



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

- Case Reference** : HAV/23UB/LSC/2025/0601
- Property** : Cambray Court, Rodney Road,  
Cheltenham, Gloucestershire, GL50 1JX
- Applicant** : John Hickman (49)  
Ian Bickerdyke & Denise Venables (46)  
Lynn Burgess & John Burgess (44)  
June Rowse (33 & 34)  
Deborah Crinion (29)  
Louise Roberts (26)  
Flowerdale Property Management Ltd (23)  
John Martin (22)  
Pauline White (9)  
Mark Phillips (5)  
Inces S. Zancada Martinez (25)  
Helen McDonnell (37)
- Representative** : Ms Louise Roberts
- Respondent** : Cromwell Business Centre Management  
Company Limited
- Representative** : Ms Ziya of counsel, instructed by  
Trowers and Hamblins LLP
- Type of Application** : Determination of liability to pay and  
reasonableness of service charges  
Section 27A Landlord and Tenant Act 1985
- Tribunal Member** : Judge J Dobson  
Mr P Smith FRICS  
Mr M Jenkinson
- Dates of Hearing** : 20<sup>th</sup> and 21<sup>st</sup> January 2026
- Date of Re- convene** : 5<sup>th</sup> March 2026
- Date of Decision** : 9th March 2026

---

**DECISION**

---

## **Summary of Decision**

- 1) The Tribunal determines that:**
  - i) The service charges in respect of the major works to the River Wall are payable by the Applicants;**
  - ii) The service charges in respect of the Legal Costs and Agent Fees of the 2019 proceedings CHI/23UB/LIS/2019/0040 are payable by the Applicants as demanded;**
  - iii) The service charges in respect of the electric meters for the garages forming part of the Major Works where payable by the individual Applicants are reduced by 20%;**
  - iv) The service charges in respect of the Boundary Wall forming part of the Major Works are payable by the Applicants as demanded;**
  - v) The service charges in respect of the heras fencing fixings forming part of the Major Works are payable by the Applicants as demanded.**
- 2) The determination is limited to those above items which were in dispute in the application.**
- 3) Directions are appropriate in respect of applications regarding fees and costs.**

## **Background- Property and proceedings**

1. An application for determination of liability to pay and reasonableness of service charges in respect of Cambray Court, Rodney Road, Cheltenham, Gloucestershire, GL50 1JX (“the Property”) was made by what was expressed to be a tenant’s association on 19 December 2024 [1- 22] with the total amount in dispute said to be £1,510,004.00 of expenditure. The Applicant further sought orders pursuant to Section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).
2. It was subsequently clarified that the association was unable to bring the proceedings and individual lessees who wished to pursue the application were substituted. Those were lessees of 13 flats in total, although 12 lessees or joint lessees. The challenge therefore came to be in relation to 13 portions out of 56, there being 56 flats at the Property.

3. The Property comprises 3 residential blocks constructed in or about 1930. There are communal areas, including 3 garage blocks (“the Garage Blocks”) containing 24 garages in total to the opposite side of the entrance drive to the residential blocks. Behind the furthest garage block from the entrance drive is situated a boundary wall.
4. The most relevant feature for the purpose of these proceedings is that to the far side of the Garage Blocks from the residential blocks is a boundary to the land within the Property which divides that from the River Chelt. In particular, there is a wall at the end of the land within the Property by the edge of the river (“the River Wall”). It is work (“the River Wall Works” or “the Major Works”) proposed, investigated and undertaken- and the cost of those- that has been the main subject of the sets of proceedings. There is another wall to which reference is also made in this Decision (“the Boundary Wall”). That wall runs from by the river at roughly a right angle to the River Wall behind the rear of the individual garage block furthest towards that corner of the Property and along that boundary of the Property.
5. It may be useful to identify that the river is very much in an urban setting. There is a road with residential and commercial buildings, Rodney Road, of which the Property forms part of the residential buildings. On the immediate opposite side of the river is a public car park entered from Rodney Road and to the side of that and just further along the river from the Property is a large office building. There is a wide bridge over the river comprising Rodney Road. The Tribunal did not investigate where the river is visible the far side of that road. The river certainly is culverted approximately by the boundary wall, so the far side of the Property from the entrance on Rodney Road. The river is relatively narrow, perhaps 3 metres wide at most. That is perhaps not the image immediately conjured up by talking of a river.
6. There have been several sets of proceedings in respect of the Property brought by the Respondent and by other lessees. Some have involved specific lessees and some the lessees at the given time as a whole. It is not necessary to refer to all of those. However, certain of them were referred to regularly in this case and merit reference here.
7. Proceedings were issued in 2019 and given case reference CHI/23UB/LIS/2019/0040. Those resulted in a Decision dated 28<sup>th</sup> January 2020 (“the 2020 Decision”) [108- 134]. There were other proceedings which resulted in a decision later that year but those are not relevant to the issues in this case. In the 2020 Decision, the Tribunal determined that it was not at that time appropriate for further on account service charges in respect of the then intended River Wall Works to be paid. In effect, the Respondent therefore failed in terms of being able to demand the intended further charges.
8. However, and significantly, the 2020 Decision determined that the River Wall is a boundary wall of the Property and that firstly the Respondent is obliged to maintain and repair the River Wall pursuant

to clause 5(2)(iii)- see below- and secondly that the costs of maintenance and repair to the River Wall fell within the costs recoverable by the Respondent from the Applicants. The particular lease considered was that for Flat 56 but there has been no suggestion that it differed from the Lease relied upon in these proceedings in respect of the River Wall or boundary walls generally. The Tribunal did not determine how far repair extended. The Tribunal found that the River Wall was in disrepair. None of that was challenged, rather it was common ground that the River Wall is part of the subject- matter of the relevant covenant, it was in a deteriorated condition and so fell below the condition intended.

9. There were no applications in those proceedings for the Respondent to be unable to recover any legal costs (“the Legal Costs”) as service charges (or administration charges). The Legal Costs- and managing agent fees (“the Agent Fees”)- in respect of the proceedings have subsequently been applied as service charges as explained below.
10. The most recent proceedings prior to this set were given Tribunal reference numbers CHI/23UB/LSC/2023/0118 [391- 410-] CHI/23UB/LSC/2023/0119 [411- 433] and HAV/23UB/LDC/2025/0600 [434 - 443]. Those were the subject of a separate Decision for each set of proceedings (although the issues in the first two were predominantly the same) dated 20<sup>th</sup> July 2025 (“the 2025 Decisions”). The first two related to applications each brought by an individual lessee and notably related to the reasonableness of the costs incurred in undertaking the major works to the River Wall, which will have had a consequent effect on the service charges payable by those lessees. The Tribunal reduced the professional fees related to the River Wall Works but determined the other costs of the Works to be payable. The challenges brought did not include specific challenges to the particular costs which are involved in the third to fifth challenges in these proceedings.
11. The third Decision (“the 2025 Dispensation Decision”) related to an application for dispensation from consultation requirements in respect of the River Wall Works. That application was granted.
12. For completeness, there was an application by one of the lessees for permission to appeal in respect of both the service charges Decision and the dispensation Decision, which was refused by the Tribunal and by the Upper Tribunal by a judgment dated 30<sup>th</sup> December 2025. The Upper Tribunal could not identify any matter which the Tribunal had failed to take account of in determining that the costs of the Major Works were reasonable.
13. In relation to these proceedings, there have been a number of sets of Directions issued. Aside from the point about the tenants’ association, the most significant (“the September 2025 Directions”) were given at a Case Management Hearing on 3<sup>rd</sup> September 2025. The Tribunal determined that for one reason or another arguments could not be

pursued by a lessee who had pursued proceedings resulting in the 2025 Decisions. The application insofar as related to her was struck out. An argument that funds should have been placed in a ring-fenced account that was generating interest and that the Applicants should be entitled to an order for payment of the interest which may have been paid in that event was also struck out. The Respondent's application to strike out the Applicants' argument that the River Wall Works undertaken went beyond the scope of repair and were a renewal for which the Applicants were not liable to pay was refused. The Tribunal did not accept that the point was the subject of a determination in 2019 proceedings. The Tribunal did identify that in order to succeed with their argument about the River Wall Works, the Applicants would need to demonstrate a renewal the nature of which went beyond the scope of a repair.

14. A bundle for the final hearing was directed to be prepared by the Respondent and amounted to 625 pages, although including some duplication. That became 652 pages with additional documents- see below. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page- numbering.
15. This is an imperfect, although perhaps as good as any, time to record that the Tribunal has been mindful of the guidance of the Senior President of Tribunals to seek to keep decisions relatively short. However, given the nature and extent of the matters in dispute, the Tribunal has been unable to achieve that. The Tribunal finds it necessary to provide its findings and reasoning on the issues, in particular the works to the River Wall itself, and it has taken some pages for the Tribunal to be able to do so. The Decision nevertheless seeks to focus solely on the key issues. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues remaining in these applications and those are not mentioned. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing and those matters which were seen by the Tribunal in the course of its inspection.

### **The Law in relation to service charges and jurisdiction**

16. Essentially, pursuant to section 18 of the Act, the Tribunal has the power to decide about all aspects of liability to pay service charges which vary year to year and can interpret the Lease where necessary to resolve disputes or uncertainties. A party may apply pursuant to section 27A of the Act for determination of by whom, to whom, how much, when and how a service charge is payable.

17. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor’s costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.
18. Section 19(1) in respect of costs incurred provides that a service cost is only to be had regard to insofar as it is reasonably incurred and works or services to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the costs which are to be met through the service charge.
19. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
20. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: “Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.”
21. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute. The Tribunal is well aware of the relevant wider law and has applied it in reaching this Decision. The Tribunal refers to specific case authorities cited by the parties about the River Wall Works when discussing that aspect below. Given the several sets of previous proceedings in respect of the Property and the explanations of the applicable law with regard to service charges generally set out in those, the Tribunal does not consider that it will assist to the relevant general law regarding service charges further.

### **The Lease**

22. The individual flats are each the subject of an individual lease. The Tribunal understands that some of the leases are of flats plus garages, but not all. In addition, that there are separate leases of some garages. Nothing turns on that for the purpose of this Decision.
23. The Tribunal was provided in the bundle with the sample 99- year lease of Flat 3 (“the Lease”) [59- 81], which the Tribunal understands to be in substantively the same terms as the leases of the other flats (or flats and

garages save for the garage part). There are detailed provisions about the usual range of matters. Most of those are not relevant for these purposes. Before turning to those that are relevant, it merits mention that the Property as described in this Decision is termed in the Lease as “the Building”, which is not therefore just the 3 buildings or any single one of them but rather is defined as being Cambray Court as a whole and to include the three blocks, that is to say the residential buildings, but also those elements outside of the residential buildings themselves.

24. The relevant provisions are as follow below.
25. By clause 4.(2)(A) of the Lease, the Applicants covenanted to pay in advance by equal half-yearly instalments on 1st April and 1st October of each year a specified percentage, varying between the flats, of the estimated costs and expenses and outgoings of the Respondent in any year in relation to its obligations under clause 5.
26. The lessee also in clause 3.(3) covenants to do various things in relation to the demised premises of a usual nature but specifically including to “repair, maintain renew uphold cleanse and keep” the Flat and the elements which constitute it in “good and substantial repair and condition”. The lessee in clause 4.(1) separately covenants “So (SIC) repair maintain renew uphold and keep” the premises so as to provided shelter and protection to other flats.
27. By clause 5.(2) of the Lease, the Respondent most importantly for these purposes agreed to:
  - “... take all reasonable steps to keep in good and substantial repair and condition the main structure of the Building including the principal internal girders timbers and the exterior walls and the foundations and the roof thereof with its main drains gutters and rain water pipes (other than those demised);
  - (ii) all such gas and water pipes drains and electric cables and wires in under and upon the Building as are enjoyed or used by the Lessee in common with the owners and lessees of the other flats;
  - (iii) the main entrances passages landings staircases and access paths roads garden and yards of the Building enjoyed or used by the Lessee in common as hereinafter provided and the boundary walls and fences of the Building”
28. As identified above, it has been determined that the River Wall is one of the boundary walls referred to in the above provision.
29. Pursuant to clauses 5.(8) and 5.(12), the Respondent covenants as follows:
  - “(8) Maintain and renew when required the central heating apparatus and all ancillary equipment thereto”
  - “(12) Maintain and where necessary renew or replace the lifts and ancillary equipment relating thereto”

30. There is also what is commonly described a “sweeper clause at 5.(13) and including all works for proper maintenance of the Property but that was not relied upon in this case.

### **The Hearing**

31. The hearing took place at the Courthouse in Cirencester across the two days of 20<sup>th</sup> and 21<sup>st</sup> January 2026, in person.
32. Various of the Applicants attended and no disrespect is intended to them by not naming them individually. Ms Roberts represented herself and the other Applicants in the main. She was assisted in that task by Mr Philips and Mr Hickman in relation to particular matters.
33. The Respondent was represented by Ms Ziya of counsel. She was accompanied by the Respondent’s witnesses, Mr Faraz Ahmed and Mr Surinder Buray. The former is a director of Metropolitan PM Limited trading as Metro PM, the managing agent employed by the Respondent. The latter is a director of Reade Buray Limited practicing as Reade Buray Associates.
34. The Applicants’ witness evidence consisted of in effect a statement of case [52- 57] and a Response [618- 622] both signed with a statement of truth and both signed by Ms Roberts. She was not asked questions by Ms Ziya but was on behalf of the other Applicants. The Respondent’s witness evidence comprised a statement from Mr Ahmed [265- 273] and one from Mr Buray [223- 232]. Whilst Mr Buray is an engineer and has a series of relevant qualifications including in surveying and architecture, he was not an expert witness for the purpose of the proceedings. They were both questioned on behalf of the Applicant and by the Tribunal. The Respondent’s statement of case [363- 376] was prepared by (different) counsel and not signed with any statement of truth or otherwise.
35. Both sides provided written Skeleton Arguments. That on behalf of the Applicants was short at 4 pages. That of the Respondent was rather longer at 14 pages and rather more akin to a written submission. Both sides also made oral closing submissions. The Tribunal sought clarification where appropriate.
36. The Tribunal records that it is grateful to the representatives and witnesses for their helpful assistance with the case.
37. An issue arose on the first morning as to the extent and nature of the Applicant’s challenge in respect of the River Wall Works. In the original application form, the Applicants identified that in the 2020 Decision, the total of £752,719 had been collected in the preceding service charge years to 2019 and the Tribunal determined that to be the reasonable contribution. A further £757,285 was demanded in the service charge year 2022/2023 and the Applicants challenged the reasonableness.

38. Hence, there was an apparent question of the reasonableness of the cost of the River Wall works beyond the earlier sums demanded on account. Whilst in the 2025 Decisions there had been a determination about the reasonableness of the costs in respect of the River Wall Works as between the parties to those proceedings, that did not bind the Tribunal when dealing with an application by different applicants. That said, the Tribunal should have appropriate respect for the determinations of differently constituted previous Tribunals and so there would need to be a good reason to depart from such a determination. The Respondent's Skeleton Argument also argued that that a great deal of resources had been expended by all parties and the Tribunal making the 2025 Decisions in scrutinising the costs associated with the River Wall Works.
39. However, the Applicants then said no more about the reasonableness of the cost. Most notably, Ms Ziya submitted that they did not do in their statement of case, although the September 2025 Directions required that the parties set out each part of their case. Neither did they do so in a witness statement. Ms Ziya argued that other aspects of the case as indicated in the original application were not pursued or struck out and so the Respondent was entitled to rely upon the issues that it had to meet being identified in the statement of case. The Respondent had not advanced a case about the reasonableness of the costs of the River Wall Works, save for the specific separately numbered items raised by the Applicants, and hence it was submitted that if the Applicants were to be permitted to pursue an argument about the reasonableness of the costs of those Works, that would need to be heard on a later date with the hearing being adjourned or going part- heard.
40. Ms Roberts accepted that nothing more had been said about the point in the statement of case.
41. The Tribunal did not make a decision on the particular question immediately, given that it did not directly impact on the other issues which would be determined. The Tribunal considered that at the end of the first day of hearing. The Tribunal explained at the start of the second morning that as the Applicants had not provided any case on the issue in compliance with the September 2025 Directions, the Tribunal would not permit the Applicants to advance the matter.
42. It was additionally noted that the Applicants had when referring to figures referred to the overall expenditure on an item- the service cost- rather than the service charge amount payable by the Applicants, that is to say the 13 shares of the overall 56. The shares payable by any given Applicant of the overall service cost were not apparent from the contents of the bundle. The Tribunal requested a schedule of those shares for the individual Applicants in order that in the event an item of expenditure were to be reduced, the effect of that upon the service charges payable by a given Applicant lessee could be determined. The Respondent's representatives provided a spreadsheet of contribution percentages, which the Tribunal took to be agreed, although with slight

concern that the percentages had been rounded to 2 decimal places and so cumulatively produced 101.6% of the service charges, whereas of course they could only properly produce 100%.

43. There was also a case management application dated 19<sup>th</sup> January 2026 on behalf of the Applicants to have 2 documents exhibited to their Response but not within the hearing bundle added to that bundle. The parties agreed and so the Tribunal granted the application, identifying no reason not to, hence the additional pages mentioned above.
44. As mentioned in the Summary of the Decision above, a concession was made by the Respondent about professional fees incurred in respect of the Major Works. The Respondent was asked whether it intended to reduce the service charges for those professional fees for the Applicants to the same extent. Having taken instructions, Ms Ziya informed the Tribunal that the Respondent would do that. It was helpful to be clear about that matter, although it must be emphasised that it did not form part of specific challenges made by the Applicants and was not therefore a matter on which the Tribunal would have reached any determination in these proceedings. Insofar as any given Applicant's service charges will be reduced by the concession, that is a matter between the parties, the Tribunal does not know and does not seek to identify the amounts by which the Applicants' service charges by a point falling outside the scope of these proceedings
45. The Tribunal identified during the course of the hearing and for reasons explained below, that the question of whether the River Wall was a separate structure or formed part of a larger structure may be relevant to the determination and further that, having considered the photographs in the bundle [particularly 202- 203] and other evidence received, the Tribunal would be assisted by inspecting the River Wall and potentially other elements of the Property. Therefore, following closing submissions, the Tribunal travelled to Cheltenham to inspect.
46. The Tribunal further directed the Respondent to provide to the Tribunal and to the Applicants any plans, drawings, reports or similar which identified the River Wall and related Works. In addition, it was provided that if the parties wished to make any further submissions in writing thereafter about the walls and in respect of the question identified above, they could do so, which the Tribunal would meet to consider, together with at that stage considering its decision more generally.

### **The Inspection**

47. The Tribunal travelled to the Property following the conclusion of the hearing to undertake an inspection of the River Wall and the surrounding elements of the Property. Representatives were present for the Applicants and Ms Ziya and Mr Ahmed for the Respondent at least at the start of the inspection. In light of the cold rain and the fact that there was nothing that they could add once the Tribunal had been

shown the location of the River Wall, the Tribunal suggested that the parties and Respondent did not need to remain and they wisely did not.

48. The Tribunal saw the Property generally, including the location of the residential blocks, the Garage Blocks, gated areas by the Garage Blocks, the electrical housings and bollards discussed below and the River Wall from the bridge, the public car park and by the point at which the river became culverted. The Tribunal did not attempt to carry out any detailed survey.
49. The Tribunal particularly saw the long newly constructed wall, in red brick topped by grey flagstones by the River Chelt and separated from the Garage Blocks by wooden fencing rising to greater height. The Tribunal noted that towards the culvert the new construction ended approximately 3 feet in from the culvert. Above the culvert were railings covered with ivy, which obscured the railings and some of the wall of the culvert itself but did not impact on the Tribunal's ability to view the areas most relevant for the purpose of the proceedings.
50. Those last 3 feet or thereabouts comprised older bricks (although repointed as compared to how the area was shown in photographs in the bundle- see below). That section was also topped by grey flagstones the same as the new construction. The new construction was not obviously keyed into that older section. Rather there was a straight line of mortar pointing extending almost all of the height from the top of the brickwork to the water level.
51. The exception was that where the older section of brickwork protruded out by the width of one brick, a brick straddled the top end of the newer construction. That occurred from approximately 2 feet down from the top of the wall down to the water level, save in the very corner by the culvert where it occurred at the full visible height. The new construction protruded only in that location and to the width of the narrower side of a brick immediately by the end of the older area of wall. Below that straddling brick, the straight line of mortar between the new construction and the old brick continued.
52. Those older bricks could be seen to extend at their other end to the culvert itself. In addition, they could be seen to rise above the level of the flagstones for two courses below the yellow bricks of the new portion of the Boundary wall. They formed the bottom courses of that wall.
53. At the other end of the visible river towards Rodney Road, the Tribunal saw approximately 30 feet of wall which was not newly constructed, which rose to approximately 1 foot lower than the new constructions and which was topped by a course approximately 1 foot deep of coping stone. A small area of new construction 2 courses deep and a handful of bricks across was seen below the course of older coping stone.

54. It should be explained that there are 3 fence panels visible behind the area of old wall, and the Tribunal judged each panel to be 10 feet wide. If that is not correct, which the above measurement is then wrong, the proportion between old wall and new wall would essentially be unchanged. Aside from a short panel above the older brickwork by the culvert, the panels running behind the River Wall- so the older part starting at the Rodney Road end and the new part- were each of the same length or thereabouts.
55. There are, the Tribunal counted, 17 panels visible behind the length of new wall the same width as the above 3, together with another shorter panel, perhaps approximately 7 feet wide. There is an approximately 3 feet wide panel behind the approximately 3 feet of older bricks by the culvert.
56. The bottom of the fence and posts and the base on which the Garage Blocks and parking by them were constructed could be seen above that area of old wall.
57. After inspecting the River Wall, the Tribunal also briefly inspected the gated areas between the Garage Blocks and the fencing by the River Wall, noting those and the refuse and re-cycling bins situated in them.

#### **The Further Evidence and Written Submissions**

58. In compliance with the further directions given at the end of the hearing, the Respondent provided a set of further documents. Those were not in a single bundle and each PDF has its own PDF page numbering. It is not practicable to indicate specific pages in those circumstances.
59. There is a 2019 report 59 pages long from Mr Alan Reade of Reade Burray in respect of the condition of the Property then, including photographs of cracked pipes and other information from Cotswold Drain Service Limited and reaching conclusions about the cause of structural movement to garages, hard-standing slabs and the River Wall. (A 2016 report with similar photographs was included in the bundle [444- 494]).
60. There are also minutes of site meetings from May, June and July 2023 [the last of which was noted to be in the bundle at 194- 203] involving Reade Burray and Walsh Construction Limited (“Walsh”) and a series of photographs taken which show the former condition of the River Wall and what was removed, the garage area with the garages taken down, plus photographs of the Boundary Wall. There appears to have been some uncertainty at that time amongst those who attended the site meetings as to ownership of the Boundary Wall.
61. Additional photographs are provided from February 2024 were also provided. Those included the old portion of the River Wall towards

Rodney Road, displaying what the Tribunal had seen from its inspection.

62. There is also a tender drawing prepared by Reade Buray, containing two notes in respect of the River Wall. In respect of both the end towards Rodney Road the end towards the culvert notes read as follows:

“The existing wall is to be retained to extent shown as measured from the existing bridge parapet wall.

The existing brick retaining wall and concrete plinth to be saw cut and the demolition materials to be carefully separated from the retained structure. The contractor shall make allowance for repointing and making good the cut edge. The retained section of wall shall be maintained throughout the works and care should be taken to minimise any excessive loading behind the wall during the backfilling process. If the existing section of the wall is considered unstable it must be reported to this office immediately.”

63. Neither party provided written submissions. The Tribunal is not aware of any comment about that from the Respondent. The Applicants indicated by email that they have nothing to add.

### **Re- Convene**

64. It should be recorded that the Tribunal reconvened following the expiry of the time for additional written submissions.
65. The Tribunal had not, given the hour and not aided by the weather additionally, been able to further discuss the case following the inspection. In any event, it was necessary to discuss the further evidence and submissions anticipated to be received. The Tribunal considered those and agreed its determinations at the re- convene.

### **Consideration**

66. The Tribunal deals with the 5 areas of dispute for determination identified in the Directions and the parties' cases and takes each in turn, adopting the numbering and so sequence adopted by the parties. The last 3 are specific items within the wider Major Works. The wording previously used has been adopted for the headings.

### **Payability of service charges in respect of the River Wall Works as a whole**

67. This was the major issue between the parties and in money terms dwarfed the other ones, termed by Ms Ziya perhaps more accessibly than the above heading as “Whether replacement of the river wall falls within the scope of the repairing covenant”. It ought to be recorded that the cost was not in the event £1,510,004.00: that was the budget amount. The actual amount expended in the event was £1,344,411.91, including professional fees. The issues with the River Wall and now to address

those can, without causing contention, be said to have been long-standing. Mr Buray's company having first been approached in mid-2016.

68. The Tribunal adopts the determination of the 2020 Decision- and agrees with both the determination and the reasons for it- that the River Wall falls within the Respondent's responsibilities pursuant to the provisions of the Lease and that the Applicants can in principle be required to pay towards the costs incurred.
69. It was common ground that the River Wall was not in the "good and substantial repair and condition" required and so the Respondent was, subject to any entitlement to first receive funds from the lessees, required to undertake repair work. Whilst the Tribunal understands there to be numerous reports, some of which were included in the bundle, given that common ground and the fact of the question for determination being a legal one, it is not necessary to refer to those except on the particular point considered further below and then only relatively briefly. Similarly, whilst there has previously been an issue about the cause of the River Wall falling into disrepair, that cause is not relevant for these purposes.
70. The solution to bringing the River Wall into a good state of repair was envisaged at the time of the 2020 Decision to involve a sheet piling system. In the event, the River Wall Works involved the Wall being rebuilt as recommended by Mr Buray. The Tribunal accepts the Respondent's case that although the systems were different, the result of both would be removal and replacement of the River Wall or any relevant part of it- see further below.
71. Both parties relied upon case authorities, principally a judgment of the Court of Appeal back in 1906 called *Lurcott v Wakely & Wheeler* 1911 1KB [85-107]. That judgment included discussion of earlier authorities, including one of *Lister v Lane* [1893] 2 QB 212 where it had been held that the provision of foundations where there had originally been none was not a repair. The Respondent also relied upon the much more recent authority of *Minja Properties Ltd v Cussins* [1998] 2 EGLR 52 [515- 523].
72. It was not in issue in these proceedings that work of the nature contemplated and undertaken had been required. The point at the heart of the dispute was that of whether the River Wall Works constituted a repair, including a renewal which fell with the scope of repair, or constituted something going beyond a repair. The key issue came to be whether the River Wall was a thing in itself, to adopt the inelegant wording used in the hearing, or was part of a larger thing. It was not argued that the works were of a nature which it was not contemplated by the contracting parties that the Applicants could be liable for, provided that they constituted a repair, and the Tribunal considers sensibly so

73. The Respondent advanced an additional limb of argument about the subject matter of the covenant: the Applicants advanced an additional limb about requirements of the Lease in respect of different elements of the Property. The Tribunal does deal with both of those below but determines that the answer does not depend on either.
74. The position as the Tribunal understood it during the majority of the hearing and until it considered the photographs in the bundle further-see below- was that there has been what the Applicants described as a complete renewal of the River Wall. It was at least not immediately apparent that the Respondent argued that to be factually incorrect.
75. The Tribunal most significantly finds as a fact that the entire River Wall was not replaced. The Tribunal rejects the Applicants' contention that it was.
76. Towards the end of the hearing, the Tribunal had cause to look at photographic evidence in the bundle, including the photographs which the Applicants referred to in their statement of case [53]. The Tribunal identified evidence, both during the River Wall Works and after it, indicated the above matters about the River Wall towards the culvert and the Boundary wall. That was the principal reason why the Tribunal determined that an inspection was appropriate. The Tribunal wished to understand whether the position as it appeared from the photographs a portion of old wall remaining- was borne out by the reality on site. It is right to say that the Tribunal had not at that stage given much thought to the reports of professionals engaged by the Respondent and as to whether they may assist at that point and had not checked each photograph.
77. The inspection in particular revealed that in fact some of the earlier iteration of the River Wall remained, to either side of the new construction. That was particularly the length towards Rodney Road and to a shorter extent by the culvert- the record of the inspection sets out the specifics. The additional documentation provided by the Respondent as directed reinforced that, including the note to the tender drawing quoted above which demonstrates that it was never intended that the whole River Wall would be taken down and that the areas of old River Wall which remain had been intended to remain. The documentation does not change anything.
78. There is not what the Applicant's Skeleton Argument termed "a completely brand new wall" but rather a completely brand new part of a wall, albeit the main part.
79. Whilst nothing turns on the matter, the Tribunal also finds that the new construction is not entirely separate from the older parts of the River Wall. There is firstly an area of new construction beneath the old stone coping stone toward the Rodney Road end and keyed into that old area of wall. In addition, although to a minor extent, there is a little of the older wall towards the culvert keyed into the new construction.

As to whether the line of mortar might be sufficient to be regarded as joining the old section and the new construction or might be regarded as dividing them does not require determination because of the other connections.

80. The evidence and what the Tribunal saw at the inspection amply demonstrates that whilst a long section of the River Wall has been replaced in the undertaking of the Works, that is not every part of the River Wall. Even though it was not obvious that the Respondent had argued the case on that basis, the Tribunal cannot avoid the obvious reality of the situation indicated in the photographs, some of which the Applicants relied upon, abundantly clear from its inspection.
81. The Tribunal pauses to make clear that it has been mindful that the Respondent was represented and did not present a case that there had been less than complete replacement of the River Wall or indeed the matters set out in the immediately following paragraphs. The Respondent in fact in the Skeleton Argument described the Boundary Wall as separate, although that statement should perhaps not be equated with any technical assessment of that state. The Tribunal was cautious about going beyond the cases as presented.
82. However, the Tribunal had evidence before it in the bundle and to which the parties had access in the form of photographs showing the work undertaken and demonstrating the extent of that. In addition, the Tribunal is an expert Tribunal and is not unable to take points, albeit with care as to how that is done and allowing the parties the opportunity to address any such point. The Tribunal did here give the parties the opportunity to make further submissions having identified that it had viewed the photographs and it considered other documents about the nature of the works may be relevant. The Tribunal equally cannot ignore what it saw at the inspection- that is not the introduction of new evidence but simply the application of what was visible to the Tribunal- and so determine the case on something different from the identified facts.
83. The Tribunal further finds as a fact that what has been identified as the River Wall even in its entirety would not have been a distinct and separate structure.
84. The Tribunal finds that the older brick part of the River Wall by the culvert extends into the culvert wall itself and continues along the edge of the boundary at right angles to the river, forming for at least some distance the base courses of bricks on which the remainder of the Boundary wall is built and forming part of the Boundary Wall.
85. As explained above, the photographs had indicated that, although it had not been sufficiently clear to the Tribunal to be satisfied that a finding could be made on that limited evidence which might determine the answer on such a large sum of service cost. The inspection made it clear. Whilst there is both the large amount of the River Wall which

was replaced and a section of the Boundary Wall which was taken down and rebuilt, the River Wall and the Boundary Wall were before and after- and indeed during the River Wall Works- linked and did not form separate structures to each other.

86. The Applicant argued, for example in their Skeleton Argument, that the River Wall “is a clearly identifiable single entity”. The Tribunal does not agree. The Tribunal considers that a person looking at the River Wall say from Rodney Road car park would be able to identify the River Wall easily enough. They may well not identify that the River Wall is connected to the Boundary Wall. However, that does not alter the fact that on closer examination the two are connected and the River Wall is not a structure unconnected to anything else.
87. Those findings of fact largely decide the outcome of this issue.
88. It was not in dispute that a renewal of part of a whole could constitute a repair, the Respondent arguing that was where the only sensible way of repairing is to renew. Both parties’ submissions accepted that effect of *Lurcott*.
89. There was also reference in *Lurcott* to whether the work undertaken changed the character or nature of the building, or equally other structure. If that had been an argument to consider, the Tribunal would have found that the character and nature of the River Wall had not changed. As the parties did not advance different positions, there is no need to dwell on that.
90. The Applicants specifically quoted words of Buckley LJ that:

“Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal as distinguished from repair, is construction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject- matter under discussion.”
91. However, the Tribunal considers that it is far from clear that the above test constitutes the conclusion of all or the majority of the Court of Appeal and can be taken as the judgment given on that aspect of the case. The 3 judgments each individually address the issues and earlier case authorities and without reference to each other. As The Tribunal observed, *Lurcott* is not an easy read. That is both in the manner in which matters are expressed, which is a style of its time and because of the fact that the learned Judges do not identify what they accept and do not accept of the reasoning of their fellow Judges.
92. Nevertheless, firstly the other 2 judgments do not talk about “entirety” of the subject matter in terms. The judgment of Curzon MR refers to the phrasing used by Buckley LJ- “the whole or substantially the whole” as against “a portion, as subsidiary portion” but without clearly agreeing that as the specific test. He states that the decision of the Divisional Court “was perfectly right” and that referred to “the whole house”. The judgment

of Fletcher Moulton LJ distinguishes the house from parts of it and says that if it were necessary to treat the question as one of degree he would say the repair in question was of “an element of the whole ....”. Buckley LJ after the comments quoted by the Applicants also says “I agree that it repair of the whole subject- matter has become impossible .....

93. The Tribunal considers that notwithstanding that the answer is rather less clear than ideal, the more accurate basis on which the majority dealt with the particular point was the whole as against less than the whole.

94. Secondly, the Tribunal regarded *Minja* as a more modern example of the wider well -established principle. The particular related to the replacement of single- glazed windows to a building in rusty window frames by new double- glazed windows in new frames, accepted to be a repair and extra pane of glass not altering that. The High Court did not adopt the specific definition by Buckley LJ of “entirety”. Rather amongst the matters stated, and specifically as quoted by Ms Ziya in her Skeleton Argument, it was that *Lurcott* and earlier authorities:

“establish that it is beyond question that renewing a part of a building by replacing it is within the obligation of a covenant to repair that thing; ... so long, always, as one is dealing with only part of the whole structure”

95. It will be identified that the High Court refers to the “whole” and not to the “entirety” as not being all of the whole in the manner used by Buckley LJ. The learned Judge also held the judgments of the 3 Judges in *Lurcott* to be “to the same effect”, which the Tribunal has found less clear from its own reading, although whether the Judges were unanimous about the test or there was a majority is not of practical effect. The Tribunal further noted in *Minja* that an authority of *Elmcroft Developments Ltd v Tankersley-Sawyer* (1984) 270 EG 140, sometimes cited to the Tribunal, was mentioned in which Dillon LJ in the Court of Appeal referred to the “whole” in stating:

“works of repair under a repairing covenant .....may not be so extensive as to amount to an improvement or renewal of the whole which is beyond the concept of repair.”

96. The Tribunal is assured that the “whole” is the correct statement of the law to be applied.

97. Just in case the Tribunal is subsequently determined to be wrong about the basis for the outcome as decided by the majority in *Lurcott*, the Tribunal considers the effect of application of the words used by Buckley LJ because of Applicants specific reliance.

98. There are a number of points which could be taken even from that short section of the particular judgment. Firstly, that repair includes renewal or replacement of part. In contrast a renewal not a repair

requires what the learned Judge terms the “entirety”. Although, and with scope for producing uncertainty, the “entirety” may not mean what might be understood as the natural meaning of that word i.e, the whole. It may, Buckley LJ considered, mean less than the whole if substantially the whole.

99. The River Wall was not in its “entirety” replaced, although most of it was. The River Wall was also connected to the Boundary Wall. Hence, irrespective of whether the River Wall Works and their outcome would have amounted to renewal or repair if the “entirety” of the River Wall had been involved and had been a separate structure to other structures, work to most but not all of the River Wall as part of boundary walls amounted to a repair in any event.
100. It can fairly be said that if the River Wall had not been connected to the Boundary Wall and so formed part of a larger structure- and if the test were that stated by Buckley LJ- the answer would have been a closer-run one. The Tribunal may have been required to determine whether what the Tribunal has described as the ‘main part’ of and ‘most of’ the River Wall was sufficiently extensive as to constitute “substantially the whole”. The Tribunal finds that to be a question of fact and judgment on which differences of outcome might well be reached by different tribunals, which is not necessarily helpful. In Lurcott, there was reference made to the front wall of house being 24 feet and the building going back 100 feet, so the comparison was a fairly simple one.
101. The Tribunal finds that if only the area by the culvert had remained as originally in place and all of the remainder of the River Wall if unconnected to the Boundary Wall had been renewed, that would have constituted the “entirety” of it as defined by Buckley LJ, albeit a few feet short of the whole length of River Wall. However, where there was not only that part of an older wall but also the older wall at the other end such that the new part of the River Wall comprised approximately 80% of the whole and the older parts comprised approximately 20%, 80% falls some distance short of “substantially the whole”.
102. The Tribunal determines that what occurred was the repair of part even applying Buckley LJ’s test even to the River Wall itself and ignoring for that purpose the connection to the Boundary Wall.
103. It will be appreciated that on what the Tribunal considers to be the judgment of the majority in the Court of Appeal as confirmed by the High Court, the answer is all the clearer. Returning then to renewal or replacement going beyond a repair requiring it to be of the whole, replacement of something less than “substantially the whole” of the River Wall necessarily is not replacement of the whole. Replacement of 80% or thereabouts (only marginally affected by the presence or absence of 7 feet across at least 210 feet) and leaving 20% or thereabouts of older River Wall in situ cannot amount to replacement of all.

104. Is not strictly necessary to therefore address at length any other aspect of the legal question of whether the Works would have amounted to a repair in the event that the River Wall had been a separate structure and the Work had been undertaken to the entirety. However, at the time of the hearing and in particular the closing submissions it was not known what would be revealed by the evidence and in particular the inspection. There was therefore substantial discussion, predominantly with Ms Ziya, of the legal question.
105. The Tribunal, without making a final determination of a question which does not arise and without as much detail as could have been necessary, indicates that if the River Wall had been a separate structure, the Tribunal's initial view would have been to conclude that a replacement of it (in full) constituted renewal extending beyond maintenance and repair as provided for in the Lease. Hence the Respondent would not have been required to undertake the Works pursuant to the Lease- much as in practice it may have been compelled to do so anyway in practice- and the Applicants would not have been required to contribute to the cost through the service charges.
106. Both *Lurcott* and *Minja* in their very different styles make clear that if the only or only practical or cost- effective way of repairing part of an item or a structure is to renew or replace it, that renewal or replacement amounts to a repair. The key point is that applies, as expressed in *Minja*:
- “so long, always, as one is dealing with only part of the whole structure”.
107. The Tribunal further notes the statement of Fletcher Moulton LJ (quoted in *Minja*) that:
- “Of course, if a house had tumbled down, or was down, the word “repair” could not be used to cover rebuilding.”
108. The extract from the judgment of Dillon LJ quoted above appears to adopt the same approach.
109. Turning to the Respondent's point, Ms Ziya argued, reflecting the Respondent's written case on the point, the key question to be what was the subject matter of the covenant. In this instance, clause 5 of the Lease ranges across various elements of the Property, of which the boundary walls, including as determined the River Wall, is only one element. Ms Ziya submitted, and quite obviously correctly, that the River Wall comprised only part of the relatively wide subject matter of that particular covenant. She relied upon the fact that in *Lurcott* the subject matter of the covenant was the house which had been leased.
110. The Applicants referred to component parts as compared to entire entities. Renewing the first was maintenance but it was argued that if the item renewed could be considered as its own entity then the replacement of that entire item was renewal.

111. The Tribunal accepts that as a matter of fact in *Lurcott* the subject matter of the particular covenant was the house. The subject matter within the covenant on the one hand and the physical object on the other hand were one and the same. There is reference to the applicable covenant and to others in previous cases. However, only on 1 page in the judgments of the three Court of Appeal judges could the Tribunal identify that their specific consideration was the subject matter of the covenant as expressed in the covenant and that was in the judgment of Buckley LJ [106] (twice in consecutive sentences) when talking about the judgment given in a previous case. Rather, the references to the house the subject of *Lurcott*- and to the wall rebuilt as part of it- were all to it as a physical entity and references to previous cases identified the building involved. The point made was that the work required to be performed would be to part of that physical house.
112. In a similar vein, the other examples which were given in the various case authorities of *Lurcott* and *Minja* and other cases referred to in them were of physical structures or parts of them. A window was part of a house or building as an overall structure. A chimney stack similarly. Replacement of matters such as an earthenware pipe and a floor constituted repair. Specific reference was made to repair by renewal of part of a garden wall, the garden wall being indicated to be the relevant structure, such that implicitly renewal of the entire wall would not have constituted a repair.
113. In each instance, the case reports indicated that the relevant covenant additionally extended to other elements of the building or another structure. References were not made to the element as being part of the elements covered by the covenant. Rather the references were to the elements as being part of the given physical structure.
114. In effect and expressed ineloquently, although the High Court in *Minja* did the same, the distinction was between an entire thing and a part of a thing. That is to say a physical thing. If the River Wall had been a thing in itself, an independent structure and not part of a wider structure, and if it had been renewed/ replaced in its entirety, the Tribunal's at least initial inclination would have been that the renewal/ replacement of the whole went beyond the covenant in the Lease.
115. Turning next to the Applicants' point, the Applicants had also argued that the Lease gave specific examples of items where renewal was included within the relevant obligations. The River Wall was not one of those. The Tribunal accepted that to be correct in itself. The Applicants had used that to support an argument that they did not have to pay to renew the River Wall. If the obligations had extended that far, the Lease would have said so.
116. The Tribunal accepts that there is reference to renewal in the two specific instances of central heating apparatus and lifts (as well as in relation to some obligations of the lessees). There is also reference to

replacement in respect of the lifts. That does give potential for the Lease having deliberately excluded renewal for even parts of the overall building in the other instances. However, it is less than obvious that there was a need to refer to replacing the lifts and ancillary equipment as well as to renewing it. There is nothing in the wording of clause 5. or of the Lease as a whole which indicates why there is reference to “renew” solely in relation to central heating and to “renew or replace” solely in relation to lifts. It is also not obvious why, for one example, in the previous clause- (11)- there is only reference to maintain in relation to aerials, given those may need to be replaced and it does not appear consistent with the sort of obligations placed on the Respondent that it could refuse to replace if that were required. There is some apparent inconsistency casting some doubt on construing wording so strictly as to exclude renewal from repair where the wider law would otherwise include it. The Tribunal therefore considers in particular that it would have taken rather more than the words used in the Lease to prevent the term repair used in the Lease including renew where the wider law would otherwise determine it to do so.

117. As the wider law already causes renewal of a whole thing to go beyond repair, that is not relevant- the law says that renewal of a whole structure is not a repair. The Lease does not indicate that the contracting parties intended to change that for their specific bargain. The usual effect of the term “repair” can be applied. The Applicants’ argument would not have been necessary if the whole of a thing had been renewed/ replaced: it adds nothing where there was only part of a thing and repair already encompasses renewal of a part of the thing.
118. Hence, if repair of a whole separate thing required renewal of that whole thing and that were still regarded by the law as a repair, the Tribunal would not have found this Lease to alter that. The Tribunal is mindful that the effect of any such determination would have been that the Respondent could for practical reasons have needed to replace the River Wall but without being able to obtain funds from the lessees to meet the substantial cost involved. It is a long way from being clear how the Respondent might have done so. It is not discernible that it has any other income remotely adequate or that it would have the capacity to borrow sufficient funds. Given that the contracting parties knew that there was a river to one edge of the Property and knew that there was a wall by it, it is reasonable to expect that some consideration would have been given to the potential need for replacement of it at some stage. The same could be said of the Boundary Wall and other elements. The Tribunal considers that it would have needed to consider carefully whether the contracting parties intended that outcome, although without considering any subjective intentions even in the event of evidence of that, and applying the relevant law regarding construction of the words of a lease. The initial inclination may or may not have been the considered determination of the Tribunal in the end. The Tribunal refrains from venturing further into a difficult question the answer to which is not required.

119. The Tribunal consequently determined that, subject to the Applicants succeeding with any or all of their challenges to specific elements of the River Wall Works, the costs of the Major Works are payable by the Applicants in the sums individually charged to them. The Tribunal considers it unnecessary to identify anything specific about the service charges per Applicant in relation to this wide item as they are unchanged from the service charges which had been demanded, subject to the more specific challenges succeeding.

**The recovery by the landlord of £13,854.07 of legal fees incurred by it in the case determined in January 2020.**

120. This is more accurately a question of whether various professional fees incurred by the Respondent with regard to previous proceedings are recoverable by the Respondent. The Applicants asked the Tribunal to determine what was “just and equitable”. The Applicants stated that could not afford their own legal representation and further that they did not know that the legal costs incurred by the Respondent could be reclaimed under the Lease or that the lessees could ask for an order that the costs could not be reclaimed. They also referred to the costs not being mentioned during the hearing.
121. It was identified by the Respondent that of the above figure, £3,244.75 related to fees of Metro PM [invoice on 389] and not lawyers. The actual legal fees for the proceedings leading to the 2020 Decision were £10,609.32. It was additionally said by the Respondent that £7,198.80 of other legal fees shown in the year end accounts [147- 154] related to other matters than those which produced the 2020 Decision and that the invoices demonstrated that. Whilst the amount shown in the relevant service charge accounts [specifically 149] in respect of legal fee was £17,808.12, the Respondent said some of that related to legal fees incurred during the year as a whole. In the event, it was not necessary to consider those arguments in detail.
122. The Applicant’s primary argument was that the Tribunal ought to disallow the recovery of legal fees as service charges pursuant to section 20c of the 1985 Act. It was not obvious that paragraph 5A of the 2002 Act applied but that like application could have been considered if relevant.
123. The Tribunal determined that it was not able to make such a determination. The Tribunal had not dealt with the relevant proceedings and had not made the 2020 Decision. It did not have the information and understanding that the Tribunal which did make that Decision had. It would be well nigh impossible to obtain that even if it were appropriate to attempt to do so. There has also been a settled position for some 6 years, such that overturning that would be a step to take only with extreme caution and even if other matters aligned so that it may be appropriate to even consider doing so. The Tribunal accepted that not all of the amount challenged did in fact relate to legal

costs and determined that it could not have considered the expenses which fell outside of being legal costs under 20C in any event.

124. The Tribunal considered that it was able to determine the reasonableness of the legal costs of £10,609.32 and the other elements of the £13,854.07 if there were a challenge to that and then their payability as service charges. The fact that the expense was not able to be disallowed, if appropriate, under the above provisions, did not preclude the Tribunal from making the usual determination about an item of service charges as and when demanded. The Tribunal did not accept, at least in principle, Ms Ziya's argument there was no legal basis for the reasonableness of the costs being considered.
125. However, the Applicants had not raised any case about the amount of the costs incurred or as to whether legal costs, agents' fees or any other elements of the sum could in principle be payable, but only about the Tribunal disallowing them in full pursuant to section 20C. There was no contention of any or all of the costs being at an unreasonable level or any reasons or evidence advanced in relation to that: there was no contention that legal costs or the other elements could not be recovered pursuant to the Lease. The £3,244.75 was clearly described as fees of the agent and not legal fees. There was no prima facie case about reasonableness or payability for the Respondent to be required to meet it in any event. More importantly, there was no point advanced for the Tribunal to determine.
126. The Tribunal therefore determined on the cases advanced that the legal fees and other fees totalling £13,854.07 incurred by the Respondent and identified in the 2020 accounts are payable by the Applicants in the sums individually charged to them. The Tribunal again considers it unnecessary to identify anything specific about the service charges per Applicant in relation to this item as they are unchanged from the service charges which had been demanded.
127. The Tribunal notes that in a Position Statement provided for a case management hearing, the Applicants had referred to the larger sum of £22,762.87, including the £7,198.80 of other solicitors' costs, described in the accounts as incurred in respect of an insurance claim and £1,710,00 of other solicitors' costs, the reason for which the Tribunal is unsure of. There was no other basis advanced by the Applicants of challenge to those last 2 elements of legal costs. The Tribunal determined that even if the Applicants still pursued them, the Applicants had failed to raise even a prima facie case and so any challenge necessarily failed.

**£30,000 for electrical works designed by Reade Buray Associates in relation to meters for the garages**

128. The background is that the garages were demolished in the course of the River Wall Works, as being situated very close to where those Works were being undertaken and to enable the Works to be carried

out. The ground then had to be prepared for the garages to be reinstated, and the blocks of garages rebuilt, with new surfacing provided between and around the blocks.

129. Within the overall cost, the Respondent identified specific elements of the provision of a service trench for the National Grid cable connection and installation at £1,432.03 [157] and the supply and installation of 2 GRP electricity cabinets and associated trunking and enabling works for meter installations and 2 stainless steel bollards at £5,388.08 [159]. The Respondent denied that the cost of the works was £30,000.00.
130. The Applicants indeed calculated £15,539.01 plus VAT of what they termed “additional and out of scope” electrical works. The Tribunal identified that in addition to the above 2 invoices, there is one for £8,718.90 [161]. The Tribunal agrees that the total of those invoices is £15,539.01 plus VAT, so £18,646.81. The £30,000.00 figure was plainly an initial estimate at best and not accurate. Hence the Tribunal determines the above figure to have been the costs of the particular works.
131. The point had been raised in the proceedings dealt with by the 2025 Decision.
132. The relevant issue with the meters is that meters are now a different design to those installed originally, so with different space requirements, and the Tribunal understood it is a requirement to have a separate on/ off switch. The net effect is that fewer meters can be fitted into a given size of area than could when the original meters were installed. Hence rather obviously additional space is required. The Applicants contended in their statement of case that a further design had to be created and delivered after the garage blocks had been reinstated.
133. The new housings for meters have caused the areas of two parking spaces to be reduced, that is common ground. The Respondent’s case denied that parking spaces had been lost. The Tribunal has no difficulty in finding that to be incorrect.
134. The photographs in the bundle [164-166] showed clearly two green metal meter housings, one either side of the door to the meter cupboard, and a silver bollard to the outer side of them, with area hatched in yellow intended to keep the area in front of the meter housings clear of any part of a vehicle. That area runs for the entire depth of the adjacent parking spaces. Further, it is shown that two what were apparently usual- sized parking spaces- although with no specific measurements available- are now significantly smaller. Those matters were also clear from the inspection.
135. Whilst Ms Roberts accepted in evidence that a small car could fit into one of the smaller bays, it was additionally apparent from the inspection attended that even the owner of a small to medium sized

hatchback had failed to fit that vehicle into the space as now marked. The car protruded out of the space onto an area meant to be left clear. A medium sized saloon attempted to be parked in the other space whilst the Tribunal was present protruded further. The Tribunal did not find the Cotswold District Council Parking Standards Review document [626 – 652] provided by the Applicants to take matters further. Ms Roberts said in evidence that the permits which are or will be issued (the Tribunal cannot now identify which, but nothing turns on it) requiring the given car to be fully inside a bay.

136. The Tribunal finds that the additional meter housings and their location has reduced the limited on-site parking space by resulting in two areas usable, at least within the marked bays, only by very small cars and smaller cars than commonly purchased. Hence for most, and possibly all, residents the marked bays not usable for parking within at all. They could also have been used for a motorcycle or similar but there was no evidence whether that was relevant. The questions then are the reason for the approach taken by the Respondent and any impact on the service charges.
137. The question is whether that ought to have been avoided. The Tribunal heard from Mr Buray in some detail in respect of this issue, principally in response to cross examination by Mr Philips and Mr Hickman but also in response to other question including several asked by the Tribunal and as re- examination.
138. It was said by Mr Buray that there had been a single meter cupboard for the electricity meters for an electrical supply for each garage in the 3 blocks, although various of the garages did not have a live supply. There was sufficient space in the meter cupboard for all of the meters of the type used at the time (plus the Tribunal perceives perhaps space for additional meters in the event that other garages had chosen to receive a supply). The meter cupboard was built into an area which would otherwise have formed part of garages 1 and 5.
139. Mr Buray also stated that he had been instructed by Metro PM that the garage blocks were to be rebuilt as they had previously stood (or as close as at all possible to that), such that the lessees received what they possessed before (and held a lease for). Hence he proceeded with that and the meter cupboard was rebuilt to its original size and in its original position. Mr Buray said in his written evidence that “There was no initial need to consider whether the space previously available for electric meters and associated cabling would suffice in the replacement design”. He had not provided any advice, nor it was identifiable had he made any enquiries. The Respondent’s statement of case, which is arguably inconsistent with that evidence, is that there was an expectation of fitting “micro- meters”
140. Mr Buray was very firm in his evidence that he did not consider that the lessees of the garages adjacent to the original meter cupboard and who would otherwise have received more space would agree to a larger

meter cupboard which therefore reduced their garage space. He referred to one lessee complaining even about what the Tribunal perceived to be the not more than marginal impact of trunking for wires or cables within that garage.

141. The Tribunal considered that the specific reason for the garages being rebuilt exactly as they had been therefore reflected entirely that being what the Respondent requested and that they could otherwise have been rebuilt differently. That said, if Mr Buray had directed his mind to the matter, he may have considered whether there was any reason to potentially alter the design- for example because of the change to the size and nature of the meters. It may be that the Respondent would have then sought to proceed in a different manner.
142. The Applicants relied upon an query raised by Walsh, and specifically by the electrical contractors engaged by them, on 11<sup>th</sup> February 2022 and passed on an to Mr Buray which stated [156] that:

“Also, it is unlikely the meter cupboard as shown will be big enough to cope with the meter requirement for 23 garages. It may need increasing so much it will impinge on the garages adjacent to it. Perhaps a separate block near the WC would be a more suitable place”
143. The Applicants said that Mr Buray was accordingly specifically warned at that time that there was an issue.
144. The Applicants argued essentially that it ought to have been known that an additional or larger meter cupboard or other additional housing would be required and that the location of that could have been planned and dealt with in the course of the re- building of the garages, including the base on which those were situated, enabling the meters to be placed in a better location- others were available- and avoiding the effect on parking which had been created by the approach which was taken. They argued a lack of due diligence.
145. Mr Buray said that the question was considered when it was later necessary to do so. The Tribunal had no doubt that the matter had to be considered then- a home needed to be found for the meters to be fitted and the cupboard was not large enough.
146. Equally, the Tribunal finds that is far from an adequate answer and the nature of the meters to be fitted and impact of that could and should have been considered sooner and planned for. That is irrespective of the point being specifically raised with Mr Buray but all the more obviously so where the point had been raised by a specialist contractor. The Tribunal of course has the advantage of viewing the situation where an issue has arisen and is mindful that matters can look rather different with the benefit of hindsight. However, the Tribunal considers that in this instance hindsight is not required.

147. Ms Ziya argued that it is not uncommon when carrying out works that it transpires that changes are required to comply with current regulations or other matters reveal themselves. However, the regulations had not altered in recent times and the issue had been flagged to Mr Buray. It would have been entirely possible and sensible to check the regulations, relevant equipment and any matters arising. Changes are indeed often required, that is no revelation. The need or potential need for them ought to be identified and planned for. That could have occurred and there had been a failure to do that. There was not a need for a hindsight but rather for appropriate consideration in advance and planning.
148. The Applicants did particularly identify areas between the sides of the garage blocks and the fencing to the edge of the garage by and above the river wall. Those areas are gated and house some refuse bins and recycling bins but, as the Tribunal saw at the inspection, there is ample space to have accommodated the meter housings without obviously impinging on other use of the areas.
149. The Tribunal was not persuaded of the merits of the Respondent's position and determined that the Respondent had failed to meet the challenge and demonstrate that the electrical works were of reasonable quality and the costs incurred reasonable. The Respondent had, the Tribunal determined, taken a poor approach to the matter such that the package of work in respect of the electric meters and housings had not been undertaken to a reasonable standard pursuant to section 19. The Tribunal determined that this element of the work had not been well planned and finds it had resulted in an avoidable effect on car parking. For practical purposes, the Tribunal finds that in effect two spaces had largely been lost by the poor approach.
150. The Tribunal noted that cost must have been incurred for two metal bollards to reduce the prospect of anyone attempting to park in the bay hitting the electric housings and that was only necessary because of the location of the housings by the parking bays. That said, it will be appreciated that Mr Buray's evidence, which the Tribunal has accepted, was that there would be no change to cost generally. It is not otherwise clear to the Tribunal whether if there had been any additional costs of locating the housings elsewhere those would have equated to the cost of the bollards but the evidence that the cost would have been the same is the best that the Tribunal has.
151. Mr Buray said in evidence that locating the meter housings differently would not have altered the cost. It appeared to the Tribunal that his focus was perhaps principally upon whether there would have been any reduction in cost if the meters had been located elsewhere but also that he was considering only the meters and housings and had not considered the cost for the bollards.
152. It should be recorded that Mr Ahmed suggested that the cost would have been greater if the new additional meter housings had been

located away from the meter cupboard. The Tribunal accepted that was at least plausible. However, Mr Ahmed advanced no expertise in the particular matter and had no other evidence to back up what was no more than his personal opinion. It is not clear whether he had factored in the cost of the bollards.

153. The Tribunal also bore in mind that the contractor engaged for the River Wall Works as a whole was undertaking a very large job and even in relation to the garages element had contracted for and priced for various tasks, in comparison to all of which the relatively limited work involved in providing any cabling or similar to enable the additional meter housings to be placed in a different location to the one in which they were in the event placed was very small beer.
154. It is right to say that Mr Buray also expressed an opinion and whilst he had expertise the Tribunal reminded itself that he was not called as an expert witness. However, of the Respondent's two witnesses, and with a degree of caution in light of them both expressing opinions, the Tribunal preferred the evidence of Mr Buray. The evidence given by him was that there would have been no change to the cost generally. The Tribunal accepted that evidence as being what it regarded as the best available to it. The Tribunal therefore accepted on the evidence received that the costs actually incurred would have been incurred in any event irrespective of the location of any meter housings.
155. The Tribunal considered whether it would be appropriate to seek to reduce the service cost to reflect the value of two parking spaces of usual size as compared to that of two smaller sized areas. However, leaving aside the fact that the Tribunal possessed no information which might have enabled it to determine the value of a parking space in the location, the Tribunal considered that was not in any event the appropriate method to use.
156. It was at least possible that one or other of the lessees may have agreed to give up more space if given a financial incentive to do so. The Tribunal can make no actual finding and has no need to do so. Nothing in this Decision turns on any possibility that there may have been a successful negotiation. It is not appropriate to make a determination which seeks to have regard to any loss of the chance that the amount which might potentially have been paid is lower than the cost of the additional housings. The Applicants did not put their case on that basis. The difficulties with valuing such loss need not be engaged with.
157. Where the Tribunal determined that work has not been undertaken of a reasonable quality such that the cost incurred by the landlord should not be recovered in full, the Tribunal can determine the value of the work as undertaken. The decision is not all or nothing, i.e., it is not that on the one hand the service costs as incurred are reasonable or on the other hand none are. It is very relevant that the Tribunal has determined inadequacy of approach to a certain portion of the

electrical works undertaken for the garage blocks, but no issue has been identified with the remainder.

158. The Tribunal has weighed the factors which exist and having considered the appropriate approach does reduce the recoverable costs for this item by 20% to reflect the extent to which the Tribunal determines the planning and outcome of the works were not a reasonable standard. That is £3,729.36 of cost incurred.
159. There needs to be a reduction in the service charges payable by each Applicant. The approach the Tribunal has taken to this item is to identify the amount of the reduction Applicant lease by Applicant lease. In that regard the Tribunal is grateful for the spreadsheet of percentage contributions to the overall service costs payable by the lessee(s) of each flat. The figures are set out below.

Flat 5	2.25%	£83.91
Flat 9	2.25%	£83.91
Flat 22	2.25%	£83.91
Flat 23	2.25%	£83.91
Flat 25	1.06%	£39.53
Flat 26	1.81%	£67.50
Flat 29	1.45%	£54.08
Flat 33	1.81%	£67.50
Flat 34	1.81%	£67.50
Flat 37	1.45%	£54.08
Flat 44	1.45%	£54.08
Flat 46	1.81%	£67.50
Flat 49	1.45%	£54.08

160. The Tribunal has concluded that it is sufficient to set out the reduction alone rather than also the revised service charge figure for each flat for the given year, in the expectation that the Respondent will post a suitable credit to add to the credit in respect of the conceded reduction in professional fees and where if the Tribunal were to seek to state the service charges for the relevant year payable by the given Applicant, that would not be accurate for failing to take account of the Respondent's concession regarding professional fees in connection with the Major Works and any other matters which might fall outside of the specific subject matter of these proceedings.
161. The other difficulty the Tribunal identifies is with the effect of the above on any given Applicant. The Tribunal has noted that the Respondent's Skeleton argument includes the, correct, argument by Ms Ziya that only those lessees who were liable to contribute to the item of work are entitled to the benefit of any reduction. If the service charges were paid by a previous lessee, the current lessee Applicant has incurred no liability. The Tribunal is unable, as a first step, to identify the commencement date of the Lease of each Applicant. The Tribunal cannot therefore identify whether any given Applicant did make the

payment for the electrical works or is liable to do so and hence takes the benefit of that reduction.

162. The Tribunal also notes that as the cumulative total of percentages is 101.60%, the percentages for 13 flats as given must be slightly high. However, 1.6% across 56 flats when applied to 13 of those flats and in the sums relevant must be so modest that the Tribunal does not consider that it needs to go further.

### **£15,000 for the rebuilding of a boundary wall supporting garages**

163. There was no dispute that part of the Boundary Wall had been taken down and re- built. That is the wall which is mentioned above in respect of the River Wall Works as a whole. As explained above, the yellow bricks of the re- built Boundary Wall rest, at least in part as visible, on old bricks connected to the wall of the culvert and the end of the River Wall.
164. The point made in respect of the electrical works that there has been no specific finding or determination in the 2025 Decisions with regard to the cost equally applies in respect of this element of the dispute. That said, the Respondent referred to the 2025 Dispensation Decision in which the Respondent was granted dispensation for the River Wall Works of which it was said this element of works formed a part, although not a part originally envisaged.
165. This element of works was described by the Respondent as in effect a variation of the Major Works and not to a separate set of works. More accurately, there were 2 elements to the works, “Variation 4” for 5 metres of Wall at £9,713.20 plus VAT [167], and “Variation 5” for 4 metres of wall at £8739.66 plus VAT [169]. It was said that the construction element amounted to £9,900.00 plus VAT of that. Mr Buray said that it fell within contingencies.
166. The Respondent’s position in terms of the work itself, which the Tribunal found to be correct in fact, was that a decision was made to take down part of the Boundary Wall because of identification after the demolition of the garage blocks that the Boundary Wall was in poor condition and consequent fear that work to the River Wall may cause it to become unstable and hence Mr Buray’s conclusion that it should be removed. The Tribunal determined the decision to be reasonable, noting that there would be workmen working below the level of the boundary wall onto whom the wall could fall. The Applicants did not in any event take issue with that.
167. It is well established that it is for the landlord or management company to choose the method to adopt- as with the River Wall- and that lessees cannot insist on the least expensive approach. However, given that the works will be paid for by the lessees, the choice made by the Respondent had to be a reasonable one. The length of the lease term and the likely length of time that the work may last is relevant in

principle- again as it would have been to the cost of the River Wall Works generally if requiring determination- but it was not argued by the Applicants that the Respondent ought not to have undertaken the Boundary Wall work- or any other work in dispute- for that reason.

168. The Applicants argued that the Boundary Wall works should have been the subject of a section 20 consultation process, given that the cost exceeded £250.00 per lessee. The Respondent argued that no consultation process was required on the basis that the work formed part of the wider Major Works.
169. The Tribunal determined the Respondent to be correct. The Tribunal found that the works within the River Wall Works had been varied by being added to. The Boundary Wall work was required because of the work to the River Wall and the Tribunal accepted in order to facilitate the safe undertaking of that work. It was additional work discovered to be required in the course of undertaking the Major Works and amounted to part of those works. The situation was, the Tribunal considered, very much along the same sort of lines often encountered in the course of major works, where doing something or removing something reveals further matters which require attention. That is the sort of reason why contracts will include sums for contingencies for items not known at the outset. The fact that the Boundary Wall has been given that name does not alter the fact that it is, as found above, physically connected to the River Wall itself or otherwise make it detached from the set of works being undertaken.
170. There were three other issues between the parties as to the boundary wall. The first related to lack of previous work to the wall. The second related to the extent of the wall which was taken down and rebuilt and the third was with regard to the cost incurred.
171. In respect of the first argument, the point made is essentially that if the Respondent had considered the condition of the Boundary Wall when considering the River Wall Works as a whole, it would have been identified that the Boundary Wall was not in a good condition and that there had been a failure to maintain the Boundary Wall. In effect, it was said that the poor condition was a consequence of inadequate historic repair and maintenance. Equally, that if the Boundary Wall had been properly maintained and had been in the condition in which it ought, there would have been no need for concern that it might be caused to collapse in the course of the River Wall Works being undertaken. The Applicants query how the issue was missed in the several reports prepared since 2003.
172. The Respondent relied upon a risk assessment being carried out by Mr Buray and the conclusion he reached. The Respondent relied, much as with the electric meter works, with the issues with the Boundary Wall not being foreseeable.

173. The Tribunal does not consider that the extent or lack of previous work to the Boundary Wall alters the reasonableness of the area of Boundary Wall nearest the River Wall and always forming part of the Major Works being taken down. The Respondent identified a risk and the Tribunal has determined there to have been a reasonable decision.
174. The Respondent conceded the condition to be poor but there is in any event no evidence that any given condition of the Boundary Wall would have enabled it to remain. Nor consequently is there evidence of whether that given condition was a better condition than the actual (but not clearly identified) condition of the Wall. So, it is not demonstrated that the actual condition fell below some other condition which would have avoided the concern about the wall potentially collapsing and was the reason why it was decided to take it down.
175. The question to be asked, applying case authorities, is what was reasonable in the situation which arose. That is to say, was there the need to take the step at the time it was taken? There may be a contrary claim by lessees for damages in appropriate situations for effects of any neglect found to have occurred (as discussed regarding the River Wall in the 2020 Decision). However, that has not been raised in these proceedings.
176. As to the physical extent of the area of the Boundary Wall taken down, the facts not in dispute were that when it came to rebuilding the area of wall removed, Mr Buray was concerned about the condition of the next section of wall. He considered that to be poor. To the Property side that area of wall was covered by render but to the far side it was not and Mr Buray's evidence was that the condition of the brickwork as visible from that far side showed deterioration and potential for instability. He suggested that the render had been applied to disguise the poor condition. Hence, Mr Buray determined that a further section of wall should be taken down across to a pillar. Consequently, the size of the task in taking down of the wall increased and necessarily so did the rebuilding the Boundary Wall, the second area being taken down so that the new wall could extend to the pillar.
177. However, whilst the Tribunal has identified this as the second issue, the Applicants did not press any point about it. The Tribunal considered that the Applicants concern was primarily the third issue, although necessarily the extent of the works required affected that. The point is that the Applicants did not specifically challenge the conclusion that Mr Buray reached and did not suggest that the Boundary Wall could have better been rebuilt without concerns about stability just to where required for health and safety in respect of the work to the River Wall.
178. The Tribunal was satisfied that the Respondent had taken a considered decision at the time and the reason for it was in principle sound. The Tribunal determined that the Respondent was entitled to remove that further part of the Boundary Wall which was in a poor condition and rebuild that to ensure that the area of wall taken down for the more

immediate purpose of the River Wall Works could be rebuilt effectively and with stability. The Respondent was more generally entitled to undertake such work as considered necessary for the repair of the area of wall in the usual way.

179. The Tribunal is not persuaded by the Respondent's argument that the work could not be foreseen. Whilst the Tribunal has determined that it cannot be known what the condition of the Boundary Wall might have been in other circumstances than those which existed, the condition in the circumstances which did exist was knowable. There is some similarity with the position with the electrical works that matters could have been better considered and planned. There has been no adequate explanation from the Respondent as to why it was only checked after the demolition of the garage blocks. The Tribunal finds from evidence of the condition of the Boundary Wall presented that if the condition and any risk arising had been considered reasonably prior to demolition of the blocks, the need for the area of wall to be taken down would have been identified. That feeds into the question of the reasonableness of the cost of the work and whether that could have been lower.
180. In relation to the cost of the works, the Applicant's position was that those were higher than reasonable. The Applicants had firstly obtained the retail price for the quantity of bricks involved in the rebuilding undertaken, which they calculated to be 2610. They identified that the price obtained of £2,990.00 [pack price at 174 ] appeared to be significantly lower than the amount charged by the contractor for the bricks required, which was priced within the contractor's invoice at £9,900.00 [168 and 170].
181. The Applicants- or more accurately one or more of them- had spoken to sub- contractors on site who had said that they charged £300.00 per day. The Applicants had calculated the number of days involved in rebuilding the Boundary Wall. The net effect of the pricing on which the Applicants relied for the bricks themselves plus the charges of a bricklayer was that the Applicants arrived in one document at a cost of in the region of £3992.00 plus VAT (presumably insofar as applicable), although they also referred to approximately 5 days for the construction of the 2 lengths of wall, which would mean a labour cost of £500, so that would total £1500.00 and hence produce a higher combined total than indicated.
182. The Applicants had not obtained any quote from a suitable contractor for the work as a whole. It was not apparent that any of the sub-contractor bricklayers would be a suitable contractor for the task as a whole, especially where the work was to be undertaken by a river- a point made by Mr Buray in his statement. The actual contractor had contracted with such bricklayers as subcontractors in what appeared to be a usual manner.

183. The construction of the new wall was also the second aspect. The first was the safe taking down of the wall the condition of which caused concern and disposal of materials. Both elements would require equipment and materials. The laying of a new brick wall at a very basic level requires mortar as well as bricks and goes to demonstrate that even taking the most simplistic starting point, the construction required more than the delivery of a given number of bricks. Mr Buray identified other costs such as for scaffolding, new foundations and other equipment.
184. The Tribunal does not know whether if the Boundary Wall work had been included in the tender as a specific item, a different tendering contractor might have charged sufficiently less for that element and have otherwise presented matters in respect of that work such that outcome of the tender would have been different. However, the reasonableness of the cost of the River Wall Works set of major works generally is not before the Tribunal for determination.
185. The Tribunal also does not know how the contractor actually instructed or any contractor might have priced the Boundary Wall work if included at the outset with a, much, larger tender. The contractors would no doubt have wished their overall tender to remain competitive. However, there is no evidence that it would have been lower at all, or indeed it could have been lower then as to how much lower any price might potentially have been.
186. The type of contractor would, the Tribunals finds, have been similar if the Boundary Wall had been offered as a separate job. The contractors who tendered would have been the equivalent of the contractor instructed and not an individual bricklayer or group of them. They would have been experienced in undertaken such a job as a whole, with appropriate insurance, management and similar. They would have been likely to subcontract to others where appropriate in a similar manner and at a similar cost. There would have been various overheads which would have impacted on the pricing.
187. It might have been that another contractor pricing a specific job in respect of the Boundary Wall taking down and re- building would have agreed a lower price than the actual contractor. Equally, it might have been, the Tribunal considered, that another contractor undertaking the particular job in isolation and without the advantage of undertaking the River Wall Works as a whole and generating the profits from that, would have quoted a higher price. There was simply no evidence before the Tribunal about that one way or the other.
188. In any event, rather than the contractor on-site undertaking the additional job in the course of wider works, there would have needed to be contact by or on behalf of the Respondent with the other potential contractors, responses (where received) would have needed to be awaited and then considered, and the new contractor's attendance would have needed to be co-ordinated with works by the main

contractor. All of that would have involved additional matters to deal with and delay. It is understandable that would not be an attractive prospect in general. The Tribunal also accepts that there was a limited window in which to undertake the River Wall works, the river levels being expected to rise later in the year. Hence, delay may produce other practical difficulties with the Works. That said, that particular potential issue was the consequence of when the condition of the Boundary Wall was identified: it would not have been relevant if that had been considered prior to commencement of the Major Works.

189. There was, pulling the above together and notwithstanding that the point about the cost of bricks certainly had initial attraction, nothing which demonstrated to the Tribunal that the service costs would have been lower and to the extent, or with any other changes to any sufficient extent, that the Respondent ought to have achieved a reduction in the cost for the Boundary Wall work and so in the service charges charged.
190. The Tribunal determined that it was well within the realms of reasonable decisions for the Respondent to contract with the contractor undertaking the Major Works as a whole. It was additionally not unreasonable to pay the sum agreed with the contractor. The Respondent was not compelled to incur the minimum cost, if indeed say the obtaining of bricks directly by the Respondent might have produced a reduction in the cost.
191. The Tribunal has concluded that the Applicants have not proved that a reduction in costs would have been achieved if the condition of the Boundary Wall had been considered at an earlier stage. This was nevertheless the most finely balanced of the determinations about areas of work in dispute in the event. That is principally because the basis for needing the extra area of wall to be taken down and rebuilt to the particular point was not especially well explained, the Tribunal has found that the condition of the Boundary Wall should have been considered earlier and because although the Applicants had not demonstrated the overall costs should have been lower, the concern about the cost of bricks was not dispelled. However, the Respondent advanced just enough and the Tribunal's determination having weighed matters is as set out above.
192. It follows that the Tribunal determines that the costs for this aspect incurred by the Respondent are payable by the Applicants in the sums individually charged to them. As the service charges per Applicant in relation to this item are unchanged from the service charge sums demanded, the Tribunal considers it unnecessary to identify the specific such sums.

### **Fixings for heras fencing**

193. The Tribunal had explained to the parties towards the start of the hearing that as the sum in dispute as an overall cost had reduced to

£180.00 [invoice on 175], the Tribunal could justify no more than nominal time- indeed arguably no time at all- on this item. Taking what is accepted to be an overly simplistic approach and if the lessees shares were equal, the charge per flat would be just over £3.00: the extent of the difference in percentages flat by flat only altered that by a very modest sum. The dispute had originally related to the fencing cost as a whole but had been subsequently limited by the Applicants.

194. In brief summary, the Applicants' case was that there had been no need for fixings. They said that the fencing had been moved to an extent on the Friday afternoon after its erection- but, and they argued of significance, that was before any demolition work actually commenced. The reason was said to be because cars belonging to lessees were blocked by the fencing, which Ms Roberts described orally as flush to the block nearest the only entrance, being that from Rodney Road. She accepted that a secondary entrance was made available but said it did not allow access to and from part of the Property where some cars were located. The reason had been a good one the Applicant argued.
195. There was not, the Applicants contended at all unreasonable as an action and did not give rise to any health and safety risk because there was no work being undertaken on the site at the time. The Applicants additionally argued that the fixings were only applied when the demolition contractor, Gloucester Asbestos Limited, left the site and not whilst it was working. They added that when the main contractor then arrived on site, the fixings were removed. Hence the presence of the fixings was brief and served no useful purpose. They produced photographs [176- 184].
196. The Respondent argued that to ensure health and safety onsite, the fencing had to remain in the intended place. It could not be risked that the fencing might be moved on another occasion. Hence, the Respondents contended that it was appropriate to fix the fencing for that reason. The fencing was not fixed out of spite.
197. The Tribunal had sympathy with both positions as set out. The Tribunal accepted that the Applicants and/ or other lessees had a reasonable reason for moving the fencing and that no risk arose from that action on the Friday afternoon. The Tribunal also accepted that there was a logic to the Applicants' argument that there ought to have been fixings from the start if there was concern about the fence being moved but that would not have reduced the service charges. Further, the Tribunal accepted that the Respondent could reasonably consider that the risk had altered upon the fencing having been identified as having been moved other than by contractors.
198. The Respondent did not engage very effectively with the Applicants' point about timing and any purpose served. However, the Tribunal was unable to find it unreasonable for the Respondent and its agents where the fencing had been moved to have concerns that it could be moved

again during the ongoing work and that a health and safety risk could arise.

199. The Tribunal therefore determined that fixing the fencing in place, even at the particular time and for a modest period, was within the range of reasonable decisions which the Respondent could take in the circumstances: the question was not what the Tribunal considered the best course of a range of reasonable ones or what the Tribunal might have decided to do itself, which the Tribunal did not consider. The Tribunal determined that the fixing costs are payable by the Applicants in the sums individually charged to them. The Tribunal again considers it unnecessary to identify anything specific about the service charges per Applicant in relation to this item as they are unchanged from the service charges which had been demanded.

### **Decision**

200. The service charges demanded by the Respondent in respect of the items disputed by the Applicants are payable in the sums demanded save where reduced above in respect of the electricity works.

### **Costs and Fees**

201. In relation to costs and fees, the Tribunal did not seek representations at the hearing. The outcome was not known and although not the only consideration, would be a relevant factor. The Tribunal therefore explained that it would give Directions in relation to submissions in writing at the time of issue of this Decision.
202. Any submissions should encompass any applications a party wishes to make for recovery of any costs and fees and for the prevention of recovery of costs and fees, including pursuant to section 20c and paragraph 5A. As each party might apply in relation to different aspects of the Tribunal's jurisdictions as to costs and fees, the Tribunal has provided for all applications to be made and then for the other side to be able to respond to any such. The Tribunal will thereafter determine any such applications.
203. Directions are therefore given as follows:
- a) Any party wishing to make any application in respect of costs and fees may do so by 14 days from provision of this Decision.
  - b) Any party wishing to respond to any such application may do so by 14 days from any such application.
  - c) The Tribunal will determine any application made and in dispute on the papers as soon as practicable thereafter.

### **Right to Appeal**

1. A person wishing to appeal this decision to the Upper 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.
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. Where possible you should send your further application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal to deal with it more efficiently.
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.