



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

Case reference : **LON/00BG/LSC/2026/0110**

Property : **Flat 21 Free Trade Wharf, 340 Highway,
London E1W 3ES**

Applicant : **Michael John Brown**

Representative : **N/A**

Respondent : **Free Trade Wharf management
Company Limited**

Representative : **CS Block Management Ltd**

**Type of
application** : **For the determination of an application
to strike out the application under rule
9)2) of the tribunal procedural rules**

**Tribunal
member** : **Judge H Carr**

**Date and venue
of Hearing** : **16th June 2026 at Alfred Place**

Date of Decision : **3rd August 2026**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the tribunal has no jurisdiction to hear the application and therefore it determines to strike out the application using its powers under rule 9(2) of its procedural rules.

The application

1. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.
2. The lessee also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
3. On 12th March 2026 Directions were issued in which Judge R Percival indicated that a preliminary issue in this application required determination, namely whether the question of whether the costs of work to the jetty at or near the estate are referable to the service charges of the phase 1 flats has already been determined by the tribunal.
4. The relevant decision was made by Judge R Abbey on 9th August 2021 under case number LON/00BG/LSC/2020/0222.
5. The tribunal directed that a hearing of the preliminary issue take place in which the Tribunal would consider whether the issue has been determined by the 2021 decision, and if so, to strike to the application under rule 9(2) of its procedural rules.
6. After the directions issued by Judge Percival, the Respondent requested that the tribunal also consider whether the application should be struck out under rule 9 (3) c and/or e of the procedural rules.

The procedural rules

7. The procedural rules relevant to strike out are set out below

Striking out a party's case

9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

The hearing

8. The hearing of the application took place on June 16th, 2026.
9. The Applicant appeared in person at the hearing, and the Respondent was represented by Ms Hannah Laithwaite of Counsel.

The background

10. The Applicant 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 Applicant acquired his leasehold interest in Flat 21 on 28th November 2025.

11. The Respondent is resident-owned and is operated by unpaid, volunteer directors who are all leaseholders of the Estate.
12. The key aspects of the case are set out in the Respondent's skeleton and are not disputed by the Applicant:
 - a. The Applicant owns a Phase 1 Lease
 - b. Under the Phase 1 Lease, the 'Estate' is defined as: "the piece or parcel of land situate at Free Trade Wharf The Highway in the London Borough of Tower Hamlets together with the buildings erected thereon (of which the Building forms part) as the same is comprised as to part in Title Number EGL 161062 and as to the remainder in the Lease detailed in paragraph 3 of the Sixth Schedule hereto and is shown (as to the whole) for identification purposes only on the Estate Plan including any further or additional land and buildings which may be added thereto at any time during the term".
 - c. The 'Lease' referred to in that definition as being listed at para.3 of the Sixth Schedule to the Phase 1 Lease is the Jetty Lease (dated 24/2/1987).
 - d. "The Estate Plan" is the annexed plan which depicts that the 'Estate' includes the Jetties and the wharf.
 - e. Under the Phase 1 Lease, the Phase 1 Leaseholders are obliged to pay their proportion of the 'Service Charge' (defined in cl.9) which includes a contribution to 'Total Estate Expenditure' (cl.9(1)(c)) which is further defined therein as: "all costs fees expenses and outgoings incurred by the Landlord in any Financial Year in carrying out its obligations under Clause 6(7) of this Lease and in respect of the items set out in Part III of the Fifth Schedule hereto (whether or not the Landlord is obliged by this Lease to incur the same); and".
 - f. Clause 6(7) requires the Respondent, inter alia, to maintain, repair, redecorate and renew the boundary, walls, fences, grounds and access ways, and so far as practicable, to keep the grounds and the access ways in good order and condition.
 - g. Part III of the Fifth Schedule includes the Respondent's costs of carrying out works to the Estate required to comply with the Deeds and Documents specified in the Sixth Schedule, which includes the Jetty Lease.
 - h. Under the Jetty Lease, the Respondent is obliged (in particular) to:

- i. Quietly deliver up the premises to the PLA at the termination of the Lease in a state consistent with the due performance of the Respondent's obligations;
 - ii. Maintain the Jetties to the PLA's satisfaction;
 - iii. Alter the Jetties from time to time to such extent and within such time as the PLA in its statutory capacity may by notice require;
 - iv. Remove the Jetties, and reinstate the riverbed, in the circumstances described in para.18 of Sch.2, which includes at expiration of the licence.
- i. Additionally:
 - i. Under cl.9(4) of the Phase 1 Leases , the Respondent "shall in its absolute discretion determine whether items of expenditure fall under [...] Total Estate Expenditure and such determination shall be final and binding on the Tenant"; which dovetails with the discretion under:
 - ii. Cl.9(10) of the Phase 1 Leases, the Respondent has a discretion in respect of the provision, withholding or discontinuance of services as follows: "The Landlord may at its discretion withhold or discontinue add to or commence extend vary or make any alterations to any of the services from time to time if the Landlord shall reasonably deem it desirable to do so for the more efficient management security and operation of the Estate or for the comfort of tenants on the Estate."

The submissions of the Respondent

- 13. In 2021, the Respondent applied to the Tribunal seeking a determination of whether the leaseholders of the flats situated within the Phase 1 Area and the Listing Building Area were liable to contribute to 'urgent works said to be necessary to a jetty [...]' situated on the Jetty Land.
- 14. By para.10 of the Decision (9/8/2021), the Tribunal made clear it was proceeding on the understanding that the Phase 1 Lessees were liable to contribute towards the costs of works to the jetty under the service charge provisions of the Phase 1 Leases by reason of the extensive definition of the 'Estate' (as detailed above) in the Phase 1 Leases and the Estate Plan which clearly showed the inclusion of the Jetties and wharf as part of the Estate. Much of the Decision is therefore focussed on whether a 'like' right existed in the Listed Building Leases.

15. In making the Decision in the Respondent's favour as to recovery of such costs, the Tribunal indicated awareness of the fact that such 'costs' might well include the costs of restricting access to the Jetties (para.19) and removal or partial demolition of the Jetties, and that the full extent of works were still subject to investigation – but that did not prevent the Tribunal making the Decision.
16. By its Decision, as seen in paras 9, 10 and 19 in particular, the Tribunal clearly and unequivocally confirmed its understanding that the Phase 1 Lessees were liable to contribute to the costs of works to the Jetties, and the basis of that conclusion (being the scope of the definition of the Estate, which included the Jetties).
17. That part of the decision was on a point of law, namely as a matter of contractual interpretation of the relevant leases and plans for the Estate, the Respondent was entitled to recover the relevant costs as service charges from the lessees.
18. In *Hemmise v Tower Hamlets LBC* [2016] UKUT 109 (LC), there had been a tenant application to the (then) Leasehold Valuation Tribunal ("LVT") challenging the reasonableness of certain service charges. The LVT upheld the challenge, finding claims in respect of the Estate could not be justified as a matter of construction of the lease. That decision was not appealed but the landlord continued to include in the service charge, items attributable to the Estate and the tenant subsequently brought a further challenge, relying on the LVT's decision, to allege the items were irrecoverable. The Tribunal concluded it was not bound to follow the LVT's decision and concluded the definition of common parts was wide enough to include the Estate items. Permission to appeal was given on the basis that it was arguable that the FTT was bound to follow the decision of a previous tribunal.
19. In *Hemmise*, the Upper Tribunal concluded that:
 - a. A decision of law by a tribunal did not create a binding precedent such that in a case involving different parties, the Tribunal "would be free to depart from it if having scrutinised it with appropriate care it believed the decision to be wrong" (para.21);
 - b. In a case involving the same parties and the same lease, the question of whether the subsequent tribunal was entitled to depart from the decision of the earlier tribunal depended on whether there was an estoppel as between the parties (para.22);
 - c. The authorities supported the proposition that "Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but

unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.”

- d. In *Hemmise*, unless there were special circumstances – therefore – the landlord was prevented from challenging the finding of the LVT in the subsequent FTT proceedings.
- e. There were special circumstances in *Hemmise* (para.43) such that the landlord was not estopped as justice was not served by perpetuating a ‘wrong decision’ over the whole life of the lease (para.44), specifically:
 - i. The LVT decision was plainly wrong as a matter of lease construction;
 - ii. There was a continuing relationship between landlord and tenant and whilst Mr and Mrs Hemmise had sold the lease, “any estoppel would endure for the benefit of their successors in title” such that their successors would be underpaying the service charge for a very significant period of time;
 - iii. The point appeared to have been taken by the LVT (and was not a pleaded issue) as opposed to the landlord itself, such that the landlord did not have proper opportunity to deal with it;
 - iv. Whilst the landlord could have appealed, the landlord in the present application was not looking to disturb the decision of the LVT in respect of the service charge years considered by it.

20. The Respondent makes the following submissions in relation to the application before the tribunal

- a. The issue is one of lease construction (namely, whether the costs of works to the Jetties (which includes removal/demolition) are recoverable under the Phase 1 Lease);
- b. The issue has already been resolved in the Respondent’s favour by the Tribunal in 2021 in its Decision (as set out above) so as to give rise to an issue estoppel in a case involving the same parties and the same lease;
- c. The Applicant’s predecessor in title was a party to those proceedings and thus the Applicant, as the successor in title to the

lease (and therefore the privy of his predecessor in title), is taken to be ‘the same party’ and the applicable lease is the same such that the Applicant is also estopped before this Tribunal from pursuing upon his Application arguments which run contrary to the Decision on the Issue.

- d. There are no special circumstances which justify the Tribunal reconsidering the issue upon this Application. Most importantly, the Decision in respect of the issue is not “plainly wrong” such that this Tribunal, in respecting the Decision on that issue, would be permitting the perpetration of a ‘wrong decision’ over the life of the Phase 1 Lease.
 - e. Rather, the Decision on the issue was right which lends force to the submission that the issue estoppel should operate against the Applicant and the Application be struck out pursuant to Rule 9 (if not r.9(2), alternatively r.9(3)(c))
21. In the instant circumstances, such a conclusion supports part of Parliament’s intention in enacting the s.27A regime which purpose includes permitting a responsible landlord such as the Respondent to apply, prior to incurring costs, for a decision as to their payability. That is so that it may then proceed (in this case following planning permission and the statutory consultation for major works) to incur, and recover the costs incurred, with confidence that its right to recover such costs will be upheld by the Courts or Tribunal subsequently. That purpose, and the confidence provided by a s.27A determination, cannot simply be allowed to be undermined by reason of a lease changing hands in the intervening period (whilst a set of major works may be imminent or underway).
22. Given that many freeholders or resident management companies have no independent sources of income aside from service charges in order to pay for the costs of necessary works, this purpose of s.27A is of critical importance.
23. The Applicant seeks a determination in respect of “2025 and onwards”. As is trite law, restated most recently in *Spender v FTT Nominee Ltd* [2025] EWCA Civ 1578 at [77, 80-89], a landlord is not required, without more, to have to justify every element of service charge claimed. It is for the leaseholder to put a prima facie case challenging specific items.
24. The Applicant cannot do that without trespassing upon the issue that has already been the subject of the Decision. That is because the premise of the Application is based on the irrecoverability of service charges as a matter of lease construction as follows

The Wharf/Jetty is disused and inaccessible. The Respondent is pursuing permanent removal or decommissioning rather than

repair or continued maintenance. The Applicant disputes that such capital disposal or asset removal costs are recoverable as service charge under the lease.

25. That conclusion is not avoided by the Applicant's reference to 'reasonableness' in circumstances where the position before the 2021 Tribunal was already that the Jetties were 'disused and inaccessible' due to them being unsafe. In making the Decision, the 2021 Tribunal was well aware that the proposed works (and therefore the costs the subject of the Decision) included 'removal' or 'demolition'. These are not new 'features' for this Tribunal to consider. Accordingly, the Application should be struck out on the basis of issue estoppel (i.e. r.9(2)).

The Applicant's submissions

26. The Applicant opposes the Respondent's application to strike out. He argues

- a. the present Application raises issues which were not finally determined in 2021;
- b. the present Application concerns current proposed works and expenditure arising from subsequent facts and circumstances;
- c. issues concerning the categorisation, scope and reasonableness under section 19 remain outstanding;
- d. the dispute is real, substantive and unsuitable for strike-out.

There is no issue estoppel

27. The Application raises issues which were not finally determined by the Tribunal's decision dated 9 August 2021 and which remain properly within the Tribunal's jurisdiction under section 27A of the Landlord and Tenant Act 1985.

28. The Respondent's primary position appears to be that the Tribunal's 2021 decision finally determined the present issues and therefore gives rise to issue estoppel. That position is not accepted. Issue estoppel arises only where the same issue has been clearly and necessarily determined in earlier proceedings (see *Arnold v National Westminster Bank plc* [1991] 2 AC 93). The Applicant does not seek to re-open or challenge the Tribunal's 2021 determination that certain jetty-related costs may in principle be recoverable under the lease structure.

29. However, the Respondent's characterisation of the present Application as concerning whether all jetty-related costs are recoverable is overly broad

and does not fully reflect the issues raised in the Application Notice. The present Application concerns distinct issues arising from the current proposed works and expenditure, including their categorisation, scope and reasonableness. While the Tribunal in 2021 was aware that works to the jetty could potentially involve demolition or substantial intervention, it did not finally determine the categorisation, scope or reasonableness of the current proposed works and expenditure.

30. Further, if the purpose of the 2021 application was to allow the Respondent to proceed with confidence before incurring substantial expenditure, that cannot amount to a blanket approval or “blank cheque” for all future expenditure irrespective of its nature, scope or reasonableness. Rather, it reinforces the need for proper scrutiny of the current proposed works and costs now being progressed. Accordingly, the issues raised in the present Application are not identical to those determined in 2021 and issue estoppel does not arise.

Lack of information - Nature, Scope of works and Reasonableness of the Costs

31. The Respondent has not provided sufficient information or documentation as to: (a) the engineering and technical basis of the current proposed works, including any relevant reports, specifications or defined scope of works; (b) the basis upon which particular works are categorised as repair, safety works or demolition; (c) the likely scale and estimated cost of the current proposed works and expenditure; and (d) whether reserve funds have already been applied to jetty-related works and, if so, the general nature of such expenditure.
32. The Respondent’s own description of the proposed works for Gammans Wharf appears to distinguish between “repair” to certain sections and “demolition” of other sections of the jetty structures. For example, the Respondent refers to concrete sections being subject to repair works, while timber sections are identified for demolition at a later stage. This raises further questions as to the true nature, categorisation and recoverability of the proposed expenditure. It is also unclear whether the concrete sections presently identified for repair may themselves later become subject to demolition or substantial replacement works, which is relevant to the reasonableness and proportionality of incurring substantial interim expenditure at this stage. Further, where demolition of Newcastle Jetty is already planned, the reasonableness of incurring additional interim repair or safety expenditure prior to demolition is itself a matter requiring proper scrutiny under section 19 of the Landlord and Tenant Act 1985.
33. These issues were not finally determined in 2021 and, in the absence of sufficient information, are not suitable for summary disposal or strike-out.

The Dispute Is Not Hypothetical

34. The Respondent suggests that the present Application is premature because no final service charge demand has yet been issued. However, the dispute is neither hypothetical nor academic. The Respondent has already undertaken and continues to progress works and proposals relating to the jetty structures, including works described as repair, safety works and planned demolition. The Respondent's own evidence indicates that substantial works programmes are being actively progressed over the coming years and that significant expenditure is anticipated.
35. The Applicant further understands that reserve funds may already have been applied in relation to jetty-related works, although insufficient information has been provided as to the extent and nature of such expenditure. In those circumstances, the dispute concerns real and developing liabilities rather than speculative future possibilities. The absence of a finalised service charge demand or completed cost assessment does not eliminate the existence of a present dispute concerning the categorisation, scope and reasonableness of the expenditure currently being progressed. Further, no clear or verified estimate of the likely costs of the proposed works has yet been provided. That lack of information itself reinforces the need for scrutiny, rather than supporting summary disposal or strike-out.
36. In the hearing the Applicant also raised his intention to challenge management fees because of a lack of response to his emails by the management company.

The response of the Respondent to the Applicant

37. The Respondent submits that the Applicant's response to the Respondent's statement of case is an attempt to reframe the Application to avoid a conclusion that it must be struck out.
38. For completeness, the allegation that the Decision could not have amounted to 'a blanket approval' or 'blank cheque' is irrelevant in circumstances where upon the Application, the Applicant does not particularise any quantum challenge (i.e. identifying specific costs already incurred or planned to be incurred which are unreasonable by reason of a matter not trespassing upon the 2021 Decision). The basis of the challenge set out in the Application is recoverability as a matter of lease construction, which has already been determined.
39. Moreover, whilst the Application purports to relate to future sets of works to the Jetties or future service charge years (with works anticipated in 2027 and 2028), this Tribunal would be in no position to determine the reasonableness of the quantum of the costs of such works in any event as: (a) planning permission (for works to comply with the PLA's requirements) is pending; (b) the Respondent is therefore in no position to commence the required statutory consultation with leaseholders or to demand service charges to pay for the works. There would therefore be no

sufficiently certain material/information which could be disclosed in these proceedings to enable the Tribunal to effectively determine such costs. Such a determination – seeking to bind the Respondent in respect of future ‘sets’ of works to the Jetties – would also be unsafe given changing market conditions.

40. The Application is therefore premature and indeed ‘impossible’ in that respect. It can have no reasonable prospects.

41. When the Respondent is in a position to commence the statutory consultation with leaseholders, the Applicant will have the opportunity to ‘have his say’ on the proposed costs.

42. The complaints as to lack of information are therefore equally misconceived: information about future major works will be provided when the Respondent is in a position to provide it i.e. when the scope of the future ‘sets’ of major works have been determined following planning permissions (etc.), tendered for and those works consulted on via the required statutory consultation with all leaseholders.

43. The complaint about management’s failures to respond was rebutted. The Respondent said that there were 81 emails generated by AI and that the Applicant had been asked to provide a summary of his questions.

The decision of the tribunal

44. The tribunal determines to strike out the application under its procedural rules 9(2).

Reasons for the tribunal’s decision

45. The Applicant’s argument that this matter should not be struck out is somewhat of a hybrid between an argument that there is a substantive case to be made on the payability of the costs of works to the jetty and a substantive challenge to the reasonableness of those costs. Whilst no service charges have been demanded for any works to the jetty, he seeks to make the quantum challenge relevant as he argues that costs for the works have been taken from reserve funds.

46. Neither of the Applicant’s positions are arguable.

47. The tribunal decision of 9th August 2021 concluded that the respondents to that application were liable for works to the jetty under the lease. The respondents to that application were the Leaseholders of the Phase 1 Flats and the leaseholders of the Listed Building Flats. All the leaseholders were identified in a schedule attached to the application.

48. For the reasons set out in the Respondent's submissions the decision on the recoverability of charges for those works cannot be reopened. It is a robust decision based on careful consideration of the lease and associated documents.
49. There is nothing in the Applicant's argument about recoverability of those charges that raises any issue that was not already considered in that decision.
50. Nor is it possible at this stage for the Applicant to mount a challenge to the quantum of any charges. As the Respondent points out such a challenge is premature. No service charges have been demanded. The tribunal cannot determine the reasonableness of an unknown amount.
51. Any application in relation to costs should be made to the tribunal on the appropriate form.

Name: Judge H Carr

Date: 3rd August 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).