FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2024/0622**
Property	:	**Southwyck House, London SW9 8TT**
Applicants	:	**(1) Alasdair Ross (Flat 353)** **(2) Beryl Campbell (Flat 124)** **(3) Adam Nelson (Flat 133)** **(4) Alex Monro (Flat 134)** **(5) Simon Barry (Flat 135)** **(6) Andy Parrott & Kay Gatehouse (Flat 203)** **(7) Jose Gomez (Flat 208)** **(8) Ms. Alexandra Lowe (Flat 223)** **(9) Lorna Jessop (Flat 301)** **(10) Manon Ligato (Flat 305)** **(11) Alex Barr (Flat 316)** **(12) Caspar Addyman (Flat 324)** **(13) Juliette and Roger Garside and Jonathan Phillips (Flat 364)**
Respondent	:	**London Borough of Lambeth**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr J Naylor FRICS FIRPM**
Date and Venue of Hearing	:	**14th-16th July and 1st September 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11th November 2025**

DECISION

Decisions of the Tribunal

(1) Mr & Mrs Baffoe, the lessees of Flat 306, are removed as Applicants.

(2) The Tribunal granted the Respondent permission to rely on further documents at the commencement of the hearing.

(3) The Tribunal notes that the parties agreed that the following service charges and the management fee charged as a percentage of them are not reasonable and/or payable:

(a) Duplicate 2019/2020 Energy Invoices	£5,631.62
(b) Communal Ventilation Maintenance for 2018/19-2022/23	£12,627.47
(c) Communal Window Cleaning for 2018/19-2023/24	£5,236.32
(d) Door Entry System for 2018/19-2020/21	£102,359.20
(e) Fire Ventilation System for 2018/19-2023/24	£4,267.55
(f) Block Repairs and Maintenance Insurance Items	£17,242.02
(g) Tree Maintenance for 2018/19-2023/24	£5,551.57
(h) Building Insurance for 2022/23 and 2023/24: 19.19% reduction for each flat	

(4) To the extent and for the reasons set out below and in the attached Schedule at Appendix 2, the service charges challenged in these proceedings are reasonable and payable, save for:

(a) Overheads;
(b) Charges dependent on the erroneous inclusion of the Coldharbour Lane Open Space;
(c) Charges for the maintenance of garden gates;
(d) Call-out charges for the installation of fire safety signage are limited to £150 per block; and
(e) Management charges are capped at £600 per flat per year.

(5) The parties seek costs orders in respect of the current proceedings, for which the Tribunal makes the following directions:

(a) The parties shall, by **28th November 2025**, email to the Tribunal and to the other party submissions in writing setting out why the Tribunal should make any orders sought;
(b) The parties shall, by **19th December 2025**, email to the Tribunal and to the other party any submissions in writing opposing any orders sought; and
(c) The Tribunal will thereafter determine any costs applications on the papers, without a hearing.

Relevant legislative provisions are set out in Appendix 1 to this decision.

The Tribunal's Reasons

1. The Applicants are the lessees of 13 of the flats at Southwyck House. They brought an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") challenging the reasonableness and payability of service charges for the years from 2018/19 to 2023/24 imposed by the Respondent, the freeholder. Their number previously included Mr & Mrs Baffoe, the lessees of Flat 306, but an unopposed application was made to remove them as applicants and the Tribunal granted it.

2. The Tribunal inspected the property on the morning of 14th July 2025. The hearing then started on the same afternoon and continued to 16th July 2025. Unfortunately, evidence could not be completed in the time available and the matter was adjourned part-heard to 1st September 2025. There was also no time for the Tribunal to deliberate at the end of that day's hearing and this decision has therefore been further delayed.

3. The participants in the hearing were:

- Mr Noah Gifford, counsel for the Applicants;
- The Applicants' witnesses:
  - Mr Adam Nelson, the lessee of Flat 133 since 19th June 2022;
  - Mr Alasdair Ross, the lessee of Flat 353 since April 2016;
  - Ms Juliette Garside, a joint lessee of Flat 364 since 2015;
- Mr Rabby Fozlay, counsel for the Respondent;
- The Respondent's witnesses:
  - Mr Gregory Thompson, Senior Commercial Manager;
  - Mr Scott Thompson, Head of Service Charges;
  - Mr Lincoln Sampson, Principal Heating & Water Engineer;
  - Mr Rasel Ahmed, Litigation Manager.

4. A further witness for the Applicants, Ms Lorna Caseley Jessop, the lessee of Flat 301 since October 2019, could not attend the hearing. The Applicants served a "hearsay notice". The Tribunal took her written statement into account, weighted as hearsay evidence in the usual way.

5. The documents before the Tribunal consisted of a bundle of 7,337 pages and skeleton arguments and bundles of authorities from both counsel.

6. At the start of the hearing, the Respondent applied for permission to adduce new documents: emails about the car wash created on 10th July 2025 and two spreadsheets containing information about the borough-wide cleaning and concierge contract. The Respondent's excuse for not adducing them earlier was that they missed their significance in the midst of the large number of issues. The Tribunal allowed them in because, although it was a significant breach of the directions, it was just in all the circumstances to do so, not least because the Tribunal's initial impression was that the documents were as likely to favour the Applicants as the Respondent.

Inspection

7. Southwyck House is a 9-storey block of 173 high-rise and 3 low-rise flats and 43 garages, completed around 1980. 36 flats are held on long leases, the rest

being let by the Respondent on secure tenancies. There are also a community centre and an area currently used as a food bank (although there was a forfeiture notice taped to the entrance door).

8. Southwyck House's design is unusual, being premised on there being an elevated motorway next to it which was not actually built. The largest side fronts Coldharbour Lane (Blocks 2-5) with two wings, the longer on Moorland Road (Block 6) and the other on Somerleyton Road (Block 1). There are a nursery and a primary school in the area bounded by the 3 sides of Southwyck House but they are not part of the estate.

9. The parties took the Tribunal on a complete circuit of the exterior and into select parts of the interior of the building. The circuit started outside the concierge office located on the corner of the building between Blocks 1 and 2, there being another such office located on the opposite corner between Blocks 5 and 6. Between the front of the building and the pavement on Coldharbour Lane is an area which consists of the following elements:

   (a) On the corner of Somerleyton Road and Coldharbour Lane, there is a grassed area, also containing some trees, crossed by a diagonal path and separated from the road by a low wall. It contains two large egg-shaped metal objects which a plaque located on the street corner advertises as sculptures paid for by section 106 planning gain from elsewhere in the borough. The area is marked on maps as "Coldharbour Lane Open Space" but the parties dispute whether it is a public space or for the exclusive use of residents of Southwyck House.
   (b) There are access roads leading to doors to garages in the basement level of the building, one from Somerleyton Road and the other from Moorland Road.
   (c) There is a large paved area, separated from the pavement by a wire fence and currently used by a car wash business.
   (d) Between the car wash and the "Coldharbour Lane Open Space", there is a triangle of paved land containing some small trees with circular or semi-circular wooden seating areas next to them. There is a row of bollards marking it from the pavement but, otherwise, it is open and can be used to access the rear of the building and areas beyond through an alley between Blocks 3 and 4. A low retaining wall to the east side has a blue sign attached to it pointing to the "Moorlands Estate".
   (e) On the corner of Moorland Road and Coldharbour Lane, there is another grassed area. There is currently a small make-shift memorial near Moorland Road, commemorating a road traffic accident victim from a couple of years ago.

10. There are communal lifts but they only serve the ground, second and seventh floors – many of the flats are themselves on multiple levels. There are communal corridors on the floors served by the lifts, with access to the front doors of the higher-level flats. Along the corridors are bin stores containing one paladin each, fire cupboards and gates to fire escapes. There are also communal stairwells, those between blocks 3 and 4 dividing Southwyck House into two wings.

Service charges

11. The Applicants described their overall service charges as follows:

> A detailed 2023 survey by Hamptons found average service charges for flats in London were £1,792 per year. Service charges in large buildings, which are more complex to manage, tend to be higher. The average for a block of 20 or more was £2,606 last year. The charges imposed at Southwyck house bear no relation to these averages. For a 3 bed in Southwyck House, we paid over £6,840 in 2022-23, and for the highest rateable value in the block it was over £7,200. In 23/24 this rose to £8,067.76 for a 3 bed flat. Strip out the costs of heating and hot water, and associated management charges (as relatively few blocks include communal heating), and a 2 bed flat in Southwyck House would have paid £4,557, a 3 bed £5,051. In London, only 20% of leaseholders paid more than £4000 that year, according to Hamptons, which counts all charges for all flats sold.
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> Taking the total borough service charges of £12,824,584.74 divided by the 8103 leasehold properties in the borough, we see that Lambeth leaseholders paid a mean average service charge (including management fees) of £1,583 in 2022-23. This compares to £6,230 for a two bedroom flat in Southwyck House that same year. It is worth noting this excludes the cost of major works. These are just day to day running costs plus heating and hot water.

12. The Tribunal is an expert Tribunal. The figures provided by the Applicants were not challenged by the Respondent and those taken from the Hamptons survey are consistent with the Tribunal's own knowledge and experience. The Respondent's service charges are extraordinarily high and would be so for a luxury block in prime central London with equivalent lift and concierge services, let alone a council block in Brixton. (Mr Fozlay himself made the point that, "Context is key. What would be acceptable in Belgrave Square would not necessarily be so in Bermondsey.") Such high service charges must be a severe barrier to the saleability of the flats, let alone depressing the price. Of course, this does not mean, by itself, that any of the charges are unreasonable but it does mean that they deserve scrutiny, not just by the Tribunal but by the Respondent itself. The fact that they are so high requires the Respondent to be able to justify them.

13. Mr Fozlay took a robust approach, asserting that the Applicants had completely failed to establish any part of their case. That is an approach used in many cases by many barristers but it is not invariably the correct one. The fact is that the Applicants obtained numerous concessions from the Respondent by taking these proceedings, despite pre-action correspondence continuing for many years, and, on that basis alone, the Respondent would have been better served by being more contrite in front of the Tribunal.

14. In particular, even before the hearing started, the parties had agreed that the following service charges and the management fee charged at a rate of 16.5% of them are not reasonable and/or payable under section 27A of the Act:

(a) Duplicate 2019/2020 Energy Invoices £5,631.62

(b) Communal Ventilation Maintenance for 2018/19-2022/23	£12,627.47
(c) Communal Window Cleaning for 2018/19-2023/24	£5,236.32
(d) Door Entry System for 2018/19-2020/21	£102,359.20
(e) Fire Ventilation System for 2018/19-2023/24	£4,267.55
(f) Block Repairs and Maintenance Insurance Items	£17,242.02
(g) Tree Maintenance for 2018/19-2023/24	£5,551.57
(h) Building Insurance for 2022/23 and 2023/24: 19.19% reduction for each flat	

TOTAL: £152,915.75 (not including insurance or management fee reductions)

15. The Respondent also conceded that they had not measured correctly the size of the estate, which is addressed further below. This and many of the aforementioned concessions speak of a landlord which is careless and inattentive, making egregious errors which cost them nothing while hitting their lessees hard, both financially and in terms of a lack of service. Such errors should not be happening at all, let alone requiring lessees to commence legal action to bring them to light.

16. The Respondent did themselves no favours by arguing that most of the remaining sums were "de minimis", i.e. too small to bother with. The Respondent deals with large sums of money, both borough-wide and in managing Southwyck House, but it seems strange to have to remind them that their local residents are often of limited means and what may seem small to the Respondent can loom large for those who have to pay out of their own pocket.

17. Similarly, it did the Respondent no good to misunderstand deliberately the Applicants' points and make arguments against straw men. When the Applicants compared their charges against the average charges for lessees across the borough, Mr Fozlay, in his skeleton argument, replied that there "is no actual or expert evidence for why the costs should be the same as the borough average." The Applicants made no such argument. The point was that the Respondent needed to explain why they have been charging the lessees at Southwyck House so much more than lessees elsewhere in the borough. The Tribunal agrees.

18. The Tribunal notes that 4 of the Applicants, Alasdair Ross, Lorna Caseley Jessop and Manon Ligato, are excluded from any adjustment made in relation to the year 2019/2020 as an agreement was reached with the Respondent for the charges in relation to this year in a settlement of a previous application to the Tribunal (Ref: LON/00AY/LSC/2021/0327).

Deemed admission/agreement

19. The Respondent argued that at least some service charges had been impliedly admitted or agreed on the basis that the Applicants had paid them for a period of time without taking their case to the Tribunal: *Marlborough Park Services Ltd v Leitner* [2018] UKUT 230 (LC); *G & A Gorrara Ltd v Kenilworth Court Block E RTM Co Ltd* [2024] UKUT 81 (LC); *Gateway Holdings Ltd v McKenzie* [2018] UKUT 371 (LC).

20. However, the Tribunal struggled to find circumstances from which it could be objectively asserted that the Applicants had agreed the charges. Mr Fozlay asserted that the Applicants had paid charges arising from the Old QLTAs for 15 years without protest but that is nonsense since the parties were in dispute for years before the 2025 hearing concerning their complaints about QLTAs signed in 2010.

21. Further, the Respondent's service charge accounts are large, wide-ranging and complex. There is simply no evidence that the Applicants have been sufficiently knowledgeable about the details to be able to say that they would be able to agree the resulting charges. Quite the opposite as many of their queries and challenges in correspondence prior to bringing these proceedings consisted of trying to obtain sufficient information just to understand the service charges.

Scott Schedule

22. Attached to this decision is a final version of the parties' Scott Schedule listing specific service charge items in dispute, the parties' comments and the Tribunal's conclusions on each. The Respondent conceded some sums, although not necessarily for the reasons given by the Applicants, and the Applicants no longer required a determination on some issues, so the Tribunal focused on the remaining items.

23. There is mention in the papers, including the Applicants' statement of case, of complaints and points other than those in the Scott Schedule. However, the case was refined and issues narrowed during the proceedings and the Tribunal has taken the Scott Schedule as being definitive as to the issues remaining between the parties.

24. Some matters of dispute require further comment outside the Scott Schedule and they are addressed below.

Consultation

25. In 2010 the Respondent entered into Qualifying Long Term Agreements for the supply of electricity and gas via Crown Commercial Services and with other contractors to provide the following services across the borough, including to Southwyck House:

Morrison (including Pinnacle)	Block Cleaning
	Estate Cleaning
	Communal Window Cleaning
	Concierge
	Repairs & Maintenance
	Grounds Maintenance
Alphatrack	Door Entry System
	Fire Ventilation Maintenance

T Brown	Boiler Repairs and Maintenance
	Communal Water Quality
	Dry Riser
Apex	Lift Services and Repairs

26. In 2021, following an appraisal of delivery options by an outside housing consultancy, Just Housing, the Respondent decided to replace the old arrangements, including using direct employed labour for some services but also entering into new QLTAs, either using an OJEU-compliant public procurement process or tendering through the Find-a-Tender service:

Responsive Repairs and Voids	Wates Property Services Ltd
Communal Gas & Water Systems	OCO Ltd
Domestic Gas Works	T Brown Group Ltd
Electrical Works	OpenView Security Solutions Ltd
Lift Maintenance	Amalgamated Lifts Ltd
Block Cleaning and Concierge	Pinnacle FM
Reserve contract for Lot 2 (South)	Morgan Sindall Property Services Ltd

27. The parties referred to them respectively as the Old QLTAs and the New QLTAs.

28. The parties have settled their dispute in relation to the New QLTAs but not the Old QLTAs. The Applicants argued that the Respondent failed to give notice in writing of the proposal for the QLTAs in accordance with paragraph 5(1)(a) of Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003. This is principally because neither the Applicants nor the Respondent have any record of any such notices. They were not part of the Respondent's disclosure, despite a trawl of their archives, and two of the Applicants, Mr Ross and Ms Jessop, said that there wasn't one amongst the information provided to their conveyancer when they bought their respective leases.

29. The Applicants point to the fact that the Respondent has failed in their consultation obligations twice before:

(a) In June 2021 the Respondent served Mr Ross with a demand for £18,202.16 for "Central Area Heating and Gas Works". Mr Ross was unaware of any earlier communication about this and queried it. Eventually, the Respondent conceded that the sum should be capped at £250, the limit for when the consultation requirements are not complied with.
(b) Further, in April 2024, on the Respondent's application, the Tribunal granted dispensation from the consultation requirements for a borough-wide contract for gas and electricity (case ref: LON/00AY/LDC/2023/0067).

30. While the first failure to consult does not paint a good picture of the Respondent's ability to comply with the requirements, the second is in a

different category. Many local authorities take part in a system called LASER, run through Kent County Council, which includes contracts entered into at short notice in the volatile energy supply market. The arrangements are often incompatible with the statutory consultation requirements and the Respondent is far from the only landlord to have sought dispensation for that reason.

31. The Respondents make a number of points:

(a) Mr Fozlay made much across his entire case of the fact that the Applicants were a minority of the leaseholders in Southwyck House, only a few of them gave evidence and they represent a small fraction of lessees across the borough. The Tribunal cannot see how this is relevant to the reasonableness or payability of most of the service charges. In particular, limiting the evidence to only some of the Applicants is to be commended as a means of keeping the proceedings proportionate.
(b) Only four of the Applicants, Beryl Campbell (Flat 124), Mr Simon Barry (135), Mr Gomez Arranz (208) and Mr Casper Addyman (324), were leaseholders at the time the Old QLTAs were entered into and none of them gave evidence.
(c) In 2010 Southwyck House was managed by Lambeth Living, an Arms Length Management Organisation (management was brought back in-house in 2015). This added an additional layer of complexity in trying to retrieve documents from so long ago. Some records for that period were missing, incomplete and/or irrecoverable. Mr Ahmed set out at paragraphs 7-11 of his witness statement the difficulties in retrieving documents from a different document management system, managed by a different organisation in different locations. Mr Thompson at paragraph 25 of his witness statement explained that he looked in the Respondent's SharePoint directories where he would expect to find Notices of Proposal and could not find any for a number of properties, including Southwyck House.
(d) Having said that, the Respondent was able to find Notices of Intention sent out by themselves to the lessees in Southwyck House in accordance with paragraph 1 of Schedule 2 to the Consultation Regulations and Notices of Proposal sent out by Lambeth Living for properties elsewhere in the Central Area of the borough where Southwyck House is located.

32. The evidence on this issue is unsatisfactory but this is unsurprising given that the relevant time is so long ago. On balance, the Tribunal is satisfied that the more likely explanation for the Respondent being unable to provide copies of the Notices of Proposal for Southwyck House is that they have lost them, rather than that they never issued them. Further therefore, the Tribunal is satisfied that the Respondent complied with the consultation requirements for the Old QLTAs.

Overheads

33. The service charges contain a head labelled "Overheads". This is distinct from and charged in addition to management charges. The Respondent says there is no overlap between overheads and management charges, with no duplication or element of double recovery. Mr Thompson stated at paragraph 4 of his witness statement,

> Overheads refer to the indirect costs incurred in facilitating the delivery of services, for example, the general running of an office and the payment of staff salaries. These are not direct costs attributable to specific works, but they are essential to enabling such works to take place. These costs must reasonably be borne by those who benefit from the services provided. If overheads were not apportioned to long leaseholders, the financial burden would inappropriately fall upon the local authority and/or the tenants, through the rents they pay.

34. The Tribunal disagrees with the last sentence. These Tribunal proceedings constitute the method by which the Respondent may be accountable to leaseholders for their expenditure and resulting service charges. Secure tenants and other residents in the borough have other methods for holding the Respondent accountable. If the Tribunal holds that any expenditure is unreasonable and/or that service charges are not payable, it is for non-leaseholders to consider and take action on their own rights. It is not for the Tribunal to protect them at the expense of leaseholders. In particular, if any expenditure or service charges are found to be unreasonable in amount, an alternative to shifting costs from leaseholders to tenants and local residents is to cut expenditure – again, it is not for the Tribunal to decide which course would be appropriate.

35. It is notable that, in his witness statement, Mr Ahmed stated:

> 12. In or around 2016, there was a change in leadership within the Homeownership service. Significant efforts were made during that period, and in the years that followed, to address the longstanding issue of service charge under-recovery. This included a programme of targeted recruitment, notably the appointment of an experienced accountant with a background in service charge accounting at other large organisations.
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> 13. It was identified that a number of the services being recharged to leaseholders did not accurately reflect the actual costs incurred by the Council, leading to financial losses for the Housing Revenue Account (HRA). In response, the Council undertook a comprehensive review of its service charge calculation processes. This resulted in the introduction of revised methodologies, improved collaboration with service delivery teams, and enhancements to cost recovery procedures, all aimed at achieving a more accurate and sustainable level of cost recovery. Although challenges still persist, it was a marked improvement to past service charge recovery.

36. On Mr Ahmed's description, this analysis was all about maximising income and was completely devoid of what would appear to be two essential, inter-related elements:

(a) Whether costs could be cut so that the issue of non-recovery wouldn't apply.
(b) Whether there were any lessons to be drawn from the private sector where the costs for the same service were lower.

37. The lease, which is the same for all the Applicants, includes the following:

2 The Tenant hereby covenants with the Council as follows:

2.2 To pay to the Council at the times and in manner aforesaid without any deductibility by way of further and additional rent a rateable and proportionate part of the reasonable expenses and outgoings incurred by the Council in the repair maintenance improvement renewal and insurance of the Building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further and additional rent (hereinafter called the "Service Charge") being subject to the terms and provisions set out the Fifth Schedule hereto.

FOURTH SCHEDULE
THE COUNCIL'S EXPENSES AND OUTGOINGS
AND OTHER HEADS OF EXPENDITURE IN RESPECT
OF WHICH THE TENANT IS TO PAY A PROPORTIONATE PART
BY WAY OF SERVICE CHARGES

PART 1

AS TO THE BUILDING IN WHICH THE FLAT IS SITUATED All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current of future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements improvements rebuilding cleansing and decoration to or in relation to the Building and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following:

8 The reasonable costs incurred by the Council in the management of the Building including all fees and costs incurred in respect of the annual certificate of account and of accounts kept and audits made for the purpose thereof such management costs being not less than 10% of the total service charge.

38. The Applicants contended that the natural, objective meaning of these words did not include such overheads (*Wood v Capita Insurance Services Ltd* [2017] UKSC 24 [10-15]; [2017] AC 1173). They relied on *Checconi v LB Lambeth* (LON/00AY/ LSC/2021/044) in which the Tribunal considered the same lease provisions and decided,

> A number of the breakdowns refer to the addition of 8.9% of the charge by way of 'overheads' and again this is not a service charge item contemplated by the lease. A management fee is charged as a separate item of expenditure (as a percentage of the total service charge and this is not challenged by the applicant) and the inclusion of this overhead charge, in the absence of any explanation by the respondent, amounts to double-counting. The tribunal find that it is not reasonable to make this charge of the applicant.

39. However, unlike in the *Checconi* case, the Respondent has provided an explanation here, at paragraphs 5-12 of Mr Thompson's witness statement. Previous Tribunal decisions are not binding and the Tribunal in this case must

make a decision based on the evidence in front of it. Essentially, the Respondent works out how much time their staff spend on relevant services through a staff survey and then allocates an equivalent percentage of staff and office costs to the Overheads head of service charges.

40. The Respondent relied on a number of authorities. In *LB Southwark v Paul* [2013] UKUT 0375 (LC) the Upper Tribunal stated at paragraph 38:

> In our opinion, based upon the authorities referred to above, the carrying out and provision of various categories of works and services includes being able to recover all those direct and indirect costs and overheads, including management costs, incurred in connection with the various categories of works and services that the landlord is obliged to carry out. If a cost or expense incurred by the landlord is either a direct cost or expense of carrying out the necessary works or services or is an incidental or indirect cost or expense of carrying out the necessary works or services, then it is recoverable.

41. In *Waverley BC v Arya* [2013] UKUT 0501 (LC) the Upper Tribunal stated at paragraph 30:

> It is clear from these authorities that, in principle, the costs incurred by a local authority (or by any other landlord) in arranging for the provision of services, and managing their delivery, is properly regarded as part of the cost of providing the service which may be recovered from its tenants through an appropriately framed service charge covenant. The same is true of the overhead costs incurred in connection with the management and provision of services. In both cases it is necessary to respect any limits which the parties may have imposed on the categories of expenditure to which the service charge may relate.

42. The Tribunal is satisfied that the ordinary meaning of the words in the lease is wide enough to include what the Respondent describes as "overheads". It is arguable that the wording of paragraph 8 of the Fourth Schedule implies that overheads will be accounted for together in a single category with all other management costs, as would normally be the case with management fees, but there is no reason in principle why the Respondent should not be able to break them down into separate categories. However, the Tribunal is not satisfied that the charges are reasonable.

43. The Respondent repeatedly criticised the Applicants' case on the basis that they did not produce evidence of a like-for-like comparison. The problem here, not least for the Respondent, is that no comparison is possible for overheads. The Tribunal knows of no landlord in the private sector who charges or has charged such a category separate from management fees. The Applicants made the point that the costs the Respondent allocates to overheads would normally be subsumed within management fees but this does not help the Respondent since their management charges already exceed the level of management fees found in the market, even before overheads are considered.

44. At times, the Respondent has emphasised its status as a local authority but that provides no reason or excuse for charging substantially more for its management than would happen in the private sector. The Respondent asserted that Southwyck House is an unusual building but there are two answers to that. Firstly, it is not so unusual or complex as to justify by itself the high service charges and, secondly, the private sector has its fair share of large and complex buildings with unique management issues for which it still does not charge as much as the Respondent does for Southwyck House.

45. Mr Fozlay argued that a comparison with the private sector was invalid because the Respondent manages a large number of properties, many of which are direct lets. However, economies of scale normally result in the management cost per unit being lower when there are more properties, not higher. The private sector does contain properties with significant numbers of direct lets but the Tribunal is unaware of any reason or evidence suggesting that that would result in higher management costs or charges. Further, there is no basis for asking lessees to pay any share of the costs incurred by managing the direct lets.

46. The fact is that the amounts charged by the Respondent for its management, taking both overheads and management charges into account, are extraordinarily high, in line with the Tribunal's comments at paragraph 12 above. If the Respondent's staff really rack up costs to this extent, then they shouldn't. No-one in the private sector has to pay such amounts for management and there are no factors unique to local authorities, the Respondent or this building which justify the difference.

47. The Tribunal is also concerned that the method of allocating costs is inadequate and insufficiently evidenced. Any survey is only representative to the extent that a sufficient number of people take part and those who do are broadly representative of all those entitled to take part. The Respondent provided no evidence on the participation rate in their staff survey or the make-up of either those who responded or of those invited to participate.

48. Moreover, the survey seeks the calculations of staff as to how they spend their time without any appreciation of how those calculations are made. There is no suggestion that time recording software was used which means that it is likely that staff gave their perceptions without any measure to check their accuracy. On the basis of the evidence, there is no reason to trust the reliability of the results of the survey.

49. Further, the evidence appears to show that the Respondent passes on the costs which are calculated in the way described by Mr Thompson without anyone on the Respondent's staff querying whether the answer reached by the calculation is in any way reasonable or proportionate. For example, as the Applicants pointed out, in 2020/21 the Respondent levied a 63.01% overhead in respect of Grounds Maintenance. It is clearly neither reasonable nor proportionate for the indirect staff and other costs to amount to nearly two-thirds of providing the service in question but no-one at the Respondent appears to have noticed. The Respondent pointed to the procurement and tendering process as the means by which reasonableness may be achieved

when employing outside contractors but that process does not apply to either overheads or management charges which are entirely in-house costs.

50. The Respondent's management charges, considered separately in the Scott Schedule, are already high and should be more than enough to cover costs for which the Respondent may legitimately charge under paragraph 8 of the Fourth Schedule to the lease. It is not reasonable for the Respondent then to charge an extra amount on top of that. In the circumstances, the Tribunal holds that the service charges for overheads are not reasonable and, therefore, not payable.

Measurement of the Estate[*]

51. The Respondent had calculated charges for Estate Cleaning, Estates Repairs and Maintenance, and Grounds Maintenance on the basis that the relevant areas of the estate measured a total of 10,714.92m². As a result of these proceedings, they re-measured the estate and reduced the size to 4,252m². Service charges back to 2018 were accordingly re-calculated. It is astonishing and appalling that the Respondent could get this measurement wrong to that degree – the measurement used, on the Respondent's own calculations, was 152% more than the correct measurement. The Respondent has not sought to explain how they made such a large error.

52. In addition, the parties dispute whether the Coldharbour Lane Open Space (see paragraph 9(a) above) is part of Southwyck House and, therefore, whether its maintenance is properly chargeable to the service charge account.

53. The Tribunal is satisfied that the Space is public open land and not for the exclusive use of the residents of Southwyck House for the following reasons:

(a) By letter dated 29th April 2024, in response to a freedom of information request, the Respondent provided a map of the grassed areas to the front of Southwyck House and stated, "The service charge for Southwyck Estate covers maintenance of the right hand area shaded pink only", the other area shaded pink being the Space. The Respondent sought to refute the information from their own FOI Team by obtaining hearsay comment in an email dated 10th December 2024 from a senior member of staff, Mr Kevin Crook, which stated that the Space "has always been maintained by the Housing grounds team and Parks have never undertaken any work. I believe there was some discussion about Parks taking it on – that was many years before Parks came over to me – but no transfer took place." Mr Crook did not state the source of his belief but the way he expresses himself suggests that it was not personal memory or direct knowledge of any sort. He did not attend to have his evidence tested. In any event, the Tribunal cannot see how or why this staffing or funding arrangement could be determinative of the status of the land.
(b) The Space is identified on maps, including Google Maps, as public open space. Even the Respondent's own source of evidence, Mr Crook, noted in his email that, "In some places it is included on lists of public open space."
(c) The Space used to be listed as public open space in the Parks section of the Respondent's website. The Respondent did not seek to explain why it had been recently removed but, if it was removed as a result of the issue being

raised within these proceedings, its absence would not support the Respondent's argument.

(d) The Space is separated from the streets on two sides by a low wall which does not provide any meaningful form of barrier and is anyway broken by open access to a path. The path runs across the Space from one street to the other (Somerleyton Road-Coldharbour Lane), not towards Southwyck House.

(e) The Respondent has chosen to use the Space to display public art, namely the aforementioned eggs, which belongs to (and presumably would be maintained on behalf of) the whole borough, not exclusively Southwyck House.

54. The Respondent purported to rely on a Land Registry map which showed the Space as within the estate of Southwyck House. However, that map also showed other areas as within the estate, namely the neighbouring day nursery, which the Respondent has positively asserted are not. On the Respondent's own case, the map is not reliable as an indicator of what is included.

55. The area of the Space, 2,848.40m², must also now be taken off. This reduces the correct measurement to 1,403.60m². The relevant service charges should be adjusted accordingly.

Contract penalties and indexation

56. The QLTAs for Block Cleaning and Concierge included provision for penalties if services were not up to the requisite standard as measured in resident surveys or by audits. The Applicants argued that, if penalties had been applied, the cost would have been lower and this would have fed into lower service charges. They claimed that the Respondent mostly failed to monitor the relevant services, making it impossible to operate the penalty system and potentially depriving lessees of the opportunity for their charges to be reduced, and then didn't apply any penalties when surveys showed they were entitled to.

57. In fact, it seems the Applicants misunderstood how the penalty system worked. It was borough-wide so that the standards were measured across the whole borough, not just Southwyck House. They claimed that no surveys had been carried out of Southwyck House lessees but this is consistent with a borough-wide system where the surveys may be of residents in other blocks. Further, the total penalty was capped under the contract at £10,000, around 0.25% of the total contract, so that, even if a penalty had been applied, it would not necessarily have been noticeable in the subsequent service charges at Southwyck House.

58. Moreover, the enforcement of standards was not limited to the use of such penalties. According to Mr Ahmed, the concierge service is monitored through a combination of operational supervision, contract management, and resident engagement. Staff are supervised by line managers who carry out regular checks, overseeing day-to-day activities, managing attendance, and addressing any immediate concerns on site. This is shown in staff logs, supervision records, and reports shared by the contractor. Further, the Respondent's housing estate services management team monitor the delivery of the concierge contract by site visits, ad hoc spot check visits and walkabouts with

staff and residents. There are also monthly contract meetings where issues are discussed and updates given.

59. The Applicants also claimed that prices were increased by more than the annual indexation permitted in the contract However, they provided no calculations to support this claim, so there was no opportunity to check them including, for example, whether the correct CPI figures were used.

Heating and Hot Water System

60. Southwyck House is served by a communal boiler system, with three boilers circulating heating and hot water to all 173 flats. Major works were carried out to the system in 2017 and new hot water and heating pipework was installed throughout the building, as well as new radiators and thermostats in each flat.

61. The Tribunal inspected Southwyck House in the summer. Inside the flat of one of the Applicants, Mr Ross, the Tribunal experienced the high temperature in the hallway generated from the pipes carrying hot water into the property. These conditions exist in all flats throughout the year, including outside the heating season. Understandably, the Applicants objected not only to the discomfort due to the heating of their flats in the middle of summer but also to the cost incurred in generating such wasted energy. (They also pointed to the fact that it contradicted the Respondent's policies on saving energy and climate change.)

62. Mr Fozlay focused his arguments on whether the lease permitted year-round heating provision but just because it is permissible under the lease does not mean it would be reasonable to incur the cost of such a service.

63. However, according to the Respondent's Principal Heating and Water Engineer, Mr Sampson, the communal heating system is managed by a Building Management System (BMS), a centralised control platform. It is supposed to monitor continuously various parameters such as external and internal temperatures, time of day, and heating demand across all connected dwellings. During warmer periods, particularly in the summer months, the BMS should automatically reduce or disable heat generation output to prevent unnecessary operation of boilers or heat sources. During the summer months, the communal system should operate in a low-output or standby mode unless hot water or a temperature drop triggers specific demand. The Applicants queried whether the BMS was operational but there was insufficient evidence to suggest that it was not.

64. Essentially, the hot water is supplied throughout the year, to both the heating and hot water supply. The Applicants had assumed that the heating to the whole of Southwyck House could and should be turned off outside the normal heating season but that's not how the system works. The Respondent relies on the BMS to ensure unnecessary heat is neither generated nor delivered. The heat the Tribunal experienced in Mr Ross's flat would appear to be the result of the delivery of hot water for the hot water supply. Heating within the flat is controlled by the thermostat and the radiator controls but they control the supply at a point after the pipes in the hallway. Of course the excess heat is

wasted but there was no evidence that this outweighed any savings from having a large communal system.

65. The Applicants complained that they have no ability to schedule when they are supplied with heating, other than by manually adjusting the thermostat or radiator controls, but the Tribunal had no evidence as to the cost or reasonableness of providing that facility or any change which could result to the service charges.

66. The Applicants also complained that the council tenants at Southwyck House had no incentive to reduce their consumption and it would be unfair for lessees to pay for any excess consumption. However, there was no evidence that council tenants are actually guilty of any excess consumption.

Garden Gates

67. Along the ground floor boundary of the estate, there is a fence to some sides which are punctuated by gates. Each gate provides entry into a garden or yard for the exclusive use of one flat. The Respondent has included the cost of maintaining the gates within the service charges. The Applicants asserted that the maintenance of the gates and, therefore, the cost, should be the responsibility of the owner of the flat, whether that is the Respondent or a lessee.

68. The lease contains the following clauses:

2.5 "the Flat" means the property described in the First Schedule hereto … and shall also include … the following:

2.5.3 non-structural walls and partitions and the doors and door-framess within such walls and partitions within the Flat and any garden fence or wall (if any)

2.5.12 external parts of the Flat (other than the glass in the windows and the door or doors of the Flat)

2 The Tenant hereby covenants with the Council as follows:

2.9 At all times during the term to repair and maintain cleanse and keep the Flat and all the Landlords fixtures and all additions thereto in good and substantial repair and condition including the renewal and replacement forthwith of all worn and damaged parts

2.10.2 There is excluded from this covenant as repairable by the Tenant

2.10.2.1 all structural parts of the Flat including the roof space foundations main timbers and joists and concrete floors and the window frames thereof

2.10.2.2 all walls bounding the Flat

2.10.2.4 external parts of the Flat other than windows and the glass therein and the entrance door(s) of the Flat)

3 The Council hereby covenants with the Tenant as follows:

3.2 Subject to the payment by the Tenant of the rents and the Service Charge and provided that the Tenant has complied with all the covenants agreements and obligations on his part to be performed and observed to maintain repair redecorate renew amend clean repoint and paint as applicable and at the Council's absolute discretion to improve

3.2.5 the boundary walls and fences of and in the curtilage of the Building and not being part of the Flat …

69. Clause 3.2.5 obliges the Respondent to maintain and repair boundary fences which are not part of a Flat. Any garden fence is included within "the Flat" according to the definition at 2.5.3. The tenant's repairing obligations in clause 2 do not expressly exclude the garden fences.

70. The conclusion must be that it is for the lessee to repair their own garden fence. A gate in that fence is as much part of the fence as the rest of it. The cost of repairs to the gates should not be included in the Applicants' service charges.

Costs

71. The Applicants sought orders under section 20C of the Landlord and Tenant Act 1985 to prohibit the Respondent from seeking to recover any costs incurred in the proceedings through the service charge and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any costs incurred in these proceedings by direct charge to one or more of the Applicants. There was also mention of an application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

72. Representations on these issues are best made in the light of the Tribunal's substantive decision, now set out above. Therefore, the Tribunal has given directions for both parties to make representations in writing, following which a further determination will be made on the papers, without a hearing.

Name: Judge Nicol **Date:** 11th November 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).

Appendix 1 – Relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
   (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
   (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
   (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

[*] When checking a reference in the Applicants' statement of case to the Respondent's website, the Tribunal came across these articles which claim that the land to the front of Southwyck House was formally designated open space by the Respondent in 1998: https://coldharbourrocks.wordpress.com/coldharbour-car-wash-free-open-air-gym/ and https://coldharbourrocks.wordpress.com/. The Tribunal did not take this claim into account when making its decision because neither party had had an opportunity to comment or to check its veracity. However, in future it is incumbent on the Respondent to ensure it is in full possession of the facts and to exhaust their searches of their own records before it disputes the status of the Coldharbour Lane Open Space.