FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2024/0671**
Property	**:**	**Belgrave House, 1-7 Clapham Road, London, SW9 0JP**
Applicants	**:**	**Dr Olinga Taeed, Tomasz Krzewina, Helen Downing, Ernesto Palidda, Rob and Mrs J Clutton, Freddie Johnson and Oliver Rabbie**
Representative	**:**	**Dr Olinga Taeed**
Respondent	**:**	**Belgrave Hall Management Limited**
Representative	**:**	**Robyn Cunningham, Counsel, instructed by Birketts LLP**
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 Bernadette MacQueen** **Mr Fonka, FCIEH CEnvH M.Sc**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**4 April 2025**
Date of decision	**:**	**22 April 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the service charges for 1 December 2022 to 30 November 2023 as demanded by the Respondent are payable by the Applicants.

(2) The Tribunal determines that the service charges for 1 December 2023 to 30 November 2024 as demanded by the Respondent are payable by the Applicants.

(3) The Tribunal makes the determinations as set out under the various headings in this Decision.

(4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985. This means that the Respondent's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(5) The Tribunal does not make an order under paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002, in the Applicant's favour.

The Application

1. The Applicants sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 1 December 2022 to 30 November 2023 and 1 December 2023 to 30 November 2024. The Application primarily related to two sets out qualifying works.

The Hearing

2. Dr Olinga Taeed appeared on behalf of the Applicants and Freddie Johnson appeared in order to give evidence on behalf of the Applicants. The Respondent was represented by Robyn Cunningham, Counsel with Ryan Atkinson, portfolio director employed by London Block Management (the Respondent's agent) and Jose Rodolfo Leon Urtuzuastegui attending to give evidence.

3. 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.

4. The Applicants provided the Tribunal with a bundle of documents consisting of 400 pages and the Respondent provided the Tribunal with a

bundle of documents consisting of 476 pages. The contents of each bundle were predominantly the same. Additionally, Counsel for the Respondent provided the Tribunal with a skeleton argument.

The Background

5. The property which was the subject of this application was Belgrave House, 1-7 Clapham Road, London, SW9 0JP (the Property). The Property was a 6-storey former hospital which had been converted into 46 residential flats. The Property was Grade II listed.

6. The Applicants were lessees of the Property, and the Respondent was a lessee-controlled management company; the directors of the Respondent were also lessees of the Property. London Block Management were the Respondent's agent.

The Leases

7. The leases of the flats at the Property were tripartite leases between: (1) Belgrave Hall Limited (the Landlord); (2) the Respondent; and (3) each respective tenant. A sample lease was included in the bundle (Respondent bundle pages 356 to 390). This sample lease was dated 3 March 1995 and was made between (1) the Landlord (2) the Respondent and (3) Hilary Barsey for a term of 125 Years from 29 September 1994.

8. Within the lease, the Respondent was defined as the Management Company. By clause 3, the Applicants covenanted with the Respondent and Landlord to pay the service charge as specified in the Fourth Schedule. The service charge was a fixed percentage of the total "Building Expenditure" and the "Estate Expenditure". "Building Expenditure" and "Estate Expenditure" were defined in the Fourth Schedule as including "the costs expenses and outgoings incurred by the Management Company in observing and performing the covenants on its part contained in Clause 5…".

9. By clause 5.2 the Respondent covenanted:

> "once in every period of five years of the Term to prepare as necessary and to paint with two coats of good quality paint or treat appropriately all the outside wood metal stucco and cement work of the Building previously so treated in a proper and workmanlike manner AND as often as in the opinion of the Management Company may be necessary to clean the external stone and brickwork and other external surfaces of the Building and to repoint the brickwork in accordance with all statutory requirements relevant for a listed building".

10. By clause 5.3 the Respondent covenanted:

> "At least once in every period of seven years of the Term to prepare as necessary and paint all the inside wood and ironwork of the internal Common Parts of the Building (including the outer surfaces of the flat front doors and their door frames) with two coats of good quality paint in a proper and workmanlike manner and to repaint repaper or otherwise decorate as appropriate the parts usually so treated".

11. By clause 5.12 the Respondent covenanted "to supply such other services…in and about the Building…as the Management Company shall reasonably consider necessary or desirable or are from time to time directed or required by the public local or any other authority…whether by virtue of any general or local Act of Parliament bye-law rules orders and regulations already or hereafter to be passed…"

12. By paragraph 5 of the Fourth Schedule: "the expression "Estate Expenditure and "Building Expenditure":

> "…shall be deemed to include respectively not only the costs expenses and outgoings which have been actually disbursed incurred or made by the Management Company during the Relevant Financial Year…but also such sum or sums on account of any other costs expenses and outgoings which the Management Company shall have incurred at any time prior to the commencement of the Relevant Financial Year or may incur after the Relevant Financial Year in respect of Estate Expenditure or Building Expenditure as the Accountant may in his absolute discretion consider it reasonable to include…whether by way of amortisation of costs expenses and outgoings already incurred or by way of provision for anticipated future costs expenses and outgoings in determining the amount of the Service Charge for the Relevant Financial Year."

13. By paragraph 8 of the Fourth Schedule:

> "the Tenant shall on the first December and first June within each Financial Year pay to the Management Company…on account of the Service Charge for such Financial Year such sum as the Management Company or its agents shall from time to time specify in its or their discretion to be a fair and reasonable interim payment…".

The Issues

14. It was agreed that there were two sets of qualifying works ("the Works") as defined by section 20ZA(2) of the 1985 Act (works on a building or any other premises) relevant to this application as follows:

    (i) Internal and external decoration and maintenance ("the Maintenance Works"). The cost of the Maintenance Works was collected during the service charge period 2022-2023. The Maintenance Works commenced in April 2024 and were now essentially completed.

    (ii) Works to replace the fire alarm system at the Property ("the Fire Alarm Works"). The cost of the Fire Alarm Works was also collected during the service charge period 2022-2023; however, the statutory consultation was ongoing and work has not commenced.

15. There was no dispute that the Works fell within the obligations of the landlord under the lease.

16. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The legality of the consultation process prior to the Maintenance Works and the Fire Alarm Works.

    (ii) Whether the costs of the Works were reasonable.

    (iii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) should be made.

    (iv) Whether an order for reimbursement of the application/ hearing fees should be made.

17. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The legality of the consultation process prior to the Maintenance Works and the Fire Alarm Works

18. The Applicants' position was set out within the bundle, particularly in their statement of case at pages 18 to 21 and their reply to the Respondent's statement of case at pages 140 to 143 of the Respondent's bundle. With regards to the consultation, the Applicants stated that the length of the consultation had invalidated the process with regards to the Maintenance Works. Further, the Applicants' position was that they would have participated in the consultation had they been aware of the cost of the Works.

19. Regarding the consultation process being invalid, the Applicants stated that on 4 October 2021 the Respondent had issued a notice under section 20 of the 1985 Act for the Maintenance Works but, in the Applicants' words, the delay until March 2023 had meant that the section 20 process had not been followed and therefore the sums were not payable (paragraph 9 of the Applicants' statement of case, page 19 of the Respondent's bundle). The Applicants relied on Jastrzembski v Westminster City Council [2013] UKUT 284 for the proposition that the Works should be commencing within months not years.

20. Further, it was the Applicants' position that the Applicants were unaware of the cost of the Works that the Respondent had planned. The Applicants asserted that had the cost been known at the pre-tender stage, most leaseholders would have participated in the consultation process. It was therefore the Applicants' position that the section 20 consultation process was not followed correctly.

21. The Applicants also made additional points regarding the disclosure of documents and the way the Annual General Meetings (AGMs) were convened. These submissions included an assertion that the Respondent was not permitted to hold virtual meetings under its Memorandum and Articles and so no legal instrument had been used to engage with the leaseholders to explain the service charge increases. Further the leaseholders had not been provided with detail about the service charges, and this was particularly the case because the autumn 2021 meeting had only been attended by 38% of leaseholders and the minutes of the meeting had not been sent until April 2022 (6 months later), which was after the service charge invoice. The Tribunal did not consider these matters further as they fell outside the Tribunal's jurisdiction. The Tribunal instead focused on the consultation requirements as set out in the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003.

22. The Respondent told the Tribunal that the relevant consultation notices for the Works were sent as follows:

    (i) Initial Notice for the Maintenance Works dated 4 October 2021 (a copy of which was at pages 144 to 145 of the Respondent's bundle). This Notice invited recipients to make written observations and

stated that a full specification was available on request.

(ii) Statement of Estimates for the Maintenance Works dated 21 April 2023 (a copy of which was at pages 146 to 150 of the Respondent's bundle) and

(iii) Initial Notice for the Fire Alarm Works dated 2 May 2021 (a copy of which was at pages 151 to 152 of the Respondent's bundle).

The Tribunal's Decision -_The legality of the consultation process prior to the Maintenance Works and the Fire Alarm Works

23. Sections 20 and 20ZA of the 1985 Act provide that the contribution of a leaseholder toward "qualifying works" will be limited to an amount prescribed by regulations (currently set at £250), unless the consultation requirements have been complied with or the Tribunal has dispensed with the consultation requirements. The relevant consultation requirements are set out in Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003/1987.

24. The Tribunal finds that the Respondent complied with the consultation requirements. The Tribunal does not accept the argument of the Applicants that the delay following the service of the initial notice for the Maintenance Works invalidated the consultation. In Jastrzembski v Westminster City Council [2013] UKUT 284 the Upper Tribunal held at paragraph 47 that in that case, the Notice was invalid because of the passage of time [between 2007 and 2009], combined with the change in the works caused by the removal of three of the blocks.

25. In the case before this Tribunal, whilst it is accepted that there was a delay in that the initial notice for the Maintenance Works was dated 4 October 2021 and the statement of estimates for the Maintenance Works was dated 21 April 2023, there was no change to the nature of the works. It must be remembered that the purpose of consultation is to protect tenants from paying for inappropriate works or paying more than would be appropriate. In this case, the scope of the works had not changed and therefore distinguishing the facts of this case from Jastrzembski. Further, the Tribunal accepts the evidence of the Respondent that there was good reason for the delay. The Tribunal accepts the Respondent's evidence that during 2022 all the directors of the Respondent company resigned and were replaced with new directors. This change of directors inevitably resulted in delay. Further, Jose Rodolfo Leon Urtuzuastegui, one of the new directors appointed, stated at paragraph 11 of his witness statement (page 133 of the Respondent's bundle) that:

> "As Directors, we were mindful of the potential impact of the works' cost on leaseholders' finances – being leaseholders ourselves, we were acutely aware of this burden, having to shoulder our share of the costs as well. To minimize this impact we diligently scrutinized all costs and explored every avenue to reduce expenses."

The Tribunal accepts the evidence of the Respondents and finds on the facts of this case that the delay does not invalidate the consultation process.

26. With regards to the Fire Alarm Works, the Tribunal accepts the Respondent's evidence that a Notice of Intention was served on 2 May 2023 but that a Notice of Estimates has not been served yet. The consultation process has therefore not been completed but this does not impact the Respondent's ability to recover estimated costs of the Fire Alarm Works via the service charge demands issued on 23 March 2023 and 28 June 2023.

27. The Tribunal does not accept the Applicants' further submission that the consultation was invalid because the cost of the Works was not set out. The Tribunal finds that the initial Notices served for the Works were compliant with the regulations, and that a Notice of Estimates was properly served for the Maintenance Works. The consultation was properly served by the Respondent and this provided the Applicants with the required information. The Tribunal does not accept the Applicants' submission that had they known the cost of the works involved, they would have responded to the consultation.

Application for Dispensation

28. At paragraph 34 of the Respondent's statement of case (page 35 of the Respondent's bundle) the Respondent makes an application for dispensation from the consultation requirements in respect of the Maintenance Works. The Tribunal notes that not all of the leaseholders will have been served with this application and so the Tribunal is not able to determine it at this hearing. However, the Tribunal has found that the Respondent complied with the consultation requirements in relation to the Maintenance Works and so dispensation is not required. The Tribunal is satisfied that the Applicants have not been prejudiced by any perceived failure to comply with the statutory requirements as the Respondent served the relevant consultation notices and leaseholders were given the opportunity to make representations in response to the notices served.

Whether the Costs of the Works are Reasonable

29. In terms of the reasonableness of the Works, the Applicants reiterated the points made above and stated that an increase of 728% for the year 2022

to 2023 and 100% uplift for the service charge for 2023 to 2024 from two years previously were not reasonable. The Applicants did not raise any specific challenge to any particular aspect of the Works but rather confined their comments to the service charge and sinking fund contribution being unreasonable because the amount payable had increased.

30. Further the Applicants submitted that the service charge demanded in March 2023 could not have been incurred during the financial year ending November 2023. The Applicants made the same argument for the service charge year ending November 2024.

31. The Applicants did not provide the Tribunal with any alternative quotations, and stated that this was because they did not have access to the information they needed to be able to obtain these quotations. Regarding the Maintenance Works, the Applicants stated that they had asked chartered surveyor Primmer Olds to complete a report because they had not received sufficient information. Further, the Applicants submitted that they had been denied a site visit and that curtains had been put onto the scaffolding whilst the Maintenance Works were being completed and so it had not been possible to see what was being done.

32. The Respondent told the Tribunal that maintenance works had not been carried out since 2011, and that there was only a very small reserve fund to fund the Works. In his evidence to the Tribunal Jose Rodolfo Leon Urtuzuastegui, Director of the Respondent, confirmed that London Block Management had told the directors that a decision had been taken by the previous board of directors to keep the service charge as low as possible to try to help leaseholders, particularly during the Covid 19 pandemic.

33. Regarding the Maintenance Works, the Respondent confirmed that a competitive tender process had been completed and that the Maintenance Works were reasonable. The Respondent stated that they did not receive any written observations in response to the Notice of Intention. On 21 April 2023, the Respondent had served a Notice of Estimates having carried out a competitive tender process, with tenders received from four contractors. The Respondent set out at page 392 of the Respondent's bundle the tender document which detailed the schedule of works for the Maintenance Works. The Respondent confirmed that the Notice of Estimates provided details of estimates from two contractors. This was because two of the four contractors who had returned tenders were not competitive. The Respondent confirmed that they invited written observations in relation to the estimates.

34. Regarding the Fire Alarm Works, the Respondent confirmed that a Notice of Intention had been issued on 2 May 2023. The Fire Alarm Works had been put to tender but it was the Respondent's position that the responses received required further investigation and clarification of the scope and so a Notice of Estimates had not yet been served.

35. The Respondent confirmed that the service charge year ran from 1 December to 30 November each year. The Respondent confirmed that the costs demanded from leaseholders were based on the Respondent's reasonable estimate of the costs to be incurred. The Respondent confirmed that the anticipated cost of the Maintenance Works and the Fire Alarm Works had been charged to lessees in the 2022-2023 period and the increase in the 2023-2024 budget was because of the re-introduction of a proportionate reserve fund contribution so that maintenance works could be funded over time.

The Tribunal's Decision - Whether the Costs of the Works are Reasonable.

Section 19(1) of the 1985 Act provides:

> "Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
>
> (a) Only to the extent that they are reasonably incurred, and
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard…"

36. Section 19(2) provides that where a service charge is payable before the costs are incurred, no greater amount that is reasonable is payable.

37. The Tribunal accepts the evidence of the Respondent that the Works were necessary and payable under the lease. This was not disputed by the Applicants. The issue for the Tribunal was the reasonableness of the Works.

38. The Tribunal finds that the Works were reasonable and accepts the evidence of the Respondent. The Property is a historic Grade II listed building; it is required to be maintained properly.

39. Regarding the Maintenance Works, the Tribunal accepts the evidence of the Respondent. In particular, Ryan Atkinson, portfolio director of London Block Management set out the tender process that was completed for the Maintenance Works. Included within the Respondent's bundle was the tender document (pages 81 to 92 of the Respondent's bundle), and the Tender Analysis Report (pages 95 to 107 of the Respondent's bundle). Further, Ryan Atkinson told the Tribunal that the final account for the Maintenance Works was £546,120.03 plus VAT which was within 4% of the estimated costs set out in the Notice of Estimates dated 21 April 2023 (page 77 of the Respondent's bundle).

40. The Applicants did not provide any alternative quotes for the Maintenance Works or the Fire Alarm Works. The Tribunal does not accept the Applicants' position that they were unable to do this because they were not given sufficient access to documents and were not able to see the Maintenance Works being completed because of the covered scaffolding. The Applicants were not prevented from using the information available to them from the consultation process to obtain alternative quotations. Further, regarding the Maintenance Works, the tender analysis documents were made available to leaseholders during the tender process and additionally, under cover of letter dated 9 April 2024 (page 129 of the Respondent's bundle), the specification, tender analysis documents, final specification and schedule of works were provided.

41. Regarding the Fire Alarm Works, the Tribunal accepts the Respondent's evidence that they began a consultation and that the work has been put to tender. However, from the tender responses received the Respondent told the Tribunal that further investigation was needed to clarify the extent of the work needed. The anticipated costs of the Fire Alarm Works were incorporated into the budget for the year ending 30 November 2023 and the demands for service charge instalments during this period. Although this work has not yet been completed, this Tribunal accepts that this does not impact the ability of the Respondent to recover the estimated costs of this work as it did through the service charge demands issued on 23 March 2023 and 28 June 2023.

42. The Applicants have not presented the Tribunal with any evidence that the costs are unreasonable or that the amounts demanded were not a reasonable estimate of the cost of the Works. The Tribunal finds that the Works are reasonable. The Respondents have diligently exercised tendering exercises for the Works and have given careful attention to the scope, detail and cost of the Works.

43. The Tribunal accepts the Respondent's position that the leases did not include any provision allowing for supplementary demands for service charges outside of the twice yearly instalments and therefore accepts the Respondent's position that they included the Works in the budget year ending 30 November 2023 based on estimated costs.

44. The Tribunal accepts that the Respondent had no assets or revenue other than service charge, so monies needed to be collected in advance of any expenditure. The Tribunal accepts the Respondent's position that the situation was exacerbated because the reserve fund was low and therefore it was reasonable to increase the reserve fund in the 2023-2024 budget through the re-introduction of a proportionate reserve fund contribution to allow maintenance works to be funded over time.

Application under section 20C and Paragraph 5A of Schedule 11 of the 2002 Act

45. In the application form, the Applicants applied for an order under section 20C of the 1985 Act and Paragraph 5A of Schedule 11 of the 2002 Act.

46. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal finds that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The effect of this is that the Respondent may pass any of their costs incurred in connection with the proceedings before the Tribunal through the service charge. The reason for not making an order under 20C is that the Tribunal has found that the service charges demanded in 2022 to 2024 are reasonable and payable. Additionally, the Tribunal notes that the Respondent is a lessee run management company and therefore has no capital and exists solely on service charge income.

47. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable in the circumstances for an order to be made in favour of the Applicants under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Applicants were unsuccessful in the application made and in the circumstances their application for an order is dismissed.

48. In light of the findings and decision made, the Tribunal does not refund any application or hearing fee paid by the Applicants.

Name: Judge Bernadette MacQueen **Date:** 22 April 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).