



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

Case reference : **LON/00AM/LSC/2023/0189**

Property : **Flats 1-14 Dalston Lane, London, E8 1LA**

Applicant : **Devon Taylor**

Representative : **Peter Gunby MRICS (director of
B Bailey Property Management Ltd)**

Respondents : **Eunsook Park (Flat 12) and
13 other leaseholders**

Representative : **Eunsook Park (in person)**

Type of application : **Payability of Service Charges: sections
27A and 20ZA Landlord and Tenant Act
1985**

Tribunal member : **Judge Robert Latham
Sarah Philips MRICS
Jayam Dalal**

**Date and Venue
of Hearing** : **16 November 2023
at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **30 November 2023**

DECISION

1. The Tribunal is satisfied that the Stage 1 Notice of Intention was validly served on 24 August 2020. Further, the Specification of Works,

which accompanied the notice, were reasonably required to put the Building in a proper state of repair and condition.

2. The Tribunal is satisfied that the Stage 3 Notice of Estimates which was served on 11 November 2022 was invalid as the landlord had not obtained at least two comparable estimates for the work.

3. The Tribunal is not willing to grant dispensation under section 20ZA of the Landlord and Tenant Act 1985.

4. The Tribunal is satisfied that a sum of £11,150 would have been a reasonable estimate of the cost of the proposed works to be included in the budget for 2023 and to be demanded as an interim service charge. However, the Applicant did not demand the said interim service charge in accordance with the terms of the Respondent's leases.

5. The Tribunal is satisfied that it would not be reasonable for the Applicant to pass on any of the costs of these proceedings through the service charge as its application has failed.

6. The Tribunal makes no order for the refund of the tribunal fees which have been paid by the Applicant.

Introduction

1. This application is a cautionary tale for a management company that assumes responsibility for a property that has been neglected and is in a state of substantial disrepair.

2. Upon being appointed, the managing agent would be well advised to take the following steps:

(i) Familiarise himself with the terms of the lease;

(ii) Draw up a planned maintenance programme to ensure that the property is put in a proper state of repair over a reasonable period of time. This should have regard to the financial resources of the tenants who will be required to fund the works;

(iii) Build up a reserve fund to ensure that the resources are available to fund any planned maintenance programme.

(iv) when tenders come to be sought for any works, ensure that quotes received remain open for a sufficiently long enough time period to meet the landlord's timetable for the execution of the works as to avoid any inflationary increases.

3. If the managing agent does not have the time to accumulate a reserve fund, he should ensure that a budget is prepared for the first year, which includes appropriate provision for any works that are proposed. This should be collected through an interim service charge in accordance with the terms of the lease. Having ensured that the necessary funds are available, it should embark upon the statutory consultation procedures in respect of the proposed works.
4. What it should not do, is to adopt the course followed by the managing agent in the current case. It embarked upon the statutory consultation procedures before it had (i) prepared a planned maintenance programme; (ii) estimated the likely cost of the works; (iii) built up an appropriate reserve fund and/or collected an interim service charge sufficient to fund the works.
5. The tenants only became aware that the works would cost £216,000 when the managing agent served the Stage 3 Notice of Estimates. The tenants then complained about the level of the costs and asked for the works to be staggered over a period of time. Some 10 weeks later, the managing agent served the Stage 4 Notification of Reasons. The landlord agreed to reduce the scope of the works. Only at this stage, did the landlord seek to collect an interim service charge. This was not demanded in accordance with the terms of the lease.
6. When the tenants declined to pay the interim service charge, the Applicant felt obliged to issue the current application to the Tribunal to consider whether the interim service charge is payable and reasonable.
7. However, time does not stand still. This is a period of high inflation in the building trade. The selected builder is no longer willing to be held to the tender that it provided in September 2022. In August 2023, the builder increased its estimate by 40%. The managing agents are now proposing to increase the interim service charge from £11,148 to £15,599. A further £430 is claimed in respect of the current application to the tribunal. The landlord did not apply to amend the claim. The tenants are therefore unaware of the increased sums that are now being sought.
8. We have concluded that the landlord has failed to comply with his statutory duty to consult as he did not obtain at least two comparable estimates for the works. We are not willing to dispense with the statutory requirements, as the landlord has not properly tested the market. The tenants are thereby prejudiced. We are satisfied that the interim service charge that was demanded, was not demanded in accordance with the terms of the lease.
9. The landlord will now need to re-tender and seek at least two comparable estimates in respect of the proposed works. The current

inflationary pressures may further increase the cost of the works. This would benefit neither landlord nor the tenants.

10. Ms Park suggested that she had suffered loss as a result of the disrepair that has affected her flat. She might have an equitable set-off against the landlord (see *Continental Property Ventures v White* [2006] 1 EGLR 85; [2007] L&TR 4). Further, a tenant might seek to argue that the cost of the works will now be unreasonably high because of the failure of the landlord to execute the required works timeously. These are all arguments for another day.

The Application

11. In this decision, any reference to the Applicant's Bundle is prefixed by "A.__"), and any reference to Ms Park's bundle by "R.__").
12. On 12 May 2023, the Applicant issued this application pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act") seeking the determination of the reasonableness and payability of service charges. The 14 tenants at Flats 1-14 Dalston Lane, E8 1LA ("the Building") are named as respondents. The application relates to "Section 20 works to put in repair the main roof and external decorations and repairs". The total value of the dispute is stated to be £156,066.98.
13. The Applicant asked the Tribunal to determine the following questions:

“(i) Has the Section 20 process been correctly implemented?
(ii) Are the works reasonable?
(iii) Are the costs reasonable?
(iv) Is the apportionment of costs charged to lessees legally due?”
14. This Tribunal's jurisdiction is normally limited to determining the liability to pay and the reasonableness of any service charge. We are not expected to carry out an audit of whether a landlord has complied with its statutory duty to consult. A landlord should be able to follow the statutory procedures without guidance. The Tribunal has rather treated this application as one to determine the reasonableness of an interim demand, dated 13 January 2023, pursuant to which each tenant was required to pay £11,147.64.
15. On 21 June, the Tribunal issued Directions and set the matter down for a two-day hearing on 16 and 17 November. On 17 July, the landlord disclosed the relevant documents to the tenants. By 23 August, any tenant who opposed the application was directed to email the landlord their Statement of Case and any documents upon which they sought to rely. At this stage, no tenant opposed the application. On 16 October, the landlord filed its Bundle of Documents of 326 pages.

16. The Directions provided that should the parties be able to agree a single bundle, they should be able to file their own bundles by 16 October. Ms Eunsook Park, the tenant of Flat 12, took this as an invitation to file her own bundle of 25 pages opposing the application on the grounds that the cost of the works is excessive and that the tendering process was not transparent. She contends that the works should be undertaken over a longer period of time. She complains that only one firm quoted for all the works. It is therefore impossible to compare the five tenders that were provided. Ms Park filed her Bundle on 16 October. The Respondent had no opportunity to respond to this in advance of the hearing.

The Hearing

17. Mr Peter Gunby MRICS, a director of B Bailey Property Management Ltd (“BBPM”) appeared for the Applicant. BBPM have been managing the property since 2019. Mr Gunby did not object to the late stage at which Ms Park had filed her Statement of Case. Some of the documents in Ms Park’s bundle had been incomplete and Mr Gunby provided full copies of these. We afforded him the opportunity to respond to Ms Park’s Statement of Case.
18. Ms Park appeared in person. She was assisted by Mr Kevin Newbery, of NBCF Ltd, her property consultant. Mr Newbery apologised for the late stage at which Ms Park had provided her Statement of Case. Ms Park had no explanation for failing to comply with the Directions. She rents out her one-bedroom flat at a rent of £1,330 per month. She stated that she was in funds and was willing to pay the sum demanded subject to a number of points being clarified. She suggested that she had a role in selecting the relevant contractor and did not seem to understand that this was the responsibility of her landlord.
19. Mr Gunby was not willing to engage with any concerns raised by the Tribunal relating to the manner in which he had invited tenders for the work and had handled the statutory consultation. His position was rather that he had always acted in this way and that his approach had never been criticised by any tribunal.
20. On 13 January 2023, BBPM issued a demand for an interim service charge of **£11,147.64** which was payable by 28 February 2023. This was a 1/14 share of **£156,066.98**.
21. However, it became apparent that Completefix, the successful contractor, had provided their estimate in September 2022, and was no longer willing to be bound by it. In August 2023, Completefix provided a new tender which is 40.3% higher. The cost of the works is now **£197,309.64**. BBPM now propose to levy an interim service charge of **£15,599.33**.

22. The Applicant also seeks to claim an additional £6,030, namely £430.71 per tenant, in respect of the cost of this application before the Tribunal. This included £2,000 for legal representation, albeit that no lawyer was instructed, and £450 for tribunal fees, albeit that only £300 had been paid. During the course of the hearing, Mr Gunby reduced the sum claimed to £1,600 + VAT.
23. The Tribunal have determined this application being mindful of the Overriding Objective in rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”), to deal with cases fairly and justly. We are satisfied that it is appropriate to permit Ms Park to participate in the hearing, despite her failure to comply with the Directions. We are further satisfied that we should allow the Applicant to amend his claim to seek (i) a determination in respect of the proposed interim service charge now totalling £15,599.33; and (ii) dispensation pursuant to section 20ZA of the Act, given our indication that the Applicant had failed to comply with the statutory requirement to secure two estimates. It is in the interest of all parties that repairs are put in hand at the earliest opportunity.

The Applicants' Leases

24. The Tribunal has been provided with the lease for Flat 4 (at A.280-297). The lease is for a term of 99 Years from 1 January 2011. Each Tenant pays 1/14 of the service charge for the Building.
25. The Landlord’s obligations are set out in Clause 5. The Landlord covenants to maintain and keep in good and substantial repair the structure and exterior of the Building. It is agreed that the proposed works fall within these covenants. The lease makes provision for a reserve fund (Clause 5.5.12).
26. By Clause 3.2.4, the Tenant covenants to pay the interim service charge and the service charge specified in the lease. The service charge provisions are set out in Clause 9. The Accounting Period is the calendar year (9.1.2). Clause 9.1.3 defines the interim service charge as “such sum to be paid on account of the Service Charge in respect of was Accounting Period as the Landlord or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment having regard to anticipated expenditure in the next Accountancy Period and the reserves held”. The Tenant covenants to pay the interim service charge by equal payments in advance on 24 June and 25 December (9.3).
27. As soon as practicable after the expiry of each Accounting Period, the Landlord is obliged to serve on the Tenant a certified statement specifying the total expenditure for that period. Any surplus is to be carried forward as a credit for the Tenant. If there is a shortfall, the Tenant is to pay this within 14 days of service of the Certificate.

28. Mr Gunby referred the Tribunal to Clause 3.1.2 by which the Tenant covenants to pay “all rates, taxes, duties, levies, assessments, charges, impositions and outgoings whatsoever which may now or at any time be assessed charged or imposed upon the Property”. He suggested that this permitted the Landlord to collect an interim service charge in respect of any unforeseen expenditure. We do not accept this argument. This is intended to deal with any liability imposed by a third party.
29. The Tribunal is satisfied that the lease makes no provision for collecting an interim service charge in respect of any unforeseen expenditure. The landlord must either establish a reserve fund to meet such expenditure or plan for it in the service charge budget. It is always open to a landlord to borrow to meet such unexpected expenditure and to recoup the cost of such borrowing as service charge expenditure.

The Law

30. Service charges are only payable to the extent that they are payable under the terms of the lease and are reasonable (section 19 of the 1985 Act). Section 27A gives this Tribunal jurisdiction to determine not only the liability of paying service charges which have been demanded, but also whether they would be payable were they to be demanded.
31. The Supreme Court recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. This is subject to this Tribunal’s jurisdiction under the Act to determine whether the landlord acted reasonably (see [33]).
32. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants’ association, describing the

works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

33. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

34. The Tribunal highlights the following passages from the speech of Lord Neuberger in *Daejan*:

(i) Sections 19 to 20ZA of the Act are directed towards ensuring that tenants are not required to (a) pay for unnecessary services or services which are provided to a defective standard (section 19(1)(b)) and (b) pay more than they should for services which are necessary and are provided to an acceptable standard (section 19(1)(b)). Sections 20 and 20ZA are intended to reinforce and give practical effect to these two purposes (at [42]).

(ii) A tribunal should focus on the extent, if any, to which the tenants have been prejudiced in either respect by the failure of the landlord to comply with the Requirements (at [44]). The

only question that the tribunal will normally need to ask is whether the tenants have suffered “real prejudice” (at [50]).

(iii) Dispensation should not be refused because the landlord has seriously breached, or departed from, the statutory requirements. The adherence to these requirements is not an end in itself. Neither is dispensation a punitive or exemplary exercise. The requirements are a means to an end; the end to which tribunals are directed is the protection of tenants in relation to unreasonable service charges. The requirements leave untouched the facts that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them (at [46]).

(iv) If tenants show that, because of the landlord’s non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the tribunal would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord’s failure, the more readily a tribunal would be likely to accept that the tenants have suffered prejudice (at [67]).

(v) The tenants’ complaint will normally be that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the tribunal (at [69]).

(vi) If prejudice is established, a tribunal can impose conditions on the grant of dispensation under section 20(1)(b). It is permissible to make a condition that the landlord pays the costs incurred by the tenant in resisting the application including the costs of investigating or seeking to establish prejudice (at [58] – [59]).

(vii) Where the extent, quality and cost of the works are unaffected by the landlord’s failure to consult, unconditional dispensation should normally be granted (at [45]).

The Background

35. The Building is a 4 storey detached Victorian property constructed in the 1890s. It has been converted to create 14 small one-bedroom flats. There is a lower ground floor and three upper floors. The Building is in a prominent position in Dalston, close to the station. The leases were granted between 1 August 2011 and 16 March 2012. On 21 February 2012, the Applicant acquired the freehold interest. Only one of the 14 lessees (Mr Mokwe at Flat 1) occupy their flats. The others rent out their flats and are in receipt of significant rents. They owe a duty to their tenants to ensure that their flats are maintained in a proper state of repair.
36. Ms Park is the lessee of Flat 12 which is on the top floor of the Building. She acquired the leasehold interest in 2012. She currently lets out the flat at a rent of £1,330 per month. Mr Newbery manages it for her.
37. On 22 February 2019 (at R.7), Ms Park wrote to Mr Taylor complaining of the disrepair. She stated that the common parts and the exterior had been in substantial disrepair since 2015. There had been a number of issues with flooding. In her evidence, she stated that she had had to compensate her tenants for losses that they had suffered.
38. There are a number of photographs of the Building at A.63-78. These show the Building to be in a state of substantial disrepair and in need of urgent attention. Patch repairs have been executed to the roof to prevent water penetration, but more substantial repairs are required. These patch repairs had been executed by Steele Roofing Ltd. Some had required scaffolding.
39. At the end of 2019, Mr Taylor appointed BBPM to manage the Building. Mr Gunby stated that BBPM was the fourth set of managing agents. In July 2020, BBPM drew up a Specification of Works (at A.116-123). The works involve the recovering of the main roof, external and internal redecoration and refurbishment.
40. Mr Gunby stated that there was only some £3,000 in the reserve fund. He informed the Tribunal that in his experience the smaller the block, the greater the pushback when a managing agent seeks to build up a reserve fund. We disagree. In our experience, tenants prefer to spread the cost of major works over time, particularly if provided with a planned maintenance programme,
41. On 24 August 2020 (at A.114-124), BBPM sent the tenants the Stage 1 Notice of Intention. The letter enclosed (i) the Specification of Works; (ii) a Fire Risk Assessment; and (iii) an Information Notice. The tenants were asked to make observations within 40 days and to nominate a contractor. The Tribunal is satisfied that this letter complied with the statutory requirements. No tenant responded to this notice. No contractor was nominated.

42. The Tribunal is satisfied that these works were required. In April 2023, Ms Park obtained a report from Mr Philip Woolston MRICS from Oswick Property Professionals (“Oswicks”). Mr Woolston concluded that the Building was in a poor condition. His inspection confirmed evidence of moisture ingress. The windows and doors were suffering from extensive rot. The conclusion was that the proposed works “are not considered disproportionate given the overall condition of the building”. Mr Woolston added a cautionary warning that, at the time of writing, both material and labour costs were extremely volatile. He noted that the JCT Minor Works contract has provisions to safeguard against price increases.
43. There was a considerable delay before BBPM embarked upon the next stage. Mr Gunby attributed this to Covid-19 and estimates becoming out of date due to inflation. Stage 2 of the statutory consultation required the landlord to obtain estimates from at least two contractors. It is at this stage that things started to go wrong. BBPM decided to draw up a single tender document covering the works to (i) the roof; (ii) the exterior of the building; (iii) the interior common parts; and (iv) the front garden. There would be no objection to this, provided that all the contractors whom BBPM approached to tender were willing to price all items in the Specification. In the event, only one of the five contractors was willing to do so.
44. An alternative approach would have been to break down the Specification into separate parcels of work. The contractors could have been asked to quote for all or any of the three tenders; one tendering for all three could be asked to offer a discount if awarded all contracts. However, BBPM would have needed to ensure that at least two builders were willing to quote for each parcel.
45. Five tenders were returned. It seems that the contractors were not asked to specify the period of time over which their estimates would remain valid.

(i) On 5 September 2022 (at A.181-191), Completefix returned a tender for the full specification in the sum of £162,561.60 (inc VAT). It provided individual prices for the 50 items specified in the tender document. It did not state for how long the estimate would remain valid.

(ii) On 21 September 2022 (at A.191-198), B&M Builders Limited returned a tender in the sum of £159,696.00 (inc VAT). However, they were not willing to price the roofing works. Neither did they price two items of the internal repairs (the intercom and carpeting). The estimate was only valid for 30 days. There was no prospect that the estimate would be accepted within this period.

(iii) On 5 September 2022 (at A.199), Lee Wor Flooring Ltd quoted £4,494 (inc VAT) to carpet the hallway. It did not state for how long the estimate would remain valid.

(iv) On 5 September 2022 (at A.200-208), Steele Roofing Ltd quoted £108,877.20 (inc VAT) for the roofing works and two items in the specification for works to the exterior of the Building. It did not state for how long the estimate would remain valid.

(v) On 9 November 2022 (at A.209-217), HEC Service Ltd quoted £11,514 (inc VAT) for the electrical works. It did not state for how long the estimate would remain valid.

46. On 11 November 2022 (at A.159-218), BBPM served the tenants with the Stage 3 Notice about Estimates. The letter included both the five tenders and a Schedule of the Estimates. The cost per tenant was stated to be £15,403.66. The works were to commence early in 2023. The tenants were invited to make written representations within 40 days.

47. The charge of **£15,403.66** was a 1/14 share of **£215,651.18**, which was made up of the following sums (see A.178-180):

(i) Estimate for works: £156,997.20. BMPP proposed to accept the prices quoted by Completefix for the works to the roof and exterior (£128,395.20) and “internal communals” (£12,594); HEC Services for the electrical works (£11,514.00); and Lee Wor Flooring for the carpets £4,494.00). The approach adopted by Mr Gunby was somewhat unorthodox. It was unclear whether Completefix would be willing to allow their tender to be apportioned in this way.

(ii) Contingency of 10%: £15,699.72;

(iii) Inflationary Contingency of 15%: £25,904.54;

(iv) Fees of BBPM in drawing up the specification of works and supervision fees (10%): £15,699.72;

(v) Consultation Fees: £810.

48. Mr Gunby stated that a number of tenants had responded to this letter. They complained about the level of costs and queried whether the works could be staggered over a period of time. However, he was unclear whether these had been oral or in writing. Mr Gunby did not provide the tribunal with copies of any of the written responses or attendance notes relating to any oral responses. Ms Park did not respond within the specified period of 40 days.

49. On 13 January 2023 (at A.219-277), BBPM served, by post and email, the Final Stage consultation letter. The letter stated that the overriding concern which had been raised by the tenants in response to the letter of 11 November, was the level of costs and whether these could be staggered with only the “mandatory works” being undertaken. The landlord had considered the responses and had decided to spread the works over the next 3-4 years. The works to the roof and the external decorations were to proceed. The works to the interior of the Building and the front landscaping would be executed in 2024 and 2025.
50. On 13 January 2023, BBPM issued a demand for an interim service charge of **£11,147.64** (A.224) which was payable by 28 February 2023. Mr Gunby stated that it was important for works to be started as soon as possible after this date to prevent further water ingress and internal damage. The interim service charge of £11,147.64 was a 1/14 share of **£156,066.98**, which was now made up of the following sums (see A.226-7):
- (i) Estimate for works provided by Completefix Ltd (“Completefix”): £111,187.20;
 - (ii) Contingency of 10%: £11,118.72;
 - (iii) Inflationary Contingency of 15%: £18,345.89;
 - (iv) Fees of BBPM in drawing up the specification of works and supervision fees (10%): £14,605.18;
 - (v) Consultation Fees: £810.
51. Only Completefix had quoted for all the works. Mr Gunby suggested to the Tribunal that it was possible to pick and mix from the prices provided for the 34 items of work by B & M Builders and Steele Roofing Ltd and that this showed that Completefix had provided the cheapest quote overall. The Tribunal does not accept that it is possible to do this.
52. The Tribunal notes that this interim service charge was not demanded in accordance with the terms of the lease. BBPM has not provided the budget which was produced for 2023 or the demands for the interim service charges which would have been payable on 25 December and 24 June. It is apparent that the budget, if any, did not include any provision for these works.
53. Mr Gunby stated that the response of the lessees had been as follows:
- (i) The interim service charge has been paid by Flats 1, 3, 6, 7, 8, 11 and 14. However BBPM has refunded the sums paid to Flats 6 and 14 as the works have not started. Mr Mokwe, the one resident lessee, paid the sum demanded.

- (ii) 50% of the sum demanded has been paid by Flats 4 and 5.
 - (iii) The following have agreed to pay: Flats 2, 9 and 13.
 - (iv) The following have not paid: Flats 10 and 12.
54. On 1 March 2023, Mr Newbery wrote to BBPM on behalf of Ms Park. She had offered to make staged payments, but this offer had been refused. On 2 March, Mr Gunby responded to this email. Mr Newbery raised the following points:
- (i) BBPM had stated that the works would only commence if 75% of the sums demanded were paid. He inquired what would happen if these sums were not collected. Mr Gunby responded that an application would be made to this tribunal. This would delay the project and increase costs.
 - (ii) Given the past history of disrepair and mismanagement, Ms Park was concerned that the project might not be completed or that the builder might walk off site. Mr Gunby responded that BBPM would hold any payment in a designated clients' account regulated by RICS.
 - (iii) Mr Newbery also referred to an application for a statutory extension of the lease. This is a completely separate issue.
55. On 17 March 2023 (at R.9), BBPM sent Ms Park a pre-action letter threatening legal proceedings should the interim service charge not be paid. Ms Park took exception to this letter being sent. She stated that she found this "very offensive". The Tribunal is satisfied that the landlord had little option but to take this step, given her refusal to pay the sum demanded.
56. On 12 April 2023 (at R13), Mr Newbery complained that the roof contract had been awarded to Completefix, a company with no office, no proper address and no headed notepaper. In May, Ms Park commissioned the report from Oswicks. On 10 May, Mr Woolston provided his report. There was no suggestion that Ms Park had provided a copy of the report to BBPM at this stage.
57. On 12 May 2023, The Applicant issued his application to this Tribunal. On 17 July, the landlord disclosed the relevant documents to the tenants. By 23 August, any tenant who opposed the application was directed to email the landlord their Statement of Case and any documents upon why they sought to rely. At this stage, no tenant opposed the application. On 16 October, the landlord filed its Bundle of Documents

58. At Appendix 3 of the Bundle (A.79-102), the Applicant includes a Revised Schedule of Costs and Estimates totalling **£197,309.64**. BBPM now propose to levy an interim service charge totalling **£15,599.33**. BBPM has not notified the Respondents that it seeks a determination from this Tribunal that the sum is reasonable and payable. The Applicant has not applied to amend its claim.
59. The proposed charge is made up of the following sums (at A.80-81):
- (i) Revised estimate for works provided by Completefix: £155,976.00;
 - (ii) Contingency of 10%: £15,597.60;
 - (iii) Inflationary Contingency of 15%: £25,736.04;
 - (iv) Fees of BBPM in drawing up the specification of works and supervision fees (10%): £16,442.47;
 - (v) Consultation Fees: £810.
60. At A.80, Mr Gunby has produced a Schedule which seeks to compare three tenders:
- (i) Completefix (at A.81-92) have provided a new tender, dated 15 August 2023, in the sum of £155,976.00 (inc VAT). This is an increase of 40.3% on their previous tender of 5 September 2022 (£111,187.20 at A.181-189). In its accompanying letter (at A.82), Completefix do not suggest that this is a revision to their earlier estimate. The new tender is costed in a completely different way. In the original estimate, items 1 to 4 were priced separately. In the new tender, there is a combined price for Items 1 and 2 and items 3 to 6. Initially, £1,380 was quoted for item 7 (coping stones and flashing); £8,500 is now quoted - an increase of 516%. £1,035 was quoted for item 7 (Box Gutter); £5,500 is now quoted - an increase of 431%; £2,760 was quoted for item 9 (front window to dormers); £6,800 is now quoted - an increase of 146%. No explanation is provided for these increases. On the other hand, the quote for item 16 (render work) has reduced from £4,900 to £690. It would seem that this was not a revision of the earlier estimate. It was rather an entirely new estimate which is difficult to reconcile with the earlier estimate. There is nothing in the tender to indicate for how long the quoted price will hold.
 - (ii) Steele Roofing Ltd (at A.93) have not prepared a further tender. They merely state that were they to be instructed to carry out the works on 1 February 2024, the expected increase in price would be “at least 12%”. No explanation has been provided as to why Steele Roofing have only increased their price by 12%, whilst Completefix have increased their price by 40.3%.
 - (iii) In his schedule, Mr Gunby has increased the quote for B & M Builders from £84,478 to £114,192, an increase of 35.2%. £32,500 is now included for items 1 and 2, namely scaffolding and the provision of a tin roof. The provision of a tin roof is irrelevant given that they were

not quoting for the roofing works. B&M Builders have provided no correspondence to explain the increase in their quote or the period of time for which it will remain open.

61. Again, it is impossible to compare these three quotes as they are not like for like comparable quotes. Only Completefix have quoted for all the works. B & M Builders have not quoted for the roof works, whilst Steele Roofing have not quoted for the works to the exterior. Neither have quoted for item 10 (flank wall) or item 12 (down pipes). It is not possible to pick and mix these quotes as suggested by Mr Gunby.
62. Despite the Directions given by this Tribunal, Ms Park waited until 16 October 2023 before filing her Statement of Case opposing the application. She does not address the revised interim charge that BBPM now seek to demand. The points raised by Ms Park in her Statement of Case build upon points which had been raised by Mr Newbery in a letter, dated 20 September 2023. She raises the following points:

(i) The works should be spread over a longer period: The Tribunal notes that the landlord has now agreed to execute the works in stages. We accept that it is appropriate for the roofing and the exterior works are executed at the same time as scaffolding will be required for both sets of works.

(ii) The delay between the service of the Stage 1 Notice of Intention in August 2020 and the service of the Stage 3 Notice of Estimates in January 2023: Ms Park complains of the haste with which BBPM is now seeking to proceed with the works. She does not seem to recognise that the builders will only hold open their tenders for a limited period of time. She has not heeded the advice of her expert, that both material and labour costs are extremely volatile. Her delay in paying the interim service charge has led to a significant increase in the cost of the works.

(iii) The statutory consultation procedure is flawed in that only one of the five contractors quoted for all the works: The Tribunal agrees with this complaint. However, we note that Mr Woolston considered that the original tender received from Completefix represented reasonable value and current market rates. His complaint was rather the absence of comparable tenders. He therefore recommended that two further estimates should be sought. He has not been asked to comment on the most recent quote from Completefix.

(iv) BBPM will be sitting on funds of £150k of other leaseholder's money for over a year, whilst preliminaries, such as this tribunal application are resolved: Ms Parks is blind to the fact that BBPM need to be put in funds before the works can be executed. On 1 March 2023, Mr Gunby had assured her that BBPM would hold any payment in a designated clients' account regulated by RICS. The Tribunal notes that these funds will also be held pursuant to the trust imposed by section

42 of the Landlord and Tenant Act 1987 on behalf of the lessees who have paid the service charge.

(v) Ms Park repeats her complaint that the roof contract had been awarded to Completefix, a company with no office, no proper address and no headed notepaper. She suggests that Completefix will subcontract the works. She was also had concerns in relation to roof works in such circumstances. She suggests that the lessees should be given the opportunity to see the draft JCT contract which should include a timescale and a penalty clause. Mr Gunby informed the Tribunal that BBPM had used Completefix on a number of other projects. The Tribunal notes that it is for the landlord, and not the lessees, to select an appropriate contractor and to draw up any contract. The landlord must ensure that works are executed to a reasonable standard and at reasonable cost.

(vi) The leaseholders had been unable to meet the chosen contractor: In his letter of 13 January 2023 (at A.222-223), Mr Gunby stated that he would arrange a pre-contract meeting with the contractor, to which lessees would be invited. Minutes would be provided to those unable to attend. The Tribunal accepts that there would be no purpose in holding such a meeting until BBPM are in receipt of funds, a contractor can be appointed and the works can proceed.

(vii) The landlord should not be permitted to pass on the cost of these proceedings through the service charge: Ms Park contends that the only reason that this application is necessary is because BBPM and Mr Taylor have shown complete disregard for the leaseholders and “a disappointing degree of intransigence”.

The Tribunal’s Determination

63. In its application, the Applicant asks the Tribunal to determine the following issues:
- (i) Has the Section 20 process been correctly implemented?
 - (ii) Are the works reasonable?
 - (iii) Are the costs reasonable?
 - (iv) Is the apportionment of costs charged to lessees legally due?
64. The Tribunal is satisfied that the Schedule of Works which accompanied the Stage 1 Notice of Intention which was served on 24 August 2020, are required to remedy the disrepair and to maintain the Building. These works fall within the landlord’s covenants to repair and

maintain the Building and its common parts. No one has suggested that these works are not required. The Applicant now proposes to execute these works in stages. This is a matter for the discretion of the landlord. The landlord has reached this decision having regard to the representations which were made by some of the lessees.

65. The Tribunal is satisfied that the Applicant has failed to comply with Stages 2 and 3 of the Consultation procedures because BBPM failed to seek estimates from at least two contractors. Although five tenders were sought, only Completefix has quoted for all the works. It is impossible to pick and mix from tenders provided by M and M Builders and Steele Roofing Ltd to determine whether Completefix has offered best value. We agree with Mr Woolston that the Applicant has failed to obtain two comparable tenders.
66. The Tribunal must therefore consider whether it should dispense with the requirement to obtain two estimates. Mr Woolston recommends that the Applicant should be required to re-tender to secure at least two comparable tenders. We were concerned that this would cause further delay and a further increase in costs. We noted that Mr Woolston considered that the tender received from Completefix represented reasonable value and current market rates. We considered whether we should grant dispensation, but on the basis that we were making no finding that the cost of the works was reasonable.
67. We are satisfied that it would be wrong to grant dispensation. The object of the consultation procedures is to ensure that tenants should not pay more than is reasonable for any works. This is particularly important when 14 tenants are facing a major works bill totalling £197,309 for what is only the first phase of the works. The purpose of requiring a landlord to obtain at least two estimates is to ensure that he tests the market. This requires at least two comparable estimates. This has not occurred. The tenants have been prejudiced as the market has not been tested.
68. We also have concerns about the manner in which Completefix have increased their estimate by 40.3%. It is impossible to reconcile their two tenders. The second is not a revision of the original estimate. Completefix have rather prepared it on a completely different basis.
69. Over recent years, the landlord has failed either to keep the Building in a proper state of repair or to manage it in a proper manner. BBPM have been the fourth set of managing agents. It is apparent that not only Ms Park, but also the other tenants, are still concerned at the manner in which the Building is being managed. There is therefore a particular need for transparency.
70. Were the Tribunal to refuse to grant dispensation, the landlord would be limited to charging £250 to each tenant. Faced by this situation, the

landlord would rather choose to re-tender as recommended by Mr Woolston. The Tribunal notes that given the current volatility of the material and labour costs, there is a real risk that were the landlord to re-tender for the works, the cost of the works could escalate further.

71. On 12 May 2023, when the Applicant issued this application, the Applicant was seeking a determination that an interim service charge of **£11,147.66** was payable by each leaseholder. We accept that each leaseholder is required to pay a share of 1/14. This interim service charge had been demanded on 13 January 2023.
72. The Tribunal is satisfied that it would have been reasonable for the landlord to have put a sum in the order of **£157,000** in the budget for 2023 as an estimate of the cost of the works that were proposed and to have collected it in advance by two equal payments on 25 December 2022 and 24 June 2023. BBPM has failed to do this.
73. Because of the delays that have arisen, Completefix are no longer willing to be bound by the tender which they provided on 5 September 2022. BBPM are now suggesting that **£197,309.64** is a reasonable estimate of the cost of the works. Each tenant would be obliged to pay a total of **£15,599.33**. We are not willing to make a finding whether it would be reasonable to include this sum in the budget for 2024. This is not the interim service charge that the Applicant had asked the Tribunal to determine in their application form. The Applicant did not seek to amend their claim. Although, we have granted the Applicant permission to raise this at the hearing, 13 of the Respondent have had no opportunity to consider this. It is therefore for the landlord now to determine what sum is included in the budget.
74. We note that any sum included in the budget is only an estimate of the likely cost of the works. When the works have been executed, the landlord must include the actual cost in the service charge accounts for the year. At that stage, it is open to any tenant to challenge the actual cost on the grounds that it is unreasonably high, or that the works have not been executed to a reasonable standard.
75. The Applicant has asked the Tribunal to consider the reasonableness of the sum of £6,030 which it would propose to pass on to the tenants in respect of this tribunal application. The Applicant has now reduced its claim to £1,600 + VAT. We are satisfied that it would not be reasonable for the Applicant to pass on any of the cost of these proceedings. The consultation procedure has been flawed. This application has failed.
76. The Tribunal is further satisfied that we should not make an order that the Respondents should refund to the Applicant the tribunal fees of £300 which he has paid. The application has failed.

Next Steps

77. The Tribunal has reached the decision with some regret. The Building is in a state of substantial disrepair and we are satisfied that the works proposed by BBPM are reasonable. The cost of the works is now substantial. The current problems would have been avoided had the landlord established a reserve fund. It is apparent that the tenants are reluctant to put the landlord in funds, as they do not believe that these will be used to execute the required repairs. They should be assured that BBPM keep such funds in a designated clients account regulated by the RICS. Such funds will also be held pursuant to the trust imposed by section 42 of the Landlord and Tenant Act 1987.
78. The landlord will now need to seek further tenders for the proposed works. He will need to obtain at least two comparable estimates and ensure that best value is secured.
79. The landlord can only collect any interim service charge in accordance with the terms of the lease. However, all the parties have a common interest in ensuring that the landlord is put in funds so that the works can be executed at the earliest opportunity.

Judge Robert Latham
30 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 **by e-mail** 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).