FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/LSC/2023/0244** **LON/00BB/LVL/2023/0004**
Property	**:**	**Flat 3, 317 Barking Road, London E13 8EE**
Applicant	**:**	**Xiaochun Guan**
Representative	**:**	**Ms S Lin**
Respondent	**:**	**GH7 Investments Limited**
Representative	**:**	**Mr Bunzl of counsel**
Type of application	**:**	**(1) For Variation of the lease** **(2) For the determination of the liability to pay service charges**
Tribunal members	**:**	**Prof R Percival** **Mr R Waterhouse FRICS**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **15 January 2024**
Date of decision	**:**	**31 January 2024**

DECISION

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Decisions of the tribunal

(1) The Tribunal orders under Landlord and Tenant Act 1987, section 38(2) that the Applicant's lease be varied so that the service charge contribution is 12.5% (order appended to this decision);

(2) The Tribunal makes the determinations as set out under the various entries in the schedule contained in this decision;

(3) The tribunal makes orders under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the extent of recovery from the service charge and as an administration charge of the costs of the proceedings/litigations costs be limited to 35%.

The application

1. The Applicant has made applications under Landlord and Tenant Act 1987, section 35 ("the 1987 Act") for the variation of a lease, and under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for the determination of services charges. The years relevant to the application under section 27A are the service charge years from 2018 to 2023.

2. In the directions (originally dated 17 August 2023, amended 11 October 2023 and 30 November 2023), Judge Tagliavini ordered that the two applications be heard together.

3. The relevant statutory provisions referred to may be consulted at:
https://www.legislation.gov.uk/ukpga/1985/70/contents
https://www.legislation.gov.uk/ukpga/1987/31/contents
https://www.legislation.gov.uk/ukpga/2002/15/contents

The background

4. The property which is the subject of this application is a block on three storeys over ground floor commercial premises, now containing 8 flats. It is immediately adjacent to 315 Barking Road, a similar block in the same structure, with which it shares an entrance. The structure (ie both addresses) is brick built, and was apparently originally a light industrial unit, converted to flats at some time.

5. Both 315 and 317 Barking Road are managed by the same managing agent, Westcolt Surveyors. The freeholds are now owned by the same ultimate company, although the immediate freeholder of each are other entities.

The lease

6. The lease is dated 25 February 2005, and is for a term of 125 years (from June 2004).

7. The demise of the flat includes the internal plastered coverings and plaster work of the walls bounding the flat, and includes the internal surface of the doors (in reality, door in the singular) in the bounding wall. The external surface of the door is not demised.

8. The service charge contribution is 25% (the subject of the variation application) (particulars, paragraph 9). "The Building" is defined as 317 Barking Road (particulars, paragraph 5).

9. By clause 5(4), the lessee covenants to pay an interim charge and service charge as provided for in the fifth schedule. By that schedule, the expenditure to which the service charge relates is that incurred by the lessor in performing its covenants under clause 6(5). The interim charge is payable twice yearly (24 June and 25 December). Provision is made for reconciliation (surpluses credited, deficits payable within 14 days of the certificate). As soon as practicable after the expiration of the relevant accounting period, the lessor or his agent must serve a certificate showing the total expenditure, the interim charge paid, and the amount of the service charge payable by the lessee. The service charge year is the calendar year (clause 2(3)).

10. The lessor's repairing covenants appear in clause 6(5). It is required to keep on good and substantial repair and condition the main structure, the common pipes and other conduits, the common parts and boundaries, and any other part of the building not demised (clause 6(5)(a)); to decorate externally and the internal non-demised parts of the building (clause 6(5)(b); and to clean and light the common parts and to clean the windows thereof.

11. Clause 6(5) contains covenants by the lessor to employ various people, including directly employing maintenance etc staff, a firm of managing agents and surveyors and other professionals. It includes a sweeper clause by which it covenants "[w]ithout prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessor may be considered necessary and advisable for the proper maintenance safety amenity and administration of the Building."

12. By clause 6(5)(l), the lessor may, in effect, accumulate a reserve fund.

13. There is an insurance covenant (clause 6(5)(m).

14. Clause 4(9) obligates the lessee to pay expenses, including of solicitors and counsel, "incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 ... including in particular all such costs charges and expense of and incidental to the preparation and service of a notice under the said Sections ... notwithstanding that forfeiture is avoided otherwise than by relief granted [b]y the Court".

The hearing

Introductory

15. The Applicant was represented by Ms Lin, a lay representative. The Applicant himself is currently in China. The Respondent was represented by Mr Bunzl of counsel. Mr Ali, of Westcroft Limited, the managing agent, accompanied him, and assisted the Tribunal throughout the consideration of the Scott schedule.

16. Most of the hearing was concerned with the section 27A application, and consisted of us considering each item in the Scott schedule in turn, in each case hearing from both Mr Ali and Ms Lin (who, in addition to being a friend of the Applicant, lived in the flat during part of the time covered by the application).

17. We considered the Scott schedules in relation to 2018 to 2023 in the hearing at Alfred Place on 15 January 2024, but were not able to conclude the schedules that day. We accordingly reconvened by video, using the VHS platform, on 17 January 2024, in the morning.

The issues

18. The issues before the Tribunal were as follows:

    (i) Whether the lease should be varied to provide for a service charge percentage of 12.5% in place of 25%.

    (ii) The payability and/or reasonableness of service charges as contested in the Scott schedule.

    (iii) Whether the Tribunal should make orders under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The variation application

19. The Applicant applied under section 35 of the 1987 Act for an order varying his lease on the basis that the proportions of the service charge provided for in the leases was such that the resulting total was higher

than the expenditure in respect of which it was demanded (section 35(2)(f) and (4).

20. Initially, 317 Barking Road had been divided into four flats, and the proportion of the service charge paid by each was set at 25% in the leases. However, at some time an additional four flats had been built and encompassed within 317. The Appellant was not aware of the other flats (access to which was somewhat obscure) until after he had bought the flat. He according sought a variation in the lease to reduce the proportion of the service charge payable by flat 3 to 12.5%

21. Unsurprisingly, the Respondent agreed the variation in principle. However, Mr Bunzl told us that the parties disagreed as to who should pay the costs of drawing up and executing a deed to accomplish the variation.

22. We expressed the view to the parties that it was an appropriate case for the Tribunal to order the variation under section 38(2) of the 1987 Act, rather than to make an order directing the parties to effect the variation under section 38(8). We suggested that such a course would obviate the need for further costs to be incurred. Both parties agreed that we should do so. We concluded (with which the parties concurred) that the order should be retrospective to the date upon which the Applicant acquired the leasehold interest, which was, we were told, 18 May 2017.

23. *Decision*: The Tribunal orders under section 38(2) of the 1987 Act that the proportion of the service charge payable under the lease be 12.5%. An order is appended to this decision.

The service charges application

24. The challenges to the service charges for the years from 2018 to 2023 were encapsulated in a lengthy Scott schedule. We attach the Scott schedule (somewhat re-formatted) in this decision, indicating our decision on each item in the final column. Where the same issue arises in subsequent years, we have not reproduced the parties' comments, and have indicated in the final column that the same decision applies as in the earlier year.

25. We noted above that the two properties at 315 and 317 Barking Road share an entrance. Late on during the reconvened hearing on 17 January 2024, Mr Ali mentioned that the entrance hall and stairwell were, in fact, within the freehold title of 315, not 317. When we considered our decisions in relation to the Scott schedule entries, we concluded that the freehold status of the communal entrance and stairwell affected some of our decisions on matters considered earlier in the hearing. We have explained why that is in respect of each issue in which it occurs. However, we appreciate that the parties have not had the opportunity to make representations in respect of those matters when they were first

considered. We concluded that, if there were further points to be made, they should form the basis of an application to appeal, which we could then consider on a review of our decision under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 55.

26. We have seen a number of photographs which make the layout of the stairs and lobbies or corridors off it tolerably clear. The street door opens onto a small hall. Mr Ali suggested it might be about four square metres. It looks, in the one photograph showing it, significantly smaller than that. The floor is wood or wood laminate. The stairs ascend in a series of short flights each turning back on itself at a small landing. The flats are off every other landing to both sides, to 315 on one side and 317 on the other. There are corridors of various lengths from the landings to the flats. The stairs and corridors are carpeted.

The Scott schedule

27. The schedule commences on the next page, in landscape format.

DISPUTED SERVICE CHARGES S/C YEAR ENDED: 31 December 2018				
ITEM	COST	TENANT	LANDLORD	TRIBUNAL DETERMINATION
Management	£2,400	Unreasonable in amount. Consider to pay £1800. 317's 2019 is: £1800. An invoice proved is £1800 although it sent by a mistake. End of Year Certificate of Expenditure was made later. That is why it is more expensive than 2019. Meanwhile, an invoice for £1800 was provided by management company Westcolt on 23/07/2023. But the invoice was addressed to Interface Properties Limited for 315 not to 317 Barking Road. But it means the fee should be £1800. Please see **Appendix 28**	Clause 6(5)(f) in the Applicant's lease is relevant. Pursuant to *Yorkbrook Investments Ltd v Batten (1986) HLR 25*, the Tribunal are invited to determine the full service charges sought in the witness statement of Mr Chaudhary as payable, as the Tenant has failed to plead why the sums they wish to pay are reasonable. In any event, the Tribunal are asked to note the admission, and at the very least determine no lower than the Applicant's admission. To go lower than the admission would create uncertainty as to the provisions in *section 81(1)(b) of the Housing Act 1996*.	The Tribunal accepts Mr Ali's evidence that the invoice for £1,800 was erroneously issued in 2019, that being the sum charged to the tenants of 315. We note that both imply a per unit charge of £300. Applying the expertise of the Tribunal, which is based on a general acquittance with the market for managing agents in London, rather than any specifically disclosable piece of evidence, the Tribunal is satisfied that that is within the reasonable range of fees for a property of this type. This cost is chargeable to the service charge and reasonable in amount.

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		–Incorrect Invoice provided by management company WestColt and email for sending.		
Building insurance	£2,560	Unreasonable in amount. 315 and 317 Barking Road share a same building insurance policy.The cost should be divided by 2. Consider to pay £1280. The freeholder failed to provide proper evidence for the cost. Please see **Appendix** **24.1 –** Freehlder Insurance Example to be provided **Appendix** **24.2 –** Incorrect insurance document & electricity bills provided by the freeholder.	Clause 6(5)(m) of the Applicant's lease is relevant here. This clause contains a description of what the insurance should insure against as a minimum. As the Applicant has failed to utilise this clause to demonstrate what is reasonable to pay with the production of like for like submissions, then the Tribunal are asked to apply the principles in *Zambra Investments Ltd v Tracey Ellis [2015] UKUT 0031 (LC) and deem that the insurance charges sought by the Respondent are reasonable. Pursuant to Yorkbrook Investments Ltd v Batten (1986) HLR 25, the Tribunal are invited to determine the full service charges sought in the witness statement of Mr Chaudhary as payable, as the Tenant has failed to plead why the sums they wish to pay are*	The Tribunal accepts Mr Ali's evidence that the freeholder operates a block policy covering a substantial portfolio. The standard method with such policies, which Mr Ali confirmed applied in this case, is that a site-specific premium is arrived at for each site covered by the block policy, taking into account the rebuilding cost, relevant risks to be insured and risk factors such as claims history. We considered the alternative quotation obtained by the Applicant. While it was a landlord/investor policy, it was not clear what risk factors it took into account, and the identity of the underwriter was not evident. Most importantly, the Tribunal considered that the premium quoted was inherently implausible. In coming to this conclusion, we took into

			reasonable. In any event, the Tribunal are asked to note the admission, and at the very least determine no lower than the Applicant's admission. To go lower than the admission would create uncertainty as to the provisions in section 81(1)(b) of the Housing Act 1996.	account that the Respondent's policy at this time was also based on an unrealistically low rebuild cost. The charge was payable and reasonably incurred.
Communal lighting	£387.33	Unreasonable in amount. 315 and 317 Barking Road share communal electricity. The cost should be divided by 2. Consider to pay£193.67. The freeholder failed to provide original EDF electricity bill for evidence and demonstrate how it spent more than 2019's cost £180 for same communal lighting. Please see **Appendix 2.4** – Incorrect evidence (for electricit bill) provided by the respond	Clause 6(5)(c) of the Applicant's lease is relevant here Pursuant to Yorkbrook Investments Ltd v Batten (1986) HLR 25, the Tribunal are invited to determine the full service charges sought in the witness statement of Mr Chaudhary as payable, as the Tenant has failed to plead why the sums they wish to pay are reasonable. In any event, the Tribunal are asked to note the admission, and at the very least determine no lower than the Applicant's admission. To go lower than the admission would create uncertainty as to the provisions in section	Twenty percent of the total cost of lighting the area (ie the cost currently divided by two) is recoverable in the service charge. The Tribunal rejected the Applicant's argument that the cost had not been split between 315 and 317. However, the communal lighting relates to the lobby and staircase, which, as became apparent at a late stage, are not within the freehold title of 317. The relevant covenant is to light the communal area, and cannot include a communal area outwith the definition of the Building, which cannot, we consider, include the communal

			81(1)(b) of the Housing Act 1996.	area covered by the freehold title of 315. However, we accept that a proportion of the area lit is to the right hand side (facing the building from the street) of the door and staircase, which, as we understand it, *is* within 317. Doing the best we can from the photographs, we estimate that twenty percent of the floor space is part of 317, and for the lighting of that proportion a charge can be made. The charge was payable and reasonably incurred only to the extent of 20% of the combined cost of the communal electricity.
Risk assessment	£360	Un-chargeable under lease. I do not think I need to pay it. Consider to pay £0. There is no 'sweeping up' clause for the freeholder to justifying passing on the cost to the leaseholder. And risk assessment does not take much time to it. The	Clause 6(5)(e)&(f) &(i) of the Applicant's lease is relevant here	Expenditure on a risk assessment (here, a fire and health and safety risk assessment) is covered by the Respondent's repairing covenants. It is also required as a regulatory requirement, and was properly incurred. It is reasonable for a managing agent to engage a specialist company to conduct such an

		management company should be able to conduct the assessment as part of its management work without additional fee. Otherwise, there is no point for the leaseholders pay management fee to their doing nothing. Please see **Appendix 27** – Fire Risk Assessment Example. The freeholder failed to provide evidence.		assessment (indeed, it is unlikely that most managing agents will have the appropriate expertise in house). The cost is moderate, and certainly within the reasonable range for such services. The charge was payable and reasonably incurred
Maintenance (leak)	£384.91	[The Applicant agreed that the charge was reasonable]		
DISPUTED SERVICE CHARGES S/C YEAR ENDED: <u>31 December</u> <u>2019</u>				
Management	£2,400			The same result obtains as for the previous year. The sum of £2,400 was substituted for the erroneous sum of £1,800 originally entered in the schedule.

				The charge was payable and reasonably incurred
Building insurance	£2,640			As above. The charge was payable and reasonably incurred
Condition survey	£1,600	Un-chargeable under lease. Do not think I need to pay it. Consider£0 to pay. Created the work and repreated charge high estimated budget for service charge, then use incorrect calculation to take money away. Please see page 3 of **statement Cection 12 (7)**. Please also see **Appendix 2.3, Appendix 12, Appendix 12, Appendix 15** and P99 of **Disclosure Documents**. Flat 3 disagreed it after the freeholder failed to provide 3 quotes/proper evidence, after Flat 3 sent a letter on 12 Feb 2019	Clause 6(5)(e)&(f) of the Applicant's lease is relevant here.	The cost of a condition survey is in principle covered by the Respondent's repairing covenant, and its associated covenant in respect of employing (inter alia) a surveyor. The Tribunal considers that it was reasonable in principle for the Respondent to undertake such a survey. There was no express challenge to the reasonableness of the amount of the fee, which the Tribunal in any event considers within the reasonable range, applying expertise of a general nature. The sum given here is that substituted by the Respondent, the original sum of £1,200 being in error. We were provided with the substitute certificate.

		(Appendix - 2.2) The freeholder failed to provide evidence to demonstrate where the item cost paid to and what works it would do on the building. Based on Section 7 of Page 91 of Disclosure Documents, I did not agree the propose works on a building or any other remises that will cost me or any other tenant more than £250. Please see **Appendix 4:** Major works and Consultation letter from the Westcolt dated on 18 Deecember 2018 (the respondent did not provide this letter on 13/09/2023's disclosure documents), **Appendix 2.2 –** Request evidence and **Appendix 2.3 –** Major works		The charge was payable and reasonably incurred
Section 20 consultation fee	£1,600	Un-chargeable under lease. Do not think I need to pay it. Consider £0 to pay. Created the work and repreated charge high estimated budget for service charge, then use incorrect	Clause 6(5)(e)&(f) of the Applicant's lease is relevant here	Mr Ali's evidence was that major works were necessary, and so the section 20 consultation was undertaken. However, the lack of co-operation from the leaseholders subsequently meant that the major works

		calculation to take money away. Please see page 3 of **statement Cection 12 (7).** Please also see **Appendix 2.3, Appendix 12, Appendix 12, Appendix 15** and P99 of **Disclosure Documents**. Flat 3 disagreed it after the freeholder failed to provide 3 quotes/proper evidence, after Flat 3 sent a letter on 12 Feb 2019 (**Appendix 2.2**). The freeholder failed to provide evidence to demonstrate where the item cost paid to and what works it would do on the building. Based on Section 7 of Page 91 of Disclosure Documents, I did not agree the propose works on a building or any other premises that will cost me or any other tenant more than £250. And Section 20 Consultation did not provide/condu ct properly. Please see **Appendix 4:** Major works and Consultation letter from the Westcolt dated on 18 Deecember 2018 (the respondent		were not proceeded with. Non-cooperation encompassed both a lack of funds as a result of non-payment of service charges, and no engagement with the consultation process. We considered carefully whether it was reasonable for the managing agent to decide to embark on the consultation process at a time when they must have known about the problems with service charge payment, and concluded, on balance, that it was, perhaps just, a decision within the reasonable range. We did not have a copy of the management agreement before us, but it is common for such agreements to include charging for extras, which invariably include undertaking section 20 consultations. We regard it as, in principle, reasonable for a managing agent to charge extra for conducting a consultation exercise.

		did not provide this letter on 13/09/2023's disclosure documents),		There was no quantified challenge to the reasonableness of the sum charged, and we consider it to be within the reasonable range. The charge was payable and reasonably incurred
Communal electrics repairs	£4,105	Unreasonable in standard. I do not think I need to pay for the wrong electrical wiring which caused fire or be damaged in 2016. Consider to pay £0. The freeholder extended the building and built 4 flats from the rear wall of flat 1. The wrong electrical wiring of Flat 1 or other flats caught fire in 2016, which was prior to my 2017's purchasing the property. Newham Council visited the building and found Flat 1 or other extended flats did not have correct Unreasonable in standard.	Clause 6(5)(a)& (e)&(f) &(i) of the Applicant's lease is relevant here.	We accepted Mr Ali's evidence that the electrical works were triggered by the infrastructure distribution company disconnecting the supply to the two addresses because the wiring within was in a dangerous condition. The works related to the installation of two (Ryefield) distribution boards, which included those necessary for the supply to the flats in both addresses. It was therefore not connected with local authority enforcement processes. The distribution boards were located in the communal area, which we now know is part of 315. Unlike the communal lighting, however, this does not exclude the obligation on the leaseholders of 317 to pay – the

		I do not think I need to pay for the wrong electrical wiring which caused fire or be damaged in 2016. Consider to pay £0. The freeholder extended the building and built 4 flats from the rear wall of flat 1. The wrong electrical wiring of Flat 1 or other flats caught fire in 2016, which was prior to my 2017's purchasing the property. Newham Council visited the building and found Flat 1 or other extended flats did not have correct electrical wiring, so Newham Council cut the electricity off and issued Enforcement Notice (Fire Risk) to Flat 1or maybe issued to other Flats in 2016. As the freeholder failed to provide evidence, I did not own Flat 3 in 2016, I did not know which Flat caused fire. Because the building was insured, insurance company		location of the distribution boards is irrelevant to the fact that the supply is to both the communal area (including the that required for the lighting obligation in respect of the 20% attributable to number 317) and the flats. There was no quantified objection to the reasonableness of the sum charged. The charge was payable and reasonably incurred.

		may pay the cost and the leaseholder should not make further contribution. And the respondent/fre eholder should contribute towards the cost if insurance did not cover it. And I should not pay previous cost or items occurred in past time. In May 2017,I spent £1200for a qualified electrician for electrical rewiring. In my studio flat after I purchased the property, and the power was cut off because the extended flat caused fire. After couple years, the freeholder should not keep using it as an excuse to create works to charge the leaseholders for its incorrect electrical wiring during construction of extended flats. The previous item should be paid by insurance company or paid by freeholder with its own costs for extension, if the insurance did not fully cover the		

		cost, or the insurance Company rejected it for the freeholder's mistake. And there is no evidence to prove what works has been done and the works related to us or communal electrics. And the cost is unreasonable very high. The freeholder failed to provide evidence for the cost.		
EDF	£180			This relates to the lighting of the communal area. As above. The charge was payable and reasonably incurred only to the extent of 20% of the combined cost of the communal electricity
Pest control	£512	[The Applicant accepted this charge]		
DISPUTED SERVICE CHARGES S/C YEAR ENDED: 31 December 2020				
Management	£2,400			As above.

				The charge was payable and reasonably incurred.
Building insurance	£3,072			There was an increase this year as a result of a revaluation of rebuilding costs. Otherwise, as above. The charge was payable and reasonably incurred.
Fire alarm installation	£3,166	Reasonable in amount if it is an installation with a pack and has a warranty. Otherwide I will assume the installation was conducted by the management comany , or the freeholder without a warranty. The fact is that the installation did not satisfy a standard. It also need to have warranty period. Minmum 12 months. Consider to pay £3166 for full pack, but not able to accept the price of £3166 if he freeholder purchased materials to install by themselve and the system was shared with 315. The pack of installation should cover emergency lighting,	Clause 6(5) (a)&(e)&(f) &(i) of the Applicant's lease is relevant here	The Applicant's advance case related primarily to fire alarm maintenance and testing (see below). At the hearing, Ms Lin suggested the spending was unnecessary. We accepted Mr Ali's evidence that it was brought to the Respondent's attention that the existing alarm was inadequate, and it was reasonable to replace it. The alarms were interlinked not just within 317, but also with 315. We were satisfied that, in the circumstances of these properties, that was clearly the proper approach. There was no challenge to the reasonableness of the sum, once

		remote monitoring, electronic notification, fire action notices, fire shutters, fire doors, 24 hours monitoring, warranty, fire log book, fire document box, fire safety box, fire alarm key box, fire safety evacuation plan , diagrammatic fire alarm zone plan; And full training on how to test and operate the system etc. After training, the staff of management company should know how to conduct fire alarm maintenance / works, monthly emergency lighting testing and so on without addtional costs for the leaseholders. There is no need to conduct weekly fire alarm testing as the flats are not commercial properties. It need to pay someone to conduct Fire Alarm System Service (x 2 annually). The quote is £150 plus VAT per visit. During Fire Alarm System servcie, will get fee		the work was established to be necessary. The charge was payable and reasonably incurred.

		communal/Emergency Lighting service (x 2 annully). Please see information from **Appendix 17**– Quote and enquiries for Fire Alarm System Installation and service. If the magament agent purchased materials to install by themselves, it will only costs over £1000 for 2 addresses to share the costs and plus labour cost. (Page 13 & 14 of **Appendix 17**). And the quality of installation is not satisfactory. Later, within a year, a cost of £840 for Fire Alarm System Repairs was demanded. The installation provided guarantee period for free repair. Meanwhile, 315 and 317 Barking Road share Fire Alarm System installed. The cost should be divided by 2. The freeholder failed to provide evidence for the cost.		

		The freeholder failed to provide Fire Alarm's installation's contract and service plan.		
Drains unblock	£928.33	Unreasonable in amount. Consider to pay £150 (if used with a pump) Flat 3 experienced paying a plumber **£100** to resolve Flat 3's drains unlock (Please see receipt from **Appendix 8 –** £100 Invoice for drains unblock paid). The freeholder failed to provide evidence for the cost. The freeholder also failed to indicate which flat or location of drains block.	Clause 6(5) (a)&(e)&(f) &(i) of the Applicant's lease is relevant here.	It was Mr Ali's evidence that a drain running under the properties served numbers 315 and 317 and two other properties. That drain became blocked, and had to be pumped out. He produced an invoice. We accepted the necessity of for the work. Ms Lin argued that the drain served more properties (on the basis of the contiguity of the buildings), and each property should have paid for its own, each having their own manhole. We accept Mr Ali's evidence, and that it was reasonable to use a single contractor to unblock the drain. However, it was clear that the figure given was based on a three way division of the invoice. Mr Ali was unable to explain why (and appeared to have assumed that it was a four way division). On the basis of

				Mr Ali's evidence, the division is wrong. The charge was payable and reasonably incurred, but the invoice should have been divided by four, so the figure that is payable is £696.25
Fire alarm repairs	£840	Unreasonable in standard. Do not think I need to pay it. Consider to pay £0. If it needed to repair, it means the installation did not satisfy a standard. The Fire Alarm System was installed within a year which was within warranty for free repair. Fire Alarm system installation should be under warranty to make sure it works properly. And the quality of installation should satisfy the needs. The repair should be free within a certain period of minimum 1 year warantty. The cost and work should be covered by fire alarm	Clause 6(5) (a)&(e)&(f) &(i) of the Applicant's lease is relevant here.	We accept Mr Ali's evidence that the repair was the result of damage caused by vandalism, which was not covered by the warranty or insurance. There is no quantified objection to the cost itself. The charge was payable and reasonably incurred.

		installation and service pack including emergency lighting, remote monitoring, electronic notifications, fire shutters, fire doors, 24hr monitoring, warranty, fire log book, fire document box, fire safety box, fire alarm key box, fire safety evacuation plan , diagrammatic fire alarm zone plan; And full training on how to test and operate the system etc. After training, the staff of management company should know how to conduct fire alarm maintenance / works, monthly emergency lighting testing and so on without addtional costs for the leaseholders. There is no need to conduct weekly fire alarm testing as the flats are not commercial properties. It need to pay someone to conduct Fire Alarm System Service (x 2 annually). The quote is £150 plus VAT per visit. During Fire Alarm System servcie, will get fee		

		communal/Emergency Lighting service (x 2 annully). Please see information from **Appendix 17**– Quote and enquiries for Fire Alarm System Installation and service. If the magament agent purchased materials to install by themselves, it will only costs over £1000 for 2 addresses to share the costs and plus labour cost. (Page 13 & 14 of **Appendix 17**). And the quality of installation is not satisfactory. Later, within a year, a cost of £840 for Fire Alarm System Repairs was demanded. The installation provided guarantee period for free repair. Meanwhile, 315 and 317 Barking Road share Fire Alarm System installed. The cost should be divided by 2. The freeholder failed to provide evidence for the cost.		

		The freeholder failed to provide Firm Alarm's installation's contract and service plan.		
Communal electric	£420			As above. The charge was payable and reasonably incurred only to the extent of 20% of the combined cost of the communal electricity
Certificate of expenditure	£800	Un-chargeable under lease. Do not think I need to pay it. Consider to pay £0. It is part of management.	Clause 6(5) (e)&(f) of the Applicant's lease is relevant here	Mr Ali said that the management contract included extra fees for accountancy services. We put it to Mr Ali that a managing agent would usually undertake the basic task of service charge calculation within the per-unit fee, with additional charges if auditing or certifying by an accountant were necessary. He said that the drawing up of the certificate of expenditure fell into the latter category. We reject the argument. The certificate was a brief and basic summary of the service charge categories, and falls within the category properly falling to a managing agent.

				The charge is not payable.
DISPUTED SERVICE CHARGES S/C YEAR ENDED: <u>31 December</u> <u>2019</u>				
Management	£2,400			As above. The charge was payable and reasonably incurred.
Building insurance	£3,379.20			As above. The charge was payable and reasonably incurred.
Fire alarm maintenance	£816	Unreasonable in amount. Consider to pay £0. The cost and work should be covered by fire alarm installation and service pack such as emergency lighting, remote montoring, electronic notifications, fire shutters, fire doors, 24hr monitoring etc. It only needs twice per year for local service to BS5839 after installation.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here.	Mr Ali's evidence was that this sum represented the two services per year recommended by the relevant standard. We accepted Mr Ali's evidence. The charge was payable and reasonably incurred.

		Normally it should not be easily damaged once fire alarm system is installed. The freeholder failed to provide evidence for the cost. The freeholder failed to provide 2020's Fire Alarm's installation contract and plan.		
Communal door replacement	£2,780	Unreasonable in amount. The door cost is not so high. It should be around £1500 for a black metal front door and installation cost. The door installed at the address 315/317 Barking Road is not a complex door. The door has no bell to answer, and the residents are not able to open the door from upstairs. We need to go downstairs to open the front door. And the locker is a type of deadlocking Night-latch. Please see the front door from P1 & P2 of **Appendix 12**, P1 & P5 of **Appendix13.1** and P1 & P3 of **Appendix 13.2**. and **Appendix 23 -** 3 Quotes for Security Front Door 315 and 317	Clause 6(5)(a)of the Applicant's lease is relevant here. Pursuant to Yorkbrook Investments Ltd v Batten(1986) HLR 25, the Tribunal are invited to determine the full service charges sought in the witness statement of Mr Chaudhary as payable, as the Tenant has failed to plead why the sums they wish to pay are reasonable. In any event, the Tribunal are asked to note the admission, and at the very least determine no lower than the Applicant's admission. To go lower than the admission would create uncertainty as to the provisions in section 81(1)(b) of the Housing Act 1996.	Mr Ali agreed that the door was that to the communal hall. It is, therefore, not part of the building of 317, but rather part of 315, and not referable to the service charge of the tenants of 317. This charge is not recoverable.

		Barking Road share same communal door. The cost should be divided by 2. Consider to pay £750 for half of £1500 The freeholder failed to provide evidence for the cost.		
Communal electric	£400			As above. The charge was payable and reasonably incurred only to the extent of 20% of the combined cost of the communal electricity.
Accounts	£800			As above. The charge is not recoverable.
DISPUTED SERVICE CHARGES S/C YEAR ENDED: <u>31 December</u> <u>2022</u>				
Management	£2,400			As above. The charge was payable and reasonably incurred.
Building insurance	£3,379			As above. The charge was payable and reasonably incurred.

Fire safety evacuation plan	£234	Unreasonable in standard. I do not think I need to pay it. Consider to pay £0 Fire safety document plan came with a pack of Fire Alarm System installation. The freeholder failed to provide evidence and infomration if you list the item.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here	Ms Lin submitted that the expenditure was not necessary. Mr Ali said that it was a new requirement, and a specified in the fire safety assessment. We accept Mr Ali's evidence. The charge was payable and reasonably incurred.
Fire safety box	£120	Unreasonable in standard. Do not think I need to pay it. Consider to pay £0. Fire Safety Box came with a pack of Fire Alarm System installation. The freeholder created this item and failed to provide information about it.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here	Ms Lin suggested at the hearing that the Applicant was not convinced that the box had been installed. Mr Ali showed us a photograph in the bundle. We accept it was installed, and there is no challenge to the reasonableness of expenditure. The charge was payable and reasonably incurred.
Fire alarm maintenance works	£648			As above. The charge was payable and reasonably incurred.
Fire risk assessment	£288	Un-chargeable under lease. I do not think I need to pay it. Consider to pay £0.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here	We reject the Applicant's contention that the managing agent could conduct the fire risk assessment, and accept Mr Ali's

		There is no 'sweeping up' clause for the freeholder to justifying passing on the cost to the leaseholder. And risk assessment does not take much time to it. The management company should be able to conduct the assessment as part of its management work without additional fee. Otherwise, there is no point for the leaseholders pay management fee to their doing nothing. Please see **Appendix 27 –** Fire Risk Assessment Example. The freeholder failed to provide evidence.		submission that it was necessary to secure it. The charge was payable and reasonably incurred.
Communal electric	£787			As above. The charge was payable and reasonably incurred only to the extent of 20% of the combined cost of the communal electricity.
Maintenance leak from 1 and 3	£150: Dispute.	Unreasonable in amount &standard.	Clause 6(5)(a)of the Applicant's lease is relevant here. Additionally, there is no provision in the Applicant's	A leak had occurred in a main water pipe in the floor/ceiling between flats 3 and 1, which was repaired by the Respondent (as

	Request to Pay same amount (£150) to Flat 3's contractor too. (It can be deducted from actual contribution payable for 2022).	Considerable in amount is £300 after adding £150 to Flat 3's work. The amount of £150 should be deducted from Flat 3's payable amount for 2022 service charge. The leak was from main pipe, under the flooring board of Flat 3. It should be freeholder's liability to repair. Flat 3 had an agree and authority from the management company to locate and repair the leak but Flat 3 did not receive any fund for paying a plumber to remove floorboard and fixing leak of main pipe. Request to deduct £150 from the Flat 3's service charge payable for 2022 accordingly, if Flat 1 was paid and deducted the amount. The freeholder failed to provide evidence for whom he paid to, receipt for the cost. Request to be treated equally for Flat 1 & Flat 3.	lease to allow for set off. Pursuant to Yorkbrook Investments Ltd v Batten (1986) HLR 25, the Tribunal are invited to determine the full service charges sought in the witness statement of Mr Chaudhary as payable, as the Tenant has failed to plead why the sums they wish to pay are reasonable. In any event, the Tribunal are asked to note the admission, and at the very least determine no lower than the Applicant's admission. To go lower than the admission would create uncertainty as to the provisions in section 81(1)(b) of the Housing Act 1996	required by the lease). As we understood her final submissions, Ms Lin's case was that the Respondent had paid £150 in compensation to the leaseholder of number 1 in respect of (presumably) the disruption, but had not paid the same to the Applicant. It was not clear to us whether any payments had in fact been made, but in any event, the complaint does not relate to the payability or reasonableness of a service charge demanded. Ms Lin did not seek to argue that we should deal with it as a claim for a set-off. There is no relevant dispute for the Tribunal to adjudicate.

		Please see email for approval and Clause of Lease from **Appendix 26** – Work aproved email and Clause of Lease & pictures for repairing the leak from main pipe under the floorboard of Flat 3		
Certificate of expenditure	£800			As above. The charge is not recoverable.
DISPUTED SERVICE CHARGES S/C YEAR ENDED: 31 December 2023				
Management	2,800			The management fee in this year amounts to an increase from £300 to £350 per unit. The Tribunal accepts that this increased fee remains within the reasonable range of management fees for properties of this type. The charge was payable and reasonably incurred.
Building insurance	£3,886.08			As above. The charge was payable and reasonably incurred.

General maintenance	£1,500	Un-chargeable under lease. The leaseholder pays management fee. The freeholder and its management failed to respond to or provide maintenance or repair service to communal areas. They do not take responsibilities to investigate the problem in communal area or caused by communal facilities e.g., main pipe or building leak etc. So there is no points for the leaseholder to pay them a large amount of money for unknown general maintenance in advance while the freeholder did not provide such service. It should not encourage the landlord/freeholder to create works. Please provide evidence/quote for the costs, and the breakdown of the costs if it is necessary.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here.	The service charge under consideration in the schedule for this year is the interim service charge, and we take that into account in assessing the reasonableness of the service charges, which will be subject to the reconciliation process in early 2024. We consider that an interim charge in this sum is justified, and it is prudent for such a sum to be collected in the interim charge. Any misapplication or unreasonable expenditure may be challenged following reconciliation. The charge was payable and reasonably incurred.
Newham Council Enforcement	£1,800	Un-chargeable under lease and unreasonable in amount.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here	This is the first matter relating to enforcement action going back some years, which, Mr Ali

Notice Works (Fire Risk)		Do not think I need to pay it. Consider to pay £0. The Enforcement Notice (Fire Risk) is not to all flats, not to Flat 3 too. It was issued to Flat 1 or extended flats in 2016. The building was/is insured, an insurance payout covered previous costs or Enforcement Notice (Fire Risk) issued to Flat 1 in 2016. The freeholder repeatedly uses previous Enforcement Notice (Fire risk) to increase the demand and create works for higher estimated budget. The estimated demands are unreasonably very high in 2022 and 2023. The Enforcement Notice (Fire Risk) have lasted for more than 12 months. Please see the unreasonable same items and estimated amounts/budget (Used to dispute) and our rights from: **Appendix 11 -1:** Service Charge Demand Period: 01 January to 31 December 2023		told us, the managing agent was catching up with. Although initially asserting that an enforcement notice had been issued, Mr Ali subsequently agreed that they were proceeding on the basis of a letter from the local authority requiring compartmentalising work, consisting largely of replacing the front doors of the flats with fire doors. We note the unusual feature of the demise in the lease, such that the internal surface of the front door is demised and the external surface not demised. However, it is impossible for the Respondent to render its side of the door fire-safe to the required degree, and thus we consider it justified in replacing the doors as a whole. So considered, it comes within the Respondent's repairing obligation, and it is reasonable to perform that obligation in compliance with regulatory requirements.

		(dated on 12 June 2023), and **Appendix 11 -2:** Service it, the freeholder should not ask the leaseholder to pay for this again. And Flat 3 should not pay charge demands.		The charge was payable and reasonably incurred.
Newham Council enforcement notice works (satellite dishes)	£2750	Un-chargeable under lease and unreasonable in amount. Do not think I need to pay it. Consider to pay £0. Flat 3 has no TV aerial/dish or devices to watch TV programmes. I do not need and do not use Satellite dish. Meanwhile, there is no satellite dish in 317 Barking Road. Please see page 2 of **Appendix** **13.2** and **Appendix 18** – Satellite dishes, The Enforcement Notice (Satellite Dish) was only issued to flats of 315 Barking Road. The freeholder failed to provide the evidence for Enforcement Notice(satellite dish). I have no idea which year the notice was	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here	We were not provided with a copy of the enforcement notice. We note that the Applicant, in its written comments on the schedule, claims that it is only addressed to 315. Ms Lin drew our attention to a photograph that showed that there were, indeed, multiple satellite dishes on the external wall of 315, but there are none on the external wall of 317. Mr Ali said that some of the satellite dishes were redundant, and it was impossible to enforce against individual leaseholders. He also said that some of the dishes may serve residents in 317. Mr Bunzl submitted that if residents of 317 benefited from the dishes, they should contribute to their removal.

		issued and which flat it was issued to. And the satellite dishes were owned by each individual householder. Same, "The freeholder repeatedly uses previous Enforcement Notices (Satellite Dish) to increase the demand or create works for estimated budget. The estimated demand is unreasonably very high in 2022 and 2023. The Enforcement Notice (Satellite Dish) has lasted for more than 12 months. Please see the unreasonable same items and estimated amounts/budgets and our rights from: **Appendix 11 -1:** Service Charge Demand Period: 01 January to 31		We reject the Respondent's submissions. The relevant service charge relates to the Respondents' repairing covenants in relation to the external structure of 315. There is no work to be done in respect of 317. We do not know to whom the enforcement notice is directed, but it is more likely than not that Ms Lin is correct that it is directed at the landlord of 315. If it were directed at the Respondent, it would be defective, as the landlord of 315 has no responsibility for the structure/exterior of 315, and cannot pass on costs in the service charge for such work to the leaseholders of the flats in 317. The charge is not recoverable.
Newham Council Enforcement Notice Works	£3,500	Unreasonable in amount. Do not think I need to pay such high demand. Consider to pay £780.24, half of quoted £1560.48.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here. Pursuant to Yorkbrook Investments Ltd v Batten (1986) HLR 25, the Tribunal are	The enforcement notice was not provided, but is said to relate to the poor condition of all of the carpets on the stairs and corridors leading off the stairs.

(Carpets)		Never heard about Newham Council Enforcement Notice Works (Carpets). But consder to pay£1560.48 to replace the carpets on upstairs including the 3rd landing and 4thSatirway. The freeholder uses the Newham Council's Enforcement Notice as an excuse to demand a large amount of a cost for carpet. The carpets on upstairs including 3rd Landing and 4thCommunal Stairway (Please see the pictures from **Appendix 15)** need to be replaced. It only needs to replace some of communal carpets but not all of them. Particularly the torn carpet on 4thCommunal Stairway may cause someone to trip on the steps.	invited to determine the full service charges sought in the witness statement of Mr Chaudhary as payable, as the Tenant has failed to plead why the sums they wish to pay are reasonable. In any event, the Tribunal are asked to note the admission, and at the very least determine no lower than the Applicant's admission. To go lower than the admission would create uncertainty as to the provisions in section 81(1)(b) of the Housing Act 1996	Photographs provided in the bundle show that all of the carpets can properly be replaced. It is true that in some areas the carpet is less bad than in others, but throughout the quality of the carpet appears to be such that replacement is at least desirable, and for the most part necessary. We note the Applicant's alternative quotation for £1,560, or £1,960 for a sisal runner. The quotation does not appear to include the corridors off the stairwell, and the contractor does not appear to be registered for VAT (it does not state that it is, and the prices do not mention VAT). We consider that a managing agent may reasonably prefer to contact with a larger enterprise. It is unfortunate that we have not been provided with the Respondent's quotation. In respect of other figures, we have accepted the Respondent's evidence that the figure

		Please see attached pictures from **Appendix 15** for budget to replace carpet. Please see details and calculation for the carpet to be replaced: P8, P12, P14, P15, P16, P17 & P18 of **Appendix 15 –** Pictures and details for Carpet**.** Please see a quote from **Appendix 16 – Quote for replacing carpet** (*from the 4th communal stairway and 3rd landings to upstairs*). The quoted amount of £1560.48 covers materials and fittings. 315 and 317 Barking Road share communal stairs and communal area, the cost should be divided by 2. So consider to pay £780.24. The areas of communal stairs and landing areas are not big. It should not cost a lot. Please provide Newham Council Enforcement Notice (Carpets) for details if the freeholder		provided has already been divided between the two properties. But if that were correct in this instance, the cost of the whole of the work would be £7,000. That would, in our view, be clearly excessive for the areas concerned. Doing the best we can on the basis of the photographs and measurements available to us, and in the absence of the Respondent's actual quotation, we think the top of the reasonable range for carpeting would be £3,500, even in the context of an interim demand. In coming to this conclusion, we are applying our expertise in respect of costs in the London area, which is of a general nature, and not such as to allow us to disclose discrete pieces of evidence. Our decision in respect of communal lighting was that the floor area properly attributable to 317 is 20% of the total, and

		received a notice for different works. Please provide the evidence (3 quotes)for carpets		that must apply equally to the cost of the carpet. The cost of the carpet recoverable from the Applicant is their share of a total cost of £700.
Major works and project management of major works	These two items appear on the Scott schedule, but do not relate to any charge made within the years the subject of this application. Accordingly there is no question for the Tribunal to adjudicate in relation to them.			
Major works consultation fee	£1,200			We do not set out the comments of the parties, as Mr Ali told us that, while this was an element of the interim charge, it is now academic, as no consultation took place during the course of the year, and the charge would therefore be credited to the leaseholders in the imminent reconciliation. On that basis, we consider the appropriate course is to conclude that the charge is not recoverable.
Fire risk assessment	£288			As above. The charge was payable and reasonably incurred.

Fire alarm system service	£600			As above. The charge was payable and reasonably incurred.
Weekly fire alarm testing	£1,300	Unreasonable in amount/standard. Do not think I need to pay it. Consider £0 to pay. Unnecessary weekly testing for residential property. Twice annual Fire Alarm System service will satisfy the need. Only all fire alarm systems in commercial premises need to be tested weekly to ensure that there has not been any major failure. The flats in 317 Barking Road are used for residential purposes, not commercial renting. Please provide evidence to demonstrate which regulations require to test so often for residential properties and whom the cost paid to/will pay to.	Clause 6(5)(a)(e)&(f) &(i) of the Applicant's lease is relevant here.	We accept Mr Ali's evidence that weekly tests are necessary and required in the fire risk assessment. We expressed some concern that a simple press-button test required attendance by a specialist company, but we accept that the tests are necessary, and it is unrealistic to expect anyone to attend even for such a minimal test at a cost less than about £25 a visit which is what this charge amounts to. The charge was payable and reasonably incurred.

		The freeholder creates too many unnecessary items to increase service charge.		
Communal emergency lighting service	£300	Unreasonable in amount. Do not think I need to pay it. Consider to pay £0 It needs to spend £360 < (=£150 plus VAT) x 2 > for Fire Alarm System Service (x 2 annually). Then Communal/ emergency lighting service (x 2 annually) will be free, which is £0 315 and 317 Barking Road share the address. The cost should be divided by 2. Please see **Appendix 17** – Quotes and Enquiries for Fire Alarm System Installation and Service	Clause 6(5)(a)&(c)&(e)&(f) &(i) of the Applicant's lease is relevant here.	We accept Mr Ali's evidence that it is both necessary to service the emergency lighting twice a year, and that it is required by the risk assessment. The charge was payable and reasonably incurred.
Monthly emergency lighting testing		Unreasonable amount/ standard. Do not think I need to pay it. Consider to pay £0 UK fire regulations stipulate that the emergency lights	Clause 6(5)(a)&(c)&(e)&(f) &(i) of the Applicant's lease is relevant here.	We accept Mr Ali's evidence that it is both necessary to test the emergency lighting monthly, and that it is required by the risk assessment.

		should be turned on and off monthly to test them. The management company should not charge additional fee for turn on and turn off emergency lighting after Fire Alarm System installed in 2020, after they been trained to operate it. The management company should do management works.		The charge was payable and reasonably incurred.
Communal electricity	£375			As above. The charge was payable and reasonably incurred only to the extent of 20% of the combined cost of the communal electricity.
Certificate of expenditure	£800			As above. The charge is not recoverable

28. Before passing on from the schedule altogether, we note that the Applicant repeatedly complained of a lack of information from the Respondent. The Tribunal also noted a lack of consistent documentary evidence provided in the bundle. It is not part of our function under section 27A of the 1985 Act to punish a landlord for failing to provide adequate information to leaseholders. However, we think it fair to record our view that if the Respondent had been more willing to provide timely information, when reasonably requested, a number of the complaints made by the Applicant could have been avoided.

Applications for additional orders

29. The Applicant applied for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

30. We consider these applications on the basis that the leases does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that was the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

31. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

32. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

33. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. There is no indication here that the making of the orders would unreasonably adversely affect the Respondent, which, on the evidence, has a substantial portfolio of freeholds.

34. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

35. In this case, the applications clearly formally apply to both the variation application and the 27A application. The same is true as a matter of

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substance – a very major part of the Applicant's concern was with the proportion of the total expenditure that was being claimed from him. His objection was also very obviously well founded. It could and should have been accommodated when the additional flats were created by the Respondent, rather than have to be the subject of an application to the Tribunal. The Respondent accepted the principle of variation before us, but that was really an inevitable concession, on the facts of the case. Again, on the facts of this case, its insistence that (had we made an order direction variation under section 38(8)) the Applicant should pay the legal costs is surprising.

36. As to success and failure, then, the Applicant starts from a position of succeeding to the extent of 50% in monetary terms, as a result of the variation. In addition to that, while clearly the Respondent has the preponderance of success in relation to the section 27A application, the Respondent has also enjoyed significant successes.

37. Taking the matter in the round, therefore, we think it appropriate to allow the applications to the extent of 65%.

38. *Decision*: The Tribunal orders

(1) under section 20C of the 1985 Act that 65% of the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant; and

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that 65% of any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished.

Rights of appeal

39. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.

40. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

41. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

42. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case

number; state the grounds of appeal; and state the result the party making the application is seeking.

Name: Judge Prof Richard Percival **Date:** 31 January 2024

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/LVL/2023/0004**
Property	**:**	**Flat 3, 317 Barking Road, London E13 8EE**
Applicant	**:**	**Xiaochun Guan**
Representative	**:**	**Ms S Lin**
Respondent	**:**	**GH7 Investments Limited**
Representative	**:**	**Mr Bunzl of counsel**
Type of application	**:**	**For Variation of the lease**
Tribunal members	**:**	**Prof R Percival** **Mr R Waterhouse FRICS**
Date	**:**	**31 January 2024**

ORDER

Upon hearing the parties and considering the documentary evidence, the Tribunal orders under Landlord and Tenant Act 1987, section 38(2):

(1) that paragraph 9 of the particulars of the lease of flat 3, 317 Barking Road, Plaistow, London E13 8EE dated 25 February 2005 be varied by the deletion of the words “Twenty Five per cent (25%)” and the substitution for them of the words “Twelve and a half per cent (12.5%)”; and

(2) that the amendment effected by paragraph (1) of this order be effective from 18 May 2017.