



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

Case reference	:	CHI/23UB/LSC/2023/0119
Property	:	Flat 18 Cambray Court, Cheltenham GL50 1JX
Applicant	:	Ms Charlotte Huot
Representative	:	In person
Respondent	:	Cromwell Business Centre Management Company Ltd
Representative	:	Mr Steve Whybrow AssocRICS (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

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 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 that none of the landlord's costs of litigation may be passed to the applicant via an administration charge.

The application

1. The Applicant 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, 2021/22, and 2022/2023. She also sought a determination in respect of the year 2023/2024.

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 (CC/CHI/23UB/LIS/2019/0040). This was promulgated in January 2020 and will be referred to as the "January 2020 decision". The applicant also challenged budget estimates in relation to day to day expenditure. The case was heard with that in respect of flat 42 Cambray Court (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/23UB/LDC/2025/0600).
3. The property which is the subject of this application Cambray Court was described in the 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."
4. The tribunal inspected the property shortly before the first hearing day in the presence of Ms Huot, Mr Parmer, 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 property. Photographs of the building were provided in the hearing bundle. The building appears to be in Art Deco style dating from the 1930s.

The issues

5. 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) Whether the budget estimates for years ending 31 March 2023 and 2024 were reasonable
 - (iii) The effect of section 20B of the 1985 act.
 - (iv) Whether section 20 of the 1985 Act has been complied with in relation to the river wall works.
 - (v) Whether orders under section 20C and Para 5A should be made.

The Hearing

6. 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 and on the second day by Mr Simon Allison KC. The parties made submissions, and Mr Ahmed gave evidence.

Procedural matters

7. Following the part heard hearing on 14 October 2024, the tribunal directed the 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.
8. At the hearing of 14 October 2024, the tribunal also 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, to make an application for dispensation under section 20ZA. Such an application was made under case reference HAV/23 UB/LDC/2025/0600.

The Applicant's Case

9. The applicant's case may be summarised as follows. Ms Huot acquired her lease on 20 August 2021. The applicant's solicitor sent notice of transfer on 11 October 2021 [to MetroPM] stating that rent demands and correspondence should be sent to the property. The freeholder's agent acknowledged receipt on 21 October 2021. On 10 September 2021 Ms Huot personally informed MetroPM by email of her recent purchase of the flat. On 14 September 2021 MetroPM stated that they could not update her information or send service charge statements until receipt of the notice of transfer from solicitors. On 23 December 2021, 7 January 2022 and 19 January 2022 her solicitors contacted MetroPM who stated that only RCP Property Management would accept notice of assignment. A receipted copy was sent to MetroPM by email on 19 January 2022. On 24 January 2022, MetroPM confirmed that the transfer would happen as soon as they had received an instruction from the freeholder. On 1 March 2023 MetroPM advised that they had not received signed notice of transfer from the freeholder.
10. Prior to her purchase Ms Huot's solicitors [by an LPE1] enquired as to the river wall works internal redecorations and repairs. MetroPM provided a copy of a section 20 notice dated 17 July 2020 which referenced "sheet piling of retaining boundary wall and associated ground/building works". Ms Huot was told that the costs had been taken into account in the service charge for 2021. Accordingly, Ms Huot concluded that the river wall works had been fully budgeted for in the service charges for 2021. Metro PM did not state that a river wall works planning application had only been submitted on 7 May 2021 and was pending, or that a new wall design had been submitted on 6 July 2021. Nor did they inform Ms Huot that the river wall works would be re-tendered. The information given by MetroPM was misleading and inaccurate. Therefore, Ms Huot challenged the costs.
11. Ms Huot received the service charge demand by email from MetroPM on 17 May 2023. This covered the period 01/10/2021 to 31/03/2022. Ms Huot relied on section 20B(1) of the 1985 Act. From *Skelton v DBS homes (Kings hill) Ltd*, section 20B does apply to on account demands. Therefore, that demand was irrecoverable.
12. Ms Huot did not receive any correspondence from the managing agent until 31 March 2023. Her details were not updated until after 1 March 2023. This was admitted by email on 17 August 2023 from MetroPM. Metro PM accounts department in an email dated 17 May 2023 stated that there was a delay in receiving the signed notice of transfer from the freeholder.
13. Between 20 August 2021 and 17 March 2023 a number of section 20 notices were issued regarding the river wall works. As MetroPM had not

updated her details on their system those notices were served on the previous owner. Accordingly, section 20 has not been complied with in respect of her lease.

14. Clause 5(13) of her lease states that the landlord will pay a reasonable proportion of the expenses incurred for or towards the making supporting repairing cleansing and amending of all party walls party fence was gutters common sewers public sewers and drains belonging or which shall or may belong to the building or any part thereof. The freeholder has not made any such contribution to the river wall works.
15. None of the accounts submitted by MetroPM are specific as to what the heating, hot water supply, plumbing, drainage and general repairs refer to. It is not possible to know which amount should be apportioned to the freeholder and therefore deducted from the service charges. As the river wall is a party wall the whole of the river wall works expenses, and associated fees should also be apportioned to the freeholder.
16. In relation to service charges for the year ending 31 March 2023 the statement of anticipated service charge expenditure issued on 25 April 2022 contain budgeted amounts much higher than the amount spent the previous years, and much higher than those showing in the service charge statement for that year. Of 22 items listed in the 2022 to 2023 budget only 8 appear under similar headings in the annual accounts. Therefore, it is impossible to verify the veracity of the budget, and the reasonableness of the sums demanded. The temperature of the heating [provided via a central system] should have been reduced and the charge is therefore not reasonable.
17. The lease does not allow for a reserve fund but the covering letter for the budget in 2024 made reference to this. The statement of anticipated service charge expenditure between 2022/2023 and 2023/2024 shows boiler room maintenance going up by 50%, electricity by 303%, insurance premiums by 25%, repairs and maintenance up by 50% and water costs by 55%. Overall, the increase was from £197,166 to £328,765. MetroPM's accounts are therefore questionable. Arundales chartered accountants state that the accounts are prepared without carrying out an audit. Miss Huot formally requested a decision regarding a full audit.

The respondent's case

The respondent's statement of case may be summarised as follows.

Section 20B

18. This is pleaded in respect of the demand for the period 1 October 2021 to 31 March 2022. The demand was raised against the executors of the

Dryhurst Estate, being the previous owner, on 27 September 2021. Following registration of the applicant's ownership of flat 18, a demand was raised against the applicant on 17 May 2023. 18 months prior to that date is 17 November 2021.

19. The respondent contended that section 20B did not take effect, as the demand raised against the previous owner was valid. By clause 3(9) of the lease the applicant covenanted: to "produce for the purpose of registration to the lessor's solicitors within fourteen ...a verified copy of every assignment of this lease or mortgage or legal charge of this lease ...and for such registration pay to such solicitors a fee of four guineas in respect of each such document or instrument so produced."
20. Flat 18 was transferred to the applicant on 20 August 2021. On 10 September 2021 the applicant emailed MetroPM stating that she had recently purchased flat 18. That email is not a valid notice for the purpose of clause 3(9) of the lease because that clause requires a copy of the transfer to be provided with payment of the registration fee. On 14 September 2021, Metro emailed the applicant to confirm that the notice of transfer not been provided by the applicant's solicitors. MetroPM is not authorised to accept service of the notice of transfer. The applicant appoints RCP Property Management as its asset manager. In compliance with the lease, it should have been provided before 3 September 2021 and would have been receipted on or around 15 September 2021. This is before the date when the demand was sent to the previous owner.
21. The notice of transfer was not sent to the respondent landlord in accordance with clause 3(9) until 11 October 2021, following which it was receipted on 21 October 2021. Therefore, as at the date of demand to the previous owner, the applicant had failed to give proper notice of the assignment in breach of the lease. Therefore, the demand to the previous owner was valid. Accordingly, the limitation period under section 20B cannot take effect and the applicant cannot take advantage of her failure to properly register the transfer. Alternatively, the applicant should have opened the correspondence addressed to the previous owner at the flat.
22. However, the respondent has also considered how much expenditure would in fact be caught by a strict application of section 20B if the demand dated 27 September 2021 is treated as invalid. Metro ascertained expenditure for the year in question chronologically to establish when the sums charged on account on 1 April 2021, totalling £175,739.10 became exhausted by incurred costs. Such funds were exhausted on 27 October 2021, because invoices received on 27 October 2021 could only be part met by remaining monies. Expenditure from 27 October 2021 until 16 November 2021 (being 18 months prior to 17 May 2023) was therefore caught by section 20B. During that period Metro ascertained that £9,903.29 of expenditure had been incurred, as per a spreadsheet supplied. The applicants share of that expenditure, 2.25%,

is £207.48. To narrow issues the respondent was prepared to settle this issue on that basis by a credit to Ms Huot of £207.48, subject to adjustment in light of the tribunal's determinations on other matters that might reduce that amount.

Consultation Requirements

23. The respondent conceded that section 20 notices were not served properly on the applicant. It had made an application under section 20ZA.

Lessors' contribution to the river wall

24. The lessor is not required to contribute to repairing the river wall under clause 5 (13) of the lease. This was the effect of the finding at paragraph 75 of the January 2020 decision.

The reasonableness of on account charges

25. On account service charges for year ending 31 March 2023 are reasonable. Estimated charges are set by the managing agent and have an expectation of being based on prior year expenditure. However, there is no requirement to split the charges into certain cost headings, nor can such estimates be entirely accurate. The budgeting is also now superfluous as accounts are complete. The on account charges for year ending 31 March 2024 are reasonable for the same reasons and the accounts are also complete for that year.

Requirement for an audit

26. The tribunal does not have jurisdiction to order an audit.

River wall costs

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

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
Metro PM £39,478.90
National Grid £4,752.94
Building Control £3,420.00

Total expense £1,344,411.91

28. There has been no breach of the Landlord and Tenant Act 1985, all service charges have been reasonably incurred, all works funded by the 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.
29. 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 in relation to on account demands for the river wall works. 50 of the 56 flats at Cambrai 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.
30. Mr Whybrow then refuted the other matters raised by Mr Palmer. 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. 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 demonstrate that works were completed by the contractor who submitted the lowest tender.

31. 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.
32. 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 on 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.
33. 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. 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, 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, 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.

34. 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. Metro PM 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.
35. 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 Metro PM). Mr Ahmed has been employed by Metro PM 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.
36. 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. Metro PM 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 that 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.
37. The January 2020 decision 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.
38. 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.

39. 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.
40. RBA obtained two tenders for garage demolition and recommended Gloucester Asbestos for £14,371 including VAT.
41. 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.
42. In answer to 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

43. In response to a direction, on 31 January 2025 Trowers & Hamlin 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 Metro PM. 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 are 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 are £39,478 inclusive of VAT.

Discussion and findings

Scope of the Application

44. Insofar as the application is for a final determination in respect of costs for the river wall works, the previous payments on account were sums to which section 19(2) of the Landlord and Tenant Act 1985 applies. This provides as follows:
45. “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

46. The position up to December 2019 was set out as follows in the previous decision:

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.”

47. On 9 August 2022 MetroPM wrote to leaseholders enclosing a stage 1 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.”
48. 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 were £11,040 will reasonably incurred, and the costs for National Grid of £4,752.94 and building control fee of £3,420.

Professional fees

RBA

49. 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.
50. 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.
51. 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.
52. 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 by the percentage fee on cost of works. As to the percentage fee, the Tribunal finds that 15% is too high for a project of this size and 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.

53. 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 services not provided to a reasonable standard.
54. 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

55. 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.
56. 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.

Budget Estimates for Years ending 31 March 2023 and 2024

57. No Scott schedules were provided but the tribunal reviewed the service charge estimates at the hearing. Significantly, accounts had been prepared by Arundales chartered accountants for the two years in question. Although a formal audit was not carried out the lease does not require it. Arundales confirmed that the accounts showed a fair summary of the costs expended and outgoings dispersed incurred or provided for by the lessor produced.

58. In terms of day-to-day expenditure, disregarding issues relating to the major works, nothing in the Arundales accounts appeared to be excessive or inappropriate for a block of 56 flats believed to date from the 1930s and with communal heating and hot water. The tribunal found that there was nothing in the point that the budget for the garden had increased from £5000-£6500 or that water was more expensive than expected nor that there was a large increase in gas costs. The tribunal rejects the suggestion that the respondent ought to have reduced the temperature in the heating system to save money.
59. The tribunal does accept that the estimates of annual service charge expenditure are difficult to read against the accounts because the headings are different. It also accepts that the actual expenditure for the year ending 31 March 2022 at £278,825 was less than that demanded on account of £347,791. However, it accepts the respondent's case that these estimates can only be a general indication as to the eventual costs for the year in question. In the year ending 31 March 2023, the total expenditure was shown as £284,645 and for the year ending 31 March 2024, £161,732. It also agrees with the respondent that the issue of on account estimates for the years in question has now been superseded by actual accounts. The tribunal finds that the level of budget estimates was reasonable.

Payability

Section 20B

60. The tribunal rejects the applicant submission that all monies referenced in the invoice in respect of the period 1st of October 2021 to 31st March 2022 are irrecoverable. The tribunal considers that the respondent's first ground, namely that the applicant failed to give effective notice within 14 days of taking the assignment of her lease and cannot therefore rely on section 20B is likely to be correct. However, in light of the alternative ground put forward the tribunal prefers to express no finding on that but to accept the approach in the 2nd ground. Therefore, the Tribunal finds that her proportion of expenditure from 27 October 2021 until 16 November 2021 is irrecoverable. This parties will need to agree this figure in light of other findings.
61. The Tribunal rejects the submission that the applicant should have opened post addressed to her predecessor in title. Under s. 84 of the Postal Services Act 2000I, it is an offence, without reasonable excuse, to open letters addressed to others. Although the applicant may have had such an excuse, she was under no obligation to open such letters.

Whether the consultation requirements were complied with

62. The respondent has conceded that section 20 notices were not served correctly on the applicant. 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.

The Lessor's contribution to the river wall

63. The tribunal accepts the respondent's case that the tribunal previously found at Para 75 of the January 29020 decision that the river wall is a boundary wall, and the sole responsibility of the respondent under clause 5 (2) (iii). The leaseholders are therefore obliged to contribute to the cost under clause 4(2) of the lease.

Requirement for an audit

64. The tribunal accepts the respondent's case that the tribunal does not have jurisdiction to order an audit.

Applications under s.20C and paragraph 5A, Schedule 11

65. 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 5 a of schedule 11 of the commonhold and leasehold reform act 2002 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 percentage 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