FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LSC/2022/0008**
HMCTS code (audio,video,paper)	**:**	**V:FVHREMOTE**
Property	**:**	**415 & 419 The Colonnades, Albert Dock Liverpool L3 4AG**
Applicants	**:**	**A.Jones & D.Currey**
Applicants' Representative	**:**	**A.Jones**
Respondent	**:**	**The Colonnades Residential Limited**
Respondent's representative	**:**	**I.Alderson, Brabners LLP**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20C** **Commonhold and Leasehold Reform Act 2002-Schedule 11 Paragraph 5A**
Tribunal Members	**:**	**Judge J.M.Going** **J.Gallagher MRICS**
Date of Hearing	**:**	**27 February 2023**
Date of decision	**:**	**9 March 2023**

DECISION

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THE DECISION

The Tribunal has determined: –
(1) that the costs of the contributions to reserves (of £60,000 for 2020, £83,000 for the 15-month period to 31 March 2022, and £100,000 for the year from 1 April 2022 to 31 March 2023) demanded by CRL and collected through the service charges from the apartment owners at the Colonnades are reasonable and payable,
(2) not to preclude CRL from including the costs of the present proceedings within the service charges, and
(3) to extinguish any individual liability that the Applicants might have, outside of the service charges, to pay an administration charge in respect of litigation costs relating to the present proceedings.

Preliminary

1. By an application ("the Application") dated 14 January 2022 the Applicants applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to whether certain service charges incurred or to be incurred during the service charge years 2017 - 2027 would be payable and are reasonable.

2. A video case management hearing took place on 17 February 2022 before the Tribunal's Regional Judge Bennett attended by the Applicants, Mr Jones and Mr Currey, and Mr Willetts who it is understood is or was a director of the Respondent ("CRL") and Mr Alderson, CRL's solicitor.

3. Judge Bennett thereafter issued initial Directions on 18 February 2022, stating that the Application "shall continue relating to service charge years 2020, 2021 and 2022 in respect of demands and expenditure for the cyclical maintenance fund only". Also included in the Application and to be dealt with at the same time were applications for orders preventing the costs incurred in connection with the proceedings to be recovered as part of the service charges and reducing or extinguishing the Applicant's liability to pay a particular administration charge in respect of such costs. The matter was set down for a two-day video hearing and timetables set for the provision of relevant documentation.

4. As matters progressed the Applicants made various applications for further directions and following the request to add the Colonnades Residential (2018) Ltd as a second Respondent and for the disclosure of a report on title Judge Bennett issued a Decision dated 20 December 2022 refusing both requests.

5. The Tribunal has been supplied with a wealth of paperwork with the final separate bundles together with CRL's skeleton argument and authorities extending to over 870 pages. The papers included photographs, the Applicants' and CRL's statements of case and written submissions, the Applicants' leases, various registered titles, service charge accounts, demands and estimates, emails, letters, technical reports, a copy of the management agreement between the CRL and its managing agent and extracts from the RICS's codes of practice.

6. All of the written evidence was carefully considered before, during and after the hearing. The oral evidence at the hearing was also carefully considered.

7. Because of the extent of the paperwork, which is on record and which the parties have access to, it would be superfluous and, in the Tribunal's opinion, particularly because of some entrenched positions, counter-productive to attempt to relate its full detail in this decision.

8. The Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.

The factual background

9. The Colonnades at the Royal Albert Dock on the Mersey waterfront form part of a series of imposing Grade 1 Listed Buildings dating from the 1840s which were originally dock warehouses constructed of brick, cast iron and stone and without structural timbers. It was redeveloped in the 1980s, at about the same time as the adjoining Tate Liverpool, and now has retail units on the ground floor with the upper four storeys occupied by 115 apartments. There is also a reception, communal areas, and a basement car park.

10. CRL now owns the intermediate leasehold titles, purchased in 2016, and as such is the landlord to the individual apartment owners. Each apartment is held under a Lease ("the Lease") which follows a common form for the balance of a 150-year term (less 3 days) computed from 1 October 1985.

11. It is understood that at the time of CRL's purchase all 115 apartment owners were invited to become shareholders and 81 did so, including Mr Jones and Mr Currey's predecessor in title.

12. The following matters are referred to in the papers. None have been disputed, except where mentioned.

In 1998	Mr Jones became the owner of 415 The Colonnades, an apartment on its top floor.
15 August 2013	Premier Estates ("Premier") was appointed as managing agents by CRL's predecessor in title.
26 July 2016	CRL was incorporated for the purposes of acquiring the intermediate leases.
4 November 2016	CRL completed the purchase of the intermediate leases.
16 December 2016	An email to residents from CRL referred to setting the contribution to the cyclical fund for maintenance for 2017 at £40,000, together with the need to build that fund up and increase it nearer to £60,000 in 2018.
17 September 2019	Thomasons published a 15- year capital expenditure report (the "Capex report"). Page 7 summarised its total costings at £3,602,833.50 and the need for an annual cost contribution of £323,899.90. Page 8 explained that such costings assumed current market costs and did not include for inflation or main contractor procurement.
23 October 2019	Mr Prescott MRICS of Cube undertook a survey to investigate the condition of the brickwork elevations. He made various recommendations, having regard to the listed status of the property and English Heritage advice. These were categorized as urgent, essential and desirable.
2020	Mr Currey became the apartment owner of 419 The Colonnades on its top floor.
4 December 2020	Premier issued their service charge estimate for next year together with a covering letter, a demand for the next period and various prescribed information. The letter explained necessary adjustments in line with anticipated costs stating "you may recall that we have indicated previously that the cyclical maintenance fund contribution will need to be increased in order to provide additional funds towards future works… The intention was to increase the contribution for 2021. However, we are mindful of the financial impact the ongoing coronavirus pandemic may cause, and therefore the cyclical maintenance fund contribution will remain at its current level. We wish to add that this will be reviewed again in advance of 2022 and note that an increase at that stage may be likely".
26 June 2021	Premier sent copies of the service charge accounts to the leaseholders for year ending 31 December 2020, certified by Leonherman Chartered Accountants on 25 June 2021 as having been prepared having regard to *TECH 03/11 Residential Service Charge Accounts* published jointly by the professional accountancy bodies, ARMA and RICS. The accounts referred to the total of the

	day-to-day expenditure as £578,106 (compared to the 2019 figure of £541,323) including in both years a contribution of £60,000 to the cyclical maintenance fund. The balance in the cyclical maintenance fund at 31st December 2020 was £240,078 and the separate balance in the dispositions fund £113,702. Offsets from the dispositions fund included £30,049 in respect of roof inspection and maintenance (in addition to the figure of £6626 in the income and expenditure account).
Thought to be 2020 or 2021	Aura Heritage issued a budget cost proposal for external façade repairs including brickwork repointing and other repairs anticipating works would be carried out over a couple of years in phases. The total cost of a programme of works in 4 separate phases was budgeted at £565,611.37.
10 December 2021	Premier wrote to leaseholders referring to adjusting the financial year end to 31 March explaining the benefit going forward as enabling the incorporation of accurate figures in its provision for 2 of the largest costs in the Colonnades' service charge being the contributions due to the Royal Albert Dock estate service charge which has a financial year end on 31 March and its buildings insurance where the renewal date is also 31 March.
18 January 2022	The Application for a determination of liability to pay and reasonableness of service charges was made to the Tribunal.
9 March 2022	Premier issued its service charge estimate for the period 1 April 2022 to 31 March 2023 which included a provision for a contribution to the cyclical maintenance fund of £100,000 (apportioned as to £75,000 from the apartments, £5000 from storage areas and £20,000 from the car parks). It was noted (inter alia) the fund "is in place to ensure contributions are set aside for the future, which minimises the risk of large one-off levies having to be raised to fund projects at the time they are required, or indeed works having to be delayed due to insufficient funds being available. At the October 2019 residents meeting, the CRL Board proposed a transfer of £100,000 to the CMF for 2021. In recognition of the likely adverse financial consequences of the pandemic for residents, the CRL Board maintained contribution for 2020 at £60,000. However, that level of transfer is insufficient to address the significant maintenance required over the next three years and so a contribution of £100,000 is proposed. That compares with a transfer of £150,000 for 2022 and subsequent years that was proposed at the October 2019 meeting".
14 April 2022	CRL wrote to the leaseholders in response to various concerns and a position statement received from ADRA ("the Residents Association"). The letter stated, inter alia,

	"the balance of the cyclical maintenance fund as of 31 March 2022 was £300,122. There was no expenditure from this fund between 1 January 2021 on 31 March 2022... The balance of the dispositions fund... was £222,736...we cannot confirm what (the) offsets will be at this stage, but applicable items of expenditure which may be offset total approximately £100,000". It also referred to "in the 15 month period..to 31 March 2022, service charge expenditure on the roof was approximately £90,000".
20 June 2022	Premier wrote an email to Mr Jones stating, inter alia, "no one has been awarded the repointing contract. Cube are a firm of surveyors who are providing the heritage expertise in project management services.
28 June 2022	Premier sent copies of the certified service charge accounts to the leaseholders for 15-month period ending on 31 March 2022. The accounts referred to the total of the day-to-day expenditure as £821,743 for the 15 months having included a contribution of £83,000 to the cyclical maintenance fund. The balance in the cyclical maintenance fund at 31 March 2022 was shown as £200,999 and the separate balance in the dispositions fund £197,359. Offsets (which were not itemised) from the cyclical maintenance fund amounted to £122,079 and from the dispositions fund £25,377.
19 July 2022	Thomasons issued a "Design and Access statement for replacement of roof finishes" for the adjoining Tate Liverpool to accompany an application for Listed Building Consent.
22 September 2022	David Rockall prepared a photographic record of condition in relation to ongoing water ingress and water damage to Mr Jones apartment, referring to severe water entry and emphasising ongoing safety concerns "for possible falling hazards, electrical wiring and slipping hazard".

The relevant terms of the Lease

13. The first clause of the Lease contains various definitions confirming: –
"…..
1.11"Maintained Property" means those parts of the Development which are more particularly described in Schedule 2
1.12 "Maintenance Expenses" means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor at all times during the term hereby granted in carrying out the obligations specified in Schedule 6
1.13 "Village Services Contribution" means the moneys actually paid by the Lessor to Merseyside Development Corporation ("MDC") as a contribution

towards the cost to MDC of insuring the Building and of the services rendered by it for the benefit of the Village
1.14 "Lessee's Proportion" means the proportion of the Maintenance Expenses or the Village Services Contribution or both (as the context admits) payable by the Lessee in accordance with the provisions of Schedule 7…

14. Schedule 2 describing the Maintained Property refers to: –
"FIRST the Parking Spaces
SECONDLY the entrance halls entrance doors windows window frames passages landings staircases lifts and other parts of the Building which are used in common by the owners or occupiers of any two or more of the Flats and the glass in the windows of such common parts
THIRDLY the structural parts of the Building including the roofs gutters rainwater pipes foundations floors all walls bounding individual Flats therein and all external parts of the Building and all Service Installations not used solely for the purpose of one Flat (but not including the glass in the windows of the individual Flats non-structural walls within the Flats the interior joinery plaster work tiling and other surfaces of floors ceilings and walls of the Flats and Service Installations which exclusively service individual Flats and the exterior doors of the Flats except the external surfaces of them)
FOURTHLY the Service Roadway the Security Wall and all landscaped areas"

15. Schedule 6 setting out the Maintained Expenses begins with the words:
"Moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor at all times during the Term in respect of the following:-
1. Paying service charge and insurances reserved by the Headlease
2. Repairing rebuilding repointing improving or otherwise treating as necessary and keeping the Maintained Property and every part thereof in good and substantial repair order and condition and renewing and replacing all parts thereof that are in the opinion of the Lessor in need of renewal or replacement
3. Painting….
4. Keeping the gardens and grounds of the Maintained Property generally in a neat and tidy condition…
5. Keeping the Service Roadway in good repair…
…..
13. Cleaning…
……
20. Generally managing and administering the building…
21. The provisions of caretaking and concierge services or both….
……
23. Employing a qualified accountant for the purpose of auditing the accounts in respect of the Maintenance expenses and the Village services contribution and certifying the total amount thereof for the period to which the account relates
……
28. Such sum (to be fixed annually) and shall be estimated by the Lessor (whose decision shall be final but shall take into account sums received by virtue of paragraph 22.1(b) of Schedule 8) to provide a reserve fund for items of expenditure referred to in this Schedule to be or expected to be incurred at

any time during the period of three years commencing with the date on which the estimate is made
29. The said reserve fund shall be kept in separate accounts... in trust for the lessees of the Flats and shall only be applied in accordance with the terms of this Schedule
30. All other expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the Development including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the building save insofar as any such defect is not covered by the insurance effected by the Lessor...."

16. Schedule 7 states: –
"1.The Lessee's Proportion means:
(a) a fair and proper proportion of the Maintenance Expenses attributable to the matters mentioned in Schedule 6 and
(b) such fair and proper proportion of the Village Services Contribution and
(c) the sum which is the product of multiplying 0.25% of the sale price on any dispositions of or the market value at the time of such dispositions of the Demised Premises (whichever is the greater) by four or (if it is greater) the number of years during which the term hereby created has been vested in the Lessee making such dispositions...
Provided Always as follows:-
(i) The certificate of the accountant for the time being of the Lessor as to the total amount of the Maintenance Expenses and the total amount of the Village Services Contribution for the period to which the account relates shall (subject as hereinafter mentioned) be binding on the Lessor and the Lessee
(ii) If the Lessee shall at any time during the said term object to any item of the Maintenance Expenses as being unreasonable.... then the matter in dispute shall be determined by a person to be appointed for the purpose by the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall bind both parties Provided Always that any objection by the Lessee under this sub-paragraph 1(c)(ii) shall not affect the obligation of the Lessee to pay to the Lessor the Lessee's Proportion of the Maintenance Expenses in accordance with paragraph 3 of this Schedule ....
(iii) The amount of the Maintenance Expenses shall be adjusted to take into account any sums received by the Lessor as contributions towards the cost of the work mentioned in Schedule 6 from the owners lessees or occupiers of any adjoining or neighbouring properties
2. An account of the Maintenance Expenses (distinguishing between actual expenditure and reserve for future expenditure) and notice of the Village Services Contribution for the period ending 31st December next following the date hereof and for each subsequent year ending on the 31st December during the said term shall be prepared and the Lessor shall within three months of the date of each account serve on the Lessee a copy thereof and of the accountant's certificate
3.The Lessee shall pay to the Lessor the Lessee's Proportion in manner following that is to say:
3.1 In advance on the First day of January the First day of April the First day of July and the First day of October in every year throughout the said term

one quarter of the Lessee's Proportion of the amount estimated by the Lessor or its managing agents as the Maintenance Expenses and the Village Services Contribution for the year ending on the next 31st December"

17. Schedule 8 setting out the covenants by the Lessee includes: –
"21.1 Not at any time during the said term to assign or transfer any part or parts of the Demised Premises....(b) without the Assignee or Transferee first executing a Deed of Covenant with the Lessor that he and his successors in title will at all times from the date of the assignment transfer or sublease duly pay all sums payable to it hereunder.... and (c) without the Lessee paying to the Lessor on completion of the disposition of the Demised Premises the sum referred to in paragraph 1(a) of Schedule 7"
18. Schedule 9 sets out the Lessors covenants and includes: –
" 5. To carry out the works and do the acts and things set out in Schedule 6 Provided:
5.1 The Lessor shall in no way be held responsible for any damage caused by any want of repair to the Maintained Property or defects therein for which the Lessor is liable hereunder unless and until notice in writing of any such want of repair or defect has been given to the Lessor and the Lessor has failed to make good or remedy such want of repair or defect within a reasonable time of receipt of such notice".

The Parties submissions

19. The Applicants' statement of case, issued after the initial Directions, explained the Application as being "due to what appear to be unreasonable demands" stating "our homes are currently in disrepair" "the amounts demanded for the cyclical maintenance fund are financially penalising leaseholders while endangering applicants and their families". The Applicants "believe the failure to adequately address applicants' safety as well as the growing mutual mistrust is as a result of the respondents accruing large amounts of funds for the cyclical maintenance fund for which we don't know why, whilst the roof is in its twentieth year of recorded disrepair". The Applicants raised various questions as to CRL's address for service and the identity of various parties, the calculations and consultation preceding the demands, and various figures and balances referred to in the accounts and correspondence.

20. CRL response was that the Applicants' statement lacked particulars, did not state any grounds or legal or factual basis for the claim that the cyclical maintenance fund contributions are unreasonable, did not state amounts that would be reasonable, and did not challenge the Capex report, and after referring to the summary figures in the report concluded that the contribution of £60,000 for 2020 and £100,000 for 2021 and 2022 must be reasonable. It also submitted that it would not be just and equitable for an order to be made under section 20C.

The Hearing

21. A Full Video Hearing was held on 27 February 2023. In attendance via separate links were Mr Jones, Mr Rockall, Mr Alderson, Mr Bickerstaffe of Thomasons and Mr Hollowes, CRL's finance director.

22. Mr Jones confirmed that he represented both himself and Mr Currey, who was absent. Mr Alderson represented CRL.

23. The Tribunal began by referring to its receipt on the working day before the hearing of Mr Alderson's skeleton argument, and a subsequent email from Mr Jones initially objecting to its inclusion. The Tribunal confirmed that it was minded to admit the skeleton argument, having noted that it did not seek to introduce new evidence or go beyond anything that had previously been put in evidence. Mr Jones confirmed that having since had time to consider it, he too now found it helpful.

24. Mr Currey had also emailed the Tribunal on the eve of the hearing to apologise for his non-attendance and requesting that the Tribunal consider two points in particular, the first stemming from his concerns as to windows and balconies being in disrepair and not painted whilst monies remained in the cyclical maintenance fund, and the second that the service charge accounts should be fully audited.

25. In his opening comments, Mr Jones said that CRL had failed to provide cyclical maintenance since 2016 despite regular payments to the cyclical maintenance fund and had made incorrect demands for specific and potentially unnecessary major works projects without consultation, instead of utilising the cyclical maintenance fund for its intended purposes. He stated that this had resulted in a misclassification of repairs, neglect of relevant works such as the external windows and balconies which had not been cyclically maintained since 2012, and the avoidance of condition surveys and risk assessments to mitigate the effect on major work funding for 2022/3. He said that CRL having procured "unrestrained capital expenditure reports" had then argued for the necessity of large contributions to the cyclical maintenance fund without proper regard to the dispositions fund, the balance in the cyclical maintenance fund, and the input from the Residents Association. He submitted that leaseholders had been unable to perform their covenants under the lease as a consequence of the landlord's failure to perform theirs. He said that there had been a serious injury and disrepair to the property as result. He submitted that payment demands were not incurred reasonably and not applied to relevant works. He also referred to unspecified expenses in the accounts, and inconsistencies between figures shown in statements and letters.

26. Mr Alderson, in his opening comments, summarised the background and referred quickly to those matters set out to in his skeleton argument together with various matters which were discussed in more detail as the hearing progressed. He confirmed that the Lease makes express provision for the collection of the cyclical maintenance fund, which the Applicants had admitted is necessary, emphasising that the Colonnades is a Grade 1 listed historic building which requires regular maintenance repair and renewal and

a substantial sinking fund, which is why CRL took professional advice by commissioning the Capex report, and which concluded that by 2019 prices CRL should be collecting approximately £324,000 a year to fund future capital expenditure. CRL had not attempted to collect the full amount of that recognising it was not affordable.

27. Having heard the introductory comments, the Tribunal moved the discussion to those clauses within the Lease referring to reserves, and in particular an analysis of paragraph 28 of Schedule 6 ("paragraph 28").

28. Mr Alderson submitted that the particular clause did not have general application because of the words employed at the beginning of the Schedule gave CRL as the landlord a general power unlimited by the three-year reference period in paragraph 28. He contended that paragraph 28 had a very specific purpose not affecting a general right of the landlord to ask for monies to go into the cyclical maintenance fund. He stated that for expenditure outside the next three years CRL would not need to take into account the monies in the dispositions fund, but for expenditure inside three years it did need to ask whether having looked at the monies in the dispositions fund it should be spending that. He felt the drafting of Clause 28 was "clumsy" but that his interpretation was the correct way of reconciling it. He agreed that the terms cyclical maintenance fund and dispositions fund were not explicitly mentioned as such in the Lease but were the terms adopted in the management of the scheme. He explained that the cyclical maintenance fund is for all the items of periodical expenditure referred to in the various clauses of Schedule 6, and that that fund is clearly a trust fund belonging to the leaseholders. Mr Alderson also confirmed by contrast that there is no limitation set in the Lease on what CRL as the landlord can use its dispositions fund for, emphasising that the two funds are separate, and that the dispositions fund is the landlord's own money making it much freer to decide on how it is spent or invested. He qualified that by also saying that there was probably an implied obligation to spend it on the building but that that was "not spelt out in the Lease". He also said that CRL had never actually used the dispositions fund for anything other than spending on the building and as certified in the accounts.

29. Mr Jones saw paragraph 28 as encapsulated in a test of reasonableness and the requirement to have regard to the balance of the disposition fund when making decisions as to the demands in respect of the cyclical maintenance fund. He thought that the somewhat oblique reference to what all agreed was the dispositions fund, occurred because of a typing error. He regarded paragraph 28 as being a form of governance and a control mechanism which when lost would leave leaseholders exposed to and reliant on the capital expenditure reports by surveyors thereby losing control. He submitted that to satisfy the test of reasonableness the landlord was required to consider a lot more things in context.

30. The mechanics of move from the annual calendar service charge year to a 15-month period ending on 31 March were discussed. Mr Jones confirmed that he did not agree to the change, which had adverse consequences and had been problematic. He said receiving a bill in December without estimates had been completely unprecedented and had made it difficult to budget. Mr Alderson confirmed that he was not aware of any authority under the Lease for the change, but his understanding was that it followed consultation, was decided upon as a matter of convenience, and had not altered the amounts payable which most leaseholders paid monthly or quarterly.

31. Mr Jones, who stated that he had been suffering water ingress since 2002, then introduced Mr Rockall, a chartered building surveyor. Mr Rockall confirmed that he was not appearing as an Expert Witness in accordance with the RICS guidance, but that he had been asked by Mr Jones to inspect his apartment in September 2022 and was very concerned and shocked by what he then saw, which he had documented in his photographic condition report. He noted that Mr Jones, who is a quadriplegic, relies on a motorised wheelchair. Mr Rockall observed rainwater pouring onto the laminate floor in the main bedroom from three locations. He also described water ingress in all four of the apartment's bedrooms and various damp staining around the perimeter and in in the hallway. He was at pains to emphasize that he had not inspected anything outside the apartment, had no access into the ceiling void, and had not been onto the roof of what he described as "a complex enormous building". He had not inspected any of the other apartments although had seen some photos of corroded windows.

32. The Tribunal then heard from Mr Bickerstaffe, also a chartered building surveyor. He confirmed that he had worked for Thomasons for 25 years and visited the Colonnades on a regular basis. He related that Thomasons has approximately 15 offices nationwide, were originally structural and civil engineers but have since diversified to being building surveyors, quantity surveyors and CDM coordinators. He had read the Capex report which had been prepared and signed off by two of his qualified colleagues and agreed with its contents. He explained that the total costs were worked out on the basis of maintaining the building over a 15-year cycle to an acceptable level. Particular reference was made to the pages summarising the costings totaling £3.6 million which computed to an annual requirement of approximately £324,000 to break even at the end of that period, which figures Mr Bickerstaffe endorsed. The stated caveats to those costings were also noted including that they assumed current market costs, did not provide for inflation, nor any main contractor provision, which was explained as typically increasing the costs quoted by a factor of 15 to 20 percent. Mr Bickerstaffe could not answer Mr Jones' question as to what documents were seen before the report was made, but described the typical process. He said any prior warranties would not necessarily form part of the report. Mr Jones noted that the report did not include reference to the service road. He also questioned the assumptions made as to the lifespan of the roof known to have been renewed in the 80s and 90s. Mr Bickerstaffe explained that Thomason's surveyors in

2019 made a judgement on the basis of inspection and experience, which he endorsed, that the present roof had lifespan of a further 25 years calculated from 2019. Mr Jones stated that either a refit was now overdue or there was a need for a "serious condition survey". It was noted that the Capex report had costed the roof renewal at approximately £1.1 million thereby requiring an annual provision figure of £44,000. There was also discussion of Thomasons' separate employment by the Tate as regards its July 2022 application for permission to reroof part of its roof. Mr Bickerstaffe confirmed that he had been on the Tate's roof on several occasions and its construction was different in various respects, particularly the walkways and guttering, and that the Tate's brief was different with Tate London wanting to install a guaranteed leak free roof. Mr Jones said he struggled to accept Mr Bickerstaffe's analysis, repeating that there had never been a proper condition survey of the Colonnades roof. Mr Bickerstaffe referred to attending the Colonnades on a regular basis and having been to Mr Jones' apartment on one occasion. He stated that the roof of the Colonnades has inherent defects as a consequence of workmanship in the 1980s or design, they were not entirely sure which, but which had "nothing to do with the planned preventative maintenance". He explained there had been a series of investigations during the last couple of years including of the front façade, and some limited success. He understood it was "hard to believe given the water ingress but it had been very well maintained". Mr Jones did not accept that, stating "everything that has been done has failed" "Basic obligations of maintenance under the lease are not being met" He referred to the 300 windows which should have been painted in approximately 2015. Mr Gallagher asked Mr Bickerstaffe if he considered that the roof was deteriorating or holding its own? His answer was "everything deteriorates over time" but he was hoping its inherent defects would be resolved very soon in "six months to one year to two years".

33. After the lunch break, Mr Hollowes gave his evidence confirming that he had been appointed as the finance director of CRL in July 2021 having been a resident since November 2018. He confirmed that he is a retired Chartered Accountant of some 45 years standing, having been a partner for 16 years in Price Waterhouse Coopers, and had also been a finance director and board member of Moorfields Eye Hospital in London.

34. He explained the rationale driving the change in the service charge year end was because of the timing of two major expenses, the first stemming from insurances for the whole of the Royal Albert Dock estate and the second, the service charge contribution which CRL is liable to make to the general estate, both of which are computed on the basis of a 31st March year-end. There was consultation before the change following an open meeting with the residents in October 2019, at which he understood that there had been a half an hour discussion. He was not aware of any objections at that meeting, or subsequently, and confirmed that those leaseholders paying monthly or quarterly would not have suffered any payment spikes. He believed that Mr Jones had been paying monthly from last year.

35. Mr Hollowes answered various detailed points on the accounts. He explained that the "offsets" referred to in the accounts were payments made out of the two funds towards costs that had been incurred, and booked as such to the accounts in the months leading up to and when finalizing the period/ year end. It was confirmed that the costs funded by the offsets were not itemised in the accounts to 31 March 2022 and he agreed that to do so in the future would aid transparency. He referred to the letter from CRL to the residents in April 2022 as confirming the amount of expenditure on the roof and setting out CRL's policy as regards the cyclical maintenance fund. Mr Hollowes did not have an explanation as to why the charge to the cyclical maintenance fund in the 15-month accounts to 31 March 2022 had been calculated at £83,000 rather than £85,000 (ie £60,000 for 2021 plus £25,000 for the additional quarter at 25% of the revised annual amount of £100,000) .

36. In explaining how the figures for the annual contributions to the cyclical maintenance fund were set, he openly acknowledged that it was a difficult judgement and that "it's about affordability". He confirmed that CRL's board do take into account what is in the dispositions fund, having regard to an assessment of what might be predicted in the uncertain sales market. In the October 2019 meeting, his predecessor as finance director had put up slides illustrating the contributions needed for the following years. The proposal was for an increase to £100,000 but in the event the decision was made to repeat the previous year's figure of £60,000 because of what it was felt the residents could afford. He explained that moving on to 2022/3 the advice and proposal from the managing agents was for a charge of £150,000, but the board felt that was not affordable. When asked if there was a decided policy as to the amounts to be carried forward in reserves he said "We need to build up the reserves as much as we can, subject to those reserves being affordable for the leaseholders and being in compliance with the lease". "As a board we are aware that it would be much better if we had much more in those funds but have to have regard to what we judge as affordable by the residents". It was said that the £400,000 figure for the combined balances in the 2 funds as shown in the accounts at 31st March 2022 (being the balance in the cyclical maintenance fund plus the balance in the dispositions fund) "pales when compared with the several millions expenditure anticipated in the Capex Report". He hoped savings could be made by being "more agile, by doing smaller amounts of work over a period of time".

37. Mr Jones said his memory of the October 2019 meeting was different. He put various questions to Mr Hollowes, and there was an exchange as to whether Premier's letters predating the extension of the 2012 service charge year by three months could be regarded as estimates or explanations. Mr Jones also asked Mr Hollowes whether the Capex report should be relied on when there was no reference to the costs relating to the service road, to which Mr Hollowes replied "if certain items were excluded from the report which were an obligation then that would indicate the amounts required should be higher".

38. Mr Jones maintained that there was no need to increase contributions to the cyclical maintenance fund when so much money was already available to meet immediate needs particularly having regard to Thomasons' estimated requirements for the next three years, which he had calculated being "something like £250,000".

39. He then raised the question of a major contract for repointing the external brickwork at a cost of £600,000, referred to the Aura document, and stated that planning permission had been granted then redacted on the council's website. Mr Hollowes said he was not aware of any contract having been let for repointing the building and what had been "driving the major part of the maintenance expenditure over the past couple of years has been the roof repairs, that has been where the emphasis has been, to get on and try and resolve what has been a very distressing problem for residents".

40. Mr Gallagher asked Mr Hollowes what the trigger was for payments to be made from the dispositions fund, to which his reply was affordability.

41. After Mr Hollowes had been released, Mr Alderson referred Mr Jones to a copy of a service charge demand, from within the Applicants' bundle, and in particular to the reference to CRL's quoted address. Mr Alderson said that it was an address and compliant. Mr Jones disagreed referring to it as an alias with a postcode encompassing over 300 addresses.

42. Mr Alderson in summing up referred to the helpful extracts and commentary, detailed in his skeleton argument from what is a leading text *Service Charges and Management (5th edition)* which he referred to as "Tanfield" as a consequence of it having been written by the barristers in the Tanfield Chambers, as setting out three stages to determining an application under section 27A , by asking are the service charges recoverable under the terms of the contract and the lease, are they reasonably incurred, and are there any other statutory limitations.

43. He confirmed that there was no dispute the Lease allowed for a charge within the service charges towards the cyclical maintenance fund or that CRL had always used the paragraph 28 test. Nevertheless, his submission remained that it is actually entitled to go beyond that in respect of anticipated expenditure outside the ensuing three years because of the words at the start of Schedule 6 of the Lease applying to every one of its 30 paragraphs. Moving on to the issue of reasonableness, He emphasised that CRL had quite correctly taken technical advice as endorsed by the Upper Tribunal in *Hyde Housing Assoc Ltd v Lane [2009] UKUT 180 (LC)* which was the correct approach to a complicated matter and a complicated building. It had received a thorough and professional report from Thomasons. It had also taken advice from the managing agents who had recommended £150,000 not £100,000 as the appropriate annual sum, all of which pointed to the figures which had been demanded as being as being manifestly clearly reasonable, and arguably too low. Mr Alderson submitted that there were no other relevant statutory limitations and that CRL's stated address is a postal address satisfying the statutory requirements.

44. Mr Jones in his concluding comments confirmed that he had focused on the logic of a test of reasonableness inside the framework of the Lease. He said that to rely on the judgement of affordability and the Capex report alone is “problematic and politicizes our sense of community” as opposed to relying on the framework of the lease. He felt that the cyclical maintenance and dispositions funds had been prioritised over a proper regard to health and safety and covenants as to disrepair. He said “I don’t understand how such sums can be accumulated but not achieve the obligations within the lease. The roof is not complicated, it just needs to be conditioned survey”. There has been “no commitment to solving roof problems apparent since 2002. The managing agents have been here since 2013. Time has moved on but its just not been done..” They have “not been able to solve the water ingress”.

45. Earlier in the afternoon session, the Tribunal having noted that the Applicants had not said what specific figures, if any, they might consider as reasonable contributions to the reserves for the periods in question, asked Mr Jones if he felt able to do so. He intimated that he could probably be specific after a small amount of time. When the matter was revisited at the end of the hearing, he confirmed that he considered that the figures should be no more than £50,000 per annum, subject to caps set by reference to the fund balances and the expenditure envisaged by the Capex report for the next three years.

46. Mr Alderson submitted that there was no basis for such figures, but that if one wanted a test figure one could look to the £148,000 actually expended from the two funds in the last period which whilst based on previous prices equated to approximately £10,000 per month or £120,000 per annum and which was more than the sums that had been demanded.

The relevant legislation

47. Section 27A of the 1985 Act provides that:-
“(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.
.....
(4) No application under subsection (1).. may be made in respect of a matter which –
(a) has been agreed or admitted by the tenant,
.....
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.”

48. Section 18 states that: –

"(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 the service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or an earlier or later period."

49. Section 19 of the 1985 Act confirms that :-

"(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 provision 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."

50. Section 20C states that: –

"(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 or any other person or persons specified in the application.
… (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

51. Paragraph 5A of Schedule 11 to the 2002 Act states that: –

"(1) A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or Tribunal may make whatever order on the application it considers just and equitable."

The Tribunal's Reasons and Conclusions

52. The Tribunal has determined the position on the basis of all of the evidence before it.

53. The documentation is persuasive in that it is clear and obvious evidence of its contents. Except where referred to, it has not been challenged and the Tribunal finds no reason to doubt the detail contained.

54. The Tribunal also found all those participating in the hearing helpful, polite and credible, and was grateful for their assistance.

55. Both members of the Tribunal have previously visited Albert Dock for different purposes and understand the location, scale, and general configuration of the Colonnades. Having carefully considered the papers and particularly the reports and photographs the Tribunal decided that a further inspection is not necessary and will have done little, if anything, to assist with its decision-making.

56. The Tribunal agreed with Mr Alderson and the commentary in Tanfield that there should be three stages in its consideration of the main application under section 27A of the 1985 Act, encapsulated by a consideration of the following 3 questions: –

- Does the Lease, as a matter of contract permit CRL to collect monies for reserves and build up a sinking fund, and if so what basis?
- Are the costs that have been demanded for the periods in question reasonably incurred within the meaning of Section 19 of the 1985 Act?
- Are there any other statutory limitations on the recoverability of those costs?

Does the lease permit CRL to collect monies for reserves and build up a sinking fund and if so what basis?

57. The Tribunal is satisfied that the short answer to the first parts of the question is yes. Indeed, this has not been disputed. Mr Jones stated at one point in his written submissions that "the reserves fund is necessary and a provision for which the Applicants are grateful".

58. The Lease is not always easy to interpret, and the Tribunal agreed with Mr Alderson's assessment that some of its provisions could be seen to be clumsy. One example is the two separate but differing definitions of the term "Lessee's proportion". That contained in clause 1.14 appears limited to two items being the Maintenance Expenses as defined and the Village Services Contribution, whereas the later definition found in Schedule 7 adds the exit charge which is levied on sales and is the source of what has been referred to as the dispositions fund.

59. Similarly, there is some ambiguity as to the reference in paragraph 28 of Schedule 6 to "the sum received by virtue of paragraph 22.1(b) of Schedule 8". The Tribunal agrees with Mr Jones' analysis and that sense dictates that that is a typographical error and that the draughtsman intended to refer to the subsequent subclause i.e. paragraph 22.1(c) of Schedule 8.

60. Despite such problems, the Lease clearly and explicitly refers to the provision of a reserves fund in paragraph 28. As such, the Tribunal felt that it must dwell on an analysis of its specific provisions. The Tribunal carefully considered but rejected Mr Alderson's more expansive view that the words employed at the beginning of Schedule 6 might allow CRL, should it so wish, to operate other sinking or reserves funds outside the constraints of paragraph 28. The Tribunal is clearly of the view that the words at the beginning of Schedule 6 are merely confirmation that monies can be reserved for a periodical expenditure and that the contractual constraints set out in paragraph 28 apply to *any* collection as a service charge of monies for reserves. In other words, CRL can only demand contributions to its reserves fund through the authority provided in paragraph 28.

61. The Tribunal accepted Mr Alderson's submissions (and was assisted by his explanation) that the Lease provides for the operation of a second separate fund, aptly referred to as the dispositions fund, being the monies for the time being accumulated from the charges levied against sales when individual flats within the development are sold. It also accepted his analysis that the Lease does not impose explicit constraints on the CRL's disposal of the monies in that dispositions fund, which are CRL's monies rather than trust monies of the leaseholders. It was noted however that CRL had not during its tenure sought to use monies from the dispositions fund other than for the development, and no doubt, particularly as it is wholly owned by leaseholders, it will be conscious of its own obligations under the Lease as regards repair and maintenance.

62. The Tribunal listened carefully to how the parties referred and appeared to have interpreted the constraints of paragraph 28. It was concerned, possibly because of the renaming the reserves fund as the cyclical maintenance fund, that on occasions it had been assumed that its use is contractually restricted to items which directly relate to maintaining the fabric of the building or its fixtures.

63. That is not the case. Paragraph 28 confirms that the reserves fund can include provision in respect of any of the items referred to in the 30 paragraphs of Schedule 6. These could, as but examples, include insurances staff and concierge costs or any of the other matters referred to in Schedule 6.

64. Revisiting the precise wording of paragraph 28, the Tribunal found that the contractual limitations that it imposes are threefold, being that the sums demanded: –

(1) shall be decided upon and set, ie fixed, annually,
(2) having regard to the then balance in the dispositions fund, and

(3) and as a reserve or backup for the total expenditure known or anticipated in the ensuing three years.

65. The Tribunal concluded that that the reference to three years therefore effectively provides a cap whereby the reserves fund should not be allowed to exceed the total of all the expenses authorised under the Lease which, at the annual review date, are anticipated within the following three years, less the balance then standing in the dispositions fund.

66. It was perfectly clear from the papers that that cap had not been exceeded in any of the three periods under review. It was also evident that CRL when fixing the annual level of the charge or contribution to the reserves fund had had regard to the amounts then held in the dispositions fund, because the two sets of completed accounts show monies having been taken out it for expenditure which would otherwise have fallen to be levied from the reserves fund or by way of an additional service charge on the leaseholders.

67. It is important to emphasise at this point that the Tribunal did not construe the terms of paragraph 28 as in any way restricting the CRL looking further than three years into the future as to what might be required for the proper management of the development. It must always be prudent for there to be a long-term plan for a very large and complex Grade 1 listed building, and for there to be proper regard for the inevitable needs over the whole of the remainder of the lease term with more than a hundred years still to run.

68. Having satisfied itself that the constraints of paragraph 28 had been complied with the Tribunal next considered such other matters as had been raised relating to compliance with the Lease provisions.

69. The Tribunal had no difficulty in agreeing with Mr Alderson that the Lease does not require the accounts to be fully audited within the very specific definition of that term as now understood by the accountancy professions. The reference in paragraph 23 of Schedule 6 to employing a qualified accountant for the purpose of auditing the accounts has to be interpreted by reference to its ordinary meaning as understood by the parties when the Lease was created, which simply means “being examined by an authorised person”. What is required under the Lease is that the accounts should be certified, and the Tribunal finds that they have been. The certificates endorsed on the accounts confirm that independent chartered accountants have had due regard to the technical standards for residential service charge accounts as agreed between the professional accountancy bodies, the Association of Residential Managing Agents and the RICS.

70. The Tribunal then carefully considered CRL’s changing of the financial year end. It found that the reasons for the change were sensible and compelling, but also that there is no authority within Lease allowing CRL to unilaterally make the change. It is noted of course that CRL is wholly owned by leaseholders and understood that many individual leaseholders have agreed to the change, and also that those that have would be precluded as a

consequence of section 27A(4)(a) of the 1985 Act from subsequently challenging the same by making an application to the Tribunal.

71. Mr Jones however has confirmed that he did not agree, and the Tribunal therefore had to consider if the service charges demanded after the change was implemented, and particularly for the 15-month period ending on 31 March 2022, remain due and payable by him under the provisions of the Lease. The Tribunal found that they do, for two reasons. The first being simply because the Lease provides for payments to be made in advance and on the basis of estimates, without being subject to or conditional upon subsequent events. The second being the explicit confirmation contained in paragraph 1(c)(ii) of Schedule 7 where it is stated "..... that any objection by the Lessee.... shall not affect the obligation of the Lessee to pay to the Lessor the Lessee's Proportion of the Maintenance Expenses ...".

72. Having therefore been satisfied that all the charges in question were recoverable as a matter of contract under the terms of the Lease the Tribunal then considered the second question.

Were those costs reasonably incurred within the meaning of Section 19 of the 1985 Act?

73. Section 19 imposes a statutory ceiling on the amount of relevant costs limiting them to those that are reasonably incurred.

74. The following principles, derived from decided cases, were helpful to the Tribunal in making its decision as to what is reasonable:-

- the Tribunal must take into account all relevant circumstances as they exist at the date of the decision in a broad, common sense way giving weight as it thinks right to various factors in the situation in order to determine whether a charge is reasonable. *London Borough of Havering v MacDonald (2012) 3 E.G.L.R. 49.*
- in section 19 what is under scrutiny is whether the actual incurring of the cost was reasonable and that must depend on whether the landlord's response, at the point in time when the decision was made to act, was a reasonable one. The question of reasonableness must be considered by reference to the circumstances when the costs are incurred and not by reference to how the need for such costs arose. Accordingly, the fact that repair works may only be necessary because of neglect or breach of a landlord's repairing covenant does not prevent the cost of such works from being reasonably incurred. *Continental Property Ventures v. White (2006) 1 E.G.L.R. 85.*
- There is a real difference between works or services which a landlord is obliged to carry out on the one hand, and optional improvements or extras which he is entitled to carry out on the other. Different considerations may therefore apply in relation to the assessment of reasonableness as between the two. The Court of Appeal in *Waaler v. Hounslow LBC (2017) EWCA Civ 45* confirmed that no error of law had been committed where a Tribunal held that a landlord, who decided to carry out a scheme of works which went beyond what was required to

effect a repair must take particular account of the extent of the interests of the lessees, their views on the proposal, and the financial impact of proceeding.
• Tribunals are likely to look for evidence of preventative maintenance programmes, long-term planning, reference to surveyors, accountants and professional advice as well as ongoing reviews when considering the reasonableness of demands for substantial contributions to sinking or reserve funds.

75. The Tribunal found that Mr Jones' assertion that CRL's decision-making has been exclusively or overly driven by reference to the Capex report is not supported by the evidence.

76. The correspondence clearly refers to, and Mr Hollowes demonstrated in his careful answering of questions, there having been a painstaking process before CRL decided on the figures to be charged to the leaseholders. This followed a dialogue with leaseholders, the Residents Association and a Roof Partnership Working Group and had regard to not just the figures computed in the Capex report, and its managing agents advice, both of which were deliberately moderated, but also the current balances in the reserves and dispositions funds. In addition, the economic effects of the covid pandemic, the war in Ukraine, inflation, the trends in the insurance market as affected by the Grenfell disaster and the housing market, the inherent uncertainty of knowing in advance what funds can be expected to be added to the dispositions fund, and above all the financial impact on leaseholders were taken into account

77. The Tribunal had no difficulty in concluding that CRL has complied with good practice, sought professional and expert advice, but also considered both that and the wider context, and demonstrated a rational basis for the amounts demanded as contributions to the reserves fund for each of the periods in question.

78. The sheer size, scale and complexity of the development and its listed status inevitably means that when major works are engaged, as at some time they must be, very considerable sums will be required. The need for adequate provision to reserves or sinking funds must be obvious to all. As quoted in the *RICS Service Charge Residential Management Code (3rd edition)* "the intention of a reserve fund is to spread the costs of "use and occupation" as evenly as possible throughout the life of the lease to prevent penalising leaseholders who happen to be in occupation at a particular moment when major expenditure occurs".

79. Having carefully considered all of the evidence, the Tribunal found the sums demanded as contributions to reserves to be reasonable.

80. The Tribunal then turned to the final question in its three-stage consideration being,

Are there any other statutory limitations on the recoverability of those costs?

81. The only matter of relevance raised in this context were the questions as to the sufficiency of the demands themselves having regard to CRL's stated address or addresses.

82. Sections 47 and 48 of the Landlord and Tenant Act 1987 require demands to specify the name and address of the landlord and an address, within England and Wales, for service of notices, without which the amounts demanded are not payable until the requisite information is furnished.

83. The Tribunal carefully considered the demand notices exhibited within the papers and found them to be compliant. It found Mr Jones' submissions of addresses used as an "alias" or not sufficiently specific, to be unfounded.

84. It was assisted in its analysis by referring to the Upper Tribunal's advice in *Bietov Properties Ltd v Martin [2012] UKUT 133 (LC)* where it was explained that the purpose behind these statutory provisions is to enable a tenant to know who his landlord is and to provide an address at which the landlord can be found. George Bartlett QC confirmed that "in the case of a company it would be the company's registered office or the place from which it carries on business. If there's more than one place .... from which business is carried on, then, depending on the facts, it may be that any one of such addresses will do".

Conclusion

85. Because of all of the foregoing the Tribunal has determined that the contributions to reserves of £60,000 for 2020, £83,000 for the 15-month period to 31 March 2022 and £100,000 for the year from 1 April 2022 to 31 March 2023 as demanded by CRL and collected through the service charges from the apartment owners at the Colonnades are reasonable and payable.

Some additional comments in relation to the section 27A jurisdiction

86. As was confirmed at the Hearing the Tribunal's own jurisdiction is limited, specific to only those matters set out in section 27A, and in this instance focused exclusively on the provisions made for reserves.

87. This Tribunal is not the correct forum, and has not attempted, to determine responsibility for any existing or past defects, whether due to a lack of maintenance, inherent defects or otherwise nor any damages resulting therefrom.

88. That having been said, it was clear to the Tribunal that the distress and frustration experienced by Mr. Jones, apparent in written statements and at the Hearing, are matters of concern. To have suffered significant rainwater inundation for a number of years without a satisfactory solution inevitably

takes its toll. The Tribunal sincerely hopes that all ongoing problems with the roof, complex as they may be, are properly and speedily addressed.

The Section 20C and Paragraph 5A Applications and costs

89. The Tribunal went on to consider the Applicants' separate applications, that it make orders both under section 20C of the 1985 Act so that CRL be precluded from including within the service charges the costs incurred by the it in connection with the present proceedings, and under Paragraph 5A of Schedule 11 of the 2002 Act to reduce or extinguish any contractual liability that the Applicants might have under the Lease in respect of CRL's costs.

90. The Tribunal, after having found that it was appropriate for CRL to oppose the application under section 27A, decided that the application under Section 20C should be denied.

91. When considering the application under paragraph 5A the Tribunal noted that Mr Alderson had stated in a written response that "there are no such charges" presumably meaning either that none had been demanded, and/or the Lease does not allow for the imposition of an administration charge in respect of litigation costs. Whilst not necessarily disagreeing with that analysis, the Tribunal decided that the application should still be answered, both for the sake of completeness and so there can be no ambiguity.

92. The Tribunal, having found that it is just and equitable in all the circumstances do so, extinguishes any liability that the Applicants might have to pay any administration charge in the Lease in respect of litigation costs relating to these proceedings.

Tribunal Judge J Going
9 March 2023