FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/LSC/2024/0738**
Property	**:**	**6, 7 & 12 Kenbury Mansions, Kenbury Street, London SE5 9BU**
Applicants	**:**	**Helen Beech (Flat 6), Jane Elizabeth Sizer (Flat 7) and Katherine Skingsley and Phillipa Skingsley (Flat 12)**
Representative	**:**	**Katherine & Philippa Skingsley**
Respondent	**:**	**The Mayors and Burgesses of the London Borough of Lambeth**
Representative	**:**	**Patrick Byfield (Litigation Officer), Rasel Ahmed (Litigation Manager) and Victoria Ogunyemi (Commercial Manager) all from the Council**
Type of Application	**:**	**Application for the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Dutton** **Mr K Ridgeway MRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 26th June 2025**
Date of Decision	**:**	**12 August 2025**

DECISION

DECISIONS OF THE TRIBUNAL

THE APPLICATION

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (the Act) as to the service charges payable by the Applicants to the Respondent in respect of major works in the period 2019 to 2023.

2. Directions were issued on 15th January 2025 listing the matter for a hearing on 26th June 2025. The directions limited the scope of the claim as are set out at paragraph 4 (of those directions).

3. The Applicants provided a bundle running to some 1,531 pages. In addition, prior to the commencement of the hearing we were given a skeleton argument for the Applicants as well as a report by Pellings LLP and some photographs.

4. At the hearing the Applicants were represented by Katherine and Philippa Skingsley and the Respondent by Mr Byfield with support from Mr Ahmed and Miss Ogunyemi.

BACKGROUND

5. The property, the subject of this application, is a three-storey, purpose-built block dated from the early 20th century containing flats numbered 1 to 12. There are further flats within an adjourning block, but this is not within the ownership of the Council and therefore not the subject of this application. There are two entrances serving Flats 1 to 6 and 7 to 12.

6. We did not inspect the Property and indeed were not asked to do so. We did not consider it would be necessary given that the works, which are the subject of the complaint, are now two or more years old.

7. We were told that the Applicants are the only three long leaseholders at the Property. Their leases require the landlord to provide services and for them to contribute towards their cost by way of a variable service charge. We shall refer to such specific provisions of the lease as are appropriate.

ISSUES

8. The relevant matters that we were required to determine are as follows:

    (i) Costs of a major works scheme 915796/1 period 2019 to 2023 of which the Applicants are required to contribute as follows: Helen Beech £70,796.94, Jane Sizer £70,983.42 and Katherine and Philippa Skingsley £49,216.84.

(ii) We were also asked to consider whether the landlord had complied with section 20 of the Act and whether the works were within the landlord's obligations and the responsibilities of the tenants to pay for same.

9. In addition to the voluminous documentation, we also had verbal submissions made to us by Katherine Skingsley and Mr Byfield.

10. <u>We will deal firstly with the question of the section 20 issue.</u>

11. There has already been a decision made by this Tribunal on the question of consultation issued on 21st August 2020 following a paper consideration. In that case limited dispensation from the requirements to deal with observations within 21 days was given.

12. It is the Applicant's case that not only was there this failure, but that the Respondents had failed to disclose extensive documentation prior to the commencement of the works, which would presumably have enabled the Applicants to undertake further forensic review of the case.

13. Reference is made to the Court of Appeal case of *<u>The London Borough of Waltham Forest and Waller</u>* and an extract is cited in the submissions. There is a partial quote of section 38 of the judgment of the Court of Appeal. It does not include the following wording:

Given that in every case the tenants will have had the opportunity to make observation on the landlord's proposals, I do not consider the landlord has any further positive duty to enquire into the tenants' views. The statutory consultation process is designed to inform the landlord about the tenants' views.

39. Once a landlord has consulted the tenants and taken their observations into account, it is then for the landlord to make the final decision. In considering whether the final decision is a reasonable one, the Tribunal must accord the landlord what in other context is described as a "margin of appreciation." As I have said, there may a number of outcomes each of which is reasonable and it is for the landlord to choose between them.

14. In this case there were two initial notices, the first was not proceeded with but the second was and this was dated 7th October 2019 and set out the basis upon which the notice was served under section 20 of the Act and also schedule 3 (regulation 7(i) and (ii)) of the Service Charges (Consultation Requirements) Regulations 2003. Those regulations set out what is required in the notice, and we are satisfied that the notice itself does deal with those matters as it should.

15. The Applicants made extensive observations to these works, which the Respondent Council replied to, albeit initially, somewhat late in the day. It does not seem to us that the section 20 process was anything other than correct. As was made clear in the decision of the Tribunal, that the matter that was dealt with in August of 2020 concerned only the dispensation. It did not concern the issue whether any service charge costs would be reasonable or payable. It reminded the Respondents, and now the Applicants, that they had the right to make an application under section 27A of the Act.

16. Our finding therefore is that there has not been a failure by the Council in connection with a section 20 consultation process. Indeed, it seems to us that the Council has gone the extra mile to provide information and documentation to the Applicants. Certainly, there has been no shortage of paperwork to enable the Applicants to bring this claim before the Tribunal under section 27A of the Act and it is difficult to see therefore one could argue that they have been prejudiced.

17. In those circumstances we reject the argument that there is a section 20 issue for us to consider and turn then to the substantive matters which related to the reasonableness of the costs incurred and whether the services or works to which the costs relate were of a reasonable standard.

18. It is the Applicant's case that the majority of costs charged were unreasonable and therefore not payable under the terms of the lease. The Applicants also challenge the 10% management fee that was claimed by the Local Authority.

19. The challenge made by the Applicants to the reasonableness of the costs was based on the report prepared by Dunsin Surveyors and works undertaken by Philippa Skingsley who is a qualified architect. We have noted all that was said in the initial submission and also in the response to the Council statement of case, which is apparently dated 12th May 2025 and appears at pages 1521 to 1526 in the bundle, although the PDF number does not follow this. We have taken the comments made by the Applicants into account when reaching our decision.

20. For the Respondent, we had their submissions, which were contained at document 1511 of the bundle (1516 PDF) but one thing that was made clear in this submission and accepted by the Applicants at the hearing, was that there was no longer an issue relating to section 20B of the Act. The submission confirmed the sums being claimed and that the terms of the lease allowed such sums to be recovered. It was their argument that the 10% management fee was reasonable and properly levied.

21. In respect of the reasonableness of costs, the Council confirmed that the works were based on professional surveys, and the works were carried out under a qualifying long-term agreement (QLTA). Indeed, it is fair to say that the Applicants did not object to the rates that were being charged under the agreement but rather the extent of the works, the standard of the works and the requirement for same.

22. Insofar as the Applicant's quantity assessment undertaken by Miss Philippa Skingsley was concerned, the Council's view was that this was retrospective without access to contemporaneous site records and measurements and the ongoing inspections apparently carried out during the works. We have noted the concerns at paragraph 22 of the Respondent's submission. It is also noted that Philippa Skingsley the is a party to these proceedings. We have noted the remainder of the terms of the submission in particular the Respondent's confirmation that they would not be seeking any costs and that no application under section 20C or paragraph 5A of the Commonhold Leasehold Reform Act 2002 needs to be made. The submission confirmed that such an order made in respect of those two parts of the Act would not be objected to.

23. To assist in the resolution of this dispute, a Scott schedule had been prepared by the Applicants at page 928 of the bundle and running through to page 955. The PDF bundle starts at page 933. This represents an almost forensic assessment of the works carried out.

24. We have used that as the basis for our assessment although not on an individual item basis as in our finding it is unrealistic in the time afforded to this case to delve into each and every item of work shown thereon. We should make clear that our findings are for both blocks.

Scaffolding

25. It is conceded by the Applicants that this was necessary, but the issue appears to be from the Scott schedule, repeated in a number of instances, that the *"square metreage calculation for scaffolding is grossly inflated. True quantity based of scaled drawing measurements of the building. The rate for scaffolding 20 metres by 15 metres is inconsistent as 15 metres high is more expensive than 20 metres high*." The response from the Council is that the scaffolding charges were not incorrectly measured. That it is priced in accordance with the QLTA framework and that scaffolding requirements were calculated to ensure safe access to necessary work areas. As we understand it, the challenge to the extent of the scaffolding is based on Miss Philippa Skingsley's measurements from the Council portals. Surprisingly it seems that she did not herself measure the building to check the required amount of scaffolding.

26. In contrast Miss Ogunyemi says she did attend the building and had measured the full extent of the Property and is satisfied that the scaffolding, insofar as it relates to the extent of same, is therefore correct. Miss Ogunyemi told us that she had initially thought the measurements were high, but she had checked them on site and agreed them. It is right that the scaffolding was in situ for a period longer than anticipated but we were told that the contractor only charged for an additional seven weeks, and this is borne out from the schedule where a figure of £17,426.57 is shown as the landlord's costs but the contractor only charged £6,325.20. We understand the Applicants to agree this figure.

27. The final account is purportedly contained at page 746 (751 PDF) of the bundle showing that the scaffolding charge was in fact £65,766.70. The figure shown on the Scott schedule, which we referred to above, is £64,266.70 and it is said by the Applicants that the contractor's claim is £55,165.33. It does not seem to us that proper credit has been given in respect of the contractors charge for the additional weekly hire, which they limited to 7 weeks. In those circumstances on the face of it, it seems to us that the amount that is being claimed for scaffolding should be reduced from £64,266.70 to a rounded figure of £57,940. This is on the basis that we prefer the evidence relating thereto and accept the measurements put forward by the Council. **This is a reduction of £6,327 (rounded).**

28. **The next item which appears challenged in the service charge schedule, relates to the timber windows**. The cause of complaint here appears to be from the Applicant's point of view that the window replacements

had not been charged at QLTA rates without explanation. The response from the Council was that QLTA rates were not utilised because they did not include specific rates for timber repairs, only renewals. To cover this, they used the National Federation of Housing (NFH) rates, which is said were widely accepted. It is said that the Respondent only replaced those windows where necessary which resulted in cost savings. To obtain their views on the costs the Applicants appear to have dealt with quantities adjusted from scaled drawing and evidence of replaced windows. It was put to us that looking at the rates under the QLTA the replacement of all the windows could have been in the region of £80,000 - £90,000 but instead the Council has charged £126,604.32. It appears that this does include doors to balconies.

29. Miss Ogunyemi was of the view that if all windows had been replaced, as they were varying sizes, that would have been some £219,000 but we understood that there were certain windows to flats that had already been replaced by the tenants. The Applicants have not provided any alternative costings. We are not of the view that these works constituted improvements but rather repairs. Of course, a repair is a matter for which the landlord is contractually obliged to deal with, and how it discharges its obligations is a matter for it provided it acted reasonably. In this case we are not told how many windows there were but it is clear that there was a mix of replacement of a few, and repairs of a number. The replacement by UPVC could not be undertaken because of planning issues.

30. It would seem from a publication produced by the Local Authority that there have been complete replacements to Flats 3, 5, 6 and 11. Certainly Miss Skingsley did not indicate that there had been wholesale changes made to their flat windows but rather repairs. We are not satisfied that the Respondents have acted unreasonably in dealing with the works on the basis that they have. The qualifying long-term agreement appears to relate only to replacement of windows. There has been some replacement but largely repairs. Without any evidence from the Applicants as to what the costs might otherwise have been, we take the view that the amount claimed by the Council is reasonable and is payable.

31. We should say at this stage, that the reports that were produced by Dunsin Surveyors, and by Pellings make it clear that the existing windows were generally in a poor condition. Pellings certainly said in their report at paragraph 63 that where repairs are so extensive that it is more economic to replace entire units, this should be considered. It seems to us that the Council has taken these facts on board and has carried out the repairs in accordance with the reports, which evidence clear problems with the windows.

32. We should perhaps comment here on the question of historic neglect. There is no evidence that the failure by the Council to carry out repairs over a period of time has necessarily involved the lessees in greater expenses than would be the case. One must also bear in mind that over the period of time for which it is said repairs had not been taking place, the service charge costs would have been lower. It seems from the documentation the Council has provided us with, that there was a paucity of funding available to deal with capital works until recently and it is within these works that the Council has undertaken improvements to its

housing stock including the subject properties. In addition it is noted that it will be the Council who bears the bulk of these costs.

33. **We turn then to the question of roofing.** In this regard we have the report of John Rowan and Partners at page 1003 of the bundle, which at 4.1.1 whilst referring to the condition of 72-76 (we assume an error) it does make it clear that the Property shows defects and that the pitched roof is in a particularly poor condition. More details are given at 4.1.6 where it is noted that there are numerous defects, including slipped, cracked and missing slates, ridge tiles and incorrect detailing. However, only the rear roof could be accessed. It does go on the say as follows *"Due to the large number of repairs required the feasibility of completely replacing the roof covering to include all underlay, battens and detailing should be considered."*

34. The same report indicates that the flat roof appeared to be in good condition and that residents appeared to be using it as a terrace, which creates a safety hazard. In the Dunsin Surveyors' report by Mr Clayson (BSC (Hons) MRICS MBA) (page 876) was of the view that there were slipped and missing slates to the mansard roof and that repairs had been carried out. He thought that the condition of the existing slates meant that repairs could be undertaken but that they would need to be carried out with proper access equipment so that slates were not broken by operatives walking over the roof slope. He did go on to say that he estimated a complete recovering of the pitched roofs would be needed in the next ten years.

35. The report by Pellings, in its conclusion, said that the roofs were generally in a poor condition and that the pitched roof covering should be replaced as part of the next cyclical works programme once scaffolding is erected. As for the flat roofs, it was felt that those over 7 and 12 were nearing the end of the life expectancy and roof above flats 1 to 6 had apparently been recently replaced with a single layer of felt.

36. Insofar as the flat roofs were concerned, a report had been obtained from flat roof specialists, Langley, (page 1030) which in its summary said as follows: *"The roof has moisture in the build up indicating they are beyond economical repair and require replacement"*. In a photograph, which had been marked, it appeared clear that all the flat roofs needed attention. Accordingly in regard to the roofs the evidence that we have is from Dunsin Surveyors, J R Rowan, Langleys and Pellings LLP. All appear to accept that the roof is coming towards the end of its natural life. The Dunsin report says maybe five to ten years. The others are more pessimistic. It seems to us, therefore, reasonable given the reports that are available to us, that there should be a replacement of all the roofs whilst the scaffolding is in place. There is no other evidence available to us to indicate that these works were unnecessary or that the costs were excessive. The Applicants rely only on their building surveyor's report and that there is some alleged inflated quantities but again this is relying on estimated dimensions, which we have already rejected.

37. In those circumstances, therefore, we are left to conclude that the works were within the scope of what was reasonable and that they required to be undertaken. Insofar as the flat roofs are concerned, although the Applicants say the scope is undetermined, it appears clear from the report by Langleys exactly what was to

be done and why. In those circumstances we conclude that these are reasonably incurred costs and there is no challenge to the quantum by reference to alternative quotations.

Concrete Repairs

38. On the Scott schedule the Applicants had raised the question of concrete repairs. Again, this relies on estimated dimensions, which we do not find reliable. It is said by the Council that the photographic evidence clearly shows that the concrete surface to be dealt with is greater than 93 square metres. The challenges in the Scott schedule at page 937 are the same relying calculations which we have already disallowed. As we have indicated, the landlord relied on measurements and estimates provided by qualified professionals and were, as we understand it, actual measurements not from scaled drawings.

39. Under the concrete works there are two entries for both properties in which there is an allegation that the item had been duplicated, as this was the removal of paved coverings and repair. There is in fact no price put against this by the landlord, although the Applicants have assessed this at £2,044. This item appears under the heading Concrete Repairs at page 955 of the Scott schedule or PDF page 960. The sum of £22,398.48 has been claimed and it is alleged this is a duplication by reference to the earlier matters to which we refer. This was covered at the hearing when we were told that there was far more work required following the lifting of the slabs. Apparently, a complete new sub-base was required, the wall was re-built and rendered before the slabs were relayed. The price is divided between the two blocks and is £11,689 per block. This cost is not challenged other than to say it is duplicated which we do not agree is the case.

40. **We then move on the question of the management costs.** We were told that all leases were the same and at paragraph 8 of the 4th Schedule to the Miss Skingsley's lease, it says the following: *"The reasonable costs incurred by the Council in the management of the building, including all fees and costs incurred in respect of the annual certificate of account and of accounts and as accounts kept and audits made for the purpose thereof such management costs not being less than 10% of the total service charge."* Given that the total claim for the works is £810,782.31, it would mean the management charges in excess of £81,000. We accept that there will have been management of the contract and that a reasonable fee is payable in respect thereof, and 10% in our finding is not unreasonable. However, we are particularly concerned at the way in which the Council has dealt with the accounting exercises in this particular case. The Applicants in their skeleton argument speak to the number of times that accounts were produced and the length of time it took to prepare a final detailed breakdown and final figures to the Applicants. The figures are difficult to understand as was accepted by Mr Byfield. Within the final account at page 751 it appears that some items have been lumped together, and it is not possible to tell what is actually included. This does not help a tenant in trying to understand the costs that they being asked to pay. This is the more so as of course the amounts being sought from each individual tenant are high.

41. We have concluded that there is merit in the Applicant's argument that the management fee should be reduced to a reasonable amount. Such reasonable

amount we find to be 5% and we would expect therefore for the accounts to be produced showing the reductions that we have made in respect of the scaffolding and the management charges. When final figures are known we would hope that the Council would extend some leniency on the time for payment of the final sum. These are not small sums of money.

42. At the conclusion of the hearing the Council through Mr Ahmed confirmed that if the final amount was paid within 30 days, there would be no interest. It was also agreed that the Council would refund half the fees paid by the Applicants and set those off against the sum found to be owing.

43. We would like to thank the parties for their assistance in this matter. We have not completed the Scott schedule for the reasons set out at paragraph 24 above.

Judge: Andrew Dutton

A A Dutton

Date: 12 August 2025

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.