



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

Case reference : **LON/00AE/LSC/2023/0207**

Property : **10 & 17 Leff House, Winchester Avenue,
London, NW6 7UB**

Applicant : **Ihab Salem (1)
Matthew Watson (2)**

Representative : **Not Represented**

Respondent : **The Mayor and Burgesses of the London
Borough of Brent**

Representative : **Mr M. Baumohl (Counsel)**

Type of application : **Determination of liability to pay and
reasonableness of service charges under
section 27A of the Landlord and Tenant
Act 1985**

Tribunal members : **Tribunal Judge MacQueen
Tribunal Member Krisko, FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **22nd November 2023**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the charges for the major works project are chargeable for the year 2023/24. The only exception to this is the amount that related to Pellings LLP, this is because whilst consultation was carried out correctly in respect of the rest of the works, the consultation erroneously stated that Pellings LLP were completing work under a qualifying long term agreement for which a Notice of Proposal was sent on 23 May 2014. This was factually incorrect and so for the

reasons set out below, the Tribunal is not satisfied that consultation in respect of this aspect of the works has been completed. The costs for Pellings LLP are therefore limited to £100 meaning that the estimated amount of service charge for each tenant is £19 809.19 less Pellings LLP estimated cost of £683.02 , leaving £19 126.17 plus £100 cap giving a total estimated cost of £19 226.17.

2. The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 to allow the landlord's costs of the tribunal proceedings to be passed to the lessees through any service charge. The reason why this order is not made is because the lease does not allow for the landlord to pass on these costs. The London Borough of Brent has confirmed that these costs will not in any event be passed on. The Tribunal therefore finds that the order is therefore not necessary and it is not just and equitable to make an order under section 20C.
3. The Tribunal does not make an order under 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (liability to pay administration charge in respect of litigation costs). This order is not made because the lease does not allow for the landlord to pass on these costs. The London Borough of Brent has confirmed that these costs will not be passed on. The Tribunal therefore finds that the order is therefore not necessary, and it is not just and equitable to make an order under 5A Schedule 11.
4. In light of the findings, the Tribunal does not make an order for reimbursement of application/hearing fees.
5. The Tribunal sets out its reasons for its decision below.

The Application

6. By application dated 11th June 2023, the Applicants seek a determination, pursuant to s.27A (3) of the Landlord and Tenant Act 1985 ("the 1985 Act"), in relation to service charges for works at 1-20 Leff House, Winchester Avenue, London, NW6 7UB ("the Property"). The works have not been completed or charged yet and so this is an application in relation to future years, namely 2023/24, for a determination whether if costs were incurred a service charge would be payable for the costs of the work.
7. There are also applications made for an order limiting the payment of the landlord's costs (section 20 (c) of the Landlord and Tenant Act 1985), and an order limiting payment of the landlords costs (Schedule 11 to the Commonhold and Leasehold Reform Act 2002).

The background

8. The Property is a purpose built five storey block containing twenty flats. It was constructed sometime between 1967 and 1975, and has a flat roof. There are nine leaseholders within the Property with the remaining eleven flats let to secure tenants. The Applicants are long leaseholders of flats 10 (Ihab Salem) and 17 (Matthew Watson) and the London Borough of Brent holds the freehold. Copies of the leases are within the bundle at pages 21 to 48. The leases require the landlord to provide services for which the tenants contribute by way of a variable service charge.
9. The works that are the subject of this application are for the renewal of the flat roof, decoration of painted surfaces, resurfacing of balconies, patch repairs to asphalt entrance walkways and external/communal area repairs. The works commenced on 28th June 2023 and had a proposed completion date of 20th October 2023. At the hearing, the Tribunal was told by Giuseppe Coia, Major Works and Refurbishment Manager employed by the Respondent, that the works were 65% complete and had an anticipated completion date of December 2023, with scaffolding being removed by the end of January 2024. The estimated cost for each flat is £19 809.19, however as the works are not yet complete, the final bill has not been established. The Respondent has confirmed that the total costs of the works will be divided equally, with each leaseholder paying one twentieth of the total final bill.
10. Following this application being made to the Tribunal, Directions dated 22nd June 2023 were made which required a digital, indexed bundle of documents for use at the hearing to be provided to the Tribunal by 2nd November 2023. The Tribunal has received a bundle of documents from the Applicants which runs to 235 pages and a bundle from the Respondent that runs to 495 pages.
11. The Tribunal did not consider that inspecting the property was necessary or proportionate to the issues in dispute. Additionally, neither party requested an inspection. Photographs of the Property were provided at pages 169-170 and 287-335 of the Respondent's bundle and pages 28-32 of the Applicants' bundle. Photographs were also included as part of the survey/scope of works/costing within the justification report (pages 172-191 and pages 194-201 of the Respondent's bundle) and as part of Langley roof report (pages 209-286 of the Respondent's bundle).

The issues

12. The directions dated 22nd June 2023 identify the following issues:
 - i. Whether the service charges have been properly demanded.

- ii. Whether the appropriate consultation was carried out.
- iii. Whether the cost of the works and/or services are payable by the leaseholder under the lease.
- iv. Whether the costs of the works and or services are reasonable
- v. Whether an order should be made under 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act and/or whether an order should be made for reimbursement of application/hearing fees.

13. The Applicants completed a Scott Schedule (page 15 of the Applicants' bundle) and identified their issues relating to the major works (including roof replacement and scaffolding) as being whether the amount is reasonable and whether the amount has been correctly demanded. Within the Applicants' application they state that the issues are:

- i. Whether the work is reasonably required at this point in time.
- ii. Whether the consultation requirements have been properly met by the Applicant.
- iii. Whether the costs of the repairs are reasonable and whether Langley should be used to complete the work.
- iv. The reasonableness of the estimates cost, including the scaffolding costs
- v. Whether because the Respondent has failed to maintain the roof, the lifespan of the roof has reduced.

14. Within the bundle, particularly in their statement of case and witness statements of Rahul Gadhvi, Senior Leasehold and Home Ownership Officer and Giuseppe Coia, the Respondent has set out their reply to the issues raised by the Applicants.

15. The Tribunal has read the documents provided within the bundles from the Applicants and Respondent. Additionally, at the hearing, the Tribunal heard submissions from the Applicants and Mr Baumohl (Counsel) on behalf of the Respondent, and also heard from Rahul Gadhvi and Giuseppe Coia.

16. The Tribunal will deal with each of the issues raised in the following order:

- i. Whether the cost of the works and/or services are payable by the leaseholder under the lease?
- ii. Whether the consultation requirements have been properly met by the Applicant?
- iii. Whether the costs of the works and or services are reasonable and whether the work is reasonably required at this point in time?

In particular:

- a. whether because the Respondent has failed to maintain the roof, the lifespan of the roof has reduced?
 - b. whether the costs of the repairs are reasonable and whether Langley and the same contractor as or Elthorpe Court should be used to complete the work?
 - c. the reasonableness of the estimates cost, including the scaffolding costs?
- iv. Whether an order should be made under 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act and/or whether an order should be made for reimbursement of application/hearing fees?

The Tribunal's Findings:

Whether the cost of the works and/or services are payable by the leaseholder under the lease?

17. Having considered the leases at pages 21-48 of the bundle, the Tribunal finds that the lease provides that this major works project is chargeable. This point was not challenged by the Applicants. For completeness the lease provides:

Clause 4 (A) the lessee covenanted with the landlord:

- (i) *To pay to the Council in advance such annual amount (hereinafter called "the advanced payment") as represents a reasonable part of the estimated expenditure to be incurred by the Council during the Council's financial year in fulfilling the obligations and functions set out in Clause 6 hereto with the exception of expenditure incurred or to be incurred as set out in clause (iii) below*
- (ii) *To pay to the Council on demand the amount by which the Advance Payment paid by the Lessee in any of the Council's financial years is less than the reasonable proportion payable by the Lessee of the total expenditure incurred by the Council*

during the said financial year in fulfilling the obligations and functions referred to in sub-clause (i) above

- (iii) *To pay to the Council on demand whether in advance or otherwise such amount as represents a reasonable part of the council's expenditure incurred or to be incurred upon the carrying out of major works of repair renovation or improvement to the Flat the Building and the fixtures and fittings and installations therein”*

By clause 6(2) the landlord covenanted with each lessee:

- (2) *To keep in repair the structure and exterior of the Building including but without prejudice to the generality of the foregoing*
- (a) *The foundations roof chimney stacks external and internal walls (but not the interior faces and plaster of the external and internal walls of the Flat) timbers (including the timbers joists and beams of the floors and ceilings) drains gutters and external pipes*
- (b) *The windows doors (including their frames) and all electrical and other fittings in the building but excluding such within the Flat for which the Lessee is responsible under Paragraph 5 of the Third Schedule to this Lease or for which a Lessee of any other flat is responsible under similar provisions*
- (3) *To keep in repair any other property over or in respect of which the Lessee has any rights under the First Schedule hereto*
- (4) *Upon the council's repainting cycle for the Building (which shall not extend beyond every seven years) to paint in a good and workmanlike manner all outside parts and all internal common parts of the Building as are usually so painted.*

The Tribunal therefore finds that the Respondent has an obligation to carry out the works under the lease and that the lessees are liable to contribute to the costs through the service charge.

Whether the consultation requirements have been properly met by the Applicant?

18. Pellings LLP, Integrated design, property and construction consultants, have been appointed by the Landlord for this project. However, the witness statement of Rahul Gadhvi (page 67 of the Respondent's bundle) confirms that unfortunately the section 20 Notice of Proposed Works sent to the leaseholders on 30th March 2023 (pages 104-134 of the Respondent's bundle) incorrectly informed the Respondents that:

“Further to our notice of proposal for a qualifying long-term agreement for surveying consultants on 23rd May 2014, we write to advise that Pellings LLP have been appointed as the surveying consultant for the project”.

However, the reality was that Pellings LLP were subject to the QLTA from 2014 until July 2018. This was under Lot 1 for the provision of integrated asset management services, including planned works programme and a responsive repair service. The witness statement of Rahul Gadhvi states that Pellings LLP had been appointed under a nine month contract awarded to them in December 2022. However, following further enquiry from the Tribunal, Giuseppe Coia told the Tribunal that the records for between 2018 and 2021 were unclear as to the nature of the contractual relationship between Pellings LLP and the Respondent and it appeared that no written contract existed after 2018. Giuseppe Coia confirmed in evidence that the Respondent continued to use Pellings LLP for work during this period. This position was regularised in 2022 and within the Respondent’s bundle (pages 356 to 359) is a report to the Respondent’s Corporate Director which recommends that Pellings LLP are appointed for building surveying services without the need to obtain three quotes for a period of nine months from December 2022. The report confirms that a new procurement process will commence in January 2023 but will take one year to complete. The difficulty for the Tribunal is that the section 20 consultation erroneously told the Applicants that Pellings LLP were working under the 2014 QLTA.

19. What appears in fact to have happened is that Pellings LLP had been completing work for the Landlord on a rolling contract type basis from 2018 to the date of the December 2022 contract. This was not made clear as part of the consultation process and the Tribunal is therefore not satisfied that the consultation for this aspect of the works has been completed correctly. The Tribunal was not provided with clarity on the exact contractual position such that it was able to identify whether the true nature of the contract was some form of continuing “rolling basis” so that consultation was required on a schedule 3 Regulation basis or under a 9 month contract which commenced from a date (not specified in the Respondent’s evidence) from December 2022 such that the Applicants could have made observations. What is clear is that whatever the position with the contractual status of Pellings LLP, the Respondents have been consulted incorrectly by being informed that Pellings LLP involvement had been consulted upon on 23 May 2014. For these reasons, the Tribunal is not satisfied that the consultation has been conducted in accordance with the regulations and therefore the costs for Pelling LLP must be capped at £100.
20. The Tribunal was not in a position to hear an application for dispensation (pursuant to Section 20ZA (1) Landlord and Tenant Act 1985) at the hearing as insufficient notice had been given to tenants that this point would be decided. Therefore, the Landlord will need to make an application for dispensation so this issue can be fully considered. The charges that related to Pellings relates to an estimate of 3.66% of the

project. The Tribunal therefore continued to look at the remainder of the charges the subject to this application, excluding only the amount that relates to Pellings.

21. Further on the point of consultation, within their application and at the hearing, the Applicants' asked the tribunal to consider whether the Respondent had replied appropriately to the issues that the Applicants raised. The Tribunal has considered the replies given to the Applicants, from the Respondent. The Respondent had mainly replied to the email that the Applicants had sent to the Respondent using blue type to record their answers on the emails the Applicants have sent. The quality and method of reply the Respondent has used is not a point the Tribunal can take further in the context of this application for the determination of service charges. It is clear that replies to the consultation process were received and the landlord has responded.

Whether the costs of the works and or services are reasonable and whether the work is reasonably required at this point in time?

22. Giuseppe Coia, Major Works and Refurbishments Manager employed by the Respondent, told the Tribunal that he makes the ultimate decision on behalf of the Landlord on the works that are carried out. This decision is based on the recommendations made by contractors, manufacturers and surveyors. In relation to the roof repair work, Giuseppe Coia told the tribunal that he considered the roof survey report prepared by Landley (pages 209-286 of the bundle), the justification report prepared by Pellings LLP (pages 163-286 of the bundle), the roof repair history, and the age of the roof. Guiseppe Coia concluded from looking at the Council's records that the roof was last replaced in 2003/04 and therefore, assuming that the roof has a lifespan of 20 years, it will need to be replaced in 2025. However, Guiseppe Coia in his statement (page 155 of the Respondent's bundle) confirmed that painting of the Property was due, as were repairs to brickwork and cement. This work would require scaffolding to be erected and would also attract contract management costs and therefore he concluded that the most cost effective way to proceed was to include the roof replacement work rather than delaying them. The Respondent also noted that if the roof works were delayed, the cost was likely to be higher as prices are likely to increase, scaffolding would need to erected again and further contract management costs would be incurred. The Respondent also states that if the roof is not replaced at this point in time additional leaks are likely to occur.
23. The Tribunal accepts the evidence of the Respondent as set out in paragraph 20 and accepts that according to the roof survey that the roof does need replacing and that it is reasonable to do this at the same time as the other cyclical works rather than delaying the work and incurring additional costs from needing to erect scaffolding twice, as well as the increased pricing that the Respondent anticipated.

Turning to the specific points raised by the Applicants:

a. whether because the Respondent has failed to maintain the roof, the lifespan of the roof has reduced?

The Applicants state that the lifespan of the roof has not been maximised because there has not been a regular programme to prevent blocked drains and subsequent leaks. The Applicants detail a leak into Flat 10 in 2020 and its recurrence in 2021. Additionally, the Applicants have provided photographs of moss and blocked drains (pages 38-32 of the Applicants' bundle), and have provided emails relating to complaints regarding leaks to the roof (pages 33-140 of the Applicants' bundle). The Applicants assert that the costs of replacing the roof should not be passed on to them given that the Respondent has not had a regular maintenance programme.

Giuseppe Coia, on behalf of the Respondent, accepted that regular maintenance of the roof was difficult and had not taken place as it was considered to be too expensive to carry out regular maintenance, however he did not accept that failure to carry out ongoing maintenance and cleaning had reduced the roof's lifespan. The Tribunal was specifically referred to Pellings LLP justification report and Landley's roof survey report (pages 210 to 236 of the Respondent's bundle) where the reports confirm that the roof need repair.

The Tribunal accepts the Respondent's evidence and finds that the roof does need replacement. The Tribunal has considered in particular the roof survey and the apparent age of the roof (approximately 20 years old), and notes that the roof would need replacement by 2025. Given the roof survey findings, the condition of the roof and the fact that cyclical maintenance is due, the Tribunal finds that the work is justified. The Tribunal therefore finds that the landlord is therefore justified in this work.

b. whether the costs of the repairs are reasonable and whether Langley and the same contractors for Elthorpe Court should be used to complete the work?

As to the reasonableness of the cost of the repairs, the Tribunal notes that no final bill has been received as the works are not complete, however, the costs are anticipated to be £19, 809.19 for each property. The estimated calculation of costs included within the Notice of Proposed

Works (page 107 of the Respondent's bundle) itemised the costs.

The Applicants express concern about Langley's being used as the contractor and refer to documentation relating to Elthorpe Court (page 185 to 236 of the Applicants' bundle). This was because Ihab Salem has a flat within Elthorpe Court and has complained about repairs to that property. However, Giuseppe Coia on behalf of the Respondent told the Tribunal that any issues at Elthorpe Court are not related to the standard of the work provided by Waites or the quality of Langley's products. When considering the issues at Elthorpe Court, the Tribunal reminds itself that the Tribunal considers whether the costs are reasonable and must not impose its own decision on how any works should be completed on the Landlord (*Waalder v Honslow LBC 2017 EWCA CIV 45*). This means that it is not relevant for the tribunal to consider the situation at Elthorpe Court, but instead must focus on the reasonableness of the works relating to the Property the subject of this application.

c. the reasonableness of the estimates cost, including the scaffolding costs.

Giuseppe Cola confirmed the pricing arrangements in his witness statement (page 156 - 159 of the bundle). The work completed by Wates has been carried out pursuant to a qualifying long-term agreement ("QLTA"). A public procurement process took place and the costs would have been market tested. The Tribunal is satisfied that the arrangements are properly in place and the charges made under this agreement are therefore reasonable.

Turning to the scaffolding costs, at page 25 of the Applicants' bundle the Applicant questions why the cost for scaffolding exceeds £90, 000 and why cheaper alternatives, such as abseilers are not used. Giuseppe Cola confirmed in his statement that there may be lower scaffolding rates available but as this is a QLTA, there will be other costs that represent savings. Additionally, Giuseppe Cola told the tribunal that using abseilers would not be a method that could be used for repair to render and painting work, and to replace the roof scaffolding would be needed.

The Tribunal is satisfied that it is for the landlord to choose the method for the works. It is for the Tribunal to be satisfied that the costs are reasonable and the Tribunal is satisfied on the basis of the QLTA arrangements which are outlined by the Respondent.

The Tribunal's Decision

24. For the reasons set out above, the Tribunal determines that there is liability to pay the service charge for the year 2023/4, with the exception of the charge relating to Pellings LLP. The estimated costs are £19 809.19, however because of the issue with the consultation for Pellings LLP their costs of £683.02 are capped at £100. This means £19 126.17 plus £100 is estimated giving a total estimated cost of £19 226.17.
25. The tribunal has not considered the apportionment of the costs to each tenant as this will be a matter for the Applicant and Respondent to determine in accordance with the lease agreements. The Respondent has stated that the costs will be divided equally by one twentieth. Additionally, the Tribunal has not considered the arrangements the Respondent has for paying any service charge levied. This is not something that the Tribunal can consider and will be a matter between the Applicants and Respondent.

Application under s.20C, Schedule 11 and Refund of Fees

26. In the application form the Applicant applied for an order under section 20C of the 1985 Act (an order that all or any costs incurred by the landlord in these proceedings cannot be included within any service charge payable by the tenant). Having heard the submissions of the Respondent that the lease does not provide for this and taking into account the Respondents submission that they will not be making a charge, the tribunal determines that it is not necessary for an order to be made under section 20C of the 1985 Act.
27. The Applicant has also made an applicant under paragraph 5A, schedule 11 of the Commonhold and Leasehold Reform act 2002. This is an order which reduces or extinguishes the tenant's liability to pay administration charges in respect of litigation costs. Having heard the submissions of the Respondent that the lease does not provide for this and in any event the Respondent will not make such a charge, the tribunal determines that it is not necessary for such an order to be made.
28. Taking into account the decision the Tribunal has reached, no order is made for the Respondent to refund any Tribunal fees paid by the Applicants.

Name: Tribunal Judge MacQueen **Date:** 22nd November 2023

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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