FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LSC/2024/0263**
Property	**:**	**Flat 1, 4 Campden Hill Gardens, London W8 7AY**
Applicant	**:**	**James Fry & Annabelle Fry**
Representative	**:**	**Lorenzo Leoni**
Respondent	**:**	**Jeremy Andrew Garston**
Representative	**:**	**Mr Garston**
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 Shepherd** **John Stead FRICS BSc (Hons), MSc, CEng MCIBSE**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**18th June 2025**

DECISION

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1. This case was transferred from the County Court for determination by the Tribunal. The Applicant is the freeholder of the premises at Flat 1, 4 Campden Hill Gardens, London, W8 7AY ('the Premises'). The Respondent is the long leaseholder of the premises.

2. The county court case concerned service charge arrears allegedly owed by the Respondent. The county court claim was brought on 12 February 2018. The sums claimed for service charges arrears total £17,770.16 for the period 24 June 2015 to 24 December 2017, although not all of that sum fell to be determined by the tribunal. The charges in issue were the following:

    a. 09/03/2017: Service Charges (Major Works) - £11,476.88;

    b. 09/03/2017: Major Works fee - £177.23;

    c. 16/05/2017: Administration Fee for late payment - £48.00;

    d. 05/12/2017: Administration Fee for late payment - £48.00;

    e. 29/06/2017: Correction to Major Works fee - £1,200;

    f. 29/09/2017: Service Charges (Major Works) - £3,602.46;

    g. 13/10/2017: Service Charge Deficit YE 25/12/2016 - £580.10.

3. By a defence dated 18 March 2018, the Respondent put the Applicant to proof of these charges. No real detail was provided in the defence.

4.The bulk of the charges in issue relate to the Major Works undertaken at the Building which comprised: :-

    i. The installation of "a new flat roof";

    ii. "Roof repairs more generally";

    iii. "Brick-work and render repairs";

    iv. 'Window and joinery repairs";

    v. "External redecorations";

    vi. "Internal redecorations"

5. The Respondent's defence was only really made clear in a skeleton argument filed before the hearing. The Respondent said the consultation for the major works was invalid because it was argued the notices were not served in accordance with the relevant lease term which states:

> *That any demand or notice requiring to be made upon or given to the Lessee shall be well and sufficiently made or given if sent by the Landlords [the Applicants] through the post by registered letter addressed to the Lessee at his last known address and that any notice requiring to be given to the Landlords shall be well and sufficiently given if sent by the Lessee through the post by registered letter addressed to the Landlords care of the Managing Agent for the time being of the Landlords and that any demand or notice sent by post in either case shall be assumed to have been delivered in the usual course of post. (Clause 9II)*

6. The Respondent complains that the consultation notices were sent by the Applicants' agents instead of the Applicant and were sent by email and this did not comply with above lease term and this invalidated the consultation process such that the Respondent owes no more than £250. The Respondent confirmed to the Tribunal that consultation notices were received directly by email.

7. As a secondary argument the Respondent alleged that the Applicant failed to have regard to the tenant's observations in relation to the proposed works. The Respondent relies on *Waaler v Hounslow* [2017] EWCA Civ 45, where Lewison LJ considered the obligation on a landlord to "have regard to" responses to consultation and said at [38]:

> *What this means is that the landlord must conscientiously consider the lessees observations and give them due weight, depending on the nature and cogency of the observations. In the light of the statutory obligation to consult, it is impossible to say that the tenants' views are ever immaterial. They will have to be considered in every case. This does not of course mean that the lessees have any kind of a veto over what the landlord does; nor that they are entitled to insist upon the cheapest possible means of fulfilling the landlord's objective. But a duty to consult and to 'have regard' to the lessees' observations entails more than simply telling them what is going to happen.*

8. In particular, the Respondent says that written observations by the Respondent were not properly considered by the Applicant.

The relevant lease terms

9. At clause 5 the Landlord covenants to (inter alia):

A. (1) To pay the foundations roof main walls (including load bearing walls but excluding the plaster in the Flat) and the timbers of the Building (including the floor and ceiling joists or beams but excluding floor boards and floor surfaces in the Flat) and all the external parts thereof and the gutters drains sewers cisterns tanks pipes wires conduits and ducts (except such as are within and solely serve the Flat) and the balcony at the front of the Flat (if any) in good and substantial repair and decorative condition

(2) To keep the common parts of the Building namely the front yard area of the building and the cupboard in the main entrance hall housing the electricity meters hereinafter referred to and the staircases halls passages paths and landings in the building and also the parts of the Building retained in the control of the Landlords clean and in good and substantial repair and painted and suitable furnished and adequately lighted during the hours of darkness and to use their best endeavours (a) to maintain the entry-phone (if any) serving the building in good repair and working order (b) to engage such persons as may be necessary from time to time to perform all such services PROVIDED that the Landlords shall not be liable to the Lessee for any temporary interruption of the services listed in this sub-clause due to circumstances beyond the Landlord's control

(3) To employ a properly qualified managing agent to manage the Building in a fitting character as a block of first-class residential flats provided that for the purposes of Clause 6(1)(2)(A)(i) hereof the fee payable to such managing agent shall at no time exceed the maximum therefor allowed by the scales authorised for the time being by the Royal Institution of Chartered Surveyors

10. At clause 6 the tenant covenants to (inter alia):

(1) To pay to the Landlords in each year by four equal quarterly payments (and so proportion for any less period than a quarter) such payments to be made in advance on the usual quarter days in each year (save that the first payment is to be made on the execution hereof and is to be a proportionate part calculated from the date hereof to the 24th day of December 1974) such sum on account of the Service Charge as the Landlords or their managing Agents (as the case may be) shall in their discretion have estimated at the beginning of the year to be a reasonable estimate of the amount of the Service Charge for the year in question such sum not to be more than one fifth part of One hundred and ten per centum of the amount of the Annual Service Cost for the previous year (except for the year to the Twenty fourth day of December 1974)

...

(3) If during the course of any year expenditure is or is to be incurred by the Landlords for which the amount collected in respect of the service Charge for that year is insufficient and the Landlords or their managing agents (as the case may be) shall serve on the Lessee notice in writing specifying the further amount required to defray such expenditure and the nature of the work or works on which it has been or will be incurred then within 14 days next following the date of service of such notice to pay to the Landlords one fifth part of the further amount specified in such notice

11. As already indicated the bulk of the charges in dispute relate to the major and other works at the building, both externally and internally. There is no dispute that the works undertaken are qualifying works as defined in section 20ZA(2) of the Landlord and Tenant Act 1985. The Applicants say they had no need to comply with the consultation requirement because the demands made were quarterly interim demands. They rely here on the well known case of *Dollis Avenue (1998) Limited v Nikan Vejdani & Ors* [2016] UKUT 0365. In any event the Applicants say they complied with the consultation requirements:

    a. At the pre-tender stage, the landlord's notice of intention was served on the Respondent (and other leaseholders at the building) on 03 June 2016 ;
    b. Upon receipt of tenders/estimates, the second section 20 notice was served on 16 August 2017 . In it, it is apparent there were two tenders received for the works: (i) Cuttle Construction at a total price of £90,512.40; and (ii) Woodgrove Construction at a total price of £97,582.80;
    c. A third section 20 Notice was served on 19 September 2017 to confirm the nominated contractor as Cuttle Construction (i.e. the contractor with the lowest estimate) ;
    d. Written observations of the leaseholders (i.e. solely the Respondent) during the consultation period were considered and are appended to the third section 20 notice.
    e. In the event, Cuttle Construction could not carry out the work and Woodgrove Construction proceeded.
    f. The Applicants stress that observations made by the Respondent were regarded by the same, as demonstrated by the responses noted above.

Determination

12. The Tribunal considers that the consultation on the major works was carried out correctly. The lease term referred to by the Respondent was permissive. It was not a condition precedent. Service could take place by any means. The lease term dictated when service would be guaranteed but it was not a requirement of service.

13. In addition, the argument that the Applicants failed to consider

representations made by the Respondent has no real basis. The Applicants considered representations as evidenced by the chronology of events outlined above. Further we agree with Mr Leoni that the demands were interim demands and therefore there was no need to carry out a consultation. There was no real challenge to the reasonableness of the works, either in cost or standard. Accordingly, the sums claimed by the Applicant are due in their entirety.

Judge Shepherd
19th June 2025

Appeal rights

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).