



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

**Case Reference** : **BIR/00CS/LSC/2018/0016**

**Property** : **Cedar Court, Pear Tree Drive, Great Barr,  
Birmingham B43 6HP**

**Applicant** : **The Anne & John Walters Charitable Trust**

**Representative** : **Pennyquick Collins**

**Respondents 1** : **Leaseholders of the Cedar Court flats**

**Respondent 2** : **Bithel Estates Limited**

**Type of Application** : **An application under section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges.**

**Tribunal Members** : **Mr Vernon Ward BSc (Hons) FRICS  
Mr David Satchwell FRICS  
Judge David R Salter**

**Date of Decision** : **22 February 2019**

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**DECISION**

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## **Background**

1. By an application received by the Tribunal on 19 October 2018, the Applicant sought a pre-determination before works are undertaken that the works proposed are the responsibility of the service charge and that the lessees are required to pay for these works.
2. The works proposed are roof recovering, removal and replacement of existing fascias and soffits at the development known as Cedar Court. The Applicant stated that a 2018 tender indicated project costs of £69,903.00 including VAT and fees. As the works are planned for 2019 and the tender is subject to an increase in material costs, a rise of 15 % on these figures is considered likely.
3. This is, therefore, an application under section 27A (3) of the Landlord and Tenant Act 1985 (“the Act”), set out below.
4. The Applicant, the Anne & John Walters Charitable Trust, is the head leaseholder of the development, whilst the First Respondents are lessees/leaseholders of the 12 flats contained therein and the Second Respondent is the superior landlord. The Applicant is represented in this matter by Pennycuik Collins, Chartered Surveyors.

## **The Inspection**

5. The Tribunal carried out an inspection of the development on 22 January 2019. Present at the inspection were Mesdames Lindsay Heritage, Lindsay Cannon – Leach and Mr Hasan Sidat all of Pennycuik Collins, the Applicant’s managing agent, and the following Respondent leaseholders:

|                     |                |
|---------------------|----------------|
| Mr R Clinton        | 1 Cedar Court  |
| Ms D Salmon         | 8 Cedar Court  |
| Mr R & Mrs C Taylor | 11 Cedar Court |
6. Cedar Court comprises a development of 12 flats arranged over ground, first and second floors, which was constructed circa 1960. The development is constructed of cavity/blockwork walls with timber cladding panels surmounted by a flat felt covered roof.
7. The Tribunal inspected the elements of the roof visible from a ground floor external inspection. From that inspection it was clear that the soffits and fascias required attention and, further, that there was poor detailing around the felt bonding to the soffits.

## **The Hearing**

8. A Hearing was held later that same day at the Tribunal Hearing Suites, Centre City Tower, Birmingham. Present at the hearing were:

On behalf of the Applicant (all of Pennycuick Collins)

Ms L Heritage

Ms L Cannon - Leach

Mr H Sidat

Mr D Jones

First Respondents (leaseholders)

Mr R & Mrs T Clinton

1 Cedar Court

Mr R Lawry

2 Cedar Court

Mr C Yates & Ms A Demaine

3 Cedar Court

Mr R & Mrs C Taylor

11 Cedar Court

The submissions of the parties both in writing and at the Hearing were as follows.

## **The Applicant**

9. On behalf of the Applicant, Ms Cannon–Leach stated that the issue of the state of repair of the roof was first noted in 2009 when external redecoration was being carried out. The building surveyor overseeing the project indicated that the roof covering had an estimated life of 3 to 5 years. Continuing, Ms Cannon–Leach, stated that re-roofing was then built into the reserve fund plan. This document was exhibited and outlined planned major works during the period 2009 to 2014. Roof works with the following designation “Work to Seal Main Roof with 15 year guarantee” were planned for 2011 and the estimated cost of the work at that time was £20,000.
10. A roof survey was carried out in 2012 and this report concluded that the roof should provide a minimum of 5 to 10 years of serviceable life provided that recommended repairs were carried out. That survey gave a budget cost for the replacement of the roof coverings, incorporating insulation, in the order of £35,000.00 plus VAT and professional fees. A further roof survey was carried out in October 2016 which recommended that the work on the roof should be undertaken within 12-18 months at the same budget cost as was cited in the 2012 survey.

11. Water ingress was reported into two flats in November 2016 and a contractor reported that this was being caused by a gap between the fascia board and roof which was allowing water to penetrate. Whilst this fault was repaired, a further leak was reported in March 2017 to one of the same flats. A localised repair was undertaken.
12. Where works, such as the renewal of a roof, are contemplated section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are collectively known as the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to “qualifying works” (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.
13. There are essentially three stages in the consultation procedure, the pre-tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and in some cases a third stage advising the leaseholders that the contract has been placed and the reasons behind the same.
14. On 29 November 2017, the Notice of Intention for roof recovering and related works was served by the Applicant.
15. In January 2018, the Building Surveying Department of Pennycuick Collins was instructed to prepare a specification and invite tenders for the work. In summary, the works specified were the replacement of the flat roofing system along with the renewal of fascias, soffits and rainwater goods. The existing roof would be retained as the vapour control layer with result that the new roof covering would over clad the existing roof. The new roofing system would also meet current insulation standards.
16. As part of the preparation of the specification, an asbestos report was commissioned in February 2018. This reported the presence of the asbestos fibre Chrysotile in the soffit boarding.
17. In March 2018, the tender report indicated that the lowest quotation received for the work was £69,903.00 including VAT and professional fees.
18. Following internal discussions within Pennycuick Collins it was calculated that in light of the reserves available an additional £1,575.00 would need to be collected per leaseholder in order to proceed with the works in 2019. Accordingly, in June 2018, a letter was circulated to all leaseholders with a breakdown of the tenders received and an appraisal of the management

scheme's financial position. A meeting with leaseholders to the same effect was held in August 2018.

## **The Respondents**

### *The Second Respondent*

19. It was submitted on behalf of the Second Respondent that it took a neutral stance in this matter, neither supporting nor objecting to the Application which does not relate to it directly as it plays no part in the property management by the Applicant of the subject property.

### *First Respondents*

20. Prior to the Hearing, a letter was submitted to the Tribunal which was signed by the leaseholders of flats numbered 1, 2, 3, 4, 5, 6, 7 and 11. This letter stated:

*“With regards to the recovering of the roof, we the residents of Cedar Court flats have no arguments to the fact that both the roof and fascias need repairing.*

*What we disagree with is that we should not have to pay for this. Over time, from when the buildings were built to current date, residents all have paid service charges from which a reserve fund has been taken. This should have been an adequate amount to cover the eventuality of major repairs such as the roof.*

*The Asbestos which has now been found is the main reason for the extra costs to do the repairs. Surely this material should have been found, or have been aware of, from the beginning.*

*So with that said it is our intention to take this further and to go to a tribunal court hearing.”*

21. At the Hearing, Mr Lawry of Flat 2 spoke on behalf of the leaseholders although all contributed to the proceedings.
22. The letter from the leaseholders encapsulates the leaseholders' view of this matter, which was amplified at the hearing. They appreciate that the works are required but fail to see how sufficient funds have not been accumulated since the need for the roof recovering works was first identified. They could not understand how a project with an estimated budget cost of £20,000.00 in 2009 and £35,000.00 in 2012 could now cost approximately £70,000.00? They considered this to be a failure of the managing agents, Pennycuik Collins, to

budget correctly and, further, not to have taken into account the presence of asbestos.

23. Continuing, the leaseholders indicated that the impact of the proposed works on the service charge were rendering the flats virtually unsaleable.
24. In response, Mrs Cannon-Leach said that the works now proposed are more comprehensive than those originally planned which was purely re-roofing without renewal of the fascias, soffits and rainwater goods and, further, that the indicative costs were only budgetary estimates.

### **The Lease**

25. The Underleases to which the Applicant and the First Respondents are subject are in similar terms. A copy of one of these Underleases was made available to the Tribunal. There is a Head Lease to which the Second Respondent is a party, but that plays no part in these proceedings.
26. By clause 1 of the Underlease, the Lessee (leaseholder) covenants as follows with the Lessor (the Applicant):

*“...AND ALSO YIELDING AND PAYING by way of further or additional rents throughout the said term (a) the Lessee’s Proportion of the Lessor’s Expenses on the days and in manner hereafter provided (without any deduction) and (b) such other sum or sums in respect of the demised premises which the Lessor shall from time to time during the said term be called upon to pay such sum or sums to be paid on demand....”*

27. This is supplemented by clause 3 (2) which sets out the procedure for payment of the Lessee’s proportion.
28. Clause 7 sets out the Lessor’s covenants with the Lessee of which paragraph (3) (a) states:

*(3) That (subject to payment by the Lessee of the Lessee’s Proportion of the Lessor’s expenses) the Lessor will:-*

*(a) maintain repair redecorate and renew (1) the main structure the roof gutters and rainwater pipes of the Mansion...*

29. The Fourth Schedule sets out the Lessor’s Expenses in respect of which the Lessee is to pay the Lessee’s proportion. Clause 1 (a) is as follows:

1. *The cost and expenses of maintaining repairing redecorating and renewing*

(a) *the main structure roof gutters and rain water pipes of the Mansion...*

30. Within the recitals to the Underlease, the twelve flats are referred to as the Mansion and, in addition, the Lessee's proportion is defined as one twelfth of the Lessor's Expenses.

### **The Law**

31. The relevant sections of the Landlord and Tenant Act 1985 are as follows:

#### ***27A Liability to pay service charges: jurisdiction***

(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....*

### **Determination**

32. The Tribunal must deal with the application before it. The Applicant seeks a pre-determination before works are undertaken that the roof works proposed fall within those costs covered by the service charge and that, consequently, the

First Respondents are required to pay for these works through the service charge.

33. It is clear to the Tribunal that the roof recovering works as set out in the Applicant's submissions are Lessor's Expenses as defined by the Underlease and, therefore, fall to be paid by the First Respondents in accordance with the provisions in the Underlease relating to the Lessee's Proportion.
34. The Tribunal understands the predicament of the First Respondents who are now facing a substantial unforeseen additional service charge to cover the cost of the proposed works. However, whether or not the works should have been carried out earlier, or a more accurate costing carried out at an earlier date, are not matters the Tribunal can deal with under this application, this is not an application which deals with the reasonableness or otherwise of the proposed costs. The Tribunal would, in any event, encourage both formal and informal consultation over the progress of the works.
35. In making its Determination, the Tribunal had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

### **Appeal**

36. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD