



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

Case reference : **LON/00BH/LSC/2025/1197**

Property : **41a Claude Road London E10 6NG**

Applicant : **Stealth Developments Limited**

Representative : **Westcott Surveyors (Qal Ali)**

Respondent : **Bankway Properties Limited**

Representative : **Hamways (Mr S. Stidworthy)**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Pittaway
Mr J Naylor FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **25 June 2026**

DECISION

Decisions of the tribunal

- (1) The lease does not permit the landlord to demand the cost of the major works identified as being required to the Property (**‘the Major Works’**) by way of service charge before it has incurred the same.
- (2) As the Applicant has complied with the statutory consultation requirements of s20 Landlord and Tenant Act 1985 the tribunal has no jurisdiction to order the Applicant to instruct an independent Building Surveyor to prepare a further specification.
- (3) For the avoidance of doubt the tribunal confirms that statute does not require any contractor invited to tender for the Major Works to be independent and unconnected to the freeholder.
- (4) It is not necessary for the tribunal to make an order to whom any advance service charge payment should be paid.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondent in respect of the service charge year 2025 in relation to the Major Works.
2. Directions were issued on 23 January 2026 which determined that the application would be heard at a face-to-face hearing at 10 Alfred Place on 23 June 2026 starting at 10 a.m.

The hearing

3. The Applicant did not attend the hearing. The tribunal was unsuccessful in contacting the Applicant’s representative before the start of the hearing to ascertain why it was not in attendance.
4. Given that the Directions made it clear that the matter was to be determined following a face-to-face hearing the tribunal proceeded with the hearing in the Respondent’s absence.
5. The Respondent was represented at the hearing by Mr Stidworthy of Hamways, its managing agents for Flat 41a Claude Road. Ms Messenger of Hamways also attended the hearing.
6. Following the conclusion of the hearing, and having been contacted by the tribunal to ascertain why it was not in attendance, the tribunal received an e mail from Mr Ali of Westcott Surveyors, the representative of the Applicant, indicating that he had not attended as he had

understood that the matter was to be determined on paper, because they had requested this in the original application. In his e mail Mr Ali stated that he believed that all relevant evidence and submissions were included in the bundle before the tribunal. He appreciated that the tribunal had continued with the hearing in the circumstances.

The background

7. The property which is the subject of this application is a ground floor flat in an end of terrace building converted into two flats. The Applicant is the freeholder and leaseholder of the upper flat in the building.
8. Photographs of the parts of the building to which the Major Works are required were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

10. In its statement of case the Applicant identified the following issues for determination:
 - (i) That it had complied with the statutory consultation requirements of s20 Landlord and Tenant Act 1985 and the Service Charge (Consultation Requirements) (England) Regulations 2003 in respect of the Major Works.
 - (ii) That £54,222.50 was a reasonable sum to pay for the Major Works, and recoverable by way of service charge.
 - (iii) That the Respondent was liable to pay its contribution before the Major Works were carried out.
11. The Respondent also identified as issues to be determined
 - (i) Whether the Applicant should instruct an independent and suitably qualified Building Surveyor to prepare an appropriate specification and undertake a transparent tender process.
 - (ii) Whether any contractor invited to tender for the Major Works should be independent and unconnected to the freeholder to avoid any actual or perceived conflict of interest.

- (iii) If the Respondent is liable to pay its contribution before the Major Works were carried out that any monies collected for the proposed works are held on trust by the appointed surveyor or other suitably regulated professional.
12. At the hearing the Respondent accepted that the Major Works are required to the building, that it had no issues with the s 20 consultation process that the Applicant had undertaken, except for the appointment of the Applicant as the contractor, and that the estimated cost of the Major Works was within what it considered to be within the parameters of reasonable cost for such works.
13. Accordingly, the issues for the tribunal to determine were;
- (i) Whether the Respondent liable to pay its contribution before the Major Works were carried out.
 - (ii) Whether the Applicant should instruct an independent and suitably qualified Building Surveyor to prepare an appropriate specification and undertake a transparent tender process.
 - (iii) Whether any contractor invited to tender for the Major Works should be independent and unconnected to the freeholder to avoid any actual or perceived conflict of interest.
14. Having heard submissions from Mr Stidworthy and considered the documents provided, the tribunal has made its determinations for the following reasons.

When is the Respondent liable to pay its contribution to the cost of the Major Works

15. Clause 3(19) of the Lease provides that the tenant shall, '*at all times hereafter contribute and pay one half of the expenses of maintaining, repairing and renewing*' the relevant parts of the building.
16. The Applicant submitted that clause 3(19) of the Lease, which is the only relevant clause, does not expressly stipulate that such sums are payable in arrears, and that if this had been the parties' intention the clause would have been drafted to refer to 'costs incurred'. While accepting that there is no express wording in the lease for service charge to be paid in advance the Applicant submitted that demands for major works are properly raised once the costs are known, and become due on completion of the statutory consultation process.
17. The Respondent submitted that there is no requirement in the lease which obliges it to make a contribution to service charge costs in

advance. It referred the Tribunal to the decision of the High Court in *Brent LBC v Shulem B Association* [2011] EWHC 1663 (Ch) in which it was held that where there was a clause which obliged the leaseholder, ‘*at all times during the said term to pay and contribute a rateable or due proportion of the expenses of making, repairing, maintaining, rebuilding and cleansing and lighting the exterior of the flat and the building of which it forms part.....*’ the landlord was required to have actually incurred the expense in question before demanding it, that ‘expenses’ refer to monies which the landlord has spent, or possibly which it is under a present liability to expend, but did not include future expenditure and that the landlord was not entitled to recover anticipated future expenses.

The tribunal’s decision

18. The lease does not permit the landlord to demand the cost of the Major Works by way of service charge before it has incurred the same.

Reasons for the tribunal’s decision

19. The High Court considered this issue in *Brent LBC v Shulem B Association*, which decision is binding on the tribunal.
20. While the terms of the lease are not identical to those in *Brent LBC v Shulem B Association* they are very similar and both refer to ‘expenses’.
21. As stated at paragraph 41 of the decision in *Brent LBC v Shulem B Association*, “*Expenses*” refers to monies which the lessor has spent or, possibly, monies which the lessor is under a present liability to expend. *The word does not include anticipated future expenditure.*’
22. Clause 3(19) also refers to ‘expenses’. The evidence before the tribunal is that the money has not yet been spent and there is no evidence before it that the Applicant is yet under a liability to spend the monies.

Whether the Applicant should instruct an independent and suitably qualified Building Surveyor to prepare an appropriate specification, that the contractor should be independent of the Applicant and that any monies collected for the proposed works are held on trust by the appointed surveyor or other suitably regulated professional.

23. The Respondent submitted that it was concerned that the Major Works should be completed to a satisfactory professional standard and that all monies be used solely for their intended purpose. They were concerned that Westcott Surveyors, who prepared the specification and tendered the proposed works do not appear to be registered with the Royal Institution of Chartered Surveyors, or The Property Institute. They were concerned that monies paid should be held on statutory trust in

accordance with s 42 Landlord and Tenant Act 1987, so that it was appropriately protected.

24. The Respondent submitted that the Applicant should not be awarded the contract due to the clear conflict of interest arising from its position as both freeholder and leaseholder at the building.
25. On being questioned by Mr Naylor Mr Stidworthy stated that it was difficult to identify prejudice in a freeholder appoint in itself as contractor; the main issue being a perceived conflict of interest, there was no independent person with oversight of the works.

The tribunal's decisions

26. The tribunal does not have jurisdiction to order the Applicant to instruct the preparation of another specification or to undertake a revised tender process.
27. The contractor does not have to be independent and unconnected to the freeholder.
28. The tribunal has not considered to whom any advance service charge payment should be paid.

Reasons for the tribunal's decision

29. The Respondent confirmed that it had not responded to any of the notices served by the Applicant in accordance with the statutory requirements of s20 consultation. It accepted that the Applicant had complied with the statutory consultation requirements of s20 of the 1985 Act in respect of the Major Works. In the circumstances there are no grounds for the tribunal to order that another specification be prepared, or further tender undertaken.
30. There is no statutory requirement that the contractor be independent and unconnected to the freeholder. Statute does not prevent the landlord from appointing itself as the contractor. The Respondent had been given notice of the Applicant's intention and had not objected, until responding to the application. The 2003 Regulations contain provisions which contemplate that the contractor may be a 'connected' person to the landlord. In the event that the Respondent has concerns as to the quality or cost of the Major Works once they are completed it has the statutory right to challenge the same.
31. There is no evidence before the tribunal as to how the Applicant would hold the monies. S42B of that Act sets out the effect of failure to comply

with s42A Landlord and Tenant Act 1987, and an offence under it is not a matter for this tribunal.

Name: Judge Pittaway

Date: 25 June 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).