FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/21UC/LSC/2025/0625
Property	**:**	South View, Upperton Road, Eastbourne, East Sussex, BN21 1LG
Applicant	**:**	South View (Maintenance) Limited
Representative	**:**	Property Management Legal Services
Respondent	**:**	The 44 Leaseholders of South View
Representative	**:**	
Type of Application	**:**	Application for a determination of liability to pay and reasonableness of service charges – Section 27A of the Landlord and Tenant Act 1985
Tribunal Member	**:**	Judge C Skinner
Date of Decision	**:**	8 December 2025

DECISION

SUMMARY OF DECISION

a. **The Tribunal finds that the balconies at South View, Upperton Road, Eastbourne, East Sussex BN21 1LG ("the Building") form part of the main walls and exterior to the Building for the purposes of Clause 4(i) of the Lease dated 22 May 1969, which commenced 25 March 1969 for 90 years at a ground rent of £40 made between (1) Prideaux House Limited, (2) Walter Llewellyn and Sons Limited, (3) South View (Maintenance) Limited and (4) Amelia Eleanor Mary Matthews ("the Lease").**

b. **The Tribunal finds under Section 27(A) Landlord and Tenant Act 1985 that the Respondent is liable to pay service charges validly incurred and demanded (if any) under Clause 5(i) and 5(a) for works in respect of maintenance of the Building and charges validly demanded in respect of the Applicants performance and observance of the covenants in Clause 4. This would include the proposed remediation works to the balconies of the Building.**

c. **The Tribunal dismisses the Respondents application under Section 20C Landlord and Tenant Act 1985.**

Background

1. The Applicant is the Management Company in respect of South View Upperton Road, Eastbourne, East Sussex BN21 1LG ("the Building"). South View is described in the Application as a residential block of flats comprising of 44 apartments, each of which is sublet subject to the terms of a long lease agreement. The Building is a 12-storey block, including the ground floor, constructed circa 1967 to 1969. The Respondents are the leaseholders of those 44 apartments.

2. The Applicant originally made an application for determination of liability to pay and reasonableness of service charges for the year ending 31 December 2025. The application was received by the Tribunal on 17 February 2025.

3. The application relates to an anticipated expenditure of approximately £1,500,000.00 in respect of a proposed project of balcony works in relation to the Building and the Applicants ability to recover those costs as service charges under the terms of the lease agreements.

4. Initial directions were issued on 12 May 2025. Following a video case management hearing on 2 July 2025 further directions were issued including the provision of statements of case by both parties.

5. The initial understanding was that the Applicant would be seeking a determination relating both as to liability and reasonableness of

amounts to be incurred in connection with balcony works. Some of the leaseholders were represented by what is known as the Participation Group and indicated that they wished to make an application challenging earlier years and bring a claim for historic neglect.

6. Following the parties failing to comply with the directions to provide statements of case, a further case management hearing took place on 10 October 2025. At this hearing the Applicant applied to vary the application and only seek a determination that under the terms of the lease the costs of the proposed major works to balcony's may be recovered as a service charge expense. The Applicant did not wish to pursue a determination of any specific amount claimed as reasonable charges associated with those proposed balcony works.

7. By the time of the Case Management Hearing on 10 October 2025, the Participation Group has issued a service charge application of their own under case reference HAV_21UC_LSC_2025_0763 JC.

8. On 10 October 2025, it was agreed between the parties that the Participation Group would withdraw the above application on the basis that the Applicant in these proceedings agreed to narrow down the application to the sole issue of whether the lease allowed the Applicant to reclaim the cost of the proposed works to the balcony as a service charge under the lease. The Tribunal consented to the withdrawal of case reference HAV_21UC_LSC_2025_0763 JC and that the Application would be varied so that the only issue for the Tribunal would be the interpretation of the lease and whether the proposed works to the balconies could be recovered under the lease as a service charge payable by the Respondents.

9. At the hearing on 10 October 2025 all parties agreed that the matter would be suitable for a determination on the papers. The subsequent Directions gave a further 28 days for the parties to raise any objections to the Tribunal determining the matter on the papers. No objections were received by the Tribunal.

10. Following a case management application made the Respondent on 17 October 2025, and as agreed by the Applicant, the Tribunal amended Paragraph 19 of the Directions dated 10 October 2025 to allow for representations in respect of an application under S20c Landlord and Tenant Act 1985.

11. The Tribunal has been provided by the Applicant a determination bundle dated 14 November 2025, consisting of 270 pages. The Applicant has also provided an Index to the determination bundle. The Tribunal has read the bundle and all associated material. References in this decision to page numbers in the bundle are indicated as [ ].

12. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require

determination. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

13. The Tribunal has reviewed the determination bundle and remains satisfied that the matter is suitable for determination on the papers alone without an oral hearing.

The Law

14. Section 27A of the Landlord and Tenant Act 1985 reads as follows:

27A - Liability to pay service charges: jurisdiction

(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.

14. Section 20C of the Landlord and Tenant Act 1985 reads as follows:

20C - Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal [or the First-tier 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.

(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.

The Lease

15. A lease of the Fifth Floor Flat, 11 South View, between (1) Prideaux House Limited and (2) Frances Louise Cotton and (3) South View (Maintenance) Limited dated 25 July 2017 was provided to the Tribunal as a specimen lease. This lease extended and modified terms relating to the existing lease dated 22 May 1969, which commenced 25 March 1969 for 90 years at a ground rent of £40 made between (1) Prideaux House Limited, (2) Walter Llewellyn and Sons Limited, (3)

South View (Maintenance) Limited and (4) Amelia Eleanor Mary Matthews ("the Lease").

16. It is the interpretation of the terms contained in the Lease that are relevant to the Decision in this Application and the most relevant terms are set out below. The parties confirmed to the Tribunal that all the leases are in a similar form for this purpose and this determination is based on that confirmation.

(a) *DEMISES unto the Tenant ALL THAT tenement of flat on the [ ] of and being Flat Number [ ] in the said Building (hereinafter called "the Flat") TOGETHER with the store ~~and garage~~ appurtenant thereto which Flat and store and garage are for the purposes of identification only delineated on the plan annexed hereto and theron coloured pink…….*

(b) *2. THE TENANT HERBY COVENANTS with the Landlord as follows:-*

(iii) From time to time and at all times during the term hereby granted well and substantially to repair cleanse maintain amend and keep the inside of the Flat the Landlord's fixtures therein and the windows (unless the same shall be destroyed or damaged by fire explosion or other act of God) and in particular clean all windows at least once in every month and repair and replace where necessary all radiators cisterns pipes wires conduits and drains and other things installed therein

(c) 4. THE SERVICE COMPANY HEREBY COVENANTS with the Tenant as follows:-

(i) FROM time to time and at all times during the term hereby granted to keep the main walls and floors roof and exterior of the said Building and all enclosures ceilings and walls to the same belonging and also all boilers radiators cisterns pipes wires conduits sewers and drains and the lift or lifts (if any) whether the same be in or upon the parts of the said Building used in common by the tenants thereof or the parts of thereof retained by the Landlord and the Service Company or otherwise serve the said Building in good and substantial repair"

(d) *5. IT IS HEREBY MUTUALLY COVENANTED by and between each of them the Service Company and the Tenant as follows:-*

(i) THE Tenant shall make to the Service Company certain payments for the maintenance of the said Building at the times and in the manner hereinafter provided

(ii) THE maintenance charge hereinafter referred to shall be the total of all sums actually paid and expended by or on account of the Service Company during each calendar year in connection with the management and maintenance of the said Building and any garages now or hereafter erected on the land coloured blue on the said plan and in particular but without limiting the generality of the foregoing include the following:-

(a) The costs of and incidental to the performance and observance of each and every covenant in Clause 4 hereof contained and the cost of making maintaining rebuilding and cleansing all ways roads pavements sewers drains pipes watercourses party walls party structures fences or other conveniences which shall belong to or be used for the said Building or the curtilage thereof in common with other premises near or adjacent thereto

(b) .....

(d) All fees charges expenses and commissions payable to any solicitor accountant surveyor valuer architect or agent from time to time employed in connection with the management and maintenance of the said Building including the cost of keeping accounts and certifying the amount of the said maintenance charge

(e) *THE SCHEDULE above referred to*

7. Will not keep any bird dog or other animal in the Flat which shall cause annoyance or after keeping thereof shall have been objected to by the Landlord nor (except in those where the same has been provided by the Landlord) shall any blind flower pot or window box be kept or placed in the front windows or on the balcony of the Flat without the prior consent of the Landlord which may be revoked at any time and will not without similar consent from the Landlord put any article of furniture plant tub or container in any entrance hall lobby or landing or any other common part of the said Building

Determination

Lease Interpretation

17. At [58] the Applicant provides a description of the balconies at the Building. There are four balconies on each level from the first to the tenth floor and two balconies on the eleventh floor, totalling 42 balconies across the Building.

18. They are described as being constructed with precast concrete hollow core units that span parallel to the front façade and are supported on cantilevered reinforced concrete tapered beams. Around the perimeter

of the cantilevered balconies are precast concrete cladding edge panels, with the steel balustrading projects up out of the top of the precast cladding panels. No dispute has been raised by the Respondent over the construct of the balconies.

19. The Applicant submitted in the initial Application details about the works that they say are required to the balconies, along with details of the current condition the balconies are in. The Applicants referred to a report from HOP Consulting Civil and Structural Engineers [63-91]. The report confirms that the balconies are deteriorating and are in need of works to remedy that deterioration. The conclusions are set out at [73] and recommendations are made to replace or repair various concrete features to the balconies with summary recommendations set out at [74]. The HOP report also contained plans showing how the balconies attach to the Building.

20. It should be noted that the Respondents initial response acknowledged that replacement of the balconies was likely the most sensible option in light of the current state of the balconies with no real challenge put forward to the alleged condition of the balconies. However the Respondents were clear that the cause of the deterioration was in dispute and that due to alleged neglect by the Applicant in maintaining those balconies, the costs that might be reclaimed in service charges from the Applicant could be significantly higher than they should have been, had previous repairs been affected in a timely manner. To this end, the Respondents intended to provide their own expert evidence to demonstrate the deterioration rate and steps that could have been taken to prevent that deterioration.

21. In November 2023 the Applicants wrote to the leaseholders at the Building raising concerns over the safety of the balconies, advising that balconies should not be used or accessed for any purpose whilst the Applicant undertook a consultation process for the purposes of Section 20 Landlord and Tenant act 1985 and looked to determine what was the most appropriate way to conduct the works required. During this process it became clear that the anticipated costs to repair the balconies would be substantial and a figure of £1,500,000 was suggested as a possible amount to complete the works.

22. As indicated above, in light of that anticipated level of spend, the initial Application sought a determination of liability to pay and reasonableness of service charges for the year ending 31 December 2025. The Application was then narrowed down to solely whether the balconies form part of the main walls and exterior of the Building and whether as a result the Landlord has an obligation to repair the balconies. The Tribunal is making no findings on the issue of deterioration or historic neglect, nor is it making any findings in relation to the any aspect of the consultation undertaken by the Applicant or the proposed reasonableness of any costs associated with the proposed works.

23. The Applicant argues that whilst the lease is silent on the demise of the balconies, the Tribunal should find that the balconies form part of main walls and exterior of the Building for the purposes of Clause 4(i) (set out at paragraph 16(c) above), placing an obligation on the Applicant to repair the balconies. In doing so, it would then follow that the costs incurred in maintaining and rebuilding all party structures would be capable of being recharged to leaseholders as a service charge under Clause 5(ii)(b) (set out at paragraph 16 (d) above).

24. The Applicants refer to the plan attached to the Lease and the fact that the Flats as demised are shaded pink (see 16(a) above) and the balconies to the Flats are not shaded. As a result the balcony cannot be said to be part of the demise of "the Flat" under the terms of the Lease.

25. The Applicants submit that despite disputing the Application, no alternative argument has been put forward by the Respondents as to where responsibility for repairing and maintaining the balconies would sit if the Applicants interpretation of the Lease is not correct.

26. The Respondents position is generally set out by representations made by the Participation Group. This Group was formed of the owners of Flats 9, 21, 23, 25, 32 and 45. The owner of Flat 27 was also named as a member of the Group but their name and signature details were omitted from a list provided to the Tribunal confirming who the members of the Participation Group were.

27. Representations were also received from the owners of Flat 5, Flat 17 and Flat 29.

28. The submissions put forward by the Participation Group in their position statement of 18 June 2025 state that the Applicants "should have carried out proper and effective remedial works" [105]. The position statement goes on at paragraph 18 to submit the Applicant should have repaired the balconies in accordance with its obligations under Clause 4(i) of the Lease.

29. The Participation Group as Respondents at this stage were in general not disputing the obligation fell upon the Applicant to conduct the repairs to the balcony, more that they had serious concerns about how much those repairs were likely to cost and whether such costs were reasonable for the leaseholders to have to pay as a service charge, given the allegations of the Applicants neglect to the balconies over many years, thereby allegedly increasing the costs now potentially associated with the works being scoped.

30. In its position statement dated 31st October 2025, the Participation Group makes a further observation that any obligations placed upon the Applicant to conduct works set out in Clause 4(i) of the Lease is not subject to the right to recover service charges and the ability to recover service charges is a separate matter governed by Clause 5 of the Lease.

31. The Participation Group refers to the case of *Hallisey v Petmoor (2000) ALL ER (D) 1632* as authority that balconies are non-structural elements and therefore do not form part of the main walls to a building. No further details around how that authority supports that submission was provided in the written position statements, nor was a copy of the judgement provided to the Tribunal.

32. The Tribunal can find no such finding or confirmation within the case. The case dealt with the question of whether a Landlord would be liable to repair a flat roof that was situated above a Tenants flat. Arguments over whether a flat roof or terrace formed part of the main structure to the building in question were considered and it was determined that the terrace was deemed part of the main structure of the building.

33. The case is fact specific and without further submission on how its findings apply to this matter, the Tribunal cannot see how it is said to be authority that balconies do not form part of the exterior to a building. To the extent that the decision in *Hallisey* confirms a court or Tribunal can analyse and make findings on whether parts of a building form the structure and exterior, that is the exact exercise this Tribunal is conducting.

32. In respect of relevant submissions from leaseholders who do not form part of the Participation Group, a written statement from the owner of Flat 5 makes reference to leaseholders having previously met the cost of abortive works to the balconies [117] and Flat 17 made submissions about the likely costs to be incurred but nothing related to who was responsible for the balcony repairs under the terms of the Lease.

33. The owner of Flat 29 submits that they did not challenge the interpretation that the balcony would form part of the structure and exterior and works to the balcony could therefore be covered as a service charge. The submission went on to carefully explain that the challenge to the Applicants was over the expense likely to be incurred and whether the leaseholders should have to meet those costs and the costs of these proceedings given the alleged conduct of the Applicant.

34. The Tribunal's Decision in this matter is based on a number of factors. When viewing these factors in their totality, it seems clear that the balconies were always intended to form part of the Building and were not demised to the leaseholders. It was clearly the intent of the contracting parties that the responsibility for repairing and maintaining those balconies was to sit with the Landlord. That intention has further been evidenced in recent engagements between the parties as set out below.

35. The Tribunal has carefully reviewed the Lease. In looking at the specific terms and operation of the Lease the Tribunal has found the following. The Demise as set out at paragraph 16(a) above identifies the Flat as delignated on the plan to the Lease and shaded pink. The balcony is clearly visible on the plan and would be capable of shading should that

have been the intention of the parties. The balcony area is not shaded and therefore can be said to not form part of the Flat as identified on the plan.

36. At Clause 2(iii) (set out at paragraph 16(b) above) the Tenant covenants with the Landlord to repair cleanse maintain amend and keep the inside of the Flat. There is no mention of the balcony or the outside of the Flat within this clause but there is reference to the windows. The contracting parties at this point appearing to carefully set out what was the responsibility of the Tenant and absence of reference to the balcony is noted.

37. There is only one reference to the balcony within the entire Lease, that coming within "The Schedule" and clause 7 therein as set out at paragraph 16(e) above. It is a basic prohibition on the Tenant placing any blind flower pot or window box on the balcony of the Flat without first obtaining the prior consent of the Landlord.

38. Neither party referred the Tribunal to this part of the Lease or this reference. This clause also contains prohibitions relating to the Tenant placing items within communal parts of the Building. The clause on its own is not determinative either way but in the Tribunals view lends weight to an interpretation that the parties did not deem the balcony part of the Flat given the Landlord was exercising control over its permitted uses within a clause that in the same way was controlling the Tenants use of communal areas.

39. The Supreme Court in Arnold v Britton [citation] and others, and in particular the comments of Lord Neuberger states;

"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30".

40. Applying the test set out in *Arnold v Britton*, the Tribunal finds the contracting parties did not include the balcony within the Demise to the Flats and the balconies form part of the exterior to the Building. This is evidenced by the plan to the Lease not delignating the balconies or shading them pink.

41. The concrete construction of the balconies as set out in the Applicants evidence is clearly structural in nature. At the time the Building was constructed the parties would have intended those balconies to be the responsibility of the Landlord to maintain and that is evidenced by their exclusion from the pink shading in the place and the absence of any further reference to balconies within the lease save for the one exception noted above. The Tribunal finding that the parties intended the balconies to form part of the definition for the Building and captured by the words "main walls….and exterior".

42. If the responsibility sat with the Tenant to maintain the balconies it would have created an unsatisfactory position that the Tribunal finds would not have been the intention of the contracting parties at the time. If left to the responsibility of the individual Tenants, a situation would have occurred where the 44 balconies at the Building could have fallen into various states of repair or disrepair with each individual leaseholder being responsible for the maintenance of each individual balcony. The Landlord then having to enforce individually against each leaseholder should the condition warrant it. If that had been the intention of the parties, it would have been explicitly set out given how onerous such an obligation would have been upon a Tenant and the inherent safety risks associated with having a building that may have balconies in various states of repair.

43. The concrete construction of the balconies and the way they are joined to the Building are such that to infer the intention of the parties was for a Tenant to be required to maintain that concrete structure and the integrity of the balcony is not an interpretation that can be supported on the facts of this case. The Tribunal accepting the evidence within the HOP report and finding that supports the position that the balconies are structural and part of the Building.

44. This interpretation of the Lease is further supported by the conduct of the existing parties to the Lease in recent years. The Applicant provided evidence of previous minor repairs to the balconies being passed on through service charges accounts [130]. Minor repairs to the balconies of Flats 19, 21 and 23 were passed on for the service charges year ending 2021.

45. A further example is found at [137] where all leaseholders were charged service charges for costs incurred in fixing warning signs to every balcony for the year ending 2022. There are multiple references within the budgeted service charge information to anticipated costs of the

balcony replacement works. These previous charges and references all add weight to the intention of the parties and how the Lease has been interpreted to date.

46. As referred to at paragraphs 28 to 33 above, the evidence from the Respondents also acknowledges in places that it has been their position and understanding of the Lease and its operation that the balconies formed part of the exterior to the Building and were the Landlords responsibility to repair and maintain under the Lease.

47. When taking all the above factors into consideration and applying the tests set out in *Arnold v Britton*, the Tribunal finds the balconies are part of the main walls and exterior of the Building and are therefore caught by the obligations placed upon the Landlord contained within Clause 4(i). The balconies do not form part of the demised premises to the leaseholders and are not within the definition of "the Flat" for the purposes of the Lease.

48. As a consequence, the Tribunal finds that the Applicant is obliged under Clause 4(i) to keep the balconies in good and substantial repair given the finding that they form part of the main walls and exterior of the Building.

49. The Tribunal therefore also finds that under Clause 5(ii))(a), the Lease allows the Applicant, as defined as the "Service Company" within the Lease, to pass on as a service charge the costs of complying with its obligations under Clause 4. The proposed balcony works would fall within the obligations placed upon the Landlord under Clause 4(a) and therefore can be claimed as service charges under Clause 5(ii)(a) if properly incurred and demanded.

50. The Tribunal notes the parties acknowledged clearly that no determination is sought over the reasonableness of any charges or costs being proposed and that the parties reserved their right to make future applications to the Tribunal over those issues. The Tribunal has clearly limited its findings to that of interpretation of the Lease and no findings are made outside that scope.

51. The Tribunal has made no determination on whether any costs to be incurred are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of any costs that may become payable as a result of this Decision, then a separate application under 27A of the Landlord and Tenant Act 1985 can be made.

Dates Payments Fall Due under the Lease

52. The Tribunal notes there may be variations within the various leases held by the Respondents in respect of when payment of service charges fall due and the method of calculation for those sums. The Tribunal has not been provided with copies of those leases. The Tribunal can only determine the manner of payment based on the terms of the Specimen

Lease provided in the bundle. Therefore no findings are made in relation to any lease where those terms are not identical to the provisions set out in the specimen lease.

53. The Tribunal in reviewing the specimen lease further determines that the manner of payment of any validly demanded maintenance charges due from Clause 5(ii) are clearly set out within the Lease at 5(vi) [51].

54. Under the above clause, payments of maintenance charges validly claimed by the Landlord are to be paid on 24th June and 25th December. The Clause requires the Tenant to pay twenty five pounds (referred to as "the Interim Payment"), with any outstanding balance (if any) being due on 24th June.

55. Whilst the initial provision of the Interim Payment was set at twenty five pounds, clause 5(vi) make provision that should the average annual cost exceed the total interim payment for a continual period of 3 years by a sum of £5 or more, the interim payment may be increased to the aggregate sum payable by the Tenant, rounded to the nearest five pounds.

56. The Tribunal has been provided with no evidence over whether the terms of that clause have been met and makes no findings on this issue beyond the specimen lease requiring payments on the dates set out above at paragraph 55.

Respondents Application under Section 20C Landlord and Tenant Act 1985

57. By way of Application dated 31 October 2025, the Participation Group made a request that the Tribunal make an order under Section 20C Landlord and Tenant Act 1985. Section 20C is set out above at paragraph 14 and if an order is made under Section 20C the Landlord will not be able to pass on as service charges the costs incurred in these proceedings against the persons specified in the Application, namely the members of the Participation Group.

58. The application sets out that it is made on behalf of Flats 9, 21, 23, 25, 32 and 45. It is based in summary on an argument that the costs of these proceedings should not be passed on because the Applicant has essentially changed the nature of the original application from one that required a wider determination of issues, including a determination on the reasonableness of the potential costs to be incurred, to a much narrow one of interpretation.

59. The owner of Flat 29 did not make a formal application under Section 20C but for the sake of completeness the Tribunal notes the comments within their statement dated 31 October 2025 and that they support the Application made by the Participation Group but the Tribunal does not treat that statement as a separate application.

60. The Applicant argues that no order under Section 20C should be made by the Tribunal. The Applicant sets out various arguments as to why it believes no order should be made. The Applicant argues that the Respondents at various places did not dispute that the balconies formed part of the main walls and exterior to the Building and in turn did not dispute that the costs of the works would be recoverable as a service charge. The Applicant submits it has always been clear over what it required the Tribunal to determine.

61. The Applicant and the Respondents both acknowledge that these proceedings now in no way restrict any parties future ability to seek a determination of the reasonableness of any costs incurred and as referred to above, further applications under section 27A Landlord and Tenant Act 1985 are not prejudice or affected by these proceedings beyond the scope of the findings made in this Decision,

62. The Tribunal has the discretion to make an order under Section 20C where it considers it just and equitable to do so. There is no presumption that an order should or should not be made depending on the outcome of the Decision. It is for the Tribunal to exercise its discretion as to what is just and equitable in all the circumstances.

63. The Tribunal does find some merit in the assertion that the initial Application was wider in scope and the determination it required from the Tribunal initially appeared to also refer to sums being claimed within the 2025 service charge year. It is not clear that the original Application only sought a determination on the issues now decided in this Decision. This is supported by the need for various Case Management directions and that it was not until 10 October 2025 that the scope of the Application was agreed by the parties and the Tribunal made clear what the matters in dispute were that required a Decision.

64. However, it is important to note that the Tribunal was still required to make a determination on the Application and the Application was not affectively both parties asking the Tribunal to approve an agreed interpretation of the lease. Such a position might have been adopted given the potential large sums involved in the proposed balcony works and the need for certainty from all parties. However, the parties were still in disagreement over the issue of the Lease interpretation and the subsequent written position statements demonstrate competing views on the Application.

65. The Tribunal notes that the Respondents have adopted a somewhat contradictory argument over the Lease interpretation and at places in the written submissions have affectively agreed with the Applicants interpretation and then rejected the Applicants interpretation. The Respondents continued to essentially resist the Applicants submissions on how the Lease should be interpreted but failed to put forward any alternative interpretations.

66. At the hearing on 10 October 2025, the parties did agree that the matter could be determined on a paper determination which seems entirely appropriate and as a result the costs of preparation for and attending a full hearing of the matter have not been incurred. The Tribunal feels a paper determination has been a proportionate way for a Decision to be determined in the Application.

67. The Tribunal does not believe it would now be just and equitable for the Participation Group members to benefit from the costs associated with these proceedings not being passed onto them, if such an order was made, when it has been largely them continuing to drive the issue of determining the interpretation of the lease and putting forward arguments against the Applicants proposed points of interpretation.

68. The Tribunal notes that other leaseholders have not challenged if the balconies form part of the exterior of the Building nor that prima facie costs of maintenance could be passed on as a service charges, instead those leaseholders have raised concerns over the reasonableness of the costs that might be incurred. As a result, the Tribunal does not believe it fair that those leaseholders would in affect be detrimentally affected if the application under Section 20C was granted.

69. Given the significant potential costs associated with the proposed works, the Tribunal finds it is reasonable for the Applicant to make an application for clarity over how the lease operates, especially where such interpretation was challenged by the Participation Group and continued to be challenged throughout the Application.

70. The Applicant has largely been successful in these proceedings in that their position has always been that the Lease should be interpretated so that balconies are determined as being part of the main walls and exterior to the Building. They have been successful in the argument that then means they are obliged under Clause 4 to repair and maintain those balconies.

71. As set out in the Decision, the consequence of the balconies being the Landlord obligation to repair under Clause 4, means that the costs of complying with their obligations under Clause 4 can allow them to recover those costs as service charges under Clause 5. That ability to recover those charges is still subject to them being validly demanded and complaint with various statutory provisions that apply to service charges and their recoverability.

72. In light of the above, The Tribunal finds on balance it is not just and equitable to make an order and the Tribunal dismisses the application made by the Respondents under Section 20C Landlord and Tenant Act 1985.

RIGHTS OF APPEAL

73. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

74. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

75. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

76. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.