FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Caernarfon, sitting remotely

Tribunal reference	**:**	**BIR/00AK/LIS/2023/0003**
Court claim number	**:**	**H4QZ6C8X**
Property	**:**	**Flat 44 Pevensey Ave, Enfield, EN1 3HT**
Council/Claimant	**:**	**London Borough of Enfield**
Representative	**:**	**Mr Jared Norman (counsel) instructed by London Borough of Enfield Legal Dept**
Respondent/Defendant	**:**	**Mr Neil Anthony Martindale**
Representative	**:**	**None**
Tribunal members	**:**	**Judge C Goodall & Mr G Freckelton FRICS**
In the county court	**:**	**Judge C Goodall**
Date of decision	**:**	**09 June 2023**

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

1. The sum of £9,898.69 is payable by Mr Neil Anthony Martindale to the London Borough of Enfield in respect of major works invoiced to him on 19 March 2019.

Summary of the decisions made by the Court

(i) Judgement is entered against Mr Neil Anthony Martindale for the sum of £9,898.69, payable by Friday 21st July 2023.

(ii) The claim for Interest is dismissed

(iii) Costs: adjourned

(iv) Direction for the parties to submit a short statement summarising the basis on which it is suggested costs should be awarded, and filing a fresh N260 in support of the sum sought, within 10 days of the date of this decision. Each party may then respond, again within 10 days of receipt of the other party's submission.

The proceedings

2. Proceedings were originally issued against the Respondent on 20 August 2021 in the County Court under claim number H4QZ6C8X. The respondent filed a Defence dated 16 September 2021. On the filing of the Defence, the case was transferred to the County Court at Caernarfon.

3. The proceedings were then transferred to the First-tier Tribunal (Property Chamber) by the order of District Judge W J Owen dated 1 March 2022. The order stated that the claim was transferred to the tribunal for directions.

4. Directions were issued from the Tribunal office and the matter eventually came to hearing on 9 and 10 May 2023. The hearing was conducted remotely using the video hearings service.

Background

5. The proceedings concern the payability of a service charge for £11,901.41 for major works demanded from the Respondent in an invoice dated 19 March 2019.

6. The payment is said by the Council to be the sum due from the Respondent under the terms of his lease, for his contribution to a

programme of major works carried out between April 2016 and December 2018.

The hearing

7. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

8. At the hearing, the London Borough of Enfield ("the Council"), was represented by Mr Jared Norman of counsel. The respondent leaseholder, Mr Martindale ("the Respondent"), appeared in person.

The issues

9. The sum claimed by the Council on the claim form was £12,294.58. This sum was not broken down into constituent elements. In addition, the court fee of £614.73 was claimed.

10. The relevant issues for decision by the Tribunal were as follows:

    a. Was the service charge demand for the major works properly demanded? This was directed to whether the demand complied with the statutory requirements;

    b. Had the Council complied with the statutory requirement for consultation in respect of the major works?

    c. Were the charges raised reasonably incurred and for work of a reasonable standard?

    d. Should the Tribunal make orders in favour of the Respondent under sections 20C of the Landlord and Tenant Act 1985 ("the Act") and/or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

11. The issues for the County Court were what orders to make in respect of interest and costs.

<u>Decisions and reasons (Decision of the First-tier Tribunal)</u>

12. Documents in the hearing bundle are referred to by their page number in the hearing bundle, shown in square brackets.

Facts

13. At the hearing, Mr Bernard Onabolu, Income Collection and Dispute Resolution Manager for the Council gave oral evidence. He had provided three witness statements during the currency of the case, dated respectively 16 December 2021 [1144], 4 Jan 2022 [1104], and 31 March 2023 [837]. The Respondent also gave oral evidence, having provided a

witness statement also dated 31 March 2023 [844]. That statement was a 'by reference' statement, to his Statement of Case dated 10 February 2023 [259], and his Reply to the Council's Statement of Case, dated 21 March 2023 [710]. From the documents disclosed in the hearing bundle and from the evidence presented at the hearing, we find the following facts as set out below.

14. Flat 44 Pevensey Ave ("the Property") is a second floor flat in a block of twelve flats in a residential development off Pevensey Avenue in Enfield ("the Development"). The flat is within what is known as Block 5 ("the Block"). It is a three storey, brick built building with pitched tiled roof, with some concrete tile cladding to the canted bay windows on the front elevation. There are front and rear entrance doors centrally located to the flats, providing access to a lobby and stairwell area allowing access to the first and second floor flat entrances.

15. From the lease plan, it appears that within the development, there are two more blocks of similar size to Block 5, and two further smaller blocks. A report (the Capital Report – see below) says the Block is one of five near identical blocks within wider grounds. The whole development is believed to be around 60 years old, so constructed post-war. The flats originally provided council accommodation, but a long leasehold interest has been purchased by a number of leaseholders under the right to buy legislation, including for the Property.

16. An area at the rear of the Block provides access to the only external area exclusively provided for the Block, which provides a pram shed and a bin store, accessed by a concrete path.

17. On 8 September 1986 a long leasehold interest in the Property was granted by the Council for a term of 125 years. On 30 August 2000, the lessees interest in the lease was assigned to the Respondent. On 21 March 2018, a Deed of Surrender and Regrant was executed between the Council and the Respondent extending the lease term to 215 years from 1 April 1985, on the same terms as the original lease.

18. The Fourth Schedule of the lease defines repairs and services as "common repairs and services". These include (at paragraph 5):

    "the repair maintenance and decoration of all such parts of the block as are not wholly included in any flat or dwelling …"

19. At clause 3(2)(B) of the lease, the lessee covenants to pay a management charge to the Council for carrying out the common repairs and services. An additional covenant at clause 3(2)(C) requires the lessee to pay a proportionate part of the costs of making good any structural defect of which the Council do not become aware earlier than ten years after the date of the lease.

20. The Respondent took no issue with the proposition that the lease requires him to contribute his proportionate part of the costs of any works required to repair the Block, and we so find. It is also common ground that the Respondents proportion is one twelfth of the costs relating to the Block.

21. In 2013, the Council began consideration of a major upgrade to the Development. It sought to enter into long term agreements with contractors for the supply of building works to the Development.

22. Under section 20 of the Act, and the associated Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"), it is necessary for a consultation exercise to be carried out to avoid the lessees service charges for any works arising being limited under section 20. Where the proposed contract is of a certain size, the consultation must be conducted under the provisions of Schedule 2 of the Regulations. It is common ground between the parties that a Schedule 2 consultation took place by virtue of two notices dated respectively 11 October 2013 [120] and 24 February 2015 [129]. Seven contractors received contracts by which they might be engaged for works by the Council, including the contractor United Living (South) Ltd.

23. On 26 January 2015, a building consultancy called Capital Property and Construction Consultants Ltd prepared a report for the Council on the condition of Block 5 ("the Capital Report") [147]. The report was prepared by Mr Phil Hughes MRICS. He inspected the roof of the Block on 20 October 2014 and returned to carry out a general inspection on 20 November 2014.

24. The report comments on eleven main areas, being the roof, above ground drainage, structure, balconies and walkways, external finishes, windows and doors, sheds and garages, external areas, communal areas, mechanical and electrical, and asbestos removal. Comments under those headings are summarised:

    a. The roof report informs the reader that the roof was inspected from a cherry picker and tiles were removed in order to assess the roof space beneath. The author's opinion was that the roof was in poor condition with several defects, indicating that the covering was at the end of its design life. Tiles were fixed using tile ribs sitting on roof battens, with nails. In many cases, the nails have corroded. Regular expansion and cracking has reduced the thickness of the tiles to around one half of the thickness of tiles inspected which had been in a protected position.

    b. There was evidence from the bitumen underlay, exposed when the tiles were removed, of water penetration through the tiles. The lack of correct dressing over the fascia board into the gutter has allowed any water to penetrate the tile roof covering and run

down the felt, onto the timber fascia, which shows signs of wet rot as a result.

c. The ridge tiles were inspected visually and like the main roof covering were in a poor state and indicated age related defects. These principally involved displacement to the ridge tiles and the dislodging to the mortar bedding. At the gable end to the east elevation, the gaps in the mortar have allowed water to penetrate the ridge, causing the wetting and rotting of the roof timbers. This has resulted in minor shrinkage of the timbers, causing the main body of roof tiles to move away from the end course by approx. 20mm. The amount of movement is not substantial, but is a clear indication of the failure of the ridge covering.

d. Chimneys were found to be in a very poor state. The brick structure and concrete coping were showing several defects. Pointing to the chimney stacks was found to be brittle and missing in places. Similarly, the lead flashing was in a poor and aged condition and had come away from the chimney. Significant works to the chimney were recommended, including stabilising, possible rebuilding, and repointing, replacement of the concrete coping and renewal of all lead details.

e. The fascia boards were found to be in a poor condition and affected by wet rot. The soffit boards were assumed to be asbestos. They were in a fair condition, but the need to carry out roof replacement meant they should be replaced.

f. The report recommended that the roof be replaced. The estimated age of the covering, at 60 years, was such that the roof would only deteriorate significantly further from now on.

g. The above ground drainage inspection revealed that the upvc gutters were poor condition. The cast iron downpipes were still in reasonable condition and jetting them to clear them was recommended. Replacement of all upvc gutters and downpipes was recommended, with retention and repainting of the cast iron downpipes.

h. The report on the brickwork concluded that it was in fair condition. There were some cosmetic issues and staining due to leaking downpipes and efflorescence. Cosmetic repairs and cleaning to mortar joints was recommended. The possibility of some repairs being needed to concrete lintels was raised, to be assessed when scaffolding was up.

i. There are no balconies or walkways.

j. Tile cladding to the full heigh canted bays was inspected. As these tiles are of the same age as the roof tiles, it was recommended that they be replaced. External decoration was described as poor to

very poor. The recommendation was to replace the external woodwork with upvc fittings to save on future maintenance.

k. A number of flats, and some of the common areas, have original crittal windows. These were described as being in poor condition and replacement was recommended. External communal doors were also identified as being in a fairly poor condition, and offering minimal security. The recommendation was that they be considered for renewal in a steel construction offering improved security and maintenance with the possibility of incorporating a door entry system.

l. The pram sheds were in a fair condition but the author considered the materials to be beyond their expected life span. Refurbishment was recommended.

m. Some work to cracked paving externally was recommended.

n. Work to the internal common areas identified included assessment of the condition of the lighting through an M & E consultant, replacement of the crittal windows, and some replastering.

o. So far as mechanical and electrical work was concerned, the author recommended a report, as he considered work on external and communal lighting and an Integrated Relay System should be considered.

p. Assessment of the soffit boards appeared to have revealed that they were constructed with asbestos. A full survey and testing report would be required.

25. On 25 June 2015 [703], the Council wrote to the Respondent informing him of its intention to carry out works to the Block. The letter was not part of any formal consultation process, but it sought the recipients views generally and requested comments should a lessee have any issues to raise. The list of proposed works attached, on one sheet of A4, set out 28 bullet points identifying the proposed works, including the works set out in the preceding paragraph of this decision.

26. On 18 February 2016, the Council sent a document to the Respondent ("the Schedule 3 Notice") [184]. It is printed on Council letterhead, and is set out like a letter. It is dated 18 February 2016. It does not commence as a conventional letter with a salutation; instead it has a heading in bold, underlined, and in capital letters stating:

NOTICE OF INTENTION TO CARRY OUT QUALIFYING WORKS UNDER SCHEDULE 3 OF THE SERVICE CHARGES (CONSULTATION REQUIRMENTS) (ENGLAND) REGULATIONS 2003

27. The document uses numbered paragraphs. Paragraph 1 recites the existence of the framework agreements. Paragraph 2 says the Council intends to carry out works, which are identified on a separate sheet enclosed with the document. Paragraph 3 sets out reasons for the proposed works. Paragraph 4 provides an estimate of the cost for the leaseholder. The estimate is £23,045.92, including an individual charge towards windows and doors, being the apportioned sum for the Respondent of total proposed expenditure of £239,101.53. Paragraph 5 deals with the right to make observations. Paragraph 6 gives some details of the contract which contractors have tendered for. Ten locations are referred to.

28. Paragraph 5 in more detail firstly identifies the right to make observations. It then has a heading "Making observations", and an address for the sending of observations is then given. There are then two bullet points:

- Delivered to the above address within the relevant period which is within thirty days of the date of this notice; the date of this notice is 24th March 2016.

- Received by no later than 24th March 2016 which is the date on which the relevant period ends; any observations after this date will not be considered.

29. The Council accept that the date appearing in the first bullet point is an error.

30. The sheet referred to in the Schedule 3 Notice that appears sequentially in the hearing bundle immediately following the Schedule 3 Notice [188] has three columns. The first is a line reference system, the lines being identified by an "LR" number staring at "0" and ending with "30". The second column lists a brief description of the works, and the third column (headed 'Lowest Contractor') shows cost values for each element. The total expenditure on the sheet is shown as £187,719.00.

31. On 22 February 2016, the Respondent wrote to the Council [651] starting the letter: "I refer to your letter referred to as notice dated 24 March 2016." We find that this must be a reference to the Schedule 3 Notice dated 18 February 2016. In his letter, the Respondent states that the letter he received included a sheet headed "leaseholder consultation advice" which contained 4 columns, the left column having line references, the next listing short descriptions of items to be carried out, then two more columns headed respectively 'lowest contractor' and 'second lowest contractor'. Although similar to the enclosed sheet described above, clearly the document in the hearing bundle at [188] is

not the sheet the Respondent refers to in his 22 February 2016 letter. There is a sheet which does comply with the description set out by the Respondent in his 22 February 2016 letter in the bundle at [697]. Curiously, the lowest tender figure is higher than the second lowest tender figure. The lowest tender figure is £239,101.53. The second lowest is £234,069.37. Our guess is that the second lowest figure has been adopted as the preferred contract price, as the overall costs across the whole contract (which probably includes all ten blocks of flats) were probably lower.

32. It is a shame that nobody from the Council was able to give any evidence to us about the detail of the contracts and the contracting process, and why the hearing bundle seemed to have included an enclosure to a letter some 513 pages away from its rightful place.

33. The Respondent's letter of 22 Feb 2022 then requests evidence in the form of reports and specifications to justify the works. His penultimate paragraph states:

> "From my own knowledge of this block going back 15 years, I agree that there is a need for some minor works in the near future, but there is no obvious requirement for most of those items listed in your letter. The bland statement of justification on page 2 is completely inadequate. A copy of the documents listed above is essential in order for anyone to be able to make meaningful observations on the requirement for any work, on its possible extent and on its cost should some of it be demonstrably necessary."

34. We have included the quote above because it neatly encapsulates the genesis of the dispute between the parties that has persisted to this day. The Respondent is unconvinced that the works are needed.

35. On 3 March 2016 [190], the Council sent the Respondent a copy of the Capital Report. The Respondent replied on 5 March 2016 [649] requesting various contract documents regarding the works including the bill of quantities and schedule of rates for the works, and pointing out that he had previously requested a copy of the letter commissioning the Capital Report in 2015.

36. In a further letter dated 17 March 2016 [646], the Respondent requested answers to detailed questions he had on a schedule provided by the Council headed 'Leaseholder Consultation Advice; Value of Work Associated with Block: Rechargeable'. That document is not included in the bundle of documents before the Tribunal.

37. The Council sent a detailed reply to the Respondents letters of 5 & 17 March 2016, wrongly dated 15 March 2016 [192].

38. On 24 March 2016 [645], the Respondent wrote again to the Council with a heading 'Notice of Intention to carry out Qualifying Works'. The text says "your formal notice is dated 24 March 2016. It provides for a deadline, by which addressees must make comment of 24 March 2016." The letter alleges that the Notice is invalid as the consultation requirements have not been complied with.

39. The Council's case is that the Schedule 3 Notice consultation period started on receipt of the letter dated 18 February 2016 and expired on 24 March 2016. Thereafter it proceeded to place a contract with United Living (South) Ltd. The date of the contract was not clear from the bundle and the Council's witness, Mr Onabolu, did not know it. In a supplementary statement from Mr Michael Hooper, Home Ownership, Rent and Service Charge Manager for the Council, which the Tribunal requested, the Tribunal was informed that the contract was offered by letter dated 30 March 2016, and accepted on 31 March 2016. We so find.

40. The Respondent would have liked to see the contract, but it was not supplied to him or to the Tribunal, no doubt due to commercial sensitivity. He would also have liked to see the works charging rates, but again these were not supplied. In the end, the Respondent did not challenge the amounts that were charged; his challenge was to the necessity for the works.

41. The Respondent was sufficiently concerned about the issue that he instructed his own surveyor to prepare a report. The surveyor instructed was a Mr Peter Tasker MRICS MCIOB MFPWS from a company called Adams – Surveyors. Mr Tasker visited site on 20 May 2016, we understand before the works had started. Mr Tasker had a copy of the Capital Report and the lease. His report is dated 31 May 2016 [435].

42. Mr Tasker's report concentrates on the Council's proposal to replace the roof covering. He concludes that although some repairs are necessary, in his view the roof does not need to be replaced. He was able to inspect the roof void above Flat 44 (about one half of the roof void of the Block less the stairwell void in total). He observed the roof itself with the aid of binoculars.

43. His report notes minor signs of spalling to the roof covering with some slipped tiles, with moss and weathering to the tile surfaces. The ridge and bonnet hip tiles require pointing and re-bedding. There are undulations and some unevenness, though he regards this as normal. He saw no signs of water penetration. There was no evidence of leakage from the rainwater goods, though the gutters needed to be cleared out. Minor works to the flaunchings were recommended. Mr Tasker was convinced that with minor repairs and continuing cyclical maintenance the roof would offer many more years of service at nominal cost.

44. Mr Tasker commented on tile slippage and accepted that slippage occurs from time to time due to the nib holding the tile to the batten becoming defective. However, he commented that there was no "real" slippage noted.

45. On other elements of the Block, Mr Tasker noted that the brickwork was not spalled and the pointing not perished. The rainwater goods appeared sound.

46. Spending on the block doors would be "money well spent" in Mr Tasker's opinion. He also commented that internal and external decoration should be carried out.

47. The conclusion of the report was that "the roof replacement is unnecessary as the tiled covering is sound with some minor defects that could be dealt with by isolated and localised repairs. There is sarking felt below the tiles and no history of water leakage or signs of internal dampness to the loft void inspected and therefore I consider the roof does not require replacing".

48. On 12 April 2016 [681, 840] the Applicant sent the Respondent a letter in relation to the possibility of replacing the door entry system, asking leaseholders to express their views, and it provided a ballot paper to express a preference for or against the proposal. The Respondent replied by email on 19 April 2016 enclosing his ballot paper objecting to the proposal. On 20 June 2016 [675] the Respondent was sent a letter advising of the result to proposal to door entry system, confirming that the council received 6 returned ballots, 4 in favour and 2 against. The letter further confirmed that the doors entry system will be installed as a result of ballot.

49. The Respondent was notified on 14 June 2016 that the works had started. On 4 August 2016 [199], he was informed that the costs of the works had been reviewed and site drainage works had been removed from the contract and the preliminary costs reduced accordingly. The Respondents contribution was reduced to £15,643.30 for the main works.

50. On 17 November 2017 [201], the Respondent was notified, under section 20B of the Act, that he would in due course be required to contribute towards the costs of the works.

51. On 19 March 2019 [757], the Council sent a covering letter and an invoice for the Respondent's alleged share of the cost of the works. The invoice was for £11,901.41, being one twelfth of expenditure totalling £142,816.93. A schedule of the breakdown of that expenditure was providing in the hearing bundle [212 & 484]. This was provided under cover of a letter to the Respondent dated 11 September 2019 [204].

52. The cost breakdown is shown in the Table 1 below. We have omitted lines in the breakdown where no charge was made to the Respondent.

Table 1 – breakdown of Council service charge for major works

Line reference	Item	Final account (£)
LH0	Preliminaries	7,334.07
LH2	Scaffold	22,550.56
LH3	Asbestos surveys & removal	5,866.97
LH5	Concrete repair works	4,289.02
LH7	Structural investigations to external walls	570.89
LH8	Brickwork repairs to External Walls	6,050.57
LH11	Timber repairs to roofs	264.99
LH12	Main pitched roof works	34,010.73
LH13	Loft insulation and fire breaks	1,335.76
LH14	Asphalt renewals to walkways	535.25
LH16	Cladding works incl vertical tiling	395.00
LH17	Fascias and soffits	2,974.08
LH18	Rainwater goods and outlets	6,386.00
LH19	Communal windows	1,411.50
LH20	Communal doors screens cpbds etc	943.02
LH21	Decorations (Staircase and external)	5,789.58
LH25	Door entry system	7,636.44

LH26	Security entrance doors and side screens	14,095.03
LH27	Integrated relay system	6,463.20
LH28	Lighting to communal areas and emergency lighting	8,699.17
LH30	Professional fees	5,215.10
TOTAL		142,816.10

53. The copy of the service charge invoice in the hearing bundle includes a summary of the tenant's rights and obligations, as required by section 21B of the Act [760a and 760b]. The Respondent denied receiving that summary, though he did not deny receiving the invoice. He accepted that the first time he raised non-service of the summary of rights and obligations was in his Reply to the Council case in March 2023.

54. Mr Onabolu's evidence was that copies of all documents sent to the Respondent were retained by the Council in its filing system. He had checked the system, which included the summary of rights and obligations, so he was sure that it was sent to the Respondent in March 2019.

55. Also on 11 September 2019, the Respondent received a further document also described as an invoice for what is described as 'last balance for major works account' for £12,042.13. This amount is unexplained. The invoice however also includes a credit of £44.60 for 'asphalt walkways wk not carried out'. We find that this refers to the charge under line LH14 in Table 1, which clearly was not in fact incurred. The total expenditure will therefore need to be adjusted to £142,280.85, and the Respondents share to £11,856.61.00.

56. On 2 December 2019 [216], the Respondent was sent certain documents including a copy of the final account for the works on the Block [219]. This is a detailed (and virtually unreadable) spreadsheet covering 10 A4 pages, showing total expenditure of £248,260.81. The Council's only witness, Mr Onabolu, had no involvement or knowledge of the contractual negotiations resulting in the final accounts and was not able to explain it. We have worked on the basis that the Council have used this account to produce what they say is the final sum due from the Respondent, but we were unable to verify that.

57. In addition, the Council sent the Respondent a copy of the responsive repairs report for the period prior to the Schedule 3 Notice, which he had requested. This report [683] details regular requirements for routine maintenance on doors and door closers, blocked soil stacks and drains, problems with the door entry system, a leaking gutter, problems with the Integrated Relay system, and lighting issues.

58. The Respondent did not pay the invoice. The Council therefore commenced County Court proceedings under reference G0QZ7T30 for £11,976.53 plus a court fee. Those proceedings were then discontinued, following an agreement between the Respondent and a Mr Reddy from the Council, confirmed in an email dated 8 November 2020 [249 & 661], in which Mr Reddy confirmed 'we will withdraw our County Court application. We will subsequently submit an application to the FTT for determination on this matter'.

59. Despite this agreement, on 20 August 2021, the Council commenced these proceedings. The Respondent filed a defence, which was a bald denial of liability to pay. No substantive reasons were pleaded. The case became defended and was transferred to Caernarvon County Court. The Respondent sought a procedural determination that the claim be struck out which did not succeed. The case was transferred to this Tribunal as set out above.

The Respondent's reasons for denying liability for the service charge

60. We discern that there are three principal reasons why the Respondent says he does not owe the money demanded by the Council:

    a. Because he did not received a summary of rights and obligations as required by section 21B of the Act, so that he is entitled to withhold payment until that is served;

    b. Because the consultation exercise was invalid, so his liability is limited to £250.00;

    c. Because the works carried out were unnecessary and so could not be considered to be reasonably incurred within the meaning of section 19 of the Act.

61. The Respondent readily conceded that points a. and b. above were remediable, by the Council serving a section 21B summary of rights, and by applying for dispensation from consultation under section 20ZA of the Act. But until those steps were taken, he was entitled to the protections provided by the Act.

62. On the question of adequacy of the consultation, the Respondent's case was adequately covered in the documents reviewed above. The Tribunal

had drawn the attention of both parties to the case of *Collingwood v Carillon House Eastbourne Ltd* [2021] UKUT 246 (LC) ("*Collingwood*"). The Respondent asked the Tribunal to apply that case here.

63. On liability for the invoice for the works, the Respondent considered strongly that the works were excessive and unnecessary. Principally he relied upon Mr Tasker's report, which as a qualified surveyor he also supported. His view was not that no work was required; just that the extent was excessive. Furthermore, he had found himself coming up against a brick wall when he had tried to engage with the Council so that they could provide such supporting evidence as he needed to satisfy himself that the work was reasonably necessary. He was critical of the lack of reports, such as a mechanical and electrical report on the lighting and emergency lighting systems that would show work was needed to those systems.

64. So far as the roof repair was concerned, the Respondent was critical of the Capital Report due to the failure of the author to inspect the roof void. He said it was inconceivable that a surveyor could conclude that a roof required replacing without inspecting the void.

65. The Respondent had also found the process of understanding the contract costs, so that he could understand what sum he should have to contribute, confusing as it was impossible to tie-in the costs in Table 1 with the final accounts. He had done his best, and had produced his own analysis of the final account, from which he had extracted the costs he considered the Council had in fact incurred on Block 5.

66. He had then assessed what a reasonable sum might be for the work that he accepted did need to be carried out, and had produced a schedule accordingly. He explained the schedule during the hearing and accepted that small amendments to it were required. Immediately post-hearing, he provided an amended version.

67. From the amended schedule, it is apparent that the Respondent's case is (referencing the LH numbers from the Council's schedule in Table 1 above):

    a. LH0 - Prelim costs should not exceed 3%. Allow £448.35 as a proportion of the costs the Respondent accepts were reasonably incurred of which the Respondent's share would be £37.36;

    b. LH2 - The roof did not need to be replaced so full scaffold was not needed. Repairs would have been needed requiring scaffolding towers(s) at 15% of the cost of full scaffolding. Cost - £3,382.58 – Respondent's share £281.88;

c. LH3 - No asbestos survey or removal cost would have been required with roof repair and no replacement of fascias and soffits. Cost £0;

d. LH5 - Some concrete repairs were reasonable. The Respondent allows 25% of the cost incurred. Cost £1,072.26 – Respondent's share £89.35;

e. LH7 – there is no evidence that a report was produced. £0.00;

f. LH8 - Repairs to brickwork likewise excessive. Allow 25%. Cost £1,209.87 – Respondent's share £100.82;

g. LH11 – Agreed. Cost £264.99. Respondent's share £22.08;

h. LH12 – Only repair and maintenance required. Estimate cost at 10% of the full replacement cost of the roof. The Respondent was unable to reconcile the amount claimed in Table 1 with the Final Account and considered that the final account only came to £31,845.69 for the roof. Allow £3,184.47 – Respondent's share £265.37;

i. LH13 – Agreed. Cost £1,335.76. Respondent's share @111.31;

j. LH14 – Has been removed from the contract;

k. LH16 – Agreed. Cost £395.00. Respondent's share 32.92;

l. LH17 – Not needed if roof not replaced;

m. LH18 – Some work required. Say 25% of the cost incurred by the Council. Allow ££1,596.50. Respondent's share £133.04;

n. LH19 – Agreed. Cost £1,411.50. Respondent's share £117.62;

o. LH20 – Described in the Capital Report as in fair condition. Replacement not needed. Cost £0.00;

p. LH21 – Described as fair in Capital Report. Allow 25%. Cost therefore £1,092.09. Respondent's share £91.00;

q. LH25 – 28 – no reports demonstrating need. Cost £0.00;

r. LH30 – Accept at 5% of works plus prelim cost. On works and prelim cost accepted by the Respondent – allow £747.26. Respondent's share £62.27.

68. The totals of the Respondent's share of the costs he accepts is £1,345.06. The Respondent therefore accepts he has a liability to pay this sum.

The Council's case

69. Dealing with the question of the adequacy of the consultation, Mr Norman urged the Tribunal to find that there was no defect in the Schedule 3 Notice. He pointed out that everything that was required under paragraph 1(2) of Schedule 3 to the Regulations was provided in the Schedule 3 Notice, but some extraneous words had been added. He accepted that they were added in error, but he said it was plain that the date of the notice was 18 February 2016, and it could not possibly be construed as having been dated on 24 March 2016.

70. Mr Norman referred to the case of *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, where it was held that notices (in that case a notice to exercise a break clause in a lease), even where they contained errors, were to be regarded as valid where they were sufficiently clear and unambiguous that they would leave a reasonable recipient in no reasonable doubt over how they were intended to operate.

71. The facts in this case, Mr Norman argued, were that it was plain and obvious that the notice was dated 18 February 2016. It had clearly been received by the Respondent in the due course of post shortly after that date and had been responded to by the making of observations. The Respondent had had a period from 18 February to 24 March in which to make observations, and indeed had done so. There was no prejudice to him whatsoever arising from the admitted error on the notice.

72. Mr Norman did not consider that *Collingwood* barred the Tribunal from adopting the approach he urged upon us.

73. Turning to the issue of the service or otherwise of the section 21B summary of rights, Mr Norman suggested that the Council's evidence was clear to the effect that the summary had been provided.

74. The principle submissions that Mr Norman made related to the reasonableness of the decision to proceed with the works. There was indeed conflicting professional advice about the necessity for the works. He urged that we accept that the Capital Report was sufficient to establish that it was reasonable to carry out the works. The report was clear in its findings about the roof. The author of the report would appear to have been thorough in his assessment. He had used a cherry-picker to carry out a detailed professional assessment of the roof and had removed tiles so they could be examined in detail.

75. It was correct that the author had not inspected roof voids, but in removing the tiles he had been able to assess the underlying coverings

sufficiently. The report was thorough and the Council were entitled to rely upon it. A clear professional opinion had been provided to the effect that the roof had reached the limit of its useful life.

76. In addition, the Council were entitled to rely upon the history of routine maintenance carried out to the Block which had showed regular need to repairs to the roof and the electrical system and the downpipes and drains.

77. In all the circumstances, the service charge levied for the works was reasonable and reasonably incurred.

Discussion

Law

78. Sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act") contain statutory provisions relating to recovery of service charges in residential leases. The contractual obligations to pay service charges are governed by the terms of the lease.

79. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

a. The person by whom it is or would be payable
b. The person to whom it is or would be payable
c. The amount, which is or would be payable
d. The date at or by which it is or would be payable; and
e. The manner in which it is or would be payable

80. Section 19(1) of the Act provides that:

"Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

81. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. If the tenant gives evidence establishing a prima facie case for a challenge, then it will be for the landlord to meet those

allegations and ultimately the court will reach its decisions on the strength of the arguments. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2EGLR100 / *Daejan Investments Ltd v Benson* [2011] EWCA Civ 38).

82. In relation to the test of establishing whether a cost was reasonably incurred, in *Forcelux v Sweetman* [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis FRICS) said:

> "39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.
>
> 40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. The second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market."

83. In *Veena v Cheong* [2003] 1 EGLR 175, the Lands Tribunal (Mr P H Clarke FRICS) said:

> "103. ...The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

84. In *The London Borough of Hounslow v Waaler [2017] EWCA Civ* 45, the Court of Appeal was considering whether the cost of replacing windows by Hounslow was reasonable where there was also an option of repair. The repair option (replacement of hinges) was substantially less than the cost of replacing the windows. The Court said that in applying the statutory test under section 19 to Hounslow's decision, it was necessary to go further than just consider whether the decision-making process was reasonable; the outcome of that process also needed to be considered (paragraph 37) as did the legal and factual context (at least in consideration of expenditure on improvements) (paragraph 42).

85. Paragraph 14 of *Waaler* is instructive in relation to some elements of this case. Lewinson LR said:

> "14. I do not believe that the following propositions are controversial in the context of contractual liability:

a. The concept of repair takes as its starting point the proposition that that which is to be repaired is in a physical condition worse than that in which it was at some earlier time: Quick v Taff-Ely BC [1986] QB 809.

b. Where the deterioration is the product of an inherent defect in the design or construction of the building the carrying out of works to eradicate that defect may be repair: Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980] QB 12.

c. Prophylactic measures taken to avoid the recurrence of the deterioration may also be repair: Ravenseft Properties Ltd v Davstone (Holdings) Ltd at 22, McDougall v Easington DC (1989) 58 P&CR 201, 206.

d. In principle where there is a choice of methods of carrying out repair, the choice is that of the covenantor provided that the choice is a reasonable one: Plough Investments Ltd v Manchester CC [1989] 1EGLR 244.

e. At common law there is no bright line division between what is a repair and what is an improvement: McDougall v Easington DC at 207.

f. The use of better materials or the carrying out of additional work required by building regulations or in order to conform with good practice does not preclude works from being works of repair: Postel Properties Ltd v Boots the Chemist [1996] 2 EGLR 60.

g. Where a defect in a building needs to be rectified, the scheme of works carried out to rectify it may be partly repair and partly improvement: Wates v Rowland [1952] 2QB 12."

86. On the question of what evidence is needed to support a finding that the cost was reasonably incurred, "in *Southwark Council v Various Lessees of St Saviour's Estate*, [2017] UKUT 10 (LC*)* ("*Southwark Council"*), the Upper Tribunal held that the cost of works of repair would not be reasonable where a landlord failed to adduce any evidence to demonstrate that the building was in a state of disrepair and that there was a need for work to be undertaken. Accordingly, a landlord who wishes to incur costs on substantial works or significant services should generally consider and provide evidence:

- as to why the works or services are necessary or desirable;

- what observations or comments were made on the proposed works or services by the lessees;

- how the landlord decided to remedy the defect or provide the service;

- why a particular method of repair, maintenance or a service was adopted; and

- what consideration was given to the impact of the cost of the works or the provision of the services on the tenants" (quoting from Service Charges and Management 3rd edition paragraph 12-10).

87. On consultation, section 20 of the Act provides that the contributions of tenants are limited in relation to qualifying works if the consultation requirements are not complied with. The cap on the recoverable service charge, should the consultation requirements apply and they are not complied with, is £250.00.

88. The consultation requirements are set out in the Service Charges (Consultation Etc) (England) Regulations 2003. It is common ground in this case that the Regulations do apply, and that the relevant consultation requirement to consult on the qualifying works are those set out in Schedule 3. Paragraph 1 provides:

> 1(1) The landlord shall give notice in writing of his intention to carry out qualifying works—
>
> (a) to each tenant; and
>
> (b) where a recognised tenants' association represents some or all of the tenants, to the association.
>
> (2) The notice shall—
>
> (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
>
> (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
>
> (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
>
> (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;
>
> (e) specify—
>
> (i) the address to which such observations may be sent;
>
> (ii) that they must be delivered within the relevant period; and
>
> (iii) the date on which the relevant period ends.

89. The *Collingwood* case concerned a failure by a local authority to comply with a requirement in Schedule 4 paragraph 11(5)(b) to provide a statement setting out the proposed cost of works as shown on the

estimates the Schedule requires the landlord to obtain. If a tenant has nominated a contractor, the landlord is obliged to include that nominees estimate within its paragraph b statement. In the case, the landlord failed to do so. The Upper Tribunal determined that the consultation was defective. Judge Cooke made this observation in paragraph 31:

> 31. "The requirements of the Consultation Regulations are both strict and sequential. There is no room in the clear wording of the provisions for flexibility in their interpretation, and no legal precedent for a flexible interpretation. They are anything but woolly."

90. On the question of compliance with section 21B of the Act, that section provides that a demand for a service charge must be accompanied by a summary of the rights and obligations of the tenant in relation to service charges. Regulations proscribe the form of the summary of rights. No issue has been raised in this case concerning the content of the summary.

91. If the summary is not provided, the tenant may withhold payment of a service charge demanded from him.

Merits

92. We consider firstly the two technical points raised by the Respondent that, if we find in his favour on them, would mean the Council's invoice for the works not be payable now, or would only be payable to a limited extent.

93. On the question of whether the Council served a demand that complied with section 21B of the Act, there is a direct conflict of evidence. We have to decide whether to believe the Respondent, who says that he received no summary of rights, or the Council, whose officer said the Council records indicated it was sent.

94. We had no reasonable basis for determining that either side were not truthful. But they cannot both be correct. There were two minor hints that could have helped us. Firstly, it was strange that, having been directed by Judge Barlow, in Direction 3 of her directions dated 9 January 2023 to provide 'copy demands for Service and Administration charges' by 25 January 2023, the summary was not included in the first version of the documents produced in compliance. It was not until the Respondent disclosed, very late, and after the Council's compliance with Judge Barlow's direction, that his case was that he had not received the summary, that that document appeared and was later interleaved into the existing hearing bundle. Perhaps that indicates the summary was not in the file at all. Or perhaps it simply indicates that it was not considered crucial to include it in the bundle as it was not being raised as an issue.

95. The second odd aspect is that the Respondent waited until absolutely the last minute before saying that he had not received the summary. Why did he not disclose it earlier, in his defence, or in correspondence when the invoice was received?

96. We have decided that we will accept the evidence of the Council rather than that of the Respondent. We consider that it is highly likely that the Council have established procedures to ensure they comply with statutory requirements; the protective letter sent on 17 November 2017 is an example of this, and we believe it is unlikely that the important and well known requirement to serve a summary of rights with each service charge demand would have been missed.

97. We therefore reject the Respondent's argument on this issue and find that the summary of rights and obligations required by section 21B of the Act was served with the invoice dated 19 March 2019.

98. The next issue is whether the Council complied with the consultation requirements. The Tribunal referred the case of *Collingwood* to the parties of its own volition. We have been persuaded by Mr Norman that it is not on all fours with this case, and it can be distinguished. In *Collingwood* there was a clear failure to comply with a clear substantive requirement in the Regulations.

99. In this case, we agree with Mr Norman that all the information required by paragraph 1(2)(e) of the Regulations was in fact included in the Schedule 3 Notice. We reject the Respondent's interpretation of that notice to the effect that it was dated 24 March 2016. It clearly was not. It was clearly dated 18 February 2016. In error, there was extraneous and superfluous language that could have created confusion and was incorrect. But we rely on the test set out in *Mannai*. We do not think the Respondent would have been remotely confused. In fact, we rather think that he realised exactly what had gone wrong when he wrote his letter dated 24 March 2016 to the Council. And of course, immediately he received the Schedule 3 Notice, he began the process of making observations and raising questions and queries on the necessity for the major works project. We therefore find that the consultation was a valid consultation and the Council are not restricted in the amount they can claim from the Respondent by way of service charge.

100. So, we must now deal with the substance of the Respondent's challenge to the service charge bill. Was the cost of the major works reasonably incurred?

101. There has been a real difficulty with evidence in this case. We have two professional reports which have both reached conflicting conclusions, particularly on the need for replacement of the roof coverings to the Block. Neither professional was called to give evidence, so the Tribunal was unable to test their respective views through oral evidence and the

rigour of cross-examination. In addition, no member of the Council staff with any expertise or involvement in the building works gave evidence or provided a witness statement. It would have been much easier for the Tribunal to make good decisions in this case if the Council's Clerk of Works or a building manager familiar with the works had provided evidence to us.

102. Our conclusion is, taking into account paragraphs c and d from paragraph 14 of *Waaler*, and the conclusion reached in *Southwark Council*, that we consider that it was reasonable for the Council to accept the advice in the Capital Report and determine that major works were required, including roof covering replacement rather than repairs. The decision was the Council's and we consider that it was well within the range of reasonable responses for the Council to accept the advice they were given.

103. We are strengthened in this approach particularly in relation to the roof coverings as we much prefer Mr Hughes's report on that element, as he made an inspection using a cherry picker and removed tiles to inspect the underside of the roof coverings. He would also have been much better placed to view the condition of the chimneys, ridge, soffits and fascias.

104. However, without some evidence of the necessity for the works, we are unable to determine that the money spent on some other elements of the works is reasonably incurred and so recoverable. There is no real dispute that the expenditure set out in Table 1 above was incurred, nor that the rates charged were reasonable as the Respondent has not challenged the rates charged. The question is whether the Council has discharged its responsibility to prove on the balance of probabilities that the works were reasonably required. It is not sufficient for the Council simply to provide a list of works and say they were done, at a specified cost, and therefore the Respondent has to pay for them.

105. We can take into account the evidence of the Capital Report. We are not willing to place very much reliance on the schedule of maintenance repairs which Mr Norman urged us to take into account. We have no evidence which establishes the nature of and reason for the maintenance tasks set out in the schedule.

106. Not all the work set out on the Schedule that formed the basis of the calculation of the invoice (see Table 1 above) was directly advised by the Capital Report, and where there is an absence of any evidence in support of other elements of the works from the Capital Report, we have taken the view that the Council have failed to establish that those works were reasonably incurred.

107. Our view is that expenditure on works which are not necessary is not expenditure which is reasonably incurred. By "necessary", we do not

mean that the property has to be in a very poor state of repair before works can be justified. Prophylactic work (i.e. work to prevent further deterioration) may well be "necessary". But we are looking for evidence that provides a reasonable justification for carrying out works now. So, for instance, where the Capital Report identifies the possibility that works may be required, but recommends a further report to establish what works, if any, are indeed required, without that further report, we are unwilling to accept that the Council has discharged the burden upon it. It has to convince us on the balance of probabilities that expenditure was justified, and so reasonably incurred, and without reports explaining what work was required and why, we are not so convinced.

108. Our conclusions can best be explained by reference to Table 2 below. Where the necessity for expenditure is supported by the Capital Report ("CR") or the Respondent's report from Mr Tasker ("TR"), or other evidence, we have allowed it. Where there is no evidence before us to explain why the expenditure was considered justifiable, we have not allowed it.

Table 2 – expenditure allowed

Line reference	Item	Evidence	Not allowed (£)	Allowed (£)
LH0	Preliminaries	Allow at 5.13% of allowed cost of works (accept Council's %age)	1,741.90	5,592.17
LH2	Scaffold	CR 2.1 – 2.4		22,550.56
LH3	Asbestos surveys & removal	CR 2.4.2 & 12.0 supports		5,866.97
LH5	Concrete repair works	CR 4.2 insufficient to support	4,289.02	
LH7	Structural investigations to external walls	No report produced	570.89	
LH8	Brickwork repairs to External Walls	CR 4.1 supports limited work we assess as reasonably costing £1,000	5,050.57	1,000.00
LH11	Timber repairs to roofs	Not contested		264.99

LH12	Main pitched roof works	CR 2.1 – 2.4		34,010.73
LH13	Loft insulation and fire breaks	Not contested		1,335.76
LH14	Asphalt renewals to walkways	Work not done	535.25	
LH16	Cladding works incl vertical tiling	Not contested		395.00
LH17	Fascias and soffits	CR 2.1 – 2.4		2,974.08
LH18	Rainwater goods and outlets	CR 3.0		6,386.00
LH19	Communal windows	Not contested		1,411.50
LH20	Communal doors screens cpbds etc	CR 7.2.2 and TR 2.40 supports		943.02
LH21	Decorations (Staircase and external)	Disturbance of decorative finishes by works and CR 2.0 and TR 2.41 supports need for decorative finishes to be attended to at end of contract		5,789.58
LH25	Door entry system	Community demand [675 & 840]		7,636.44
LH26	Security entrance doors and side screens	CR 7.0 – 7.4 supports		14,095.03
LH27	Integrated relay system	CR 11.3.1 No M&E report. No ballot. No evidence of need	6,463.20	
LH28	Lighting to communal areas and emergency lighting	CR 10.1.6 & 11. No M&E report provided. Some work needed. Allow 50%	4,349.58	4,349.58

LH30	Professional fees	Allow at 3.65% (Council's %age) of works cost + prelims	1,032.15	4,182.95
TOTALS			24,032.56	118,784.36

109. Thus, we find that the reasonable cost incurred on the works is the sum of £118,784.36. The Respondent's share is one twelfth, being £9,898.69. We determine that sum is payable by him for the works.

S.20C of the Act and paragraph 5A Schedule 11 of the 2002 Act

110. The Council have succeeded in establishing that around 83% of the amount it claimed from the Respondent is payable. It seems to the Tribunal that there is no strong case for making protective costs orders in favour of the Respondent.

111. However, there may be issues relating to costs of which we are currently unaware. The Tribunal indicated at the hearing that it was content to allow the parties to make their costs submissions once they knew the outcome of our deliberations.

112. We will therefore not finalise our decisions on the applications for these costs orders in this decision. We direct that if the Respondent now wishes to pursue the applications for these orders, he should inform the Council and the Tribunal within 10 days of the date of this decision, setting out what orders be still pursues and the reasons why the Tribunal should grant them. The Council should then reply (if advised) within 10 days of the date the Respondent's submission was sent to it. The parties should use email to ensure the submissions are received on the day they are sent.

113. It may be helpful for the Tribunal to say that on its reading of the lease, there are no provisions that allow the Council's costs of this case to be added to the service charge, nor for it to pursue direct recovery of them against the Respondent personally. If a party considers that this is not a correct interpretation of the lease, they should explain their reasoning in their submission.

Decisions and reasons (County Court)

114. It is an inevitable consequence of the Tribunal decision above that the Court will order payment by the Respondent of the sum of £9,898.69 which the Tribunal found is payable in respect of the sum invoiced to the Respondent on 19 March 2019.

115. The Respondent's defence includes a counterclaim for £525.00 for the costs of preparing and filing the defence and counterclaim. This is misconceived. A counterclaim must be a cause of action under which the defendant has a legal basis for pursuing his own action against the claimant. What the Respondent is seeking in his counterclaim is simply his costs of defending the action. That is not a separate legal cause of action. The counterclaim is dismissed.

Interest

116. The sum invoiced to the Respondent was £11,901.41, which was subsequently reduced by £44.10 as asphalt renewals to the walkways was not carried out. The principal sum claimed was, or should have been, therefore, £11,857.31. The Council added additional sums to the Respondent's major works account for interest, as shown on page 773 of the hearing bundle, and as at the 22 December 2022 (the last date on that statement), the balance was said to be £12,592.52.

117. There are 37 separate additional sums charged to the Respondent between March 2019 and December 2022, off-set by 6 credits. Each entry is described as a "manual adjustment".

118. I do not know how the sum claimed on the claim form is made up. It appears most likely that any sum above £11,857.31, is a monthly additional charge for interest.

119. Clause 3(2)(B) of the lease is a covenant by the Respondent to pay, inter alia, the service charge. If not paid within 14 days, contractual interest can be charged at the rate of £14 per centum per annum or 2 per centum per annum above the base rate for the time being of the Council's bankers, whichever shall be the higher. There was discussion at the hearing of the meaning of the phrase "£14 per centum per annum". I take the view that it means 14% per annum, not £14 per annum.

120. Under paragraph 1(1)(c) of Schedule 11 of the 2002 Act, a sum which is payable under the lease in respect of a failure by the tenant to make a payment by the due date to the landlord, is an administration charge. The contractual interest charge is therefore an administration charge.

121. Because it may be calculated by reference to the Council's bank's base rate, rather than a formula in the lease, it is also a variable administration charge (see paragraph 1(3) of Schedule 11).

122. A demand for payment of an administration charge must be accompanied by a summary of rights and obligations, as prescribed by regulations (Schedule 11 paragraph 4). Until that summary is served, payment of the administration charge may be withheld.

123. There is no evidence before me that any summary of rights was served on the Respondent in respect of any of the additional charges to his major works account for interest. Until the summaries were served, the Respondent was not under an obligation to pay the interest charges. I cannot give judgement for payment of sums the Respondent was entitled to withhold. I therefore dismiss the claim for contractual interest.

124. In the claim form, an alternative basis for claiming interest was included, namely that interest was payable under section 69 of the County Courts Act 1984.

125. The award of statutory interest is discretionary ("there may be included"). Statutory interest is not recoverable before issue of proceedings.

126. I need to take into account that the issuing of the County Court claim was in direct breach of the Council's agreement, via Mr Reddy, to bring proceedings in the Tribunal to determine the payability of the disputed service charge invoice (see paragraph 59 above). Mr Onabolu was unable to offer a justification for commencing proceedings in the County Court rather than the Tribunal that I found convincing.

127. Had the Council honoured its agreement, statutory interest would not have started to run until after the amount of any liability for the Respondent's contribution towards the major works had been established.

128. I do not regard it as just to allow statutory interest, for the above reasons, and dismiss the interest claims.

Costs

129. It was agreed at the hearing that forms N260 which had been supplied would have to be recast in the light of *Tower Hamlets v Khan* [2022] EWCA Civ 831, which determines that costs in the Tribunal are not recoverable in County Court proceedings.

130. I direct that, if the parties are unable to reach agreement on costs, each should submit a short statement to the Tribunal office and to the other party summarising the basis on which it is suggested costs should be awarded, and filing a fresh N260 in support of the sum sought, within 10 days of the date of this decision. Each party may then respond, again within 10 days of receipt of the other party's submission. I will then determine the costs on consideration of the submissions and without a hearing, as agreed at the hearing.

131. As mentioned at the hearing, the parties should note that I do not consider that I have a discretion to revisit the costs order made by Judge

Owen in relation to the Respondent's application to strike out the County Court claim. Costs relating to that application should not be included within any recast form N260.

Conclusion

132. By way of conclusion, I make the following decisions:

(i) Service charges (as assessed by the FTT): Judgement for the Council in the sum of £9,898.69;

(ii) The Respondent's counterclaim is dismissed;

(iii) Interest - claim dismissed:

(iv) Costs claim: - adjourned for compliance with the Direction below:

(v) Direction: each party should submit a short statement to the Tribunal office and to the other party summarising the basis on which it is suggested costs should be awarded, and filing a fresh N260 in support of the sum sought, within 10 days of the date of this decision. Each party may then respond, again within 10 days of receipt of the other party's submission.

133. A County Court order accompanies this decision.

Appeal rights

134. The annex to this decision applies.

Name: Judge C Goodall **Date:** 09 June 2023

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration by the decision maker of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal the decision maker's decision must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. Upon the receipt of the decision maker's decision on an application for permission to appeal, if a party wishes to pursue an appeal, the time to do so is extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 21 days after the date the refusal of permission decision is sent to the parties.

7. If no application to the decision maker is made for permission to appeal, any application for permission must be made to an appeal court/centre within 42 days of the hand-down date on an Appellant's Notice.

8. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.