FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/23UB/LSC/2023/0118**
Property	**:**	**Flat 42 Cambray Court, Cheltenham GL50 1JX**
Applicant	**:**	**Mr Paresh Parmar**
Representative	**:**	**In person**
Respondent	**:**	**Cromwell Business Centre Management Company Ltd ("CBCM")**
Representative	**:**	**Mr Steve Whybrow Assoc.RICS (14 October 2024)** **Mr Simon Allison KC (9 April 2025)**
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	**:**	**Mr Charles Norman FRICS (Valuer Chairman)** **Mr Mike Ayres FRICS** **Mr Mike Jenkinson**
Venue and hearing dates	**:**	**The County Court at Cheltenham and Gloucester, 14 October 2024 and 9 April 2025**
Date of decision	**:**	**20 July 2025**

DECISION

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Decisions of the tribunal

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

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The tribunal makes an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that none of the landlord's costs of litigation may be passed to the applicant via an administration charge.

The application

1. The Applicant (hereinafter also referred to as CCMC) seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2017/18, 2018/19, 2019/20, 2020/21, 2021/22, and 2022/2023. He also sought a determination in respect of the year 2023/2024. The disputed item was costs in connection with the replacement river wall.

The background

2. This application is concerned with the determination of final amounts payable by the applicant in respect of major works to the property, being river wall works. Interim payments in relation to those works have been the subject of a prior determination (case reference CC/CHI/23UB/LIS/2019/0040), given on 28 January 2020 ("the January 2020 decision"). The freeholder brought that application. The applicant has also brought other applications to the tribunal in the past.

3. The present case was heard with that in respect of flat 18 Cambray Court brought by Ms Charlotte Huot (case reference CHI/23UB/LSC/2023/0119). On the second day of the hearing the tribunal also heard a related application for dispensation from consultation requirements brought by the landlord (case reference HAV/23 UB/LDC/2025/0600).

4. Previously, on 24 February 2022 the parties had entered into a Tomlin Order in the County Court at Birmingham in settlement of service charge arrears. The effect of that order was in issue.

5. The property which is the subject of this application Cambray Court was described in the January 2020 decision as " three blocks of flats ("the Building") together with a number of garages and surrounding grounds. The freehold title is subject to 56 long residential leases of the flats, along with telecommunications leases and a number of garage leases." The freeholder is Cromwell Business Centre Management Company Ltd (hereinafter also referred to as CCMC). MetroPM act as its managing agents.

6. The tribunal inspected the property shortly before the hearing in the presence of Mr Parmar, Ms Huot, Mr Whybrow and Mr Ahmed, the applicants witness (see below). The tribunal inspected the replacement river wall and new garages and also visited the common parts of the building. Photographs of the building were provided in the hearing bundle.

The issues

7. The Tribunal identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of the costs of major works which comprise (i) construction costs and (ii) professional fees

   (ii) The effect of the Tomlin Order of 24 February 2022 made between the parties.

   (iii) The effect of section 20B of the 1985 act.

   (iv) Whether the service charge demands served were defective for non-compliance with s 47 of the Landlord and Tenant Act 1987 ("the 1987 Act").

   (v) Whether the management agreement between CBCMC and Metro PM was a Qualifying Long Term Agreement ("QLTA") caught by section 20 and if so the effect.

   (vi) Whether section 20 of the 1985 Act has been complied with in relation to the river wall works.

   (vii) Whether orders under section 20C and Para 5A should be made.

The Hearing

8. At the hearing the applicant appeared in person. On the first day of the hearing the respondent was represented by Mr Steve Whybrow Assoc. RICS. On the second day of the hearing, the Applicant appeared in person and the respondent was represented by Mr Simon Allison KC of counsel. The parties made submissions, and Mr Ahmed gave evidence.

Procedural matters

9. Following the hearing on 14 October 2024, the tribunal directed the respondent landlord to provide further submissions in relation to the application of section 20B. It also provided that both parties would be able to make further submissions about section 20B at the resumed hearing. In addition, the tribunal acceded to a request from the applicant for the respondent to provide the latest management agreement between the respondent and Metro PM. The tribunal also required from the applicant further information in relation to disputed invoices.

10. At the hearing of 14 October 2024, the tribunal indicated that it was minded to find that the consultation requirements had not been complied with. Both at that hearing and in subsequent directions it invited the respondent, if it wished, to make an application for dispensation under section 20ZA. Such an application was made under case reference HAV/23 UB/LDC/2025/0600.

11. At the resumed hearing on 9 April 2025, the applicant sought to introduce a new 94 page document which he described as a "skeleton argument" although it is also described on its file name as "complete authorities". The tribunal had not received this document prior to the day of the hearing although it had been sent to the tribunal three days previously. The document was not a skeleton argument. No prior case management application had been made by the applicant seeking to admit it. Mr Allison KC did not strongly object to the document but submitted that it was generated through artificial intelligence. Having adjourned to consider this, the tribunal announced that it would not have regard to new matters in the document not previously raised.

12. The tribunal considers that the only parts of this document to which it can have regard are those dealing with section 20B, because the directions had indicated that additional submissions could be made on that matter. Had the applicant wished to challenge the current management agreement once disclosed, he should have brought a case management application for a direction to raise additional matters on that agreement, but he did not do so.

13. The applicant was given a full opportunity to make a closing statement to the tribunal, which he did.

The Applicant's Case

14. In his statement of case the applicant raised many issues. The tribunal explained that it is not concerned with electric pump charges (which the tribunal had previously found not to be a service charge item) or TPO and ICO rulings which are not relevant to the tribunal's jurisdiction. Further, the tribunal stated that it would not reopen previous findings as to the definition of the boundary of the site as this had been determined in the January 2020 decision.

15. The applicant's case may be summarised as follows. The landlord had neglected management of the property near the river wall, and this had caused or contributed to the cost of repair works. The landlord did nothing between 2009 and 2015. At around that time there were also issues regarding drainage on the ground. Consultants were commissioned to carry out surveys. The insurers rejected a claim in 2017. At that time the managing agent established that the owner had the responsibility to repair the wall. No challenge was made against the insurer's rejection of the claim. The insurance premium should therefore be refunded.

16. In around December 2020 the landlord pursued a claim for service charges against Mr Parmar in the county court. In February 2022 Mr Parmar agreed to settle the service charge claim in full and final settlement [in the Tomlin Order] which included all costs associated with river wall works. In December 2021 the lessees were advised of the programme of works to repair the river wall. Accordingly, all charges for those works were known at the point in time when the Tomlin order was concluded. Therefore, he did not have liability for any further service charges relating to the river wall.

17. Between 8 September 2020 and 24 April 2023, a period of over 18 months he did not receive any service charge demands. This was later described as the period 8 September 2022 to 25 April 2022. In response to a direction from the tribunal the applicant wrote that both statement were correct, because all demands prior to those issued on 3 May 2023 were invalid. That was because the landlord had failed to provide their correct address.

18. The applicant has suffered serious prejudice as a result of various works not being done early enough or not done to a good enough standard.

19. Although the river wall bounds the Cambray Court estate, the wall itself is in the ownership and the responsibility of Cromwell Business Centre

Management Company Ltd. Therefore, the leaseholders should not be liable for costs associated with damage to the wall. The landlord has to contribute substantially for works to the river wall.

20. The landlord proceeded on the basis that the works were urgent, to justify measures to restrict [physical] access, but their previous application to the tribunal did not reflect urgency. The landlord appointed various consultants and RBA [Reade Buray Associates][1] whom they retained in 2016. The landlord exaggerated the risk as well as insisting that the best solution was to tear down all 23 garages and the old river wall, and to install sheet piling to replace the wall with a 100 year life. Their solution was over- specified and constituted substantial improvement, for which leaseholders are not liable. In 2017 the Environmental Agency confirmed that the river wall did not provide any flood risk benefits in the form of any raised flood defence.

21. The landlord did not take emergency works at an early enough stage to limit the extent of the repairs required. The problem was allowed to deteriorate since 2009 and the costs for remedial works continued to escalate. Even if lessees are liable for a small proportion of the amount, this should have been mitigated and the charges being claimed are therefore unreasonable.

22. The previous tribunal decision [January 2020] concluded that "all professional advice received supports the conclusion that action is required and has been for some time. The question that is unresolved… is whether sheet piling is the appropriate solution." The applicant also referred to the findings of that tribunal that the tribunal, as at 20 March 2019, did not see justification for the applicant to have demanded a further large sum from leaseholders based on a sheet piling solution, in the absence of evidence as to the viability of a less expensive alternative solution, such as a bored pile solution. The Tribunal held that a reasonable landlord would not tie up his own money in this way in such circumstances.

23. Suddenly in April 2022, RBA announced that the sheet piling solution was not viable. This was after having spent substantial money in surveys reports and tender exercises. A credible consultant should have been able to propose a viable solution.

24. In August 2022 the landlord announced that it was making an application for dispensation[2]. The section 20 exercise had been poorly conducted with many relevant documents and specifications not available to lessees. It was not helped because documents could only be made available in Birmingham. It was impracticable and made it

[1] Chartered Architectural Technologists, see below

2 This did not proceed

deliberately difficult for anyone to review the documentation. The landlord should be wholly liable for repair costs of the river wall.

25. The landlord has failed to issue contractually valid service charge demands because these gave different landlord addresses for the same period. The landlord cannot have two different registered office addresses at the same time. All these demands were served by MetroPM. All consultant fees relating to the river wall must be aggregated and form a single qualifying work and therefore be subject to consultation.

26. It was unfair for the applicant have to contribute to the cost of garage replacement because he did not have a garage and this should have required a lease variation.

27. There was poor communication between the MetroPM their consultant RBA. This contributed to delays in the river wall works being carried out.

28. In Tribunal decision CH5/23 UB/OIS/2017/0036 it was held that the landlord entered into a qualifying long term service contract with Metro PM and that relevant service charges of the applicant should be capped. Since then, various works have been charged by the landlord using the same companies over several years and the applicant service charges should therefore be capped for those works. The same applies to day-to-day services such as cleaning and insurance.

The respondent's case

29. A river wall expenditure invoices summary was given as follows [629][3]:

Accounting £772.80
Environment Agency £1,448.25
Reports and Monitoring £3,012.00
Reade Buray Reports and Project Management £191,586.14
Kudos Structures - interim repair £11,040.00
Walsh Construction & Gloucester Asbestos £1,088,900.88
MetroPM £39,478.90
National Grid £4,752.94
Building Control £3,420.00

Total expense £1,344,411.91

30. There has been no breach of the Landlord and Tenant Act 1985, all service charges have been reasonably incurred, all works funded by the

[3] Square brackets denote bundle pages

service charges are necessary and completed to standard, all professional advice and project management costs were essential and reasonable, and all invoices were compliant and section 20 processes complied with. Mr Whybrow set out disclosure documents and a project chronology which gave the background decisions and actions taken by the respondent and its agents.

31. The respondent also relied on a witness statement from Mr Faraz Ahmed, Associate Director of MetroPM. [Mr Ahmed's evidence is discussed below]. The respondent also relied on the findings of the previous tribunal [January 2020] in relation to on account demands for the river wall works. Fifty of the fifty six flats at Cambray Court have paid their service charge contributions in respect of river water project. The sums demanded on account are clearly accounted for in the service charge accounts for the years ending 2018-2023 inclusive. The bulk of actual expenditure was made during the year ending 31 March 2024 as set out in those accounts. Sums demanded on account exceeded the actual expenditure and resulted in a year end credit adjustment which is to be applied to each leaseholder.

32. Mr Whybrow then refuted the other matters raised by Mr Parmar. A building insurance claim was made to Alliance in November 2016 but rejected as no insurable event had occurred. The respondent instructed Solicitors Wright Hassall to challenge this, but this was unsuccessful. The issue of riparian rights was determined in the 2020 decision. The respondent denies any breach of its duties as landlord. The respondent has not ignored tribunal determinations. The Tomlin order did not limit the ability to recover future charges relating to the river wall or otherwise.

33. The respondent accepted that service charge demands had not been served during the period when the parties were in the county court. Those service charges cannot be determined by the tribunal as they have been determined at court. The repair work has been carried out to standard. The respondent has procured appropriate technical reports and advice to ensure actions to repair the river wall and garage land were correct and appropriate. The respondent accepts that repair costs have increased over time for the subject project. This was caused by Covid, sharp increases in costs and materials globally and lack of specialist contractors. These matters fall outside the control of the landlord. The tender analysis demonstrates that works were completed by the contractor who submitted the lowest tender.

34. The address required to be shown on invoices need not be the registered office of the company but may be any other address in England and Wales upon which notices could be served on the landlord. Section 20 consultation requirements do not apply to consultant fees, nor were they procured in a long term qualifying contract that could be captured by the

Act. Further, no aggregation is required. This point was determined in the 2020 decision at paragraph 105. The estimated budget costs were £1,510,004. The actual expenditure has reduced the overall cost, and a balancing credit is to be applied to the account.

35. In the disclosure statement Mr Whybrow referred to pre-works reports by Reade Buray Associates (RBA), structural engineers and project managers on the necessity and scope of the project, samples of section 20 consultation notices, planning documents, specifications from RBA for the various project stages, contractor tender information with the return from Walsh Construction Ltd and RBA tender analysis, details of the garage demolition plan from RBA and copies of all invoices paid in connection with the project. In addition, service charge accounts for years ending 31st March 2018 - 2023 were supplied. The total expense was £1,344,441.91 being an underspend of £165,592.09. This was mainly due to not utilising the contingency provision.

36. The chronology of events was as follows. The respondents managing agent MetroPM in mid-2015 discovered cracked concrete to the garage land with bowing movement, and structural failure at the river wall. Geotechnical engineering Ltd carried out initial investigations and discovered a lack of foundations and recommended further expert advice be taken. RBA were appointed to inspect and report findings and solutions. The cause of the wall failure was attributed to a lack of concrete foundations under the garage land which had deteriorated over decades and potentially been hastened by an undetected water pipe leak. Second opinions from other structural engineer firms Clancy Consulting Limited and David Simmons Associates were obtained, given the seriousness of the situation.

37. RBA were appointed to monitor movement, and further consultations and tenders were obtained. The respondents attempted to progress a building insurance claim instructing solicitors, but this was ultimately unsuccessful. The respondent consulted with the Canal and River Trust and Environmental Agency to establish ownership and responsibility for the wall repair. Delays were caused by the pandemic, recovery of costs from leaseholders, a lack of contractors, and Environmental Agency restrictions limiting works to a few months of the year. RBA conducted detailed research and ultimately concluded that the initial sheet piling design solution together with other system were unsuitable, dangerous or had adverse practical implications. The final design was to demolish the garages and backfill concrete foundations behind a reinforced brick cavity retaining wall [the garages were rebuilt].

38. After tendering and section 20 consultation processes, Walsh Construction Ltd were awarded the contract for £1,009,477, including VAT. Work commenced in May 2023. RBA provided expert advice and reports, obtained planning permission, EA permits, design specifications

and conducted tendering processes for the works and managed the project. Their fee of 15% plus VAT is very reasonable. MetroPM are RICS members, 18 years established and have been managing Cambray Court for 14 years. They dealt with the section 20 consultation, appointed specialist advisers managed the financial and administrative aspects of the project. Their fee of 8% plus VAT is seen as very reasonable for their work.

39. The respondent called Mr Faraz Ahmed to give evidence. He had provided a witness statement verified by a statement of truth, which may be summarised as follows. Mr Ahmed is an Associate Director of Metropolitan PM Ltd (known as MetroPM). Mr Ahmed has been employed by MetroPM for seven years. During 2015 cracking was noted to the retaining wall and RBA were instructed to survey the affected area. RBA are consulting engineers with specialist knowledge in site reclamation demolition abnormal foundations structural alterations and repairs.

40. RBA in 2016 suggested that escaped drain water had softened the garage land which lacks foundations, and this resulted in slab and river wall damage. MetroPM were advised to make a £200,000 provision for repairs. MetroPM logged the matter with the building insurer. The insurer refused the claim on the basis damage occurred over time and not as a single insurable event. Wright Hassall were appointed by the respondent but ultimately the claim was unsuccessful. In 2018 RBA were appointed to design a solution and obtain tenders. RBA provided three tenders in March 2019 based upon a sheet pile design with a projected cost of £647,881. Provision was made in the accounts.

41. The tribunal decision in January 2020 held that an alternative to sheet pile design should be investigated. It held that the works were required, that they form part of the landlord's title and are recoverable as part of the service charge. In February 2020 RBA concluded that bored pile underpinning, sheet pile or rock anchoring were not viable. Hydraulically installed sheet piling or Keller king post systems were under consideration subject to Environmental Agency approval.

42. Section 20 notices were served in July 2020. Interim works to support the river wall were carried out a cost of £11,040 under supervision of RBA March 2021. A planning application was subsequently submitted for demolishing and rebuilding the garages. Planning permission and EA consent were obtained in October 2021. In December 2021, RBA concluded that the only viable design was backfilling concrete foundations behind a reinforced brick cavity retaining wall. This was because all piled or anchor designs were too risky for the unstable land and there was an unacceptable risk of damage being caused to nearby structures. This was unacceptable to the EA and the local planning authority.

43. In March 2022, RBA obtained three tenders after approaching over 15 contractors for the river wall works. They recommended O'Brien contractors for £1,051,024 including VAT.

44. RBA obtained two tenders for garage demolition and recommended Gloucester Asbestos for £14,371 including VAT.

45. In February 2023, section 20 statements of estimates were issued for the river wall works. Walsh Construction Ltd, a leaseholder-nominated contractor, was recommended at a price of £1,009,477 including VAT. The total expected cost of the work including contingency fees was £1,427,096. The river wall works commenced in May 2023. The project was completed in December 2023, except for electrical connections to the garages.

46. In answer to a question from the tribunal, Mr Ahmed said that he did not consider Birmingham to be a reasonable location for the inspection of documents required under the consultation regulations for the subject property which is in Cheltenham.

Professional Fees

47. In response to a direction, on 31 January 2025 Trowers & Hamlins in a letter addressed to the applicant stated that the sum of £222,505.60 exclusive of VAT had been the estimated project management fee as detailed in the Notice of Estimates dated 27 February [2023]. The actual costs were now known totalling £192,554.20 plus VAT, or £231,065.04 inclusive of VAT. The professional fees are those of RBA and MetroPM. RBA's fee for project management was 15% of the project cost being £135,562. The other professional fees of RBA include all reports on pre-tendering works. Each invoice was meticulously detailed and is reasonably incurred having regard to the complexity and scope of work. RBA undertook investigations, monitored production of reports and drawings, and undertook co-ordination with numerous stakeholders. The fees paid to Metro were £39,478 inclusive of VAT.

Section 20B

48. In accordance with directions issued by the tribunal, in its further submissions of 31 January 2025 addressing section 20B, the respondent submitted that service charge demands need not comply with section 47 of the Landlord and Tenant Act 1987 to stop time running under section 20B. From *Holding & Management (Solitaire) Limited v Sherwin*, when determining whether or not a balancing payment is recoverable where demanded more than 18 months after the start of financial year it will be necessary to ascertain the date on which the advance payments on account are exhausted; the Upper Tribunal suggested when determining

when that point was reached should reflect the reasonable expenditure rather than actual expenditure.

49. The applicant alleges that he received no demands from 8 September 2020 until 3 May 2023 and that demands are also invalid as they contain 2 different addresses. From *Staunton v Kaye* the respondent's name and address had been given by the bringing of the application.

50. Demands for the following periods were dated as follows and further copies sent on 3 May 2023:

1 April to 30 Sept 2020	14 July 2020
1 October 2020 to 31 March 2021	8 September 2020
1 April 2021 to 20 September 2021	27 April 202 (sic)
1 October 2021 to 31 March 2022	27 September 2021
1 April 2022 to 20 September 2022	25 April 2022
1 October 2022 to 31 March 2023	10 October 2022
1 April 2023 to 20 September 2023	4 April 2023

51. The applicant has said at para 37 of his statement of case that demands for April 2020 to March 2021 were given to him in April 2021. Whether that was as a result of the claim is irrelevant.

52. Counsel summarised the position as follows. Most of the demands in the period in issue were sued upon in the County Court and the applicant agreed to pay, subject to deductions. The applicant also admits to having received some of those demands in his statement of case. Copies of all demands were sent to the applicant on 3 May 2023. 18 months prior to that date is within the period covered by the court proceedings, which covers charges up to 31 March 2022. From *Skelton v DBS homes (Kings*

Hill) Ltd only compliance with contractual requirements is required when serving for the purpose of section 20B.

The Tomlin order

53. Proceedings were issued against the applicant in the County Court at Liverpool. The statement of account with the total balance of £12,492.80 of which the respondent claimed £12,141.00 of unpaid service charges. Copies of those demands were annexed. The balance claimed allowing for credits was £9,302.38. This expressly included sums for the periods commencing 1 April 2020 and 1 October 2020.

54. The parties entered a Tomlin order which stated that the respondent had demanded further service charges from the applicant of £3,147.51 in respect of the period 1 April 2020 to 3 September 2020 for on account charges and in respect of on account charges for the period 1 October 2020 to 31 March 2021. The applicant paid £15,246.40 in full and final settlement of the claim, the credits and the further demands.

55. There is a typographical error in respect of the further demands they were for the period 1st of April 2021 to 30 September 2021 and 1st October 2021 to 31st of March 2022 respectively. As those sums were resolved between the parties by virtue of section 27A(4) the Tribunal no longer has jurisdiction.

Consultation requirements

56. The notice specified for inspecting documents was the nearest address available to the landlord being the address of its agent. There was nowhere suitable on the site itself, and MetroPM had closed its Cheltenham office by the time the notice of estimates was served on 27th February 2023. The question of whether the location specified was reasonable must be answered by considering all the circumstances, not just the convenience of leaseholders. The Tribunal must consider what options are reasonably available to the landlord and its agent and the cost of these, the location of the leaseholders, the property and the potential to provide documents by other means upon request. Requirements specifying location for inspection is now somewhat outdated as it is easy to set up a data room or provide a link to download documents in any event. The specified hours at the office were 42.5 hours a week. No one contacted Metro seeking to inspect or for alternative provision to be made.

Whether the management agreement between the respondent and Metro PM was a Qualifying Long Term Agreement (Paras 39-40 ASOC)

57. Counsel's submission was that Metro's management contract was not a QLTA. The tribunal had previously found that a prior agreement was a QLTA and dispensation was refused in relation to the current applicant (CHI/23UB/LIS/2017/0036). Unsurprisingly, the landlord thereafter ensured that management agreements would not be caught by the regulations. Each management agreement has included provision for a term not exceeding 12 months. It may also be determined any time on giving 3-months' notice. From *Corvan Properties Ltd* the *Abdel-Mahmoud*, [2018] HLR 36 (CA) a contract is not a QLTA if the minimum commitment does not exceed one year. The new agreement was periodically renewed by email, with a short-term extension in 2018/19 and then 12 months terms thereafter.

Discussion and findings

Scope of the Application

58. The application is for a final determination in respect of costs in relation to the river wall works. The previous payments on account were therefore sums to which section 19(2) of the Landlord and Tenant Act 1985 applies. This provides as follows:

59. "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." (see para 47 *Avon Ground Rents Limited v Cowley and others* [2018] UKUT 0092 (LC))

The cost of the works

60. The position up to December 2019 was set out as follows in the decision of January 2020:

> 95.On 20 March 2019, by which time no remedial works had been done on the wall, the agents wrote to leaseholders and enclosed a copy of the budget for 2019-2020 and an advance service charge demand for the first half yearly advance service charge payment, payable on 1 April 2019. The letter stated that it had proved necessary to make further provision in respect of the river wall repairs. It informed leaseholders that based on advice

from structural engineers and the Environment Agency the Applicant had come to the conclusion that sheet piling the full length of the wall was the most suitable option.

96.The letter continued, "Following meetings with four sheet piling contractors, structural engineers are now working up a scope of works to enable a full competitive tender process for the sheet piling and associated works. The engineers have obtained accurate budget costs from the various contractors for the required works recently obtained a budget cost for the works of £647,881 inc. VAT however we hope to make savings during the tender process (sic). [...]

97. This raises the question of what had happened between 1 April 2018 and 20 March 2019. We know that on 29 March 2017 a firm of structural engineers, Clancy Engineering, was instructed by the Applicant to give another opinion. It was engaged from 29 March 2017 until 16 November 2018. Clancy's invoice of 17 September 2018 stated that it had received further instructions on 19 September 2017 "with regards obtaining costs for repair works, commencing enquiries with Platipus Earth Anchoring Systems and Target Fixings Ltd." Clancy's invoice of 30 November 2018 stated that Clancy had been asked to review RBA's sheet piling option.

98. However, as stated above, no evidence had been produced as to why sheet piling had been chosen as the preferred method of solution. The Geotech Report of 26 June 2015 recommended investigation of a number of possible solutions including replacement, underpinning, anchoring the existing wall or sheet piling to the front of the wall. It further recommended that specialist piling contractors be consulted to advise further on the most suitable pile type and installation method. There is no evidence that this has happened. Furthermore, the DSA Report of 24 July 2017, which the Applicant says was commissioned on 20 July 2017 in order to obtain a "second opinion", had recommended a bored pile solution. Nevertheless, on 27 July 2017, RBA invoiced the Applicant for their fees in respect inter alia of production of a budget and tender documents for a sheet piling solution all as discussed and agreed with Mr. Bird between 11 November 2017 and 31 July 2017.

> 99.Mr Bird told us that Clancy, whose report appears not to have advanced matters any further, dropped out of the picture, but not, the Tribunal notes, before it had charged fees of £13,000. When questioned at the hearing by the Tribunal, Mr. Bird said the Applicant Landlord had appointed Clancy independently of Metro PM (although we note that invoices were sent by Clancy to Gray's Inn Estates Group). However, it is clear from the invoices that Clancy had meetings on site with Mr. Bird throughout their appointment, at the same time as RBA were working on the matter of the wall. All this suggests a duplication of services and costs."
>
> 100. Since then RBA, who were reappointed in November 2018 has sought and obtained quotes from sheet piling contractors and check them with the local (and identified) contractor in order to produce the latest budget forecast of £647,881 and subsequently drawn up a schedule of works dated 1 August 2019. Mr. Allison says that it is for the landlord to choose a method of repair the distilled subject of a reasonable test in section 19 of the 1985 act. In the circumstances the Tribunal sees no justification as at 20 March 2019 for the applicant to have demanded a further large sum from leaseholders based on a sheet piling solution, in the absence of evidence as to the viability of a less expensive alternative solution such as a board pile solution. A reasonable landlord would not tie up his own money in this way in such circumstances. The tribunal therefore concludes no further sums payable by way of advance service charge as at 1 April 2019."

61. On 9 August 2022 MetroPM wrote to leaseholders enclosing a stage I section 20 notice and stating "as previously indicated we are advised that sheet piling is no longer a viable option owing to the technical difficulties caused by adopting such aggressive hydraulic methods. There are buildings in the near vicinity which may be damaged if a pile hammer was used, and in addition, the brick culverts at each end of the open river section and the car park wall opposite may be similarly affected. The estates engineers have therefore revised the proposed scheme and we enclose a copy of the structural engineers revised drawing… Please see the planning approval certificate dated 4 August 2021…. The approval is for the reinforced brick cavity retaining wall and not the steel sheet pile. As you will see, the proposed replacement retaining wall has been amended to a more traditional construction of reinforced cavity brick retaining wall. The wall be constructed from class A engineering bricks and will be of a more sympathetic appearance to match the existing wall and the car park wall opposite and the immediate surroundings in general."

62. The tribunal accepts the submissions of the respondent that the work needed to be done that they had taken careful professional advice as to the necessary construction method and specification, that the works had been put out to competitive tender and the lowest tender accepted. The applicant did not call any expert evidence to challenge this. There is no evidence that the works were over specified. The Tribunal acknowledges that various alternative construction methodologies had been considered but ultimately were found to be non-viable. None of that means that the construction costs actually incurred were excessive. For these reasons the tribunal finds that the Walsh Construction and Gloucester Asbestos costs of £1,088,900.88 were reasonably incurred. It also finds that the interim repairs by Kudos Structures of £11,040 were reasonably incurred.

63. The Tribunal found that that works had been completed to a good standard when it inspected.

Professional fees

RBA

64. Fees totalling £191,586 are sought in respect of RBA. It is important the tribunal does not approach what has happened since 2016 with the benefit of hindsight. However, RBA are Chartered Architectural Technologists and described themselves as architectural, civil and structural consultants, project managers, building surveyors and party wall surveyors. The tribunal considers that the sensitive nature of the location of the river wall being in the centre of Cheltenham, an historic Regency town should have been obvious from early on. It should have been clear that sheet piling and any other construction methods involving hydraulic piling were unlikely to be viable, because of the vibration caused to nearby sensitive buildings.

65. This misapprehension led to a number of activities and actions which were unproductive and of no benefit to the leaseholders. It also contributed to delay. For these reasons the tribunal finds that some of the professional fees incurred by the respondent were not reasonably incurred or alternatively the professional work was not carried out to a reasonable standard. Consequently, the overall level of professional fees is too high.

66. The Tribunal has received and considered the invoices supplied. It notes at [538] that the fee was agreed 15% of cost of works of £834,120.09 equating to 125,118.01 plus VAT (£150,141.50 including VAT). In addition, RBA charged for other work carried out prior to the eventual form of project being finalised. In summary, the fee invoices based on a percentage total aggregate to £99,484.83 including VAT. Time-based

invoices aggregate to £92,101.21. The Tribunal has reviewed the fee accounts provided and prepared a schedule of RBA fees attached, with findings.

67. The Tribunal notes that time-based charges cover the period from 16 August 2016 to 27 January 2023. During that period a variety of work was carried out. Some was wall monitoring and some related to the river wall reconstruction. Some of this work was unproductive for the reasons given above. In addition, the Tribunal finds that some of the time-charged work should be encompassed within the percentage fee on cost of works.

68. As to the percentage fee, the Tribunal finds that 15% is too high for a project of this size and that there should be a discount for quantum. The Tribunal finds that 12% would be appropriate. This is 80% of 15%. The upshot of these determinations is that the amount found recoverable by the Tribunal is £143,803.55 inclusive of VAT, against the £191,586 sought.

69. The Tribunal further finds that the Clancy fee and DSA fee referred to in the 2020 decision, as extracted above, are both also disallowed, because they represent duplication of costs and were therefore either not reasonably incurred or for services not provided to a reasonable standard.

70. The Tribunal's finding is re-enforced to a limited extent by the emailed comments of Mr Whybrow on 14 April 2023 to Mr Ahmed and others at Metro PM. The email stated "the bottom line is you need to arrange a meeting with [John Hickman of the Cambray Court Residents Association]. Be able to show him all the financial details… Specifications… He is particularly interested that you justify your proposed fees… That he claims stand at £245,000. I don't know if this figure is true but it is an awful lot of money. […] I know section 20 major work management fees are generally around the 10% mark, but there has to be a ceiling, I could not see any FTT agreeing that figure."

MetroPM and Other Costs

71. The Tribunal found that Mr Ahmed was a credible witness doing his best to assist the Tribunal. The tribunal finds that although Metro PM made errors in connection with the consultation requirements, which were not therefore complied with fully, this was not a deliberate ploy to frustrate consultation. However, in addition to the document location not being reasonable, at least one lessee was not served with section 20 notices correctly. For these reasons the tribunal finds that the service was not provided to a reasonable standard and that a fee reduction of 20% is necessary.

72. The tribunal finds the other professional fees and disbursements in connection with the major works were reasonably incurred and payable, including fees and costs for accounting, Environment Agency, National Grid, and building control.

Payability

Section 20B

73. The tribunal accepts the respondent's case and finds that the contested demands are not caught by section 20B of the 1985 Act for the reasons given by the respondents above. Copies of all demands were sent to the applicant on 3 May 2023. 18 months prior to that date is within the period covered by the court proceedings, which covers charges up to 31 March 2022. The Tribunal accepts, from *Skelton v DBS homes (Kings Hill) Ltd* that only compliance with contractual requirements is required when serving notices to comply with section 20B.

Section 47 (landlords address on demands)

74. The tribunal accepts Counsel's submissions on this issue and finds that the demands were valid. The address given need not be the registered office of the respondent.

Whether the management agreement was a QLTA

75. An agreement dated 21 September 2017 was provided [17/Flat 42 Supp]. The term was defined as one year less one day from 26 September 2017. Termination was at the expiry of the term and either party could terminate at 3 months' notice. This is in contrast to an earlier agreement dated 26 September 2016 and completed on 3 November 2016. This provided that the term was a year less a day and would continue subject to the right of termination of either party on 3 months' notice on the last day of the one year term of the agreement.

76. The 2017 agreement was renewed by informal emails. By way of example that dated 21 June 2021 stated "please take this email as confirmation that the freeholder… wishes to formally renew the management agreement on the same terms of the contract effective 26/9/17 for a new period from 1/6/2021 expiring on 31/5/2022. No new contract is required". The applicant sought to argue that this represented a minimum term of 12 months. The Tribunal disagrees because although the email does refer to a 12 month period the formal wording of the legal agreement takes precedence as it is clear that it was the agreement that was being renewed.

77. In *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] H.L.R. 36 the Court of Appeal held that the test is the length of the minimum commitment. The question is whether the contract must last for 12 months or longer, not whether it is capable of being renewed for longer.

78. The Tribunal accepts Counsel's submission that the minimum commitment under the 2017 contract is less than 12 months and therefore the consultation requirements do not apply.

Tomlin Order

79. The tribunal accepts that the Tomlin order contains a typographical error and should be read as dealing with 01/04/2021-30/09/2021 and 01/10/2021 – 31/03/2022. the tribunal finds that although the Tomlin order was in full and final settlement of the matters set out in the schedule, the right to make a future challenge under section 19(2) did not feature in that agreement. The right to seek a final determination following the completion of major works which reflects section 19(2) of the 1985 Act (see above) is separate from a challenge to on account payments. Therefore, the tribunal finds that it does have jurisdiction to consider the final costs for the major works and professional fees for the years in question.

80. Conversely, the tribunal rejects the applicant's submission that the Tomlin order is in full and final settlement of all future liability to contribute to the major works. The Tomlin order does not say that and is a settlement of those disputed sums as pleaded in the county court. These were incurred several years prior to completion of the works. As far as the river wall works are concerned, they were on account demands only. When the Tomlin Order was entered into neither party could possibly know the actual final costs of the works or whether they would be carried out to a reasonable standard. Therefore, as far as the major works were concerned, the sums settled in the Tomlin Order were on account sums only. The Order does not therefore prevent the landlord from bringing further demands in respect of the river wall works.

Whether the consultation requirements were complied with

81. The Service Charges (Consultation Requirements)(England) Regulations 2003 ("the Regulations") require that the location of documents for inspection must be "reasonable"[4]. The tribunal rejects counsel's submission that the tribunal has to take all relevant

[4] Schedule 4, Part 2, Para. 2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—(a)the place and hours so specified must be reasonable; and (b)a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

circumstances into account, including the circumstances of the landlord when determining whether the location for inspection of consultation documents is reasonable. The purpose of the consultation requirements is to ensure that adequate information is available to lessees who will ultimately be liable to pay for the costs of the work. The Regulations do not say that, and Mr Allison KC did not cite any authorities for his propositions.

82. The location in Birmingham given for inspection of documents would be an approximately 90 mile round trip. It would be unreasonable to expect residents to devote either the time or the travelling costs to embark on such a journey. It should also be borne in mind that a location for inspection is an alternative to the landlord sending hard copy documents to the lessees, which is the default position. Not all residents may have access to the internet or be able to remotely access documents. Further, no evidence was adduced as to why the documents could not be placed within the common parts of the property. For these reasons the tribunal finds that the inspection location in Birmingham was not a reasonable location and the consequently the consultation requirements were not complied with.

83. It follows that unless dispensation is granted under section 20ZA of the 1985 act, the applicant's liability to contribute to the cost of major works is limited to £250. However, conditional dispensation has now been granted.

Application under s.20C and refund of fees

84. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. For the same reason the tribunal makes an order under paragraph 5A of Schedule 11 of the 2002 Act that none of the landlord's costs of litigation may be passed to the applicant via an administration charge.

Date: 20 July 2025

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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

Schedule of RBA Fees

Page number main bundle	Invoice No	Date		Amount	Description	Tribunal findings	Allowed	Time or Percentage		Amount Allowed
551	995	16/08/2016	£	600.00	Site visit	Allowed	100%	**Time**	£	600.00
553	1055	10/01/2017	£	4,706.22	Site visit for drainage survey and prep report	Allowed	100%	**Time**	£	4,706.22
552	1121	27/07/2017	£	9,321.02	Insurance correspondence, draft costs plan liaison with local authorities, production of budget tender documents	Some is concerned with sheet piling which is disallowed reduced by 20%	80%	**Time**	£	7,456.82
554	1460	28/04/2020	£	17,932.09	A large number of separate activities	Some is concerned withsheet piling which is disallowed reduced by 20%	80%	**Time**	£	14,345.67
558	1461	28/04/2020	£	4,723.14	Dealing with the insurance claim and liaising with Wright Hassall	Allowed	100%	**Time**	£	4,723.14
559	1462	28/04/2020	£	2,268.00	Wall monitoring works	Allowed	100%	**Time**	£	2,268.00
560	1479	30/06/2020	£	1,335.12	Wall monitoring works	Allowed	100%	**Time**	£	1,335.12
561	1510	02/12/2020	£	1,603.38	Wall monitoring	Allowed	100%	**Time**	£	1,603.38
562	1548	23/03/2021	£	3,581.00	Working connection with retaining wall	Some work is could connected with piling contractors reduced by 20%	80%	**Time**	£	2,864.80
563	1549	26/03/2021	£	2,052.84	Wall monitoring and prep for temporary works	Allowed	100%	**Time**	£	2,052.84
565	1677	25/05/2021	£	1,500.90	All monitoring and temporary works	Allowed	100%	**Time**	£	1,500.90
567	1679	04/06/2021	£	13,287.00	Drawings in relation to a piling proposal and temporary works and planning application for demolition of garages and sheet pile retaining wall and reconstruction of garages	Some of these costs were not reasonably incurred as they related to the piling proposal which was not viable but most of the costs were reasonably incurred. Reduced by 50%	50%	**Time**	£	6,643.50
569	1706	06/08/2021	£	8,152.20	Drawings in relation to the initial proposal, examining, asbestos survey and planning application planning application alternative parking arrangements	Some of these costs were not reasonably incurred as they related to the piling proposal which was not viable but most of the costs were reasonably incurred. Reduced by 50%	50%	**Time**	£	4,076.10
530	1757	07/02/2022	£	13,107.60	Correspondence with JB Leach who asking questions about redesign author retaining wall, demolition of garages planning correspondence, EA correspondence drawing amendments prep specification and plans	Some of this work appears to relates to design changes. Reduce by 50%	50%	**Time**	£	6,553.80
533	1875	27/01/2023	£	6,970.80	Reviewing respondents with civic society liaising with MPM Discussing tenders, demolition of garages liaison with EA preparing tender analysis letter nearing documentation to Walsh construction tenders	Much of this relates to administration of the tender process and should be covered by the percentasge fee. Reduce by 50%	50%	**Time**	£	3,485.40
535	1923	18/05/2023	£	13,407.50	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	10,726.00
537	1925	31/05/2023	£	9,661.10	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	7,728.88
539	1936	30/06/2023	£	12,366.42	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	9,893.14
541	1947	31/07/2023	£	9,523.14	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	7,618.51
528	1962	31/08/2023	£	9,841.56	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	7,873.25
543	1970	30/09/2023	£	11,001.13	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	8,800.90
545	1977	31/10/2023	£	11,940.25	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	9,552.20
547	1991	02/01/2024	£	16,621.43	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	13,297.14
549	2006	09/02/2024	£	5,122.30	Retaining wall	15% too high reduce to 12%	80%	**Percentage**	£	4,097.84
532	1864	13/01/2023	£	959.90	visual inspec of wall	Dissallowed. Covered by percentage fee	0%	**Time**	£	-
			£	**191,586.04**					**£**	**143,803.55**

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