FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00CQ/LSC/2024/0628**
Property	**:**	**Beauchamp House, Greyfriars Road** **Coventry CV1 3RX**
Applicants	**:**	**Maria Sthefanie Devia Cartagena** **Vicky Hans** **Stuart Brettell** **Neil Ward** **Steve White** **Manohar Sahota** **Raghbir Sahota**
Representative	**:**	**Maria Sthefanie Devia Cartagena**
Respondent	**:**	**Beauchamp House RTM Limited**
Representative	**:**	**Mrs Kinza Wahed (counsel) instructed by Kennedys Law LLP**
Type of applications	**:**	**Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985 (“the Act”) and costs applications under Section 20C of the Act and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge C Goodall (Chair)** **Mr I Humphries FRICS** **Judge C Rhys**
Date and place of hearing	**:**	**14 & 15 May 2026 at Centre City Tower Birmingham**
Date of decision		

DECISION

Background

1. The application in this case was made in December 2024 and challenged service charges levied in the service charge years from 1 April to 31 March in each of 2020/21, 2021/22, 2022/23, and 2023/24, and to the budgeted service charge in 2024/25 for services provided in accordance with the leases of the Applicants' flats at the Property.

2. After several abortive attempts to list the case for hearing due to inability to find mutually available dates for the parties, the case was listed for hearing over two days on 14 & 15 May 2026, to be preceded by an inspection.

3. At the hearing, the Applicants case was presented by Mr Neil Ward and Mr Steve White, with the approval of the original applicant and appointed representative, Ms Devia Cartagena. The Respondent was represented by Mrs Kinza Wahed of counsel. Attending the hearing on behalf of the Respondent were its two directors, Mr John Puri and Dr Anoosh Rasool, and a representative from the appointed managing agent Metro PM, Mr Fahraz Ahmed.

4. A hearing bundle comprising 3,654 pages was provided for use at the hearing.

5. This document sets out the decisions the Tribunal has reached on the issues for determination and our reasons for them.

Law

6. The legal framework setting out the Tribunal's jurisdiction in service charge cases is summarised in the following paragraphs.

7. Sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act") contain statutory provisions relating to recovery of service charges in residential leases. Normally, payment of these charges is governed by the terms of the lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.

8. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

   a. The person by whom it is or would be payable
   b. The person to whom it is or would be payable
   c. The amount, which is or would be payable
   d. The date at or by which it is or would be payable; and
   e. The manner in which it is or would be payable

9. Section 19(1) of the Act provides that:

"Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –

(a) Only to the extent that they are reasonably incurred, and

(b) Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

10. Section 19(2) of the Act provides that:

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

11. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. If the tenant gives evidence establishing a prima facie case for a challenge, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions on the strength of the arguments. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten [1985] 2EGLR100 / Daejan Investments Ltd v Benson [2011] EWCA Civ 38*).

12. When interpreting a lease, the Tribunal has to identify the parties' intention by reference to what a reasonable person having all the relevant background knowledge would understand the terms to mean. We have to focus on the meaning of the words in their context and in the light of the natural meaning of the clause; any other relevant provisions; the overall purpose of the clause and the lease; the facts and circumstances known by the parties at the time; and commercial common sense (*Arnold v Britton* [2015] UKSC 36).

13. Section 20 of the Act imposes an obligation upon a landlord to consult, or obtain dispensation from consultation under section 20ZA, if a landlord intends to carry out "works on a building" which will cost more than £250.00 per lessee, or if the landlord propose to enter into a "qualifying long term agreement" ("QLTA") which will cost more that £100.00 per lessee per annum. There are detailed provisions setting out how consultation should be carried out and how dispensation can be applied for that it is not necessary to set out in this decision.

Inspection

14. The inspection took place in the morning of 14 May 2026, and was attended by the Applicant, Mr Stephen White, and Mr Neil Ward, for the Applicants, and by Mr John Puri and Dr Anosh Rasool, Directors of the Respondent, and Mr Fahraz Ahmed, from their managing agent, for the Respondent.

15. The Property is a development of 136 residential flats in Coventry carried out around 20 years ago. The flats are arranged in five blocks on 4/5 floors each with an independent entrance door arranged around a central courtyard. There is a car park floor at basement / ground floor level running under the whole of the blocks and the courtyard. The site slopes downwards from the south-east to the north-west so that the car park entrance is at ground floor level at the north-west end but is underground at the south-east end.

16. The main purpose of the inspection was to inspect the lighting in the communal corridors of each block and in the car park, as it had been renewed in 2022 and the totality of the costs are an issue in the case. The corridors had multiple light fittings each being a round fitting in design which we were told are fitted with LED light bulbs and switched by PIR movement detector sensors. Emergency light fittings (always on) have also been installed.

17. In the car park, lighting is provided by LED batten fittings which we were told had emergency battery back-up, microwave sensors, and standby dim functions.

The issues

18. The original application was formulated more as a series of complaints about rising service charges and also raised governance and constitutional issues with the Respondent company.

19. Following a Case Management Conference, on 27 February 2025, Judge Barlow directed that the issues for the Tribunal to determine comprised consideration of whether the charges under eight specific headings were payable under the lease, reasonably incurred, reasonable in amount (in relation to the nature of the works, the contract price and the supervision and management fee) and/or of a reasonable standard. She noted that the issues may be amplified by the parties in their statements of case.

20. The eight issues included:

- Building maintenance, in particular: … communal/emergency lighting

- Contributions to the reserve fund

21. Judge Barlow also directed that corporate compliance issues concerning the conduct of the Respondent company, its governance, and disputes between members of the Respondent and the board were not matters within the jurisdiction of the Tribunal.

22. The Applicants set out their issues most fully in witness statements rather than in a formal statement of case. The witness statement of Mr Neil Ward, dated 4 June 2025 contained a further issue relating to whether the Respondent had complied with consultation under section 20 of the Act in making the appointment of the managing agents, as his case was that their appointment is a QLTA on which consultation is required to avoid a statutory cap of £100.00 per annum per lessee on the management consultants fees.

23. On 8 May 2026, Ms Devia Cartagena emailed a skeleton argument to the Tribunal in which she outlined that the Applicants wished to proceed with only four issues in the case, these being:

"(a) Lighting works undertaken during May–June 2022 and whether those works required consultation under section 20 of the Landlord and Tenant Act 1985.

(b) The transfer of £81,999 from the service charge account to the reserve fund without prior budget provision.

(c) The Respondent's failure to hold reserve funds in an interest-bearing account as required by the lease.

(d) Whether the MetroPM Property Management Agreement dated 2 July 2021 constitutes a Qualifying Long-Term Agreement under section 20ZA of the Landlord and Tenant Act 1985."

Application to adjourn

24. At the start of the hearing, Mrs Wahed applied for an adjournment of the hearing on the basis that the original scope of the case had substantially changed following submission of the skeleton argument. The issues the Applicants now sought a determination on, were different from those originally formulated, and the Tribunal should issue further procedural directions to ensure the Respondent had a sufficient understanding of the Applicants' case and could respond accordingly. The hearing should proceed as a case management hearing instead.

25. The Tribunal refused the application to adjourn for the following reasons:

    a. The overriding objective requires that the Tribunal manage cases in a proportionate manner, and it should seek to avoid delay. The difficulties already experienced in setting a hearing date made the Tribunal loath to adjourn unless it was clearly necessary ;

b. The Applicants skeleton argument reduced, rather than increased the issues;

c. Of the four issues now remaining, issues (a) and (b) (as set out in paragraph 23 above) had been identified in February 2025 as being at large in the case;

d. Issue (d) (as set out in paragraph 23 above) had been clearly flagged as an issue the Applicants wished to pursue in Mr Whites witness statement dated June 2025;

e. The question of interest on reserves (being issue (c) as set out in paragraph 23 above) had been raised in Mr White's undated "reframed written submissions" in the hearing bundle at page 3578 and in a series of email in November 2025 at pages 3602 – 3623;

f. The interest issue was in any event a very simple discrete point that the Respondent ought to be able to deal with on the second day of the hearing, as that would allow sufficient time to assemble and call oral evidence on the point.

Issues

26. The issues before the Tribunal were therefore those identified in the skeleton argument sent on 8 May 2026. Each will be considered in turn.

The Lighting Works

The facts apparent from the documents in the bundle

27. For the assistance of the parties, in this section, the numbers in square brackets are the page reference in the hearing bundle to where the supporting document is found.

28. In the early part of 2022, the manager and directors embarked on preparations for repair / replacement of the lighting systems in the communal areas at Beauchamp House and in the garage area. In his first witness statement, Mr Puri describes the project as a "strategic decision to replace all our lights with energy efficient LED lighting installations" **[278]**.

29. Three quotations were obtained for lighting works, from Rowlec Ltd, Energicity Ltd, and from Mackin Electrical.

30. The Rowlec quote **[334 and 3431]** is dated 18 February 2022 and is only for lighting in the communal corridors. It offered two prices dependent upon the light fitting chosen, the first being £12,535.00 and the second being £18,844.00, each plus VAT.

31. There are two quotes from Energicity. The first is dated 28 April 2022 **[345]**. It is a quote relating to car park lighting and is for the sum of £21,560.00 plus VAT.

32. The second Energicity quote **[3434]** is dated 4 May 2022. It provides an assessment of the existing communal lighting and points out that there are two types of light currently installed, being fluorescent fittings and LED polo fittings. Necessary repairs, particularly to non-functioning PIR sensors, are identified and the quote reports that the emergency lighting is "non-compliant", which needs to be remedied. The quoted sum is for replacement of the fluorescent fittings only (and presumably also remedial work to the emergency lighting) and is in the sum of £19,643.00 plus VAT.

33. There are two quotes from Mackin Electrical **[337 & 341]** both dated 26 April 2022. One is for works to the communal corridors. This quote also identifies defects and recommends replacement of all light fittings, including the functioning LED polo fittings, installation of new LED microwave sensors, and associated additional benefits. Item 6 in the specification is "Install (qty 50) new LED maintained (always on) emergency exit lights …". The overall figure quoted is £34,262.00. A deposit of £21,000.00 was required to commence work.

34. The second Mackin Electrical quote is for works to the lighting in the car park area. The quote notes that the existing installations are expensive to run and recommends the replacement of a total of 210 lighting units, all with on/off sensors and some with battery back-up and standby dim function. The price quoted is £23,000.00. A deposit of £15,000.00 was required to commence work.

35. On 11 May 2022 **[3439]**, Mackin Electrical invoiced the Respondent for a deposit of £15,000.00 (no VAT) in order to commence work on the car park lighting.

36. On 12 May 2022 **[329]**, the managing agent wrote to the first applicant (and presumably to all lessees) to inform her that a programme to remediate the car park lighting would commence on 23 May 2022.

37. On 17 June 2022 **[3440]**, Mackin Electrical invoiced the Respondent for the balance of the quoted price for the car park lighting work in the sum of £8,000.00 (no VAT).

38. On 28 June 2022 **[3441]**, Mackin Electrical invoiced the Respondent in the sum of £31,762.00 for works to install LED microwave emergency lighting and non-emergency lighting fixtures in common areas as per proposal 19062022I. That invoice allowed for phased payments over the period July to October 2022.

39. Also, on 28 June 2022 **[2069]**, the managing agents wrote to the first applicant (and presumably to all lessees) to announce that Mackin Electrical would be commencing a programme to remediate the internal block lighting in the communal corridors on 4 July 2022.

40. On 16 December 2022 **[1034]**, Mackin Electrical invoiced the Respondent for the sum of £2,500.00 for work to "install 50 new LED emergency exit lights per contract".

The oral evidence

41. Mr Ahmed accepted that there had been no consultation as required under section 20 of the Act on the lighting works.

42. Mr Ahmed's evidence was that the management company always treated the lighting works projects as two separate projects; one for the communal corridor lighting and one for the car park lighting, as the Respondent was unsure whether and if so when it would have funds available to carry out both projects together. That is why there are two separate quotes from Mackin Electrical and Energicity. Accordingly, consultation was not required, as the threshold for consultation arose only if the costs applied to the service charge exceeded £250.00 per lessee, a grand total of £34,000.00 (£250.00 x 136 lessees).

43. In answer to questions from Judge Rhys, Mr Ahmed explained that as the Mackin electrical quote for the car park project was in any event above the consultation threshold, a decision had been taken to obtain a reduced quote to bring the price below £34,000.00. Any note of this decision that may exist had not been included in the bundle of documents; nor had the amended quote.

44. Mr Ahmed explained that the split between the two projects had been brought to the attention of the lessees in the two letters to them referred to above. He was asked what dates the contracts had been placed for the two elements of the lighting project. He could not recall, and he confirmed that the purchase orders had not been included in the bundle of documents.

45. Dr Rasool gave evidence. His evidence focussed on the financial inability for the Respondent to contract for the cumulative value of the two projects at the point that the car park works order was placed. The Respondent only had reserves of £20,000.00 and could not guarantee that it could afford to pay for both projects. He regarded the prospect of making a further call on the lessees by way of a balancing charge at the year-end as an unacceptable outcome that should be avoided.

46. Dr Rasool said that the two projects were not commissioned nor commenced on the same date, but he was not able to confirm the relevant dates.

47. Mr Puri gave evidence. He also stressed that the financial position of the Respondent precluded the placing of one contract for both elements of the lighting works. But he was also concerned that the electricity cost for Beauchamp House needed to be controlled, particularly as the Ukraine war was likely to result in significantly increase costs in October 2022, and the price cap applicable to domestic properties does not apply to the communal areas of Beauchamp House, so the works were important. He was also very averse to the risk of asking lessees to pay a balancing charge.

48. The Tribunal asked what sum had been included in the 2022/23 budget for the lighting works. Dr Rasool confirmed that a sum of £41,546.00 for repairs and maintenance and a long term reserve of £8,000.00 **[1992]** had been budgeted, but at the time of fixing the budget it had not specifically been allocated for the lighting works. The real benefit of the savings that might be made from carrying out the lighting works had not been fully appreciated when the budget had been set.

Findings of fact on the lighting issue

49. The Tribunal finds from its consideration of the documents and the evidence that:

a. The Directors identified significant benefits from carrying out the lighting works, no later than late February 2022. At the time of those discussions, the lighting works were conceived as a single project – that is the clear evidence of Mr Puri;

b. For reasons that we cannot determine, at the point that quotations for the lighting works were sought, it had been decided to split the works into two elements; the communal areas and the car park. The two most likely reasons were (1) affordability, and (2) concern about the process of consultation;

c. Whatever the reason, on the facts, there were two separate contracts, one for each element of the lighting works;

d. We are unable to make a finding of fact about the start date for each element due to the absence of what would have been clearly relevant documents in the bundle.;

e. On the Respondent's best case, the car park works were commissioned and probably commenced on 12 May 2022 and were completed on 17 June 2022. The communal area works were commissioned and commenced on or around 28 June 2022.

Submissions

50. Mrs Wahed's submission was that the lighting works did not require to be consulted upon because they formed three separate set of works the cost of each being below the consultation threshold. The three sets of works were the costs of the car park lighting at £31,762.00, the costs of the car park lighting works at £23000.00, and the costs of the works invoiced in December 2022 at £2,500.00.

51. The projects had been split into three sets of works for legitimate reasons concerning fundability. They should also not be regarded as one set of works applying the test set out in *Francis v Philips* [2014] EWCA Civ 1395 at paragraph 36:

"It is not in issue that the question of what a single set of qualifying works comprises is one of fact. It is a multi-factorial question the answer to which should be determined in a commonsense way taking into account all relevant circumstances. Relevant factors are likely to include (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character from, or have no connection with, each other. I emphasise that this is not intended to be an exhaustive list of factors which are likely to be relevant. Ultimately, it will be a question of fact and degree."

52. If the Tribunal regarded the works as being two set of works rather than three, on the facts, the works to the communal areas and the car park were physically separate from each other; the phasing was that the car park works had to be completed first before there could be confidence that the second phase could commence; and there were two contracts. The fact that the same contractor was used was just a reflection of the fact that the best contractor provided both quotes. The Tribunal should determine that consultation was not required.

53. If the Tribunal were not to accept this argument, an application had been submitted to the Tribunal on 13 May 2026 for dispensation. Case law summarised in paragraph 11-45 of Service Charges and Management 5th edition suggested that the Tribunal should proceed to determine the dispensation application before ruling on this issue, and within the current proceedings.

54. For the Applicants, Mr Ward pointed out that the successful quotes had been dated with the same date, the same contractor had been appointed for both the communal lighting and the car park lighting works, both quotes had been accepted within the quote period, the two contracts were part of a co-ordinated contractual process, the works had been carried out over a short period of around 6 weeks, and invoices totalling £54,672.00 had been submitted also within 6 weeks.

55. These factors indicated that the lighting works in both areas of Beauchamp House were a single set of works, and the Tribunal should determine that only £250.00 per lessee was payable for the works due to the absence of consultation.

Discussion

56. The Applicants' challenge on the lighting works is to the absence of consultation under section 20. There is no challenge to the reasonableness of the lighting works themselves.

57. We do not accept that the second phase of the lighting works on the communal corridors were in any event a set of works on which there was no requirement to consult. We are sceptical of the suggestion that by contracting for a reduced price just below the consultation threshold, the scope of the works changed from being one to two sets of works.

58. The failure to produce the amended contract or any record of it, and the fact that the 28 June and 16 December 2022 Makin invoices add up to exactly the same sum as the Makin quote, and the fact that the sum invoiced in the 16 December 2022 invoice was for works included within the Makin quote, clearly indicate to us that the communal corridor lighting works themselves were a single set of works as set out in the original Makin quote, the cost being the sum of £34,262.00, which is above the consultation threshold. The works carried out which generated the 16 December invoice were integral to the communal corridor lighting project. It appears to us that the splitting of the costs into two invoices was an attempt to ensure the overall cost was below the consultation threshold, rather than the carrying out of a genuinely separate set of works.

59. The Tribunal's view is also that the combined lighting works to the communal area and the car park were a single set of works. We are influenced by Mr Puri' statement that they were originally conceived with the single purpose of installing energy efficient fittings with a view to making substantial savings on the ongoing energy costs at Beauchamp House.

60. Applying the criteria set out in paragraph 36 of *Francis v Philips*:

    a. The works were carried out in the same building, the only distinction being that the car park is in nature a different environment from communal corridors. We do not see that distinction as being a material factor in identifying whether the works were a single or multiple set of works;

    b. On the facts, there were indeed two separate contracts but that is not the issue. The question is whether they formed part of the same works for the purposes of consultation;

c. The works were done more or less at the same time, the six week time gap not being material in our view;

d. The lighting works in the communal areas and the car park were the same in character, being replacement with energy efficient LED light fittings, and the purpose of the works was the same.

61. In our view, ability to pay and affordability on the part of the Respondent do not have a material impact upon the determination of whether the works are a single set of works. In any event there was no documentary evidence in support of this point. It is entirely possible to carry out a single set or works in more than one phase, for practical or commercial convenience.

Decision

62. The Tribunal determines that the lighting works carried out in 2022/23 to the communal areas and the car park were a single set of works. As the cost exceeded £250.00 per lessee, and as there was no consultation, the sum payable by the Applicants for them is limited to £250.00. The total cost of the lighting works was £57,262.00. Our understanding of the apportionment of service charges in the leases is that all lessees pay an equal proportion of a 136th part of the service charge, so each Applicant is entitled to a credit on their service charge of £171.04 (£421.04 - £250.00).

Application for dispensation

63. On 13 May 2026, the Respondent submitted an application to the Tribunal for dispensation from the obligation to consult on the lighting works in the event that the Tribunal should find that obligation arose.

64. Mrs Wahed asked the Tribunal to determine that application within this case even though it was only submitted the day before the hearing. In the normal course of events of course, the application for dispensation would go through a tribunal process of issue of directions to ensure the Applicants could consider and respond to the application. It was a matter of concern to the Tribunal that determination of the dispensation application as part of this case would unfairly disadvantage the Applicants ability to respond properly.

65. Mrs Wahed drew our attention to paragraph 11-45 from Service Charge and Management 5th edition in support of her submission for determination of the dispensation application within this case. That provides:

"... It is not uncommon for the tribunal, during the course of the hearing, to identify a failure by the landlord to comply with the consultation requirements that the tenants are unaware of and therefore does not form part of the tenants' case before the tribunal. In such cases, the tribunal must put the point to the landlord and ensure that the landlord is given a sufficient opportunity to address the argument, including, if necessary, the opportunity to file evidence. A failure to do so may amount to a breach of natural justice and hence be a sufficient procedural irregularity to ground an appeal.

In *Warrior Quay Management Co Ltd v Joachim*, it was held that where there is an issue in relation to compliance with the Consultation Regulations and there is no formal dispensation application before the tribunal, then, at least where a landlord is not professionally represented, the tribunal should ask the landlord whether it wishes to apply for dispensation, rather than not raising the point and omitting to consider at all whether dispensation should be granted. However, in practice the tribunal usually requires the landlord to make a separate application for dispensation and to pay the appropriate application fee."

66. The first paragraph, of course, does not apply to this case at all. The Applicants are well aware of the Respondents failure to consult on the lighting works; that is the whole thrust of their case. The Respondent is also well aware that is the issue.

67. So far as the *Warrior Quay* case is concerned, the text above simply suggests that the Tribunal should ensure an unrepresented landlord is made aware of the opportunity to apply for dispensation. That, again, is not applicable to this case.

68. We see no good reason to depart from the usual practice set out in paragraph 11-45. We are not willing to determine the dispensation application as part of this case. It has of course been open to the Respondent to make the dispensation application on a precautionary basis at any time after this application was submitted in December 2024.

69. There will be a slightly uncomfortable period between the issuing of this decision and the determination of the dispensation application that the Respondent has submitted, for the impact of our decision above may not apply if dispensation is granted. We cannot require, but we would suggest to the Applicants, that they should not press for implementation of our decision above until the dispensation application is determined.

70. As set out by Judge Rhys during the hearing, it is for the Respondent to make enquiries with the Tribunal to ensure that its application for dispensation has been issued as a stand-alone application, and no further steps are required by the Respondent in order that the Tribunal follows its usual process.

Transfer of reserves

71. This issue arises because the year-end accounts for the period 1 April 2023 – 31 March 24 reported a surplus for the year, after budgeted reserves had been taken, of £81,999.00. The Respondent transferred that surplus to reserves, rather than crediting the lessees individual service charge accounts. The Applicants say that treatment was wrong.

72. Clause 3.2 of the Applicants' leases is a covenant by the lessees to pay the Service Charge by two equal instalments in advance … . The Service Charge is defined (see clause 1.8) as a sum equal to 136th … of the Annual maintenance Provision.

73. Clauses 2 and 3 of the Fourth Schedule to the leases provide:

"The Fourth Schedule

…

Part II Computation of Annual Maintenance Provision

2. The Annual Maintenance Provision shall consist of a sum comprising:

2(i) the expenditure likely to be incurred in the Maintenance Year by the Company for the purposes mentioned in the Fifth Schedule together with

2(ii) an appropriate amount as a reserve for or towards those matters mentioned in the Fifth Schedule as likely to give rise to expenditure after such Maintenance Year …

2(iii) a reasonable sum to remunerate the Company for its administrative and management expenses …

3(a) After the end of each Maintenance Year the Company shall determine the Maintenance Adjustment calculated as set out in the next following sub-paragraph

3(b) The Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2(i) above shall have exceeded or fallen short of the actual expenditure in the Maintenance Year

3(c) The Lessee shall be allowed or shall pay on demand as the case may be the proportion of the Maintenance Adjustment appropriate to the Flat and the Parking Space"

74. The Applicants' case was that by the operation of paragraphs 2(i) and 2(ii), it was legitimate for the Respondent to levy a service charge in advance each year on the basis of a budget that included collection of reserves to cover anticipated expenditure in future years, but that it was not legitimate to transfer any surplus service charge income at the end of any

year to reserves. That surplus should be "allowed" to the service charge payers by the crediting of their service charge accounts with their share of the surplus. Instead, the Respondent had incorrectly treated the surplus in 2023/24 as reserves.

75. Mr White drew our attention to paragraph 7.16 of the RICS Service Charge residential management Code 3rd Edition, which clarifies that the typical options for surpluses on the service charge account found in residential leases were that they (a) be credited towards the following year's service charge budget (b) credited to the reserve fund or (c) be refunded to the leaseholders. He said that the Applicants' submission was that the leases in this case required the first option to be adopted.

76. The Respondent's case was that the lease in fact allowed the transfer of surpluses to reserves as the obligation to "allow" the surplus to be credited to the lessee's service charge account was unclear in its meaning, and in any event was optional by virtue of the use of the word "shall" in paragraph 3(c), rather than the word "must".

77. Mr Ahmed's evidence was that being able to use the surplus generated had had a beneficial impact upon the operation and management of Beauchamp House, by reducing the number of insurance claims and so securing a substantial reduction to the annual insurance premium. It is interesting to note that in the accounts for 2023/24, there is a note stating:

"The transfer of the additional surplus to the reserve fund is done to strengthen the overall reserve balance, ensuring that Beauchamp House is well-prepared to handle large-scale, occasional or unexpected expenditure."

78. Respectfully, the Tribunal disagrees with the Respondent's interpretation of the Fourth Schedule. It is crystal clear to the Tribunal that "allowing" the surplus to the lessees is obligatory, as is required in paragraph 3(c). The word "shall" means "must", not "may". It is also clear to us that giving the lessees an "allowance" means that their service charge accounts should be credited with their proportion of the surplus, being option (a) in the RICS guidance quoted above. We therefore find that the Respondent has failed to comply with the terms of the lease in respect of the treatment of the surplus reported in the 2023/24 service charge year.

79. The Respondent's error was an accounting error. Its impact upon the payability of the service charge is that lessees should each have received a proportionate credit at the end of the 2023/24 service charge year for the total sum of £81,999.00, which should have been shown as the surplus for the year on the income and expenditure account. Accruals on the top half of the balance sheet should have been increased by that sum, and the surplus should not have been added to reserves on the bottom half of the balance sheet.

80. As the error was an accounting error, it had no cash impact upon the payability of the service charge for 2023/24. The impact is upon the service charges payable for 2024/25, as in theory, lessees would have a lower sum to pay for the amounts demanded on account for that year, being entitled to rely upon the credit that should have been applied to their accounts as part payment of the budgeted demand for that year.

81. It is also the case, of course, that the Respondent had and still has prospectively, the option of creating a further reserve if it anticipates the need to forward fund for a sum that falls within the categories of future expenditure set out in paragraph 2(b). It is almost always the case that a management company, particularly a RTM company, is better able to manage a building if it is well capitalised in accordance with the terms of the lease.

82. The determination that we make on this question, within the limitations of our powers under section 27A of the Act, is that the service charges demanded from the Applicants for 2024/25 must be reduced by the proportionate part of the 2023/24 surplus to which each of them was entitled.

Reserves not in an interest bearing account

83. Clause 8 of the leases provides:

“The company's powers of investment

8.1 The company hereby declares that it will hold all service charges until the same are spent in trust for the lessees of the flats and parking spaces in the Estate in the same proportions as such service charges shall have been paid

8.2 The company shall place on deposit or loan at a bank or building society or with a local authority at interest or invest in the purchase of fixed interest government securities of the United Kingdom having a final redemption date not later than five years after the date of acquisition sums representing the reserve created pursuant to paragraph 2(ii) of Part II of the Fourth Schedule and to withdraw the same from deposit or realise the same as required in order to meet expenses referred to in that paragraph or to meet any temporary deficiency in the monies available to meet expenditure referred to in paragraph 2(i) of that Part of the Schedule”

84. Under the right to manage legislation, the Respondent is obliged to comply with the obligations accepted by the Company referred to in this clause.

85. The Respondents evidence was that all service charge funds paid for Beauchamp House were kept by the managing agents in a separate designated bank account and the managing agents accounting software

was able to identify the sums in the reserve accounts with ease. It was accepted that no service charge funds were held in an interest bearing account.

86. The Respondents submissions were:

   a. The obligation to place reserve funds in an interest bearing account was permissive not compulsory, arising from the use of the word “shall”; and

   b. Nobody had, until recently, asked for funds to be placed on deposit so that the Applicants had, until that request, waived their right to rely on the clause.

87. We have already indicated that we do not accept the first of these submissions in respect of the interpretation of the Fourth Schedule above. The word “shall” indicates the placing of reserves in an interest earning account, as is required in clause 8.2, is compulsory.

88. The Respondent did not provide any authorities or detailed legal argument on the question of waiver, which can be a complicated area of law. We therefore deal with the point in a broad brush way. In our view, all forms of waiver; express or implied agreement, by conduct, waiver by estoppel or otherwise, require some form of positive act, conduct or representation on the part of the party waiving a right, which indicates that the party has decided not to rely upon the right said to have been waived. Mere silence, in our view, is not sufficient. There has been no such positive act on the part of the Applicants.

89. We determine that the Respondent was obliged under the leases to place reserve funds on deposit to earn interest, which would have been credited to the service charge accounts so as to reduce the amount of service charges payable by lessees.

90. Mr White’s submissions were that the quantum of interest should be based on the Bank of England base rate of 0.5% for 2021/22, 2% for 2022/23, and 4.5% for 2023/24. He had figures for later years, but as no accounts have been provided to the Tribunal for any later years, it is in fact premature to determine any interest sums for later years.

91. Further, we are not willing to determine specific amounts of interest on the basis of a rough and ready calculation not reduced to writing. We can only go so far as to say that for all the service charge years under challenge, the Respondent was contractually obliged to place the cash reserves on deposit to earn interest at a bank, building society, local authority, or through the purchase of short dated gilts. The Bank of England base rate is not the appropriate measure of the interest that should have been earned as it is not one of the investment options that complies with the lease, the Bank of England not being a retail bank. Additionally, a

calculation can only be made on the basis of accurate figures for the cash reserves available for deposit, which have not been provided, and will not necessarily be apparent in the accounts.

92. This decision therefore cannot be regarded as a final determination on the amount of interest that should be credited to the service charge accounts for the years under challenge. The parties should seek to agree the calculation. If agreement cannot be reached, the Applicants may apply for a further determination of the appropriate sum within 21 days of the date of this decision, at which point further directions will be issued. If no such application is made within that time period (or any extension of it), this determination will be regarded as the final determination of the application.

Is the management agreement with Metro PM a qualifying long term agreement

93. The agreement is at page 1942 of the bundle. Its commencement date is 4 July 2021, and its term is "for a period of one year less one day." A termination clause (clause 9.1) provides that:

"This agreement will end at the expiry of the Term, subject to either Party providing three months notice."

94. No written renewal agreements have been provided in this case.

95. A qualifying long term agreement ("QLTA") is "an agreement entered into by the landlord ..., for a term of more than twelve months" (section 20ZA (2) of the Act).

96. The Applicants case was that in reality the agreement has not been renewed and in practice it has therefore run for more than twelve months, so it must be regarded as being a QLTA.

97. The Respondents evidence is that an oral decision to continue the management arrangements with Metro PM was taken in February each year when the Directors set the budget each year. Mr Puri said that in his view, once the original term had passed, the contract could be terminated at any time thereafter.

98. Mrs Wahed submitted that the evidence was that the agreement was not a QLTA and so the consultation requirements in section 20 did not apply to it.

99. On this point, the Tribunal agrees with the Respondent. The Applicants suggest that the Tribunal should look at reality and note that the agreement has lasted more than twelve months. Respectfully, that is not the question. We must determine whether the Respondent entered into a QLTA at the point that the agreement or agreements started. There would

be no other point at which the need for consultation would become apparent. We must look forward as from the date of the agreement, rather than backwards following the passage of time. The original agreement dated 4 July 2021 was clearly not for more than twelve months. There is no evidence before us that at any other time the Respondent and Metro PM contracted on the basis of an agreement that at its outset would last for more than twelve months.

100. We determine that there was no obligation upon the Respondent to consult under section 20 of the Act on the entering into of the management agreement with Metro PM either when it was originally entered into or when it was orally renewed in subsequent years.

Costs

101. The Applicants have submitted applications for protective costs orders under section 20C of the Act and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

102. Mrs Wahed confirmed to the Tribunal that the Respondent did not propose to seek any costs of this application through the service charge or from any individual lessee under any provision of the lease.

103. We therefore make the costs orders requested. Any costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining any service charge payable by any of the Applicants. Any administration charge levied upon any Applicants in respect of the litigation costs of this case is extinguished.

Appeal

104. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of this decision becoming a final determination (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)