FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HN/LIS/2022/0034
Property	**:**	Forest House, 1 Russell Cotes Road, Bournemouth, Dorset, BH1 3UA
Applicant	**:**	Forest House (Bournemouth) Management Company Limited
Representative	**:**	Napier Management Services Ltd
Respondent	**:**	Michael Kaddah Charlotte Cooper Sandra Harthill Carol Jones Anthony Lacey Jean Lovering Stephen Millward Mervyn Shaya
Representative	**:**	Anthony Lacey
Type of Application	**:**	Applications to determine service charges– section 27A Landlord and Tenant Act 1985 Applications that costs not be recoverable as charges- section 20C Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	**:**	Judge J Dobson Mr C Davies FRICS Mr E Shaylor MCIEH
Date and venue of hearing	**:**	4th May 2023, Havant Justice Centre
Date of Decision	**:**	19th July 2023

DECISION

Summary of the Decision

1. **The Tribunal determines that the service charges demanded by way of "special levies" in December 2022 and February 2023 are not reasonable as it is not reasonable to demand service charges in that manner in order to undertake the whole of the major works in one single phase.**

2. **Given that demands cannot now be made in lower sums in past years, the appropriate way of phasing the works to enable reasonable demands in any given service charge year 2022-2023 onward is a matter in respect of which there may be a number of reasonable approaches open to the Applicant and the reasonable service charges to demand in respect of each phase will depend on the works reasonably included in the given phase and the level of demand otherwise having been considered and determined to be reasonable, such that the Tribunal cannot determine the level of service charges reasonable in respect of such works for the service charge year 2022-3 or 2023-4 at this time.**

3. **The Applicant shall bear the application and hearing fees for this application.**

The General Background

4. The Applicant is the management company for Forest House, 1 Russell Cotes Road, Bournemouth, Dorset, BH1 3UA ("the Property"). The head-lessor is Forest House (Estates) Ltd but neither that company nor the freeholder have played any part in these proceedings. Both the Applicant and the head- lessor are resident- owned companies. The lessees of all but 3 flats own shares in the freeholder. Both share the same representative according to the application.

5. The Property is a 13- storey purpose- built apartment block constructed in or about 1974. The Property contains 74 flats, including 2 penthouse flats, let on long leases. The Property is roughly X- shaped. There are 4 limbs containing the individual flats extending from a central communal area. 2 of those limbs are larger and, save for the top penthouse floor, contain 2 flats per limb per floor. The other 2 are smaller and with the same exception contain 1 larger flat per limb per floor. There are balconies around the external corners. The top floor contains 2 penthouse flats which extend across one of the larger limbs and one of the smaller limbs but do not extend as far into the limbs as the flats below.

6. The Property is situated over-looking Bournemouth seafront. More specifically the south- facing limb does, particularly to its eastern side (less so to its southern end and not to its western side), and the eastern limb does. The eastern side of the northern limb looks out to sea albeit from a little further back. The seaward facing faces are therefore the east face of

the southern limb and the southern face of the eastern limb at right angles to it on the one hand and the northern face of the eastern limb and eastern face of the northern limb on the other hand (collecting "the seaward facing faces").

7. The Respondents are the lessees of the individual flats.

The Application and history of the case

8. The Applicant sought determination of service charges for the years ending 21st March 2023 and 31st March 2024 by application dated 7th November 2022 [4- 15]. The costs in dispute related to exterior decoration, lintel repairs, brickwork pointing and repairs and parapet water proofing, with associated works. The amount stated to be in question is some £1,245,779.28. It was said that nothing engaged the provisions of the Building Safety Act 2022. It was added that work to the exterior of the parapet wall was required to be undertaken when the scaffolding was erected for the major works (termed in the bundle the "Major Works Programme", which term the Tribunal adopts).

9. The Applicant specifically sought the Tribunal to determine "the reasonableness of the scope and cost of the works specified and that the method of tendering and S20 consultation were compliant with the S20 legislation and [the applicable service charges] are payable under the terms of the leases." It was asserted that the work required to the exterior of the parapet wall was urgent and had to be undertaken when the scaffold was in situ for the remainder of the works and further that one flat was uninhabitable.

10. Directions were given on 23rd January 2023 [16- 19]. Those Directions identified uncertainty as to whether the works had been included within a budget and have been demanded and hence the jurisdiction the Tribunal has for determining the service charges arising. Clarification was sought.

11. Further Directions were required on 15th March 2023 [331-335], which noted that various lessees had submitted a detailed objection and statements. Those are the Respondents. In addition, it was noted that the Applicant had produced evidence that a demand has been levied on 4th February 2023 entitled "Special Levy". It was added as follows:

> "The Tribunal is able to consider whether or not such is a demand properly made under the lease and whether the calculation of the sum is reasonable. Until the works are completed and finally invoiced to the Applicant it will not be possible to determine whether all such costs are payable and reasonable. The Tribunal will simply be able to determine whether the proposed costs and sums claimed are reasonable and sums which the Applicant may issue a claim for."

12. The further Directions provided for the Applicant to produce a bundle of documents relied on by the parties in relation to the issues for determination and listed the application for a hearing. The Applicant produced a PDF bundle amounting to 353 pages in advance of the final

hearing. The location of the Directions dated 15th March 2023 towards the very end of the bundle was less than ideal.

13. The Directions did not give permission for any party to rely on expert evidence and neither had the previous Directions. No party made any application either prior to those Directions or subsequently to rely on expert evidence, which had some relevance in the hearing, as explained below.

14. The Respondents served a very detailed statement of case in response to that of the Applicant on [239-276]. The points taken by the Respondents were set out under the following headings, namely, Liability of Leaseholders to Pay Charges, Reasonableness of Charges and Section 20 consultation process. The 1st, 2nd and 4th elements of the works listed in the application were identified as the principal ones. A theme of the Respondents' case was that works did not need to be undertaken in a single project and that was not the reasonable approach to take.

15. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so (the Respondent's detailed statement of case and the many pages of questions and answers being cases in point although not the only ones), much as the Tribunal does refer to most of them to one extent or another in this instance. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page- numbering.

16. This Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues remaining in these applications. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

17. There has been a rather longer delay in this Decision being produced than hoped for, notwithstanding the need to re-convene at a later date and the technical issues. It is only appropriate to sincerely apologise to the parties for the delay and for any frustration and inconvenience arising. The Tribunal does so.

The Lease

18. The headlease ("the Headlease") of a parcel of land on which the Property was subsequently constructed was provided [27-39]. It is dated 5th March

1973. None of the parties to this application are contracting parties. The Headlease was granted at that time to the developer of the Building, Pinewood Homes Limited, ("the Head- lessee"). The term of the Lease as originally granted is 99 years, subject to payment of rent provided for and payable in two instalments on 29th September and 25th March of any given year.

19. The Property did not exist at that time. The head-lessee covenanted to build it.

20. A sample lease ("the Lease") and described in the document as "This Underlease" of a flat, specifically Flat 74 a penthouse flat, (and also of a garage) was also provided [41-52] dated 4th April 1977. The copy appears to have been obtained from HM Land Registry but is not a good one. The Lease is tri-partite between the then head- lessee, the Applicant and the specific lessee.

21. The term of that is 99 years less 10 days and commencing on 25th December 1972. The Applicant is a party to the Lease and is termed "The Company". The Property as termed in this Decision is described in that Lease as "the Building" and so the extracts from the Lease provided below need to be read accordingly. There is also a definition of "The Estate" as being nearby premises and of "General Common Parts" as The Estate excluding the Building. "The Landlord" is the head-lessee. The lessee is termed "the Tenant".

22. Various obligations on the Applicant are set out in clause 4 in covenants between the Landlord and the Applicant Company and the given lessee, including:

> "(a)that THE COMPANY will at all times during the term hereby granted keep the foundations main walls and horizontal structural slabs supporting floors (and other main structural supports) timbers roofs main drains and sewers and the exterior and internal parts including the staircases halls passages and such other internal parts as shall or may from time to time be used in common (or made available for common use) by the tenants of THE ESTATE of (i) THE BUILDING and (ii) every other building (including the underground garaging) now or hereafter on or under THE ESTATE in good and substantial repair and in clean and proper order and condition and properly lighted"

and:

> (c)that the COMPANY will in the year 1979 and thereafter once in every third year of the said term and at the end or sooner determination thereof prepare as necessary and paint all external surfaces of THE BUILDING (including balconies) and every other building and outbuilding and fences and gates on THE ESTATE and additions thereto as are or ought to be painted with two coats of good quality paint in a proper and workmanlike manner and in accordance with the terms of THE- HEAD LEASE and will likewise at the same time creosote or otherwise treat all wooden fences on the boundaries of THE ESTATE and varnish all external parts previously so dealt with.

23. The Tribunal noted the location of the Property by the south coast and was not surprised by the requirement to decorate the exterior every 3 years, although noting that would produce a significant ongoing expense very regularly.

24. There are requirements in other sub-clauses in respect of internal decoration, lift maintenance and in respect of sewers, drains, pipes and similar and in relation to insurance.

25. Clause 5 then sets out the covenants of the lessee. The costs to which the lessees must contribute are included in clause 5(1) as follows:

> "the aggregate amounts properly and reasonably already expended previously or required to be expended by THE COMPANY for the ensuing accounting year (including the amount of any reserves or sinking funds in accordance with the provisions of THE HEAD LEASE or otherwise reasonably required by THE COMPANY) in connection with the performance and observance during the whole of the term hereby granted of the covenants and obligations on the part of THE COMPANY contained in this Underlease or in connection with the management and administration of THE COMPANY"

26. It merits emphasising that the clause therefore enables the Applicant to maintain reserves (or sinking funds) to the extent reasonably required in order to meet costs to be incurred, which the Applicant did. The ability of the Applicant to do so was not one of the matters in dispute.

27. By clause 6(8), the Applicant may retain any payments made by lessees and not actually expended in any, tax, year in which they were made on trust for the lessee but able to be applied as authorised by the Lease, hence to meet the lessee's share of authorised expenditure, such as on repair and maintenance work required..

28. In terms of making the Lessee making payments, the clause continues by requiring two equal instalments in advance on the rent days, identified as 25th March and 29th September of any given year. The lessees are additional required to pay additional payments, termed as special levies, and also provided for in the clause as follows:

> "or at such other times and/ or on such other additional occasions as THE COMPANY shall in writing notify to THE TENANT"

29. The Applicant is thereby able to make demands at any time it so decides, subject to the sums being payable and reasonable in the usual way.

30. The share of the expenditure payable by the given lessee ("the Tenant's Share of total expenditure") is set out in paragraph 10 of the Particulars of the Lease. In the particular instance in the Lease, that is 2.41%. There is provision, (clause 3 (12) for the lessee to pay the Tenant's Share of expenditure incurred by the Landlord.

31. There is a covenant (clause 3 (13)) for the lessee to pay on demand the Landlord's various costs as set out "of and incidental to the preparation and service of a notice under sections 146 and 147 of the Law of Property Act 1975", so in relation to forfeiture.

32. There is not the sort of service charge mechanism usually encountered. That would usually include the Applicant sending an estimate of the anticipated expenditure for the Service Charge year and an estimate of Service Charges, most commonly as soon as possible after the start of each Service Charge Year and then after the end of the year preparing and sending an account, probably with a suitable certificate, showing (actual) Service Costs and Service Charges. There would ordinarily be payment on demand of the balance where the actual Service Charge exceeds the estimates and the ability to either credit any overpayment or to pay that into the reserve or sinking fund.

The Construction of Leases

33. It is well- established law that the Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is not different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

34. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in *Chartbrook* [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

The relevant Law

Service charges

35. Essentially, pursuant to section 18 of the Landlord and Tenant Act 1985 ("the Act"), the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.

36. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable.

37. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

38. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

39. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute.

40. However, examples of relevant authorities for the purpose of this Decision and the key points arising from them are set out below:

Forcelux v Sweetman [2001] 2 EGLR 173

There are two elements to the answer to the question of whether the cost of any given service charge item is reasonably incurred, namely:

i. Was the decision-making process reasonable; and
ii. Is the sum to be charged reasonable in light of the evidence?
The second element was stated to be particularly important.

Lord Mayor and Citizens of Westminster v Fleury and Others [2010] UKUT 136 (LT)

The first element principally involves a consideration of whether the proposed method is a reasonable one in all the circumstances, even if other reasonable decisions could have been made. However, that is not a complete answer to the question and other evidence should be considered.

The London Borough of Hounslow v Waaler [2017] EWCA Civ 45

The process is relevant but to be tested against the outcome. The fact that the costs of the work will be borne by the lessees is part of the context to whether the costs have been or will be reasonably incurred and interests of the lessees must be conscientiously considered and given the weight due, although they are not determinative- the lessees have no veto and are not entitled to insist on the cheapest possible means of fulfilling the landlord's objective. Reasonableness is to be determined applying an objective test.

Garside v Maunder Taylor [2011] UKUT 367 (LC)

The nature and location of the property and the amount demanded in previous years, in particular any significant increase and the financial impact on the tenants are relevant to the question of whether costs have been reasonably incurred. So too, the degree of disrepair and the urgency or otherwise of work being undertaken.

Plough Investments v Manchester City Council [1989] 1 EGLR 244.

The lessees are not entitled to require the landlord to adopt a minimum standard of repair, the choice being the landlords' provided it is reasonable, but on the other hand, the lessor could only recover for what were truly repairs. That assumes of course no lease provision allowing recovery in respect of improvements, although it has been said there is no bright line between repairs and improvements.

In respect of how the landlord addresses required works, the question is whether the method adopted was a reasonable one in all the circumstances. That is to say, one of what may be a number of reasonable courses, even if other reasonable decisions could also have been made**.** The correct answer to the question of works being reasonable is fact sensitive and can only be answered by considering all the evidence relevant in light of the provisions in the Lease.

41. Only one case was referred to by the parties, in particular the Respondents, being the case mentioned above as *Garside v Maunder Taylor*, although the Respondents referred to it as *Garside and another v RFYC* and another, or rather the article they produced about the case did from the Leasehold Advisory Service (LEASE). The other Appellate was called Anson. The other Respondent was *Maunder Taylor*.

42. The article gave a little more by way of background facts and the decision by the Leasehold Valuation Tribunal, the predecessor of this Tribunal but the only gloss put on the principal identified above was reference to financial impact being considered in broad terms with reference to past service charge requirements and the nature and location of the particular property. The suggestion of LEASE is that the case adds a requirement particularly when considering major works, that emphasis should be on spreading out cost through use of a reserve fund and that the judgment emphasises the need to take account of all factors and take account of the needs of all leaseholders.

43. The Tribunal does not regard any of that as controversial in itself. The application to an individual case is the more usual battleground.

Consultation and dispensation from consultation

44. The requirements in respect of consultation are provided in Section 20 of the Act and the related Regulations. Whereas the Act refers to tenants, that does not mean tenants under short- term tenancies but rather lessees, the term adopted in this Decision, under long leases.

45. Section 20(1) provides that the "relevant contributions of tenants" will be:

> "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."

46. Section 20ZA(4) of the Act provides that "the consultation requirements" be prescribed by statutory instrument. requirements" in respect of are set out at Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "Regulations").

47. In the first instance, the lessor or other with relevant responsibility is required to serve a Notice of Intention to Carry Out Qualifying Works on each lessee.

48. The details which are to be included in a written notice of intention are identified in paragraph 8(2) to Part 2 of Schedule 2 of the 2003 Regulations. Those require the lessor to, amongst other things, "(a) describe, in general terms, the works to be carried out…(b) state the landlord's reasons for considering it necessary to carry out the proposed works; (c) invite the making, in writing, of observations in relation to the proposed works and (d) give other information about responding including the date by which the period for responding ends.

49. Paragraph 10 provides that where observations are received from a lessee in accordance with paragraph 6, the lessor shall have regard to those observations within 21 days of receipt and where a contractor is nominated, the lessor shall try to obtain an estimate from that contractor.

50. The lessor must, pursuant to paragraph 11(5), obtain estimates for the proposed works and must provide details of at least 2 estimates (including from the contractor nominated by a lessee (if one) and a summary of observations received (if any) and the lessor's response to them, also making any estimates available for inspection. If observations are received about those estimates, the lessor must also have regard to those (paragraph 12).

51. Finally, there must be a written notice provided to each lessee within 21 days of entering into a contract for the works (paragraph 13), stating reasons for entering into the contract and summarising any responses received to the estimates and the lessor's response to those.

52. Section 20(5) enables regulations to also provide by regulations for the maximum amount payable by a lessee if the consultation requirements ate not complied with. The Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum. That is unless the requirement has been dispensed with by the Tribunal, for which an application may be made retrospectively.

53. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements". As no application was made for dispensation, it is unnecessary to discuss the law related to that any further.

The Hearing

54. The hearing was conducted at Havant Justice Centre in person.

55. Ms Aileen Lacey-Payne of Napier represented the Applicant. There were 4 other persons in attendance for the Applicant, namely Mr Simon Welch, Mr David Earle (chair of the Applicant company), Mr Robin Thorpe and Mr Rob Spencer. The Respondents were principally represented by Mr Lacey. Of the Respondents, 5 were in attendance, being Mr Lacey and also Mrs Judith Lacey, Ms Carol Jones, Mr Mervyn Shaya and Mrs Ann Shaya.

56. The Tribunal identified that in effect expert evidence was sought to be relied on by the Applicant from Mr Welch MRICS, a chartered surveyor. It was explained to the Applicant that Mr Welch could provide factual evidence but was not entitled to provide expert opinion.

57. The bundle included limited documentation which it was identifiable had been prepared by Mr Thorpe, a structural engineer, although as Ms Lacey-Payne accepted, there was nothing signed at all by him in the proceedings. The effect was that such documents were just that and not expert evidence and could not be given the weight of expert evidence.

58. Ms Jones indicated that the Respondents had sought to obtain expert evidence but had been unable to do so. Nevertheless, the Tribunal identified that Mr Lacey was a chartered surveyor and Mr Shaya an engineer (EEng MICE FIStructE). The same point about factual evidence but not expert evidence applied to any documents produced by them.

59. The Tribunal also expressed concern that the hearing was listed for only 1 day, where the parties sought to rely on six witnesses between them. There was no possibility to run into a second consecutive day, the Tribunal members and hearing rooms both being unavailable for that. Neither was there any satisfactory answer if a second day had been required to be other than consecutive.

60. The parties expressed that they were content to proceed on the above bases and hence the Tribunal did so.

61. Consequently, it was necessary to complete matters in the 1 day and the Tribunal agreed to do so, requiring the parties to seek to focus on the key points in order to achieve that.

62. The Tribunal received written witness evidence from Ms Lacey- Payne as signatory to the Applicant's statement of case [18- 23] and, if the point is stretched almost to breaking, arguably from Mr Welch by way of Specification and Tender Report and the replies to questions he said he had prepared (although no witness statement or other document was signed with a statement of truth as required and actual witness evidence) [84-120, 123- 133 and 170- 193] for the Applicants. Written witness evidence received from Mr Lacey as signatory of the Respondent's statement of case and Mr Robert Briggs for the Respondents.

63. Oral evidence was also given by Ms Lacey- Payne, Mr Welch and Mr Thorpe for the Applicant. No oral evidence was given for the Respondents, there being no matters which the Applicant wished to raise and the Tribunal having no need to question Mr Lacy, or other attendee for the Respondents with that in mind and in light of the written case.

64. Closing submissions were made by Ms Jones on behalf of the Respondents and then by Ms Lacy- Payne on behalf of the Applicants.

65. The Tribunal is grateful to all the above for their assistance with this application.

66. It will be identified that the Tribunal allowed both parties some significant latitude in permitting them to rely on evidence which was not properly provided, or indeed provided at all, in response to the Directions, including from persons from whom proper written expert evidence ought to have been adduced. The list of witnesses above demonstrates that on both sides the parties sought to call oral evidence from persons who had not provided any written statements. However, both sides were in much the same boat and so a balance between them was maintained.

67. The Tribunal was mindful that if further directions had been required in relation to the evidence being attended to as it ought to have been, the hearing would necessarily have been adjourned. Given the suggested- although as discussed below, not demonstrated- urgency of part of the works, the Tribunal sought to avoid that.

68. The Tribunal also took a shorter than usual lunch break and sat somewhat later than should be expect in order to enable the parties' evidence and submissions to be made and to avoid an adjournment for several weeks to enable a 2- day hearing. If the Directions had been complied with, elements of the dispute might have been clearer in advance of oral evidence and hearing time saved

69. The Tribunal makes the parties aware that the approach taken by the Tribunal and outlined in the preceding paragraphs to enable the parties to rely on the evidence they sought to and to deal with the hearing in a day and thereby avoid at least several weeks of adjournment is not one which they ought to expect on other occasions. Far more likely is that if cases are not properly prepared on paper, as they were not on this occasion, the parties will either be limited in the evidence relied on to that which has been properly attended to or there will be an adjournment until such date as proper compliance has occurred and re-listing of the hearing has been achievable.

70. As the Tribunal could not discuss the case on the day following end of the other parts of the hearing, given the time and the quantity of information, the Tribunal needed to re-convene when a mutually convenient later date could be found. Strictly, only at the end of that did the hearing conclude.

71. The Tribunal did not inspect the Property. The Tribunal was content that the nature of the Building and any matters in respect of which there was a need for visual evidence were demonstrated by photographs [24 and 25 and 55- 75 for example but supplanted by others at various other locations in the bundle] such that it was not necessary to inspect in order to the determine the matters remaining for determination.

Specific Background to the proposed works

72. There was a chronology within the bundle [143]. The Tribunal does not repeat that in full. However, there is good deal of context to the issues arising which has some relevance and so it is considered necessary to explain that.

73. In terms of decoration, it was common ground that major works were last undertaken in 2016/ 2017 in respect of external decoration. Prior to that it was undertaken in 2012. It will be apparent that, even allowing for an apparent lack of regular 3- yearly intervals, decoration was somewhat overdue by 2023 in context of the provisions of the Lease.

74. It is perhaps convenient to add at this point, if not strictly part of the background being outlined, that the Respondent's case was that such work

had been unnecessarily delayed and could have been undertaken in 2019/2020. There was speculation about the reason for that, which as speculation does not merit setting out.

75. The most substantial works noted in the Chronology were undertaken in 2016 and related to renewal of balcony balustrades and waterproofing at a cost of £711,861.00 including VAT and fees. No information was given as to how the funds were raised.

76. The witness statement of Mr Biggs [335- 336] states that during 2019 the board of the Applicant was made aware of water leaks to Flats 68, 69 and 72, located immediately below penthouse level. It is said that Mr Welch was instructed then and that some works were undertaken. The Applicant obtained a detailed report [50- 85] in January 2021 from Mr Richard Sharp, a Chartered Engineer, of RS Specialist Services Ltd in order to attempt to locate the source of reported water leaks. The report explains its purpose is to be, "Attempt to locate the source reported water leaks into the 11th floor flats Provide remedial/additional investigation recommendations". It does not address any other elements of the Major Works Programme.

77. Save for an objection to planning permission back in 2017, this report was the earliest document in the bundle chronologically.

78. The report records water leaks to flats 67/ 68 and 72, situated on the top floor of the floors containing 6 flats and just below the penthouse floor. Water testing was undertaken and internal finishes in selected areas were scanned using an infrared thermal imaging camera. One feature identified in the report was a recent extension to a penthouse flat.

79. The essence of the report was that the primary source of water penetration to the above- numbered flats was the "complex" parapet detailing. It was said that:

> "The weatherproofing relies totally on the parapet sections themselves being watertight, the parapet joints being intact and the junction between these parapet sections and the felt waterproofing being intact.
> If any of these are not 100% driving rain will get beneath the recent waterproofing, track across the roof slab before encountering and exploiting any casting joints or cracks in the concrete slab.
> The position of the property would be considered to be extremely exposed and therefore susceptible to extreme driving rain conditions. These would severely test all weathered joints
> It was demonstrated that rainwater could get between the roof slab and the parapets via the felt waterproofing upstand detail."

80. There were other possible causes, being cracked render and defective lead flashings to the penthouse flat, in respect of which further investigations were recommended.

81. It was recommended that in addition to works to address the specific leaks works should be undertaken to all vertical joints to parapets, all

termination bar details, all penthouse lead flashings and all cracks to penthouse render around the perimeter of the roof/ terrace to minimise the prospect of further leaks.

82. A further report and much shorter report [83] was prepared on 18th February 2021. At that time, water was considered by Mr Sharp to be running out of the cracks/joints in the edge beam beneath the parapets, getting onto the roof slab, tracking across it and either running out via the joints/cracks in the edge beam or through joints/cracks into the flats. His opinion was that the likely weak point was related to the vertical sealant joints in the parapets and the waterproofing upstands.

83. The works recommended were to install a reinforced waterproof coating to the top and inner face of the parapet, incorporate a mechanically fixed angles drip flashing to protect the existing termination detail and ensure the sealant joints up the inner face and on the top of the parapets are covered.

84. None of the above was controversial as between the parties, subject to the issue raised by the Respondents about the extension to the penthouse referred to below.

85. The Applicant subsequently obtained a detailed document entitled Specification for External Redecorations, Concrete and Brickwork Repairs, Waterproofing and Associated Works ("the Specification") [84- 123] and so in relation to the Major Works Programme. That is dated 4th January 2022 and is from Winkle-bottom Chartered Surveyors, authored by Mr Welch.

86. In respect of waterproofing works, the report included a letter [123] from Mr Sharp which included the following:

> "During a further visit in February 2021 with the roofing contractor it was agreed that it would be prudent to attempt to seal the inner face of the parapets (in a trial area). Again, works would be possible before the whole building was to be scaffolded.
>
> In March 2021 we discussed the repairs with the liquid coating supplier.
>
> They were of the opinion that the coating may have to be extended outer (sic) the outer face of the parapet but that this option could be re-visited once the inner faces had been sealed and the effectiveness of this initial repair had become apparent.
>
> We agreed with this suggestion at that stage as a sensible way to progress."

87. It was therefore accepted as possible that waterproof coating would be required to the outside of the parapet walls once success of the works which Mr Sharp had recommended had been undertaken could be assessed. It was clarified in the hearing that "We agreed" meant Mr Shapr and the contractor agreed. It is work to the outer face which is included in the Major Works Programme and is in issue between the parties.

88. 10 of the parapet joints were repaired in May 2021 as a trial, which the Applicant originally identified as 100% effective above the worst affected flat. In addition, there was waterproofing to part of the inner parapet wall to the area above Flat 72. The Tribunal perceives that work was paid for from funds already held, although it matters not for these purposes.

89. The work to the waterproofing to the area of internal parapet wall was successful (as stated at the extraordinary general meeting mentioned below) and whilst there was a photograph in, the Tribunal understands, the March 2022 newsletter showing damp penetration, the photograph is captioned that it is an example of leak and is now resolved.

90. The other 35 joints were not undertaken- and the Respondents criticise that- until October 2022. In addition, the water proofing works other than to the external face of the parapets were undertaken at that time. A letter from the Applicant's representative to Mr and Mrs Jones dated 26th September 2022 [309] confirms the contractor, named as Structural Renovations Ltd, to be in a position to undertake that work, commencing 3rd October.

91. The work pre-date the special levies and the Tribunal notes the letter from the Applicant's agent dated 30th August 2022 [161- 162] which explained to the lessees that the work would be funded from available service charge reserve funds. It is consequently not part of the service demanded by special levies. The letter from the Applicant's representative dated 9th December 2022 which notifies the lessees of the levies to be raised also identifies that the work was successfully completed.

92. It was a little confusing in that several documents, including ones mentioned in the paragraphs which follow, pre- dated those works. Matters in relation to and connected to the roof terrace and parapet were inevitably not the same after the works to the joints and water- proofing as they had been before. The special levies were not demanded in relation to the cost of the above parts of the original Major Works Programme.

93. Turning to other areas of the Property, in 2021, there is also identified in the chronology lintel failure and investigate work to Flat 55. Photographs were taken [148-150]. It is not immediately obvious how that was first noted and reported and specifically how that work came about. The statement of Mr Briggs refers to problems with a number of lintels being identified in 2020, of which Flat 55 is said to have been the worst. The Respondents' statement of case mentions an inspection by a company called R. Elliot Associates Ltd on 18th August 2020, so the problem must have been identified in or before Summer 2020.

94. It is said, and was not in dispute, that scaffolding was required, and the work was undertaken. In addition, it is agreed that the lintels that could be accessed were inspected on the same elevations. The result of assessment was set out in a table [153], which records the suggested level of defect as 1 of 3 levels of severity, including where entire reconstruction is required.

95. Returning to the Major Works programme, in the Specification, the Works as defined in the Specification clarified that the works included waterproofing concrete repairs to penthouse parapet, concrete repairs to boot lintels and balconies and repointing. The Recitals and the Schedule of Works added that the waterproofing concrete repairs to the parapet were waterproofing to internal and external face[s] (to include new lead flashings) and that other works included replacement cavity wall ties. In addition, scaffolding was to be provided to the whole of the Property in one phase [105], although there was also a section, 3.01A, which allowed for more than one phase and the phases to be specified.

96. The parapet work excluded the area over Flat 72 already undertaken but included a relatively modest provisional sum for unforeseen works to joints within the parapet. More information was provided in Appendix A [117-118 including a drawing.

97. The balcony works related to water seepage and stalactites formed and was entirely a provisional sum, of the rather higher £25,000.00, although overall the works have been described as minor. That was also first investigated in 2020. The brickwork works related to replacing damaged and defective bricks and related pointing, including removal of old metal fixings. There was also potential work to repoint more generally and replace failed wall ties.

98. In relation to the lintels, the sum was again a provisional one but of some £280,000.00 (on the premise of 70 lintels requiring work at an average cost of £4000.00) plus £5,000.00 for structural engineer costs and £42,000.00 for internal making good around window reveals (so £327,000.00 of total provision costs of £407,000.00). Appendix B to the Specification provided more detail about that [121- 122] including a drawing of what was described as a "Typical section through window lintel" prepared by Thorpe Engineering Consultants Limited, consulting civil and structural engineers, the company of Mr Robin Thorpe who gave evidence at the hearing.

99. The Tribunal has not made reference to any document from Mr Welch and/ or Mr Thorpe prior to the Specification because none has been provided. As far as the Tribunal is aware, there was none. That is unusual. The Specification or similar would in the normal course follow from analysis of work required and there would have been advice about that sought and received by a lessor or similar. It is apparent that the Specification was drawn up for the major works but it is not clear why that specifically was.

100. It merits recording if in somewhat the wrong place, that Mr Lacey by his company JMC Chartered Surveyors undertook his own analysis of the major works and tender analysis [203- 2015].

101. The Applicant's commenced formal consultation by way of the Notice of Intention to Carry Out Qualifying Works dated 14th March 2022 inviting responses by 15th April 2022 [124- 125]. The March 2022 newsletter

attached that Notice as well as explaining [145] that there is a reserve fund, "which will contribute to the funding of these proposed works although it is likely an additional levy will also be required due to the need to scaffold the building to undertake the work (previous projects have been undertaken using abseiling) however abseiling access is not possible on this occasions due to the extent of the work required." The reserves were identified as £180,000.00 to be supplemented by another £57,000.00 in September 2022 (as and when all payments were received). The Notice was not served other than being sent with the newsletter.

102. The tender report [126- 136] of Mr Welch was dated 25th April 2022 and identified that 3 tenders had been received, one for a 24- week programme, one for a 48- week programme and one with the timescale to be confirmed. There was a difference of £200,000 excluding VAT or so between the lowest and highest tenders (of which the difference in scaffolding costs and preliminaries far exceeded the overall difference), the lowest also having the shortest timeframe. There was an additional cost of £3000, for BR Mellor Roofing to undertake the leadwork for the parapet as a direct contractor. The report recommended accepting the tender of the lowest price contractor, Trident Maintenance Services Ltd.

103. It was noted that neither that contractor or the contractor with the middle price had included a breakdown of the costs of scaffolding, although they did included sums for scaffolding more generally at £307,000.00 give or take (excluding VAT and additional sums).

104. The overall tender price by Trident was £1,019,649.40 (excluding VAT), to which needs to be added VAT (£203,929.88), so £1,223,579.28 and (plus £3,600 for BR Mellor Roofing including VAT). It will readily be identified that the Major Works Programme is no small matter- and the Tribunal has sought to give the dispute the careful attention that it therefore deserves.

105. The second formal consultation notice with the tender information was provided.

106. An extraordinary general meeting ("EGM") of the Applicant was held on 1st July 2022 with the lessees of 28 flats present, with apologies of lessees from 14 more. At that time, the chairman was Mr Biggs. Minutes were produced [137- 141]. Mr Welch gave a presentation to the lessees, which is included in the bundle.

107. On 30th August 2022, the Applicant served the second required notice. The work to the interior of the parapet wall was then proposed to be completed in October 2022 and so before the winter (see also above).

108. In 2022, the Applicant expressed concern at decoration being overdue and potential action against it for breach of obligations, although the Respondents observed it was well overdue with no action being intimated or taken against the Applicant. (In any event, the statement of Mr Briggs

indicates that the Applicant consciously did not undertake decoration works in 2020 or thereabouts because of the intended other works.)

109. There was in the documentation pre-dating the proceedings no dispute about the reasonableness of external decoration in itself. The requirement in the Lease which is clear and indeed requires that work very regularly- each 3 years- was accepted by all.

110. The Respondents said a good deal else about the works in various communications, including detailed questions asked. However, as the Tribunal deals with the matters in dispute below insofar as appropriate in order to deal with the issues in this case, it will not advance matters to set out the relevant arguments out prior to that in this section of the Decision.

111. The Applicant had collected much of the required funds by the time of the hearing of this case as funding for the major works project. Ms Lacey-Payne said in closing, although not supported by any evidence, that was over £800,000.00. As nothing turns on the precise sum the somewhat unsatisfactory nature of that does not need further comment in this instance. That sort of sum is, the Tribunal notes, ample for quote a good portion of the works but not of course for the entirety of the works, which necessarily cannot proceed unless and until the balance of the required funds has been collected.

112. It will be identified that although this application was made at the end of 2022 and came for hearing in Spring 2023, the issues have been ongoing for a lengthy time prior to that, indeed 2020. None of the others works within the Major Works Programme (that is to say beyond the internal parapet water- proofing and joints referred to above) have yet been undertaken.

Consideration of the Disputed Service Charge Issues

113. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The cases were set out in writing, supplemented by recorded oral evidence and submissions. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the matters below.

114. The Tribunal notes that in addition to the special levy demanded on 4th February 2023, another was demanded on 9th December 2022. Those dates were roughly bisected by the Christmas and New Year period. Each of those is said to have been for 50% (so totalling 100% between the two) of the given lessee's share of the service costs of £1,245,779.28. In addition to sums identified above, there was a fee of £14,500.00 plus VAT for surveyor contract administration and related costs and of £6000.00 plus VAT for the Applicant's agent/ representative.

115. There was no issue that the works proposed were the responsibility of the Applicant and fell within the works provided for in the Lease. Neither was there any issue demands were able to be made at the time that they

were made, given the relatively unusual ability of the Applicant to make demands at any time and so were, in principle, payable, assuming always that they were reasonable. The issues for determination, explained further below, were the assertions by the Respondents that works were not required or not in the manner proposed, whether the approach being taken to the works (and hence the consequent costs of the works intended at this time) were reasonable and hence, most directly relevant, whether the service charges demanded by way of the levies to pay for it were reasonable.

Respondents points of dispute about the works 1)- Liability of Leaseholders to Pay Charges

116. As stated above, the Respondents did not dispute that most of the works identified above are required to be undertaken but where work was agreed, it was not agreed that all to be paid for from service charges and in any event not as a single programme of major works.

117. The Applicant case in terms of the works was that scaffolding was required in order that the issues with the lintels could be addressed. The external decoration was proposed to be undertaken at that time, enabling the utilisation of the scaffolding for that decoration work. The Applicant asserted that would save (scaffolding) costs. Hence the works being undertaken as the programme proposed.

118. The Respondents' dispute as expressed towards the start of their statement of case [239] as explained in section A1 of their statement of case was that (the repairs required to the roof should be undertaken and) once the recommended repairs to the roof had been completed, "the lintel repairs can be carried out in a phased project (once a proper investigation of the scale of the problem and the correct technical solution has been carried out) and the external decorating can either be done, as normal using cradles or abseiling and funded by the reserve fund or delayed yet further and carried out as part of the phased Lintel Project."

119. The Respondents disputed what they described as the Applicant's suggestion of interdependence of the 3 principal elements of the major works programme. They particularly disputed the requirement for 24 weeks of scaffolding to the entire Property, for the lintel works, as mentioned above, which they said should be phased. Given the cost of scaffolding from the contractor of £306,800.00 plus VAT (£61,560.00) plus additional costs, the scaffolding was a significant aspect of the case.

120. The Respondents also disputed the Applicant's assertion that the work was, by 2023, urgent, given that the primary causes of leaks had been resolved. They asserted that there is no urgency at all. Hence, there was not any need for the works to all be undertaken in the single project proposed.

121. The Respondents did not challenge the reasonableness or costs of smaller items of work or challenge the cost of works to the outer face of the parapet (the argument being about work itself). Rather their statement of

case set out 3 areas of work in dispute, which the Tribunal takes in turn much in the manner that it has separated out those parts of the works when setting out the background above.

Lintel works

122. This is the most significant area of dispute and contended by the Respondents to be the cause of much of the cost involved in the major works programme as intended by the Applicant. A good deal of the hearing time was also devoted to it. Hence it is appropriate to take it first. It merits adding that there was no dispute that work to some lintels is in general terms required.

123. The Applicants provided in the Specification for works to elevations of the Property. Mr Welch said in the EGM that he had counted 336 windows, that he had looked at 60 of those closely and that 20% of those required lintel renewal. He had calculated for the Property as a whole from that, arriving at 70 lintels in round terms, with differing levels of work required and so differing levels of cost but considering that £4000.00 was an appropriate average cost. It was however apparently also said (see Minutes) that the cost was a worse case scenario. That discrepancy was not explained, although nothing turns on that. The condition of some lintels was such that windows could not be opened

124. The Respondents contended that the approach proposed by the Applicant in respect of the lintel was flawed in two respects. The first was as to the extent of the problem- inadequacy of information about the scale. The second was as to the approach intended to rectify problems with the lintels in any event. In addition, it was asserted that it was unnecessary to undertake all the lintel works in one programme work and that rather that work could be phased. Those collectively were the three counts on which it was submitted in the statement of case that the lessees were not liable. In consequence of the asserted difficulties with the approach sought to be taken by the Applicant, the Respondents also contended that the lintel programme should not be proceeded with until further assessed.

125. The Respondents accepted that a problem having been identified with lintels to Flat 55, on the 9th floor and to the seaward side. In addition, there had been Mr Welch's inspection of other lintels on that side- "one drop" Mr Shaya termed it- which wa clarified in oral evidence as every single lintel there. However, they did not accept the method of extrapolation of what was considered required to that area to the entire set of windows to the Property. In addition, the Respondents said that identification of problems by a hammer test alone was not appropriate and that a drone survey would assist, but that the Applicants refused to undertake that. It was, the Respondents asserted, necessary to obtain better evidence of the extent of the problem before work was undertaken.

126. Mr Lacey had also queried back at the EGM the fact that the cost of the work to the lintels was all provisional.

127. Taking the second above element first and so inn relation to the work intended to resolve the asserted problem, Mr Shaya did not accept the approach to be correct. Various questions were asked of the Applicant and the Respondents contend that the responses raised sufficient issues for it to be appropriate to halt the proposed lintel works pending further investigations.

128. It was accepted that there is a need to restore passivity to the concrete. It was not accepted by the Respondents that repairs using the same lintels and repairing to the previous dimensions is appropriate. That reflected what was said to be the poor original design. Mr Shaya asserted that the solution was to cut off the original nib and bolt a stainless- steel angle onto the lintel. The Tribunal leaves to one side that being essentially an expert opinion about a technical matter and so beyond the evidence which it had allowed. He also offered an alternative of installing helical bars to effectively create a beam. Mr Shaya explained his views in questions he asked and his own evidence

129. The Applicant's engineer was, the Respondents contended, unable to satisfactorily answer technical questions. The solutions were only relevant in respect of lintels which have suffered damage, the others being capable of being left. Either of the solutions would not only be more appropriate but also cheaper than the Applicant's approach, the Respondents also contended.

130. The Tribunal is mindful that the question in terms of the nature of the work which the Applicant seeks to undertake is not what it might do but whether the approach is a reasonable one. It is not therefore which does the Tribunal consider to be the best one of a number of competing options. The Tribunal is not assessing the precise technical merits of one approach against another, at least not beyond the question of whether there is such a flaw in the approach of the lessor or management company that it cannot properly be regarded as a reasonable approach to take of the available courses. The question is whether the work proposed is work which the lessor, or in this instance the Applicant company, is properly able to consider appropriate.

131. The Tribunal considered that the approach proposed by the Applicant was reasonable and was that which most parties in a similar position would be likely to adopt.

132. The Tribunal did not in any event agree with the Respondents that the Applicant's approach is an inappropriate one. The Tribunal noted that the Property was constructed pouring the concrete one floor at a time and that the lintels are not what would normally be regarded as a lintel in other methods of construction. The Tribunal also accepted that the Applicant and its advisors had considered the various points raised on behalf of the Respondents and had been able to answer them. The Applicant conceded the original design to be less than perfect but was clear that the suitability of the repair product had been considered and that it was suitable. The Applicant's engineer implied that helical bars would be relatively expensive

and it was said that in any event would not address the defects to the concrete. The Tribunal expresses no view on the first element of that but does accept the second. The Tribunal considered it appropriate that there be electrolytic measures taken given the seafront location.

133. The Tribunal does not embark on a longer recital of the many points made and the questions asked of and answers given by the Applicant's witnesses. An already long decision could be lost in those hills for some time without discernible benefit. That might have been beneficial, indeed a necessity, if the Tribunal had been seeking to decide the asserted merits of one approach against others. As the Tribunal has identified, that is not the task before it.

134. The Tribunal is certainly not persuaded that the approach to be taken by the Applicant to works to such lintels as are suffering damage and require works is outside of the range of approaches which the Applicant is entitled to take on the advice sought and received by it.

135. Inevitably, that will be affected by whether the Applicant has sought appropriate advice and the nature of the advice received. If the Applicant has sought such advice and intends a course of action recommended by that advice, then unless that is significantly undermined, the Applicant is able to proceed in the given manner. The fact that another party might obtain advice recommending a different approach or otherwise propose a different approach which may also be reasonable, does not compel the Applicant, or another in the equivalent position, to take that different approach.

136. Despite the dissatisfaction of the Respondents with the expert evidence about the lintel works, the Applicant had sought such evidence and proposed to proceed in a manner recommended. There was no obvious flaw in the reasoning of those providing the advice.

137. For the avoidance of doubt, that is not a criticism of the solution proposed by the Respondents. It may well be a suitable alternative approach. However, that is not the relevant test in respect of whether the approach of the Applicant is reasonable. There might also have been the potential issue of whether the Respondents' work to the lintels may amount to an improvement and whether that is properly chargeable as service charges under the terms of the Lease. The Tribunal need not consider that in the event, the Applicant's approach clearly being a repair and not raising such an issue.

138. Turning then to the first element, that in relation to the wider approach to the amount of lintels likely to require work and the cost involved, the Tribunal considered that the approach taken by Mr Welch was the usual one adopted and was a reasonable one in this instance. The Tribunal noted from its experience that in the normal course when faced with a situation such as this, a sample would be analysed and then exactly the same sort of extrapolation would occur.

139. The Tribunal understands the concern of the Respondents that there could be greater problems with some of the lintels than anticipated and there could be different numbers of lintels requiring works from one face to another. That could be more, as the Respondents are concerned about. It could be less.

140. The Tribunal accepted that the cost was necessarily a provisional one. Unless every single lintel were to be individually analysed and no allowance were to be made for anything which then arose in the course of the works themselves, the Tribunal considered there could be no precise costing. Inevitably the exact number of lintels requiring work and the exact cost of the work to each could not be assessed in advance. That did not, the Tribunal determined, in any way call into question the methodology adopted by Mr Welch. Rather it was an inevitable consequence of the usual and sensible approach being taken.

141. The Tribunal identified that there may be a difference between the weathering of the seaward faces as compared to the landward faces. The seaward faces, such as the area including Flat 55 and where Mr Welch carried out his analysis, may bear more salts and similar. That said, the bulk of the winds experienced on the south coast are from the west, which would mainly affect the landward faces. Other factors may also be relevant. From its experience, the Tribunal did not consider that there was any guarantee that any given face would be better or worse than another. Hence, looking at an exposed face and extrapolating was entirely reasonable.

142. Therefore, there are a number of uncertainties. There is a possibility that the provisional sum provided for will not be sufficient. However, there is nothing which makes that more likely and, the Tribunal repeats, nothing which renders the approach taken unreasonable.

143. Mr Shaya was concerned that the provisional sum was asking for trouble and may raise the cost but the Tribunal accepts that a figure needed to be given. The Tribunal notes that it may be possible that the work can be undertaken more cheaply than the provisional sum- if the other faces are less bad than the extrapolation allows for- and plainly any cost must be for the work actually required.

144. The Tribunal does not disagree with the Respondents that the condition of the lintels could be considered by way of drone surveys. The Tribunal accepted potential usefulness of drone surveys. However, the Tribunal but did not consider that they would provide a sufficient answer in this instance. The Tribunal noted the evidence of Mr Welch that a visual inspection had been undertaken and that a hammer test would be used when it came to undertaking the work. The Tribunal determined that checking the lintels from the scaffolding, once erected, is at the very least a reasonable approach for the Applicant to adopt.

145. For completeness, the Tribunal accepts that the works to the lintels will require scaffolding and could not be undertaken from cradles, for example.

The Tribunal also considered that the Respondents' scaffolding quote was not like for like, in addition to not being a contractor which had tendered during the consultation process when a tender could have been made.

146. It was a theme running through their case that the Respondents contended that a single programme of major works inevitably led to a higher cost which was demanded at this time, whereas as they put it, more than one phase would enable "staggering of the levy payments so that leaseholders could afford the levy". That was in addition, to the assertion of a phased approach allowing more analysis and avoiding the inconvenience to residents of scaffolding for longer than necessary. It will be appreciated that the Tribunal does not accept the second point.

147. Mr Lacey raised the question of phasing the works at the EGM in July 2022. The Minutes of the EGM also recorded that, "There was further discussion on whether the work could be phased however it was generally felt that this would cost significantly more", although the Tribunal observes (and says no more at this stage) that it is quite unclear who was involved in the discussion, whether Mr Welch expressed any view and what "generally felt" means. The Applicant said at that time that there would be further discussion with the contractor.

148. It was apparent to the Tribunal that the two faces of each approximate right angle between any given two limbs of the X could be undertaken with a set of scaffolding and that the two faces of the angle of any other limbs could be undertaken separately. The obvious logic of undertaking work to all limbs at the same time would be that there would be a saving in cost for a single set of lintel works and related scaffolding as opposed to four separate sets of works.

149. Ms Lacey- Payne said in evidence that it is not economically sensible to undertake the works "in chunks". She asserted that she has been asked to look into phasing. There was no other evidence of her looking into phasing and certainly no evidence of how carefully and with what advice about it- none being presented.

150. She accepted that any of the work could be phased but said that would not be of any benefit. The Tribunal accepts that is probably correct purely in terms of undertaking of works but that is only one part of the overall picture and not the relevant question to be answered.

151. Mr Welch also said in evidence that the work could be phased. Mr Welch initially suggested that there would not be additional cost for the work being undertaken to each pairs of faces one at a time, rather than as a single whole but only said because of more than 1 set of preliminaries and a longer period of work being involved. However, he later said- the Tribunal understands albeit it was not entirely clear, each area- pair of faces as the Tribunal has described it- would take 4 to 6 weeks. Hence whilst the work may be spread over a longer time frame, it was no demonstrated to the Tribunal that it would take longer in itself.

152. It was also established in response to questions from the Tribunal that Mr Welch did not know that the cost of the work would be greater if phased. No prices had been sought. He agreed that the cost of lintel work would not alter, the cost of the decorating work would not alter and the cost of the parapet work would not alter. Similarly, it was not said that costs of scaffolding would increase. That left only preliminaries or what Mr Welch somewhat imprecisely described as "overheads"- it is not apparent what those could be which is not accounted for elsewhere.

153. The Tribunal noted that the overheads of the successful tenderer were stated as £16,000.00. Unless the amount of those would increase massively with phased works, which the Tribunal regards as unlikely and a long way from being demonstrated, an element of increase in overheads is very small beer in the context of the major works as a whole.

154. It should be said that the Tribunal has not sought to analyse any cost which might have arisen from having scaffolding all around the Property at the same time when, in all likelihood, not all of it would be in use at any given time or to analyse to what extent there may or may not have been economies of scale at any given amount of scaffolding. The Tribunal notes that hiring one quantity of scaffolding should be expected to involve a different cost to hiring another quantity and that in its experience economies of scale fall away beyond a certain amount of scaffolding being hire. The cost of erecting and dismantling one amount may or may not be proportionate to another amount. The Tribunal has no specific information in this case and so none of this Decision turns on the matters within this paragraph, although the lack of evidence that phasing would increase cost has an element of relevance.

155. Ms Lacey- Payne in re-examination of Mr Welch sought to demonstrate that costs would increase more due to phasing. However, the Tribunal regards the previous evidence of Mr Welch in response to specific questions by the Tribunal in it seeking to understand the point to be perfectly clear. The Tribunal was not persuaded. It was established that the contractor would hold its prices for a few months. Beyond that was not known and so did not detract from previous evidence.

156. The logical basis for work in one phase is considered by the Tribunal to fall away. Hence, there was, the Tribunal determined no need and no identified sufficient benefit to be obtained to scaffold the entire Property at the same time and undertake all of the work in one phase. That impacts on the service charges discussed below.

157. There is no precise analysis possible by the Tribunal and there is no need for any. Accepting that the methodology used by Mr Welch is the usual approach and a reasonable approach, seeking to guess exactly the extent of effects on the other faces is not a useful or required exercise.

158. The question of phasing of the work is returned to in respect of the service charges demanded.

Parapet wall water- proofing

159. The Applicant's case was that works were required as referred to above, and that is not unnecessarily repeated. The Applicant relied, amongst other matters, on the photographs from January 2023 [24-25]. Ms Lacey- Payne added in response to questions that that there are large bubbles to the outside of the parapet and where broken by inserting a pen, water came out.

160. The Respondents disputed that the outer parapet wall required water-proofing, in particular on the basis that had not been identified as the cause of the leaks (much as Mr Sharp identified the weatherproofing relying on the parapet sections being watertight). They noted that the Applicant asserted on its statement of case that the earlier parapet joint work had only been 80% successful and the contradiction with previous statement of 100% success. In addition, the Respondents relied on the report of Mr Sharp and his conclusion as to causes of leaks, "Defective waterproofing- not proven". They also quoted his conclusion "permeable parapets- not proven". Hence, the Respondents case was that there was a lack of evidence of the need for those works.

161. They added that the February 2021 report of Mr Sharp did not recommend work to the outer face of the parapet until the work to the inner face had been undertaken and the results assessed. They said that the statement by Ms Lacey- Payne that work to the outside had been identified as required by a specialist was untrue, asserting that the furthest evidence got was the contractors who supplied the coating suggesting that there may be a need to apply to the outer face once the effectiveness of the work to the inner face became apparent. The January 2022 letter of Mr Sharp referred to above does so essentially state.

162. Given that Mr Sharp referred to scaffolding in the January 2022 letter, having not recommended any work which required it, the Respondents asserted that he must have been informed that scaffolding would be in place, although the Respondents said that the lintel problems (now said to be the reason for scaffolding) had not been identified yet. It should be said that whilst the Specification had not yet been produced covering all lintel work, the lintel survey of the area including Flat 55 had been carried out and it would be apparent that the work to the lintels required scaffolding so that the Tribunal would not have accepted any relevant point by the Respondents. Ms Lacey- Payne also explained that Mr Sharp had attended again with "the surveyor", presumably Mr Welch, which the Tribunal had no reason to doubt. It may have been preferable if the letter from Mr Sharp had made that clear and it may be that greater exploration would have neem appropriate if this had been a point of particular significance. It was not.

163. The works to the parapet joints already undertaken, had, the Respondents asserted, been removed from the major works programme.

164. The Respondents accepted a potential need for works to what they term secondary causes of water leaks, being cracked rendering on and effective lead flashings to the penthouse, which had not been carried out and queried why those has not been undertaken in the time which has elapsed since January 2021. They also suggested that the extension of the penthouse had been the cause of at least some of the leaks or otherwise connected to them.

165. The Tribunal mentions that by way of identifying to the Respondents that it is aware of the points raised. Mr Welch said in oral evidence that he had tested and those did not cause water penetration. As any work which may at any stage be undertaken to render and flashings does not in any event form part of the major works programme in relation to which the service charges in question have been demanded and have not been demonstrated to be a cause of water leaks impacting on the reasonableness of the parapet works, it is not necessary to address those matters further.

166. Most fundamentally, the Respondents contended that they were not liable to meet the cost of the parapet works at all.

167. The Tribunal determines that there is no evidence that the extension to the penthouse, identified as a conservatory, has any relevance to the cause of the leaks. Consequently, insofar as it is alleged that there is no basis for the cost of the relevant works being the responsibility of the owner of the penthouse and of the work being something not properly payable by the lessees under the terms of the Lease, the Tribunal rejects that and moves onto the other matters raised. The Tribunal also finds for the avoidance of doubt that the leaks in 2019/ 20 were unrelated to leaks in 2017 more generally. Whilst there were a number of detailed questions put to Ms Lacey- Payne, it is not necessary to recount them.

168. Similarly, Mr Shaya asked a number of questions about the core samples and testing which had been undertaken but it was established that was before roof renewal work in 2019, which it was said involved the whole roof being taken off and renewed. It was not established by the Respondents that detracted from the appropriateness of the work to the parapet inner face and joints, which the Respondents accepted as appropriate albeit with the challenges set out, and the Tribunal also considered it was not established that anything was relevant to whether or not work should be undertaken to the outer face of the parapet. Whilst it was sought to be advanced that the leaks related to the roof itself, the investigations and the roof works more generally, the Respondents did not persuade the Tribunal of any of that on the available evidence.

169. For completeness, it was queried by the Tribunal whether the installation of railings and glass screens to part of the parapet may be relevant. Ms Lacey- Payne said that they are unrelated and on the opposite side of the Property to the leaks. That was not challenged and so no more need be said.

170. The cost of all of the parapet work already undertaken before December 2022 was, as explained above, funded from reserves. However, as Ms Lacey- Payne said in oral evidence, it had not been removed from the Major Works Programme, it simply had been undertaken in advance of the remainder of the work. The inner parapet and related work also did not require funding from the levies, so it not relevant to determination of those demanded as service charges. There is nothing else for the Tribunal to need to determine about that main part of the parapet work which was agreed by the Respondents to be appropriate.

171. The Applicant's position is, as for example set out when writing to the lessees on 30th August 2022 following the EGM, that the outside of the parapet walls water- proofing be undertaken when the scaffolding is in situ for the other works.

172. It could not possibly have been known at the time of the Specification that the work to the inner face of the parapet and joints would not be effective, although it was known what Mr Sharp had said in that regard. Nevertheless, the work to the outer face was provided for as a definite part of the major works, rather than for example as a provisional one.

173. It is not, the Tribunal observes, apparent from documentation what the difference in cost between the agreed work and the overall proposed parapet work- so the cost of waterproofing the outer face- was. However, the tender information does not identify the specific cost for the outer faces, there is no evidence in the bundle about how much was paid out for the October 2022 works and so it is not clear what portion of the overall cost of the works as set out in the tender analysis relates to the work to the outer face of the parapet wall.

174. Mr Lacey put to Mr Welch a figure of £60,000.00, given the tender price was for all work and not divided up. Mr Welch accepted that may be right. However, whilst both Mr Lacey and Mr Welch are surveyors and so weight should be given to their views insofar as expressed, those expressions were very brief and very imprecise. The cost for the waterproofing of the outer parapet may not be that high. The Tribunal does not consider in its experience that it obviously ought to be but is mindful that it can only be equally imprecise. It is hard to go beyond saying that the cost is unclear on the evidence presented.

175. The Tribunal could not identify any evidence which demonstrated that water- proofing to the outer face is currently necessary, still less that it is needed urgently. The work to the inner face and other work identified by Mr Sharp and within the Specification has only been undertaken in Autumn 2022. Neither the bundle nor the oral evidence given identified any investigation and analysis of whether there is ongoing water penetration to any of the flats or otherwise identifies that it can be said that the water-proofing "may have to be extended outer the outer face of the parapet" has crystalised into <u>does</u> need to be extended. Whilst "this option could be re-visited once the inner faces had been sealed and the effectiveness of this initial repair had become apparent", there is a lack of evidence of it being

revisited, most obviously by not necessarily by Mr Sharp, and that lack of effectiveness of the initial repair has become apparent from investigations.

176. Ms Lacey- Payne was adamant in evidence that Mr Sharp had recommended work to the outer face. The Tribunal could not accept that on the overall evidence provided. The attendance she had referred to was months before the work to the inner face. The letter from Mr Sharp did not say that, as Mr Lacey pointed out in questioning, and nothing else did. The Tribunal repeats the last sentence of the preceding paragraph. Ms Lacey-Payne accepted in response to a question by the Tribunal that work to the outer face was, at least in part, preventative.

177. The Tribunal is, for the avoidance of doubt, mindful that it was said in December 2022 that 2 flats (the Tribunal perceives 68 and 69) could not be occupied. The Tribunal notes a mention in response to one of the Respondents' questions that it is said the leak is "hugely improved….. but it is ongoing" and does not dismiss that comment itself, although the answer seems to relate to Flat 72. However, the statement of case refers instead to the flat(s) still being damp, where continuing dampness from previous water penetration and ongoing water penetration are quite different animals.

178. In any event, that statement with nothing produced to back it up is not sufficient evidence on which the Tribunal can determine that there indeed is such ongoing leaking. The Tribunal also notes that in a document called "Responses to Cost analysis provided by Mr A Lacey……" [223] it is again said (it is unclear by whom) that 2 flats are not occupiable and are at opposite corners. The Applicant's Reply [337 onward] referred to Flat 72 and described heavy rain and minor leaking and also that "the concrete specialist wishes the same work to be completed on the outside" but not who that was or why. If the specialist referred to is Mr Sharp, he has not expressed that wish in anything presented to the Tribunal.

179. However, as explained above the Tribunal lacks information as to the specific reasons why it is considered that there is ongoing water leaking, sufficient evidence that it is doing, and also specific evidence that such water leaking is caused by the lack of waterproofing to the outer face of the parapet.

180. The Tribunal adds that it has considered the photographs mentioned above. It is abundantly clear from the photographs, at least of one of the flats (it is not explained which), that there was water penetration- the staining, tide- marking and other evidence of damp make that obvious. The long period of water penetration from 2019 until works in Autumn 2022 has clearly taken its toll. The contrast between that and an assertion of urgency in late 2022 need not be laboured. It is apparent that internal works including decoration to the flats are required to be attended to. The flats may very well not have been and not be occupiable until that work is undertaken.

181. However, what is not demonstrated is that once that internal work is undertaken the flats could not be occupied once the historic damp is attended to, certainly because of the absence of water- proofing to the outer face of the parapet. That is to say that there are and will be ongoing water leaks and consequent damaging occurring. Still less that the cause is lack of water- proofing to the parapet such that the undertaking of the water- proofing will resolve any ongoing problem

182. Internal works to the flats do not fall within the major works programme. On the evidence provided to the Tribunal, there is no obvious reason why they should be awaiting the outcome of these proceedings, if indeed they are. If indeed there is ongoing water leaking, internal works are undertaken, and it then transpires that further works are required at a later point that would be regrettable, but it is at least not apparent on the evidence that is the more likely than not to arise and certainly that the cause is more likely than not to be the lack of water- proofing to the outer face.

183. Consequently, it has not been demonstrated to the Tribunal, although it has been asserted, that there is a need for the works to the outer face of the parapet demonstrated as required at this time. It necessarily follows that it has not been demonstrated that there is a need for such work urgently. The Tribunal notes the Respondents' point that urgency as at January 2021 would have made sense but by two years on and with works undertaken in the meantime, but only in the main in Autumn 2022 and so without obvious sense of urgency from the start of 2021, the landscape was different. That said the Tribunal does not accept the Respondent's point entirely but rather has considered the evidence presented and the effect of that.

184. So to summarise, there is on the evidence damp to the flats in question from historic water penetration, but there is not sufficient evidence for the Tribunal to be satisfied that there is ongoing water penetration and that, if there is any, the cause of that is lack of water- proofing to the outer face of the parapet.

185. In any event, the question to be answered is a little different and that difference is significant. That is whether the work is reasonable.

186. The Tribunal accepts that some water has got beyond the outer covering, hence the water bubbles, although no effect of water held there was demonstrated. The Tribunal accepts the potential for water penetration through the parapet, for example through hairline cracks- Mr Lacey put to Mr Welch that water would not penetrate the thickness of concrete but Mr Welch explained it could through cracks and joints, to which the Tribunal agrees. The Tribunal accepts the potential for that to enable water to leak into the flats and that the work to the joints and inner face of the parapet may not be enough to prevent that. Whilst the Tribunal has found that the Applicant has failed to provide adequate evidence to demonstrate an ongoing problem, it is not implausible that there is one or will be one. On the evidence before the Tribunal, it can be summarised that

the water- proofing is therefore not demonstrated to be currently necessary but is logical preventative work.

187. The Tribunal has concluded that undertaking the works to the outer face of the parapet wall are within a range of reasonable approaches which the Applicant is able to take, despite the above lack of clear evidence of the asserted ongoing leaks. The Tribunal is mindful that is relevant question to be answered. The reasons are explained below.

188. The Tribunal considers that absent any identifiable urgency on the evidence, the work can be undertaken to any given area whenever it is appropriate to do so to fit with the undertaking of the remaining works to that area, whether in one phase or more. The work can be undertaken using the scaffolding which will be in situ. At that time, the cost of the work will be only the balance of the tendered cost over and above the cost of the work already undertaken.

189. The Tribunal is mindful that if the work to the outer face is not undertaken at that time and is required to be undertaken at a later time, particularly a not much later time, the cost will then be considerably greater because scaffolding will be required just to deal with the outer parapet walls. The lessees are quite likely to be unhappy about that and the additional cost and might very well point to the fact that the work could have been undertaken at that much less cost at the time of the remainder of the major works.

190. Of course, the lessees may also be unhappy about the cost of these major works being greater than they could have been but may reflect on the fact that the difference is relatively modest in the context of the works as a whole.

191. The Tribunal considers that on balance it cannot be said to be unreasonable for the Applicant to undertake the works in conjunction with the remainder of the major works and utilise the scaffolding in place. The approach taken by the Applicants is, by that yardstick, within a range of approaches it can reasonably take, even if there is no current water leak caused by the lack of water- proofing (as opposed to simply inadequate positive evidence of any).

192. The Tribunal considers that undertaken using scaffolding in situ and in conjunction with other works, preventative works- even if solely that- are something it is reasonable for the Applicant to undertake. The uncertain cost is a relevant consideration but does not, the Tribunal determines, detract from the wider point in this instance.

193. The Tribunal makes clear, for the avoidance of any doubt not resolved by the above discussion, that the Tribunal does not regard the work to the outer face of the parapet to be the “lynchpin” for the scaffolding work as Ms Jones asserted in closing. Rather that is the lintel work.

194. The Tribunal makes it clear that it has commented on the evidence before it and by no means dismisses the possibility of ongoing water leaks in consequence of the lack of water- proofing to the outer face when identifying the lack of proof of them in this case. The Tribunal considers that the work included in any phasing of works with more than 1 phase should consider which parts of the outer face of the parapet merit undertaking in advance of the others to best alleviate any ongoing water leak that there may in fact be because of the absence of water- proofing of the outer face of the parapet. If indeed that is to 2 flats at opposite corners, the Tribunal appreciates that may not be simple matter. As to the extent that such consideration should involve further analysis of the cause of any ongoing leaks, the Tribunal leaves to the Applicant at this time.

Decoration

195. There was no issue about the fact that work was required in relation to decoration. The dispute was principally about the method of undertaking the major works, in particular as one single whole, and hence the timing of the decoration on the one hand and on the other hand a dispute about whether access ought to be via the scaffolding to be erected in relation to the other works or could be undertaken another way.

196. In addition, Mr Lacey in his analysis referred to an alternative quote for decoration, which was cheaper than the price quoted to the Applicant. However, that was not provided in the course of the consultation process, had not been sought by the Applicant on the same terms as the others and was not therefore of assistance.

197. The Applicant's position, as stated on an extract quoted from a newsletter to residents [144] was that it was possible that the lintel repairs and redecoration could be undertaken at the same time. That plainly crystalised by the time of the Major Works Programme.

198. In particular, given the Respondents contended that the lintel works should not be undertaken, at least not at this stage, then if the Respondents had been correct in that regard there would have been no scaffolding. Necessarily if decorating were to be undertaken in advance of the lintels works, the access for decorating would be facilitated another way, logically the cradles or abseiling proposed, they asserted.

199. The Applicants rejected the use of cradles or abseiling as adding to cost where there would be scaffolding erected.

200. The Tribunal accepted the appropriateness of the decoration works being undertaken utilising the same set of scaffolding as the lintel works, which it has found to be reasonable. There is no reason for other access for the decoration, which would only add to cost.

201. The Tribunal determines that the entirely logical time for the undertaking of the decoration work is when the lintel work is undertaken and the scaffolding in place for that. Insofar as relevant, the Tribunal

accepts that there is a level on which it is illogical to undertake the decoration work only for the decoration to be disturbed by other works.

202. The flaw in that is that decoration should have been undertaken in 2019/ 20. Whilst work to the lintels would have detracted from that decoration, given the 3- yearly cycle and the fact that the 2022/ 23 decoration work is due, delay to the 2019/ 2020 decoration because of lintels works in later years was probably not appropriate. The Respondents had a valid point about that set of decoration works. That does not however taken them anywhere and need not be dwelt on where no service charges were demanded, past works not undertaken are inevitably not part of the future major works and there is no suggestion of additional cost in those works. It is sensible not to decorate in advance of lintel works at this point.

Other elements of the works

203. There was barely anything said about the other elements of the major works programme and so the Tribunal does not consider it necessary to say much about them beyond acknowledging their existence.

204. The Tribunal was content that it was appropriate that the pointing work and brickwork repairs be undertaken as part of the major works. It is sensible for any such pointing work to be attended to when the scaffolding is in place. Ms Lacey- Payne said in evidence that a lot of pointing is needed. The Tribunal could not identify that specifically but no particular point was taken and so no analysis is required. In any event, there was no evidence that the Applicant's approach was not reasonable.

205. The same applies in relation to works to the balconies and to any other minor elements of work- tidying television cables has been mentioned. There was brief questioning by Mr Lacey to Mr Welch about likely need for work to wall ties, to which it was explained in effect that a sensible area had been checked and an overall figure estimated (although that is not the specific wording Mr Welch used).

Respondents points of dispute about the work 2) reasonableness of charges demanded

206. The essence of the Respondents' case that there was no need for 24 weeks of scaffolding for the entire Property floor to roof and that the service charges demanded by way of the special levies were not reasonable because they were demanded to meet the unnecessary entire cost of the major works as undertaken in one programme of what was argued to be flawed works. Rather works had, it was said, been combined into a single programme with the presence of any given part of the work used to justify the remainder, producing the single programme of works the costs of which were demanded together.

207. It was a significant feature of the case that there were two levies just 8 weeks apart (and with the Christmas period in between possibly of some

relevance to that period) requiring payment by lessees of 74 flats of shares of £1,245,779.28. In respect of Flat 74, that was an individual share amounting to £30,023.28. That share was greater than the average. However, just by way of reference, if each flat had paid 1/76th each, the figure would have been £16,391.83. In the event, sums were either a little less than that or more than that. The bundle included a table [160] based on a slightly lower anticipated levy of £1,215,000.00 with figures ranging from £13,244.00 to £20,169.00 other than for the penthouses, with the most common figure being £14,337.00.

208. It cannot be controversial to state that is a significant sum and any sum close to it, or in the case of the penthouses far above it, is also a significant sum. Mrs Jones is recorded as raising at the EGM concerns over the timing and the additional payments. Other lessees raised the same issue. The Minutes of the EGM refer to a suggestion of 2 amounts of approximately £5,000.00 without specific dates or timeframe, the Tribunal notes.

209. The Tribunal also notes that those sums are in addition to the usual annual service charges which are suggested in the March 2022 newsletter to be between £3,500.00 for the smallest flats to £7,000.00 for the penthouses and further notes that usual service charges were to be demanded in September 2022 (50%) and so infers that they have also been demanded (the other 50%) in March 2023. Therefore, in addition to something in the region of £3,500.00 upwards, there have been demands by special levies between the dates of the 2- part payments of those service charges of at least a little over £13,244.00 and in most instances more than that to one degree or another.

210. Rather obviously, if the works were not appropriate, the likelihood of the service charges demanded to pay for them being reasonable was not high. That applied particularly in respect of the works to the lintels and to the parapet. However, the Tribunal has accepted that work to the lintels is reasonable and the technical approach within the Applicant's remit and has not found any other work to be demonstrated not to be reasonable, albeit that to the outer face of the parapets somewhat narrowly. Further, the costs for that which the levies have been demanded to meet are reasonable.

211. The Tribunal therefore returns to the question of the undertaking of all work in one programme. The Tribunal has not accepted a necessity to have been demonstrated for all faces to be attended to one immediately after the other or a need for the entire Property to be scaffolded at the same time.

212. The Tribunal is mindful that the undertaking of works to one pair of faces at a time or more than one pair of faces but not all of them will not make the cost of the works required themselves any less and it is not clear that it will reduce scaffolding costs. It may or may not add to the costs by a percentage which is not known. A risk of some additional cost for preliminaries has some relevance. However, phasing would enable a certain amount of the work to be undertaken in one service charge year,

perhaps the same year as the decoration works, and the remainder to be undertaken another year.

213. The service charges would be that much less year by year, much as they would (inflation and wages/ other forms of income being equal) be the same overall once the amounts year by year are added together.

214. It is also of some note that whereas the Major Works Programme cannot currently be undertaken in one single whole, because there are insufficient funds collected from the levies, there are sufficient funds to undertake at least the first phase of a phased approach. Hence, rather than the entirety of the works having to wait, some of the works can proceed.

215. The other point of relevance made in case authorities related to the decision- making process and in particular the decision to undertake all of the works in a single phase demanding the cost by service charges at, or as near as to make little difference to, the same time.

216. As expressed in *Forcelux*, the question whether the process was one of a number of reasonable ones and the sum charged reasonable in light of the evidence, although as expressed in other caselaw the outcome of the process is relevant and *Garside* demonstrates the relevance to major works of, amongst other matters, the level of previous charges.

217. It was said on behalf of the Applicant that the purpose of the meeting was "to give residents an explanation of the issues, and to ensure people had ample time to make arrangements". However, that was asserted time to make arrangements to pay contributions to the Major Works Programme planned. There was no documentary evidence that the Applicant gave any consideration at the time to undertaking the works in any other manner. There was nothing provided to the Tribunal which supports the Applicant having considered what an ample time might be for the lessees nor any decision arrived at.

218. The contributions indicated at that point, summer 2022, were 2 sets of approximately £5,000.00. Given that would have meant overall £10,000.00, the estimate was by any analysis a poor one- the minimum actual levy across the 2 dates was higher by approximately 33%. No levy was demanded at that point nor was it clear when the demands would be made.

219. It appears that a letter was sent 29th September by the Applicant's representative which still did not give amounts but said half would be collected in October 2022 and the other half in March 2023.

220. Some time later, by letter 9th December 2022, the Applicant's representative wrote to the lessees [194] informing them that 50% of the levy is to be raised "now" and 50% in February. It is said that the invoice will be received "in the next couple of days". The amount is not indicated, much as a lessee could calculate it based on the overall sum to be raised if they wished to- the Tribunal does not consider that they ought to have to.

The timeframe between the two parts had reduced considerably from that indicated in the previous letter. There is nothing explaining why the period has become such a short one, which is say why the 2 demands have been decided to be made so close together.

221. The Tribunal notes that the letter states that some lessees are already making payments and others propose to pay in one go. It is said on behalf of the Applicant "We realise that this is a significant amount of money and that is why all Lessees were advised at the EGM of the 1 July 2022 to be able to make provision." That is followed by "The terms of the Leases are clear with regard to the payment of Levies, and to the interest charge for late payment."

222. The Tribunal observes that the second part quoted is a correct statement of the provisions of the Lease. That is not to endorse the approach taken. The realisation that the sums which the Applicant knows it will demand are "significant" was scarcely avoidable. It is still not explained how informing lessees in July would enable them to make the provision to pay which would be required.

223. The focus of the Applicant throughout as indicated by the evidence received by the Tribunal is on receiving payment for a single- phase set of major works. There is no reference in the documents produced of any consideration of works in more than one phase. The "staggering of the levy payments so that leaseholders could afford the levy" to quote the Respondents again, does not feature. There is also mention by the Respondents of inconvenience caused by the entire Property being scaffolded, although somewhat in passing.

224. As identified above, the Applicant did not obtain any pricing for the undertaking of work in 2 or more phases. It cannot have known that would increase cost- if it would increase, was not demonstrated beyond modest preliminaries- or to what extent. It cannot have given the extent of any increase or lack of it any weight in the absence of that knowledge.

225. Whilst the Tribunal accepts that increased cost in phased works would be relevant, it is by no means so weighty that it outweighs any other factor. The degree of weight would depend on the degree of increase and the appropriate weight to be given to other factors. That will vary from one instance to the next. Necessarily weighing requires knowledge of the extent of any increase and so obtaining that information on order to be able to weigh it.

226. There was no evidence that the Applicant took account at any time of the difficulties which may arise with lessees making the payments, save for giving a degree of advance warning that there would be significant payments, and gave any adequate consideration in that context to proceeding in another manner which might have enabled less substantial payments to be made in the particular service charge year and other payments to be made at later points. The extent to which funds were required could only, the Tribunal considers, weigh very heavily and reasonably had to be taken into account accordingly.

227. Whilst it was said on behalf of the Respondents in closing that some lessees would lose their flats because of being unable to pay, there was no evidence of that, whereas the point is such that the Tribunal would have required good evidence in order to take it into account, were it necessary to do so. All that the Tribunal considers can reasonably be said is that there is no evidence of the Applicant taking account of any potential effects on lessees.

228. It is not apparent that the Applicant gave much, still less sufficient, thought to seeking to obtain greater sums in previous years to put into the reserves. Bearing in mind that difficulties arose back in 2020 and both the parapet wall and the lintels were the subject of analysis in 2021, it would on the face of things have been entirely possible and eminently sensible to make demands whether in usual service charges or by smaller special levies far earlier than December 2022 if, which there is no evidence at all of, the Applicant had addressed its mind to likely costs. The Tribunal appreciates that the Applicant would not have received the tenders until more recently but it was receiving expert advice and it must have been possible to identify that the works would not be inexpensive and to have some sense of broad likely minimum cost even if the exact cost could not be known.

229. An identification of when the works might be aimed to be undertaken, which the Tribunal considers ought to have been possible relatively early in the process would have enabled consideration of the minimum likely sum needed by a given time, the notification to lessees of at least that so that there was what was actually ample notice of what they would face and a plan about how to raise the funds in a manner which enabled service charges of reasonable levels.

230. It may very well have been possible to demand service charges year by year over even the small number of years which would the accumulate, or go some way to accumulating, to the sums needed for the works to be undertaken and which could be retained in the reserves for that purpose. There would have been time to chase those lessees who did not pay. The service charges in 2022-23 would have been significantly lower.

231. That may very well have facilitated all of the major works being undertaken in one phase without the issues which now arise with that of the substantial level of service charges demanded in two slices only a handful of weeks apart.

232. There is no evidence that any account was taken of the additional charges demanded from lessees in 2022- 23 as compared to the previous level of service charges. The substantial increase- approximately 4 times the usual service charges for the special levy in the 2 parts combined- is such a major increase on other service charges that it could only have been reasonable for that to receive careful and documented analysis. Given that the Respondents specifically referred to *Garside* in that regard, the Applicant cannot have been unaware of the relevance of the point or the

need to provide any evidence that the point was consider (and how it was considered and with what outcome).

233. The fact that whilst demands are made in two parts, they are so very close together, simply adds to the general picture that an approach was determined to undertaking the works themselves and that other matters relevant to the service charges were not given sufficient and reasonable consideration.

234. The unavoidable conclusion to draw, and which the Tribunal does draw, is that as and when there had been tenders against the Specification and in Summer 2022, the Applicant whether through its agent and/ or other advisors or otherwise, started to seek to get to grips with how the works would be paid for. Even then and despite having figures it did not give a proper indication of service charges involved and only apparently finally did so shortly before substantial sums in quick succession were to be demanded.

235. Given that there is no identifiable need for the works to be undertaken to all 4 pairs of faces in a single programme and there was no need to have scaffolding in place on all faces at the same time, the Tribunal considers it obvious that the Applicant ought to have considered the substantial increase in charges to the lessees in that context and ought to have analysed the positives and negatives of any given approach, reaching a considered conclusion which should have been conveyed. All of that is lacking in this case. The level of demands leans in favour of undertaking such work as could be paid for by realistic demands in the short term and the undertaking of the remainder at such time as the lessees had been given a realistic prospect of raising the money to meet the levies and so at a later time. That and any counter-veiling pressures required considering.

236. To return then to the caselaw, the Tribunal determines that the decision- making process was not reasonable and the outcome of such process as there was is not reasonable, including but not limited to the lack of any account being taken of the level of demands and the impact of that and the undertaking of the works in a manner which might reduce the demands and ameliorate the impact.

237. The Tribunal emphasises that even if notwithstanding inadequate evidence, there is ongoing water leaking to the 2 flats referred to above, even that is not enough to overcome the failings referred to above and turn the Applicant's process into a reasonable one and the service charges as demanded reasonable. Comments made about such leaking did not, without repeating the various matters elsewhere in this Decision, include any consideration of the service charges and impact of those. At the very least, those matters ought to have been weighed.

238. It is not therefore possible to identify the Applicant as having followed an appropriate process.

Respondents points of dispute about the works 3)- section 20 consultation process

239. The points made by the Respondents and the Tribunal's decision in relation to them can be expressed much more briefly than the matters dealt with above. Those points were made in the written case and by Ms Jones in closing

240. In respect of the issue raised that the Notices, or at least the first Notice, were served with other documents and that it was not apparent that they were present, there are two points. The first is that the Notices were provided and there is no requirement that be in any specific manner for the particular manner adopted to fall foul of. The Tribunal accepts that they were emailed where lessees had agreed and posted otherwise. The Applicant did not fail to follow the required consultation process for that reason.

241. The second is that whilst the Applicant has not fallen down because of a lack of provision of the Notices, the Tribunal accepts the points made by the Respondents generally and Ms Jones specifically with regards to the nature of the provision of those Notices that there was poor practice. In the normal course, each Notice would be provided with a covering letter stating clearly what was happening and about the Notice served. The nature of the consultation and nature of the Notice would be obvious to a lessee unused to such matters, that is to say the majority of them. That is the proper way to bring such a significant matter to the attention of the lessees.

242. In contrast, what the Respondents indicate to have seen as an attempt to bury the first Notice amidst a quantity of other information and obscure its nature and significance, is not without merit. The first Notice was not on the evidence submitted provided by the Applicant in a clear manner. It was sent with a newsletter and its presence and information about it were less clear than good practice would require. There was an unsatisfactory approach taken on behalf of the Applicant and so whilst there was no failure to comply with requirements as such, the Tribunal firmly considers that it is not an approach which should be continued with in any similar situation.

243. It should be added that no issue was raised with the content of the Notices, nor was any difficulty so apparent to the Tribunal that the point was appropriate for the Tribunal to raise. The Tribunal is mindful that raises the possibility of a failing not obvious to the Tribunal but which the Respondents did not raise. However, if there was any such- and the Tribunal by no means seeks to suggest that there was- as the point had not been taken, the Tribunal does not consider that it ought to go looking for anything.

244. The Respondents also asserted that a director of the Applicant company had to be present at the opening of the tenders received from potential contractors. The Tribunal does not agree and is content that the

opening of the tenders by Mr Welch as the Applicant's agent for that purpose is sufficient.

245. The Respondents' challenge to the section 20 process fails. The question of dispensation from consultation because of any failure in the process is not therefore a matter which will arise.

246. Ms Lacey- Payne seemed in her closing comments to believe that if there was any change that would require a further section 20 consultation. Given that the major works have not changed and given that any adjustment in any pricing- which there often is to an extent- would not require consultation, the Tribunal cannot identify why. Any phasing of the works- and it appeared this was her concern- would not require a new consultation where the works themselves were those originally consulted on.

Decision and effect

247. The effect of the above findings and determinations is that the Tribunal's answer to the Applicant's question about "the reasonableness of the scope and cost of the works specified and that the method of tendering and S20 consultation were compliant with the S20 legislation and [the applicable service charges] are payable under the terms of the leases." is that the overall scope of work is reasonable and cost of the work is reasonable and the method of tendering and consultation, whilst less than ideal, were compliant with requirements. The applicable service charges are payable under the terms of the Lease, but that does not of itself make them reasonable as currently demanded. In response to the point raised by the Respondents as to the reasonableness of service charges to meet the works in one phase, the Tribunal does not find the service charges reasonable.

248. Plainly, the Applicant will need to consider the approach to the major works further in light of the terms of this Decision. As indicated above, it is not for the Tribunal to determine the appropriate number of or timing of phases nor the timing of payments reasonably required from the lessees (where not already made and able to be retained in the reserve in any event). It scarcely needs saying that phasing will result in some faces of the Building being dealt with before others and some lessees will pay service charges further in advance of having works undertaken to the outside of their flats than others. However, that is an inevitable consequence of any phasing of works and no reason for payments not to be made when reasonably demanded nor the basis for any challenge.

249. The Tribunal re-iterates that if there is indeed ongoing water leaking into any flats just below penthouse level notwithstanding the lack of clear evidence before the Tribunal then work to such faces as would do most to alleviate that will, the Tribunal trusts, be included in the first phase utilising the scaffolding erected on those faces.

250. Given that the work to any specific pair of faces of the Property will be very likely to take a rather shorter number of weeks than the entirety of the

major works would do, the Tribunal trusts that some of the work can progress in the short term, utilising the funds already accumulated, with the remainder of the work being programme at one or more appropriate later dates.

251. Finally, the parties, including the Respondents, are reminded by the Tribunal that inevitably there will be the need for ongoing discussions and co-operation in relation to this Property in weeks, months and years to come, that there will be further works and demands. It will be very expensive way of going about matters for there to be continued disputes and continued need for proceedings to resolve any issues. In contrast, it will be much better for ongoing relations, much less time consuming and expensive and more likely to facilitate work without delay if all those involved with the Property can co-operate and make timely decisions which take account of an inevitable range of views. However, it must also be appreciated by lessees that ultimately decisions will need to be made. The nature and location of the Property is such that there will inevitably be works required from time to time and the cost may be significant when they are but should ensure the best enjoyment for the residents.

Applications in respect of costs and fees

252. No applications were made by any Respondent that any costs incurred by the Applicant in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the Applicant pursuant to section 20C(1) of the Landlord and Tenant Act 1985 or pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act that the costs of the Applicant's application should not be recoverable as administration charges and so no determination of any such matters is required. The Tribunal observes that the Lease does not at first blush appear to allow specifically for recovery of costs for proceedings such as these but has not considered whether any costs may be encompassed in wider provisions and so it would not be appropriate to express any view on the matter.

253. In terms of fees for the application, the Tribunal has identified failings in the approach taken by the Applicant to the decision-making process and by both parties in respect of preparation of cases but weighing more heavily in respect of the Applicant represented by a professional managing agent acting in the course of that profession.

254. The Respondents have of course failed on most of the points made by them. The works themselves have not been determined to produce unreasonable service charges as such and the questions asked by the Applicant have essentially been answered in their favour to that extent. It is a point on which the Respondents expended a relatively modest portion of their efforts which won the day.

255. Nevertheless, the service charges were challenged and ultimately the service charges have been found not to be reasonable. Hence, whilst it generally succeeded in respect of specific challenges along the way, in the

end in practical terms the Applicant is determined to have failed. The Tribunal considers that the appropriate outcome is for it to bear the fees paid to pursue the application.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.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.