

UPPER TRIBUNAL (LANDS CHAMBER)



LC-2023-000372
LC-2023-372

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

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

BETWEEN:

**CANARY RIVERSIDE ESTATE MANAGEMENT LIMITED (1)
OCTAGON OVERSEAS LIMITED (2)**

Appellants

-and-

**SANDRA CANTLEY and others
(member of the Residents' Association of Canary Riverside)**

Respondents

The First Tier Tribunal (Property Chamber) having granted permission to appeal its decision dated 21 December 2022 on some of the grounds requested by the appellants but refused permission on other grounds

And the appellants having filed notice of appeal within time and having applied for permission to appeal on the grounds refused by the First-tier Tribunal

Permission to appeal is REFUSED on grounds 1, 3, 5 and 6 for the following reasons

1. Ground 1 – The FTT was clearly correct to state that consideration whether the appellant was contractually obliged to incur a cost was relevant to the question whether the cost was reasonably incurred. If the cost was not one which the appellant was bound to incur, but had been incurred voluntarily, that fact would be relevant both to reasonableness and to the more fundamental question raised by any application under section 27A, Landlord and Tenant Act 1985, namely, whether a service charge is payable. In any event, the point raised a question of contractual interpretation and was argued. No purpose would be served by arguing whether the point should have been considered at all, when it has already been determined and is itself the subject of the appeal.
2. Ground 3 – The FTT was satisfied that the leaseholders had established a *prima facie* case that the sums claimed were not payable. No criticism is made of that proposition. There is therefore no basis on which it can be said that the evidential burden fell on the appellant to establish what the payments were for, that they had been reasonably incurred, and were of a reasonable amount.
3. Ground 5 – The relevance of this point to anything the FTT decided is not explained. In paragraph 35 of its decision it appears to have been explaining matters of background which would already have been well understood by the parties and was

contrasting the position before and after the appointment of the manager. No objection is taken to the account of the current position in paragraph 36 and it is not suggested that the general statement in paragraph 35 has adversely influenced the substantive decision.

4. Ground 6 – In view of the FTT's explanation in paragraph 12 of its decision refusing permission to appeal on this point, and the leaseholders' acceptance that Insurance Premium Tax is recoverable on any sum which they are liable to contribute towards, no purpose would be served by granting permission to appeal.

The following directions will apply to the determination of the appeal

1. All professionally represented parties must make use of the Tribunal's electronic filing facility, CE-File, to file documents with the Tribunal in this case; unrepresented parties are encouraged, but not required, to do the same.
2. If any of the respondents wish to participate in the appeal they must file a respondent's notice with the Tribunal and send a copy to the appellant by **4 September 2023**. A single respondent's notice may be served on behalf of all those represented by the Residents' Association.
3. The appeal will be a review of the decision of the first-tier tribunal and will be conducted under the Tribunal's standard procedure.
4. By **4 September 2023** the parties to the appeal must provide the Tribunal with details of any dates during the period from 22 January to 14 March 2024 which the Tribunal should avoid when listing the appeal for a final hearing (which will take place at the Royal Courts of Justice, London WC2 and will last not more than one day).
5. By **15 December 2023** the parties shall agree which of the documents provided to the first-tier tribunal should be included in the hearing bundle for the appeal. Any document which either party wishes to refer to which is relevant to the issues for which permission has been given shall be included together with a copy of the first-tier tribunal's decision, its refusal of permission to appeal, and the subsequent appeal documents.
6. By **9 January 2024** the appellant shall lodge one indexed and paginated copy of the agreed hearing bundle with the Tribunal.
7. Not later than 3 clear days before the date fixed for the hearing a legally represented party shall, and an unrepresented party may, provide to the Tribunal and to the other parties a skeleton argument identifying the points which they wish to argue on the appeal together with copies of any authorities to which they intend to refer. Skeleton arguments should be provided electronically in Word format.
8. The parties may apply for further directions if required.

Martin Rodger KC,
Deputy Chamber President

2 August 2023

