FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BF/LSC /2022/0019**
Property	**:**	**Fairlawnes, Maldon Road, Wallington, Surrey SM6 8BG**
Applicant	**:**	**Fairlawnes Wallington Limited**
Representative	**:**	**Carpenter & Co solicitors and Mr R Harris of Harris Property Management**
Respondent	**:**	**The leaseholders at the Property**
Representative	**:**	**For the "Group" - Ruby Acquaye-Nortey**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Dutton** **Mr D I Jagger MRICS**
Venue	**:**	**Paper determination**
Date of decision	**:**	**3 August 2022**

DECISION

Decisions of the tribunal

The Tribunal determines that the works to the roof of Block D are required and that the proposal for such works is, save as to the costs of same, reasonable.

Background to the application

1. The Applicant seeks a determination pursuant to s.27A(3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of service charges to be incurred in relation to roofing works. The Application is made by Fairlawnes Wallington Limited, (the Applicant) the landlord of the property at Fairlawnes, Maldon Road, Wallington Surrey SM6 8BG (the Property). The Respondents are the leaseholders of the 56 flats situated in four purpose-built blocks of flats making up the Property.

2. The matter has been considered on the basis of the documents contained in a hearing bundle running to some 135 pages, the contents of which we have noted. Within the bundle was the application dated 24 December 2021, directions issued by the Tribunal on 6 May 2022 together with two statements made by Mr Roger Harris of Harris Property Management, who is not only the managing agent for the Property but also, it would seem, a leaseholder and the company secretary of the Applicant. A copy of the lease is included, to which we will refer as necessary in the course of, this decision. Section 20 notices and the schedule of works together with a specification, tender reports and bundle of emails from some of the leaseholders, to which again we shall refer as necessary, were also included. We were also provided with ground rent and service charge demands dated May 2022.

3. The first witness statement of Mr Harris seeks to explain the reasoning behind the application. He says that it is made in response to questions raised by the tribunal in a letter dated 8 February 2022. That letter said as follows:
Your application has been considered by Judge Martynski who has commented as follows:

"I am not entirely sure what this application is seeking to achieve. The application asks the tribunal to declare that the Applicant can accept any one of the estimates. The Applicant does not need the tribunal's permission for this.

In any event, there has been a tender process and a tender analysis which makes a clear recommendation for the acceptance of one of those tenders. I am not sure that, given this information, the tribunal is going to say anything other than that the acceptance of the recommended tender would appear to be reasonable. Such a declaration from the tribunal would not prevent a leaseholder making a

challenge at a later date nor would it prevent complaints that the work was not ultimately done to a reasonable standard.

If the Applicant wishes to proceed, it must supply a Statement of Case which briefly, clearly and succinctly sets out:
(a) A brief description of the buildings
(b) The background to this matter
(c) The works envisaged
(d) What the tribunal is being asked to do"

4. His statement told us that the Property comprised four purpose-built blocks, all with flat roofs, containing 56 flats. We were told that all leaseholders contribute equally to the costs of reroofing the blocks. It seems that block C was reroofed some 7 years ago, and that works are 'urgently' required to Block D, with Blocks A and B to be attended to after the Tribunal has approved these works.

5. It is intended to do away with the internal drainage stacks that deal with the dispersal of water from the roof and to replace that system with gutters and downpipes once the reroofing has been completed. We are told that there have been several water leaks and that there is pooling of water. All this is set out in the Statement.

6. In answer to point (d) in Judge Martynski's letter it is said that approximately 11 lessees object to the works and therefore the application has been made to give the dissenting lessees the chance to oppose the application. It is hoped that we will agree that the costs to be incurred are reasonable so that works can be proceeded with as soon as possible and that this would set some form of benchmark for the works to Blocks A and B.

7. The directions provided for any objecting leaseholder to send to the Applicant and the Tribunal a statement setting out their objections in full. What we have is a letter to the Tribunal dated 16 June 2022 from Ruby Acquaye-Nortey said to be on behalf of the Fairlawnes Limited Group, the status of which is unclear but appears to represent those leaseholders who challenge the application and who are named. The response refers to previous accounting issues and other brick works over the window openings (Helibar) which are not the subject of this application. It would seem that the "Group" engaged in the s20 procedures although there is no evidence of alternative quotes or experts reports in the papers submitted to us. There is a challenge to the expertise of Mr Bill Morle FCSD and MFWPS of A & B Designs, it being said that a Chartered Structural Engineer or Building Surveyor should have been involved.

8. The letter goes on to complain about difficulties in arranging meeting during 2020, with a meeting eventually taking place, we are told in March 2022, which did not resolve the concerns of the "Group". Questions under the Companies Act 2006 were raised, which is not within the jurisdiction of this Tribunal. The economic status of the

lessees was raised, and it is said that the lease does not allow the Applicant to recover the costs of this application.

9. There are a number of exhibits annexed, which we have reviewed but some have no relevance to this application. There is evidence in emails of attempts made to arrange a meeting with Mr Harris and the directors of the Applicant. In addition, we have indistinct copies of correspondence between Maguire Brothers, the preferred contractor following the s20 process and Mr Morle which appears to relate to some additional charges.

10. There are copies of emails from other lessees, for example Diana Nicholls emailed dated 9 December 2020 concerning the proposed works and Victoria Churchill, in particular an email dated 11 November 2020, which raises a number of issues, including service charge contributions, the works involving the Helibars, a potential conflict of interest involving Mr Harris and a short paragraph concerning the roofing works to Block D.

11. In a second witness statement Mr Harris attempts to cast some doubt as to the relevance in the statement lodged on behalf of the "Group" by Ms Acquaye-Nortey and indeed her right to make the statement on their behalf. He justifies the retention of Mr Morle and responds to some extraneous issues raised. We have noted all that has been said.

12. In addition to these submissions, we were provided with a copy of the Building Defects Report which is assumed to have been prepared by Mr Morle but has no signature. It runs from page 70 to page 81 of the Bundle and addresses both the roofing issues and Brickwork. We have noted all that has been said about the roofing works and their need. Under paragraph 3.2 the problems from which the roof suffers are highlighted and at paragraph 4.2 the recommendations to correct the issues are set out. Reference is made to Schedules, but they did not appear to be included in the copy provided to us.

13. The notices served under s20 appear correct and are not challenged.

Findings

14. Judge Martynski raised queries in his letter of 8 February 2022. Like him, we are somewhat at a loss to know why this application has been brought. There does not appear to be any issue with the s20 consultation, and although the Report included with the bundle seems incomplete, but assuming it was made by Mr Morle or a similarly qualified professional, the findings are clear. The roof to Block D needs replacing, and the removal of the existing stack system would appear to make sense.

15. There is no compelling evidence from the Respondents that the works are not required or should be dealt with differently. We do not consider that the works would constitute an improvement. At clause 5 (c) of the

lease the Landlord covenants to maintain repair and renew inter alia the roofs of the blocks and under the Fourth Schedule paragraph 1.(c) the lessee is required to contribute to the expenses of maintaining repairing and renewing the roofs. Such maintenance, repair and renewal would, in our findings, include the works envisaged.

16. However, the submission to us that we should approve the works and the price being charged. We do not feel able to approve the present quotes. There is no evidence before us that the chosen contractor, Maguire Brothers, will stand by the quote, given that more than two years have passed. It is, we believe, common knowledge that since the pandemic building material costs have risen but we have no indication as to what the price may now be.

17. Accordingly, we find on the evidence produced to us, and on the assumptions we have had to make, that the roof to Block D needs replacing and that the schedule of works and the specification are reasonable. We trust that a suitable guarantee will be sought from the contractor. However, we are not satisfied that the potential costs are accurate now.

18. In the submission on behalf of the "Group" reference is made to costs. We do not know whether the Applicant intends to seek the costs of these proceedings. If it does, it should review the lease to determine which clause(s) allow the recovery of costs and the leaseholders would be entitled to raise a challenge under s27A of the Act if they thought it appropriate to do so.

Name: Judge Dutton **Date:** 3 August 2022

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).

Appendix of relevant legislation

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.