



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : LON/00AM/LSC/2024/0353

**Property** : 1-14, 234 Dalston Lane, London E8 1LA

**Applicant** : Mr Devon Taylor

**Representative** : Mr Peter Gunby FRICS (director of B Bailey Property Management Limited)

**Respondents** : Ms Eunsook Park (Flat 12) and 13 other lessees of flats 1-14, 234 Dalston Lane

**Representative** : Mr Kevin Newbery (representing Ms Eunsook Park)

**Type of application** : For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985

**Tribunal members** : Judge J Moate, Judge H Carr, Mr J Naylor FRICS FIRPM

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 10 March 2025

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**DECISION**

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**Decisions of the tribunal**

- (1) The tribunal determines that the 2024 interim service charge sum of £218,390.02 demanded in respect of the section 20 consultation works is payable and reasonable.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of the interim service charge payable by the Respondents in respect of the section 20 consultation works in the service charge year 2024. .

### **The hearing**

2. The Applicant was represented by Mr Peter Gunby FRICS (director of B Bailey Property Management Limited) at the hearing and Ms Eunsook Park attended in person, assisted by her Property Consultant Mr Kevin Newbery. The other 13 lessees did not engage in the proceedings, nor did they appear at the hearing. For convenience, Ms Eunsook shall hereinafter be referred to as “the Respondent”.

### **The background**

3. The property which is the subject of this application is set out in detail in the Decision of Judge Robert Latham dated 30 November 2023 in case reference LON/00AM/LSC/2023/0189 and will not be repeated here.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **Preliminary issue**

6. At the start of the hearing the tribunal considered the Applicant’s application to rely on an expert report. The tribunal noted that this application had not been put before a procedural judge or listed for hearing. The report in question appeared at p48 of the bundle and was prepared by Mr Gunby, on behalf of the Applicant. The Respondent had seen the report.
7. The tribunal decided that the Applicant could not rely on Mr Gunby to give expert evidence as there was a conflict of interest, he being the property manager and representative in the proceedings. The tribunal therefore decided to treat the report as Mr Gunby’s statement.

## **The issues**

8. The parties identified the relevant issue for determination as follows:
- (i) **The payability and/or reasonableness of the interim service charge for 2024 relating to the section 20 consultation works.**
9. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal has made a determination on this issue as follows. References to page numbers in square brackets refer to page numbers in the hearing bundle.

## **The interim service charge for 2024 relating to the section 20 consultation works in the sum of £218,390.02**

10. The Respondent raised three challenges to the sum demanded:
- a) The difference (namely £36,318.35) between:
- i) £218,390.60, the estimated cost of the section 20 consultation works, prepared for the purposes of the interim service charge raised on 11 December 2023 [p85] (“the interim service charge sum”), and
  - ii) £182,072.25, the amount quoted in the second stage consultation letter dated 16 May 2024 [p107] (“the stage 2 consultation sum”).
- b) The charge for inflation at 15%.
- c) The consequential increase in the estimated professional fees.
11. Although a determination of liability for the lessees to contribute towards the s20 consultation works was sought within the application, there was no dispute about liability under the lease, the s20 consultation process or the provisions of the lease in respect of the payment of an interim service charge.
12. Pursuant to the terms of the Lease at paragraphs 9.1.3 [p185] and following the decision of Judge Latham dated 30 November 2023 [para 3, p64] the Applicant was required to raise an estimated interim charge to be paid on account of anticipated expenditure in the upcoming accountancy period.
13. Mr Gunby explained that based on quotes from three builders [p225] he estimated that the likely cost of the works would be £155,976. He added to this a contingency of 10%, which is standard practice, and an inflationary contingency of 15%. Mr Gunby explained that the inflationary contingency was due to the high rate of inflation in

construction work at that time. On top of this, he added his own professional fees of £20,270.96 (including VAT) for overseeing the work and drawing up a specification and a further £810 in fees for the upcoming s20 consultation. This gave a total figure of £218,390.60 [p226].

14. Mr Gunby stated that the lower figure of £182,072.25 quoted in the second stage consultation letter dated 16 May 2024 [p107] was calculated following the s20 consultation. This figure is made up of the quote from the selected tender in the sum of £131,238.00 plus a contingency of 10%, which is standard practice, and an inflationary contingency of 15%. On top of this, he added his own professional fees of £16,944.75 (inclusive of VAT) for overseeing the work and drawing up a specification and a further £1,080 for the s20 consultation fees. This gave a total figure of £182,072.26 [p112].
15. Mr Gunby explained that he used the same inflationary contingency of 15% when calculating the stage 2 consultation figure because although the rate of inflation in construction work was not as high in 2024, he was concerned that the selected tender may have underestimated the final cost, particularly because the other three tenders all came in substantially higher [p109-111]. He had therefore allowed 5% for inflation and an additional 10% contingency. He accepted that he had not explained this reasoning to the leaseholders.
16. The reason for the difference between the two figures (£218,390.60 and £182,072.25) was that the interim charge was estimated before the s20 consultation whereas the costs under the s20 consultation were calculated based on the 3-stage process and full specifications. Mr Gunby explained that in accordance with the terms of the lease at clause 9.4 [p185] any excess interim charge paid would be carried forward and credited to the tenant in the succeeding accounting period.
17. The Respondent argued that the difference could have been deducted at the half-yearly interim charge payment date. Mr Gunby's response was that there was no provision for half-yearly deductions in the Lease and that tenants would get the benefit of any excess charge paid in the subsequent accounting period.
18. The Respondent further contended that the Applicant had unnecessarily charged a 15% inflationary contingency which in turn inflated his own professional fees.

### **The tribunal's decision**

19. **The tribunal determines that the 2024 interim service charge sum of £218,390.02 demanded in respect of the section 20 consultation works is payable and reasonable.**

### **Reasons for the tribunal's decision**

20. The tribunal found that Mr Gunby's explanation about 15% inflationary contingency was reasonable. The tribunal considered that it was unfortunate that Mr Gunby's reasoning had not been fully communicated to the leaseholders at the time. However, it would be worse for the parties to find that the cost of the works was not covered as this would result in further delay and/or partial completion. The tribunal noted that the mechanism in the lease at clause 9.4 meant that any excess charge would be credited in the subsequent accounting period.
21. The tribunal considered that the Respondent's objection to the difference between the interim charge of £218,390.60 and the subsequent s20 consultation figure of £182,072.25, was misconceived. The application was in respect of the reasonableness of the interim service charge and was not a comparative exercise. In December 2023, the estimated figure of £218,390.60 for the interim service charge was reasonable based on the information available to Mr Gunby at the time. The fact that the figure obtained following the s20 consultation (£182,072.25) was lower than the interim charge, did not change that.
22. The tribunal found that there was no process within the lease for reducing the interim service charge part way through the accounting year.
23. The tribunal found that there was no basis for the Respondent's contention that Mr Gunby was unnecessarily inflating his professional fees. Any excess fee would be credited back under the mechanism at clause 9.4.
24. The tribunal noted that Mr Gunby had prepared the draft accounts for 2024 and that a credit was due to the leaseholders.

### **Application under s.20C and refund of fees**

25. No application was made by the Respondent with regards to s20C of the 1985 Act.

**Name:** Judge J Moate

**Date:** 10 March 2025

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 regional office which has been dealing with the case.

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

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).