



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

Case Reference	: HAV/40UG/LSC/2025/0821
Property	: Arlington House, All Saints Avenue, Margate, Kent, CT9 1XR
Applicant	: Metropolitan Property Realizations Limited
Representative	: Fladgate LLP
Respondent	: The Leaseholders as per sheet "A" attached to the application
Representative	: A Better Arlington
Type of Application	: Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985
Tribunal Members	: Tribunal Judge C Skinner Mr D Ashby FRICS Mr B Bourne MRICS
Date of Hearing	: 23 June to 26 June 2026
Date of Decision	: 19 August 2026

DECISION

SUMMARY OF DECISION

- a. The Tribunal finds for the purposes of Section 19 Landlord and Tenant Act 1985 and Section 27A(3) Landlord and Tenant Act 1985 that it is reasonable for the Applicant to carry out all the Works set out in the Specification, in the manner proposed, save for the proposed refurbishment of the 25 original Category B, and the 10 Category B subset, leaseholders aluminium windows which the Tribunal finds are demised to those Category B, and Category B sub-set leaseholders under the terms of their respective leases. The Tribunal further finds that the Category B subset leaseholders can be charged for the specified works to their demised windows if they fail to maintain, but only on condition that a breach is established.**
- b. The Tribunal finds the costs of the Works plus the professional fees proposed in the sum set out in the application will be recoverable under the service charge provision in each category of lease and as per the “Arlington House Major Works Schedule” save for any adjustment required in light of the finding at a. in relation to the Category B leaseholders aluminium windows and adjustments required in light of the findings at g. and h. below in respect of the applicable percentage contribution rates.**
- c. The Tribunal finds the proposed service charges in respect of the Works are reasonably incurred and reasonable in extent.**
- d. The Tribunal finds the Applicant complied with the statutory consultation requirements for the purposes of Section 20 Landlord and Tenant Act 1985.**
- e. In the alternative, if the Tribunal is wrong in respect of d. above, the Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in relation to the proposed works at Arlington House, All Saints Avenue, Margate CT9 1XR.**
- f. The Tribunal’s decision to grant dispensation is limited to only the works and costs associated with the works required as identified in the Application.**
- g. The Tribunal by way of corrective construction, corrects the following leases accordingly;**
 - i. Flat 5B contribution percentage is corrected from 6.6% to read as 0.6%**

- ii. **Flat 5E contribution percentage is corrected from 76% to 0.76%**
 - iii. **Flat 7G contribution percentage is corrected from no figure to 0.76%**
- h. **The Tribunal finds no basis to apply corrective construction to the leases of Flat 15H and Flat 17H.**
- i. **The Tribunal dismisses the Respondent's application under Section 20C Landlord and Tenant Act 1985 and Paragraph 5, Schedule 11 Commonhold and Leasehold reform Act 2002.**

Background

1. The Applicant is the current registered proprietor of a long leasehold in respect of Arlington House, All Saints Avenue, Margate CT9 1XR ("the Building"). The lease is dated 19 May 1965 and is registered under title number L248788. Thanet District Council is the present registered proprietor of the freehold reversion. The Respondents to the Application are the leaseholders of 106 flats within the Building. The leaseholders and their specific flat numbers are identified in the application at Schedule A [29].
2. Arlington House enjoys a prominent location close to the beach in the heart of Margate. The views from the majority of flats located within look across the beach and coastal area nearby. The Building comprises of a 19-storey block of flats, along with additional structures including disused ground floor commercial units, a car park and accessways.
3. The Building was constructed in the 1960's, completed in December 1963 and sits within the Arlington Square development. It is constructed with reinforced concrete frames, pre-cast external cladding panels and has a flat roof area above the 18th floor that houses water tanks, machinery for two lifts and various commercial telecom and emergency aerials that are affixed to the roof walls.
4. The Building contains 142 flats ("the Flats"). 6 flats are located on the first floor, with 8 flats on each additional storey thereafter. The Flats vary in size from 1 to 3 bedrooms. 106 of the Flats are let on leases whilst 36 are retained by the Applicant.
5. Of the 106 leases let to the Respondents, they fall broadly into three different types, with each type containing some small, but potentially crucial, differences in drafting, particularly in relation to the windows and frames of the individual flats and the ability to recover service charges in respect of works conducted to the same. Those leases are referred to within the application and this decision as falling into either Category A, B or C depending on which type of lease is in question. Category B leases contain a subset, which have further changes to the terms under which the individual flats that fall into that category are

let. The Applicant provided sample leases within each category for analysis and determination of the issues in question.

6. The Applicant has been served with two Compliance Notices by the Health and Safety Executive (“the HSE”) in respect of the Building. By way of notice dated 15 April 2025, the HSE raised concerns that the assessment of building safety risk, in particular linked to the spread of fire, was not suitable for the purposes of Section 83 Building Safety Act 2022.
7. A further notice dated 23 June 2025 was served on the Applicant in respect of the Building by the HSE. This notice raised concerns that the assessment of building safety risk, in particular risk linked arising from structural failure, was not suitable for the purposes of Section 83 Building Safety Act 2022.
8. The Applicant has also been served with a Hazard Awareness Notice by Thanet District Council in respect of the Building. The Notice is dated 7 August 2025 and identifies both Category 1 and Category 2 hazards present at the Building. Many of the hazards identified link to fire safety issues but also include reference to exposed cavities (owing to investigation work), structural collapse and falling elements.
9. Due to the age and current condition the Building finds itself in, the Applicant is seeking to conduct major works. Those works include concrete repairs to all facades of the Building and associated structures, repair and treatment to the concrete frame and concrete cladding, an overhaul of all windows (both communal and all individual Flats) and roof resurfacing works. Details of the proposed works are set out in the Applicant’s Statement of Case [4212]. The extent of those works were set out within the Applicants application under a details specification of works dated April 2025 Rev B [213] and modified by a Schedule of Additions and Omissions [4229].
10. The Applicant submits that following a compliant consultation process for the purposes of Section 20 Landlord and Tenant Act 1985, they intend to award the contract for those works to GTCI Limited at a cost of £5,329,883.30 (inclusive of VAT and professional fees). It is said that this tender was the cheapest price of the 3 tenders submitted in the process.
11. This application is made to determine under Sections 27A(3) and 19(2) Landlord and Tenant Act 1985, if costs are incurred for the major works as a service charge, who would be required to pay, what amount is payable, when would any payment be due and in what manner would it be payable. The Applicant further seeks a determination that the Section 20 consultation process was compliant and that the costs of, and the manner those works will be carried out, are reasonably incurred and reasonable in amount, including the proposed method of charging leaseholders for the same.

12. The potential sums being sought in service charges from the Respondents are by any measure substantial amounts. The Applicant recognises this and indicates that is part of the reason for seeking the Tribunal's determination of the issue.
13. In response, the Respondents raise concerns about the Applicants proposals, both in terms of the extent of the work required and the level of costs to be incurred. The Respondents challenge the Applicants approach to the interpretation of various clauses within some of the leases held by some of the Respondents (including the extent of the demise, what is recoverable as a service charge and what amount can be charged to individual leaseholders), submit the proposed window refurbishment works to the Flats is not reasonable to incur, that some of the proposed roof works are unnecessary and that there has been historic neglect to the Building causing the proposed costs to unreasonably increase.
14. The Respondents also submit that they are afforded protection under the Building Safety Act 2022 in respect of some of the potential service charges being claimed by the Respondent, meaning they cannot be passed on as service charges. The Respondents also apply for orders under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to limit the Applicants ability to recover its costs of making the application to the Tribunal.

The Inspection

15. Further to Case Management Directions made on 23 January 2026, the Tribunal inspected the Building and surrounding areas on 22 June 2026 at 1pm ahead of the final hearing that was listed to take place from 23 June 2026 to 26 June 2026. The weather was clear blue skies and sunshine with intermittent coastal breezes. The conditions were excellent for the purposes of the inspection.
16. The panel was met in advance of the inspection outside the front entrance to the Building in All Saints Avenue by representatives of both the Applicant and Respondent. For the Applicant, Ms Mathers of Counsel was present along with Joel Crips from instructing solicitors. Also in attendance for the Applicant was Suzanne Calvo (Area Manager employed by Highdorn Co. Limited part of the Freshwater Group) and new area manager, and Stephen Thorpe (Director and Chartered Surveyor at Hughes Jay & Panter Ltd),
17. On behalf of the Respondents were Magdalena Korczak (Flat 7B), Tom Bradshaw (Flat 18E) and Simon Pengelly (Flat 7E).
18. Also in attendance were the Applicants experts David Smith (Chartered Structural Engineer from David Smith Associates LLP) and Larua Bennell (Managing Director of Associated Steel Window Services).

19. The Tribunal proceed to inspect Flats 13H, 13A, 16C and 18E which were flats owned by Leaseholders. The Tribunal also inspected Flats 5D and 12H which were flats retained by the Applicant. Flat 12H was the pilot flat where investigation works had taken place into the structural integrity of the concrete column and where the windows and frames had been refurbished in accordance with the proposed specification for all other windows within the Flats.
20. In all flats, the Tribunal spent time inspecting and reviewing the condition and operation of the windows and frames. In particular the ease with which the windows could be opened and closed and the ease with which they would run along the track when sliding open and closed. It was noted that there was a variation in the condition and operation of the windows inspected and such variation appeared linked to the way the individual leaseholder or owners had taken steps (if any) to attempt to maintain those windows.
21. The Tribunal inspected a variety of communal stairwells across the building at a variety of levels. The steel windows and frames situated in both the North and South stairwells inspected were in poor repair, with evidence of the timber frames deteriorating and rotting taking place, with gaps in some places between the window frames and the outer walls.
22. The Tribunal was able to overlook the car park and the areas of roof referred to as “Roof A” and “Lower Roof B” within the application. The Tribunal could see on Roof A an area where roof replacement works had already taken place and could see the remaining area that required works in a poor condition. The Tribunal was unfortunately unable to view much of Lower Roof B due to the presence of scaffolding, but a small patch was visible which appeared consistent with the part of Roof A that had not been replaced.
23. The Tribunal was shown the accessway from the car park to the first floor flats and was also able to walk around the car park and associated accessways. From the car park the Tribunal was able to view clearly the East and South elevations and could see the areas where concrete had spalled. The Tribunal also noted the UPVC windows installed in Flat 3D which it was suggested had been installed as part of a trial when replacement windows and associated works were being considered.
24. The Tribunal was then shown around the street level access ways and underneath the waffle slab upon which the car park was situated above. The Waffle Slab showed clear signs of deterioration and again concrete spalling was present in a variety of locations. The Tribunal was able to inspect the physical lay of the land in terms of where the Building and associated structures were situated, with the Tribunal able to see a clear definition and delineation from neighbouring land. The public car park situated next to the Arlington site only being connected via a ramp to the Buildings car park and a further connection via a walkway. Other

commercial areas of Arlington Square were fenced off but those areas are not subject to any of the proposed major works.

25. Finally, the Tribunal walked around All Saints Avenue to view the West elevation and North elevation from across the road at Marine Terrace. Works were taking place to the vacant commercial units situated on the ground floor to the West of the Building for the preparation of scaffolding, such scaffolding being part of the subject matter of this application. The North elevation was similar in condition to the South elevation with spalling concrete and deterioration again visible.
26. The Tribunal did not inspect the roof of the Building on the basis that nesting peregrine falcons were present with recently hatched chicks who were just taking flight and therefore it was advised that disturbance should be kept to a minimum. Given the number of, and quality of, photos and reports within the bundle, the Tribunal did not feel disadvantaged by not inspecting the roof in such circumstances.
27. The Tribunal concluded its inspection shortly before 4pm. The Tribunal wishes to place on record its thanks and gratitude to all those involved in arranging and facilitating the inspection. The Tribunal is very grateful to all occupiers of the flats that were inspected and for accepting any inconvenience caused as a result. The inspection of such a wide variety of flats and ability to inspect almost all of the areas in dispute was of real benefit to the Tribunal.

The Hearing

28. The hearing took place at Thanet County Court in Margate over four days commencing on 23 June 2026 and concluding on 26 June 2026 as listed. The Applicant was represented at the hearing by Ms Mathers of Counsel. The Respondents as litigants in person were represented by Magdalena Korczak (Flat 7B) who was assisted by Tom Bradshaw (Flat 18E).
29. The Tribunal had been provided with a hearing bundle by the Applicant, consisting of 5723 pages. The Tribunal had read the bundle and all associated material and evidence in advance, although due to the volume of documentation therein, reiterated to the parties the need to direct the Tribunal to any document that was said to be of significant importance. References in this decision to page numbers in the bundle are indicated as [] or [xxAB] if from the bundle of authorities.
30. In advance of the hearing, the parties both submitted Skeleton Arguments and additional information including a schedule of the various lease terms for each flat and a schedule of proposed individual costs per flat pending determination of the appropriate amounts and percentages the Tribunal may determine ("Arlington House Major Works Schedule"). The Applicant submitted a combined bundle of

authorities which had been agreed with the Respondent consisting of 821 pages.

31. The Tribunal had requested the parties also submit a draft proposed timetable for the hearing and an agreed list of issues for determination. The parties helpfully submitted both requested documents in advance. The Tribunal is grateful to the parties and their representatives for the same and the clear assistance it provided with the management of the final hearing.
32. The timetable that was followed for the final hearing started on the first day with the Applicant and Respondent presenting opening submissions. At the end of the first day witness evidence began with Suzanne Calvo. On the second day the Tribunal heard witness evidence from Laura Bennell, Stephen Thorpe, David Smith, Tom Bradshaw and David Walker (Flat 16C). On the third day the Tribunal heard witness evidence from Simon Pengelly.
33. The remainder of the third day and fourth day was then used to hear closing submissions on the areas of dispute set out in the agreed List of Issues referred to at paragraph 31 above and it was agreed those agreed List of Issues covered the entirety of the determination required by the Tribunal. On that basis, this decision is drafted to mirror that agreed list and takes each area in turn below, making findings on each area in dispute.
34. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Tribunal has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.
35. In opening, Counsel for the Applicant set out that the Tribunal would hear from two witnesses of fact on behalf of the Applicant and two experts witnesses. In response there were two witnesses of fact for the Respondent. The Applicant confirmed the list of issues for determination were agreed with the Respondent and was the extent of the determination required by the Tribunal.
36. The Applicant summarised the ownership of the land, explaining how the various proprietary interests were registered at the Land Registry including how title number K710135 linked with title K248788 when understanding the extent of the interest held by the Applicant over the entire site where the Building was situated.
37. Counsel for the Applicant then provided an overview of the three categories of lease referred to below and set out where those leases contained differences in the wording of the landlord and tenant repairing covenants, setting out brief views on how to interpret what was demised to the leaseholders under those leases and submitting that

clarity was required from all parties over how those leases were constructed and how they were to be interpreted to allow the Applicant to proceed with the proposed major works.

38. The Applicant set out an overview of its alleged compliance with the requirements of Section 20 Landlord and Tenant Act 1985 and how a fully considered and competitive tender took place. It was submitted that the Applicant clearly had due regard to the responses received from the leaseholders at both stages of the consultation process and their primary review was there had been full compliance with the requirements under Section 20.
39. The Applicant submitted that in many respects, it was not in dispute between the parties that substantial works were required to the Building, nor was it in dispute that the impact of those proposed costs would be significant. The Tribunal was reminded that the Applicant would be required to meet over a quarter of the total costs. As such seeking approval from the Tribunal was both reasonable and proportionate in the circumstances.
40. In opening the Respondent set out how the Resident Association Group (“A Better Arlington”) who were effectively representing the Respondents were litigants in person. They were not legally qualified, did not have legal representation and the costs of seeking the same was prohibitive. A lot of work had gone into trying to consider the vast quantities of documentation that had been generated and they had done their best to put forward a response in opposition to the application.
41. The main thrust of the Respondent’s challenge was to the reasonableness and extent of the works being proposed. In addition the Respondents contended that the provisions of the Building Safety Act 2022 applied and therefore certain protections were engaged under that Act for the leaseholders.
42. The Respondents drew the Tribunals attention to the history of the Building and how that was relevant when considering the context of the leases, their terms and the intention of the parties at the time when they were granted.
43. The Respondents submitted that the Applicants had an intention to redevelop the site, evidenced by previous planning applications that had failed or not progressed, and that the Applicant had made a conscious decision previously to not take steps to do works and mitigate the extent of the works now required. It was submitted a 10 year maintenance plan from March 2020 showed the costs of the works currently proposed to be around £3 million in total at that point in time, meaning the Tribunal could see how that failure to act in March 2020 had increased the costs now required to conduct the works.

44. The Respondents suggested that the expert evidence may not be as reliable as the Applicant wished to claim, challenging some of the general findings made. The Respondents could not afford to retain professional experts but David Walker's background as an architect meant his witness statement could give evidence to challenge aspects of the expert evidence.
45. The Respondents also set out details of a recent fire that took place at the Building which occurred whilst the proposed contractor for the works was already responsible and on site for existing works to commercial units, highlighting concerns the Respondent held that the proposed contractors were not competent and demonstrated a genuine and significant risk to the safety of the Building and its occupiers.

The Relevant Law

46. Section 19 of the Landlord and Tenant Act 1985 reads as follows:

19 - Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a 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 or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) 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.

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

27A - Liability to pay service charges: jurisdiction

(3) An application may also be made to [the appropriate tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

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

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

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [residential property tribunal] or leasehold valuation tribunal [or the First-tier Tribunal], or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

49. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 reads as follows;

Limitation of administration charges: costs of proceedings

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

50. Section 120 Building Safety Act 2022 reads as follows:

120 Meaning of “relevant defect” [and “relevant steps”]

(1) This section applies for the purposes of sections 122 to [124] and Schedule 8.

(2) “Relevant defect”, in relation to a building, means a defect as regards the building that—

(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and

(b) causes a building safety risk.

(3) In subsection (2) “relevant works” means any of the following—

(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;

(b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

“The relevant period” here means the period of 30 years ending with the time this section comes into force.

(4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.

[(4A)“Relevant steps”, in relation to a relevant defect, means steps which have as their purpose—

(a) preventing or reducing the likelihood of a fire or collapse of the building (or any part of it) occurring as a result of the relevant defect,

(b) reducing the severity of any such incident, or

(c) preventing or reducing harm to people in or about the building that could result from such an incident.]

(5) For the purposes of this section—

- *“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from—*

(a) the spread of fire, or

(b) the collapse of the building or any part of it;

- *“conversion” means the conversion of the building for use (wholly or partly) for residential purposes;*

- “relevant landlord or management company” means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant.

51. Paragraph 8 of Schedule 8 Building Safety Act 2022 reads as follows:

Schedule 8 - Remediation costs under qualifying leases etc

No service charge payable for cladding remediation

8(1) No service charge is payable under a qualifying lease in respect of cladding remediation.

(2) In this paragraph “cladding remediation” means the removal or replacement of any part of a cladding system that—

- (a) forms the outer wall of an external wall system, and*
- (b) is unsafe.*

The Relevant Specimen Leases and Relevant Lease Terms

- 52. The Tribunal was provided with a selection of sample leases within the bundle. These leases were representative of the main types of leases that had been granted to the Respondents.
- 53. The copy leases provided to the Tribunal were Flat 1B [39], Flat 1E [53], Flat 2B [79], Flat 3A [101], Flat 4H [116], Flat 5B [4042], Flat 5E [4056], Flat 5H [4071], Flat 7G [4097], Flat 8F [4110], Flat 15H [4129] and Flat 17F [4143].
- 54. Further to the above, attached to the Respondent’s Statement of case were copies of leases for Flat 14H [4291] and Flat 18E [4302]. Attached to the witness statement of David Walker was a copy of the lease to Flat 16C [5506] which was a copy of the lease relevant to Mr Walker’s property.
- 55. The leases fell into one of 3 types of lease, with differences in the repairing covenants between landlord and tenant determining which type of lease it was. Depending on the type of lease, it was defined as being either “Category A”, “Category B” or “Category C”.
- 56. The Category A leases related to 70 of the 106 Respondent’s flats, with the specific flats identified within the Applicant’s statement of case at [4203]. The pertinent clauses from the Category A leases were set out in the Applicant’s Statement of Case at [4203 to 4205].
- 57. The Category B leases related to 35 of the 106 Respondent’s flats, with the specific flats identified within the Applicant’s statement of case at

[4205]. However, due to further differences in respect of the terms around the covenant to pay towards Landlords costs within the Category B leases, a sub-set of Category B lease was also identified. This sub-set applied to 10 of the 35 leases with Category B (“the Category B Sub-Set Leases”).

58. The pertinent clauses from the Category B leases (including the differing clauses in respect of the Category B Sub-Set Leases) was set out in the Applicant’s Statement of Case at [4205 to 4208].
59. The Category C lease related to only the lease of Flat 1B. The pertinent clauses from the Category C lease were set out in the Applicant’s Statement of Case at [4208 to 4210].
60. Supplementary to the documents and information supplied in the bundle, the Applicant’s also provided a Schedule of Lease Clauses that set out the relevant leases terms for every lease granted to the Respondents with the Building.
61. This decision is formed on the basis of the sample leases provided to the Tribunal and the terms set out within those sample leases. It was not in dispute between the parties that those terms were as per the sample provided to the Tribunal and the defined Categories of lease set out above were agreed and accepted by both parties.

Witnesses and Expert Evidence

62. The Tribunal first heard evidence from Suzanne Calvo on behalf of the Applicant. Her statement was accepted as evidence in chief [4192]. The Tribunal heard evidence of her employment with a company within the group structure of companies which the Applicant sits in and her managerial experience. Ms Calvo provided evidence of how decisions were made within the Freshwater Group and that whilst there were committees that provided information and recommendations, when it came to major works, ultimately all decisions were made by the Chief Executive Officer.
63. Ms Calvo confirmed she had no direct decision making power and hers was a management/supervisory role. Ms Calvo gave evidence as to how the Applicant had regarded all observations made during the Section 20 consultation process but confirmed she had no direct knowledge in relation to previous planning applications or some of the previous day-to-day management decisions that had been made prior to her taking over from Mr Phelps (the previous estate manager for the Building).
64. Ms Calvo confirmed that the Applicant was seeking to refurbish and not replace the windows at the Building and gave evidence that the Applicant was willing to consider every individual leaseholder's financial circumstances if they were financially unable to meet the service charges associated with the proposed works, should the

Tribunal find that some, or all, of the works were reasonable and could be passed back as service charges to the Respondents. She further confirmed there was no internal guidance or policy document in relation to how the Applicant would consider and determine such requests and that it was wholly discretionary in nature.

65. Ms Calvo confirmed that the date of posting for the notice of estimates for the Section 20 consultation process was the 31st of July 2025.
66. The Tribunal heard expert evidence from Laura Bennell of ASWS relating to the proposed works to the windows and window frames at the Building. Her expert report and evidence was accepted as evidenced in chief [5450].
67. Under cross examination Ms Bennell confirmed this was her first time giving expert evidence before a court or tribunal. She confirmed her duties as an expert had been fully explained to her and her report had been prepared as an expert report and was compliant with the Tribunal rules. Ms Bennell confirmed she had 40 years experience in respect of refurbishing and replacing windows and that steel framed windows had been predominantly her area of work but she had also dealt with aluminium windows occasionally.
68. Ms Bennell confirmed there were not many companies that had dealt with or continue to deal with aluminium windows. She confirmed one other time where she had conducted works on aluminium windows and described her companies work in respect of that project.
69. Ms Bennell was directed to evidence the Respondent had obtained in relation to windows replaced at a site referred to as The Curzon in Mayfair, a journal article that potentially challenged the findings of her report and the approach to replacement or refurbishment of aluminium windows at that site [5658]. As Ms Bennell had not had direct involvement or engagement with the window replacements at the Curzon, she was unable to give direct evidence or a view on what was put to her given the potential differences that might exist between that site and the windows at the Building.
70. Ms Bennell was questioned on the condition of the windows from the flats that were inspected by the Tribunal. Ms Bennell confirmed that some of those windows were undoubtedly in a better condition than those she had inspected in 2022 when compiling a previous condition report on the windows at the Building. Ms Bennell did confirm from her direct involvement there was a variety of conditions throughout the Building. The flats that ASWS had surveyed in 2022 were not in a similar condition to those recently inspected and her evidence was that those that were inspected for the 2022 report were in a worse condition than some of those inspected by the Tribunal. This was evident from the pictures annexed to the 2022 report.

71. Ms Bennell also highlighted that it was not simply the ease of which the windows could be opened and closed that was an issue but from her inspection and reports further issues such as unblocking the weep hole situated within the window tracks was also important to remove debris, to ensure that there was no unnecessary build-up of water and salt within the tracks. Failure to maintain those weep holes and the drainage they provided were also a crucial reason for the deterioration of many windows she had inspected.
72. Ms Bennell was clear that when compiling her report from 2022, the driving force behind that report was focusing on thermal efficiency. When looking at her report from that context, this was why she submitted in 2022 refurbishment was not a viable option as refurbishing the windows would not have improved the thermal efficiency of the windows to the levels the Applicant was seeking at the time.
73. Ms Bennell gave evidence to confirm that any treatment or coating that had been applied to the windows and frames when they were installed in the 1960s will have stopped working. In order to maintain those windows, it was important to respray them with an anodized coating. She noted the challenges operatives would face when conducting the proposed refurbishment works and that works would have to take place both inside and outside of leaseholder flats. It was her expert view that a full scaffold would be required to conduct the works. This was based primarily on safety reasons, HSE guidelines and the requirement to eliminate risk wherever possible.
74. Ms Bennell was challenged over alternatives that could be used as opposed to a full scaffold. Ms Bennell was very clear in her evidence that scaffolding was the most appropriate way to conduct the specified works without presenting significant risk to any operatives conducting the works. It was the only realistic option to conduct the refurbishment works of the windows. She confirmed that she would not undertake the proposed window refurbishment works without a full scaffold being present. Other options such as an anchor system or mast climbers were simply too risky.
75. Ms Bennell went on to confirm that in her opinion, by using the proposed spraying and anodizing protection, the lifespan of the windows and window frames would likely increase by at least 5 to 10 years possibly longer. When questioned she confirmed that the proposed recommendations within the specification of works were between the middle to the top end of the products that could be used for these works on the market and provided manufacturer guidance was followed this would likely increase the lifespan of the windows and frames by 10 to 15 years. She also confirmed that if the works to the windows and frames were carried out as per the specification it was unlikely that there would be the need to do the same extent of works at the expiry of those 10 to 15 years because the specification meant future works would be significantly reduced.

76. Stephen Thorpe gave evidence on behalf of the Applicant, his witness statement was accepted as evidence in chief [4956]. Mr Thorpe clarified the extent of CTGI's current work on site, confirming it was to strip out commercial units and the cost of these works was being met directly by the Freshwater Group. Mr Thorpe confirmed that applications to the Building Safety Regulator ("the BSR") were ongoing and had not yet been completed. He further confirmed that CTGI had been an approved contractor of the Freshwater Group for 11 years and in order to be such an approved contractor they are required to be audited, hold appropriate levels of insurance, be registered with the safe contractor scheme and ensure regular reviews of their operating policies and procedures, including meeting with various industry accreditations.
77. Under cross-examination Mr Thorpe was challenged over his suggestion he had not been part of the March 2020 10 year maintenance plan report [3822], despite his name being clearly displayed on the title page of that report. Mr Thorpe clarified who within the company authored the report and what actual involvement he had at the time. He confirmed he was present for the inspection but the report was authored by his colleague Jonathan Winter and that reflected the reference "JW/JW/5257".
78. Mr Thorpe clarified his roles and his engagement with the BSR to date. He explained why initially it was felt no application under regulation 11 was needed for the exploratory works on the structural column at Flat 12H. He had received advice from the engineers involved that such an application might not be required where works to the column on 12H were only investigatory and may not amount to a structural repair. In any event Mr Thorpe decided to check with the BSR and was told an application was required before works could take place.
79. Mr Thorpe spent time giving evidence on how the Freshwater Group awarded and managed large contracts and the process that was applied to deem CTGI as competent. He explained why that then allowed the consultation process to then focus heavily on price at the point of considering award, given to get to that stage of the process, any bidding contractor would have been required to prove competence.
80. He conceded that a previous planning application for redevelopment of the site had not been refused purely on the back of leaseholder objections and also gave evidence that the anticipated 52 weeks to complete the works had not started running and that would only start when the scaffold had been erected. He believed 52 weeks was a reasonable estimate for completing the works.
81. Mr Thorpe confirmed to the Tribunal that he believed if the specified works to the windows took place, the 15 year estimate on the next set of cyclical works was reasonable and concurred with Laura Bennell that the next set of works would not be as extensive, highlighting works such

as top capping and sealant replacements as not being required again for a significant period of time once completed in this round of works.

82. The Tribunal heard expert evidence from David Smith. Mr Smith had provided an expert report on the concrete repairs and other structural issues at the Building. Mr Smith's expert report and evidence was accepted in chief by the Tribunal [4975].
83. Mr Smith was an impressive witness. His knowledge and expertise was clearly demonstrated and his evidence to the Tribunal was extremely clear and helpful. Mr Smith acknowledged that his experience on high-rise buildings was limited to previously working on buildings with 7 to 10 storeys and he had not dealt with a building as high as 18 storeys, however the areas of evidence that his expert evidence related to were not limited by that experience.
84. Mr Smith gave evidence to confirm that the concrete cladding provided only passive structural support and they were not structural. He confirmed you could remove all the concrete panels and the building would remain standing. They could be replaced with a different system and he confirmed they provide weatherproofing to the Building.
85. Mr. Smith gave detailed evidence around the carbonation process and how it affects concrete from its first day of being exposed to the elements. He explained how the atmospheric conditions become acidic and at a very slow rate will corrode the concrete.
86. Mr Smith explained how this process accelerates over time and is progressive. He explained once concrete had spalled and the structural elements of the Building were then exposed, this would lead to more corrosion at an increased rate. Mr Smith confirmed that once spalling was identified and once it became clear corrosion was causing the concrete to spall a period of approximately 5 to 10 years was the time scale that applied when needing to conduct works to remedy the same.
87. Mr Smith gave evidence on the purpose of the waffle slab, it's strength ability to spread weight load and that it was structurally integral to the main part of the Building at Arlington House. He advised you would not consider removing it due to it being an integral part of the structure to the Building. He advised that you should repair the local spalling for the same reasons given above.
88. Mr Smith gave evidence on alternatives to a full scaffold when considering the works required to the concrete. He acknowledged he was not a scaffolding expert and the context of his evidence was in relation to completing works on the concrete cladding and the spalling concrete. Mr Smith clarified that the DOFF cleaning needed to be viewed holistically and that where 19 floors required such cleaning followed by the anti-carbonation treatment, it was simply not logistically realistic to do so without a full scaffold. Mr Smith spent time discussing other techniques and alternatives to scaffolding but

concluded that a full scaffold was the most appropriate method in his view to conduct the cleaning and apply the treatment.

89. Mr Smith was challenged on his expert report concluding that the treatment works may only result in an extra five years of lifespan to the concrete. Mr Smith clarified that based on the specification being proposed for the works, subject to compliance with the manufacturers guidance and the products set out actually being the ones applied, it was his expert opinion that there would be a significantly longer life span as a result of those proposed works, estimating a further 20 to 30 years lifespan. Mr Smith explained that the DOFF cleaning was crucial to the treatment of the concrete. The DOFF cleaning removed contaminants present on the external parts of the concrete and that if they were present when the anti-carbonation treatment was applied, it would have no effect and be of no use to stopping the carbonation process.
90. The Tribunal then heard evidence from Tom Bradshaw. Mr Bradshaw's witness statement was accepted as evidence in chief [5470]. Mr Bradshaw explained that when purchasing the lease of his flat, he had not been made aware of the extent of the potential works required and did not recall receiving any major works notices. He acknowledged that there was an expectation of a certain level of expenditure associated with purchasing a flat at the Building but not to the levels now being pursued.
91. Mr Bradshaw confirmed he took on responsibilities as Chair of A Better Arlington in around March or April 2025 and he had coordinated responses to both the notice of intention and the notice of estimates on behalf of the leaseholders.
92. Mr Bradshaw gave evidence of the historically difficult relationship many of the leaseholders had with the Applicant and the Freshwater Group in general. He described how a closed meeting with Freshwater in January 2026 had descended into chaos when its purpose had been to try and improve relations. Following a scrutiny meeting with Thanet District Council in February 2026, information had been provided to A Better Arlington that scaffold was going to be imminently erected, yet this proved not to be true.
93. Mr Bradshaw confirmed that because of mixed messages and poor communication, there was a historical distrust between the Respondents and the Freshwater Group. Mr Bradshaw did acknowledge communication with Freshwater and the flow of information had improved slightly over the last few months but many of the concerns the Respondent's held regarding the Applicant still applied.
94. Mr Bradshaw set out clear concerns around the safety of any scaffolding that was to be erected and whether the proposed contractors were capable of minimising the risk of people breaking and entering onto the

site, especially in light of the recent fire on a different part of the Arlington site.

95. Mr Bradshaw gave evidence that there were genuine concerns that if the site was not secure and the scaffolding not properly secured, due to the condition of some of the windows, residents may be at risk of people breaking into properties and the potential for theft occurring. Mr Bradshaw also highlighted the risk of unauthorised people accessing scaffolding in any event and pointed to graffiti and previous issues on the Arlington site as demonstrating such a risk was very real.
96. Mr Bradshaw also gave evidence of the genuine concern held by leaseholders around the costs associated with the works being proposed. Whilst Mr Bradshaw accepted the nature of leasehold ownership and the risks of such costs being passed back under the lease, he articulated very well the impact the proposed costs may have on some leaseholders, describing them as impossible to manage for some and also set out concerns that the works would overrun and end up costing more than was proposed by the Applicant.
97. The Tribunal heard evidence from David Walker. Mr Walker's witness statement was accepted as evidence in chief [5493]. Mr. Walker was cross examined on the observations provided to the Applicant at both stages of the consultation process by himself and other leaseholders. Mr Walker confirmed he had helped create a spreadsheet to track queries raised and responses to the same. Mr Walker's evidence was that the information provided by the Applicant lacked detail. Examples of this suggested by Mr Walker was that there was not sufficient information to understand how the contractors proposed to approach the works and he wasn't convinced by the value engineering suggested.
98. It was suggested to Mr. Walker that his expectations on the amount of information and detailed response from the Applicant were not realistic and went beyond what was required under the statutory consultation requirements. Mr Walker gave evidence to highlight why he felt the information and responses from the Applicant were inadequate. He felt there had been a lack of transparency and the proposed contractors simply hadn't demonstrated competency giving rise to genuine concerns.
99. Mr Walker felt that no one had demonstrated that the proposed window refurbishment works were worth the money that was being proposed to be spent on the project. Mr Walker had taken steps to maintain his own windows to a high standard, something the Tribunal had witnessed itself during the inspection. As a result, Mr Walker felt that the Applicant had not demonstrated this cost was worth incurring or that it was reasonable to incur this cost. Mr Walker did accept there was a wide range of condition of window across the Building but that in itself did not mean it was reasonable to incur the costs of the proposed window refurbishment where simple steps of everyday maintenance

might resolve some or all of the associated deterioration of the windows and frames.

100. Mr Walker's professional career as an architect undoubtedly meant his insight and knowledge of certain aspects to the proposed works were greater than other Respondent leaseholders. However Mr Walker was not an expert for the purposes of Rule 19 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and had not produced evidence as an expert. He was a witness of fact only. Therefore where his evidence went beyond that of evidence of fact, the Tribunal had to disregard or treat with extreme caution evidence that was essentially proposed to be expert evidence.
101. Mr. Walker had exhibited to his statement and referenced the opinions of a Professor Stacey in relation to the proposed window refurbishment works and a letter he had drafted following a visit to the Building and specifically inspections undertaken of flats 11A, 14F and 17H. It was put to Mr Walker that Mr Stacey was not an appointed expert and was not present to be questioned or challenged over the content of the letter.
102. It was put to Mr. Walker that neither he nor any of the Respondents had provided alternative proposals to the Applicant, something Mr Walker did accept.
103. Finally, the Tribunal heard evidence from Mr Simon Pengelly. Mr Pengelly had submitted his statement on 8 April 2026 and within it suggested he was not represented by A Better Arlington. This meant his statement and his submissions were outside the directions timetable that required any leaseholder who did not wish to be represented by A Better Arlington to inform the Tribunal by 13 February 2026.
104. The Tribunal heard from Mr Pengelly as to why that deadline had not been complied with. Mr Pengelly, in summary, explained that he simply wanted his views to be heard by the Tribunal and considered as part of the decision. There was no real reason put forward as to why the original deadline had been missed beyond a suggestion Mr Pengelly wanted to change who was representing him.
105. As a result, in considering the overriding object and the principles set out in Rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal determined that Mr Pengelly's statement could stand as a witness statement and he could give evidence but that it would not form an independent statement of case. There was no good reason why Mr Pengelly had missed the directions deadline nor any reason why he had not made a subsequent application to the Tribunal. The Tribunal also acknowledged that Mr Pengelly really wanted to ensure he could give evidence to the Tribunal and be heard, something the Tribunal felt could be achieved through his witness evidence.

106. Mr Pengelly's witness statement was accepted as evidence in chief [4692]. He was challenged over his claim that the DOFF cleaning was essentially an attempt to make the building look nicer and that the window refurbishment works amounted to an act of "polishing". Mr Pengelly had been present to hear Mr Smith's evidence and whilst he noted what was said he did not agree with it.
107. Mr Pengelly suggested that a previous Section 106 Agreement, an extract of which was annexed to his statement, was still operational and therefore presented an alternative option to the Applicant to pursue instead of the proposed works, therefore meaning the proposed works were unreasonable to incur. The Tribunal was later supplied with a full copy of that section 106 agreement.

The List of Agreed Issues for Determination.

108. As referenced at paragraph 31 above, the Tribunal had requested the parties prepare a list of agreed issues for determination. Set out below are the headings and issues for determination that were submitted to the Tribunal. Under each heading, the Tribunal sets out its decision on that issue and the reasons behind that decision.
109. The parties had all helpfully prepared and submitted skeleton arguments in advance of the hearing. In summary the parties all advanced the positions adopted within those skeleton arguments in submissions to the Tribunal on the agreed list of issues for determination. The Tribunal does not repeat every submission made within this decision but is grateful to the parties for the clear presentation of their respective arguments.

Applicability of the Building Safety Act 2022 ("BSA 2022")

1. *Do the Leaseholder protections in para 8 of Schedule 8 to the Building Safety Act 2022 apply to any of the following works, e.g. are they cladding remediation as defined:*
 - a. *Concrete panel repair*
 - b. *Windows*
 2. *Does the proposed concrete column work relate to a relevant defect for the purposes of section 120(2)?*
110. The Applicant in submissions argued the wording of Paragraph 8 Schedule 8 of the Building Safety Act 2022 was entirely clear. Its reference was to the *removal or replacement of any part of a cladding system*. In respect of this application, the evidence clearly demonstrated neither the removal nor the replacement of any cladding

system was proposed. The evidence of the Applicant and David Smith was clear that patch repairs and treatment of the concrete cladding did not amount to the removal or replacement of a cladding system for the purposes of the Act.

111. The Applicant accepted that the decision in *Almacantar Centre Point Nominee No1 Ltd v De Valk (2026)* [299AB] decided that Paragraph 8 of Schedule 8 is not limited to works falling within the relevant defects regime of the Act and applies more generally, however that did not assist the Respondent as the works proposed simply did not involve works that were cladding remediation as defined in paragraph 8.
112. The Respondent's suggestion that the *Almacanter* decision allows the Tribunal to extend the scope of Paragraph 8 of Schedule 8 to capture those works is rejected on the basis put forward by the Applicant, that the proposed works do not meet with the definition within 8(2) in that they are not the removal or replacement of any part of a cladding system.
113. Whilst the Respondents argument that the removal of pieces of concrete during the investigative works and through the proposed works should allow the Tribunal to determine that constitutes the removal of part of a cladding system, the Tribunal finds that does not amount to the meaning of the words set out in the Act. Reference to removal of part of a cladding system in this context is not designed to capture the removal of small parts of concrete as is the case in this application. It is the Tribunal's view it is designed to capture entire parts of a wider cladding system, so for example the removal or replacement of one entire concrete panel, that one panel being a part of the wider entire cladding system made up of all the concrete panels.
114. The Tribunal prefers the submissions made by the Applicant on this issue. The Tribunal finds on the evidence of the Applicant of the extent of the specification of the works and the evidence of David Smith that the proposed repair works to the concrete cladding cannot be said to be a removal or replacement for the purposes of paragraph 8 of schedule 8 to the Building Safety Act 2022. The proposed works to the concrete cladding are repair works to restore the concrete cladding to a condition that is as close to its original state as is possible and an attempt to prevent further deterioration of the existing cladding system.
115. The Tribunal was referred to the Upper Tribunal decision in *Lehner v Lant Street (20240 UKUT 0135 (LC))* [375AB]. The Tribunal has considered this decision and if any statutory provision within the BSA 2022 affects the determination of liability to pay a service charges. In light of the findings above, considering the submissions of the parties and further to its own consideration, the Tribunal does not find any provision of the BSA 2022 that is engaged in this application.

116. The Tribunal also notes from that decision the following paragraphs:

116. As to the second question, we consider that the conditions in paragraph 8(2)(a) and (b) must be satisfied by the cladding system as a whole, and not simply by the parts of the system which are to be removed or replaced. That seems to us to be the natural consequence of the reference to the removal or replacement of “any part” of a cladding system that forms the outer wall of an external wall system. If the intention had been to confine the scope of paragraph 8 to the removal or replacement of the outer wall of an external wall system, the reference to “any part” of the system would be both redundant and misleading. The appropriate way to express the narrower intention would be to refer to “so much of” or “such part of” a cladding system as forms the outer wall of an external wall system.

117. We also consider that it is the cladding system as a whole which must be unsafe, and not simply the part which is to be removed or replaced.

117. In considering and applying the above to this application, the Tribunal finds that there is no evidence to suggest the cladding system as a whole is unsafe. Therefore even if the Tribunal is wrong that small parts of concrete removed from individual concrete cladding does not constitute part of a cladding remediation system, it would still find the proposed works are not captured by paragraph 8 of schedule 8 BSA 2022 because there is no evidence to support the cladding system as a whole is unsafe. The evidence shows it is in need of repair and maintenance but not that it is unsafe in respect of the cladding system.

118. In respect of the concrete column at Flat 12H it was important for the Tribunal to consider the definitions relating to relevant defects under section 122 of the BSA 2022. It was conceded the Building is a relevant building for the purposes of section 117 BSA 2022. The Tribunal agrees and makes that finding accordingly.

119. The Tribunal must then consider if the provisions of section 120 BSA 2022 are met. This section sets out the meaning of a relevant defect for the purposes of sections 122 to 124 and Schedule 8 BSA 2022 and therefore potentially qualifying for the protections afforded by the Act in connection with service charges not being permitted to be passed on leaseholders.

120. A relevant defect is defined under section 120(2) and refers to anything done (or not done) in connection with relevant works. Relevant works are defined at 120(3).

121. Relevant works mean as follows:

(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;

(b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

“The relevant period” here means the period of 30 years ending with the time this section comes into force.

122. It was accepted by the parties the Building was built in the early 1960's and completed around December 1963. The relevant period runs from 28 June 1992 to 28 June 2022. The Tribunal finds that the construction of the Building for the purposes of (a) plainly falls outside the relevant period.
123. In order for any works to be considered relevant works for the purposes of section 122 they needed to fall within one of the categories within section 120(3)(a)(b) or (c).
124. The Applicant submitted that the evidence of the Applicant, David Smith and Stephen Thorpe was clear that no works had been done to the concrete column or to the East or West elevations and as such the definitions within section 120(3) had simply not been met.
125. The Respondent argued that the Tribunal should place weight on the decision in the *Almacantar* decision and not read the BSA 2022 in a restrictive way. The various reports and investigations such as the Martech Report from 2015 [400] had shown as part of those investigations, samples had been taken and as such there was an argument that works had been conducted in the relevant period or potentially outside the relevant period for the purposes of (b) or (c).
126. In considering the arguments, the Tribunal agrees with the Applicant's interpretation of section 120(3) BSA 2022. There is no evidence for the Tribunal to conclude that previous reports and investigations that have taken place in respect of the concrete column would allow the Tribunal to find those were works that meet with any of the definitions set out within (a) (b) or (c). The evidence shows those were not works. The evidence shows those reports set out what proposed works need to be conducted to the Building. As part of the investigations to assist in the drafting of those reports, samples were taken and parts removed from the Building, but that is not enough to suggest those investigations

could stretch to meet with the definition of works for the purposes of s120(3) BSA 2022. In this regard the Tribunal accepts the expert reports and evidence of David Smith and Julie Bennell as experts that no works had been done to the Building since it was built, which was why the proposed works were now needed.

127. In respect of the windows at the Building constituting cladding for the purposes of the BSA 2022, the Applicant was clear that this issue was not raised in the Respondents statement of case and there has been no ability for the Applicant to properly respond to this nor place evidence before the Tribunal allowing it to safely make any findings on this issue. The Respondent had first raised this issue within its skeleton argument.
128. The Tribunal understands why the Respondent may have attempted to raise these arguments within its skeleton argument and is not critical of the Respondent in doing so but the Tribunal agrees with the Applicant that it is not appropriate in the circumstances to make any findings in relation to whether the windows qualify as a cladding system for the purposes of paragraph 8 of schedule 8 to the Building Safety Act 2022 in the circumstances.

Consultation Requirements under Section 20 Landlord and Tenant Act 1985 (“Section 20”)

- 1. Have the requirements of section 20 LTA 1985 been met?*
- 2. In particular has the Applicant provided enough information to the leaseholders for the purposes of the regulations and has the Applicant had due regard to leaseholder observations?*
- 3. If the answer to 1 is no, is this nonetheless a case where dispensation should be granted pursuant to section 20ZA?*

129. The Tribunal heard submissions from the Applicant at the hearing which pointed out that the first time a failure to comply with the requirements of Section 20 was put in issue by the Respondent was within their skeleton argument. The Tribunal accepts that to be the case but is grateful to the Applicant for addressing the point being taken by the Respondent nonetheless.
130. The Respondent's skeleton argument and argument advanced in the hearing was that essentially the failure to comply with the statutory consultation requirements of Section 20 was a failure to provide sufficient information and a failure to have due regard to the observations raised by the resident leaseholders. The Respondents relying on the evidence of David Walker to support their submission
131. The Applicant had addressed compliance with the Section 20 consultation process within its statement of case [4222]. The Applicant

set out how it had complied with the requirements of Section 20 by issuing first a Notice of Intention on 6 March 2025 (a copy annexed to the statement of case). The Notice of Intention invited the Respondent leaseholders to provide observations. A total of 6 responses were received. 5 from leaseholders and 1 from A Better Arlington. A letter was sent addressing those responses, summarising the main issues raised. Upon hearing evidence from Suzanne Calvo it was confirmed this letter was sent on 31 July 2025 and the Tribunal accepts that evidence which was unchallenged.

132. The subsequent tendering process was conducted by Hughes Jay and Panter Limited Chartered Surveyors and Consultants (“HJP”). Four companies had been invited to tender for the proposed works of which three responded. A Notice of Estimates was sent to the Respondents and A Better Arlington with observations on the Notice invited initially by 8 September 2025, subsequently extended to 19 September 2025. A copy of the Notice of Estimate was attached to the Applicant's statement of case.
133. The Applicant received 38 separate responses to the Notice of Estimates. 36 from leaseholders, 2 from A Better Arlington. The Applicant by way of letter dated 28 November 2025 responded to those responses. The letter set out the Applicant's response to the observations received and included a notification that the Applicant intended to award the contract to GTCI. GTCI were the cheapest tenderer and the Applicant therefore suggests technically this extra step was not required under the statutory consultation process but shows the Applicant's attempts to take additional steps to engage with the Respondents given the size, nature and cost of the proposed works
134. The Tribunal has carefully considered the evidence of Suzanne Calvo, Stephen Joyce and David Walker in respect of this issue. The Tribunal finds on the evidence presented that the Applicant has complied fully with the 2 stages of the statutory requirements of Section 20. There is direct evidence to show both statutory stages were completed and preferring the evidence of Susanne Calvo and Stephen Joyce on the processes that the Applicant undertook when conducting tender exercises. The Tribunal feels the evidence clearly supports that a compliant process was followed.
135. Suzanne Calvo's evidence demonstrated the Applicants internal processes and the approach taken to meet the requirements of the consultation process. The level of engagement with the leaseholders was reasonable in the circumstances and there was clear evidence in the responses submitted in evidence by the Applicant that due regard had been had to those observations. The Tribunal has carefully reviewed the letters and Notices within the bundle and finds them to be compliant with the requirements of Section 20.
136. The requirement under Section 20 is for the landlord to have “due regard” to observations made by Respondent leaseholders. Due regard

does not extend to ensuring each and every line of inquiry is fully and comprehensively responded to. Such a task could be overwhelming for a landlord and that is not the purpose or intention of the requirements of Section 20. The Tribunal finds on the evidence of the letters and responses set out above that the Applicant did have due regard to the observations raised by the Respondents.

137. The evidence of David Walker showed the level of the inquiries made by Respondent leaseholders and the spreadsheet that had been compiled to track information and responses was helpful to the Tribunal. The difficulty the Respondent has is that many of the inquiries made for further information go beyond the requirements of Section 20 and what is meant by due regard. There is no obligation on a landlord to answer every single request for information or clarification and some of the information sought by the Respondents such as detailed schedules of works and challenges to the suggested levels of value engineering were not reasonable to expect a landlord to provide in response.
138. In submissions, the Respondent criticised the choice of contractor awarded the tender (namely GTCI) and raised serious concerns about their competency to deal with high-rise buildings and suggested that their appointment was therefore not compliant with this process. The argument submitted being they were not competent and the contract should have been awarded to an alternative tenderer, at a significantly higher cost, on the basis they may be deemed more competent to deal with high-rise buildings.
139. The Tribunal rejects this argument in respect of the allegation that amounts to a failure to comply with the Section 20 consultation process. The Respondents submissions essentially oppose the tender award and that decision. The line of a submission is one that suggests the tender process itself was flawed in the way that GTCI were assessed for competency and ability to deliver the works. That is a very separate submission to the allegation that the statutory consultation process was not followed.
140. The Tribunal finds on the evidence presented in the Applicants statement of case and the evidence from Susanne Calvo that the Applicant complied fully with the requirements of the Section 20 consultation process.
141. The Applicant has requested the Tribunal make a finding on whether dispensation should be granted under Section 20ZA Landlord and Tenant Act 1985 regardless of any finding on its compliance with Section 20.
142. To be clear the Tribunal has found there to have been compliance with the statutory consultation procedure therefore this decision is made strictly in the alternative, should the Tribunal be found to be incorrect on the above findings.

143. Dispensation under Section 20ZA would be granted in the alternative. The Tribunal finds that in the circumstances and on the evidence provided, it would be proportionate and appropriate to grant dispensation from complying with the requirements of Section 20.
144. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
145. The relevant section of the Act reads as follows:
- S.20 ZA Consultation requirements:
Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
146. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
147. The leading judgment of Lord Neuberger explained that a Tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were a means to an end, not an end in themselves.
148. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
149. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:
- I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.
150. The main, indeed normally, the sole question, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of

the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

151. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
152. The reason why dispensation from consultation requirements is said to be required is due to risk presented by the Building and the need to conduct the repair works, to reduce the risk of further deterioration to the Building and to address some of the safety risks that are presenting given its current state. Given the nature of the works and the fact that it related to the safety and welfare of the building and its occupants, the Tribunal is satisfied that those works are required for the purpose of this dispensation application.
153. In considering the evidence before the Tribunal, the Tribunal finds that none of the Respondent leaseholders have demonstrated that any prejudice has been caused to them. The Tribunal finds that nothing different would be done or achieved in the event of a compliant consultation with the Respondents, except for the potential delay and problems.
154. The Tribunal finds that the Respondents have not suffered any prejudice by the failure of the Applicant to follow the full consultation process when looking and assessing prejudice in the contest of the decision in *Dajeau*. The Applicant clearly undertook a process that allowed the Respondents to engage with the proposed works and appointment of a contractor. The Applicant considered responses from the leaseholders and set out in correspondence its observations in response. The Tribunal finds no evidence as a result that any prejudice has been caused to the Respondent leaseholders in this regard when assessing if dispensation should be granted.
155. The Tribunal consequently finds that it is reasonable to dispense with all the formal consultation requirements in respect of all the proposed works to the Building should such dispensation be required in the alternative to the initial finding that the Applicant complied with the requirements of Section 20.
156. **Corrective Construction of Certain Leases**
 1. *Should the leases to flats 5B, 5E, 7G, 15H and 17F (or any of them) be correctively construed to bring them into line with the general charging scheme for the flats?*
157. The Applicant supplied to the Tribunal and the Respondent a breakdown of the existing service charge apportionment percentages for each Respondent flat. The document was entitled "Arlington House

Major Works Schedule”. This provided not just a breakdown of the percentage contributions the Applicant suggested were attributable to each Respondent leaseholder but also the amount that equated to if the cost of the proposed works was approved by the Tribunal and deemed payable. Reference to the general charging scheme within the issue for determination is reference to that schedule.

158. The Tribunal was supplied with copies of all the leases subject to the application for corrective construction. Set out below is a summary of what the current lease term states and what the applicant proposes the Tribunal should determine under the principle of corrective construction when looking at the relevant percentage contributions.

Flat 5B – lease states 6.6%.	Applicant proposes 0.6%
Flat 5E – lease states 76%.	Applicant proposes 0.76%
Flat 7G – lease is blank.	Applicant proposes 0.76%
Flat 15H – lease states 0.213%.	Applicant proposes 0.76%
Flat 17F – lease states 0.196%.	Applicant proposes 0.71%

159. The Applicant suggests that the general charging scheme sets out a fair method of charging leaseholders and the standard contribution percentages that apply for all flats from the 2nd to the 18th floor are consistent, applying a fair percentage contribution based on the footprint/size of the flat in question.
160. On each floor, flats A or B attract a percentage contribution of 0.6%, flats C or E attract 0.76% and flats D or F attract 0.71%. When those percentages are totalled up and flats located on the 1st floor (which are not in dispute or contentious for the purpose of this issue) the total percentage contribution for all flats across the Building equals 100%.
161. The Applicant argues that in respect of flat 5B and flat 5E these are clear typographical errors and therefore can be changed under the doctrine of contract corrective construction. In respect of flat 7G the omission of any figure again allows the Tribunal to apply corrective construction and apply an appropriate percentage.
162. In respect of flats 15H and 17F, the Applicant submits that the Tribunal can again apply the doctrine of corrective construction to avoid the injustice of some owners paying a greater percentage contribution for a similar sized flat and avoid a situation where two flats are paying considerably less and thus create a shortfall in the overall total percentage contribution for the Building.
163. The Applicant submits that where there is a plain and manifest error in the lease, in accordance with *East v Pantiles (Plant Hire) Ltd (1982) EGLR 111*, the Tribunal can apply corrective construction on the basis there is a clear error and a clear correction that can be made based on the Applicants general charging scheme that applies both fairness and a method of achieving 100% contributions across all flats.

164. In response the Respondent does not take issue or object to the proposed corrective construction of flats 5B, 5E or 7G. However, the Respondent suggests that the leases for 15H and 17F are not defective and do not require correction. In both instances the Respondent argues that the leases were properly negotiated, properly executed and that the lease term is clear and unequivocal. It is argued this is supported by the fact that not just a figure is present but there is wording subsequent to the figure clarifying exactly what percentage is to be applied in each lease.
165. On this basis, not only is there not a clear error on the face of the document given the figure is represented in both numbers and text, but when considering the principles of *Arnold v Britton (2015 UKSC 36)* and the guidance therein on how to interpret the construction of the lease terms, the Tribunal should apply the literal meaning of the words used and consider that at the time the lease was granted it was clear this was the deal the parties wished to enter into. The fact that it no longer is commercially attractive to the Applicant is not a reason to find an error or to interpret the lease in a different way. Both leases were granted in the mid to late 70s, the Respondent arguing this was simply the parties intention at the time and to interfere with it now would not be appropriate in the circumstances.
166. The Tribunal has carefully considered the authority of *East v Pantiles (Plant Hire) Ltd (1982) EGLR 111*. The guidance therein is clear. The Tribunal must apply a two stage test in order to be able to apply corrective construction to the leases in question. Firstly, the Tribunal must find there to be a clear mistake on the face of the instrument and secondly it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied then the correction is made as a matter of construction
167. In respect of Flat 5B, Flat 5E and Flat 7G, the Tribunal agrees with the Applicant's submissions, noting that it is not challenged by the Respondent. The Tribunal finds that there is a clear error on the face of the leases.
168. The Tribunal finds that for Flat 5B and Flat 5E these are clear typographical errors and the correct wording should have read 0.6% and 0.76% respectively. The Tribunal finds that given there has been no evidence to suggest there has been a change to the layout and number of flats at the Building, it is not reasonable to conclude the parties intended one flat out of 142 to bear 6.6% of the total service charge costs in contribution or in the case of Flat 5E for that flat to bear approximately three quarters of the total cost, the Tribunal finding a clear error in both leases.
169. Where the Applicant has provided details of the general charging scheme and that general charging scheme and its figures meeting almost squarely with those typographical errors and the proposed corrections, the Tribunal agrees with the Applicant submission and

under the corrective construction principles corrects those leases to 0.6% and 0.76% respectively.

170. In respect of Flat 7G, the Tribunal applies the same decision as in the paragraphs above, finding that it is a clear error that no figure was inserted into the lease. It would not have been the intention for no percentage service charge contribution to be made and again on the basis of the Applicant's clear proposed percentage that should apply, which meets in accordance with the general charging scheme, under the corrective construction principles the lease should read 0.76%.
171. However, in respect of the leases for Flats 15H and 17F, the Tribunal agrees with the Respondent's submissions. There is no clear error on the face of the lease, the lease terms not only reflect the percentage contribution in numerical terms but also in typographical terms. It cannot therefore be said that it is a clear error on the face of the instrument.
172. The Tribunal therefore has to apply and consider the principles set out in *Arnold v Britton (2015 UKSC 36)* as to whether those figures could nonetheless be considered errors when interpreting the lease. The Tribunal has carefully considered and applied the guidance from *Arnold v Britton (2015 UKSC 36)* and in particular the comments of Lord Neuberger which states;

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

173. For the reasons submitted by the Respondent, the Tribunal has concluded that it does not find there to be an error on the face of the lease. The Tribunal in considering the guidance set out above finds the

natural and ordinary meaning of the language used in the clause and the fact that these leases date to a relatively similar time, give weight to the argument that at the point these leases were granted, the circumstances and the context was such that the lease was granted as the parties intended and those were the figures to be applied.

174. There is no evidence before the Tribunal to show whether that made commercial sense at the time but simply because the Applicant's current application shows evidence of a general charging scheme that is commercially operational and effective now, that does not of itself in the Tribunal's view mean that these percentage terms were not the commercial intention of the parties when they were granted. It may well have made commercial common sense at the time but in any event the Tribunal finds there is insufficient evidence to confidently conclude that the leases should be interpreted to have meant to apply a different percentage figure and as a result it cannot be said there is a clear error within the lease.
175. The Tribunal therefore declines to find it should apply the principles of corrective construction to the leases of Flat 15H and 17F. The Tribunal recognises that the leaseholders of 15H and 17F therefore potentially benefit in a way that does not apply equally and fairly when considering the majority of other leaseholders at the Building. It is important to appreciate that the Tribunal in making this decision is not required to consider what may be fair or reasonable in this context. The Tribunal has applied the law and the guidance of the authorities provided to it in making this decision which has resulted in the Tribunal making the findings it has.

Lease Issues with Respect to Windows

1. *In light of the findings of the FTT in 2019 that the Category A leases do not demise the windows to the Category A leaseholders, do the category B leases demise the windows to the Category B leaseholders?*
2. *Irrespective of the answer to question 1 above, given the covenant in clause 2(9) of the Category B leases:*
 - a. *Is the Applicant entitled (but not obliged) to undertake works of repair and maintenance to windows of Category B leases at its discretion as of right pursuant to its obligation to maintain the structure of the building in clause 2(2)(iii)(a) of the Category B leases; or*
 - b. *Is the applicant entitled (but not obliged) to undertake any required works of repair to windows of Category B leases at its*

discretion in the event of the lessee's failure to do so (without first serving a notice of repair – see 2015 FTT decision); or

- c. Is the applicant only entitled (but not obliged) to undertake any required works of repair to Category B leases at its discretion in the event of the lessee's failure to do so as a pre-cursor to redecorating the windows;*
 - 3. Pursuant to section 27A(3)(a) of the Landlord and Tenant Act 1985 if the Applicant was to undertake works of repair to the Category B Lease flats would the costs of those works be recoverable from:*
 - a. Category A Leaseholders;*
 - b. Category B Leaseholders;*
 - c. The Category B Subset Leaseholders; and*
 - d. The Category C Leaseholder?*
 - 4. Is the Applicant entitled at its discretion, but not obliged to, repair the windows of the Category C lease? If it does so can it recover the costs of the same?*
176. The Tribunal heard submissions from both parties in respect of this issue. It was acknowledged by all that this is a complex area of the dispute and that the drafting and operation of the leases, there being 3 categories, with slightly differing terms and obligations, made this an extremely difficult part of the dispute to navigate and draw conclusions upon. It was acknowledged that it was possible the Tribunal could come to varying conclusions and findings as a result of the difficulties presented by the various categories of lease.
177. The Applicant in submissions stating that essentially the parties would benefit from clarity of findings on this issue, whatever they may be, so that they can proceed in confidence and work with those findings in the management and operation of the leases thereafter. The Tribunal is grateful to both parties for their clear and detailed submissions on what is a complex and difficult issue to determine.
178. The Applicant in submissions expanded upon the arguments within their skeleton argument and statements of case and the Tribunal does not feel the need to repeat the same here. In very brief general summary the Applicant stated that the starting point was the demise and the definition of the same and that the leases all have virtually the same wording. Therefore, the starting point for the Tribunal could be a consistent one. It was submitted windows were clearly not fixtures and were part of the Building itself, part of the original structure and design.

179. The Applicant submitting that where the lease was silent on the issue, the Tribunal should look at the terms and conditions set out within the leases and that the presumption should be the windows were not demised unless there was a reason to depart from that starting point.
180. This was supported by previous FTT decisions which although not binding could be referred to and should be seen as persuasive. It was acknowledged that the category A and B leases were incompatible in certain respects when looking at the changes to the obligations around the windows and frames.
181. Both parties referred to the authority of *Arnold v Britton (2015)* being the appropriate guide for the Tribunal when interpreting the construction and operation of the leases. In brief summary the Applicant submitting that the covenants at Clause 2(2)(iii) of the leases could catch all windows within the Building not demised as being structure of the Building and that would allow for the Applicant to recharge the costs of the work to the windows consistently across the Building.
182. The Tribunal has considered carefully the previous findings of the FTT in relation to leases at the Building in respect of the issue of the windows and their demise. The 2019 Tribunal decision [3495] correctly in this Tribunal's view determined that the windows and frames in respect of the Category A leases were not demised to tenants under those leases (see paragraphs 76 to 78 of that decision).
183. When considering the Category B leases, the Tribunal's starting point therefore has been to consider that in order to depart from the finding that the windows and frames were not demised to the tenants, there would need to be clear evidence within the terms of the lease that allowed this Tribunal to depart from that previous finding, given the wording of the demise of all categories of leases are almost identical.
184. As set out above, the authority the Tribunal must be mindful of when interpreting leases is that of *Arnold v Britton (2015)* and the guidance referred to at paragraph 172 above.
185. The Category B leases as indicated by both parties do contain variations to the terms of the Category A leases that must be considered in the context of whether the windows and frames were demised to the tenant or not.
186. The Category B leases make clear and express provision that the tenant is to meet the cost incurred by the landlord at Clause 2(a)(iv) of *decorating the exterior of the window frames.....and of repairing the same before such decorating if the same shall not have been properly repaired by the lessee in accordance with Clause 2(9)*
187. That clause was not present in the Category A leases, it is a clear change to the intention of the parties to the scope of responsibilities. It is also

clear in its wording that the obligation to pay is for *decoration* costs only. There is a clear limitation on what works it is perceived the landlord will undertake and that is limited to decoration only and does not extend to *maintenance, repair or renewal* such terminology used elsewhere in respect of landlord repairing obligations.

188. The lease retains the provision for the Lessee to meet *the cost of maintaining repairing redecorating and renewing.....The structure of the Buildings* at Clause 2(a)(iii)(a). This set out a clear obligation to require the Lessees to meet the costs incurred by the landlord for works to the Building in the same way that provision applies to other categories of lease. The distinction here being that if the Category B lease windows and frames have been demised to the lessees, those windows and frames would not form part of *the structure of the Building*.
189. The interpretation that the windows and frames are now demised to the Category B leaseholders is strengthened further by the wording of Clause 2(9). Here the Lessor sets out its obligations to the Lessee which is subject to the payment of the contributions (or service charges). Here the Landlord agrees to *maintain repair redecorate and renew* the structure of the Buildings at 5(1)(a)(i) and at 5(1)(ii) agrees to *redecorate the exterior window frames.....to the Flat*. This mirrors the obligation set out earlier in the lease to meet that cost if the works are conducted.
190. Under clause 2(9) of the lease there is a clear obligation on the tenant to repair cleanse and maintain *the windows and window frames*. This again is consistent with the intention of the parties that those windows and frames were to be demised to the tenant under this category of lease. When considering all these terms in the round, the Tribunal finds a clear intention from the parties when granting the lease that the windows and frames would be demised to the lessees. The Landlord understanding in doing so, it should retain the responsibility to decorate only the exterior parts of the frames, presumably on the basis of safety of the various residents attempting to conduct that type of work which by its nature could present risk to any occupier attempting to do such redecorations particularly on higher floors and ensuring the external parts of the frames would be kept to a consistent standard as a result.
191. When considering that Clause 2(a) is set in the context of the tenant obligations to pay service charges it follows that the tenant is required to pay service charges in respect of the maintenance of the structure of the Buildings. Therefore, where any windows and frames are not demised elsewhere in the Building, the tenants of category B leases would be required to meet any costs incurred by the landlord pursuant to that clause.
192. The original Category B leases further do not contain any provision for the landlord to, by discretion, do works to those windows and frames

and seek to recover those costs unless those costs meet with the specific obligation of redecorating the external parts of the frames.

193. This is based on the fact that under the lease, even if the tenant does not comply with Clause 2(9) there is no mechanism in the original category B leases that would permit a landlord to do the works and recharge the tenant. It is entirely feasible that the intention of the parties at the time was that if a breach of lease existed and was considered serious enough, forfeiture may have been viewed as the appropriate enforcement action, as opposed to the landlord conducting the works and recharging in light of breach.
194. These small but crucial changes to the obligations that exist within the lease when applying the guidance in *Arnold v Britton* suggests the Tribunal now must find the windows and frames were demised to the tenants under the Category B leases.
195. Considering the natural meaning of the wording used and the clear reservations made by the landlord in its repairing obligations to only seek to decorate the exterior of the windows, that would support this interpretation.
196. Where these changes were obviously not present in the Category A leases, this would strengthen the argument that the windows were not part of the demise to the tenants for the purposes of Category A leases but that there was a change in the intention of the parties at the point the Category B leases were being granted to change that position.
197. This view and finding of this Tribunal is supported further when considering the changes and variations that occurred to the Sub-Set of Category B leases. The sample Category B Sub-Set leases that the Tribunal has referred to and considered were granted in April 2014 and August 2016. These grants at the time they were entered into incorporated variations to the original terms and conditions of the lease. Those variations in this Tribunal's view are key when interpreting the original category B leases and intention of the parties at the time.
198. This would also take into account the 2015 FTT decision that concluded that a landlord could conduct works if there had been a breach and recharge the tenant accordingly. That decision references the lease being one that is concurrent and dated 2nd of April 2014. That position would be entirely consistent with the varied wording incorporated into the lease.
199. When looking at the sample lease Flat 4H, the wording under this subcategory B lease has been amended [122] and Clause 4(2)(iv) is the relevant clause. The relevant parts now read *And of repairing and/or replacing the windows window frames..... of the individual flats in the Buildings which have not been duly repaired and/or replaced by individual lessees and which it is necessary so to repair and or replace prior to such redecoration.*

200. This variation extends the ability directly for the landlord to conduct works to the windows and windows frames where the tenant of a sub-set Category B lease has breached the lease and importantly makes provision to recharge directly for those works. The Tribunal draws inference from the fact those lease variations took place and are absolutely explicit in the change on the rights and obligations that then exist in those subcategory B leases.
201. This ability for the landlord to enter and make good and pass on the cost in this Tribunal's view makes it clear that the original category B leases did not allow such provision and no recharging could take place for works in default nor did the landlord have any right to do repairs if the tenant had defaulted.
202. Therefore in respect of the all category B leases the Tribunal finds that the windows and frames were demised to the tenants and the tenants are obligated to conduct the maintenance of those windows including meeting the cost of the same. There is no provision in the lease for the landlord to do the works or for the landlord to then seek recovery of those costs, even if the tenant fails to comply with their obligations under Clause 2(9).
203. For the subcategory B leases that have made alterations and variations referred to above, that position clearly changes and allows for the recovery of cost where the landlord conducts the work should the tenant be in breach of the lease term in respect of that lease or other Category B leases where windows and frames have been demised to the tenants under their lease.
204. In respect of passing on service charges in respect of other windows at the Building in respect of the Category A and Category C leases, where windows and frames have not been demised, the Tribunal finds that the 2009 FTT decision was correct and the cost of those works can be passed back to the Category B leaseholders (both subsets) under the general maintenance provisions of Clause 2(2)(iii)(a) where those windows form part of the structure of the Building.
205. Turning to the Category C lease there is only one lease that falls into this category namely Flat 1B [39]. The lease was granted on the 4th October 1983. Again the Tribunal's starting point, given the similarity of the demise clause to the Category A & B leases is to start from a position that the intention was to not demise the windows unless there is different wording within the lease to infer otherwise.
206. At clause 5(i)(a) the lessor covenants with the lessee **subject to** the payment by the lessee of contributions (service charges) *to maintain repair redecorate and renew the structure... Of the said buildings but excluding the windows frames and glass therein.*

207. This express reference to excluding a requirement of the lessor to maintain repair redecorate and renew the windows frames and glass therein is framed in the context of the requirement for the lessee to make contributions and therefore it is subject to that payment taking place.
208. If it is to be said that reference is enough for the windows frames and glass to be deemed demised to the lessee, it is important to consider who is therefore responsible for their maintenance?
209. When considering the lessees repairing obligations at Clause 2(9) the express obligation is to repair cleanse maintain and keep the Flat other than parts referred to in paragraphs one and two of Clause 5 and there is no express mention here of windows frames or glass. Likely because they fall within the parts referred to at Clause 5. Therefore it stems that the obligation to maintain the windows frames or glass is only placed upon the tenant if they have been demised.
210. Under Clause 2(a)(iii), the lessee covenants with the lessor to pay the cost of maintaining repairing redecorating and renewing...the structure of said Buildings. This is in a similar format to Category A & B leases and if the windows frames of glass are not demised to the tenant this clause would permit a landlord to pass back the cost of maintaining repairing redecorating and renewing windows frames and glass including the windows frames and glass of Flat 1B.
211. There is nothing further within this lease that the Tribunal finds of assistance when determining the issue of the demise and whether the windows frames and glass are contained therein. The Tribunal again has considered carefully the guidance in *Arnold v Britton*. In the absence of clear express wording, the Tribunal has considered the intention of the parties and what would have made commercial sense at the time of the grant.
212. The Tribunal attaches weight to the placement of the reference to windows frames and glass in this lease. Its placement is within the covenant that sets the obligation on the tenant to pay costs. Of note the landlords obligations to conduct the maintenance repair renewal etc being **subject to** that payment. In other words, if payment is not forthcoming, the landlord cannot be obligated to conduct the maintenance or repair of the window frames and glass therein.
213. The Tribunal finds that in the absence of any express clear wording around the intention of the parties on the demise in this respect, the Tribunal prefers an interpretation that is consistent with the Category A leases and there being a basis that the landlord wanted to retain responsibility for the window frames and glass and be responsible for them. This is consistent with the majority of the leases at the Building and consistent with the 2019 FTT decision.

214. It is possible, and the Tribunal considers this the most likely intention of the parties, that when drafting this lease, it was deemed that maintenance of the windows frames and glass would be of such importance that it should not be subject to a payment. For example a situation could occur where the window was smashed and the landlord could not be compelled to make the property safe, if the leaseholder has not paid the relevant contribution.
215. The absence of any direct reference to the tenant being responsible for the maintenance of the window within the repairing obligations at Clause 2(9) is in the Tribunal's view again of note and is given weight when set against its direct reference clause 2(a)(iii)(a). The Tribunal finding that had the windows frames and glass been demised to the tenant and that had been the intention of the parties it would have been expressed within that clause or further references found as was the case in the Category B leases. In the absence of the same and for the reasons set out above, the Tribunal finds the windows to not have been demised to the Category C leaseholder and the intention of the parties was that the landlord would maintain those windows frames and glass accordingly being capable of recharging such works under clause 2(a)(iii)(a). This commercially being the more attractive and appropriate approach to the parties at the time.
216. Therefore in summary answer to question 1, for the reasons set out above, the Tribunal finds the Category B, and Category B subset leases do demise the windows and frames to the Category B and Category B sub-set leaseholders. In respect of question 2, for the reasons set out above, the Applicant is only entitled to undertake any required works of repair to the Category B leases at its discretion in the event of a lessee failure to do so, as precursor to redecorating the windows only, the lease terms not permitting works beyond decoration, **unless** the lease is one of the subset Category B leases in which case the Applicant is entitled but not obliged to undertake any required works of repair to windows at its discretion in the event of a lessees failure to do so in accordance with the varied lease terms that apply to that subset of leases.
217. In respect of question 3, in light of the finding that the windows and window frames have been demised to all category B leaseholders, the ability to recover the costs of works done by the applicant to repair those windows would subsequently only be recoverable from the category B subset leaseholders, whose terms and conditions had been varied to give that explicit right. The Tribunal as set out above finds that where those windows and frames have been demised they would not be caught as forming the *structure of the building* and therefore is not caught for the purposes of Clause 2(2)(iii)(a) and the original Category B leases, as found above, gives no recharging mechanism that could see the costs passed back to those original category B leaseholders under the leases. The Tribunal has found that it is only the Category B subset leaseholders where there is a mechanism within the

lease that clearly allows the recharging of works of redecorating and/or repair to the Category B lease windows and windows frame.

218. Finally in respect of question 4 the applicant is entitled at its discretion but not obliged to Repair the windows of the category C lease and can recover the costs of the same and under the provisions of Clause 2(2)(iii)(a).

Leases – Recoverability Of Works Under The Service Charge Provisions In Principle (before taking into account the specific Respondents’ arguments on the various issues set out below):

1. Are the works to the following parts of the building recoverable in principle under the service charge provisions:
 - a. Concrete panels
 - b. Concrete column
 - c. Roof
 - d. Waffle slab
 - e. Residents’ car park
 - f. Walkway connecting resident’s car park
 - g. Communal windows on stairwells
 - h. Windows in category A properties
 - i. Windows in un-demised flats in the building
219. In submissions on this first question, it was accepted that some of the proposed works to parts of the Building were recoverable in principle under the service charge provisions and were not in issue between the parties. The parties did still request the Tribunal make a finding nonetheless. In respect of the concrete column at Flat 12H, this was not in issue save for the Respondents arguments relating to costs protection under the BSA 2022 and an argument of offset (see below) that the Respondent claimed should apply.
220. The first areas in dispute were (a) the concrete panels and (b) the roof. The Respondent submitted that works to the concrete panels and the roof were not recoverable under the leases on the basis that Clause 2(2)(iii)(a) omitted the word “exterior” and the concrete panels and the roof clearly formed part of the exterior to the Building and *not structure of the Buildings*. The Respondent in support of this relied on the evidence of Mr Smith who said that the concrete panels were not structural. The Respondent suggesting that the lining covering the roof as a surface equally did not provide structure and was therefore not structural.
221. The Respondent's position being that the evidence was to repair the roof covering therefore it was not caught by the definitions under Clause 2(2)(iii)(a) of the leases.
222. The Respondent argued the same reasoning could be applied to the concrete panels as Mr Smith's evidence was that they were not

structural and were just added on top of or attached to the structural elements of the Building. Mr Smith's evidence being the Building was capable of standing without those concrete panels, therefore in the Respondents submission they couldn't meet with the defined term as a result.

223. The Respondent submitting that the works relating to the spalling and the concrete cladding was therefore "exterior" and not covered by the definition of "structure of the Building" and the Tribunal was invited to apply the principles of *Arnold v Britton* and interpret the leases on the basis that the concrete panels and the roof were excluded from the definition and provisions of Clause 2(2)(iii)(a).
224. The Respondent in submissions did accept that works were needed to both the concrete panels and the roof but that they were not capable of being recharged under the lease terms.
225. The Applicant in response to this argument said the lease clearly defined what structure is and *Arnold v Britton* specifically directed the Tribunal to look at the context and wording of the lease. The Applicant submitting that when you look at the Building and the length of leases granted, the idea that no one would be responsible for the "exterior" or the roof lining (if you accepted the Respondent's interpretation of the lease) simply could not be sustainable.
226. "Structure" in the context of the lease was clearly not limited to "structural" and "structural support". For example the term includes reference to gutters which could not be said to be structural. The roof was specifically included in the lease term with no limitation attached so should be read to include lining and surfaces.
227. The Applicant argued that when you read the lease terms in respect of obligations set out upon the landlord and the requirements for the lessees to contribute towards the works of maintenance repair and renewal, it was clear that the concrete panels and roof were included for the purposes of "structure of the Building". The Applicant added that if the landlord was not responsible for the concrete panels and their maintenance, the panels providing weatherproofing to the Building and its constituent parts, it is far from clear that anyone would be responsible for it and that cannot have been the intention of the parties.
228. In respect of the waffle slab (d) the residents car park (e) and the walkway that connects the residents car park (f), all these issues were in dispute.
229. The Applicant argued that the definition of "Buildings" within the lease covered all three structures. All leases use the word "Buildings" whilst Category B and category C leases also referred to "ancillary structures".
230. The Applicant had provided the Tribunal with detailed title plans showing that all three structures fell within the Applicant's title and

that the reason why “Buildings” was plural was to account for these structures when granting the leases, otherwise, if it was to be as narrow as the Respondent suggested, the singular “building” would have been sufficient to capture the Arlington House block on its own.

231. The Applicant referring to the evidence of David Smith who confirmed that the waffle slab and car park were integral to the structural part of the main building and he would not advise its removal due to the adverse consequences.
232. The Respondent in counter argument referred to the English Oxford dictionary's definition of a building being a singular building; the Respondent stating that a car park was clearly not a building and that on the evidence of Suzanne Calvo around filming having taken place on the car park, it was clear the Respondents did not enjoy exclusive use of the car park and waffle slab. The Respondent referred to historical documents showing that the car park had been built to be strong enough to park coaches upon it, something that would not be linked to residential use of the Building. The Respondent argued an ancillary structure should be something subordinate to the main building whereas the waffle slab and car park were in some respects just as big as the main building, ancillary structure meaning something smaller like a garage.
233. Having carefully considered the arguments of both the Applicant and the Respondent, the Tribunal finds that the concrete column and roof fall within the definition within the leases of “structure of the Buildings”. The Tribunal agreeing with the Applicant's submissions and preferring the evidence of the Applicant and David Smith.
234. The concrete panels as cladding were clearly always intended to be the responsibility of the landlord and form part of the *structure of the Buildings*. There is no evidence to suggest that such cladding was not deemed to be within the definition of structure of the Building. The evidence of David Smith was clear that whilst the concrete cladding was not structural, that did not mean it did not form part of the structure. It plainly does. There is significant force in the Applicant's argument that due to the cladding providing weatherproofing and being a constituent part of the building, it is covered by the term “structure”. Likewise the leases refer to elements such as gutters when linking to structure of the Building. It is not sustainable to suggest that a gutter falls within the definition of structure of the Building but the concrete cladding does not.
235. Likewise the Tribunal prefers the evidence and submissions of the Applicant in respect of the roof. To suggest the roof lining is something separate to the roof is not a finding this Tribunal will make on the evidence before it. The roof is clearly anticipated in the terms of the lease to be the landlords responsibility to maintain and then pass back associated costs of the same. If the Tribunal were to adopt the Respondents argument, either no one is responsible for the roof lining

or it would have to be inferred as being part of the demise to the flats on the 18th floor, neither of which for the purposes of *Arnold v Britton* can have been the intention of the parties when granting the leases.

236. In respect of the waffle slab, resident car park and walkway, the Tribunal finds that these are covered within the definition of “Buildings” within all leases. The Tribunal agrees with the Applicant that when looking at the title plans and the site owned as a whole by the Applicant, the leases were granted with the waffle slab, car park and walkway captured by the use of the plural term “Buildings”.
237. The Tribunal preferring the evidence of David Smith that these structures are key and integral to the main building. The leases would simply not have been required to use the word as a plural and could have kept a very narrow definition of building had it been the intention of the parties at the time to only refer to the residential block of flats when setting out the extent of the definitions within the lease.
238. On balance the Tribunal does not accept the Respondents submissions on this point that the parties would have not intended to capture those three structures under the terms “Buildings” and prefers the submissions of the Applicant
239. In the event that the Tribunal is wrong in its interpretation of the extent of the term “Buildings” then the Tribunal finds that for the Category B and C leases, “ancillary structures” would undoubtedly capture the waffle slab, car park and pathway for the same reasons set out above. However, for clarity, the Tribunal believes that this change in terminology was placed in the leases of Categories B and C more as an act of clarification and due to the changing nature of the Arlington site and surrounding areas at the time the leases were granted. The Tribunal remains of the view that the term “Buildings” and what it covers has been consistent from day one and following the site inspection, the Tribunal was confident that the actual lay of the land supports that interpretation.
240. In respect of the proposed works concrete column at Flat 12H, the communal windows on stairwells, the windows in the Category A lease properties and the windows in the un-demised flats in the building, the Tribunal finds that those parts of the Building and any works conducted to them, are recoverable in principle under the service charge provisions within the leases and are covered under clause 2(2)(iii)(a) as falling within the meaning of “structure of the Buildings”.

2. *Are each of the following areas of the building in a present state which requires repair or maintenance:*

a. *The concrete panels to each elevation;*

- b. *The structural column on the north elevation around flat 12H*
 - c. *The roofs of the building*
 - d. *The waffle slab, car parking area and walkway*
 - e. *The communal windows on the stairwells*
 - f. *The steel windows on the first floor*
 - g. *The aluminium windows on floors 2-18*
- 3. *Are the works proposed in the specification of works a reasonable response to the disrepair/need for maintenance in respect of each of:*
 - a. *The concrete panels to each elevation;*
 - b. *The structural column on the north elevation around flat 12H*
 - c. *The roofs of the building*
 - d. *The waffle slab, car parking area and walkway*
 - e. *The communal windows on the stairwells*
 - f. *The steel windows on the first floor*
 - g. *The aluminium windows on floors 2-18*

241. In respect of the above two questions, the Applicant made submissions based on the arguments set out within their skeleton argument. In summary the Applicant argued that the condition of the concrete panels on the East and West elevations were in need of repair and the DOFF cleaning was a reasonable act of maintenance to facilitate that repair, the Applicant submitting the expert report and evidence of David Smith was conclusive at both the East and West elevations were in disrepair [4985] and following the July 2024 survey the report [2192 to 2194] submitted in evidence, this demonstrated the list of known defects.
242. David Smith's evidence confirmed that survey could only take you so far in establishing the full extent of repairs required. There was evidence of spalling with further tests required to find out the full extent of the disrepair. The works being proposed were in accordance with the reports submitted by Martech in 2015 and follow up of 2019 and the recommendations therein [400][486].
243. The Applicant, building on the evidence of David Smith, highlighted his expert evidence that once you have discovered the defects and want of repairs in the concrete panels and structure, it will now progressively accelerate and get worse. There is a window of time to complete those works to repair and maintain. This showed the Applicant's reasonable approach to the works. The Respondent has provided no alternative evidence to the expert evidence before the Tribunal and the Tribunal should be cautious to disregard or not accept such expert evidence in the circumstances.

244. Further, if a full scaffold is required, it becomes prudent to complete the works to minimise the need for future works and to make best use of that scaffold to minimise if possible the need for future scaffolding and the sizable cost and inconvenience of the same. The Applicant relying on the Martech reports [411] and the specification of the treatment to the concrete requiring multiple rotations and applications of treatments. In light of the Applicants reasons for conducting these works, a full scaffold was clearly reasonable and the most appropriate and safest way to proceed.
245. The Applicant pointing out that both experts considered it safer to have a full scaffold with Julie Bennell giving expert evidence that she would not allow her company to conduct such works without a full scaffold in place.
246. The Applicant submitted in respect of the aluminium windows, the Tribunal had inspected those and could form conclusions. The ASWS condition survey and the expert evidence of Julie Bennell was fair and balanced. Photos from the report [2322][2331] showed some of the windows in a poor state of repair, with tenants making improvisations in order to remedy the defective operation of those windows.
247. The Applicant submitted that the former proposal to replace the windows should be viewed in its context and that proposal in 2022 had not been successful partly because at the time the Applicant was unable to obtain an equivalent sliding window replacements. As the ASWS report from the time was clearly framed from the position of seeking to optimise the thermal efficiency for the windows, when this was not achievable, the only reasonable option left to the Applicant was now the proposed refurbishment as per the current scope of works.
248. The evidence was clear that there was a variety of states of repair throughout the Building but when viewed as a whole it was not unreasonable for the Applicant to take steps to refurbish and maintain all aluminium windows that it was responsible for.
249. In respect of the roof works, the Applicant submitted that the photos supplied in the bundle showed that the telecoms infrastructure was elevated above the roof and fixed to the sides/perimeter wall. The specification of works to the roof met with the reports that confirmed it needed repair and the Applicant was proposing to do the works to the specification contained in the report. There was no evidence before the Tribunal that it has been over specified or impacted by the telecoms infrastructure.
250. In respect of the waffle slab, the Tribunal had witnessed directly the spalling concrete and heard evidence from David Smith about the importance of the waffle slab to the integrity of the Building which was also present in the DSA structural reports from 2025 [1105]. The building survey [2130] clearly advising the Applicant that this needs to be put in repair. Similarly advice under the Martech report and the

Tribunals visible inspection of the car park and pathway should lead to similar conclusions. Again there was no evidence to counter that this is not a reasonable course of action in seeking to conduct these repairs.

251. In response the Respondent submitted that Julie Bennell's expert evidence conceded that she could not recall the flats surveyed during the 2022 inspection and that the whole scheme of works was predicated on that 2022 report when it came to the refurbishment of the aluminium windows. It was only 10 flats that were surveyed but it was taken to be indicative of the whole Building. Following the inspection and hearing the evidence of David Walker and Tom Bradshaw, there was evidence to show that the windows could be maintained by the occupiers of flats with relative ease.
252. The Respondents submitted that the Applicant should essentially consider a hierarchy of need for the works and focus only on those works that were deemed urgent or of emergency. It was not reasonable to incur all these costs at the same time when the financial hardship that would result to leaseholders was significant. The Respondent submitting that the Applicant should instead not conduct the refurbishment works to the aluminium windows and should not proceed with the repair works to the concrete cladding on the East and West elevations on the basis these weren't urgent. The Respondents suggesting that the expert evidence of David Smith was that the carbonation was isolated and although there was a risk of deterioration it was not urgent and could be left for longer, with little evidence of significant spalling to those concrete panels.
253. The Respondent conceded that the structural column and the works to the same, given it was of structural integrity to the Building, was likely reasonable and that the roof repair works probably did need doing as well but it was likely the roof had deteriorated from the telecoms infrastructure and therefore the Applicant should seek funding from those companies obtaining the benefit of the use of the roof.
254. The Respondent argued it was difficult to see what work was actually needed on the waffle slab, car park and with the walkway still in use and accessible through the car park, it could not be said to be dangerous given it was not closed off. Where other parties had used parts of the waffle slab and car park, it was again suggested that others other than residents should contribute towards the cost.
255. It was conceded that the proposed works to the stairwell windows in the North and South elevations were needed on the basis they were in a poor state of repair and the link to fire safety.
256. In summary the Respondent felt that the specification had changed following the unsuccessful plans in 2022 for full restoration of the Building to now nothing more than a common service which in part amounted to an expensive clean. It could not be reasonable for the works to take place, save for where admitted, and it was arguable that

replacement of the windows might be a more viable longer term option given the anticipated additional lifespan.

257. The Tribunal has carefully considered the evidence that has been supplied by the parties both within the bundle as written evidence and also the oral evidence presented at the hearing. The Tribunal attaches significant weight to the expert evidence, both the expert reports and oral evidence given.
258. The Applicant is not obliged in law to only conduct urgent or emergency works or adopt a minimum standard of repair. The proposed works set out in the specification save where indicated otherwise in this decision are works that the lease obligates the Applicant to conduct in order to comply with repairing covenants. The way the Applicant chooses to comply with those covenants in this instance falls within the boundaries of what is reasonable and the Tribunal finds accordingly.
259. In respect of the present state of the areas of the Building listed in question 2, the Tribunal finds all areas require repair or maintenance. The Tribunal bases this decision primarily on the expert reports and evidence submitted to the Tribunal by the experts but also on the basis of its own inspection and the various reports evidenced in the bundle.
260. The Tribunal has carefully considered the reports of ASWS from 2022 and the Martech reports and finds it reasonable for the Applicant to have considered the content of those reports and put together a proposed specification of works in response to their findings. The Applicant's response and the programme of work set out is a reasonable response to the disrepair or need for maintenance in respect of each item listed.
261. As indicated, the Tribunal makes this finding primarily on the back of the expert reports and evidence submitted by the Applicant but also on the basis that the vast majority of the submissions made by the Respondent are simply not backed up with any real tangible evidence to counter the Applicant's position. For example there is no evidence to suggest that the carbonation of the concrete panels is isolated and can be left longer before repairs are required. In fact the expert evidence said at its highest there was uncertainty and it was impossible to tell the full extent until further investigation and works took place. The expert evidence was direct on this point and the Tribunal prefers that evidence. It therefore flows that it is reasonable not only for the landlord to wish to ensure the matter is addressed within a reasonable time but that the proposed treatment and repair works are themselves reasonable.
262. The Respondents submitted that the telecoms companies should be liable for the deterioration to the roof but supplies no evidence to suggest that any deterioration was caused by the installation and use of that infrastructure.

263. A submission was made that the walkway from the resident car park was not that dangerous or it would be closed off but there is no evidence to counter the evidence provided by the Applicant that the repair works were still required and it was reasonable to incur the cost of those repair works in light of the findings of the reports it had considered. The test not being the requirement to only conduct the minimum works required or only address urgent areas of disrepair.
264. The Tribunal find the steel windows in the North and South elevations to be in a state of disrepair and that following the ASWS window condition report it is accepted that the proposed refurbishment works are necessary and reasonable.
265. The Tribunal finds that the Applicants decision to incur the cost of the refurbishment of the aluminium windows is reasonably incurred in light of the ASWS windows condition survey [2337] and the expert evidence of Julie Bennell. The Tribunal does accept there is a variation across the Building in the condition of those aluminium windows however it is not the solution to suggest the answer is for tenant maintenance to occur to remedy the problem, particularly in light of the vast majority of leases not demising those windows to the tenants, meaning that the landlord has no ability to enforce that maintenance in the vast majority of the leases and is obligated to maintain and repair those windows. Therefore when faced with expert reports and the need to maintain the vast majority of the windows in the Building, the decision to incur costs of maintenance as per the recommendations is reasonable as are the sums proposed in respect of the same.
266. The Tribunal finds that the proposed roof works are reasonably incurred and reasonable in amount. The Tribunal relying upon the evidence of the Langley condition report submitted in evidence [3759] as deeming all roofs, with the exception of Lower Roof B as in urgent need of refurbishment having reached the end of their natural life. The inspection report dated 29 April 2025 sets out the necessity for these works, including Lower Roof B, such evidence is preferred by the Tribunal and in light of these reports and their conclusions and the subsequent recommendation for conducting the works needed to repair the roofs, the Tribunal finds the roofs to be in a state of disrepair and that the Applicant's decision is reasonable to incur the works and the proposed cost for the works are also reasonable.
267. As set out above and further to the evidence contained in the Martech survey report dated 3 July 2015, the 2022 drone survey, the abseil dropped survey 29 July 2024 and the DSA report dated 15 June 2026 along with the expert evidence of David Smith, the Tribunal finds that the concrete panels are in need of repair and maintenance and that the Applicants decision to adopt the specification of works to remedy the repairs is reasonable.

268. As set out below in answer to question 8 the Tribunal also notes that the Respondents have provided no expert evidence to suggest there should be any offset of costs as an alleged failure by the Applicant to remedy this issue at some earlier stage. The increase in costs from March 2020 to the present day is not supported in any evidence that it is due to a failure to act by the Applicant that has increased those costs. The Tribunal also dismisses the argument that the survey and the removal of 32 kilogrammes of concrete in 2024 in any way accelerated the deterioration of the concrete panels and indeed that suggestion is counter to the Respondent's submission that it was an option for the Applicant to do nothing given the concrete's current condition.
269. The Tribunal finds, and it is not disputed by the Respondent, that there is clear evidence of disrepair to the structural column in flat 12H, the Tribunal accepts the Martech report dated 11 October 2021 and the DSA structural report of 30 July 2025 in this regard as evidence to support that finding.
270. The Tribunal also finds that the DOFF cleaning treatment and application of anti-carbonation treatment are not improvements. The expert evidence of David Smith was clear that without the DOFF cleaning treatment the anti-carbonation treatment will be ineffective. Therefore the DOFF cleaning treatment is required in order to allow the acts of repair and maintenance to the concrete panels to be effective. The Tribunal fully accepting the evidence of David Smith on this point.
271. The Tribunal also finds that the works to the car park and the walkways and the waffle slab are all reasonably incurred and that all are in need of repair, again the Tribunal accepting the evidence of David Smith in respect of the structural integrity of the waffle and the need to conduct the repairs identified as supporting evidence.
272. In light of the above findings, the Tribunal also finds that on balance the Applicant is reasonable in its decision to incur the cost of a full scaffold and it is necessary in relation to the works that the Tribunal has found are reasonable, namely the roof works, the window works to all elevations and the concrete panel works, including testing the integrity of the concrete, the DOFF cleaning and the application of the anti-carbonation treatment.
273. The Tribunal prefers the evidence of David Smith and Julie Bennell as experts and although they are not direct scaffolding experts, they were able to give an informed opinion over the issue. In the circumstances and taken as a whole, their evidence on why a full scaffolding was on balance in their professional experience the most appropriate way to proceed being accepted by the Tribunal and the Tribunal finding that a full scaffolding is reasonable to incur and the cost of the same to be incurred by the Applicant is reasonable for reasons already set out in relation to compliance with the Section 20 consultation process and the assessment of costs associated with the same.

4. *Does the proposed Doff cleaning and the proposed application of the SIKA anti-carbonation treatment constitute an improvement or is a legitimate form of maintenance under clause 5(1) of the Leases?*
274. In light of the detailed findings set out in the paragraphs above, the Tribunal will not repeat the evidence considered and the findings made but for the reasons set out above the Tribunal finds that the DOFF cleaning and proposed application of the SIKA anti-carbonation treatment is a legitimate form of maintenance under clause 5(1) of the leases.
5. *Are the proposed costs of the works set out in the GTCI tender as amended by the schedule of additions and omissions (“the GTCI Tender”) for each tranche of work set out above reasonable?*
 6. *Will it be reasonable to incur costs in line with the GTCI Tender to undertake each of the categories of work set out in subparagraphs 2(a) to 2(g) above?*
275. In summary the Applicant expanded upon the arguments in their skeleton argument and set out that the evidence before the Tribunal showed a competitive tender process, evidenced by the Applicant submitting a tender report [924] which contained an appropriate market cross check. ASWS were an approved subcontractor of the Applicant and evidence from Stephen Thorpe [4690] explained the process of appointment. In respect of the refurbishment to the aluminium windows it is a small marketplace and not many people or companies are available to do this work.
276. The Tribunal had heard evidence from Suzanne Calvo and the documentation submitted in evidence clearly showed appropriate quoted prices [276 to 278] and a price analysis [927]. The Tribunal had heard evidence that there had been a competitive tender process involving proper assessment of the potential contractor's competency and ability to deliver the works and that had then resulted in the Applicant securing the cheapest tender. There was no real evidence to counter that these costs were reasonable and therefore the Tribunal should accept the Applicant's evidence.
277. There was evidence of value engineering with the Applicant pointing out that only two tenders are required legally (*OM Property Management (2014) UKHT 0009 (LC)*) in order for there to be a competitive process. No other alternative quotes had been put forward by the Respondents. There was no evidence of over specification particularly, for the roof works. *Waalder v Hounslow LBC (2017) 1 WLR 2817* was authority that the landlord is not obliged to take the cheapest option. The applicant submitted the Tribunal simply has to find if the tender costs set out by GTCI for each tranche of work are reasonable

and the evidence clearly demonstrates they are, following a competitive tender process and testing of the market.

278. The Respondents raised concerns that the use of terms such as “value engineering” on a high-risk building leads to significant fears given the history of high-rise buildings and safety issues and tragedies such as the Grenfell Tower fire. The Respondent claimed GTCI has no previous experience of buildings similar to Arlington House so they couldn't demonstrate value for money, just a low price. Concerns were raised over the quality and competency of the contractor with submissions made that prices were likely to continue to increase, the Respondent stating it was unreasonable to expect residents to supply alternative proposals or alternative quotes and that the landlord is a professional landlord with access to platforms and approved contractors.
279. The Tribunal finds on the evidence provided that the proposed cost of the work set out in the GTCI tender as amended by the Schedule of Additions and Omissions for each tranche of work set out above are reasonable and that it is reasonable to incur the costs in line with GTCI's tender in respect of each category of work including the costs of a full building scaffold.
280. For the reasons already set out within this decision above, the Tribunal finds the costs have been demonstrated to be reasonable, the works meeting the recommendations and not going further than necessary in respect of those recommendations when it comes to the specification of works. The Tribunal does not repeat the findings already made above that relate directly to this issue but where appropriate they equally apply.
281. The Tribunal prefers and relies upon the Applicant's submissions on this issue and prefers the evidence of the Applicant in respect of how it has assessed those tenders, which the Tribunal has found took place through a compliant Section 20 consultation process.
282. The Tribunal accepts that the Applicants evidence that it had an appropriate method of assessing those companies that tendered for the work and made an award to CTGI based on their assessment of that competency to oversee and coordinate the works. The price quoted was the cheapest of the tenders put forward and there is no evidence before the Tribunal to suggest that those costs are unreasonable. In respect of those sums, the Tribunal also accepting the evidence that the Applicant did negotiate down certain fees and ensure appropriate value engineering to reinforce their position that these costs are reasonable.

7. Are the proposed professional fees (e.g. HJP fee, CDM fee and Management fee) for the project reasonable?

283. The Applicant submitted that again based on the evidence and the lack of any real evidence to counter it, the Applicant's position was clear that

the professional fees were reasonable. There had been no alternatives put forward and whilst the Applicant accepted it may be hard to get full major works quotes as alternatives, it was not difficult to necessarily obtain alternative quotes from surveyors and other professional companies.

284. In any event the evidence from the Applicant was clear the works needed professional services [4920] with Suzanne Calvo's evidence showing the Applicant had worked to secure savings, the professional fees negotiated down to 5% from an original 6% and the fee for the CDM at 0.5% was not controversial.
285. The Applicants management fee [4941] and Suzanne Ccalvo's evidence showed considerable project management and engagement was to be required with the Respondent leaseholders and other stakeholders and therefore the fee a 4% was justified. The Tribunal could look at the engagement levels through the Section 20 process as evidence to see it was proportionate.
286. In response the Respondent in submissions opposed the Applicant and the professional fees on the basis that in light of the new building safety laws and regimes, it was submitted Stephen Thorpe's instruction as principal designer and lead contact with the BSR showed a failure to understand the importance of building safety and this was proven by the recent delays and failure to fully understand the need for Regulation 11 approval from the BSR for works on structural column. This was compounded when the Tribunal was advised that the current application had been rejected as no statement of truth had been executed on the form.
287. The Respondent submitted that this showed a lack of skill and knowledge and that someone in Mr Thorpe's position should not have to check with engineers about the appropriateness or need of applications to the BSR.
288. When questioned by the Tribunal over what percentage of fees would be appropriate, the Respondent suggested 1.5% on the basis that reflected the lack of competence.
289. The Tribunal assessing the parties evidence and its own professional knowledge finds the proposed fees for the project reasonable. The Tribunal preferring and accepting the Applicant's submissions and supporting evidence in respect of this issue.
290. The Tribunal finds on the evidence from the Applicant as set out above it clearly engaged in a sensible course of conduct to try and secure reasonable and proportionate professional fees in all respects. There is no evidence that counters that those fees are not reasonable or that such professional services are not necessary given the need for the same on a project of works such as is proposed. The Tribunal finding such fees are reasonably incurred.

291. The criticism of the Applicants engagement with the BSR is understood in light of the initial misunderstanding around the need for approval from the BSR for works on the column but Mr Thorpe in evidence explained how the BSR is still in relatively early days and the sector is still bedding into a new regime. Mr Thorpe in evidence confirmed he took advice when this uncertainty initially presented but then reacted when he was informed by the BSR that an application would be required.
292. The Tribunal finds that Mr Thorpe's conduct in this regard is entirely reasonable and proportionate and that to check and make enquiries of other professionals and the BSR directly when uncertainty exists is exactly the type of conduct that one would expect from somebody appointed to such a position. Further the Tribunal prefers the evidence of Suzanne Calvo and in particular her witness statement [4919-4920], the Tribunal finds that the fees are at levels that are reasonable for a project of this scale.

8. Has there been historic neglect on the part of the Applicant in relation to the concrete column and the façades? If so, is there any basis for a set-off in respect of the repairs to the same?

293. The Applicant submitted that for the purposes of a determination of reasonableness under Section 19 Landlord and Tenant Act 1985, the Tribunal must focus on the actual costs being incurred now to fix the problem that exists and specifically whether those costs are reasonable in light of the current situation facing the landlord.
294. There was clear authority in *Daejan Properties Ltd v Green & Ord (2014) UKUT 0206* that the Tribunal does not need to factor in how those costs have arisen and no leaseholder can claim an offset for a period before they obtain the lease.
295. It was settled law that leaseholders may have a claim for damages for disrepair but only for the length of time that they have held their interest in any subject property. Here there were a range of periods of ownership and it was far from clear how any basis for offset was being presented by the Respondents. In any event this was an evidential test with the Respondent required to show that “but for” the landlord's failure to carry out work required by its covenant, the cost of remedying the consequential defects would have been avoided.
296. In respect of the concrete facades this simply wasn't made out in any way on the evidence. The evidence showing clearly that the Applicant is not responsible for any suggested offset based on its conduct.
297. When considering both the concrete column and the facades and considering the Ramboll Whitbybird 2008 report which was not about

the structural column, the evidence has been consistent. It showed the Applicant conducting an ongoing assessment of the Building. In relation to proposed work to both the concrete column and the facades, it had been a constant position following that Ramboll Whitbybird report that a full scaffold would be required whenever works were to be taken to repair these issues. Whenever the appropriate anti-carbonation treatment was to be applied, a DOFF clean would have been required. That had not changed so there was no increase in cost [4999]. The expert report of David Smith clearly stating that simply acting on an earlier report would not have made any difference, any change to the extent of the repairs required being de minimis over that time.

298. David Smith's evidence on the spalling concrete had been consistent that it was not possible to know how far the carbonation had spread and there was no evidence therefore the spread of carbonation since 2015 had accelerated significantly or at all. It was likely there may be a small difference but the same work and investigations that were required in 2015, were required now. That was the evidence of the expert in this matter and there was nothing from the Respondent to counter that opinion.
299. Further Mr Smith confirmed the 33kg of concrete that had been removed following the survey and investigations, Mr Smith's evidence [4998] confirmed that was an aggregate total, not one single lump, and the removals were to avoid leaving loose parts of concrete. The reinforcement within the concrete was already deteriorating at that stage and the removal of this aggregate amount of concrete would have been of minor effect. The Applicant's position was there was no proper claim for any offset based on the evidence that had been credibly made out and that the Tribunal should accept and prefer the evidence of David Smith on this point [5002] and the content of his report.
300. In response the Respondent invited the Tribunal to disregard Mr Smith's expert evidence on concrete on the basis that he was not an expert in concrete. He was instructed as a structural engineer, referring to his listed specialisms within his CV [4979] and that he agreed he was not an expert in high rise buildings or tower blocks. Therefore in reference to concrete he was speaking beyond his expertise and that the Tribunal should accept the Martech report from 2015 that showed evidence of spalling and that there was clear evidence the global costs had increased from the March 2020 Martech report which demonstrated a basis for offset.
301. The Tribunal in assessing the submissions and evidence before it prefers the submissions of the Applicant and the evidence of David Smith. The expert report and the oral evidence of David Smith, as referred to above, was impressive and the Tribunal places weight on that evidence. Mr Smith was very clear in that once discovered, there was a period of 10 to 15 years available to a landlord to take action to repair the concrete from the original discovery but after that period, the

deterioration could accelerate substantially if no repair action was taken. His evidence was clear and the Tribunal accepts that. Whilst he may not have listed a specialism as being in concrete, Mr Smith's professional experience and background, and the detailed knowledge he clearly possessed, gives the Tribunal confidence to put weight on his evidence and prefer it.

302. On the basis of Mr Smith's evidence and considering the authority of *Daejan Properties Ltd v Green & Ord (2014) UKUT 0206* and the applicability of Section 19 Landlord and Tenant Act 1985, the Tribunal finds no evidence of historic neglect on the part of the Applicant in relation to the concrete column and the concrete facades and there is no basis for any set off in respect of the repairs to the concrete column or the concrete facades.

9. *Is there any basis for alleging that the Applicant has failed to mitigate by claiming "funding under the Building Safety Act"? If so, what is the effect of the same?*

10. *Has there been premature mobilisation in relation to the works? If so, has that premature mobilisation led to an increase in the costs of the work?*

303. In respect of both these questions. It was conceded at the hearing by the Respondent that there was no failure by the Applicant to mitigate by claiming funding under the BSA 2022, nor had there been premature mobilisation in relation the proposed works.

304. In light of those concession by the Respondent, the Tribunal finds no basis that the Applicant failed to mitigate by not attempting to claim funding under the BSA 2022 and the Tribunal finds no evidence of premature mobilisation of the proposed works by the Applicant.

Reasonableness Of Advance Service Charge

1. *If the costs were incurred in respect of the works proposed in the GTCI Tender (or such works as the Tribunal considers reasonable) and would a service charge in respect of the same be payable by the Leaseholders in the proportions set out in their lease for the purposes of s 27A(3)? (For the purposes of section 27A(3)(c) the Tribunal is asked to confirm the amount that would be payable, taking into account the works that it has found to be reasonable.)*

2. *Is it reasonable to charge each leaseholder the relevant proportion of the full cost of the works (or such lesser sum reflecting the works which the Tribunal thinks it reasonable to undertake) due under their*

lease with the September 2026 service charge instalment for the purposes of section 19(2) LTA 1985 and section 27A(3) LTA 1985?

3. *If the answer to 2 above is no, is it reasonable to charge each leaseholder the entire sum which will be due in respect of the works (that the FTT have found reasonable) in two tranches, in the September 2026 service charge instalment and the March 2027 service charge instalment?*
 4. *Does the Tribunal have any power to order that the sums should be repayable over 10 to 20 years as the leaseholders contend?*
305. In submissions the applicant referred the Tribunal to the authority of *Waller v Hounslow LBC (2017) EWCA CIV 45* and that the standard when looking at what is reasonable is an objective standard. Whilst it was accepted the costs potentially to be borne by the leaseholders was one factor, it was not of itself determinative. The Court of Appeal setting out a two stage test the Tribunal must apply, namely is the decision making process reasonable in the decision made to incur the costs and then is the sum being sought reasonable looking at and considering market evidence.
306. In respect of whether it is reasonable to incur the cost, the Applicant arguing in this instance, works were to maintain and repair the Building and these were not improvements or unnecessary works. The Tribunal agrees with this and refers to the findings set out above.
307. It was not in dispute that in respect of the lease terms and their operation, the Applicant under those terms can demand service charges in advance and whilst there was some minor variation between the leases, they all fell into broad categories that permitted that advance charge.
308. The Applicant's position being that those advanced service charges are of an amount that is reasonable to be demanded in one single request for the purposes of Section 19(2) Landlord and Tenant Act 1985. This was on the basis that the proposed works are due to take place over a 52-week period and would require the Applicant to make payments every four weeks to the contractor. It was therefore reasonable for the Applicant to request money in advance to meet that liability and in doing so through one single request, it would be able to make provision should there be problems on collection. The Applicants primary position being this was what the leases allowed for and the terms were clear.
309. In the alternative the Applicant suggesting that the lease position allowed for a situation where works were being done within the relevant year, the obligation to pay could at most be split into two payments on the dates due in September and March of those relevant years. The Applicant suggesting in the alternative, the Tribunal could

deem that to be reasonable for the purposes of Section 19 Landlord and Tenant Act 1985.

310. In response, the Respondent submitted that they did not in essence challenge the operation of the lease and the terms that exist. The Respondent agreeing with the Applicant's interpretation of how the payment mechanisms operate. What the Respondent disputed was that the amounts could not be considered fair and reasonable. The Respondents referred to the Upper Tribunal authority of *Garside v RFYC Ltd (2011) UKUT 367 (LC)* and that the financial impact on the leaseholders is a material consideration that the Tribunal can take into account. The Respondent being clear that in some instances £30,000 to £40,000 per leaseholder was to be demanded. There was a range of financial circumstances within the Building and that many leaseholders would find these costs simply unaffordable.
311. The Respondents submitting that even if the Tribunal found it reasonable to divide that into two payments for the purposes of the lease, the amounts would still ultimately have the same impact and effect on many leaseholders.
312. The Tribunal carefully considered the submissions of both parties and the decisions of the case authorities referred to in determining the issues outlined above.
313. The Tribunal accepts the evidence and submissions of the Applicant which was not contested by the Respondent in respect of the lease terms and the mechanics permitting the Applicant to request in advance service charges which it is to incur in respect of all leases. There is an entitlement to equal half yearly payments payable on the 25th of March and 29th of September under the lease conditions referred to above. All leases retain a requirement for tenants to pay service charges under clause 2(2)(iii)(a) as outlined above which covers the cost of maintaining repairing redecorating and renewing the Building.
314. The Tribunal having made findings above where necessary on the extent of the demise of the Building and where windows frames and glass do, or do not, fall within that definition.
315. Within the leases the landlord Applicant retains the right to charge fair and reasonable amounts incurred during the year in question.
316. In light of the findings made already in this decision, the Tribunal has found that it is reasonable for the Applicant to undertake the works planned and that where necessary the costs of those works are reasonable. The Tribunal has based this decision on a preference for the Applicant's evidence. The Applicant engaged in a compliant Section 20 consultation process, scoping out much needed maintenance and repair works to the Building. The Tribunal recognises the cost of that maintenance and repair work is substantial. As was highlighted in

argument by the Respondent there has been an increase in those potential costs since March 2020 and the Martech report.

317. It was acknowledged that the Martech report was dated March 2020 and that due to global events since then, costs for a broad range of goods and services have increased.
318. In answer to the first question posed, the Tribunal finds that if costs were incurred in respect of the works proposed in the GTCI tender (which the Tribunal has found as reasonable), those costs are payable by leaseholders in the proportions set out in their lease for the purposes of a determination under Section 27A(3) Landlord and Tenant Act 1985, with the exception being the leases where the Tribunal has made findings on the issue of corrective construction and those findings apply.
319. In light of the Tribunal's findings in relation to the windows in respect of the 25 leases covered by the original Category B leases and the 10 Category B subset leases, the Tribunal cannot fix a set amount that can be recovered for the purposes of Section 27A(3) for those 35 leaseholders.
320. The Tribunal has not received evidence on what the impact of that decision would have on the amounts that are proposed to be charged under the Arlington House Major Work Schedule. The Tribunal appreciates the knock-on effect of that decision may mean the Applicant has to reconsider how it approaches conducting the works in respect of those demised windows. This in turn may have a knock-on effect to which leaseholders are to be charged and if the Applicant subsequently needs to adjust the total costs of the works to refurbish the windows.
321. On this basis the Tribunal is unable to fix an amount that would be payable without that evidence being before it.
322. The Tribunal does confirm that subject to any adjustments to the global total of the proposed works and the effect of the Tribunal's findings in respect of the Category B lease windows, that the percentage contributions in the Arlington House Major Work Schedule, save for the exceptions noted above, apply and that will determine the appropriate amount that the Applicant can charge for the purposes of Section 27A(3)(c).
323. In respect of questions 2, 3 and 4 above the Tribunal has considered carefully the balance that it must strike between the clear operation of the lease terms and the rights and obligations contained therein against what is reasonable for the purposes of Section 19(2). The Tribunal has considered the decisions in *Waller* and *Garside* in this context also.
324. There is no escaping that the sums proposed will be significant and for many leaseholders may well be extremely difficult to meet. The

Applicant gave evidence to suggest that each leaseholder can approach the Applicant to discuss their financial circumstances and the Applicant had discretion over how it may approach each individual's case.

325. In light of the sizeable sums that are being proposed, the Tribunal for the purposes of Section 19 does find that the Applicant should demand the total amount in two tranches, likely to be the September 2026 and March 2027 instalments, the Tribunal finding that to be reasonable. The Tribunal appreciates this is only a modest difference in terms of timing and ultimately does not affect the global amount that is to be demanded but feels that in light of the amount in question, it is reasonable for the Applicant to split that cost accordingly. This will still afford the Applicant an initial ability to meet the 4 weekly payment conditions, but give leaseholders some additional time to try and make financial arrangements to cover the proposed costs.
326. The Tribunal finds no authority or power to order that the sums should be paid outside of the applicable lease terms which are clear and uncontested. It certainly is not aware of any authority it has to order sums to be repaid over 10 to 20 years as per the Respondents contention.
327. The Tribunal notes the Applicant's willingness to discuss individual circumstances with leaseholders and hopes that the Applicant will consider the submissions made by the Respondents and where appropriate exercise its discretion to try and help and facilitate repayment of these sums across an extended and reasonable timescale wherever possible. Whilst the Tribunal has found that the sums are reasonably incurred and reasonable amount in the context of the application and the condition in which the building finds itself in, with the clear need for maintenance and repair, it nevertheless does acknowledge some Respondent leaseholders would undoubtedly welcome assistance from the Applicant.

Respondent's Application under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

328. By way of Application within their statement of case, the Respondents made a request that the Tribunal make an order under Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Those provisions are set out above at paragraphs 48 and 49 and if an order is made under either provision the Applicant will not be able to pass on as service charges or administrative costs, the costs incurred in these proceedings against the persons specified in the Application.
329. The Tribunal has the discretion to make an order under either provision where it considers it just and equitable to do so. There is no

presumption that an order should or should not be made depending on the outcome of the Decision. It is for the Tribunal to exercise its discretion as to what is just and equitable in all the circumstances.

330. The Respondent submitted in its statement of case that the Applicants conduct had caused unnecessary litigation and costs, specifically in relation to the request to expedite proceedings on an urgent basis despite not having full approval from the BSR. The Respondents alleging that the Applicant's conduct had created significant prejudice and stress and that the Respondents should not be required to subsidise the Applicant's legal costs for a dispute they felt compelled to defend.
331. The Respondents submitting in argument that when considering the overriding objective principles it was fair and proportionate that the Applicant should bear its own legal costs the Respondent submitting that the anticipated financial hardship that the Respondent leaseholders were likely to face would be made even worse with high legal costs that will undoubtedly be substantial subsequently being added to the costs anticipated for the works. In all the circumstances it was felt this was not just or fair
332. In response the Applicant in its statement of case set out that it was mindful of the significant sums about to be incurred in relation to the works, pointing out that the Applicant itself will likely incur in excess of £1,000,000 in service charges, over 1/4 of the cost of the anticipated works. In such circumstances, the application was said to be both prudent and necessary.
333. The Applicant set out how it had reasonably believed at the point the application was submitted that there was an urgency to the works to the column in Flat 12H in light of the notices served by the BSR and Thanet District Council. The Applicant acknowledged that the circumstances had now changed but that the belief was reasonably held at the time the application was made.
334. The Applicant submitting that in light of the number of inquiries observations and assertions made by the Respondents during the Section 20 consultation process, the Applicant was faced with little choice but making this application, it being clear that it was in the interests of all parties to obtain certainty and to obtain the Tribunal's determination in respect of the liability for the service charges, the amount and way those charges are to paid and an assessment of the reasonableness of those charges incurred.
335. In submissions the Applicant argued that in light of the scale of the works and in light of the opposition presented by the Respondents there were no grounds for criticising the application that had been made. Whilst the Applicant made no criticism of the Respondents for being litigants in person and seeking to oppose the application, the approach of the Respondents had inevitably led to the Applicant

needing to spend considerable time and effort in dealing with the arguments advanced.

336. The Tribunal has carefully considered the submissions of both parties and considered all the relevant circumstances. Whilst not determinative on its own, the Tribunal is mindful that the Applicant has been successful on almost all points advanced. The Tribunal is also mindful that due to the complexity of some of the leases involved, the need for clarity and a determination on those issues was in part for the benefit of all parties.
337. The Respondents have been unsuccessful with a number of arguments advanced and whilst the Tribunal is not critical of litigants in person not having a detailed understanding of some of the relevant legal principles and regulations involved in this application, many of the arguments advanced were simply not sustainable. The Tribunal took time to ensure the Respondents arguments and views were heard but there is force in the Applicant's submission that the Respondent's approach led to an increase in time and cost of the dealing with the application.
338. Once the Applicant was faced with differing views on the obligations and interpretations set out in the Lease, seeking a determination on the issue was a reasonable step to take to try and get a resolution to the dispute. The Applicant reasonably needed a determination of the issue given the conflicting positions of the parties and has not acted unreasonably in bringing the application. In light of the background and on-going difficult relationship between the parties, the Tribunal would likely have been required to make a determination in any event.
339. In such circumstances and on balance, the Tribunal agrees with the Applicants submission on this issue and declines to make an order under either statutory provision as it finds it is not just and equitable to do so in all circumstances.

RIGHTS OF APPEAL

340. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
341. 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.
342. 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.

343. 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.