FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AB/LSC/2024/0045**
Property	**:**	**50, 58, 62, 86, and 88 Trefgarne Road, Dagenham, RM10 7QS**
Applicant	**:**	**Andreea Radu (62), Alejandro Contreras Martinez (62), Zille Huma (50), Gladys Emma Kwafo (58), Aneta Chrominska (86) and Rebecca Etoh (88)**
Representative	**:**	**Andreea Radu**
Respondent	**:**	**The London Borough of Barking and Dagenham**
Representative	**:**	**Anthony Peak** **Senior Project Manager**
Type of Application	**:**	**Application to determine whether service charges are payable Section 27 of the Landlord and Tenant Act 1985 ("1985 Act")**
Tribunal Member(s)	**:**	**Judge Tildesley OBE** **Alison Flynn MA MRICS** **Jayam Dalal**
Date and venue of the Hearing	**:**	**10 Alfred Place London WC1E 7LR** **19 and 20 August 2024**
Date of Decision	**:**	**6 September 2024**

DECISION

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Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).

2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).

3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).

4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

Application

5. On 2 February 2024 the Applicants sought a determination of liability to pay and of reasonableness of service charges in the sum of £603,717.68 under Section 27A of the Landlord and Tenant Act 1985.

6. The sum of £603,717.68 is the costs of major works to the property which were started in December 2020 and completed around March 2021. On 10 August 2023 the Respondent demanded a contribution of £30,185.88 from each leaseholder which was to be paid over a period of five years until the end of 2028/29 service charge period.

7. The Applicants also made an application under section 20C of the 1985 Act to prevent the landlord from recovering the costs of the proceedings through the service charge.

8. The property known as 50-88 Trefgarne Road is a four storey block of 20 purpose-built maisonettes. The main elevation is facing south onto Trefgarne Road. The building's footprint is divided centrally with a single main entrance and communal area with stairs rising to the second floor. The building has two parts each of which are the same length. To the north side of the block the access walkway leading from the communal staircase provides access to the upper floor properties which are two storey maisonettes. All entrances to the maisonettes are to the rear of the block at the ground and second floor level.

9. The construction of the building is of solid brick walls with concrete floors under a bituminous felt covered concrete flat roof. Windows are generally double glazed uPVC with the exception of the communal area. The communal entrance is located centrally. This has full height screens to the front constructed in metal framing.

10. To the rear of the block is a large grassed area enclosed by a fence which has two blocks of stores (17 in total) constructed in brickwork with concrete flat roofs and a drying area with post and lines. The grassed area at the front of the property is open.

11. Seven of the maisonettes are held on long leases. The remaining 13 maisonettes are owned and tenanted by the Council. The Application has been brought by the owners of five of the seven long leases in the property. Mrs Zille Huma the leaseholder for Flat 50 completed the purchase of the maisonette under "Right to Buy" legislation on 12 June 2023. Mrs Huma's legal position is different from the other Applicants because she has the additional benefit of the protections under section 125 of the Housing Act 1985.

12. On 28 February 2024 the Tribunal directed that the Application would be heard in person on 19 and 20 August 2024. The parties were required to exchange their evidence. The Applicant supplied the hearing bundle.

13. The Tribunal inspected the property in the presence of the parties immediately prior to the hearing on 19 August 2024. The Tribunal saw the new communal entrance and the brick cabinet for the

mains electrical supply at the front of the building. The Applicants pointed out the external brickwork which they said had not been the subject of repairs. The Tribunal noted the private balconies to the second floor. The Tribunal entered the property via the communal doors. The Tribunal observed that the concrete path and area at the rear had not been renewed. The Tribunal inspected the two blocks of stores. one Applicant highlighted a loose fitting door frame to a store. The Tribunal saw from the ground, the new external lights for each maisonette, the safety rails fitted to the roof, the decorations to the communal walkway on the second floor and the new front doors to the upper maisonettes. The Tribunal ascended the communal stairs to the second floor and noted the protective covering to the walkway and the fire resistant boarding to the canopy underside. Mrs Etoh of 88 Trefgarne Road demonstrated the opening of the new front door. The Tribunal did not venture onto the roof. Finally the Tribunal was invited into 62 Trefgarne Road and shown evidence of water ingress in the upstairs bedrooms which was less pronounced than that displayed in the photographs in the bundle. The Tribunal understands that repairs had been carried out to stem the water ingress.

14. The Applicants attended the hearing in person on 19 August 2024. Mrs Radu, the joint leaseholder of 62 Trefgarne Road, represented the Applicants. Mr Peak, Senior Project Manager, spoke for the Respondent. Mr Faisal Bhatti, section 20 officer, Mr Brett Mayne, Service Charge Manager, and Miss Jane Shaw, Homeownership Manager, were also in attendance for the Respondent.

15. At the inspection Mr Peak informed the Tribunal about the existence of a witness statement dated 7 August 2024 made by Mr David Spiller, Group Financial Director at Potter Raper Limited. The Respondent's agent appointed Potter Raper to provide multi-disciplinary consultancy services including building surveying, quantity surveying, clerk of works, principal designer and project management for the major works which were the subject of this application. The Tribunal discovered that the Respondent had emailed the statement to the Applicants and Tribunal on 12 August 2024. The directions required the Respondent to send witness statements by 17 June 2024. The Respondent had not made an application to submit the witness statement late. The Tribunal admitted the witness statement in evidence. Mr Spiller did not attend the hearing to substantiate his witness statement.

16. At the beginning of the hearing on 19 August 2024 the Tribunal indicated to the Respondent that it had not included in its evidence: (1) The appendices to the Survey Report & Budget prepared 22 July 2019 by Potter Rapper Limited which included detailed budget costs, the specialist concrete report and flat roof report; (2) The tender report for the external works, and (3) The 2015 condition survey for the roof.

17. At the hearing the Tribunal heard from the parties in respect of their evidence presented in the Scott Schedule. Mr Peak was unable to give specific answers on some items of expenditure identified in the Scott Schedule. Mr Peak did his best but he did not have detailed knowledge of the major works. At the conclusion of the hearing on 19 July 2024 Mrs Radu expressed her disappointment with the lack of clarity on the Respondent's part to support its case for the major works. Mrs Radu stated that she had expected answers to her questions. The Tribunal decided to give the Respondent an opportunity to supply additional evidence for the major works in time for the commencement of the hearing on 20 August 2024.

18. The Respondent supplied (1) another copy of the Survey Report prepared 22 July 2019 but again without the appendices except the photographs; (2) a Table showing the estimated and actual costs for the major works: (3) the Tender Report, and (4) a Breakdown of the Description of Works for each expenditure item (hereinafter referred to as the "Specification". Mr Peak spoke to and was asked questions on those documents.

19. At the close of the hearing the Tribunal informed the parties that it would reserve its decision and make its determination on the evidence heard. The Tribunal indicated that it would not permit a party to submit further evidence. The Tribunal commended Mrs Radu for the manner in which she presented the leaseholder's case particularly as she had no prior knowledge or experience of Tribunals. The Tribunal acknowledged that Mr Peak had been put in an invidious position and expressed the hope that the Respondent would learn from this experience and ensure that it would be better prepared for Tribunal hearings in the future.

Decision

20. **The Tribunal determines that a sum of £462,520.99 is reasonable and payable for the costs of the major works to the property which was completed around March 2021.**

21. **The leaseholders of 58, 62, 86 and 88 Trefgarne Road are liable to pay a contribution of £23,126.05 to the costs of the major works payable over a period of five years ending with the service charge year 2028/2029.**

22. **The Tribunal defers its decision on the liability of Mrs Zille Huma, the leaseholder of 50 Trefgarne Road (see paragraphs 93-99). The Tribunal directs the Respondent to reconsider its position in the light of the comments at paragraph 93 onwards and consideration of the relevant documentation, legislative provisions and case law, and provide a response in writing to the Leaseholders of Flat 50 and the Tribunal by no later than 28 October 2024.**

Mrs Huma will be given a right of reply in writing which will be sent to the Respondent and the Tribunal by 25 November 2024. The Tribunal will reconvene on 3 December 2024 at 10.00am at the Tribunal Centre 10 Alfred Place London WC1E 7LR at which the parties must attend. The Tribunal will make a determination or issue directions for a further hearing. If the parties reach an agreement they must inform the Tribunal straightaway.

23. **A summary of the Tribunal's Decision is set out at Appendix One.**

24. **The Tribunal makes order under section 20C of the 1985 Act preventing the landlord from recovering the costs of the proceedings through the service charges.**

Reasons

25. Under section 27A of the 1985 Act the Tribunal may determine any issue arising as to liability to pay service charges.

26. When determining a section 27A application the Tribunal addresses the following three questions:

    a) Are the service charges recoverable as a matter of contract under the terms of the lease? This depends on general principles of construction. The Tribunal has jurisdiction under section 27A to determine questions as to the proper construction of the leases where doing so is necessary or incidental to making a determination as to whether the claimed service charge is payable;

    b) Are there any other statutory limitations on recoverability? These will include: the service charge consultation requirements imposed by section 20 of the 1985 Act; limitation under section 20B of the 1985 Act; leaseholder's protections under section 122 and schedule 8 of the Building Safety Act 2022; the provision of information regarding the landlord under sections 47 and 48 of the Landlord and Tenant Act 1987; the requirement for a summary of rights and obligations under section 21B of the 1985 Act and any applicable Limitation Act 1980 defences.

    c) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?

Are the Costs of the Major Works recoverable under the terms of the leases for the Applicants' maisonettes?

27. The hearing bundle included copies of the leases for 58, 62, 86 and 88 Trefgarne Road. The leases are granted for a period of 125 years

under the Right to Buy provisions of the Housing Act 1985 and are virtually in the same terms with some minor variations.

28. Sub-clause 4(3) requires the Lessee to pay the Corporation the service charge on the terms and at the times and in the manner set out in the Fourth Schedule.

29. Part 1 of the Fourth Schedule sets out the contractual machinery for the collection of service charges.

30. Paragraph 2 of Part 1 of the Fourth Schedule states that

> "Service Charge' means a reasonable and proper proportion (such reasonable and proper proportion to be ascertained by the Corporation by a reasonable and proper method which may vary in relation to different items of the aggregate of the costs expenses and outgoings described or referred to in Part 2 and Part 3 of this Schedule incurred or expected to be incurred by or on behalf of the Corporation in connection with the Services during the relevant year on the terms contained in this Schedule (herein called 'the Proportion')".

31. The Respondent adopted a proportion of one-twentieth for each leaseholder's contribution to the service charge which was based on the fact that there are 20 maisonettes in the property. The Applicants did not challenge the reasonableness of a proportion of one twentieth (1/20).

32. Paragraphs 3 and 4 of Part 1 of the Fourth Schedule deals with payments on account and the end of year adjustments to the service charge.

33. Part 2 of the Fourth Schedule defines the Corporation's covenants for insuring and repairing the Estate and for providing services. The costs of which can be recovered from the Lessees through the service charge.

34. Part 3 of the Fourth Schedule is a comprehensive list of "Other Items included in the Service Charge" which includes the provision of reserves, the reasonable and proper costs and charges of the Corporation in effecting the administration, and management of the Estate, the costs of managing agents, architects, surveyors, accountants, contractors, builders, gardeners and any other person firm or company, and any other costs expenses and outgoings reasonably and properly incurred by the Corporation in connection with the management of the Estate.

35. The lease for 58 Trefgarne Road differed slightly from the leases for the other properties in that the Corporation was permitted to add the sum of ten per cent or twenty-five pounds to the relevant expenditure for administration where no agent was appointed. The leases for the other three maisonettes did not have this proviso to

paragraph 11.3 of Part 3 of the Fourth Schedule. Instead these leases incorporated additional paragraphs at 10.15 and 10.16 to deal with the administrative costs of the Corporation which was not present in the lease for 58 Trefgarne Road. The Tribunal does not consider this variation between the lease for 58 Trefgarne Road and the other three leases had an impact upon the recoverability of the Corporation's administrative costs associated with the major works.

36. The Applicants made no substantive submissions on the provisions of the leases. The Tribunal is satisfied that under the terms of the leases the Applicants are liable to pay a service charge. The Tribunal considers that the Fourth Schedule to the leases is comprehensive and provides an exhaustive list of the costs that the Respondent can recover from the Lessees under the service charge. The Tribunal finds that the costs of the major works are catered for in the exhaustive list of costs in the Fourth Schedule. The Tribunal decides that the Respondent is authorised under the terms of the lease to recover the costs of the major works through the service charge.

Are there any other statutory limitations on recoverability of Service Charges?

Building Safety Act

37. The Tribunal directed the parties to notify it by the 18 March 2024 if they considered that the provisions of Schedule 8 to the Building Safety Act 2022 applied. On 21 March 2024 the Applicants indicated that Schedule 8 might apply and provided further information in their reply to the Respondent's case on 1 July 2024. The Applicants argued that they had the benefit of the Schedule 8 protections in respect of the costs for the fire doors to the second floor maisonettes, the replacement of the hardwood panels in the main entrance door, and the works to the balconies.

38. The Respondent did not comply with the Tribunal directions. The Tribunal was not assisted by the Respondent's failure to comply with the directions.

39. Section 122 and Schedule 8 of the 2022 Act contain provisions designed to protect leaseholders under "qualifying leases" from liability to pay some or all of the service charges which would otherwise be due from them as their contribution towards costs connected with "relevant defects". Schedule 8 applies to relevant building which is defined under section 117 of the 2022 Act as including any self-contained building in England containing at least two dwellings which is at least 11 metres high or contains at least five storeys.

40. The Tribunal finds that the property had four storeys. The Tribunal accepted Mr Peak's evidence that the property was not on the

Respondent's list of high rise buildings, and that it was unlikely to be at least 11 metres high. The Tribunal decided that the property was not a "relevant building" as defined in the 2022 Act.

41. The Tribunal, therefore, decides that the Applicants were not entitled to the Schedule 8 protections in respect of the costs for the fire safety works at the property.

Section 20 Consultation

42. The works to the property were carried out under an existing Qualifying Long Term Agreement (QLTA). This meant that the consultation requirements for the proposed works were not as extensive as when there is no QLTA in place. In this instance the consultation requirements are set out Schedule 3 of the Service Charges (Consultation etc) (England) Regulation 2002. Essentially a landlord is required to issue a Notice of Intention to carry out qualifying works. The Notice of Intention shall (1) describe in general terms the works proposed to be carried out; (2) state the landlord's reasons for carrying out the works, (3) contain a statement of the total amount of expenditure estimated by the landlord as likely to be incurred by it for the works , and (4) invite the making of representations within a period of at least thirty days beginning with the date of notice. The landlord is required to have regard to any representations made and to respond to them within 21 days. Once the landlord has met these requirements it is free to carry out the works.

43. In this case the Respondent sent the leaseholders a Notice of Intention to carry out the Works on 11 December 2019. The Respondent described the works as:

> "Full external enveloping of building comprising roofs, chimneys, fascias, soffits and rainwater goods, concrete repairs and brickworks, windows, doors, balconies, walkways, underground drainage, external walls, works to mechanical and electrical items, communal decorations, and associated works including asbestos removal and fire safety (where applicable)".

44. The Respondent's reasons for proposing the works were:

> "We consider it necessary to carry out these works because a recent condition survey undertaken by accredited surveyors has identified that components and elements of the building have reached, or are reaching, the end of their useful life and require renewal/repair".

45. The Respondent estimated the costs of the works to be £358,680.68 with a contribution of £19,727.44 inclusive of 10 per cent management fee from each leaseholder. The Respondent gave a date of 12 January 2020 for representations which was a period of 33 days including 11 December 2019.

46. The Tribunal understands that the only representation received in connection with the Notice of Intention dated 11 December 2019 was a telephone request for a breakdown of the costs from Mr Radu's husband. Mr Bhatti supplied a description of the works in response to the request.

47. The Applicants in their evidence highlighted that the estimated costs in the Notice of Intention was some £125,423.93 higher than the figure of £233,256.75 given in an earlier Notice of Intention on 5 October 2018, which was subsequently withdrawn; and some £245,037 lower than the final costs of £603,717.68 published on 10 August 2023. The Tribunal considers the disparity in the costs cited in the Notice of Intention dated 11 December 2019 with the costs of the earlier consultation and with the final costs did not impugn the integrity of the statutory consultation process. The Tribunal, however, accepts that the disparity may be relevant when considering the issue of reasonableness.

48. The Tribunal is satisfied that the Respondent fulfilled the necessary legal requirements under schedule 3 of the 2002 Regulations when it carried out its consultation in connection with the major works to the property.

Section 20B of the 1985 Act

49. Section 20B(1) provides that costs are not recoverable as service charge if they were incurred more than 18 months before being demanded. However by virtue of section 20B(2) the bar to recovery does not apply if the lessee is informed in writing by the landlord within 18 months of those costs being incurred that those costs had been incurred and that the same would be recoverable from the lessee.

50. On 27 April 2022 the Respondent issued a Notice under section 20B (2) to inform the Applicants that the total costs incurred to date on the major works was £512,188.35 and that they would be required to contribute to them by the payment of a service charge under the terms of their lease.

Service Charge Demands

51. Sections 47 and 48 of the Landlord and Tenant Act 1987 require demands for service charges to include the name and address of the landlord and for the landlord to serve notice in writing giving the tenant an address for service in England or Wales at which notices may be served on the landlord by the lessee. Section 21B requires a demand for service charge to be accompanied by a "Summary of the Rights and Obligations of Tenants of dwellings in relation to service charges". If a landlord fails to comply with these requirements the service charge is not payable until a corrected demand or section 21B Notice is served.

52. On 10 August 2023 the Respondent served the Applicants with a Schedule of Final Cost in respect of the major works. The Schedule informed the Applicants that the final cost of the works was £603,717.68 and that each Applicant's share was £30,185.88. Further the Respondent stated that it had apportioned the final costs equally amongst the number of dwellings in the block and that each Applicant's share of costs would be applied to the reserve fund account for his/her property. The Respondent stated that payment of the contribution would be spread over five years so that it would be fully paid up by the end of 2028/2029. The Schedule was accompanied by a Summary of the Tenant's Rights and Obligations.

53. The Applicants exhibited copies of the "Reserve Fund Statement from 1 April 2014 to 31 March 2023" and "Requests for Payment" for some of their maisonettes. The Reserve Fund Statement showed that the contribution to the major works expenditure was allocated to the 2019/2020 financial year. The Requests for Payment covered quarterly periods such as 1 January 2024 to 31 March 2024 and demanded contributions towards the service charge, ground rent and reserve fund.

54. The Applicants in their evidence identified errors and discrepancies with the periodic amounts demanded for the major works. This was an ongoing dispute with the Respondent's accounting department and was not a matter for the Tribunal.

55. The Tribunal observes that the Schedule of Final Costs dated 10 August 2023 operated as the service charge demand for the major works. The Tribunal considers that the Schedule of Final Costs did not meet the requirements of section 47 of the 1987 Act by not identifying explicitly the name address of the landlord. Similarly the Requests for Payment did not name the landlord and had no "Summary of Tenant's Rights and Obligations" attached. Further the Requests for Payment included contributions to Ground Rent which requires a separate section 166 Notice. The Applicants did not raise in their Application the issue of non-compliance with the various statutory requirements for service charge demands. Further non-compliance with the requirements for demands only suspends payments until the landlord remedies the defects by sending corrected demands and notices. In those circumstances the Tribunal makes no determination on compliance with the statutory requirements for service charge demands but suggests that the Respondent may wish to review its practices in the light of the observations made.

Reasonableness of the Costs

56. Section 19 of the 1985 Act provides that an amount of service charge is payable only to the extent that the costs are reasonably

incurred or where those costs have been incurred on the carrying out of works those works must be of a reasonable standard. This is commonly referred to as a "test of reasonableness" and operates by imposing a cap on the amount of service charge payable which can be recovered by the landlord. The test of reasonableness ensures that any element of the service charge which is not reasonable cannot be recovered, while allowing recovery of the reasonable element of the charge.

57. In *Waaler v Hounslow LBC* [2017] EWCA Civ 45 the Court of Appeal said in the context of s.19(1)(a) that "reasonableness" has to be determined by reference to an objective standard, not by the lower standard of rationality. The landlord's decision-making process is a relevant factor but this must then be tested against the outcome of that decision. The fact that the cost of the relevant works is to be borne by the lessees is part of the context for deciding whether they have been reasonably incurred. Where a landlord has chosen a course of action which leads to a reasonable outcome, the costs of pursuing that course of action will have been reasonably incurred even if there was a cheaper outcome which would also have been reasonable.

58. The Applicants argued that the costs of the major works were excessive and unaffordable. The Applicants highlighted discrepancies in the surveys of the building on 15 August 2018 and on 22 July 2019, and the unexplained significant increased costs for the works from the initial Notice of Intention on 5 October 2018 to the revised Notice of Intention on 11 December 2019 to the Schedule of the Final Costs on 10 August 2023. The Applicants complained that they had been charged for works which had not been done or completed to a reasonable standard. The Applicants expressed their dissatisfaction with the Respondent's response to their concerns which they said was dilatory and dismissive.

59. The Respondent stated that it had commissioned Be First, the urban regeneration arm of Barking and Dagenham Council to manage the works on its behalf. The Respondent said that Be First appointed Potter Raper to carry out a conditions survey of the property in July 2019 which recommended that various works to the property be carried out over the next 12 months. Potter Raper undertook a competitive tendering exercise amongst the contractors named in the QLTA for the works. Potter Raper appointed Mulalley & Co Limited as the approved contractor for the works and a contract period of 25.8 weeks was agreed. The Respondent asserted that Be First/Potter Raper ensured that the works met the specification in terms of products and installation and that the works represented good value.

60. The Tribunal approaches the question of reasonableness in two stages. The first stage is to evaluate the evidence overall and state the weight to be attached to the specific evidence and the issues

raised. The second stage is to consider the individual items of expenditure in the light of the factors identified in the overall evaluation and the explanation given by the parties at the hearing.

The Evidence

61. The conditions survey conducted by Potter Raper in July 2019 was persuasive evidence of the property being in disrepair and of the necessity for carrying out specific works remedy the disrepair. The Applicants relied on a letter dated 15 August 2018 from Maria Hitches, Building Surveyor employed by the Respondent, to challenge the necessity for the works. The letter informed the leaseholders that "they might see surveyors in or around the building for a few weeks from week commencing 27 August 2018, however, there was no need for the leaseholders to worry as there was nothing wrong with the building". The letter went onto say that "the purpose of the survey was to assess whether it was possible to build more new homes on the rooftop of the building to help with the shortage of homes in the Borough". The Tribunal observes that the survey mentioned in the letter of 15 August 2018 was not a conditions survey, and the comment from Ms Hitches that the leaseholders had nothing to worry about should be viewed in the context of the reason for the August 2018 survey. The Tribunal is satisfied that the Applicants adduced no compelling evidence to challenge the conclusions of the Potter Raper survey in July 2019.

62. The Breakdown of the Description of Works for each expenditure item (referred to as the "Specification") was helpful for providing further details of the proposed works .

63. The Tender Report for External Works – Batch 1A – 19/20 which confirmed that the Respondent had tendered the works to the contractors named in the QLTA, and that the contract was awarded to the contractor, Mulalley, with the second lowest tender. Potter & Raper confirmed that the tender was competitive and lower than the pre-tender estimate, and that they had recommended Mulalley instead of the contractor with the lowest tender because the latter's costs for preliminaries were unsustainably low. The costs given in the Tender Report, however, was for a tranche of nine properties, and was not exclusive to the subject property.

64. The estimated costs for the "External Enveloping Works" for 50-88 Trefgarne Road which provided a breakdown of the costs of the individual categories of work making up the major works on the property. The Respondent confirmed that the Estimated Costs totalled £358,680.96 were derived from the tender. This carried weight in the Tribunal's assessment of the reasonableness of the costs because the prices for the work had effectively been subject to market testing on two occasions: the contract prices given in the QLTA, and the competitive tendering exercise with the contractors

named in the QLTA. The Applicants supplied no alternative quotations for the proposed works.

65. The Notice of Intention to Carry Out Qualifying Works dated 5 October 2018 which cited an estimated cost of £233,256.75 with a leaseholder's estimated contribution of £12,289.00. The Respondent withdrew this Notice of Intention because Be First had advised it that "as part of a global review of the Capital Works programme for the next two years, this scheme of works had been deferred in order to accommodate additional blocks where similar works are required". According to Be First, this had resulted in a review of the tendering process, with the intention of awarding a better value for money contract. The Applicants argued that the much lower figure given for the estimated costs in the October 2018 Notice of Intention undermined the higher estimated (tendered) costs in the subsequent December 2019 Notice of Intention and the significantly higher figure for the actual costs. The Applicants commented that the disparity was even more remarkable because the purpose of cancelling the proposed works in October 2018 was to enable the Respondent to achieve better value for money. The Tribunal considers the comparison between the proposed works in October 2018 and those proposed in December 2019 was not on a like to like basis. The Tribunal observes that the scope of works cited in the October 2018 Notice was limited to "renew roof covering, make good to brick work, jet wash external, decorate previously painted surfaces & communal repairs and replacement of front entrance doors". The proposed works in the December 2019 Notice were much more extensive which probably accounted for the difference in the estimated costs in the two Notices. The Tribunal also did not know how the estimated costs in the October 2018 Notice were arrived at. The Tribunal did not attach weight to the estimated costs in the October 2018 Notice.

66. The Schedule of Final Costs supplied a figure of £603,717.68 for the total costs of the works which was £209,168.91 (53 per cent) more than the estimated costs of £394,548.75 derived from the tender. The breakdown of the Final Costs schedule showed that the costs incurred by the Contractor was £506,557.09, £172,819.44 (51 per cent) more than the costs of £333,737.65 agreed with the Contractor under competitive tendering. This significant departure from the tendered costs raised questions about the reasonableness of the costs particularly in respect of the increased element, and the potential prejudice to leaseholders who had no involvement in the changes to the specification. In this regard the Tribunal placed the onus on the Respondent to justify the variations in actual costs from the costs agreed in the tender.

67. The Tribunal directed the Respondent to supply by 17 June 2024: a completed Scott schedule; copies of all relevant invoices, all documents upon which the landlord intends to rely, a statement regarding the lease provisions, and any signed witness statements

of fact. The hearing bundle contained the Respondent's reply to the Scott Schedule and a document entitled "Leasehold Property Major Works Option". The bundle contained other documents originating from the Respondent including the survey without appendices, service charge demands, and section 20 correspondence which the Applicants had supplied. There were significant omissions in the Respondent's evidence such as no witness statements, no invoices, no appendices to the survey, and no tender documentation. At the inspection Mr Peak informed the Tribunal of the existence of a witness statement from David Spiller of Potter Raper Limited dated 7 August 2024 which the Tribunal obtained in time for the hearing. Mr Peak advised the Tribunal that the Respondent was not calling Mr Spiller as a witness and that he would be conducting the Respondent's case. The Tribunal permitted the Respondent to supply further documentation on the second day of the hearing to substantiate its case. The Tribunal, however, was mindful of its overriding duty of fairness to both parties, and that a party is ultimately responsible for the conduct of its case. The Tribunal is obliged to make its determination on the evidence before it. There remained serious shortcomings with the Respondent's case, and on occasions Mr Peak was unable to supply a convincing explanation for the costs incurred. The Tribunal treated Mr Spiller's witness statement with circumspection because his evidence was not subject to cross-examination.

68. The Tribunal considers its inspection of the property together with the photographs of the property before the commencement of the works helpful in its assessment of the works done and their likely costs having regard to its expertise and general knowledge of property matters.

69. The Applicants challenged the service charges on the ground that they were unaffordable. The general position is that where the works of repair are required, and there is reciprocal duty on the leaseholder to contribute to the cost of the repair, the lessee's means are usually irrelevant to the issue of whether the cost of the works is reasonably incurred. This is subject to the limited circumstances where there is an unexpected increase in service charges and the financial impact of such an increase may be a relevant consideration in a decision on how and when to effect repairs. In this case although the Respondent has not decided to phase the works, it provided options to enable the leaseholders to pay the costs over time by year end 2028/2029 or take out a discretionary voluntary charge. The Tribunal decides that the Respondent's action of offering the leaseholders various payment options demonstrated that it had given due regard to the means of the leaseholders when commissioning the works, and, therefore, it was not a matter that impacted on the reasonableness of the costs of the major works.

70. The Tribunal sums up its overall approach to the question of the reasonableness of the costs incurred on the major works. The Tribunal places weight on the Potter Raper survey to demonstrate that the property was in disrepair and that the programme of works was necessary to deal with the disrepair. Further the "Specification" was helpful in identifying the scope of the works. Next the Tribunal is satisfied that the estimated costs for the works were the outcome of comprehensive market testing and prima facie reasonable subject to whether the works were carried out to the required specification. The issue in this case was whether the significant increase in costs from the estimated costs in relation to specific items of expenditure were justified and reasonable which required an evaluation of the Respondent's explanation for the increase in the context of the entirety of the evidence. Finally the Tribunal assessed the reasonableness of the management against its decisions on the costs of the works, and the standard of service provided by the managers.

Individual Items of Expenditure

71. The Tribunal now deals with its findings on the individual items of expenditure which are summed up in Appendix One.

72. **Preliminaries**: an increase from £36,631.06 to £69,713.50; the costs related to site establishment, management, running costs, plant and equipment and insurances. Mr Peak suggested that the increased costs were a result of the agent awarding the contractor extensions of time to the contract. Mr Spiller referred in his witness statement to an eight week extension given to the contractor to install the steel doors and screens to the front entrance. The Tribunal notes that the overall contract term for Tranche 2 was 25.8 weeks, and that included works on nine different buildings. Eight weeks on the face of it appeared excessive. Mr Peak offered no explanation why an increase in the contractual period would result in the doubling of the preliminaries costs. Finally the increase in the preliminaries would appear to arise from an incorrect specification of the works. The Tribunal determines £36,631.06 reasonable.

73. **Access:** £41,319.00 to £43,093.50: this related to the costs of scaffolding, and not to the costs of the new entry door system as suggested in the Respondent's reply to the Scott Schedule. The increase in costs is minimal from the tender costs. The Tribunal determines £43,093.50 reasonable.

74. **Roof Works**: £88,842.58 to £105,959.43: the covering on the flat roof was in disrepair and required replacement. The additional cost was in part due the fixing of new safety rails. The increase was relatively modest, and within the bounds of reasonableness. The Tribunal determines £105,959.43 reasonable.

75. **Rainwater Goods**: £1,404 to £5,772.05: The increase in costs was a result of replacing defective rainwater pipes instead of repairing them. The increase was modest. The Tribunal determines £5,772.05 reasonable. The leaseholder of 62 Trefgarne stated that the works were not to the required standard because her property suffered water ingress. The Tribunal understands that the Respondent has now rectified the problem.

76. **Drainage:** £2,179 to £2,179: No change in the tendered costs. The Tribunal is satisfied that the works were completed. The Tribunal determines £2,179 reasonable.

77. **Concrete Works:** £32,153.25 to £5,705.42. Mr Peak believed that the costs of concrete repairs had been included wrongly in the figure of £88,472 for the costs of external repairs. Mr Spiller in his witness statement identified a substantial increase in the costs for the concrete repairs. Mr Spiller said that "following scaffold access and concrete/brickwork surveys and testing it was agreed that the repairs required to these blocks was extensive as identified within the concrete surveys, repair logs and photos. Costs were going to far exceed the pricing schedules". The Tribunal, therefore, decided that the figure of £88,472 should be transferred to this expenditure head in place of the £5,705.42 from the external repairs expenditure head. Mr Peak, however, was unable to justify the increase from £32,153.25 to £88,472, and to give information on what concrete repairs had actually been carried out. Mr Spiller's statement required clarification because the conditions survey referred specifically to the full survey of the concrete elements. This suggested that the tender price would have taken account of the recommendations of that full survey. The leaseholders had spoken to the contractors on site who had indicated to them that the concrete on the balconies was in reasonable condition. The Tribunal determines £32,153.25 (the tender costs) reasonable.

78. **Windows:** £11,365.98 to £5,679.64: The Applicants referred to the survey report which said that the windows were in fair condition and did not require replacement. Further the survey identified that any repairs to windows would be minimal. After speaking to other tenants, the Applicants were adamant that no repairs on windows had taken place. Mr Peak was unable to identify the nature and location of the repairs, and there were no invoices provided to the Tribunal to identify what works, if any had been done to the windows. The Tribunal decides that the amount for windows should be nil.

79. **Doors**: £47,029.36 to £57,827.98: the costs covered the replacement of the doors to the outside stores, the fitting of new fire safety front doors to the second floor maisonettes and the installation of a new door entry system. The survey found that the outside store doors were in a state of disrepair, and that the door entry system was not working. The fire risk assessment of the

building recommended fire safety doors for the second floor maisonettes because of the restricted means of escape. The increase in costs from the tender was primarily due to the costs of the fire safety doors and the new door entry system. Under the tender an overhaul of the door entry system was costed, however, it was not possible to source parts for the existing system. The Applicants said that there were problems with the new entry system, the fire doors were heavy and badly fitted, and that parts of the fittings of the store doors had come away. The Tribunal understands that there were teething problems with the door entry system which the Respondent is addressing. The Respondent informed the Tribunal that it had carried out further repairs to the store doors, which according to the Respondent had been vandalised. The Applicants disputed the allegation of vandalism. The Tribunal understands that the Respondent has carried out the subsequent repairs to the stores at no additional cost to the leaseholders. The Tribunal considers the new fire doors fit for purpose and did not agree with the Applicants' concerns about them. The Tribunal determines £57,827.98 reasonable.

80. **External Walls:** £4,463.65 to £88,472.24: as explained earlier Mr Peak believed that the figure of £88,472.24 represented the costs of the concrete repairs and not those of the external wall repairs. The survey reported under "External Walls" that the brickwork render was in fair condition with minimum defects. The survey recommended minor brick pointing and cleaning off stains to the brickwork. The Tribunal determines £4,463.65 reasonable.

81. **Communal Decorations**: £4,720.10 to £40,651.43: Mr Spiller indicated in his witness statement that the increased costs were primarily due to the replacement of the communal entrance screen and door. According to Mr Spiller, the Respondent had expected to redecorate and repair the existing frame for the communal entrance screen. However, on further investigation the existing entrance scheme was found to be in a worse condition and that full replacement would give a better long term solution. The works included removal of plywood panels, installation of protective sheeting, grit blasting, priming and finishing, installation of steel powder coated panels and new replacement steel door sets. The Respondent supplied no costings for the additional works, the Tribunal, however, accepts that the additional costs would have been significant. The Applicants questioned the standard of decoration for the window sills which was now peeling, and said that the railings had originally been painted in the wrong colour. The Respondent asserted that the Applicants had not been charged twice for decoration of the railings. Following its inspection the Tribunal considered that the communal decorations had been completed to a reasonable standard. The Tribunal determines £40,651,43 reasonable.

82. **Mechanical & Electrical**: £34,901.46 to £62,124.89: the survey identified that the lateral main to the property was last upgraded in the 1960's or 1970's and that a full survey of both the cable and the equipment by a qualified electrical consultant was required. A provisional sum was allocated for these works in the tender. This expenditure head also included the costs of replacing the emergency lighting and the lights outside the door entrances of the individual maisonettes. The increase in costs was due to the relocation of the lateral mains to the front of the property involving new heads and new power supplies from the road to the property, the construction of a new intake cupboard, and the improved specifications for light fittings and electrical containment which included white powder coating multi-compartment permitting the future installation of additional wiring. The Tribunal was satisfied with the Respondent's explanation for the increase in costs. The Tribunal determines £62,124.89 reasonable.

83. **Fire Safety**: £7,735.50 to £6,705: The Tribunal understands that the works involved the installation of fire resistant boards to soffits of the communal and balcony canopies. The Tribunal determines £6,705 reasonable.

84. **External Works:** £4,880 to £11,855.10: the Specification indicated that this expenditure head covered the costs of renewing the in-situ concrete path, re-levelling concrete flagging and jet washing the staircase and ground hardstanding. The Specification had allocated the costs of the works to the stores under "Doors", and "Communal Decorations". The Applicants pointed out at the inspection that no works had been done to the concrete path and paving. The Tribunal doubts that the costs of jet washing the stairs would account for the costs of external works. The Tribunal decides that the amount for external works should be nil.

85. **Asbestos**: £179.48 to £817.02: the Respondent stated that this covered all necessary items related to asbestos, some of which may not have been apparent during surveys. The Applicants disputed this by reference to the Asbestos Identification Plaque affixed to the building which identified two areas of asbestos: electrical flash guards and bitumen electrical cable wrap in the electric cupboard. The Applicants said this would have been known at the time of the conditions survey. The Tribunal notes that the conditions survey allowed a provisional sum for the mains electrical works because the scope of the works was not known at the time. The Tribunal considers the increase in cost modest. The Tribunal determines £817.02 reasonable.

86. **Performance Bond**: £641.99 to £742.99: The Tribunal understands that the Respondent incurred this cost to insure against the risk of default by contractor. It appears that the cost is calculated as a percentage of the costs of the works. The Tribunal determines that the estimate of £641.99 is reasonable.

87. **Framework Fee**: £835.95 to £967.37: Mr Peak explained that the Respondent had to pay a fee for applying the QLTA for building contracts. Mr Peak was unable to provide further information on the calculation of the fee and why it was part of the costs of the major works in question. The Tribunal considers Mr Peak's explanation inadequate, and did not understand how such costs could be regarded as part of the costs of the major works. The Tribunal decides that the amount for the framework fee is nil.

88. **Building Control**: £4.661.82: Mr Peak explained that this was a fixed fee required by law. The Applicants complained that they had not been informed of this charge until they received the Schedule of Final Costs. The Tribunal is satisfied that the costs of building control can properly be regarded as part of the costs of the major works. The Tribunal determines £4,661.82 reasonable.

89. **Be First Fees:** £23,465.09 to £35,905.04: this represented costs of managing the major works project calculated by means of a per centage of the costs of major works including the disbursements (performance bond, framework fee and building control). Mr Peak said that Be First charged a rate of seven per cent. The Tribunal considers that an escalation in the major work costs of over 50 per cent from the tender was prima facie evidence that Be First lost control of the project. Also Mr Spiller in his witness statement did not mention the leaseholders which indicated a disregard of the leaseholders' interests in the costs of the project. The Tribunal decides that a reduction in the fee is merited and determines a fee of £19,000 as reasonable (just below 5 per cent of the costs of the major works less disbursements).

90. **Respondent's Management Fee**: £35,868.07 to £54,883.42**:** this represented the Respondent's administration costs associated with the major works including the costs of the section 20 consultation, service charge demands, and dealing with leaseholders. The Respondent charged a rate of 10 per cent of the costs of the major works which included the disbursements and Be First Fees. The rate of 10 per cent was stated in the lease for 58 Trefgarne Road but omitted from the other leases. The Tribunal considered the practice of charging 10 per cent against the entirety of the costs of the major works including the fees of Be First not in line with industry practice. In the Tribunal's experience the management costs associated with major works are split between the administration and project management calculated as a percentage of the costs incurred by the contractor on the major works. Also in this case the Respondent was claiming an additional percentage on the Building Control Fee charged by the Respondent which was fixed by law. The Tribunal, therefore, considers the correct reference point for the management percentage charge is the major works costs of the contractor. The Tribunal considered whether there should be a reduction in the percentage charge for

the standard of service provided by the Respondent. The Tribunal decided against this because Be First was primarily responsible for the costs overrun of the major works. The Tribunal determines £39,873.93 reasonable for the Respondent's management fee.

91. The Tribunal determines £462,520.99 reasonable for the costs of the major works. The Applicants are required to contribute each £23,126.05 towards those costs.

Section 20C Application

92. The Respondent raised no objection to the application and indicated that it had no intention of recovering the costs of the proceedings through the service charge. The Tribunal is satisfied that the Applicants conducted the proceedings in a proper and efficient manner, and that they have been partly successful in securing a significant reduction in their contribution to the costs of the major works. The Tribunal finds that it is just and convenient to make an order under section 20C preventing the landlord from recovering the cost of its proceedings through the service charge.

Mrs Huma and 50 Trefgarne Road

93. The leaseholders of 50 Trefgarne are in different position from the other Applicants. They were Council tenants at the time of completion of the major works and would not have been responsible to contribute to the costs of the major works. The leaseholders, however, claimed their right to buy under the Housing Act 1985 which the Tribunal understands was dated 14 December 2022. The Respondent accepted their Claim on 13 January 2023. The lease was said to have been completed on 12 June 2023.

94. Where a lease has been granted under the Housing Act 1985 the leaseholder's liability is limited for service charges and improvement contributions during the initial period of lease usually five years. When the Council serves the Notice accepting the Claim it must provide estimates for the likely service charges that will be incurred in the reference period which usually begins with the date of the lease and ends five years after the grant. The leaseholder's liability for service charges during the first five years is as a rule limited to the maximum of the estimates of the service charges in the Notice. In Mrs Huma's case the Respondent restricted her contribution for the major works to £24,736.55 in accordance with the estimates given in the Housing Act 1985 Notice.

95. At the hearing the Tribunal questioned whether the Respondent was entitled to recover costs that had been incurred before the issue of the section 125 Notice Claim and Notice. The Respondent said that it was a grey area, and relied on the demand for service charges

dated 10 August 2024 which was after completion of the lease on 12 June 2023.

96. This issue regarding Mrs Huma liability under the Housing Act 1985 had not been identified clearly in the Application and the Respondent had not addressed it in its reply to the Application. The hearing bundle did not include a copy of the lease for 50 Trefgarne Road, and copies of the various section 125 Notices.

97. The Tribunal considers that there may be a case that the Respondent is not entitled to recover a contribution for the major works from the leaseholders of Flat 50. The available evidence indicated that a substantial proportion of the costs for the major works were incurred before the 27 April 2022 (the date of the section 20B notice). The Lands Tribunal decision of *Nicholas Hyams, Emma Anderson v Wilfred East House* 2006 WL 4110808 found that the leaseholders were not liable for costs incurred before the start of the reference period identified in the section 125 Notices. The date for determining when costs are incurred is when the contractor tendered its invoice for works done. The date of the service charge demand is not determinative of the date when the costs were incurred.

98. The Tribunal accepts that this is a complex issue and may turn on the terms of the section 125 Notices and the lease which were not before it at the hearing.

99. The Tribunal directs the **Respondent** to reconsider its position in the light of the above comments and consideration of the relevant documentation, legislative provisions and case law, and provide a response in writing to the Leaseholders of Flat 50 and the Tribunal by no later than **28 October 2024**. **Mrs Huma** will be given a right of reply in writing which will be sent to the Respondent and the Tribunal by **25 November 2024**. The Tribunal will reconvene on **3 December 2024 at 10.00am** at the Tribunal Centre 10 Alfred Place London WC1E 7LR at which the parties must attend. The Tribunal will make a determination or issue directions for a further hearing. If the parties reach an agreement they must inform the Tribunal straightaway.

Appendix One Breakdown of Costs of Major Works & Summary of Tribunal's Decision				
Works	Tender (£)	Actual (£)	Decision (£)	Reasons
Preliminaries	£ 36,631.06	£ 69,713.50	£ 36,631.06	Increased costs most likely due to extending the contract unreasonable to expect leaseholders to pay for those costs
Access	£ 41,319.00	£ 43,093.30	£ 43,093.30	Costs of Scaffolding reasonable
Roof Works	£ 88,842.98	£ 105,959.43	£ 105,959.43	Costs supported by specification. Increase within bounds of expected variation for completed works
Rainwater Goods	£ 1,404.00	£ 5,772.05	£ 5,772.05	Reasonable
Drainage	£ 2,179.99	£ 2,179.99	£ 2,179.99	Reasonable
Concrete Works	£ 32,153.25	£ 5,705.52	£ 32,153.25	See 12 below. The specification is extensive. The tender is the best evidence of reasonableness of costs.
Windows	£ 11,365.98	£ 5,679.64	£ -	No explanation of the works. Unreasonable
Doors	£ 47,029.36	£ 57,827.98	£ 57,827.98	Increase due to fire doors. Reasonable
External Walls	£ 4,463.85	£ 88,472.24	£ 4,463.85	Believed the actual costs include costs of concrete repairs. Works done to external walls minimal tender costs reasona
Communal Decorations	£ 4,720.10	£ 40,651.43	£ 40,651.43	Increase primarily due to the extensive works on the communal entrance. Reasonable
Mechanical & Electrical	£ 34,901.46	£ 62,124.89	£ 62,124.89	Increase due costs of new heads for supply of electricity and change in specification: Reasonable
Fire Safety	£ 7,735.50	£ 6,705.00	£ 6,705.00	Fire resistant boards to soffits of communal and balcony canopies: reasonable
External Works	£ 4,888.80	£ 11,855.10	£ -	No explanation for the works. Unreasonable
Asbestos	£ 179.48	£ 817.02	£ 817.02	Reasonable
Contingency	£ 15,922.84	£ -	£ -	
Total for Works	£ 333,737.65	£ 506,557.09	£ 398,379.25	
Performance Bond	£ 641.99	£ 742.92	£ 641.99	Insurance against contractor default. Adopted tender figure
Framework Fee	£ 835.95	£ 967.37	£ -	No explanation
Building Contol	£ -	£ 4,661.82	£ 4,661.82	Fixed fee
BeFirst Fees	£ 23,465.09	£ 35,905.04	£ 19,000.00	Reduced on grounds of service not to reasonable standard
Total	£ 358,680.68	£ 548,834.24	£ 422,683.06	
Management Fee	£ 35,868.07	£ 54,883.42	£ 39,837.93	10 per cent of the actual cost of works
Total Cost of Works	£ 394,548.75	£ 603,717.66	**£ 462,520.99**	
Cost per dwelling	£ 19,727.44	£ 30,185.88	**£ 23,126.05**	

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RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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