a wider private development by contractual osmosis. The Tribunal accepted that the sales particulars stated that no concierge service was provided, no access was allowed to communal gardens, and no gym was provided, although those facilities existed on site and were available to non-social housing leaseholders. [98] It also found that the parties' intention was to maximise affordability by limiting services and service charges, an intention reflected both in the leases and in NHG's own historic demands before wider-development costs were added. [99]

The decision is therefore both narrow and significant. Narrow, because it turns on the wording of these particular leases and remains subject to any appeal. Significant, because it exposes a familiar structural problem in shared ownership: complex headlease arrangements, imperfect sub-leases, opaque service charge machinery, and residents who often feel compelled to pay first and challenge later.

The Tribunal's findings on payment under protest are therefore important. The first respondent argued that the applicants had agreed or admitted the charges by paying them. [93]–[96] The Tribunal found that some applicants had challenged liability from August 2018, and that all applicants

had unequivocally opposed the charges from January 2022. [111], [112] That finding prevents "you paid the bill" from becoming "you agreed to the bill", which would be a remarkably efficient way of turning fear of enforcement into consent.

The section 20C protection was also significant. Having succeeded on the central issue, the applicants were protected from the first respondent adding its litigation costs back through the service charge or as administration charges. [116] That does not make the process painless or affordable. It simply prevents the particularly theatrical injustice of residents paying to defeat a claim and then paying again for the landlord's attempt to make it.

The conclusion is stark. NHG may have been left with an unattractive headlease liability. But the Tribunal did not permit that liability to be exported downstream to shared ownership leaseholders whose sub-leases did not bear the load. [105] The case is a warning to housing providers that affordable housing cannot safely be administered on the assumption that residents will absorb drafting failures, headlease mismatches and commercial misjudgments whenever the service charge machinery starts coughing smoke.

For shared owners, the case offers encouragement, but not comfort. It shows that the FTT can restrain service charges that are not recoverable under the lease. It also shows that getting there may require years of endurance, legal cost, documentary stamina and the ability to keep paying while protesting with absolute clarity.

In the end, Viridian is not a revolution. It is something more legally useful: a disciplined reminder that service charges are creatures of contract, not wishful thinking. If a landlord wants leaseholders to pay for the wider estate, the lease must say so. If it does not, the answer is not to recast the bargain after the event.

#SharedOwnership #ServiceCharges #FirstTierTribunal #AffordableHousing #NottingHillGenesis #ViridianApartments #LeaseholdDispute #SocialHousing #HousingLaw #PropertyLaw #Leaseholders

Authorities

Case Law:

Lease Construction and Correction of Drafting Errors (Primary Theme)

1. ***Arnold v Britton*** [2015] UKSC 36 – *The applicants relied on Arnold v Britton for the principle that contractual language may only be corrected by construction where there is both a clear mistake in the parties' use of language and it is equally clear what correction ought to be made. [38] The Tribunal accepted the applicants' argument that the sub-leases did not satisfy that test and refused to construe "Estate" as meaning the wider "Development". [101]*
2. ***Investors Compensation Scheme Ltd v West Bromwich Building Society*** [1997] UKHL 28; [1998] 1 All ER 98; [1998] 1 WLR 896 – *The applicants cited Investors Compensation Scheme in support of the orthodox approach that the natural and ordinary meaning of the contractual words is the starting point, and that parties are generally presumed not to have made linguistic mistakes in formal documents. [38] This formed part of the construction argument which the Tribunal ultimately accepted. [101]–[105]*
3. ***Britvic Plc v Britvic Pensions Ltd*** [2021] EWCA Civ 867 – *The applicants cited Britvic for the proposition that poor drafting, ineptitude, or internal inconsistency is not enough to justify correction by construction unless both the mistake and the correction are clear. [39] The Tribunal's conclusion reflected that approach: the sub-leases were poorly drafted, but they were not an obvious nonsense and could not be rewritten to pass wider-development costs to the*

applicants. [100]–[102]

Service Charges and Absence of Benefit (Secondary Theme)

1. ***Solarbeta Management Co Ltd v Akindele*** [2014] UKUT 416 (LC) – *The first respondent relied on Solarbeta for the proposition that the fact a tenant derives no benefit from a service does not, by itself, prevent contractual liability for the relevant service charge. [77] The Tribunal had regard to that general submission but held that, on the wording of these sub-leases, the applicants were only liable for costs of repairing and maintaining Block V1 and services provided to it. [105], [108]*
2. ***Billson v Tristem*** [2000] L&TR 220, CA – *The first respondent also cited Billson v Tristem in support of the proposition that absence of benefit does not automatically preclude recoverability where the lease requires payment. [77] The Tribunal's decision turned not on benefit as a free-standing principle, but on the construction of the particular sub-leases. [105], [108]–[110]*
3. ***Universities Superannuation Scheme Ltd v Marks & Spencer Plc*** [1999] 1 EGLR 13; [1999] L&TR 237 – *The first respondent relied on this authority for the proposition that service charge provisions should, where the scheme, context and language permit, be interpreted so as to allow a landlord who reasonably incurs expenditure for the benefit of a development to recover the proper proportions from tenants. [83] The Tribunal did not accept that this principle permitted recovery here, because the relevant sub-leases did not require the applicants to contribute to wider-development costs. [105], [108], [109]*
4. ***London Borough of Southwark v Woelke*** [2013] UKUT 349 (LC) – *Woelke was referred to in the first respondent's submissions as part of the same purposive service charge construction argument associated with Universities Superannuation Scheme. [83] The Tribunal's conclusion remained that the wording of the sub-leases confined recoverability to Block V1 and services provided to it. [105], [108], [109]*

Payment, Agreement, and Jurisdiction under s.27A (Tertiary Theme)

1. ***Cain v Islington LBC*** [2015] UKUT 0117 (LC) – *The first respondent cited Cain in support of the proposition that repeated unqualified payments of service charges may, depending on the circumstances, give rise to an inference that the tenant agreed or admitted the charges. [94] The Tribunal ultimately found that certain applicants had expressly challenged the disputed service charges from August 2018, and that all applicants had unequivocally demonstrated opposition from January 2022. [111], [112]*
2. ***Marlborough Park Services Ltd v Leitner*** [2018] UKUT 230 (LC) – *The first respondent cited Marlborough Park as further support for the argument that payment history may, depending on the circumstances, indicate agreement or admission. [95] The Tribunal rejected the respondent's jurisdictional objection on the facts, finding sufficient protest and opposition by the applicants. [111], [112]*
3. ***Gorrara v Kenilworth Court Block E RTM Company Ltd*** [2024] UKUT 81 (LC) – *The first respondent referred to Gorrara as recent authority clarifying that payment alone does not necessarily amount to agreement, but that payment combined with other factors may do so depending on the circumstances. [95] The Tribunal's factual findings on protest and opposition meant that the applicants were not treated as having accepted the relevant service charges. [111], [112]*

General Principles of Lease Interpretation and Structure (Supporting Theme)

1. ***Arnold v Britton*** [2015] UKSC 36 (reiterated within reasoning) – *The Tribunal reaffirmed that*

the starting point in construction was the language used, read in context and that commercial consequences did not justify departing from the wording absent clear error. [38], [101]

2. ***Investors Compensation Scheme Ltd v West Bromwich Building Society*** [1997] UKHL 28; [1998] 1 All ER 98; [1998] 1 WLR 896 *(reiterated within reasoning) – The Tribunal relied on the foundational interpretative approach that contractual provisions should be read objectively, in their documentary and commercial context, subject to the limits on rewriting language. [38]*

Observations on Thematic Priority

1. *The Tribunal's reasoning was led primarily by lease construction and the limits of correcting defective drafting. That analysis determined whether the landlord could pass wider-development costs down through the sub-leases. [97], [101]–[105], [108], [109]*
2. *The absence-of-benefit authorities were secondary. The Tribunal recognised the general proposition that leaseholders may sometimes be liable for costs even where they receive no direct benefit, but held that this depended on the wording of the lease. On these sub-leases, wider-development costs were not recoverable. [105], [108]–[110]*
3. *The payment and section 27A authorities were important to jurisdiction and admissibility of the challenge. The Tribunal found that the relevant payments did not prevent the applicants from disputing the charges, because there had been express and unequivocal opposition. [111], [112]*
4. *The interpretative authorities underpinned the result, but the decisive point was simple: the Tribunal would not rewrite poorly drafted sub-leases where the alleged mistake and alleged correction were not both clear. [100]–[102]*

Legislation:

Service Charge Determination and Tribunal Jurisdiction — Primary Theme

Landlord and Tenant Act 1985, section 27A

1. *The application was expressly brought pursuant to **section 27A of the Landlord and Tenant Act 1985** for determination of the payability of service charges for the years 2018 to 2025. [1]*
2. *The central statutory question was whether the applicants were liable to pay the disputed service charges under their sub-leases. [10], [11]*
3. *The Tribunal determined that the applicants' sub-leases did **not** permit the first respondent to recover, as service charges, sums paid to the management company in respect of the wider Development to which the applicants had no access or could not enjoy. [97]*
4. *The Tribunal further held that the recoverable costs were confined to repairing and maintaining Block V1, providing services to Block V1, and certain balcony and terrace costs. [108], [109]*

Landlord and Tenant Act 1985, section 27A(2), (4) and (5)

1. *Section 27A(2) was identified as confirming that the Tribunal's jurisdiction may arise **whether or not payment has already been made**. [94]*
2. *Section 27A(4) was identified as restricting the Tribunal's jurisdiction where the relevant matter has been **agreed or admitted** by the tenant. [93]*
3. *Section 27A(5) was identified as providing that a tenant is not to be taken to have agreed or admitted a matter **by reason only of having made payment**. [94]*
4. *The Tribunal found, on the facts, that named applicants had expressly challenged liability from August 2018, and that all applicants had unequivocally demonstrated opposition to the disputed*

charges from January 2022. [111], [112]

5. *Accordingly, payment did not prevent the applicants from challenging the disputed service charges. [111], [112]*

Landlord and Tenant Act 1985, section 19(2)

1. *Section 19(2) was referred to in relation to estimated service charges. The Tribunal recorded that, for the later years in issue, the question was whether the estimated sums were reasonable. [92]*
2. *This was distinct from the primary construction issue, which concerned whether the disputed wider-development charges were contractually recoverable at all. [97], [105], [108], [109]*

Restriction on Recovery of Litigation and Administration Costs — Secondary Theme

Landlord and Tenant Act 1985, section 20C

1. *The applicants sought an order that none of the respondent's fees, costs or charges should be added to the service charges. [116]*
2. *Having regard to its substantive decision, the Tribunal considered it reasonable and appropriate to make such an order, preventing recovery of the first respondent's costs through the service charge. [116]*

Commonhold and Leasehold Reform Act 2002, Schedule 11, paragraph 5A

1. *The applicants also sought protection against the respondent's costs being recovered as administration charges. [116]*
2. *The Tribunal made an order preventing the first respondent's costs from being sought from the applicants as administration charges. [116]*

Tribunal Procedure and Case Management — Tertiary Theme

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 9

1. *The Tribunal exercised its case management power under rule 9 to direct that the second respondent was not required to remain a party to the application. [8]*
2. *This was because the second respondent was not a party to the shared ownership sub-leases and, by agreement, had no real role to play in the proceedings. [7], [8]*

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 36(2)

1. *In the rights of appeal section, the Tribunal referred to rule 36(2), which requires the Tribunal to notify the parties of any right of appeal.*
2. *The decision explained the procedure and time limit for seeking permission to appeal to the Upper Tribunal.*

Priority of Themes

1. ***Service charge jurisdiction and payability — section 27A***
   This was central to the outcome. The Tribunal determined whether the disputed sums were payable under the sub-leases. [1], [10], [97], [108], [109]
2. ***Reasonableness of estimated charges — section 19(2)***

This was relevant to the later estimated service charge years, but secondary to the main construction issue. [92]

3. ***Limits on recovery of litigation and administration costs — section 20C and Schedule 11 paragraph 5A***
   These provisions were material to the financial consequences of the decision, preventing the respondent from passing its costs back to the applicants through service charges or administration charges. [116]
4. ***Procedural rules — FTT Rules 2013***
   These were ancillary and concerned case management and appeal notification rather than substantive service charge liability. [8], Rights of appeal section.

Closing observation

The judgment followed a conventional statutory structure:

1. ***section 27A*** *determined whether the disputed sums were payable;*
2. ***section 19(2)*** *governed the reasonableness of estimated charges where relevant;*
3. ***section 20C*** *and* ***Schedule 11 paragraph 5A*** *controlled the applicants' exposure to the respondent's costs after the substantive determination; and*
4. *the* ***FTT procedural rules*** *dealt with party management and appeal rights.*

Legal Texts & Commentary:

None cited.

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