FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HQ/LSC/2024/0625
Property	:	8A Park Lake Road, Poole, Dorset, BH15 1TR
Applicant	:	Dr Patricia Harrison
Representative	:	
Respondent	:	Mrs Christine Roberts
Representative	:	
Type of Application	:	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Regional Surveyor Clist MRICS Mr D Cotterell FRICS Mr M Jenkinson
Date of Hearing	:	24 September 2025
Hearing Venue		Poole Magistrates Court, The Law Courts, Park Road, Poole, BH15 2NS
Date of Decision		16th December 2025

DECISION

Summary of the Decision

The Tribunal determines that the sum of £3622.50 is payable by the Respondent in respect of service charges for major works demanded.

The Tribunal makes the determinations as set out under the various headings in this Decision.

Background

1. The Applicant has made an application for determination of liability to pay and reasonableness of service charges for the years 2022 to 2027.

2. The application was received on 17 October 2024.

3. On the 16 May 2025, a case management hearing took place at Havant Justice Centre and was attended by the Applicant, Ms Ceri Edmonds (Counsel for the Respondent) the Respondent and her solicitor Ms Audrain.

4. At the hearing it was agreed that the matters in dispute related to service charge demands for the years 2022, 2023 and 2024.

5. The Tribunal was provided with a hearing bundle comprising 244 electronic pages. References in this determination to electronic page numbers in the bundle are indicated as [ ].

6. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

7. The hearing was audio recorded, and the recording serves as the official record of the proceeding.

The Lease

8. A copy of the Lease was provided within the bundle. The Lease [26- 38] is dated 29 January 2010. The term of the Lease is 189 years from 1 September 1961.

9. The lessor is defined as the proprietor of the freehold property ("the property") which consists of two self-contained flats known as 8 and 8a Park Lake Road together with appurtenant gardens.

10. The demise of 8a Park Lake Road is defined within clause 1 of the lease.

11. Clause 2(15) provides for the lessee to contribute and pay one equal half part of the cost, expense, outgoings and matters mentioned in the Fourth Schedule.

12. Clause 3(3) provides the lessor with the following obligation:

> (3) That (subject to contribution and payment as hereinbefore provided) the Lessor will maintain repair redecorate and renew (a) the main structure and in particular the roof roof-timers joists and beams the chimney-stacks gutters and rain-water pipes of the property (b) the gas and water-pipes sewers drains cisterns and tanks and electric cables and wires in under or upon the property and enjoyed or used by the Lessee in common with the Lessor (c) the main entrance gates the external porch and the drive or passageway at the side of the Property leading to the said entrance porch (d) the footings and foundations of the Property.

13. Clause 3 (4) includes an obligation for the lessor to undertake external decoration as often as reasonably required, to be agreed with the lessee and in the same or similar manner as to previous decoration.

14. The Fourth Schedule provides for the lessee to contribute towards the following:

> **THE FOURTH SCHEDULE** above referred to
>
> Costs expenses outgoings and matters in respect of which the Lessee is to contribute
>
> 1. The expense of maintaining repairing redecorating and renewing:
>
> (a) the main structure and in particular the roof roof-timbers joists and beams the chimney-stacks gutters and rain-water pipes of the property
>
> (b) the gas and water-pipes sewers drains cisterns and tanks and electric cables and wires in under or upon the Property and enjoyed or used by the Lessee in common with the Lessor
>
> (c) the main entrance gates the external entrance porch and the drive or passageway at the side of the Property leading to the said entrance porch
>
> (d) the footings and foundations of the Property.
>
> 2. The cost of decorating the exterior of the Property.

The Hearing

15. The hearing took place at Poole Magistrates Court at 10am 24th September 2025. The hearing was attended by the Applicant, Dr Harrison who was representing herself. The Respondent, Mrs Roberts also represented herself. Both parties were accompanied by an observer each, Mr Harrison and Mr Macintosh.

16. Both Dr Harrison and Mrs Roberts gave oral evidence in relation to their witness statements at [50-68 and reply at 219-226] and [133-153] respectively.

17. At the end of the hearing, Dr Harrison requested to ask additional questions of the Tribunal, referring the same to paragraph 9 of page 220 to the bundle. Having sought clarification from Dr Harrison, the Tribunal held a short adjournment of some five minutes to consider before informing the parties that the questions asked of the Applicant were akin to legal advice rather than determinations and the Applicant should obtain the same independently.

18. It should be mentioned that following the hearing, the Tribunal had insufficient time for deliberations owing to the number of items of expenditure and difficulties in referring to the applicable evidence owing to a difference in the document page numbers and electronic page numbers. The Tribunal therefore reconvened on 14th October 2025 to conclude its deliberations and reach this decision. This regrettably, although somewhat inevitable, delayed the issue of the written decision.

The Applicant's case

19. The Applicant seeks a determination of the payability and reasonableness of service charges in respect of major works undertaken over 2022-2023. The Applicant became the freeholder of the subject property on or around 15 March 2022. It was said that the property was purchased for the dual use as a holiday home and for short lets but was in poor condition at the time of the purchase following a lack of maintenance over several years. An overview of maintenance issues were provided to the leaseholder following the Applicant's purchase.

20. The Application relates to service charges dating back to 2022 in relation to major works which can be summarised as follows:

- Front chimney removal (£3120)
- Building control fees (£117.30)
- Chimney report (£210)
- Bird survey (£252)
- B Willis structural engineer / party wall fee (£1428)
- Covenant approval (£45)
- Roof support (£500)
- Pointing and wall tiles (£2050))
- Fascias and guttering (£250)
- Back chimney removal (£1030)
- Porch replacement and external decorating (£700)
- Front door and surround (£1220)
- Pathway Renewal (£1700)

21. It was said that costs were apportioned by 50% to the Respondent in accordance with the lease, with the exception of those incurred for repairs to the fascias and guttering which was limited to the statutory cap of £250. The Applicant accepted that the consultation process had not been followed in respect of the same, nor had dispensation been granted in respect of the same.

22. Dr Harrison's opening statement explained that whilst she initially consulted with the Respondent informally on matters, she had not previously been aware of the S.20 process. Furthermore, works relating to the removal of both chimneys were said to have been urgent and at risk of collapse. This led to an application for Dispensation from the consultation requirements in relation to the removal of front and rear chimneys and repointing. Dispensation was granted on 12 December 2023.

23. It was submitted that the consultation process was correctly followed in respect of the other works.

24. The Applicant's bundle contained a service charge demand dated 26 March 2023 which included costs for works for repointing and wall ties, fascias and guttering, front and rear chimney removal, porch and external decorating, front door and surround, shared pathway and water leak emergency works. Further invoices dated 30 July 2023 [101-103], 30 September 2023 and 30 October 2023 [117-118] were said to have been sent to the Respondent. It was said that further invoices had been sent but the bundle only included the aforementioned.

25. The Applicant had sent a notice in accordance with S20B Landlord and Tenant 1985 on 9 October 2023 [79]. It was said that the notice applied to costs already incurred, as per the 30 September 2023 notice and major works subject to a dispensation application.

26. The Applicant sent a further demand by post, dated 28 May 2025 [98-101] which included a S.153 notice. The costs were divided over two categories; major works invoiced within an 18 month period of first works and major works invoiced post dispensation process and 18 month period. The total sum said to be payable was £12622.30.

The Respondent's Case

27. The Respondent purchased the leasehold interest in the ground floor flat on or around 4 January 2007.

28. The Respondent's evidence included pertinent extracts of the lease under clauses 3(3), 3(4), 2(15) and the Fourth Schedule in relation to the landlord and tenant covenants. A Scott Schedule was included to summarise the Respondent's submission in respect of each itemised cost (outlined within the Tribunal's consideration).

29. The Respondent's written evidence challenged the validity of the Applicant's demands. It was said the lease was silent as to how notices and demands should be served. As such she had been advised that service should be made by post as per S.196 Law of Property Act 1925. It was said that the only invoice/demand that was sent by post was that of 28 May 2025. All previous invoices had been sent via email and requests for payment lacked the Applicant's name, address and Section 153 information.

30. In relation to the March 2023 demand, the Respondent stated that she had no record of it being sent to her although the Applicant's husband had sent an email with attachments referring to qualifying works statement and invoice 6 April 2023 but was unclear as to whether this was the March 2023 demand.

31. The Respondent submitted that the March 2023 demand was in any case not a valid demand as it was sent via email, not accompanied with the S.153 summary of rights and obligations pursuant to S.21B of the Landlord and Tenant Act 1985. Subsequent provision of the summary of rights was insufficient to validate the previous demand.

32. The Respondent states that Applicant's document [81-82] dated 31 July 2023 with attached spreadsheet [80] was not received and was, rather, a reminder for payment with interest applied to the outstanding balance. It was said the same applied to the document dated 30 September 2023 with a spreadsheet [101-103].

33. In relation to the document dated 30 October 2023 [117-118], the Respondent could not find any email of the same date but rather one sent on the 16 November 2023 which attached a spreadsheet and reminder to pay. The same was not a demand for payment.

34. The Respondent stated that many emails had been received with various reiterations of the spreadsheet with differing costs on each and asserted that as a result none constituted a valid demand. The Respondent put the Applicant to proof that a valid demand was sent to her.

35. With regards to the demand dated 28 May 2025, the Applicant referred to the same as an updated service charge and invoice. No separate invoice was attached, only a spreadsheet and S.153 notice. The Respondent also asserted that the document is not a valid demand as it does not request payment or provide payment details.

36. She added that the S20B notice served by Applicant was unclear as to what costs were included and not appropriate in relation to some costs.

37. If the May 2025 demand was valid, it was served more than 18 months after costs had been incurred and as such the Applicant was time barred from demanding the same.

Consideration and Decision

38. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the lease where necessary to resolve disputes or uncertainties.

39. Service charge is in section 18 of the Landlord and Tenant Act 1985 defined as an amount: "(1) (a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements] or insurance or the landlord's costs of management and (2) the whole or part of which varies or may vary according to the relevant costs."

40. Section 27A provides that the Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and the services or works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable.

41. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

42. In respect of consultation requirements and dispensation from those requirements, Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

<u>Validity of Demands</u>

43. The Respondent asserts that the Applicant's service charge demands were invalid. Dr Harrison's oral evidence was that numerous demands or reminders had been sent to the Respondent but her evidence had only included the March 2023, July 2023, September 2023, October 2023 and 28 May 2025 invoices.

44. The Respondent submitted that email was not a valid form of service as the lease was silent on service and as such should be by post in accordance with Section 196 Law of Property Act 1925. The Applicant was put to proof of service in relation to the 2023 invoices.

Additionally, all invoices prior to the May 2025 demand had not included the Section 21B Landlord and Tenant Act 1985 Notice summary of tenants' rights and obligations.

45. The Applicant's evidence within the hearing bundle did not provide proof of email service of any of the invoices. Proof of postage related only to the 30 September 2023 invoice. The Tribunal is therefore unable to make a finding that the March 2023, July 2023 or October 2023 demands were sent to the Respondent.

46. Notwithstanding, the Tribunal notes the Respondent's written evidence whereby it is accepted that many versions of spreadsheets with itemised costs were received from the Applicant with specific reference made to emails received on 6 April 2023 and 13 November 2023. The Respondent refers to the same as reminders to pay rather than demands. The Tribunal therefore finds that the Respondent was in the least notified of costs on these two occasions.

47. The Tribunal finds that in this modern day, service by email is acceptable, particularly where previously accepted and utilised by the parties for correspondence. The Tribunal has considered the evidence of the Respondent's acceptance of email as the preferred form of communication in reaching this finding [80].

48. The Applicant accepted within her oral evidence that the 2023 invoices had not included the Section 21B Notice. The Tribunal therefore finds that these demands were indeed invalid.

49. The Tribunal considered that it did however, need to make a finding in respect of the service of the September 2023 invoice. It was said by the Applicant within oral and written evidence that the September 2023 invoice was sent alongside the S20B notice and proof of postage was provided [81]. The Tribunal notes that the proof of postage showed the letter to weigh 0.030 kg which the Tribunal considered to be more than the two pages of the S20B notice. Additionally, the S20B notice makes reference to the 30 September 2023 invoice and the figures cited relate to the same. On the balance of probabilities, the Tribunal therefore accepts the Applicant's evidence and finds that the September 2023 demand was sent alongside the S20B notice.

50. In relation to the May 2025 demand [97-101], the Respondent states that the demand is not valid owing to a lack of payment details or request for payment. The Tribunal finds that the demand is sufficiently clear as to the purpose of requiring payment with frequent references to 'lessee to pay'. The addition of the S.153 summary of rights additionally makes clear what the purpose of the document. The Tribunal does however find that the Notice lacks payment details. Whilst a requirement of a service charge demand, the Tribunal does not consider this to be fatal to render the notice invalid. The Tribunal therefore finds that the May 2025 demand is valid.

51. The Respondent states within her witness statement and supporting Scott schedule that the costs outlined in the May 2025 demand were over 18 months old and as such time barred in accordance with Section 20B Landlord and Tenant Act 1985. If it were not, the S20B notice was not appropriate for those works subject to the grant of dispensation (front and rear chimneys, building control fees, bird survey, Structural engineer / party wall survey, covenant approval and roof support) as the actual cost was known. The Applicant's written and oral evidence was that the S20B notice was served whilst awaiting the outcome of the dispensation application, the outcome of which would dictate whether the Applicant could demand the 50% share of costs or at the statutory cap. The Tribunal accepts the Applicant's explanation of such.

52. The Respondent further challenges the validity of the S20B notice dated 9th October 2023 on the grounds that it was not sufficiently clear what works and costs the notice related to. The Tribunal deals with the specific items to which the Respondent refers below, but in the main, finds that the S20B notice is sufficiently clear for the Respondent to understand what works it related to on the basis of the accompanying September 2023 invoice to which the notice refers and previous correspondence such as invoices/reminders to pay, the consultation documentation [69-71] and dispensation application. The Tribunal therefore finds that the S20B notice was sufficiently clear and appropriately served upon the Respondent. Notwithstanding, The Tribunal notes that of the range of costs incurred, the earliest were incurred in March 2022 which related to building control fees (21st) and covenant approval (28th). Both items of expenditure were therefore incurred over 18 months before the effective date of the S20B notice and as such, the Tribunal finds that the Applicant is unable to demand payment for these two costs. With respect to the remaining items of expenditure, the Tribunal finds that the May 2025 is not time-barred to the 18 month limit.

53. The Tribunal notes that the Respondent's written evidence outlined concerns regarding the validity of the S20 consultation process undertaken in respect of the porch and external decorations, front door and surround and the pathway [140-142] although it was stated that she 'did not intend to take the point', rather, the items were challenged on the basis of whether the costs were reasonably incurred, to a reasonable standard or whether the Respondent ought to be liable under the terms of the lease. This was reflected in the Respondent's oral evidence. The Tribunal therefore makes no findings in relation to the S20 consultation process.

54. The S.27A application and evidence prior to the case management hearing refers to interest. The oral evidence of Dr Harrison confirmed that interest charges had since been removed and not contained within the 28 May 2025 demand. For completeness, 'interest' is not a service charge within the meaning of section 18 Landlord and Tenant Act 1985.

Determination

55. Having regard to the totality of the evidence, the Tribunal takes each item of expenditure in turn.

Front Chimney

56. In relation to both chimneys, Dr Harrison explained that upon purchase and commencement of renovation works to her property, the chimneys were found to be in very poor repair by her builders. Work was being undertaken to create an open-plan room which would have required the installation of a RSJ support, however, the chimney above was unstable and could not be supported. Dr Harrison instructed a local chartered surveyor, Mr Thorne to provide a report on the condition of both chimneys. Dr Harrison included only an extract of the report dated 7th April 2022 [119] whereas Mrs Roberts helpfully included the report in full. Dr Harrison's extract referred to the recommendation for external chimney stacks to be removed to the point of a stable base, allowing for rebuild or the capping off below the roof line. Mr Thorne had limited access to inspect and referred to his inspection as visual a 'head and shoulder' inspection internally from the loft hatch, view of the flues and external view of the stacks.

57. Dr Harrison accepted that she had not provided Mrs Roberts with much notice prior to the removal of the front chimney. As such, the S.20 consultation process was not observed and Dr Harrison applied for Dispensation which was granted 12 December 2023. An extract and full copy of the decision within the hearing bundle [85 and 234-240] which was said to grant dispensation in respect of the removal of the front and rear chimneys and repointing works. The decision refers to advice received by 'consultants' as to the need for removal. Dr Harrison confirmed within her oral evidence that Mr Thorne had provided an additional email relating to what chimneys had been seen and a report was conducted by BE Willis. Neither had been included within the hearing bundle. The Chair explained to Dr Harrison that this application was distinct to the previously decided Dispensation application and as such the Tribunal did not have access to any evidence formally relied upon.

58. In her oral evidence, Dr Harrison said that in relation to both chimneys, she had been genuinely fearful that they may collapse and cause serious injury to Mrs Roberts or contractors on site and felt compelled to take action immediately. It was said that Mrs Roberts had disagreed with the removal of the chimney owing to the belief that it was part of the intended renovation plans.

59. During the oral hearing, Mrs Roberts had queried the photographic evidence stating that some had been mistakenly labelled as the front chimney when it was the rear and to the converse. Dr Harrison replied that she could not be sure and was led by the advisors.

60. Mrs Roberts also questioned why the builder, known as 'Roy' had stated that on the 6th May 2022 he had seen both chimneys and he did not know how they were still standing when the front chimney had been removed at that date. Dr Harrison agreed that his opinion may have been unreliable as at that date he would have only seen the rear chimney.

61. Mrs Roberts questioned where the evidence of the advice stating is was not possible to repair the chimneys was with Dr Harrison confirming that only the Thornes report was contained within the hearing bundle, that of BE Willis had not been included.

62. Within her witness statement, Mrs Roberts contended that she was not liable for the front chimney removal as it was not covered by the lease as removal could not be classified as 'maintaining, repairing, or replacement'. Furthermore, the lease provision only relates to the stacks. The removal of this stack was within the attic of the first floor and therefore not within her demise.

63. Mrs Roberts' written evidence also stated that Dr Harrison initially agreed to pay for the removal of the front chimney, as was reflected in the draft party wall agreement created by BE Willis and the March 2023 demand which allocated the cost to the lessee as £0.

64. Dr Harrison included within her evidence an invoice from Umbrella Improvements dated 8 July 2022 [242] which included a figure of £13,710 inclusive of VAT for several items of work completed between 30th May – 2nd July (no year given). Within that list included 'chimney removal and making good to date'. The invoice did not allocate a specific cost to the chimney removal, nor did it specify which chimney was removed.

65. A letter from Umbrella Improvements dated 3rd June 2025 [108] addressed to Dr Harrison confirmed that payment was received in respect of the back chimney which was said to have cost £2,160 and was dated 14 July 2022 and the front chimney at £6,240 on 19 April 2022.

66. The Tribunal first gives consideration to the terms of the lease, with particular regard to clause 3(3) and the fourth schedule. Whilst chimney-stacks are included within the landlord's repairing obligation at clause 3(3) providing the lessee with liability to pay for the same, the terms relate to 'repair, maintain, redecorate and renew'. On a strict interpretation, the Tribunal finds that removal would be distinct from the same. The Tribunal therefore finds that the Respondent is not obliged to pay for the removal of the front chimney.

67. Furthermore, the Tribunal considers that the quality of the evidence provided by the Applicant in respect to the both chimneys was insufficient. The Tribunal is mindful that the Applicant as the

freeholder in this instance, has the burden of proof. Whilst on the face of the evidence, the Tribunal is satisfied on the balance of probabilities and on the basis of the Thorne report that removal was appropriate, had it found that the Respondent was liable under the terms of the lease, on the basis of the evidence advanced, the Tribunal would have been unlikely to have been able to satisfy itself that the cost was reasonable due to a lack of evidence as to the extent of the works. The oral evidence of Dr Harrison was unclear as to what works had been undertaken to each chimney with moments of confusion and discussion with the Respondent in an attempt to clarify the situation.

68. The Tribunal would add further comment that this Tribunal's findings bear no relation to any findings of previous Tribunals, such as the grant of dispensation. The Tribunal makes its decision on the basis of the evidence advanced in relation to each application. A dispensation application does not consider the payability or reasonableness of any service charges as per the basis of this application.

Building Control Fees

69. The Applicant includes a receipt of payment dated 21st March 2022 to Bournemouth, Christchurch and Poole Council (BCP) for £234.60 in respect of building control fees.

70. The Respondent states that is unclear what the fees were in relation to although she considers that they are attached to the BCP Building Control Certificate dated 14 September 2022 [38]. The same refers the removal of chimneys and sound insulation. It is said that this cost does not fall within her obligations under the lease. Furthermore, the fee was paid 7 days after the Applicant acquired her property which supports the Respondent's view that the cost was incurred in relation to the Applicant's renovation plans.

71. The Applicant agrees that the Respondent should not be responsible for sound insultation, however it is said that the BCP call out charge was the same whether one or more issues. As the charge related to the roof, the Respondent was liable under the lease.

72. The Tribunal refers to its earlier finding as to the S20B notice, finding that the notice was sent 18 months after the cost was incurred. The cost is therefore not payable by the Respondent.

73. The Tribunal would add that had the S20B notice been within 18 months of the cost being incurred, the Tribunal would not have found that the cost amounted to qualifying major works under the grant of dispensation, nor would there be an obligation for the Respondent to contribute under the fourth schedule of the lease as related to the removal of the chimney.

Chimney Report

74. The Respondent says that no invoice for the Thornes Roof Report or basis of the instruction had been provided by Dr Harrison to evidence the cost and asserts that the instruction was for the benefit of the Applicant (as a lessee) rather than in connection with her obligation as a freeholder.

75. The Applicant states that an invoice is included within 'E154' [119].

76. The Tribunal agrees with the Respondent that the Applicant's evidence does not include an invoice from Thornes but exhibit 154 relates to an extract of the roof only.

77. Referring to the report [202], it is said within the document that instructions were taken on 30th March 2022 to assess the condition of the chimneys. This appears to the Tribunal to provide a basis of instruction.

78. The Tribunal finds that the Applicant has not provided sufficient evidence of the fee for the Thornes Report and accordingly is not satisfied that the cost of £420 (prior to apportionment) was incurred.

79. The Respondent is not therefore liable to pay this cost.

80. The Tribunal would add, for completeness that had the Applicant adduced sufficient evidence of an invoice, the Tribunal would not have found that the same was covered under the grant of dispensation as it was not considered to be within the remit of qualifying major works, nor is it covered under the fourth schedule of the Respondent's obligations as connected to the removal of the chimney.

Bird Survey

81. The Applicant claims that a bird specialist undertook a survey to check for nesting birds in the roof at a cost of £504. It was said that this was conducted by 'The Pest Detective' on 28th April 2022 with an invoice included at 'E157'.

82. The Respondent states that no invoice was included within the Applicant's evidence. Furthermore, the cost was not included within the March 2023 demand and was included in the July 2023 spreadsheet of costs as 'example of other costs paid by the Freeholder. The Respondent had therefore believed the cost was to be borne by the Applicant.

83. The Respondent's written evidence adds that the cost was then added to the 30 September 2023 demand and 30 October 2023 schedule as 'costs currently going through the dispensation process'. Mrs Roberts did not believe the bird survey is covered under dispensation as is not

a work to the chimney or repointing, neither did it fall within her obligation to contribute under the lease.

84. The Tribunal finds that the Applicant has not provided sufficient evidence of the fee or any corresponding report for the Bird Survey. E157 [241] related to an invoice from Savills in relation to the covenant approval and accordingly the Tribunal is not satisfied that the cost of £504 (prior to apportionment) was incurred.

85. The Respondent is not therefore liable to pay this cost.

86. The Tribunal would add, for completeness that had the Applicant adduced sufficient evidence of an invoice and report, the Tribunal would not have found that the same was covered under the grant of dispensation as not considered to be within the remit of qualifying major works, nor is it covered under the fourth schedule of the Respondent's obligations as connected to the removal of the chimney.

<u>BE Willis Fee</u>

87. The Applicant includes an undated invoice [96] for £2,856 for 'engineering fees -to provide structural design details, attend meetings and issue our structural design certificate. An email was included within the hearing bundle from Mr Willis stating that the same figure had been paid 13th October 2022. The Applicant states the invoice was dated 23rd August 2022 within the May 2025 demand.

88. During the course of the oral earing hearing, both parties frequently and interchangeably referred to the fees as covering mediation and a party-wall agreement.

89. The Respondent states that the invoice does not appear to be complete and assumes that any meetings relating to the preparation of structural design details related to meetings undertaken prior to the Applicant's purchase of the property and are therefore not recoverable. The Respondent asserts that the basis for the instruction was in connection with a party wall agreement as to the removal of the rear chimney and the conversion works.

90. Mrs Roberts's written statement also adds that the nature of the service would not be covered under the lease as it is not related to maintenance, repair, redecoration or renewal.

91. Mrs Robert's oral evidence, was that she had considered the cost would be borne by Dr Harrison as the freeholder. Her written evidence referred to the July 2023 demand which listed the cost as a 'cost paid by the freeholder'. This was reflected within the detail of the party wall agreement which stated that Dr Harrison would bear the costs of repairs and improvement works, in addition to the reinstatement of the chimney [217]. Mrs Robert's written evidence

was that it was not reasonable for her to contribute towards this cost and 50% is unreasonable in the circumstances.

92. In relation to the dispensation, Mrs Robert's written evidence was that the cost was not included in the grant of dispensation which related only to the removal of the chimneys and repointing. As such any contribution should be capped to the statutory limit of £250.

93. Mrs Roberts was not clear that the fee was included within the S20B notice and as such should not have been included within the May 2025 demand as it was time-barred.

94. The Applicant's evidence was that the fee related to the main structure and roof for which she was responsible for under the terms of the lease. The dispensation decision stated that it did not relate to costs with the Respondent not suffering any prejudice. The Respondent was therefore liable for the costs [225].

95. The Tribunal considers that the invoice provided by the Applicant is insufficiently detailed to ascertain what date each service referred to was provided and the cost relating to the same. The Tribunal is therefore unable to assess each service in light of the lease obligations. The Tribunal reminds itself that the Applicant, as freeholder, has the burden of proof. It was accepted throughout Dr Harrison's oral and written evidence that general improvement works were being undertaken to her property. The draft party wall agreement made reference to the same 'alteration to the premises of the First Floor Flat in addition to the removal of the chimney' [217].

96. The Respondent raised justifiable doubt as to whether all of this cost could be ascribed to the Applicant's obligations under the lease. The Applicant failed to provide adequate evidence to counter this concern. Oral evidence from both parties referred to a report from BE Willis which was included in the dispensation application but was omitted from the evidence provided under this application. The Tribunal therefore had little evidence available to it to assess whether the cost had been reasonably incurred under the terms of the lease and is mindful that the Respondent's obligation under the lease is limited to costs for maintenance, repair, redecoration or renewal. The Tribunal considers the Applicant was acting in both capacities as a freeholder and a lessee. It was not possible on the evidence advanced to separate the costs attributable to each.

97. The Tribunal therefore finds that the Applicant failed to demonstrate that the costs in relation to the BE Willis fees were reasonably incurred. As such the Tribunal finds that the Respondent is not liable to contribute towards this item of expenditure.

98. In relation to this conclusion, the Tribunal need not make any further findings in relation to the Respondent's submissions. Notwithstanding, it may assist the parties to address the Applicant's

submissions relating to the grant of dispensation. The Tribunal notes that the decision states Mrs Roberts suffered no prejudice. The Tribunal refers to paragraphs 7(a) and 22 which reference that the assessment for the Tribunal is whether or not the Respondent suffered any prejudice *by the Applicant's failure to observe the S.20 consultation process*. The Applicant's assertion that the decision did not relate to costs is correct, but that is not to say the grant of dispensation results in a liability for the Respondent to pay the same. Paragraph 18 of the decision should be read in conjunction with paragraph 24. Furthermore, had the Tribunal not have made its finding that the cost was not reasonably incurred in the preceding paragraph, it would have concluded that the BE Willis fees were not qualifying major works subject to the grant of dispensation.

Covenant approval

99. The Applicant relies upon an invoice from Savills in connection with a covenant approval of Lord Wimborne dated 1st April 2022 for £90.

100. The Respondent states that the Applicant has not adduced an invoice, nor is there any evidence demonstrating what covenant this is in relation to.

101. The Applicant referred to the invoice citing that covenant approval is required for all works to the chimney.

102. The Tribunal refers to its earlier finding as to the S20B notice, finding that the notice was sent 18 months after the cost was incurred. The cost is therefore not payable by the Respondent.

103. The Tribunal would add that had the S20B notice been within 18 months of the cost being incurred, the Tribunal would have found that the cost would not have been covered as the qualifying major works under the grant of dispensation.

Roof support

104. The Respondent's witness statement states that the cost for the roof support was not included within the March 2023 demand but was included later within the schedule of costs provided for the 30 September 2023 demand. It is said that no date had been given as to when the cost was incurred nor was an invoice provided although it was accepted that the it was included within an email from Umbrella Improvements confirming that the sum of £1000 had been paid in relation to the works [242].

105. The Respondent puts the Applicant under strict proof as to what the works entailed and the price paid.

106. It was further stated that the grant of dispensation did not include works to the roof support and as such the cost should be capped to the statutory limit.

107. The Applicant states that the Umbrella Improvements invoice (undated) [108] includes 'supply and installation of metal straps as per the structural engineer'. It was said that the Respondent was aware of the requirement for the works as per the party wall agreement and the work was covered with the grant of dispensation. As the decision of the same stated the Respondent was not prejudiced, she is liable for the costs.

108. The Tribunal considered Dr Harrison's oral evidence on the roof support to be unclear, vague and confused. She was unable to answer the Tribunal's query as to the nature and extent of the work and referred to the same only as straps to the roof.

109. The Tribunal gives consideration to the evidence of the BE Willis 'Structural design certificate – Alterations to First Floor Flat Chimneys' [83]. This document is not particularly legible when the text is expanded. As such, the Tribunal understands that the document states the steel straps were required following the removal of the front chimney, being fixed to the timber framework and masonry cavity wall. The removal of the rear chimney required the strengthening of the existing roof structure. The Tribunal understands that this work relates to the subject item of expenditure.

110. The Tribunal finds that this item of expenditure was connected to the removal of the chimneys and as such is not recoverable under the terms of the lease, as per the rationale provided in relation to the front chimney.

111. The service charge in respect of the roof support is not payable by the Respondent.

<u>Pointing and wall tiles</u>

112. The Applicant demands a 50% contribution to the cost of £4,100 in relation to repointing and wall tie repairs. The cost was said to have been incurred on 13th April 2022 by the contractor K Arnold.

113. The Applicant states that the works were included within the dispensation application.

114. It is accepted by the Respondent throughout her oral evidence that the works were required and that there was an obligation to contribute to the works pursuant to the lease terms. The issue was that Mrs Roberts had understood the contractor would undertake repointing and wall tie repairs to the front, side and rear elevations. Work was carried out only to the front and side with the contractor having requested a further £2000 for the rear wall.

115. Dr Harrison's oral evidence was that the quotation was for the front and side elevation only, referring to a notice of intention dated 26 April 2022 [70] which stated that the front and side walls were in worse condition than the rear.

116. The Tribunal considers the evidence before it which includes an email from to the Applicant to the Respondent titled 'cost information', sent on the 27 March 2022. Within this email Dr Harrison stated that the works would be to the side and front elevation and include a 'patch repair' to the rear elevation.

117. The Applicant did not include a full quotation specifying the extent of the works from the contractor, nor any invoice of the same, explaining within her evidence that K Arnold is a small contractor and did not issue the same. The Applicant did however include a screenshot of a text message sent from Roy of K Arnold on 9th June 2025 confirming that £4100 was paid for 'pointing' [109]. There was no mention of wall tie repair.

118. The Tribunal considers that the Respondent's belief that work would be carried out to the rear wall was reasonable on the basis of the email sent by the Applicant on 27 March 2022. Furthermore, the notice of intention stated only that the condition of the side and front elevations being worse than the rear. That is not the same as saying that the work was limited to the front and rear.

119. The Tribunal reminding itself of the burden of proof on the Applicant, finds that the Applicant has not adduced sufficient evidence to demonstrate that the works or repair were limited to the front and side elevation or that wall tie repair was included. As such, the Tribunal finds that the full cost of £4100 was not reasonably incurred. Notwithstanding, the Respondent accepted that the works had been carried out and there was no issue raised with the quality of the work to the front and side elevations.

120. The Tribunal considers that as the majority of the work had been carried out, a deduction to the sum demanded was appropriate. This was somewhat of a difficult assessment as the Applicant failed to provide sufficient detail of the size of the elevations, access arrangements and extent of wall tie replacement. As such, in the Tribunal's expert opinion, considering general labour and scaffolding/access costs it deducts 25% from the sum demanded of Mrs Roberts in relation to the repointing and wall ties.

121. The Tribunal determines a sum of £1537.50 is payable by the respondent to the Applicant in respect of the cost of the pointing and wall tie repairs.

Fascias and guttering

122. It is accepted by the Applicant that she failed to undertake the S.20 consultation process in respect of the fascias and guttering, nor did she make an application for dispensation. The sum demanded was therefore capped at the statutory limit of £250. It was said that quotation for the work was £3000.

123. The Applicant's oral evidence was that the exterior of the property was in very poor repair at the time she purchased it. Photographic evidence within the hearing bundle [90] showed overgrown shrubbery to the front of the property.

124. An invoice was included from Umbrella Improvements date 8th July 2022 [242] which included numerous items of works under the heading, invoice for works completed from 30th May to 2nd July. Within the list of works included 'completion of fascias, soffits and guttering and 2 of 3 downpipes'. A cost was not attributed to this work but was included in a total sum of £13,710.

125. Whilst the Respondent accepts an obligation to pay for such work under the terms of the lease, it was said that no invoice had been produced. The Respondent put the Applicant to strict proof that the cost of the works had been over £500 and were completed.

126. The Tribunal considers evidence contained within the Applicant's notice of intention dated 26th April 2022 [70] which outlines the disrepair to the guttering and rainwater goods whilst the email to the Respondent dated 27th March 2022 provided further detail of the works required which included replacement of UPVC rainwater goods and repair of timber soffits and fascias [72]. The invoice from Umbrella Improvements was clear as to what works have been undertaken, although a specific cost to the same had not been attributed to them. On the basis of such evidence and in consideration of the prevailing lease obligations, the Tribunal is satisfied on the balance of probabilities the cost was reasonably incurred. In the Tribunal's expert opinion, the costs of the works would be expected to exceed £500 and as such the £250 apportioned to the Respondent is reasonable.

127. The Tribunal determines a sum of £250 is payable by the Respondent to the Applicant in respect of the cost of the gutters and fascia repair and replacement.

Rear chimney

128. The Applicant demands a 50% contribution towards the sum of £2160 of the Respondent in respect of the removal of the rear chimney.

129. In addition to the evidence cited under the front chimney, specifically in relation to the rear chimney Dr Harrison explained throughout the

course of the hearing that she had engaged a party wall surveyor / structural engineer for advice and the drawing up of a party wall agreement with Mrs Roberts in relation to the rear chimney. It was said that Mrs Roberts had not accepted that the chimney was dangerous, nor the health and safety implications of the same. Owing to the difficulties in reaching an agreement with Mrs Roberts, it was said that Dr Harrison's husband, Mr Harrison reported the chimney to Bournemouth, Christchurch and Poole Council (BCP) as a dangerous structure. As a result, BCP issued an enforcement demolition notice on 24 June 2022 [95], stating that the chimney was liable to structural collapse, recommending removal to ceiling level and making the roof watertight. Dr Harrison, in complying with the notice, removed the chimney prior to finalising a party wall agreement with Mrs Roberts.

130. Dr Harrison accepted that she had offered to meet the cost of the chimney removal had the Respondent signed the party wall agreement. There had been several versions drafted without acceptance by Mrs Roberts and as such Dr Harrison felt she had not option but to receive a demolition order from BCP. It was felt that this was the responsible action to take in the circumstances.

131. Dr Harrison included within her evidence an invoice from Umbrella Improvements dated 8 July 2022 [242] which included a figure of £13710 inclusive of VAT for several items of work completed between 30th May – 2nd July (no year given). Within that list included 'chimney removal and making good to date'. The invoice did not allocate a specific cost to the chimney removal, nor did it specify which chimney was removed.

132. A letter from Umbrella Improvements dated 3rd June 2025 [108] addressed to Dr Harrison confirmed that payment was received in respect of the back chimney which was said to have cost £2,160 and was dated 14 July 2022 and the front chimney at £6,240 on 19 April 2022.

133. A document from Mr Willis confirming that Mrs Roberts had altered the party wall agreement rendering it 'null and void' [244] was included within the hearing bundle.

134. Within her witness statement, Mrs Roberts contended that she was not liable for the rear chimney removal as it was not covered by the lease as removal could not be classified as 'maintaining, repairing, or replacement'. Furthermore, the lease provision only relates to the stacks. The removal of this stack was within the attic of the first floor and therefore not within her demise.

135. Mrs Roberts' written evidence also stated that Dr Harrison initially agreed to pay for the removal of the rear chimney, as was reflected in the draft party wall agreement created by BE Willis and the July 2023 demand which stated it was an 'example of other costs paid by

leaseholder' which she understood to mean that the Applicant had paid the cost and did not expect a contribution from the Respondent.

136. The Respondent's written statement also asserted that the Applicant did not seek to rely upon the S20B notice in respect of this cost.

137. Mrs Roberts explained in the hearing that she had agreed to the party wall agreement but Mr Harrison had made his report to BCP prior to it being finalised.

138. The Tribunal finds that this item of expenditure was included within the Applicant's S20B notice.

139. The Tribunal finds that the chimney was a dangerous structure which required removal. The Tribunal had no doubt that Dr Harrison had acted responsibly in addressing the same. Notwithstanding, the Tribunal makes the same finding in respect of the front chimney with regards to the terms of the lease, with particular regard to clause 3(3) and the fourth schedule. Whilst chimney-stacks are included within the landlord's repairing obligation at clause 3(3) providing the lessee with liability for the Respondent to pay for the same, the terms relate to 'repair, maintain, redecorate and renew'. Following a strict interpretation, the Tribunal finds that removal would be distinct from the same.

140. The Tribunal therefore finds that the Respondent is not obliged to pay for the removal of the front chimney.

Porch and decorating

141. The Applicant demands a 50% contribution towards the cost of £1400 for the demolition of the outer porch, maintaining the inner porch format, external rendering and repainting.

142. The works were undertaken by K Arnold. An invoice for the same was not included within the hearing bundle. Dr Harrison's oral evidence was that the contractor was a small builder who did not provide invoices. A screenshot of a text message was however included from K Arnold which confirmed payment of £1400 for 'porch' [109].

143. The Respondent's written evidence stated that she did not accept that the Applicant had not properly undertaken the full S20 consultation process, although she did not intend to take the point. This was reflected within Mrs Robert's oral evidence which rather contended that the work was not carried out to a reasonable standard. Mrs Roberts had understood that the quotation was for rendering rather than painting over the existing render. The work was of a poor finish and it was said that the invoice should not have been paid by the Applicant.

144. Dr Harrison's oral evidence was that the quotation was never for re-rendering but rather to make good of the existing render. It was said that the Respondent had previously been content with the works although it was accepted that some issues remained with a few bricks.

145. Mrs Roberts referred to photographic evidence within the hearing bundle [196-199] which showed the recent appearance of the external decoration. Dr Harrison stated that photographs on the first page were that of Mrs Robert's window sills to which there was an agreement she would arrange and fund herself but never did.

146. Mrs Roberts also included a copy of a handwritten quotation from K Arnold which detailed the proposed works [195].

147. The Tribunal has considered the evidence adduced, finding that the quotation referred both to repainting and making good of render and cement work but also referred to the application of a scratch coat to plinth and top coat of render to the left hand side of the porch. The Tribunal finds that the Applicant has failed to provide sufficient evidence that the works were carried out in accordance to the quotation and to a reasonable standard. The Tribunal finds that the Respondent's photographic evidence demonstrates areas of peeling paintwork although the extent of the same could not be established from the evidence. Notwithstanding, it was accepted that the works had been carried out and the concerns surrounding the quality of the workmanship related to the painted and rendered areas only. There had been no concern in respect of the porch.

148. The Tribunal makes an allowance of 20% from the figure demanded of the Respondent in respect of the external decoration not having been completed to a reasonable standard.

149. The Tribunal determines a sum of £560 is payable by the respondent to the Applicant in respect of the porch and external decorating.

<u>Front door and surround</u>

150. The Applicant seeks a 50% contribution towards the cost of £2440 for the supply and installation of a new front door and surrounding side frames. The Applicant relies upon an invoice dated 13 March 2023 from Dorset Windows Ltd [109].

151. The Applicant states that a notice of intention was sent to the respondent 26 April 2022 which commenced the consultation process. It was said that the Respondent engaged with the process, making suggestions as to the preferred colour and choice of glazing. This was confirmed by Mrs Roberts in the course of her oral evidence although there was some disagreement as to what the preferred colours were of each party at the time.

152. The Respondent states that she had concerns over the consultation process within her written evidence but states that she does not intend to take the point. This was reflected in Mrs Roberts' oral evidence which concentrated upon the use of the door and the standard of the works carried out.

153. Mrs Roberts explained in the course of her oral evidence that she rarely used the front door as she had another entrance to her flat. The front door was for the benefit of the Applicant and her Airbnb/short let business. The door was said to have been installed badly and constantly malfunctions including the need to bank it to engage the lock. The issues still remain. The door is in constant use by Dr Harrison's guests at all hours of the day and night. This led to inevitable disturbance of Mrs Roberts.

154. Mrs Roberts also stated that she was not happy with the appearance of the door. There was nothing in the lease to suggest that she was obliged to contribute to the front door and assumed she would be responsible for her own inner door.

155. The Applicant stated within her written response that she has witnessed the Respondent and her visitors using the front door and the Respondent is obliged to contribute to the cost pursuant to the fourth schedule of the lease.

156. With respect to Mrs Roberts' comments regarding the use of the door which was said to be primarily for the benefit of the Applicant, the Tribunal gives consideration to the demised area under clause 1 of Mrs Robert's lease. Clause 1 states:

> *'The lessor hereby demises unto the Lessee ALL THAT flat consisting of the separate internal entrance door, the entrance passage and five rooms on the ground floor and being known as 8A Park Lake Road TOGTHER WITH the garden at the rear of the property and the coal-house erected therein and the driveways paths fences and back gate thereof all of which is registered at HM Land Registry with Title Number DT220188…'*

157. The Tribunal was not provided with a copy of the title plan, nor of the lease for 8 Park Lake Road, nor any internal plans or photographs of the porch, front door or internal entrance.

158. Based on the evidence it has before it, the Tribunal finds that the external front door is not included within the demise of 8A Park Lake Road, nor is there an obligation for the Respondent to contribute under the fourth schedule.

159. As such, the Tribunal finds that the Respondent is not liable for this service charge cost.

Pathway

160. The Applicant seeks a 50% contribution towards the cost of £1400 for a new pathway to the front of the property including to the side gate of the Respondent's property. The front garden was said to be within the Applicant's demise. It was said that following the consultation process, the Respondent agreed to the works [73].

161. The Applicant did not have a copy of a written quotation or invoice from the contractor but relied upon a letter from the contractor dated 1 June 2025 confirming receipt of payment of £3400 in September 2022 for the 'supply and lay of Indian sandstone slabs in four sizes to create a random effect…'.

162. The Respondent accepts liability under the terms of the lease for a contribution towards such works. Mrs Roberts also accepted during the course of her oral evidence that the work needed to be done. The issue was that the Applicant had extended the path beyond the 1m-1.2m width of the existing path. Google earth photos were included within the bundle to show that the path was wider than the original area.

163. It was said by the Respondent that the contractor for the pathway is the Applicant's brother. She therefore put the Applicant to strict proof that the invoice was paid in relation to the same.

164. The Respondent stated that there were issues with the consultation process undertaken by the Applicant although she did not intend to take the point. The Respondent sought a reduction of the sum demanded to reflect a comparable area to that of the previous path.

165. Mrs Roberts claims that she was not happy with the extended area of the path as it results in Dr Harrison's Airbnb guests congregating outside her window.

166. Within the oral evidence there was some doubt from Dr Harrison whether the pre-existing path went so far as to the side gate although the Respondent confirmed it had. Dr Harrison stated that she had accepted the path was wider than it previously was and as such she had only demanded a sum from Mrs Roberts that reflected the previous width of the path.

167. The Tribunal finds that the Applicant has not adduced any evidence that she had reduced the figure demanded of Mrs Roberts to reflect the extended area. The quotation was said to be for £3400. Mr Joliffe's receipt stated £3400 was paid. A sum of £1700 was demanded of Mrs Roberts.

168. The Tribunal therefore finds that the cost was not reasonably incurred in full and should be reduced to reflect the area of the original path.

Neither party has provided any evidence as to the dimensions of the new path. The tribunal therefore relies upon the photographic evidence contained within the hearing bundle and its expert opinion to arrive at a deduction of 25% of the cost demanded of the Respondent.

169. The Tribunal determines a sum of £1275 is payable by the respondent to the Applicant in respect of the cost of the pathway.

RIGHTS OF APPEAL

1. 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

2. 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.

3. 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.

4. 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.