FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/LSC/2022/0013 CVP:REMOTE**
Property	**:**	**2 Signal House, 3 Seagar Place London SE8 4HJ**
Applicant	**:**	**Mr Chandan Kumar Singh**
Representative	**:**	**In person (application for adjournment made by Mr M Haque paralegal from Raiyad Solicitors)**
Respondent	**:**	**Freshplant Ltd**
Representative	**:**	**Mr J Harper Brown of Galliard**
Type of Application	**:**	**s27A and s20C Landlord and Tenant Act 1985; Schedule 11 paras 1 and 5 Commonhold and Leasehold Reform Act 2002**
Tribunal	**:**	**Judge F J Silverman MA LLM** **Ms S Phillips MRICS**
Date of Consideration	**:**	**13 October 2022.**
Date of Decision	**:**	**31 October 2022**

DECISION AND ORDER

1 The Tribunal determines that the amounts set out in the service charge demands served by the Respondent on the Applicant for the years 2016, 2017, 2020 and 2021 are reasonable in amount and are payable in full by him.
2 The Tribunal determines that the amounts set out in the Respondent's service charge estimated budget for 2022 are reasonable.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVP:REMOTE. A face to face hearing was not held for the reasons cited below. The Tribunal considered that all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in an electronic bundle the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicant is the leaseholder of 2 Signal House 3 Seagar Place London SE8 4HJ (the property) which is a two bedroomed apartment forming part of a recently converted former industrial building divided into five self-contained flats. The Respondent is the current freeholder of the property.

2 The hearing was scheduled to take place as a face to face consideration but was altered to a remote CVP video hearing following a request from the Applicant who said that he was unable to attend a face to face hearing on account of his medical condition. A medical certificate was produced in support of this application. The application to change the nature of the hearing was made following two previous applications by the Applicant for an adjournment both of which had been granted.

3 On the day prior to the present hearing a further application for an adjournment was made by the Applicant on the grounds that he had had a disagreement with Counsel who had been engaged to represent him and was now without legal representation. This application was refused by a Judge.

4 The application for an adjournment was repeated on the Applicant's behalf by his representative at the commencement of the hearing. The Applicant was not present at the hearing at that time. No evidence other than that presented on the previous day was presented and the Tribunal noted that the Applicant had represented himself with some success (and with the support of a friend) during a previous application between the same parties. The Tribunal also noted that the original application for an adjournment had mentioned two physical medical conditions but at no point had it been suggested that the Applicant was

not fit enough to be able to attend a video hearing from his own home. The Respondent objected to the application. Having retired to consider the matter the Tribunal declined to adjourn the hearing because they saw no reason why the Applicant would not be able to attend by remote link and considered that further delay would prejudice the Respondent. The Tribunal asked the Applicant's representative to inform the Applicant of the Tribunal's decision and to ask him to join the hearing from his video connection. A short break in the hearing was taken to allow this to happen. The Applicant's representative said that he had been instructed to appear only to make the adjournment application and was not instructed in relation to the substantive application.

5 On resumption of the hearing at 11.40am the Applicant did appear briefly via his video link. The Tribunal explained the procedure to him, accepted his witness statement as evidence in chief (page 111) and invited the Respondent's representative to cross examine. The Applicant said he had no papers with him. He answered some questions from the Respondent and at 12.14 said he was not feeling well. The Tribunal adjourned until 12.25 when the Applicant did not re-appear and the Applicant's representative was unable to establish contact with him. The hearing resumed at 12.33 in the Applicant's absence.

6 At 12.39 the Tribunal received an email copy of a medical report which the Applicant had forwarded to the Tribunal. This report stated that the Applicant had been discharged from treatment and does not therefore support a further adjournment on medical grounds.

7 In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software.

8 The Applicant holds the property under a lease dated 12 January 2016 for a term of 999 years and made between the Respondent as landlord and the Applicant as tenant.

9 Directions in this case were issued on 22 January 2022 as amended on 06 April 2022.

10 The issues for determination by the Tribunal under the Applicant's application dated 29 November 2021 are the reasonableness of the service charges and administration fees demanded by the Respondent as service charge for the years 2016, 2017, 2020, 2021 and the estimated charges for 2022. The service charge year runs from 01 January to 31 December in each year. The amount in dispute under this application is £12,500.

11 Previous litigation between the parties (page 331) (Case no LON/00AZ/LSC/2019/0222) had dealt with the years 2018 and 2019 and the Applicant said that the previous Tribunal had indicated that he should make an application in respect of the other years during which he had been a tenant. This is a slight misinterpretation by the Applicant of the previous Tribunal's remarks which, in declining to deal with years other than those to which that application pertained, had stated that the Applicant was free to make an application in relation to other years if he so wished.

12 The previous case had established that in principle the Applicant does bear responsibility under the terms of his lease for payment of a

proportion of the service charges (clause 2 and Schedule 4) and for the reasonable costs in relation to the preparation and service of a notice served under s146 Law of Property Act 1925 (clause 2.16). The extent of that liability is subject to the statutory provisions contained in the Landlord and Tenant Act 1927 and subsequent legislation.

13 The issues raised by the Applicant in the present application are essentially the same for each of the years in question and were therefore discussed en bloc, the principles and subsequent decisions set out below applying to all years under discussion in this application.

14 In relation to **car parking**, the Applicant complained that he had been penalised for parking in spaces other than that allocated to him. His argument was that he had never officially been allocated a designated space, that the space given to him was a temporary allocation and that it was unsuitable and he therefore had to park in alternative spaces. The Respondent said that there were a limited number of allocated spaces of which the Applicant's was one. This had been allocated to him from the commencement of the lease and there had been no complaint from him until 2017 when he had changed his car and it had suffered damage through contact with part of the structure of the car park. Since that time the Applicant had asked for his space to be changed but the Respondent had been unable to accede to this request because all the other spaces had been already allocated to other tenants. The Applicant had resorted to parking in spaces allocated to other tenants and had consequently been charged a penalty for this behaviour. The amount of the penalty was not challenged. It is accepted both that there is a discrepancy between two versions of the Applicant's lease and that he does have the right to an allocated space. The dispute is essentially whether the space originally designated to the Applicant is a designated space or a temporary one. The Tribunal can find no reason to disagree with the Respondent's statement that the space allocated to the Applicant in 2016 and used by him without complaint for nearly two years was and remains his allocated space and further, that they were unable to change this space for the reasons cited above. On that basis the penalty parking charges imposed by the Respondent are justified and the reasonableness of their amounts had not been challenged by the Applicant.

15 In relation to the **concierge** the Applicant suggested that the Respondent had not complied with the order of the previous Tribunal to re-allocate this charge to the 'estate charges' element of the service charge and remove it from the 'building charges' element of the service charge. He argued that his contribution should be nil because of this failure. In this respect the Applicant has once again misinterpreted the decision of the previous Tribunal where the Applicant had argued that since the concierge services were based in another building on the estate he did not have use of them and therefore should not pay for them. In their decision, the previous Tribunal had indeed suggested that these charges might be better suited to being included and calculated as part of the estate charges but made no order to that effect.

16 The Respondent said that the concierge service was run from a central building where the staff had facilities but that the service was available

to all tenants on the estate. They produced figures demonstrating that the Applicant or his family had made considerable use of the concierge service, mainly to take in deliveries of parcels, and that while the immediate recalculation of this element of the service charge to a different element of the overall sum had not been possible it had been done from 2020 onwards and had been applied retrospectively resulting in a decrease in this charge to the Applicant. The Tribunal accepts the Respondent's argument and finds the charges both reasonable and payable by the Applicant.

17 The Applicant complained that the **cleaning** charges for his block which covered both cleaning the windows and the cladding were unreasonable. The Respondent said that the windows were cleaned twice a year and the cladding cleaned and inspected once a year. In the absence of any alternative quote from the Applicant the Tribunal finds this charge reasonable and payable by the Applicant.

18 The Applicant asserted that the charges made for servicing the **lifts** was unreasonable but had given no reasons nor provided any alternative quotations. The Respondent said that the lifts were serviced monthly and that the contract had been tendered as part of a portfolio in order to keep costs down. In the absence of alternative evidence the Tribunal accepts the Respondent's explanation and finds this charge reasonable and payable by the Applicant.

19 The Applicant sought to challenge the **insurance** costs for the block and according to the Respondent, the filing of the hearing bundle had been delayed because they were waiting for the Applicant to supply the alternative quotation which he had promised. The document which the Applicant eventually submitted (page 114) is not an alternative insurance quotation, it appears to be an estimate for management of a block which includes an insurance estimate. Not only is this not a quotation from an insurer or broker, it is unclear to what premises it relates , which company the insurance is with, or what the policy covers. It is totally inadequate as a comparative quotation in the present context. The Respondent insures the building in which the Applicant's apartment is situated as part of the wider estate and the cost is apportioned between the various tenants according to their leases. They say that the market is tested on renewals. The Tribunal took into account the witness statement from the Respondent's witness Mr Gibson (page 125) regarding the cost and extent of the insurance. In the absence of an alternative quotation and taking into account the size and location of the Respondent's estate the Tribunal considers that the charge apportioned to the Applicant is both reasonable and payable by him.

20 The Respondent said that the **cleaning of the common parts** of the building in which the Applicant's apartment is situated was done once a week and took one hour each time. This was a time limit which had been requested by the residents and the cost was estimated to be £28.30 per week. The Applicant had sought to argue that the cost should be reduced to £10 per week. The Applicant's offer is clearly unacceptable since it amounts to less than the current hourly London living wage amount of £12. The Tribunal finds the sums charged by the

Respondent for cleaning common parts to be reasonable and payable by the Applicant.

21 The Applicant maintained that **Management charges and charges for general maintenance** included in the service charge should be reduced. He relied on the fact that the previous Tribunal had reduced the Respondents' fees in part because they had failed to notice and correct an overcharge to the individual tenants' electricity account caused by a fault in the wiring connecting the individual meters to the main system. The Respondent say that they had rectified that fault before the hearing of the previous application and charges were now being made correctly. The Applicant also made unsubstantiated allegations of collusion between the managing agents and a maintenance company allegedly run by a director of the Respondent freeholders. The Respondent told the Tribunal that there was no connection between the managing agents and any company connected to the directors of the freehold company. The Tribunal considers that the charge per flat proposed by the Respondent is within the band of charges made by similar London agents currently dealing with similar properties and finds it both reasonable and payable by the Applicant.

22 The Respondent said that the Applicant had accrued a large debt in unpaid service charges which had been the subject of a parallel county court action, the latter having been stayed pending outcome of the then current Tribunal application. Following the previous Tribunal case (referred to above) the Applicant had issued a further Tribunal application which he had withdrawn on the day before the hearing. He had then issued the current application which itself had been postponed several times before the present hearing. They were therefore reluctant to accede to the Applicant's request for the Tribunal to make orders limiting the recovery of litigation costs under s20C or Schedule 11.

23 The Applicant has not been successful with his challenges to any of the costs charged by the Respondent and in these circumstances the Tribunal declines to make orders under either of the above sections in favour of the Applicant named in this application and further declines to order the repayment to the Applicant of his £300 application and hearing fees.

24 **The Law**

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or
   (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 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.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Section 47 Landlord and Tenant Act 1987

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.
(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as

precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 31 October 2022

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. 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.
3. 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.
4. 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.