FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	HAV/21UD/LSC/2025/0767
Property	:	Flat 2, 13 Alumhurst Road, Bournemouth, BH4 8EL
Applicant	:	Cyril Freedman Limited
Representative	:	Mr Brooke of Counsel Spalter Fisher LLP, solicitors
Respondent	:	Charlie Fountain
Representative	:	No representative for the Respondent
Type of Application	:	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Member	:	Judge Pattni-Evans Mr Smith Ms Wong
Date of Hearing and Venue	:	22 June 2026 at Havant Justice Centre
Date of Decision	:	14 July 2026

DECISION

The Tribunal Determines as follows:

(A) The Tribunal is satisfied that the Lease permits recovery of the relevant categories of expenditure comprising the Major Works through the service charge.

(B) The Tribunal is satisfied, on the evidence presently available, that the Major Works are reasonable in nature and that the estimated costs obtained through the 2025 tender process were reasonable as estimates at that time.

(C) To the extent that consultation was required at this stage, the Tribunal is satisfied on the evidence before it that the statutory consultation procedure was substantially followed.

(D) The 2025 service charge demand is not currently payable because it does not correctly apportion the Respondent's liability for the Major Works project and because the Applicant had not yet incurred a liability in respect of the proposed works.

(E) The 2025 service charge demand was not admitted by the Respondent on the facts of this case.

(F) The Lease does not permit recovery of the Respondent's contribution to the Major Works before the Applicant has incurred a liability in respect of those works.

(G) The Tribunal makes limited findings regarding the future recovery of the Major Works under section 27A(3) of the Act.

The Tribunal gives reasons for the decision below.

Introduction

1. The application is for the determination of liability to pay and reasonableness of service charges for the year 2025 relating to the cost of a major works contract, professional fees and a management fee of which the Respondent's apportioned share was calculated at £32,244.62. The Respondent is the leaseholder of Flat 2, 13 Alumhurst Road. The application is pursued by the freeholder.

2. The application principally concerned the service charge mechanism of the Lease, but the applicant also Applicant sought findings that the Respondent had "admitted" the 2025 service charge demand. Alternatively, if the Lease did not permit advanced payments as contended for by the Applicant, they sought a determination that if the costs were incurred in the future, they would thereafter be recoverable as a service charge, pursuant to the Tribunal's jurisdiction under Section 27A(3) of the Landlord and Tenant Act 1985 ("the Act").

3. The application was received by the Tribunal on 9 September 2025 and directions issued for a case management and dispute resolution hearing. On 10 March 2026, the Tribunal conducted that hearing in the Respondent's absence and made directions to full hearing. Both parties were given an opportunity to send their evidence to each other and the Tribunal. The bundle thus includes email exchanges between the parties and reference to information to which the parties refer in their statements of case.

4. On the morning of the final hearing, the Tribunal received a voice message from the Respondent saying that he was unable to attend the hearing as he had

contracted food poisoning. The Tribunal offered a hybrid hearing, but the Respondent's subsequent email stated that he was unable to speak, and he could not participate by video link.

5. The Tribunal concluded that it was in the interests of justice to proceed pursuant to Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is because the matter was trial ready, with the Applicant's representative present in the Tribunal before a full panel. The Tribunal had the Respondent's position statement which set out the basis upon which he objected to the 2025 service charge demand, the Tribunal was confident that the issues raised could be dealt with in the Respondent's absence without causing prejudice and could be fairly determined on the available documentary evidence. The Tribunal also bore in mind the Respondent's non-attendance at the case management hearing, which was an opportunity to resolve the matter through a judge-led discussion. However, to ensure fairness, the Tribunal permitted the Respondent to submit a written statement before the end of the proceedings and he did so.

6. The Tribunal also read the bundle of documents provided and the skeleton argument for the Applicant. At the hearing, we heard evidence from Mr Tyrone Phillips, on behalf of the Applicant. The absence of reference to a particular document or submission should not be taken to indicate that it has not been considered. The Tribunal has focused on the issues requiring determination. In preparing these reasons, the Tribunal has had regard to the Senior President of Tribunals' Practice Direction, Reasons for Decisions, dated 4 June 2024.

Background

7. The Premises comprise a two-storey semi-detached house which has historically been converted into four residential flats. There is a shared driveway and a small communal garden at the rear. The Respondent is the long lessee of Flat 2 pursuant to a lease dated 4 September 1990 ("the Lease").

8. As part of routine management and maintenance, Mr Saltman, a Chartered Building Surveyor of BMCS, inspected the building on 16 February 2023. He provided a preliminary written report dated 1 March 2023 explaining that certain work should be carried out. A summary of the works was provided in his short report as follows ("Major Works"):

    a. Overhaul of roof and subsidiary roof and cleaning of moss.
    b. Overhaul and repairs to chimney works.
    c. Overhaul and installation of the surface / wastewater gutters and downpipes.
    d. Localised brickwork repairs / stitching.
    e. Repointing Works
    f. Masonry / Render / Stucco repairs.
    g. Timbers repairs.
    h. Replacement of defective window putty / mastic beading
    i. External Repairs and redecoration.
    j. Internal Repairs and redecorations.
    k. Deep cleaning of carpet.

l. Installation of a hard-wired smoke detector.

9. The same list is reproduced in the application to the Tribunal, save that item (h) was removed at the case management hearing as the Applicant conceded the windows fell within the demised premises.

10. In relation to the Major Works, Elcock Associates were subsequently instructed to prepare a specification of works and thereafter undertake the tendering process and oversee the project, two local contractors, namely AJB Building & Design Ltd and Atlantis Construction Ltd returned a tender.

11. In their tender report dated April 2025, Elcock set out the reasons why they preferred Atlantis. This was partly because Atlantis provided a better specification. Their estimated cost was also lower; AJB provided a total cost of £132,763.64 whereas Atlantis came in at £128,978.46. These sums included VAT, professional and management fees. Section 20 notices were given on 5 April 2024, being a "notice of intention" based on the initial specification; on 10 October 2024, a "notice of intention to carry out work" based on the surveyor's more comprehensive specification inviting observations; and on 17 April 2025, being a "statement of estimates for the major works project".

12. On 26 June 2025, a demand was issued to the Respondent under cover of an email referring to a "supplementary demand notice for internal & external redecorations". The attached invoice refers to the "Internal and External Decorations" with the sum of £32,244.62 calculated as the Respondent's share, with a due date of 2 June 2025.

The Issues

13. The main issues for the Tribunal to determine in establishing whether the service charges demanded for 2025 were payable were set out in the application as follows:

    a. Whether the Lease permits recovery of the Major Works through the service charge.

    b. Whether the Major Works are reasonable in cost and nature.

    c. Whether the statutory consultation process was complied with or dispensation is appropriate.

    d. Whether or not the Respondent's proportion was correctly calculated in accordance with the terms of the Lease.

14. As set out above, the two additional points raised by the Respondent are: whether the 2025 service charge demand was admitted and in relation to the service charge mechanism, *if* the Lease required upfront costs to be borne by the freeholder for the Tribunal to make an order regarding their future recovery under section 27A(3) of the Act.

Lease

15. The Tribunal was taken to the following terms of the Lease, as follows.

16. Clause 3 concerns the rents reserved by the Lease, clause 3.2 obliges the tenant to pay the service charge referred to in the Fifth Schedule on demand and on the rent date the sum of £100 on account of the annual service charge. The service charge as defined within this provision falls under the umbrella term of "the rents".

17. Clause 5.1 confers an obligation on the tenant to pay the rents without deduction in accordance with its terms.

18. The relevant landlord's obligations are set out in clause 6, cl. 6.2 says as follows:

"The landlord will subject to advance payment by the tenant redecorate in a proper and workmanlike manner the exterior of the building at least once in every five years and will from time to time and at all times during the said term well and substantially repair and renew (if necessary) the foundations roof roof timbers main walls chimney stacks eaves gutters and downpipes fences walls and other drains sewers wires cables and pipes (not used exclusively for the demised premises) forming part of the building of which notice of disrepair has been given to the landlord by the tenant or the tenant for the time being of any part of the building."

19. The Fifth Schedule sets out the heads of service charge expenditure and liabilities. Under Part 1 the leaseholder is liable to pay 25% of costs "incurred in the landlord" discharging obligations under the terms of the Lease. This includes "the costs of carrying out works or services of any kind whatsoever which the landlord may deem desirable or necessary for the purpose of maintaining or

improving the service is in all for the building and the cost of any other services reasonably provided by the landlord from time to time for the better employment or use of the building by its occupiers including the cost of maintaining the communal garden area and drive".

20. The same apportionment also applies to "fees charges and expenses and commissions payable to any solicitor accountant surveyor valuer architect engineer and managing agent who the landlord may from time to time employ in connection with the management of the building and the costs of periodically inspecting and examining the Demised Premises".

21. Under Part 2 of the Fifth Schedule, the service charge expenditure liability increases to 33% where the costs include decorating the entrance vestibule, the cost of providing communal lighting and emergency lighting, decorating and repairing or renewing from time to time the stairway and the doors and windows of the entrance vestibule and stairway. Under Part 3, the cost of decorating the stairway coloured yellow on the plan incurs a liability of 50%. There are a number of plans attached to the Lease, but these were provided to the Tribunal in a black and white copy only.

<u>Law</u>

Approach

22. The relevant law is contained in the Landlord and Tenant Act 1985 ("the Act"). Under section 27A(1), an application may be made to the appropriate tribunal

for a determination whether a service charge is payable and, if so, as to the person by whom it is payable, the person to whom it is payable, the amount payable, the date by or at which it is payable, and the manner in which it is payable.

23. In an application under section 27A, the Tribunal's task is to determine, on the evidence before it, whether the relevant service charge is payable and, if so, whether the costs were reasonably incurred. Where a tenant raises a reasonableness challenge, the nature and cogency of the evidence adduced by each party will inform that evaluative exercise. The Tribunal has approached the present application on that basis.

24. Under section 19 of the LTA 1985, a tenant is liable to pay a service charge only to the extent that the costs are reasonable. The Tribunal must therefore decide whether the costs were reasonably incurred and, where they relate to works or services, whether those works or services were carried out to a reasonable standard. Where charges are demanded in advance, the sums sought must represent a reasonable estimate of the likely costs.

25. For the interpretation of a lease agreement, the Tribunal starts with the principles for interpretation of contracts generally, which were helpfully summarised by Lord Neuberger in *Arnold v Britton* [2015] UKSC 36; [2015] A.C. 1619 at [15].

> *"[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable*

person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of:

(i) the natural and ordinary meaning of the clause,

(ii) any other relevant provisions of the lease,

(iii) the overall purpose of the clause and the lease,

(iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and

(v) commercial common sense, but

(vi) disregarding subjective evidence of any party's intentions."

26. No special rules of interpretation apply to leases: *Arnold v Britton* at [23]. But Lord Neuberger did state that leases needed to be "clear" about the costs which are covered by service charges provisions:

"120. In the courts below there was some discussion of the "restrictive" approach said to be appropriate to service charge provisions (McHale v Earl Cadogan [2010] 1 EGLR 51, para 17 per Rix LJ). I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.

27. On section 27A(3) of the Act, the jurisdiction requires the Tribunal to determine a concrete question of payability. It cannot do so where the proposed expenditure is insufficiently defined or supported by evidence. The more contingent or provisional the costs, the less appropriate it is to determine their reasonableness in advance.

28. In terms of the construction of the lease, counsel for the Applicant referred the Tribunal to the well-established point that the ordinary meaning of 'incurred cost' entails having incurred some sort of an obligation to pay: *Daiches v Bluelake Investments Ltd* (1985) 17 HLR 543, 548-549; *Capital & Counties Freehold Equity Trust Ltd* [1987] 2 EGLR 49, 50. The relevant clause there was:

> *To pay to the Landlord on demand in writing being made by the Landlord by way of additional rent an amount (hereinafter referred to as "the Service Charge") equal to 27.59 per centum of all amounts sums costs and expenses of each and every kind whatsoever which may from time to time during the said term be expended or incurred or become payable by the Landlord (as certified by the Landlords' Accountant as hereinafter provided) in respect of the matters set out in the Fourth Schedule*

29. In this case, His Honour Judge Barker KC (formerly QC) held that within the context of the lease, the term "incurred" was synonymous with "expended" or "become payable". As such, the leaseholder was not liable to contribute such a proportion of the cost of relevant work which the freeholder had contracted with

builders to have carried out, but which had not yet been done by the end of the term.

30. A provision in a lease that the landlord's repairing covenant is subject to the tenant paying the service charge does not create a condition precedent to the landlord's liability under the covenant: *Yorkbook Investments Ltd v Batten* (1985) 18 HLR 25, CA.

Section 20

31. The Landlord and Tenant Act 1985 (as amended) impose statutory controls over the amount of service charge that can be charged to long leaseholders. If a service charge is a "relevant cost" under Section 18, then the costs incurred can only be taken into account in the service charge if they are reasonably incurred or works carried out are of a reasonable standard (section 19).

32. Section 20 imposes an additional control. It limits the leaseholder's contribution towards a service charge to £250 for works unless "consultation requirements" have been either complied with or dispensed with. There are thus two options for a person seeking to collect a service charge for either works on the building or other premises costing more than £250. The two options are: comply with "consultation requirements" or obtain dispensation from them.

33. In this case, the issue was whether the consultation requirements were necessary, or alternatively, whether they were met. To comply with consultation requirements a person collecting a service charge must follow procedures set out

in the Service Charges (Consultation Requirements) (England) Regulations 2003 (section 20ZA(4)).

34. More specifically, Part 2 of Schedule 4 to the 2003 Regulations imposes effectively four stages for consultation. Under stage 1 the landlord must (i) give written notice to the leaseholders of its intention to carry out qualifying works, (ii) invite observations in relation to the proposed works (to which the landlord must have regard) and (iii) invite the leaseholders to nominate a contractor from whom the landlord should seek to obtain an estimate. Under stage 2 the landlord must obtain at least two estimates for the proposed works, including from any contractor nominated by the leaseholders. Under stage 3 the landlord must issue a statement to the leaseholders with two or more estimates and a summary of, and the landlord's response to, the leaseholders' observations. Under stage 4 the landlord must notify the leaseholders of the award of the contract, unless it is awarded to the contractor submitting the lowest tender or to a contractor nominated by the leaseholders.

35. However, the authorities make clear that the limitation of £250 relates to liability to contribute to costs which have been incurred, rather than to advance or estimated charges. Those principles are reflected in *23 Dollis Avenue (1998) Ltd v Vejdani* [2016] UKUT 0365 and *Assethold Ltd v Terixeira* [2022] UKUT 285 (LC).

Discussion and Findings

Issue 1: Whether the Lease permits recovery of the relevant categories of expenditure through the service charge.

36. There are three elements to Clause 6.2: the necessity of the work, the scope of the repairing covenant and the requirement for notice to be given. The Applicant focused on this provision of the Lease because the specifically wording of it points to major works.

37. Taking each point in turn. Firstly, we are satisfied that the work is necessary. The Applicant has followed a logical and sensible process of having the Property surveyed, the report is detailed and the specification provided by Elcock Associates is clear and reasoned. In so far as the Tribunal had the views of the Respondent on this matter, we were referred to an email dated 9 October 2024, the Respondent refers to the external condition of the Property noting that the brickwork needed fixing, roof slates need looking at and commenting that the communal hallway looked “awful”. Whilst he ultimately disagreed with the cost of the work and suggested that a less comprehensive project would have sufficed, he did not appear to challenge that work was required. In the Tribunal’s view, the Surveyor, as a regulated professional who provided a detailed report for this Property, was best placed to identify the manner in which the repairs ought to be carried out. As such, the Tribunal is satisfied that the works are necessary.

38. Secondly, we are satisfied that the Landlord's relevant categories of expenditure comprising the Major Works fall within Clause 6.2. The Tribunal notes that although the summary descriptions indicate extensive works such as an "overhaul" of the roof, the detailed specification explains that this comprises removing excess moss, repairing damaged or slipped tiles and carrying out a more thorough inspection with leadwork as required.

39. In the Tribunal's view, Clause 6.2 is widely cast permitting works to the *foundations roof roof timbers main walls chimney stacks eaves gutters and downpipes fences walls and other drains sewers wires cables and pipes (not used exclusively for the demised premises) forming part of the building…*

40. As such, in terms of works to the exterior, the Tribunal is satisfied that clause 6.2 of the Lease applies to the external Major Works, the summary descriptions provided by the initial surveyor are set out in paragraph 8(a) to (g) and 8(i) above. They are therefore categories of expenditure which are, in principle, recoverable through the service charge.

41. As to the interior of the Property, the Tribunal is satisfied that the carpet works – see description at paragraph 8(k) above, and the internal repairs and redecorations at paragraph 8(j), above, fall within the landlord's obligations under paragraph 2 of Part 1 of the Fifth Schedule. They are also categories of expenditure which are, in principle, recoverable through the service charge. As we turn to below, the extent of the Respondent's liability for those costs is a separate question, because Parts 2 and 3 of the Fifth Schedule apply different

apportionments depending on where the works are carried out within the Property.

42. The Tribunal considers that the replacement of battery-powered smoke detectors with hard-wired smoke detectors falls within the categories of recoverable expenditure under paragraphs 1 and 2 of Part 1 of the Fifth Schedule. The works relate to health and safety and to the proper maintenance and improvement of services for the building. They are therefore recoverable in principle through the service charge, subject to reasonableness and the remaining issues.

43. As for the fees incurred, these are in connection with the instruction of professional advisers, namely Elcock and Mr Saltman, and management fees, these are relevant categories of expenditure recoverable under Paragraph 4 of Part 1 to the Fifth Schedule.

44. Thirdly, in so far as the clause requires notice of defects to be given to the landlord, the Lease is silent on how a tenant is required to give 'notice' of a defect to the landlord. On the facts, the Tribunal is satisfied that notice had been communicated to the landlord before commencement of the Major Works, indeed the consultation documents refer to non-specific reports of disrepair made by the leaseholders.

45. In conclusion, the Tribunal is satisfied that items 8(a) to (g) and 8(i) to (l), excluding item 8(h), fall within the categories of expenditure recoverable under the Lease and may, subject to reasonableness and the remaining issues, be

recovered through the service charge. The Tribunal is also satisfied that the professional fees and management fees are recoverable under the terms of the Lease.

Issue 2: Whether the proposed works are reasonable in cost and nature.

46. The Applicant has not yet entered into the proposed contract for the works. The Tribunal was told that, as of 17 April 2025, the estimated total cost was £128,978.46 inclusive of VAT. That figure comprised £91,865 plus VAT for the contractor's works, £13,779.75 plus VAT for professional supervision, and £1,837.30 plus VAT for the managing agent's administration fee.

47. The Tribunal heard evidence from Mr Phillips on behalf of the Applicant. Mr Phillips explained that the Applicant's involvement with the proposed contractor, Atlantis Construction Limited, was through the surveyor and that the Applicant had no direct contact with Atlantis during the tender process. The Applicant was provided with the tender analysis prepared by Elcock Associates. Mr Phillips was not aware of any connection between Elcock Associates and Atlantis. He was unable to confirm if Atlantis continued to trade at the date of the hearing.

48. The Applicant had not proceeded to enter into a contract because funds had not yet been collected from the leaseholders. Mr Phillips explained that this was the process adopted by the Applicant, rather than as his own interpretation of the Lease. He explained that if the works were not commenced on the basis of the existing tender, the Applicant may need either to invite updated prices on the

same specification or to re-tender. The Tribunal notes that the current figure is therefore an estimate rather than a fixed contractual sum.

49. The Tribunal is satisfied that the Applicant adopted a reasonable process in identifying and costing the proposed works. It first obtained the opinion of a chartered building surveyor, who identified disrepair and areas requiring further investigation. Elcock Associates then prepared a specification and conducted a tender process. Two tenders were returned. The lower tender was submitted by Atlantis and, on the Applicant's evidence, was also preferred on qualitative grounds because it provided the better specification. Whilst we note that the professional fees associated with the tender at the higher end, the Applicant had obtained two quotes, the Atlantis one was lower than AJB which was £14,184.15 (excluding VAT).

50. We note that the Respondent did not advance any substantial objection to the need for the exterior repairs or to the general approach taken by the Applicant in obtaining professional advice and tendered prices. He had the opportunity to provide details for alternative contractors, having indicated that he would do so, but then did not do so. On the contrary, the correspondence before the Tribunal showed that the Respondent had raised concerns about the external condition of the building and had indicated a preference for Atlantis once that contractor was identified.

51. Taking the evidence as a whole, the Tribunal finds that the estimated costs as they were in 2025 were reasonable in amount as estimates at that time. The Tribunal prefers the contemporaneous quotations obtained through the

structured process undertaken by the Applicant. That finding does not determine the reasonableness of any future actual costs, which may require updated quotations or re-tendering before the works proceed. Given the passage of time and the probable continued deterioration of the Property, it is likely that updated costs will be required. The Applicant is not bound by the 2025 figures when progressing the works.

Issue 3: Whether the statutory consultation process was complied with / dispensation is appropriate.

52. The Tribunal heard evidence from Mr Phillips concerning the section 20 consultation process. The Tribunal was also taken to the relevant statutory notices in the bundle. Those documents show that the Applicant served a notice of intention and a statement of estimates. No notice of reasons for the award of a contract had been served because, at the date of the hearing, no contract had yet been entered into, there remained a dispute regarding payability and the Applicant had indicated their preference for the lowest tender. The notices were relied upon as demonstrating compliance with the consultation requirements in the Service Charges (Consultation Requirements) (England) Regulations 2003.

53. To the extent that consultation was required at this stage, and on the evidence before it, the Tribunal is satisfied that the statutory consultation procedure was substantially followed. No defect capable of affecting recoverability has been identified on the evidence presently available.

Issue 4: Whether or not the Respondent's proportion was correctly calculated in accordance with the terms of the lease.

54. The Tribunal considered the 2025 service charge demand for £32,244.62 which represented 25% of the Atlantis quotation of £128,978.46 inclusive of VAT. As set out above, the Major Works Schedule comprised a range of activities within the Property and in accordance with the Lease, the Respondent's liability depends on whether the works fall within Part 1, Part 2 or Part 3 of the Fifth Schedule.

55. Counsel for the Applicant properly accepted that the Respondent's apportionment appeared to have been calculated incorrectly. This is because the Lease does not impose a flat rate liability. Instead, the Fifth Schedule provides for different percentage contributions depending on the nature and location of the relevant works within the Property (as noted under issue 1).

56. Accordingly, the Tribunal finds that the Respondent's proportion was not correctly calculated in accordance with the Lease. However, it remains open to the Applicant to recalculate the Respondent's liability by applying the correct percentages to the relevant parts of the works, subject also to any updated quotation or tender figure obtained before the works proceed.

Issue 5: Whether the 2025 service charge demand was admitted

57. The Applicant submits that the Tribunal's jurisdiction is excluded by section 27A (4) of the Act, which provides that no application may be made under section 27A (1) or (3) in respect of a matter that has been agreed or admitted by the tenant. The Applicant relies upon a series of communications which, it says, amount to a clear admission by the Respondent that the works should be carried out and that the associated costs were payable through the service charge.

58. The Tribunal does not agree that the correspondence relied upon by the Applicant amounts to a sufficiently clear admission so as to oust the Tribunal's jurisdiction. An agreement or admission may be express or may be inferred from the surrounding facts and circumstances but any such agreement must be clear and must be based upon the objectively ascertained intention of the tenant: *Marlborough Park Services Ltd v Leitner* [2018] UKUT 230 (LC) at [32], applying *Cain v Islington BC* [2015] UKUT 542 (LC).

59. In the Tribunal's judgment, it is entirely possible for a leaseholder to express a preference for a particular contractor whilst at the same time maintaining an objection to the recoverability or reasonableness of the resulting service charge expenditure. A nomination or preference for a contractor does not, without more, constitute an admission that the leaseholder accepts liability for the costs ultimately incurred. Further, the correspondence relied upon by the Applicant must be considered in the context of the evidence as a whole rather than in isolation.

60. To that end, on 17 April 2025, the statement of estimates was sent to the Respondent by Mr Phillips. The concluding paragraph explained that following

expiry of the consultation period and consideration of any observations received, an invoice would be sent to the leaseholders for their proportion of the cost of the works and would require payment. Whilst this was an indication that a contribution would be sought from leaseholders, the notice did not specify the amount that the Respondent would be required to pay. In particular, it would not necessarily have been apparent to a reasonable recipient the size of his likely contribution. Indeed, as the later correspondence shows, the Respondent was plainly under the impression that costs may be covered in part by the freeholder via their insurers.

61. In the subsequent communications between the parties, the Respondent partly engaged with the consultation process and indicated that he would recommend contractors. On 23 April 2025, following circulation of the estimates, the Respondent said he preferred Atlantis as the contractor. The Applicant relies heavily upon that statement as constituting an admission.

62. The Tribunal does not accept that submission. The correspondence demonstrates that the Respondent had not properly understood the Section 20 process. On 25 April 2025 he asked, "How does the invoice work?" and queried whether Trust Property Management would, in terms, be footing the bill. On 28 April 2025 he again enquired how the bill would be settled and whether the insurer would reimburse the expenditure. He did not want to proceed until this point was clarified.

63. Once the Applicant informed the Respondent that the costs would be met by the leaseholders rather than by the managing agents or an insurer, the Respondent

promptly communicated that he did not agree with the proposed expenditure and did not wish the works to proceed on that basis. Those communications are difficult to reconcile with the contention that he had already made a clear and binding admission. His protest was apparent throughout and continued in his written statement to the Tribunal on the morning of the hearing.

64. To that end, the Tribunal also bears in mind that the Respondent was unable to attend the hearing due to circumstances which appeared to be beyond his control. The issue raised by the Applicant under section 27A(4) is fundamentally one of fact, requiring an assessment of the meaning and effect of the correspondence. In those circumstances, the Tribunal considers it appropriate to proceed cautiously before concluding that a party has made an admission with the consequence that the Tribunal's statutory jurisdiction is excluded.

65. Taking the evidence as a whole, the Tribunal finds that the Respondent's statement indicating a preference for Atlantis was not an unequivocal admission of the service charge. It did not amount to a clear admission that the costs of the works were payable through the service charge, nor did it constitute an agreement as to the reasonableness of those costs. It simply evidenced a preference as to which contractor should undertake the works.

66. Accordingly, the Tribunal is not satisfied that there was any agreement or admission of sufficient clarity to engage section 27A(4) of the Act. The Tribunal's jurisdiction is therefore not ousted, and the application falls to be determined on its merits.

Issue 6: whether the Lease allows for recovery of service charge in advance of entry into the contract of works or only after costs have been incurred. If the latter, whether the Tribunal should make a determination as to future recoverability pursuant to section 27A(3)

Advance Recovery

67. The Applicant submitted that the Lease permits recovery of the relevant service charge in advance of the Applicant having entered into a contract for the works. Reliance was placed on clause 5.1, which confirms the tenant's covenant to pay the rents, and clause 3.2, which cross-refers to the Fifth Schedule and provides for payment of the service charge on demand together with the fixed annual sum of £100 on account.

68. The Applicant further submitted that clause 6.2 is significant because the landlord's obligation to redecorate, repair and renew is expressed to be "subject to advance payment by the tenant". It was said that those words would have little practical effect if the landlord could never demand payment before the works had been carried out or before the relevant contractual liability had arisen.

69. The Applicant argued that the reference to advance payment in clause 6.2, together with the broader wording in parts of the Fifth Schedule, showed that the Lease contemplated a right to demand advance payment for works falling within the landlord's repairing obligations. The Applicant submitted that, absent such a construction, the advance payment wording would be deprived of meaning and the landlord could be placed in a circular position: it would not be

obliged to carry out the works until advance payment was made but could not recover the advance payment until it had incurred the cost.

70. The Applicant relied on obiter remarks made in *Bluestorm Ltd v Portvale Holdings Ltd* [2004] EWCA Civ 289, a case where the appellant remained liable for service charges since they could not be set off against any loss that may have been suffered through the respondents failure to repair because it was the appellant's failure to pay the charges that had caused the inability to meet the repairing covenant. At paragraph 46, Sir Martin Nourse said:

> *The lesser is under a continuing obligation to provide and carry out, or to procure the provision an carrying out, of the purposes specified. The tenant is under a continuing obligation to pay the maintenance charge which is the product thereof. The purpose of the words "subject to the receipt by the lesser of the maintenance contribution from the tenant" is to forge a particular link between the one obligation and the other and to provide that the tenant is not to be able to claim the benefit of the lessor's obligation if and so long as he does not discharge the burden of his own.*

71. The Applicant accepted however that authorities including *Yorkbrook Investments Ltd v Batten* support the proposition that an advance payment provision does not necessarily operate as a condition precedent to the landlord's obligation to carry out works or as a mechanism by which funds may be collected before the works are undertaken. The Applicant acknowledged that the only fixed advance payment specified in the Lease is the annual sum of £100.

72. The Tribunal is not satisfied that Clause 6.2 operates as a freestanding charging provision independent of the service charge machinery contained elsewhere in the Lease. There are a number of reasons that we have considered in reaching this conclusion.

73. First, we have considered the words within Clause 6.2, in particular "subject to advance payment by the tenant". Those words plainly contemplate some relationship between the tenant's payment obligations and the landlord's performance of its repairing and redecorating covenants. However, the clause does not itself identify the mechanism by which such payments are to be calculated, demanded or collected. Nor does it expressly state that the tenant is required to contribute towards estimated future expenditure before the landlord has become liable for the cost of the relevant works.

74. Secondly, the Lease does contain an express provision for payments on account, namely the annual payment of £100 under clause 3.2. Clause 6.2 may therefore be understood as recognising that the landlord's repairing and redecorating obligations are to be performed with the benefit of funding provided by the tenant. That said, the clause neither establishes a separate regime for advance funding of major works nor specifies how such sums are to be assessed, apportioned or demanded. Whilst the reference to "advance payment" indicates that payment need not necessarily await completion of the works themselves, the wording falls short of clearly authorising the landlord to demand substantial contributions towards estimated expenditure before any contractual liability has arisen or before the amount of the expenditure is otherwise ascertainable under the service charge provisions of the Lease.

75. Thirdly, that conclusion is consistent with the approach adopted in *Daiches v Bluelake Investments Ltd* and *Capital & Counties Freehold Equity Trust Ltd*. Those authorities demonstrate that where a landlord seeks to recover expenditure in advance of incurring liability for that expenditure or otherwise seeks to depart from the ordinary operation of a service charge scheme, clear words are required. The Tribunal accepts that each case turns upon the construction of the particular lease and that the tenant's payment obligations may be intended to operate coterminously with the landlord's obligations. However, neither Clause 6.2 nor the Fifth Schedule contains language sufficiently clear to establish separate contractual entitlements to demand advance contributions towards major works in the manner contended for by the Applicant. The Tribunal has also considered the observations in *Bluestorm Limited*, but does not regard them as taking the matter further than the proposition identified in *Capital & Counties* that the respective obligations may be coterminous.

76. Fourthly, the Tribunal is reinforced in that conclusion by considering the consequences of the Applicant's construction of the Lease; it would permit the landlord to recover substantial sums from the Respondent before any contract had been entered into, before any works had been carried out and before any liability to pay a contractor had arisen. Whilst the parties could, in principle, agree to such a scheme, the Tribunal would expect clear language if leaseholders were intended to assume liability for significant estimated expenditure before the landlord had itself become subject to any corresponding liability. Applying the principles of contractual interpretation explained in *Arnold v Britton*, the Tribunal does not consider that such a commercially significant departure from

the ordinary service charge framework can be derived from the general wording of clause 6.2 alone.

77. Fifthly, the Applicant's construction sits uneasily with the detailed charging provisions contained in the Fifth Schedule. Those provisions prescribe differing percentage contributions according to the location and nature of the works undertaken within the Property. The Tribunal considers it plain that the service charge machinery in the Fifth Schedule was intended to operate alongside clause 6.2 and that there is a clear nexus between the two provisions. Read as a whole, the Lease points towards contributions being demanded through the service charge framework established by the Fifth Schedule rather than pursuant to an independent and undefined advance-payment mechanism contained within clause 6.2. Had the parties intended clause 6.2 to create such a mechanism, the Tribunal would have expected clear and express language to that effect.

Future Payability

78. Turning then to the alternative case proposed by the Applicant namely, that the Tribunal should make a determination under section 27A(3) of the Act as to future payability. The Applicant invited us to do so because the Respondent had already indicated that he intended not to pay, and this would thereby enable the Applicant to pursue a breach of the Lease.

79. However, section 27A(3) is not a vehicle for approving budgets. It enables the Tribunal to determine liability where the proposed costs are sufficiently concrete to permit a proper judicial evaluation of payability with reference to the specific amount, the date and the manner in which it would be payable.

80. The evidence before the Tribunal was that no contract had yet been entered into with Atlantis or any other contractor. The tender figure was therefore no more than an estimate, which may be outdated and the apportionment remains uncertain. It may require updating or replacement before the works proceed. Furthermore, no specific terms were put before the Tribunal by the Applicant.

81. In the Tribunal's view, on the facts of this case, any future determination can only be limited to identifying whether costs of the specified description, if incurred, would be capable of being recoverable in principle and by whom. The Tribunal is, therefore satisfied that the works identified in the specification are, in principle, recoverable under the Lease, subject to the correct apportionment and to the costs being reasonably incurred when the relevant liability arises. It remains open to the Applicant to enter into an appropriate contract, obtain updated pricing if necessary, and issue a recalculated demand in accordance with the Lease.

82. In conclusion, the Tribunal determines that the Lease does not permit the Applicant to recover, by way of service charge, the Respondent's contribution to the proposed major works in advance of the Applicant entering into a contract for those works or otherwise incurring a liability to pay. The 2025 demand is therefore not payable in the sum demanded.

83. The Tribunal makes a limited finding pursuant to section 27A(3) of the Act in respect of future recoverability, namely that if the costs comprised in the Major Works are incurred in the future, they are capable of being recoverable through

the service charge provisions of the Lease, subject to the correct contractual apportionment and the costs being reasonably incurred. This finding is limited because the relevant costs, contractual arrangements and apportionment are not yet sufficiently certain to permit a full determination to be made as to amount, timing, manner of payment or final payability.

Conclusion

84. For the reasons set out above, the Tribunal determines that the relevant categories of expenditure comprising the Major Works are, in principle, recoverable under the Lease, and that the estimated costs obtained through the 2025 tender process were reasonable as estimates at that time.

85. However, the Tribunal determines under section 27A of the Act that the service charge demanded from the Respondent in the 2025 service charge year is not payable, because it does not correctly apportion the Respondent's liability for the Major Works project and because the Applicant had not yet incurred a liability to pay.

86. The Tribunal does not find that the 2025 service charge was admitted and makes only a limited determination under section 27A(3), because the relevant costs, contractual arrangements and apportionment are not yet sufficiently certain to permit a full determination.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.