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

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| **Case reference** | **:** | **LON/00AJ/LSC/2023/0470** |
| **Property** | **:** | **37 Greystoke Court, Hanger Lane, London W5 1EN** |
| **Applicant** | **:** | **(1) Nicholas Evans and other leaseholders**<br>**(2) Various leaseholders** |
| **Representative** | **:** | **(1) In person**<br>**(2) Nicola Muir of Counsel** |
| **Respondent** | **:** | **Albermarle Ealing No 1 Ltd** |
| **Representative** | **:** | **Hugh Rowen of Counsel** |
| **Date and Venue of Hearing:** | | **13th 14th 15th 16th May 2025**<br>**10 Alfred Place, London WC1E 7LR** |
| **Type of application** | **:** | **Service charge determination** |
| **Tribunal** | **:** | **Judge Shepherd**<br>**John Naylor FRICS**<br>**Clifford Piarroux JP** |

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**DETERMINATION**

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1. We have been asked to consider two applications which both deal with the reasonableness and payability of service charges in respect of the premises at Greystoke Court, Hanger Lane, London, W5 1EN. The applications are brought by Nicholas Evans and various other leaseholders of Flat 26 and 36 (LON/00AJ/LSC/2024/0157) and 38 other leaseholders (LON/00AJ/LSL/2024/0502).

2. Nicholas Evans, a leaseholder of Flat 17 represented himself and two other leaseholders. Nicola Muir of Counsel represented the other 38 leaseholders. There was some general consensus in relation to the two applications but they were not entirely identical. In essence, both challenged the reasonableness and payability of service charges sought by the Respondents for the period 2021 to date. Hugh Rowan of Counsel represented the Respondents. Sensible concessions were made by all parties along the way during a four day hearing.

***BACKGROUND***

3. Greystoke Court is an interestingly configured series of buildings. There is a 1930s building with a pitched roof ("Block 1"). The eastern end has a 1960s building with a flat roof, which comprises two sections with separate entrances ("Block 2" and "Block 3").

4. The Respondent became the freehold owner of the premises on 11th August 2023. They have used David Adams Surveyors Limited as managing agents. The Respondent have plans to develop the site by adding 13 new flats 4 in the eaves space of Block 1, and 9 above Blocks 2 & 3. The Respondent has planning permission/permitted development rights to carry out the works. We were shown plans for the four flats to be constructed on top of the 1930s block.

5. There has been some confusion between the development works and the works for which service charges are sought from current leaseholders. The Respondent insists that the two are separate, but the leaseholders suggest that they are being used as a funding source for the development works. They highlight the fact that on 20th March 2024 the Respondent, via its managing agents David Adams Surveyors Ltd, served a Notice of Intention indicating that they intended to carry out extensive external and internal works. The contractor selected by the Respondent to carry out these works is Glanmire Design and Build Ltd, which is also the company undertaking the development works. It is the Applicants' case

that these works are motivated by the Respondent's redevelopment rather than by the need for repair or maintenance.

***The Dispensation Applications***

6. The Respondents have made a number of dispensation applications. These will be referred to in due course. Suffice to say on 8 May 2025, Judge Martynski directed:

   *"…that tribunal will not be able to determine the applications, because the Service Charge hearing involves only some of the lessees as parties. The s.20ZA applications need to be served on all leaseholders and those leaseholders need to be given an opportunity to respond to the applications."*

7. These dispensation applications are for the following:

   Major Works

   Lifts

   Additional Items

   Redecoration

   Balconies

8. None of these applications were considered at the hearing for the reason given by Judge Martynski**.** The Tribunal were placed in a difficult position of being asked to assess the reasonableness of costs for which proper consultation had not been carried out. In any event we have criticisms of the bill of quantities and specifications used by the Respondent which they may wish to consider before pursuing the dispensation applications

**The leases**

9. The service charge provisions in each of the leases are essentially all the same. The demise includes:

   *(1) the internal and external walls of the flat; one half of the structures between the floors of the flat above and the ceiling of the flat below and one half of the*

*structures between the floors of the flat and the ceiling of the flat below. Walls separating the flat from an adjacent flat are party walls.*

*(2) the windows, window frames, glass and fastenings and front door of the flat; and*

*(3) where a Garage is demised, the whole of the garage.*

10. The Lessor's Obligations are set out in the Fourth Schedule and include*:*

*"1. The Lessor will whenever reasonably necessary maintain repair and redecorate and renew:*

*(a) the external walls and structure and in particular the main load bearing walls and foundations roof storage tanks gutters and rainwater pipes of the Block and the boundary fences (if any) marked "T" on the said plan. . . .*

*4*

*4. The Lessor will not less frequently than once in every fifth year decorate the external parts of the Block (including the windows and frames) in such manner as the Lessor shall in its absolute discretion think fit.*

*5. The Lessor will maintain and where necessary renew or replace the passenger lifts and goods hoist and ancillary equipment relating thereto and maintain insurance against risks of breakdown and third party claims in respect of the lifts and lift equipment plant and mechanism and goods hoist in such amounts and on such terms as the Lessor shall from time to time think fit.. . .*

*8. The Lessor will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessee) insure and keep insured the Block with an insurance company of repute against comprehensive risks including loss or damage by fire and loss or damage or liability to any persons arising from the ownership or occupation or user of the Block (including the lifts and boilers) and all other risks usually described as Property Owners Liability and such other risks (if any) as the Lessor or its Agents may think fit in the full reinstatement value thereof (inclusive of Architects' and Surveyors' fees) and will in the event of the Block or any part thereof being damaged or destroyed by any insured risk as soon as reasonably practicable apply the insurance monies payable in respect thereof in the repair rebuilding or reinstatement of the Block in good and substantial manner and the direction and to the satisfaction of the Lessor or its Surveyor for the time being.*

*9. The Lessor may set aside such sums of money as he reasonably considers necessary to meet future costs to be incurred by the Lessor in complying with his obligations hereunder . . .*

*15. The Lessor may provide such other services and facilities at the Block which in its opinion it considers to be to the benefit of the lessees"*

11. The method of calculating and collecting the service charge is set out in the Fifth Schedule of the Lease. In summary, the Lessor may charge an *"Interim Charge" based on the estimated expenditure for the accounting period which is payable on 25th March and 29th September in each year. If the total expenditure for the year exceeds the Interim Charges, a balancing charge is payable.*

**The law**

12. The Landlord and Tenant Act 1985, s.19 states the following:

**19.— Limitation of service charges: reasonableness.**

*(1) 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;*

*and the amount payable shall be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

13. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

*27A Liability to pay service charges: jurisdiction*

1. *An application may be made to [the appropriate tribunal]2 for a determination whether a service charge is payable and, if it is, as to—*

a. *the person by whom it is payable,*

b. *the person to whom it is payable,*

c. *the amount which is payable,*

d. *the date at or by which it is payable, and*

e. *the manner in which it is payable.*

2. *Subsection (1) applies whether or not any payment has been made.*

3. *An application may also be made to [the appropriate tribunal]2 for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*

a. *the person by whom it would be payable,*

b. *the person to whom it would be payable,*

c. *the amount which would be payable,*

d. *the date at or by which it would be payable, and*

e. *the manner in which it would be payable.*

4. *No application under subsection (1) or (3) may be made in respect of a matter which—*

a. *has been agreed or admitted by the tenant,*

b. *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*

c. *has been the subject of determination by a court, or*

d. *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

5. *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

14. In *Waaler v Hounslow* [2017] EWCA Civ 45 the Court of Appeal held the following:

*Whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be*

*determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of "service charge" in section 18 of the 1985 Act, as inserted, there was a real difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations*

## The hearing

15. The hearing lasted four days. We then had two meetings as a panel to assess the evidence. The bundle of documents was substantial. We heard live evidence as well as considering witness statements. A summary of each of the days is provided below.

## Day 1

*Second Applicant's opening statement*

16. Ms Muir opened the case for the Second Appellant. She said that the Respondent had been involved in the planning application for the development works before they purchased the freehold. She said there was planning permission for three new flats on top of the 1930s block and nine new flats on top of the 1960s block. She said the development works had caused disruption. Residents had been prevented from using parking spaces. She said the Respondent was seeking to enhance the sale value of the new flats by carrying out works to the site. Her clients accepted that some works were needed. The lifts in block 1 needed attention and the fire doors needed to

be fitted. The scale of the works was however prohibitively expensive at over £2 million.

17. She took the Tribunal through the standard lease. The demise included the exterior of the building but it was for the landlord to carry out repairs. The easements in the lease gave a right of way which had been obstructed by the works. Some of the leaseholders had lost the use of the communal garden which was now part of the building site. Residents had been told that this area was being concreted to create a car park. In relation to insurance the Respondent entered into an arrangement where his mortgagee paid the insurance on their behalf. They had deprived themselves of the right to insure.

18. Ms Muir said that the Respondent had purchased the freehold on 11th August 2023. They carried out a condition survey four days later and sent the first notice of intention to carry out works. This letter dated 5th December 2023 stated the following works would be carried out:

    *Renewal of 1930s (Flats 1 to 28) and 1960s (Flats 29 to 47) roofs,(10 year guarantee from 2009 expired in 2019) and associated renewal guttering, soffit, and fascia boards; Repair building envelope defects including rainwater goods, pointing, facia and render details and associated redecoration to all elevations, Replace Communal windows; Repair Balconies & Replace associated glazing; Repair Chimney stacks; Repair garage roofs, doors, and parapets; Repair roads and underlying services as required; Repair storage rooms; Asbestos removal in line with 2014 Report; Demolish and reconstruct collapsed Northern Boundary wall;*

    *RE: Internal Works to the Buildings: Renewal, redecorations, replacement and repair of individual flat doors to FD30 doors in line with current fire regulations.*

19. Ms Muir highlighted the fact that when the building survey was carried out in February 2024 by AC Design Solutions it identified limited works to the roof of Block 1. On its face the survey was for limited use. It stated the following at paragraph 1.1.1:

    *Purpose: This schedule of condition has been prepared in connection with proposed building works to commence at Greystoke Court, Hanger Lane, W5 1EN. This report highlights areas of concern and is not intended for*

*general use and has specifically been detailed to include the areas considered most vulnerable from the proposed works. The owners and advisors should not use this report for any other purpose.*

20. There followed a second notice of intention dated 20th March 2024. This stated that the intended works were the following:

    *RE: External Works to the Buildings:*

    *Renewal of 1930s (Flats 1 to 28) and 1960s (Flats 29 to 47) roofs,(10 year guarantee from 2009 expired in 2019) and associated renewal guttering, soffit, and fascia boards; Repair building envelope defects including rainwater goods, pointing, facia and render details and associated redecoration to all elevations, Replace Communal windows; Repair Balconies & Replace associated glazing; Repair Chimney stacks; Repair garage roofs, doors, and parapets; Repair roads and underlying services as required; Repair storage rooms; Asbestos removal in line with 2014 Report; Demolish and reconstruct collapsed Northern Boundary wall;*

    *RE: Internal Works to the Buildings: Renewal, redecorations, replacement and or repair of 47 individual flat doors to FD30 doors in line with current fire regulations.*

21. There followed a notice of estimates dated 5th July 2024. This outlined the estimates received as follows:

    *a) GLANMIRE DESIGN & BUILD LTD*

    *Unit 2 Crossways Bicester Road, Kingswood, Aylesbury, HP18 0RA £1,489,174.59*

    *b) ROSEWOOD COMMERCIAL LIMITED*

    *22 Wycombe End, Beaconsfield, Bucks HP9 1NB £1,513,201.80*

    *c) R&B REFURBISHMENT LTD*

    *4 Abbey Trading Estate, Bell Green Lane, London SE26 5TW*

    *Basic Tender £1,204,632.00*

    *Add tiled roof block 1 Greystoke Ct £166,068.00*

    *Aluminium Window/Door Replacement to Communal*

*Areas ONLY - Fire Rated £71,240.12*

*£1,441,940.12*

*10% contingency £144,194.01*

*£1,586,134.13*

*20% VAT £317,226.83*

*£1,903,360.96*

22. At paragraph 6 of the notice of estimates it states:

*The written observations in relation to the notice of intention received during the*

*consultation period may be summarised as follows:*

*23.* Nothing followed in terms of a summary of the written observations. This was a glaring error because numerous observations had been received from leaseholders, many of whom were very concerned about the proposed works. In short there was no regard to the observations made. An application for dispensation has been received. In that application the qualifying works are described as follows:

*- Redecorations to internal common parts of the premises*

*- Redecorations to external parts of the premises*

*-Maintenance works to common areas/grounds (which come under the definition of the*

*"Block" in the lease).*

*The works have not yet taken place and are envisaged to take place in late 2025/early 2026.*

24. In July 2024 a newsletter was sent to leaseholders about the development works. From the outset it was stated that this was not a two way channel of communication and emails would not be responded to.

25. Ms Muir stated that after the expiry of the consultation period Glanmire design were appointed as the chosen contractor. Very soon after a demand was sent out to leaseholders for over £28k. The demand did not contain a payment date. Soon after

there followed a solicitor's letter seeking immediate payment. Two leaseholders paid the demanded sums. These were the leaseholders of Flats 15 and 31. At the date of the hearing neither had been repaid. This is unacceptable in light of the fact that the demand was invalid and the consultation process was flawed. Pausing here, the Tribunal would expect the sums to have been repaid, and if they have not, they should be immediately. When we asked questions about this, the answers we were given by the Respondent's witnesses were inadequate.

26. The tender document/ schedule of works dated June 2024 from Glanmire added the option of replacing the roof of Block 1 at a cost of £166000. This had not been in the original specification, and the roof did not need replacement. Pausing here, this was confirmed later by the expert surveyor.

27. Ms Muir took us through some of the works in issue. Some works were necessary such as works to the roadway, the garage roofs and some lift repairs but the extent of the works proposed was in issue. It was considered that much of the works proposed such as the new roof to Block 1 were unnecessary and were only included to improve the saleability of the flats being built. In addition, the Applicants considered that the sensible course would be to carry out the development works and then attend to other repairs. In relation to the boundary wall, it was proposed to replace the Southern boundary wire fencing with a retaining wall at a cost of £76000. This work was not within the lease obligations that the Applicants were required to pay for.

28. In relation to the lifts the Applicants accepted that the lifts needed attention. Leaseholders had already paid £146000 which had been claimed in the service charge. A notice of intention was sent on 9th May 2023. The works were described as follows:

> *It is our client the Freeholder's intention to enter into an agreement to carry*
>
> *out the above works for which we are required to consult with leaseholders.*
>
> *2) Repairs and or replacement where necessary to the 3 X Communal Lifts.*

29. The leaseholders who responded to the notice of intention objected to the works proposed for blocks 2 and 3 and these lift works have been put on hold. There followed a notice of estimates which again failed to provide a summary of objections. Again, an application for dispensation has been made.

30. There followed a letter from the managing agents dated 22nd August 2023 which confirmed that the lift in Block 1 was to be concentrated on. At the same time, it was said that urgent works were necessary on all three lifts (one in each block) at a cost of £118000. Ms muir highlighted the fact that there was no new specification for these urgent works. This sum was demanded of individual leaseholders on 22nd August 2023. There was then a further demand on 2nd April 2024 for £72000. The Applicants say they have met these demands but the works have not been carried out.

31. In relation to the proposed new fire doors in the blocks these works were necessary because an enforcement notice had been served by London Fire Brigade. A notice of intention was sent out on 4th April 2022. A notice of estimates was sent out on 28th September 2022. The chosen contractor Capital Fire Doors fitted only one door and a different contractor was used. The leaseholders had paid £146000 for the doors. At the date of the hearing only six out of thirty six of the doors had been replaced. In addition, Ms Muir showed us plans for the development works which showed that the new fire doors will need to be removed to accommodate the development works. The fire doors are also subject to a dispensation application. Amongst other things that application states the following:

> *The total amount of the service charge demand was £146,533 (spread across two separate demands). This included the cost of the works for CFDL, the contract fee and the managing agent's fee, but did not include the abortive fees of £8,908.64 paid to CFDL, as that was not incurred at the date of the demand. To date, 9 doors out of the 36 fire doors have been changed at a total cost of £38,655.00. The remaining works have not completed due to a lack of funds in the service charge account.*

32. Pausing here, this is a surprising statement. The service charge had been demanded and as far as we know collected for the purpose of fitting the fire doors. Those sums have clearly been used for other purposes which explained the lack of funds in the service charge account. This puts into context how the leaseholders are prioritised. It is disingenuous for the Respondent to state as they do in their dispensation application:

> *Part of these works have been carried out. The remaining works will be carried out when leaseholders pay their service charges.*

*First Applicant's opening statement*

34. Mr Evans made an opening statement on behalf of the First Applicants. He lives in the 1960s block at the top. He said the block had a new roof in 2009. In 2019 there was water ingress into the building. The roof was patch repaired. He accepted that the development works would attend to this problem.

35. Mr Evans said he was representing three other leaseholders, one was housebound and there was also a couple who lived in Cairo. He said that there had been external decorations of the block in 2014 and 2022 and there should not be a need for further decoration until 2030. He was concerned that some of the garages were owned privately which, should be reflected in the overall calculations. He also said that there was an old oil tank which needed to be removed at the expense of the Respondent. He thought the development works should take place first.

*The Respondent's opening statement*

36. Mr Rowen emphasised the distinction between the major works and the development works. He took the Tribunal to an email from James Butler the Managing Partner of the Respondent in which he anticipated the difficulties associated with both sets of works taking place concurrently and considering how to ensure that there is separation. Mr Rowen said that the intended development works did not abrogate the Responsibilities under the lease.

37. Mr Rowen said that the Second Applicant's expert (see below) was broadly in agreement that works were required although he accepted that there was some disagreement such as the need for a new roof on block 1 and the type of scaffolding to use.

38. Mr Rowen outlined how the insurance was charged. Some of the cost was apportioned to the garage owners. The garages had been affected by subsidence in 2021 which had increased their premiums. He said that the First Loss Payee system prevented the landlord from running off with the insurance sums. The lessees were

not out of pocket as a result. The insurance premiums had increased firstly because of the subsidence claims in relation to the garages and there were a lot of other claims as a result of the water ingress in block 1.

39. In relation to the lifts he said that the urgent health and safety works were required for each block. It was not intended to replace the lifts in any of the blocks.

40. Mr Rowen said that the landlord had been trying to comply with the enforcement notice in relation to the fire doors. Six doors had been installed.

*Mr O'Keefe*

41. Mr O Keefe gave his evidence early as his wife was expecting a child. He is a leaseholder of Flat 19 Greystoke Court. He had provided a witness statement and was subject to a short cross examination.

**Day 2**

*The expert's evidence*

42. Erol Stewart BSc MRICS the Second Applicant's expert gave evidence. He had provided a report dated 18th December 2024. He provided a useful conclusion to his findings:

*Conclusion*

*8.0.1 Block 1, Roof, Gutters, Fascias & Soffits and chimneys. I am of the opinion that remedial works are required to stabilise the elements and reverse years of lack of maintenance. However, the proposed replacement of the roof and replacement of rotted timber is excessive and unnecessary. Further, given the intended development proposed by the freeholder the proposed replacement works would be rendered valueless and ill judged.*

*8.0.2 Block 1 Elevations, generally the condition reported is in line with my findings as are the remedial works identified. That said, the level of disrepair would in my opinion be markedly lower as would be the costs should there have been more strategic planned maintenance undertaken over the years. I am unclear why the freeholder has commented on all the windows to the Block when only those to the common areas should be subject to service charge in my opinion.*

*8.0.3 Blocks 2 & 3 roofs, generally the condition reported is in line with my findings as are the remedial works identified. That said, the level of disrepair would in my opinion be markedly lower as would be the costs should there have been more strategic planned maintenance undertaken over the years. Further, given the intended development proposed by the freeholder the proposed works would be rendered valueless by the installation of the additional storeys.*

*8.0.4 Blocks 2 & 3, elevations, generally the condition reported is in line with my findings as are the remedial works identified. That said, the level of disrepair would in my opinion be markedly lower as would be the costs should there have been more strategic planned maintenance undertaken over the years. I am unclear why the freeholder has commented on all the windows and balconies to the Block when only those to the common areas should be subject to service charge in my opinion.*

*8.0.5 Garages & Adjacent building are in need of remedial works, however the description of the defects is a little inflated and much of the works would not be necessary, such as the claim to replace copings when they could be lifted and re-bedded. I call into question whether or not the adjacent building is part of the demise given its use.*

*8.0.6 Bin store has been demolished with no clear justification as to why. I call into question if the freeholder followed current legislation in so doing, I suspect not. Further, given the intended development proposed by the freeholder of utilising this space for parking I question if the building was demolished solely due to its condition.*

*8.0.7 Roads & paving's are in an advanced state of disrepair, but I am of the opinion that the level of disrepair would be significantly lower as would be the costs should there have been more strategic planned maintenance undertaken over the years. I question the intelligence of undertaking the proposed works prior to the freeholders proposed development works which would clearly be affected by the impact of heavy good vehicles, storage and the like.*

*8.0.8 Boundary wall, I am particularly confused by the inclusion of this element in the condition report. I was unable to identify the issue complained of in the condition report. With the recommended works being the existing fence should be replaced with a reinforced concrete wall with a 1.2m high fence on top. Currently the boundary is demarked with a combination of a concrete post fence with timber panels or a chain link fence with steel post, also the boundary is heavily wooded so to install the reinforced wall including the foundations may require removal of a number of trees. Additionally, I do not hold the opinion that the boundary requires that level of retaining with the difference of*

*levels between the properties approximately 500mm. I would suggest the reason the retaining wall has been proposed is to retain the proposed new road being installed by the freeholder. I call into question whether the freeholder has conclusively identified the precise location or ownership of the boundary normally a property is responsible for one boundary, by the freeholders conclusion Greystoke Court is responsible for all boundaries.*

*8.0.9 With regards the procurement of the works I have grave concerns that the freeholders procurement process is considerably flawed and not in accordance with good practice such as that recommended by the RICS. I call into question the construction costs proposed as I believe the freeholder will not be able to demonstrate he has properly tested the market and obtained firm costs. He will not be able to ensure the contractor does not make claims for extras or unforeseen works, he will be unable to control costs. I also question how firm the tenders are, when not all of the schedule works having been fully designed. I would not be able to recommend the residents accept the cost information provided.*

43. In chief Mr Stewart said about 5% of the tiles on block 1 needed replacement. The tiles could be individually replaced. Also, some of the gutters needed realigning, rubbing down and repainting. Some may need replacement. Some splice repairs may be necessary to the soffits and fascias. He said there were two versions of the specification, one with a roof replacement of Block 1. He said there was not enough detail in the specification. There was more evidence needed of the extent of the work required. This was the case in relation to the tile replacement and repointing. In addition, he said that the repointing was unnecessary and could be done in four years time. He said there should be a window schedule identifying the extent of the works required. He did not agree that full working scaffolding was required to do the roof on block 1 and Access scaffolding was adequate.

44. In relation to Block 2 he said a cherry picker could be used as the roof was not being done although scaffolding would be needed for the development works. The pointing needed to be better specified. He said only three of the garages needed work. The roads needed attention but he questioned whether all of the works specified needed to be done.

45. In cross examination Mr Stewart confirmed he was a surveyor and not a structural engineer. He said clay tiles like those on Block 1 could last longer than 100 years. He was taken to some pictures of the roof. In one there was impact damage as a result of a storm. He summarised that the roof was in good condition with minor disrepair.

He said the guttering could be repaired where the joints had come apart. The charge of £23500 for gutter replacement was excessive. He accepted that the balconies and windows needed works. He broadly accepted the condition of block 2 and 3. He accepted the roads needed resurfacing.

46. In re-examination Mr Stewart said that none of the windows identified in the specification were communal windows (this was later proven to be only partly true as some of the windows were communal windows). He said that the specification was of a poor standard and this would cause problems in analysing tenders. Too much was left to the contractor to speculate on and this would mean that there would be lack of consistency across the contractors' tenders. He said he would start again and do a detailed description of the works required, with a better specification and schedules so that the contractors were clear about what they were pricing for.

*The remaining leaseholders evidence*

47. We had the benefit of the written and oral evidence of Mr Silver, Mr Beddows (who had paid the unlawfully demanded service charge and had not been repaid) and Ms Yeo.

**Day 3**

*Ms Benathan's evidence*

48. Ms Benathan is the leaseholder of Flat 3 Greystoke Court. She provided written and oral evidence. She had provided detailed comments in response to the consultations. She was critical of the managing agent's performance. She maintained this position during cross examination. She was concerned that a sinking fund had not been collected to cover the major works. She accepted that she was in favour of the appointment of Capital Fire Doors to do the fire door replacement contract and accepted that they had only repaired one door.

*Ms Cunningham's evidence*

49. The Tribunal had the befit of evidence in written and oral form from Mr Cunningham.

*Andrew Davies*

50. Mr Davies was the lift engineer that gave evidence on behalf of the Respondent. He is the Director of Empire Lift Group. He provided lift condition reports and other information attached to his witness statements. Empire lifts had quoted for the lift modernisation works of the three lifts at a price of £224972. The lift works had not been completed because there was a lack of funds. They had carried out phase 1 of the works to the control panels but the work had stopped as they had not been paid for further works.

*James Butler*

51. Mr Butler is the sole director of the Respondent company. He said that his company acquired the freehold on 11th August 2023 but had been planning the acquisition before this. He was asked about the plans for the development works. He said the plans in the bundle were out of date. He said that the work was a moveable feast. He said the roofscape was changing and further planning permission may be required.

52. In relation to the s.20 consultation he accepted that a lot of the observations had not been responded to. He was asked about the specifications and how the contractors were supposed to price them when they were inadequate. He said the contractors were invited to site and it was a process of dialogue. He said it was an opportunity to save costs by carrying out the development works at the same time as the major works.

**Day 4**

53. Mr Butler continued giving evidence. He said wrap around scaffolding was needed even to carry out repairs to the roof. He denied that he had any issues raising money for the development works. He said he had no access to the service charges to use for the development works. He accepted that he could not charge for the roof of blocks 2 and 3. It was put to him that there were not many communal windows and a tower scaffold could be used and there was no need for wrap around scaffolding at all for blocks 2 and 3. He accepted that. He said the oil tank was leaking and had to be removed. He said there would be no charge to leaseholders for this. In the process

the bin store was demolished but Mr Butler said there were other bins available. He also said a new bin store would be built and paid for by the Respondent.

54. Mr Butler agreed that the garage repair costs were not a general item and should only be paid for by the garage owners. He said that money for the lifts paid by the leaseholders had been absorbed by other financial pressures. He also said that payments made for the lift in block 1 had been reversed by leaseholders withholding money.

55. In relation to compliance with the Enforcement Notice Mr Butler said they were working to comply with it even though it had been served in 2018.It was put to him that the fire doors had not been completed despite the leaseholders paying for them. He said he was doing his best to catch up He denied that the fire doors would be redundant once the development works were done. He said the new fire doors would remain in place.

56. He denied that the insurance arrangement didn't comply with the lease. He denied that the specification of works was not fit for purpose. He did accept however that the works to the roads should wait until after the development works were carried out.

*Danishmand Ahmed*

57. Ms Ahmed is the sole director and shareholder of David Adams Surveyors Limited, the Respondent's managing agent. She provided written and oral evidence. In cross examination she said that she had not make any insertions to the specification and did not know how the changes were made. She said she employed a company to send demands out. It was put to her that the demands were invalid and Mr Beddows had paid £33k. She was asked why this did not show on the service charge account. She said she kept the day to day account separate from the major works. She said the letters before action had been sent by solicitors. She was silent when it was put to her that the ledgers should reflect the payment of service charges. She said the money for the fire doors had been given to the Respondent and the funds had been diverted to other works. It also transpired that Ms Ahmed was receiving a substantial fee for the administration of the development works but it was not clear what services she was providing for this remuneration.

*Closing speeches*

58. Both advocates gave short closing addresses. Mr Rowen said that the delay in works being carried out did not render the demands unpayable because the Respondent had the right to make interim demands. He said there was no evidence that the lift work or the fire doors would be rendered otiose by the development works. He said that the expert had eventually accepted the need for wrap around scaffolding around blocks 2 and 3. Mr Rowen said that preventative works are within the landlord's powers in relation to the roof replacement. He accepted the garages should be separately charged to those leaseholders that own a garage. The expert had largely accepted the landlord's proposed work to the garages.

59. Ms Muir said the Tribunal needed to assess whether the works fell under the lease and whether it was reasonable of the landlord to carry out the works proposed. She said that Mr Butler's evidence was weak. He accepted that fire doors had not been completed. He had criticised the expert but had refused him access.

**Determination**

60. The Tribunal heard and read extensive evidence in this case. We were able to form a view of the witnesses during this process. We found that both Appellant's witnesses were credible. There was clearly considerable concern about how the property is being managed and the development works. The latter had caused considerable disruption to them.

61. In communication with the residents the Respondent had the opportunity to build bridges before the development work started and develop good working relationship to minimise the disruption. Instead of taking the opportunity the Respondent appears to have started off on a "war footing". The email disclosed by the Respondent for the purpose of deflecting the allegation that they had an agenda prioritising the development works and that those works were separate from the major works made interesting reading. Mr Butler who had not owned the freehold very long was anticipating problems from the leaseholders and planning an offensive which involved the Tribunal. See the emails dated September 2023:

*As you know we are about to start work on site in January 2023 to build 13 new flats onto and into the 3 blocks on this estate. Now of course the Lessees are all going to allege that we are trying to mitigate our costs exposure by running the S20 at the same time and they will seek to muddy the waters when it comes to what is and what is not recoverable…..*

*It is our intention to collate quotations (including from any contractors recommended by Lessees) and serve the Notice of Estimates by the end of January 2024. This will place us in a position where we can sign contracts by the end of February, send out the invoices to all Leaseholders and make an immediate application to the FtT for Fairness & Reasonableness. We know it will end up there anyway so I want to control the narrative and the shape what that application encompasses…..*

*Please can you keep a keen eye out for any notices or internal tenant comms which indicate that the tenants may be mobilising to obstruct etc. Please can you ask Habib to report these back to you urgently if he becomes aware and tell him that we will look after him for being on our side in this regard;*

*3. Given the uncertainties around the movement of vehicles, we have decided to knock the tree works back by a fortnight. Instead we are putting up the gates on the primary entrance and bollards on the exit onto Hanger Holl from the Crescent. We will be mobilising iso containers to site for site establishment over the coming weeks. The tenants do not need to be informed of any changes;*

*4. We have discussed the Ben Nathan email internally and we do not intend to engage with Tenants on a tit for tat, complaint by complaint basis. As discussed over the next week or so I will draft up a letter which provides a general timeline and which deals with various matters as the Freeholder. When it comes to doing what we need to on site, we are not going to consult with the Lessees, we are just going to get things done as and when they are required. The parking issue is a prime example, once gated there can be no parking in that area, the end. Anyone who doesn't like it will have to take us to court if they have the money, we will not give their protestations a platform. The same will go for trees, hoardings, scaffolding, noise, H&S etc. If we are offside at any point then the relevant authorities will take us to task and we will engage with them as we are required to legally.*

62. These sections of the emails are quoted because they demonstrate Mr Butler's attitude to the leaseholders. In short, the leaseholders are a problem, they are not to be accommodated and they are not to be consulted. It is striking because this was

only about a month into the Respondent's freehold. Similarly, the newsletter sent out by the Respondent during the same period stated quite clearly:

> *The purpose of the Newsletter is to act as a simple one way broadcast, so that you are brought fully up to date with important issues on site pertaining to our development activities which will commence in earnest very shortly. Please note that this email channel is designed to be a broadcast channel to alert you as to what is coming up and how each step will be managed to minimise disruption. The email address you received this communication through will not receive incoming emails and is not therefore a channel for concerns, complaints or litigation…*

63. There is of course nothing inherently wrong in sending a broadcast email like this but only if an alternative medium is set up for leaseholders' concerns about the development work. We could not identify one. This downgrading of the leaseholders' interests was apparent also in Mr Butler's evidence. It was patently clear that his principal concern was getting his project completed for a profit. He gave the Tribunal very little reassurances that he appreciated the responsibilities of being a freeholder. He was unable to give straight answers about what was planned for the development, how it would affect leaseholders or indeed what the major works (which we were principally concerned with) would actually entail. The specification that had apparently been sent out to tenderers was woefully inadequate. This was described perhaps too politely by the Second Applicant's expert, it did not contain proper quantities, it left too much for the contractors to speculate on and he would have scrapped it and started again. Mr Butler said the contractors were invited on site and it was a process of dialogue. This is inadequate. Firstly, it is not clear how the Respondent ensured that the tenderers were on a level playing field and this puts the tender process in issue. This is of concern when the Respondent is seeking dispensation from the consultation process. That is to be dealt with in a separate application but the attitude of Mr Butler demonstrated above gives a clear impression of why he may not have included feedback from leaseholders at the estimate stage. More immediately we as a Tribunal are left in an impossible position speculating on major works costs without a proper specification. We refuse to do this and this is the reason why we make no determination in relation to the payability and reasonableness of the major works. We simply don't have the correct information to do so.

64. We were also unimpressed by the evidence of Ms Ahmed who appeared defensive and was unable to explain why a payment of £33k did not show on the ledger. The

only reliable witness on the Respondent's side in our view was the lift engineer, Mr Davies. He gave honest answers. His firm had not been kept in funds and that was why the lift improvement work had ceased.

*Service charges other than major works*

65. Turning to the remaining service charges the parties helpfully prepared an extensive Scott schedule of issues and updated it as we progressed through the hearing. We will be addressing that schedule in our determination below.

**2021-2022**

66. The costs were incurred before the Respondent became the freeholder but the managing agent was the same and the Respondent appeared happy to answer on behalf of its predecessor in title.

***Insurance costs - £56295***

67. This was a recurrent item. The Applicants said that the cost was excessive and was related to the subsidence claim made on the garages. The Respondent said this was not the case. The garage insurance was apportioned separately. The higher insurance was due to claims made in the top floor of the 1960s block where there had been persistent water ingress through the flat roof. This tied in with the evidence of Mr Evans. The Respondent said that insurance brokers seek cheaper insurance before a renewal on 7th August each year. The financial year is April to March so that there needed to be an apportionment and this had led to an under demand on the previous year. The Respondent's arguments were evidenced in the documentation. The Appellants had not provided alternative quotes. We consider that this charge was reasonable and recoverable. There is however one aspect we were not happy with. This was the extra cost for the payment by instalments by the Respondent. This sum ought to be met by the Respondent as it is entirely for their benefit. The extra sum will need to be deducted from the total.

***Fire doors- £54000***

68. The First Applicant had various complaints about the fire doors. The standard of the works was unreasonable. Only 6 out of the 36 fire doors had been completed despite all of the money being collected. It was also alleged that the redevelopment works would render the works obsolete. The Second Applicant said that the total cost of the fire doors contained in the s.20 notice was £146533. The sum of £54000 had been demanded on 24th September 2021. Then a further £92533 had been demanded on 28th November 2022. Despite the works being paid for in full only 6 of the fire doors had been completed. They also said the works would be rendered redundant by the development works. For their part the Respondent said that a fire notice had to be complied with and the works would not render this work obsolete. They said that service charge arrears had led to delays. They also blamed one of the leaseholders Louise Benathan who recommended Capital Fire doors who ultimately had to be removed from site.

69. The evidence about the fire doors becoming redundant was inconclusive. It is however disingenuous for the Respondent to blame service charge arrears. The work had only partially been completed accordingly we consider that only the amount completed should be charged. This represents 1/6 of the total sum namely £ 9180. This is the sum due. Part of the fire doors cost has been subject to a dispensation application. It's hard to glean from the application exactly what is included. It may be the case that the unit sum payable is only £250 until dispensation is granted.

70. The remaining issues for this year had been withdrawn.

**2022-2023**

***Insurance costs - £62005***

71. The arguments on this item were a mirror image of the previous year. For the same reasons we allow the sum in full.

***Fire doors - £92559***

72. The arguments on this item were a mirror image of the previous year. We allow £15725. Again, this might be affected by the dispensation application.

### *S.20 notice cost £4700*

73. The First Applicant said this was not a legitimate charge for a managing agent to make. The second Applicant said it should be disallowed for the same reasons as the fire door cost. The Respondent said that the management agreement allows for this extra work to be charged for.

74. We consider that this is a legitimate charge for the managing agent to make but a reasonable cost is £50 per unit making a total of £2400. This the sum we allow.

### *Capital fire doors - £4454.35*

75. The original work was defective but the Tribunal were told that the works had been made good although this is not reflected in the Respondent's comments in the Scott Schedule. We consider that the work done by Capital Fire doors was not fit for purpose and we disallow the sum.

### *Paul Henry surveyor fee - £2013.80*

76. The Applicants both said that nothing should be allowed as the fire doors would become obsolete. As said above the evidence on this was inconclusive. The Respondent had to respond to the order made by London Fire Brigade and the appointment of a surveyor was prudent. The work was done and should be paid for. We allow the sum in full.

### *Empire lifts – various*

77. A number of the charges were conceded by the Respondent as they represented double charging. The remaining costs were the following:

***£864, £2988, £1320, £436.80, £667.90, £1759, £1740, £1788, £2184, £2511.60, £2028, 2313.60 and £1154.40***

78. We had very little evidence or submission on individual cost items like this but we were impressed by Mr Davis' evidence and we allow these sums in full.

***Empire Lifts - £7212***

79. The First Applicant suggested that this work should have been consulted on as some of the leaseholders were charged over £250. We heard no submission on this point but the sum is not included in the current dispensation application. Doing the best we can we provisionally allow the sum in full but stress that dispensation may be required.

**2023-2024**

***Insurance - £68314***

80. The arguments here were virtually a mirror image on previous years. We allow the sum in full.

***Block 1 Lift Modernisation - £102660***

81. This sum is subject to a dispensation application. At present £250 per unit is the sum payable. We were asked to comment on the reasonableness of the sum nonetheless. The facts are that the work had been demanded and paid for by the leaseholders but the work has not been completed. In fact, Mr Davies estimated that only 1/3 of the work had been carried out. We allow 1/3 of the total sum which is £34220.

***Blocks 2 and 3 Lift Emergency - £15840***

82. This sum was spent on emergency repairs to the lifts in blocks 2 and 3. This is an unavoidable expense and we allow it in full.

***Section 20 money spent on lifts - £60884***

83. For the same reason given above we allow a 1/3 of the sum- £20295. This is of course contingent on dispensation being granted.

***TLC Lift Consultancy money - £51500***

84. We heard no submissions or evidence on individual items like this. It is not clear what the fee was for and we disallow it.

***Money spent by managing agent on fire doors work that we can see on the accounts - £27487***

85. We heard no submissions or evidence on individual items like this. It is not clear what the fee was for and we disallow it.

***AC Design Solution report – flat 6 inspection - £2184***

86. This cost was excessive for the work involved. We allow £1092 which is a fair price for the work involved.

***AC Design Solution report – Flat 26***

87. We allow £897 which is a fair price for the work involved.

***AC Design Solutions – Flat 20***

88. We allow £471 which is a fair price for the work involved.

***AC Design Solutions report - £9711.40***

89. This report related to the development works which do not benefit the leaseholders. It is disallowed.

***AC Design Solutions – Flat 29***

90. We allow £471.43 which is a fair price for the work involved.

***AC Design Solutions - £1500***

91**.** We disallow this sum as it related to the development works.

***AC Design Solutions Specification - £6857.14***

92. Our criticisms of the specification have been made clear above. It simply was not fit for purpose and we disallow the sum in full

***AC Design solutions – Flat 21 - £600***

93. We allow £300 which is a fair price for the work involved.

***Legal & Admin fees - £7704***

94. This sum was not charged to the leaseholders and therefore there is no issue for us to resolve.

***Emergency Lift works - £30384***

95. This appears to be a duplicate charge in relation to the lift charges above. If it is a duplicate it is not payable. If it is not a duplicate it's unclear what it relates to.

**2024-2025**

***Insurance costs - £72184***

96. The Second Applicant raised a number of arguments in the Scott schedules which were new arguments on previous years. The Respondent has not responded to these arguments. There is a concern that this was due to either an oversight or the order in which the Scott Schedule was filled in. We make no determination on this issue save than to say the costs appear reasonable on previous years. **If the parties want this issue resolved properly, they will need to make written submissions which should be sequential with the Second Applicant's submissions filed within 14 days of receipt of this decision and the Respondent replying to those submissions within 14 days thereafter. A further decision can then be made with associated appeal rights.**

**Major works - £1487349.48**

97. For the reasons given above we make no determination on this issue. The specification prevented any proper analysis of costs predicted. **This does not mean that the sums are due.** The Respondent will need to address the issue of the specification before any determination can be made. In any event there is dispensation application to be considered.

***Block 2 - Urgent Health and Safety works to lift- £33000***

98. This is a budgeted sum. As such it is on its face reasonable. The position may change with modernisation works but at present it is a reasonable budgeted sum.

**Block 3** - ***Urgent Health and Safety works to lift- £33000***

99. As above this is a reasonable budgeted sum.

***Contract administration – 10%***

100. We consider this to be excessive and allow 5%

***Fee to view accounts - £1500***

101. This sum is entirely unreasonable and we disallow it in full.

**Summary**

102. The parties will need to reflect on this decision and the way it affects the other applications for dispensation before the Tribunal. When Mr Butler was being questioned, he accepted that it would make more sense for the development works to be carried out before the major works. This would allow the Respondent more time to properly prepare the specification of works for the major works and consult on the works in accordance with the Act. It is of course up to the Respondent whether they pursue this course. In any event, we consider it very important that they start to build bridges with the leaseholders as this will make their task as freeholder much easier.

103. The parties are invited to make written submissions on s.20C Landlord and Tenant Act 1985 once they have read and considered this decision. The submissions should be filed within 14 days of receipt of this decision.

Judge Shepherd

12th September 2025

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.