FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/41UD/LIS/2020/0001P**
Property	:	**29 Maryvale Court, Lichfield, Staffordshire WS14 9HZ**
Applicant	:	**Jacqueline Jones**
Applicant's Representative	:	**Anthony Stewart**
Respondent	:	**Sanctuary Housing Association**
Type of Applications	:	**(1) Application for a determination of liability to pay and reasonableness of service charges pursuant to ss 19 & 27A Landlord and Tenant Act 1985** **(2) Application for an order limiting the Respondent's costs in the proceedings under s20C of Landlord and Tenant Act 1985 and** **(3)Application under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 (CLRA 2002) reducing or extinguishing the tenant's liability to pay an administration charge in respect of litigation costs**
Hearing	:	**29 April 2020 Papers Only**
Tribunal	:	**Tribunal Judge Mr.P. J. Ellis.** **Tribunal Member Mr. N.Wint. FRICS**
Date of Amended Decision	:	**10th August 2020**

AMENDED DECISION

Pursuant to rules 53-55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'), the Tribunal, being satisfied that a ground of appeal is likely to be successful has reviewed its Decision of 7 May 2020 and reissued it with amendments which are in bold and underlined.

1. ***The Service charge demand for 2019-20 in the sum of £1647.48 is reasonable and payable.***
2. ***It is just and equitable that the Respondent may have regard to the cost of these proceedings ~~may be regarded as relevant costs to be taken into account~~ in determining the amount of service charge payable by the Applicant pursuant to s20C Landlord and Tenant Act 1985 and paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 (CLRA 2002). This determination shall not be taken to exclude the Applicant from further referring any such claim under s27A Landlord and Tenant Act 1985 or paragraph 5A Schedule 11 to CLRA2002***
3. ~~***The application for an order under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 is dismissed.***~~

Introduction

1. This is an application for determination of the reasonableness and payability of service charges for the service charge year 2019-20 under s27A Landlord and Tenant Act 1985. The sum in dispute is £1,647.48. It was issued on 3 January 2020 by the Applicant Jacqueline Jones with the assistance of her representative Anthony Jones. The Respondent is Sanctuary Housing a registered provider of social housing. There are associated applications relating to the costs of the application under s20C Landlord and Tenant Act 1985 and Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002

2. The matter was listed for hearing pursuant to the Pilot Practice Direction-Contingency Arrangements and Panel Composition issued by the Senior President of Tribunals 19 March 2020.

3. By Directions issued on 25 March 2020 the parties were notified of the decision of the Tribunal to dispose of these proceedings without a hearing under Rule 31 of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber)Rules 2013 or an inspection in accordance with the Pilot Practice Direction. The Applicant agreed to a determination without a hearing in her application form. The Respondent raised no objection to a paper determination in response to the Directions.

4. The issue for determination by the Tribunal relates to the costs incurred by the Respondent in carrying out works to the roof of Boley Lodge. The Applicant complains that the relevant works were improvements and not repair. The Applicant further submits the expenditure for work on the roof is enhancement expenditure within s38 Taxation of Chargeable Gains Act 1992. The Respondent asserts that the work was repair although there was some replacement of materials when they were worn or unusable.

5. There is a factual issue of whether or not the condition of the roof necessitating attention was caused by jet washing to remove moss undertaken by the Respondent's contractor.

6. According to the application form the service charge in dispute is in respect of service charge year 2019-20 but the Applicant's submissions and evidence relate to charges incurred by the Respondent in carrying out work on the roof of the building of the subject property. The cost of works challenged by the Applicant inclusive of Vat is £30,900.00.

7. The roof works were carried out following a s20 consultation. The Applicant objected to the cost of work being charged to the sinking fund during the consultation procedure but did not refer her objections to this Tribunal.

8. The Applicant now seeks to challenge the Respondent's decision to pay for the roof works from the sinking fund by challenging the service charge claim.

9. In addition, the Applicant challenges the imposition of an administration charge of 5% of the net cost of works imposed by the Respondent in relation to its management of the work.

The Property

10. As set out in paragraph 3 of the application, the subject property, 29 Maryvale Court, is one of four flats situated in Boley Lodge which forms part of a larger development of 26 bungalows. Each flat comprises one bedroom. The Applicant and three other residents in Boley Lodge hold the leasehold interests in their flats. The freehold is held by the Respondent.

11. The Applicant acquired her interest in Boley Lodge in September 2009. The leasehold interest acquired by the Applicant was made 16 December 1991 between Barratt West Midlands Limited and Charles Edward Riley for a term of 125 years from 25 March 1989 at a peppercorn rent. Relevant particulars of the lease are set out below at paragraph 35.

12. The Applicant describes the entire estate as retirement homes. According to her application the residents of the other three flats are over 90 years of age but the matter at issue is a cause of concern to them. They are not parties to these proceedings.

13. According to the minutes of a meeting held on 14 November 2018 between the residents of Maryvale Court and the Homeownership Team of the Respondent, Boley Lodge was constructed in the 19th Century. A Homebuyers Report prepared for the Lessee of 30 Maryvale Court (one of the three other properties forming Boley Lodge) following inspection on 6 March 2017 described the roof as *entirely original with cement torching provided to the underside of roof tiles. Whilst this has inevitably fallen away, roof tiles and tile batons remain in good condition and inspection does not suggest the condition of the roof to be such as to demand stripping felting and retiling within the foreseeable future."*

14. The report describes the observation of the condition of the roof being made from inspection of the roof voids. The name of the surveyor is not known as extracts of the report were served with the Applicant's bundle of documents.

15. According to the Respondent's maintenance surveyor, Mr Phil Green, who submitted a statement with the Respondent's bundle, "*construction of the roof involves the clay tiles being bedded with lime mortar and struck on the underside between the tile laths; this secures the tiles and prevents*

movement of the tiles. It was noted that extensive areas of torching were missing or badly degraded, one section in the roof space the over the communal stairs daylight was evident due to a large section of slipped tiles. External inspection is difficult due to the roof being constructed with a number of valleys meaning large areas are not visible from ground level. On the sections that were visible a number of slipped tiles to various locations were evident. On the inspection it was apparent that the roof structure was original from build and while the exact age isn't known the roof is likely to have far exceeded its anticipated to lifespan."

The Statutory Framework

16. Sections 18 -30 Landlord and Tenant Act 1985 provide a statutory framework for the regulation of the relationship between a Landlord and tenant of residential property in connection with service charges.

17. Section 19 provides

(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.

18. S20 provides:

(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.

19. In relation to costs s20C provides:

(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.

20. S27A provides

(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.

21. Paragraph 1(1) Schedule 11 CLRA 2002 provides:

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

22. Paragraph 5A Schedule 11 CLRA 2002 provides

(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.

23. The Applicant has referred to the *Taxation of Capital Gains Ct 1992 s38*

which provides:

(1)Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—

(a).....

(b)the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by

him in establishing, preserving or defending his title to, or to a right over, the asset,

(c).....

The Factual Summary

24. The facts giving rise to this matter were ascertained from the papers. There is a substantial dispute regarding the cause of the leaks and the condition of the roof but otherwise the chronology leading to the issue of proceedings is not in dispute.

25. In November 2017 the Respondent appointed contractors to carry out power washing of the roof of Boley Lodge in order to remove an accumulation of moss and clean tiles. In March 2018 the residents of Boley Lodge complained to the Respondent of leakage of water from the roof affecting the Applicant and the owners of flat 30.

26. The residents blamed the contractors who carried out the tile washing for damaging the tiles in the process thereby allowing water ingress.

27. The Respondent denied that the power washing was the cause of the leakage and asserted the condition of the roof was as a result of age.

28. The residents were not happy with that response and persisted with their allegation that the power washing was the cause of the leaks. The Respondent asked for evidence to support the residents' assertions. In answer the residents produced extracts from a Home Buyers Survey prepared on behalf of the purchaser of flat 30 in March 2017. The relevant comments in the Survey are set out in paragraph 10 above.

29. The Respondent was not satisfied that the Survey was satisfactory evidence in support of the residents' complaints and maintained its position that age was responsible for the condition. It then embarked on a S20 consultation on 28 September 2018. The residents maintained their position that the fault was the power washing and any cost of making good should be the responsibility of the Respondent and its contractor.

30. On 8 January 2019 the Respondent gave notice of the estimates obtained from three contractors. On 19 February 2019 the Respondent gave notice of

its intention to appoint MGM Roofing to carry out the works. Their tender described the work as follows:

a. Strip off the existing roof tiles dispose of poor quality and set aside salvageable quality for reuse
b. Strip off batten and underfelt, lower to ground level and dispose of all debris
c. Supply and fix vapour permeable underlay membrane
d. Cover roof with type A38mm x 25mm tantalised treated lath
e. Supply and fix EPS and over facia vents to all fascia details
f. Retile all elevations using tiles previously set aside and make up difference with good quality second-hand clay tiles. Introduce new double course to eave and top elevations using appropriate tile and half where necessary maintain bond.
g. Reuse existing clay ridge tiles bedded in sand and cement mortar
h. Replace all existing leadwork to all abutments and soakers
i. Reline existing valley with new code 5 lead.

31. The cost of the work in the sum of £25,750.00 plus VAT of £5,150.00 was paid from the sinking fund. In addition, the Respondent charged leaseholders an administration fee of 5% in the sum of £1,287.50.

32. The dispute over the allocation of the cost of the roof works continued throughout 2019 with correspondence between the Respondent and the Applicant or her representative Mr Anthony Stewart who has assisted the Applicant throughout.

33. In April 2019 the Respondent served its service charge demand for the year ending 31 March 2020. The total sum estimated as required from all residents of Maryvale Court is £47,961.17. The Applicant's share is £1,647.48 payable by four quarterly instalments of £411.87. The charges making up the demand from the Applicant are:

	£
a. Warden Call System Costs	57.84
b. Grounds Maintenance	400.08
c. Communal Service costs	20.04
d. Day to day repairs	66.72
e. Insurance	109.92
f. Management Costs	492.84
g. Transfer to Sinking Fund	500.00
Total	**£ 1,647.48**

34. The Applicant has not raised any objection to the service charges other than the implicit criticism of the transfer to the sinking fund of £500.00. In March 2019 the sum held in the sinking fund was £52,042.00 which was

sufficient to meet the costs of the roof work and the Respondent's administration charge.

35. The papers submitted by the parties made no representations in connection with the costs of the proceedings. In the application the Applicant asserted the s20C application was made because of the provision at sub-clause 4(vi) of the Schedule to the lease recited below at paragraph 42 *"as it may apply to these proceedings"*. The application was made under paragraph 5A Schedule 11 to CLRA 2002 by marking the relevant box on the application form without further representations.

36. Upon reviewing this Decision under rule 53(1) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal gave directions on 24 June 2020 permitting the Respondent to make submissions in response to the Applicants request for permission to appeal. The Respondent made a short submission on 16 July 2020. The Applicant made a short response on 19 July 2020.

37. By its submission the Respondent averred its officers had on a significant number of occasions explained to the occupiers of Boley Lodge that the Applicant is responsible for meeting their (sic) share of the Respondent's costs of keeping the roof in repair in accordance with the terms of the lease. It also asserted that it had attended meetings and provided detailed correspondence and the Applicant's representative. It further asserted the Applicant had persisted with her allegation that the Respondent should bear the costs of roof works and not recharge them to the occupants.

38. The Respondent then submitted that although its employees had incurred a significant amount of time investigating and preparing its case in response to this application it proposed to recharge a proportion of the total costs in dealing with the application. It concluded with a submission that it is reasonable for the occupiers of Boley Lodge to contribute to the Respondent's costs in dealing with the application as it is a not for profit housing provider and charity with limited resources.

39. By a short response the Applicant's representative refuted the submission by the Respondent that there had been meetings

with him whether before or after the issue of these proceedings. Mr Stewart also denied there had been any substantive correspondence with him regarding the Applicant's case although he admitted he had all but composed much of the Residents Association correspondence.

The Lease

40. The relevant provisions of the lease are at clause 1 the Lessee agrees to pay to the Landlord "*quarterly in advance on the usual quarter days or on such other date and for such and in such other manner as the landlord shall from time to time determine and shall have given notice to the Lessee and maintenance and service charge (the hereinafter referred to as the service charge) which annual charge shall be 3.34 per centum of the amount estimated by the landlord as the cost to it for the relevant twelve month period of the matters referred to in clause 5 hereof and the schedule hereto plus ¼ cost so estimated of the matters referred to in clause six hereof*". Clause six is not relevant to these proceedings.

41. At clause 4(i) whereby the Lessee covenants to pay the rent and service charge in the manner and on the dates mentioned in accordance with the provisions of the Schedule to the lease.

42. At clause 5(i) whereby the landlord covenants during the term to "*keep in good and substantial repair .....the roof main structure external walls and doors and windows.*"

43. The Schedule provides more information regarding the service charge. At clause 1 is a provision for determination and certification by the landlord's accountants of the landlord's expenses. Any excess payment made by the Lessee is to be held against the liability for the next ensuing service charge year (clause 2).

44. Clause 3 provides that sums collected by way of a sinking fund shall be held on trust for the Lessee until expended.

45. Clause 4 provides that among other charges incurred by the Landlord in performing obligations there may be charged a reasonable provision of a sinking fund in respect of future repairs and replacements. Also, the Landlord has the right to make a charge of a management allowance not to exceed the allowance permitted by the Department of Environment for schemes approved for Housing Association Grant.

46. **The Schedule to the lease referred to in clause 5 (landlords services) provides at paragraph 4:**
The expenses incurred by the landlord in performing the obligations and providing the services mentioned in clause 5 shall include:-
(iii) the fees and charges of the Landlord's accountants auditors surveyors solicitors valuers architects or any other agent or professional adviser employed or instructed by the Landlord in connection with the carrying out of its duties contained in this lease
and at (vi) the cost incurred by the Landlord in bringing or defending any actions or proceedings against or by any person whatsoever in connection with the demised premises or the Estate

The Decision

47. The issue for the Tribunal to determine according to the application form is the service charges for year 2019-20. The demand is for the sum of £1,647.48. However, in the Applicant's submission and evidence there is no challenge to any of the items other than by implication the sum of £500.00 transfer to the sinking fund.

48. The Tribunal therefore determines that the service charge demand is reasonable and payable. However, it has considered the way in which the parties have conducted this case. The Respondent submitted evidence in response to the Applicant's complaint about the use of the sinking fund to pay for the roof works. The Tribunal will make a ruling as to whether or not it was reasonable to use the sinking fund to pay for the roof works and also whether or not it was reasonable to add an additional £1,287.00 administration charge.

49. As far as the administration charge is concerned, it should be regarded as a management charge. It is not an administration charge pursuant to Commonhold and Leasehold Reform Act 2002. ~~The Respondent has not incurred legal expenses in connection with these proceedings. There is no claim for legal costs. Accordingly, the application for an order under paragraph 5A Schedule 11CLRA 2002 is dismissed.~~

The Use of the Sinking Fund

50. Clause 5 of the lease imposes an obligation upon the landlord (insofar as relevant to this case) *to keep in good and substantial repair ..... the roof, main structure, external walls.* The leaseholder has an obligation to meet 3.34% of charges incurred by the Landlord in complying with this obligation through the service charge.

51. The Applicant has in effect made two separate submissions as to why the work on the roof undertaken by the Landlord falls outside the service charge.

52. The first is that earlier work undertaken by the Landlord in jet washing the roof was performed badly resulting in damage to and displacement of the tiles. Consequently, it is for the Landlord to discharge the costs of making good from the jet washing contractor.

53. The second submission is that the decision taken by the Landlord to carry out major works to the roof was connected with the age and condition of the roof and that the work was renewal or improvement not repair.

54. The two submissions are not pleaded in the alternative but linked by the assertion that the roof was sound until the jet washing was undertaken. When leaks were reported the Landlord's responsible employee decided that the jet washing was not responsible for the leak but was as a result of the age of the roof which was coming to the end of its economic life and in need of attention in any event.

55. The Applicant relies upon a report prepared for a purchase of flat 30 in 2017 as evidence that the roof was sound. There is no other evidence that supports the submission of damage caused by the jet washing. The Applicant submits the evidence of the House Purchase survey is enough on a balance of probability to justify a finding that the jet washing was responsible for the leaks and other observed defects and that the contractor should be pursued for the entire cost of work undertaken.

56. The Tribunal is not satisfied that the jet washing was responsible for the roof defects as the surveyor's report describes his observation from the roof voids

of the visible parts of the roof. It is not enough to rebut the observations of the Landlord's surveyor who was concerned to examine the whole roof. Moreover, even if there was evidence that the work of jet washing was performed poorly causing damage requiring remedial attention, without an allegation that the work is an improvement, the further work would have fallen within the terms of the service charge. Whether there was a right of action for recovery of the cost of remedial work would be a matter for further investigation.

57. The second submission namely the work falls outside the obligation to repair requires more consideration.

58. It is axiomatic that work of renewal or improvement is the responsibility of the Landlord. The Applicant has referred to *London Borough of Hounslow v Waale [2017]EWCA Civ 45*

Para 42 per Lewison LJ:

"I agree with Mr Beglan that the same legal test applies to all categories of work falling within the scope of the definition of "service charge" in section 18. But the application of the same legal test does not mean that the legal and factual context applicable to one category of works rather than another can be ignored.....There is, to my mind, a real difference between works which the landlord is obliged to carry out on the one hand, and work which is an optional improvement on the other. When the Lessee enters into an obligation to pay for the cost of keeping the structure and exterior of the flat and the building in repair it is possible to form a view about what kind of works will be involved, and consequently what the scale of cost is likely to be."

59. The Applicant sought to distinguish that case from these proceedings because in Waale the lease imposed an obligation to contribute to the cost of improvements. That is not a distinction with which the Tribunal agrees. Lord Justice Lewison went on in paragraph 43 as follows:

"First, as I have said there is no bright line difference between repairs and improvements. Although Mr Beglan suggested that the UT had drawn such a line, I do not think that on a fair reading of the decision as a whole it did. Paragraph [41] recognises in terms that in some cases the line may be blurred. The contrast that the UT drew was between the discharge of obligations on the one hand and the carrying out of discretionary improvements on the other.

Second, neither the decision of the UT nor the decision of this court is part of the statute. Observations, even if of a general nature, made in a judgment are not to be construed as if they were. Third, there is a spectrum of different factual situations which may give rise to different considerations and situations in which different weight should be given to common considerations. A number of examples of discretionary improvements were discussed in argument. At one end may be a case like this one in which improvements were carried out in order to eradicate the future possibility of failure of the windows due to a design defect in the original building. In the middle may be an improvement designed to benefit all tenants, such as the installation of security measures (e.g. CCTV or keypad locks) where none had existed before. Further along may be improvements which will benefit some but not all tenants (such as the creation of a children's play area). And at the other extreme might be something of purely aesthetic interest such as the installation of a water feature to beautify the estate. The relevance of the Lessees' views and the financial impact on them may be given greater weight the further along the scale one goes".

60. In Southwark LBC v Baharier [2019] UKUT 0073 the Upper Tribunal said in relation to a decision by the First-tier Tribunal that it had directed itself to the wrong question when deciding whether the subject works were repairs or improvements

"We are therefore satisfied that the FTT directed itself and the parties by reference to the wrong question. It ought not to have asked whether the costs of the replacement system were costs of repair or costs of improvement, but rather whether they were costs and expenses of or incidental to proving the services of heating and hot water, or of ensuring so far as practicable that those services were maintained at a reasonable level."

61. In this case the lease provides by clause 5(1) that the Landlord has agreed to keep the roof in good and substantial repair. As stated in *Baharier* in relation to an obligation to provide a service of management and maintenance of the apartment block:

"A covenant to provide services is not the same as a covenant to repair; it imposes a wider and potentially more onerous obligation.

30. As a matter of contract, it is for the Landlord to decide how to supply the central heating/hot water service. That principle is firmly established in the

case of covenants to repair (Lewison LJ included it as one of the uncontroversial propositions in paragraph 14 of his judgment in Hounslow v Waaler citing Plough Investments Ltd v Manchester CC [1989] 1 EGLR 244 in support). It applies equally to covenant to provide a service. In Yorkbrook v Batten (1986) 52 P&CR 51 (CA) at pp.61-62, the Court of Appeal applied the principle to a covenant very similar to clause 4(5) of the lease in this case:
"The [landlords]' covenant was, and is, to provide "a good sufficient and constant supply of hot water and an adequate supply of heating in the hot water radiators." How they achieved this was a matter for them."
31.Because a covenant to provide a service of heating and hot water imposes an obligation to take whatever steps are required to achieve an outcome it is not relevant to consider in any detail what those steps are. The distinction between repairs and improvements, and the question of whether a particular programme or item of work goes beyond repair, is therefore irrelevant.

62. The Tribunal is satisfied the Respondent was undertaking necessary roof work in accordance with its obligation to provide a service under the terms of the lease. In the circumstances it is neither an improvement nor is it an enhancement as envisages by the Taxation of Capital Gains Act. Moreover, the Respondent acted reasonably in procuring the best price for the work although the Tribunal notes there was no substantive complaint about the charges per se only their allocation to the sinking fund.

63. Accordingly, it is reasonable to include a charge to restore the sinking fund. It follows that the service charge as demanded is reasonable and payable.

64. However, the Tribunal is not satisfied that the administration/management charge additional to the actual cost of work is reasonable. The Respondent adduced no evidence to justify that charge nor that it was an eligible cost under paragraph 4(iv) of the Schedule to the lease.

65. **As far as costs of the proceedings are concerned the Tribunal is satisfied the Respondent has done what it was required to do to persuade the Applicant and other residents that it was responsible for the roof and that costs of repair would be part of the service charge. There was no need for it to go further than it did. Further by paragraph 4 of the Schedule to the lease the Respondent is**

entitled to recharge its costs incurred either with instructions to agents (para 4iii) or in connection with any proceedings (para 4iv).

66. **The parties have not submitted any quantified claims for costs at present. The respective submissions relating to the costs of the proceedings are set out above at paragraphs 35-39. There is a dispute regarding the time and attention given to the Applicant's complaints.**

67. **The Tribunal does not propose to make a determination as to whether and when there were any meetings or detailed correspondence in relation to the costs of repair of the roof. The dispute relating to the alleged meetings and correspondence is not relevant at this point. The Tribunal orders that it is just and equitable that the Respondent is entitled to an order for costs under both s20C of the Landlord and Tenant Act 1985 and paragraph 5A Schedule 11 to CLRA 2002. The Tribunal is satisfied it has an obligation under the lease to repair the roof and further that the costs are part of the services it is obliged to perform. Moreover had the Tribunal decided in favour of the Applicant all relevant occupiers of Boley Court would have received a benefit. Conversely, had the Tribunal made an order in favour of the Applicant those leaseholders not part of the proceedings are at risk of the Respondent adding the costs to their service charges.**

68. **However, as the amount of the costs claimed is unknown the Tribunal does not exclude the Applicant from referring any claim when made to the Tribunal for determination as to what sum, if any, is reasonable and payable.**

Rights of Appeal

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

70. Either party may appeal this **amended** decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal at the regional office that has been dealing with the case, for permission.

71. Any application for permission must be in writing and be received by the regional office of the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the decision to the person making the application.

72. 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.

73. 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

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

Tribunal Judge PJ Ellis