FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference(s)	**:**	**BIR/00CS/LIS/2023/0019**
Properties	**:**	**Properties situated at Woburn Crescent Great Barr Birmingham B43 6AX**
Applicants	**:**	**See Appendix One**
Representative	**:**	**Angela Harris**
Respondent	**:**	**Freshwater Property Management**
Representative	**:**	**Kate Traynor Counsel – Landmark Chambers** **Brady Solicitors – Jeremy Weaver**
Type of Applications	**:**	**An application in respect of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985.** **An application for an Order under section 20C of the Landlord and Tenant Act 1985.** **An application for an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**:**	**V Ward BSc Hons FRICS – Regional Surveyor** **Judge David R Salter**
Date of Decision	**:**	**20 August 2024**

DECISION

Background

1. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to whether or not service charges, are reasonable, due and payable.

2. The issues raised within the application are in respect of service charges for the years 2016 to date and relate to the following:

    - Repairs (and proposed repairs) to the main roof of the development.
    - Repairs (and proposed repairs) to the roof of the garage block.
    - General maintenance
    - Historical neglect which has led to proposed repair costs being higher than necessary.

3. The Applicants also seek an Order for the limitation of the Respondent's costs in these proceedings under section 20C of the Act that the cost of these proceedings are not to be included in the amount of any service charge payable by the tenants or any other persons specified in the application and an Order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs" i.e. contractual costs in a lease.

4. The Respondent holds the long leasehold interest in the development, whilst the Applicants hold leases of individual apartments emanating from the same. The Respondent owns 9 apartments and 22 garages in the development.

5. Upon receipt of the application, the Tribunal decided to convene a case management conference (CMC) with the parties to discuss how the Tribunal would deal with the application. This was held by video platform on 28 April 2022.

The Law

6. The relevant legislation is set out in Appendix Two to this decision.

Inspection and Hearings

7. The Tribunal carried out an inspection of the Woburn Crescent development on 9 May 2024. The first hearing was held later the same day at Tribunal Hearing Rooms, 13th Floor, Centre City Tower, Hill St Birmingham B5 4UU.

8. Participants were:

    Applicants

Eunice Geary (No 28 Woburn Crescent)
Marlene Hartley (No 30)
Helen Turner (No 10)
Lynda Coen (17)
Kerrie Barber (No 23)
Emma Forbes (No 6)

Represented by Angela Harris.

Respondent – Freshwater Property Management

Michelle Samuels
Deborah Murphy
Tom Haskins

All of Freshwater Property Management

Represented by Kate Traynor - Counsel – Landmark Chambers and Jeremy Weaver – Brady Solicitors.

The First Hearing

9. The Respondent had submitted a skeleton argument on the morning of the first hearing which included a request for the Tribunal to strike out the application. The strike out was sought on the basis of Rule 9 (3) (e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which states:

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—
.....
(e)the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

Preliminary Decision

10. The Tribunal advised the Respondent that it would not strike out the application as, until it had considered all the relevant evidence, it could not determine whether or not the application would succeed, in whole or in part.

11. The Tribunal found that there was insufficient evidence provided by the Respondent for the Tribunal to satisfy itself as an *expert* Tribunal as to the matters raised in the application, in particular, the repairs/proposed repairs to each of the blocks in the development and the garage roofs.

12. The initial directions in this matter had instructed the Respondent to disclose the following:

    a) *Copies of survey reports, quotations and other relevant documents in respect of the proposed roof repairs for both the main and garage roofs. This should include details of any consultation carried under section 20 of the Act for both past and proposed works. This document should also set out the charges that will be levied upon leaseholders as a result of the proposed works.*

    b) Copies of any invoices and other documents relating to roof works carried out since 2016.

13. Whilst these had been disclosed to the Applicants and the Tribunal, the Respondent was not in a position to present evidence in respect of the same at the hearing. As this evidence was considered by the Tribunal to be crucial to the determination of this case, the hearing was adjourned, and further directions issued.

The Second Hearing

14. The second hearing was held on 17 June 2024 again at the Tribunal Hearing Rooms, 13th Floor, Centre City Tower, Hill St Birmingham B5 4UU. Participants were as for the previous hearing with the following additions:

    Applicants

    Ann Burgess & Kelvin Burgess (No 7 Woburn Crescent)
    Elizabeth Green (No 31)

Background

15. The Tribunal finds it useful, initially, to give a background to the properties themselves and to the works that are the subject of the application.

The Properties

16. The properties that are the subject of this application form part of a development called Woburn Crescent which from the Tribunal's inspection and the information provided by the parties appears to comprise a development of 36 apartments and 37 garages.

17. The apartments are arranged in three blocks, the front and rear blocks each of 9 apartments and a larger middle block of 18 apartments. The development is of a

three-storey nature with apartments at ground, first and second floor levels. It is understood that it was constructed in the 1960s.

18. The garages are arranged in several terraced blocks to the rear of the site adjacent to the larger middle block.

Matters in Dispute

19. The matters that were the catalyst for and the subject of this application are as follows.

    a) Renewal of Garage Roofs

    A Notice of Intention to replace the garage roofs was issued on 24 May 2021. The specification for the replacement garage roofs was set out in a document produced by PPC Chartered Building Surveyors dated November 2021. The existing roofing systems were a combination of felt flat roofs (some of which had temporary sheeting in place following storm damage in 2019) or asbestos sheeting. The specification allowed for a replacement of these roofs with a bitumen felt flat roof and profile steel cladding respectively.

    The Respondent employed PPC Chartered Building Surveyors to seek tenders for the works. This resulted in a Tender Analysis report dated April 2023. This indicated that 4 companies had been approached to provide quotations for the flat roof system and 5 for the steel-clad system. Ultimately 3 companies tendered for each. The summary by PPC was as follows:

    "10.1 To summarise, 3No competitive quotes have been arithmetically checked and analysed as follows:

    • Buildlec - £70,700.15 + VAT. (Excluding Contingency)
    • M&D Roofing (Redditch) Ltd - £75,769.88 + VAT. (Excluding Contingency)
    • G I Sykes - £122,090.00 + VAT

    10.2 Buildlec has provided the most competitive tender and price certain for these works and we would recommend that they be appointed to carry out these works for the sum of £70,700.15 + VAT, plus a contingency sum of £2,500.00 + VAT, resulting in a contract sum of £73,200.15 + VAT.

    10.3 Asbestos removal works to the 16No garages with asbestos sheet roofs will be undertaken by a specialist contractor as detailed in the document reference PPC/SG/2020/89/18 REV A. The asbestos removal contractor will work as a sub-contractor under the main contractor selected for the roof works and their cost plus the Contractors overhead and profit is to included (sic) in their overall contract sum.

10.4 This cost per garage of £1,978.38 + VAT. (Including Contingency)"

A Notice of Estimates was issued on 22 November 2023 which summarised the conclusion of the tender analysis report. It is also confirmed that a company proposed by leaseholders during the consultation process had been approached for a tender. The Tribunal was advised that the Respondent had adopted the company which had provided the most competitive tender. At the time of the Tribunal's inspection, the works were nearly complete and were, the Tribunal is advised, finished by the time of the second hearing.

b) Renewal of Block Roofs

In 2018, a survey of the block roofs and associated structures was carried out by Maylands Consulting (self-labelled as a Surveying, Architectural design and Project Management Consultancy) with the inspection carried out by Paul Chapell, a Chartered Building Surveyor. The existing roof systems were described as *"flat roofs are covered with asphalt roofing that has been overlaid with a single layer of felt roofing"*. The survey involved an inspection of the roof via the use of a mechanical lifting platform and a core sample was taken. The following is an extract from the summary/conclusions of the report:

"4.0 Summary/conclusions
4.1 From the inspection and observations, it is clear that the roof and associated structures will require the renewal of the roof covering within the very near future."

In June 2022, a document titled Budget Costings for the replacement of the main roofs was produced (presumably by Maylands Consulting). This set out the recommended roof replacement works and gave a budget cost for the works of £663,928.00.

By way of a letter dated 4 October 2022, Maylands responded to an enquiry from Michelle Samuels (employed by the Respondent as an Area Manager) which included the following statement *"Works to replace the roof covering as detailed in our survey of main flat roofs and associated structures dated 25 June 2018…could be left for a period of approximately 2 years."* The letter warned that maintenance may be required if the works were delayed and the costs of the works themselves may rise, significantly, over this two-year period.

On 6 June 2023, the Respondent issued a Notice of Intention to replace the main block roofs.

Subsequently, Maylands were instructed to seek tenders for the works and in April 2024 produced a tender analysis report which indicated that 6 companies had been approached to tender of which 3 had provided quotations. Maylands had analysed the two best tenders which indicated that Mitre Construction Co Ltd was the most competitive in the sum of £588,478.00.

The Tribunal was advised that the Respondent cannot, presently, issue a Notice of Estimates due to a lack of funds.

c) General Maintenance

No regular maintenance or maintenance schedule alleged by Applicants.

d) Historic Neglect

Alleged by Applicants especially re garage roofs and block roofs i.e., failure to maintain over time has increased present costs.

20. Further works of relevance to the application are as follows:

a) Garage redecoration and repair in 2016/2017.

The garages were the subject of redecoration and repair works carried out in 2017 based on a specification dated August 2016. A Notice of Intention was issued on 11th May 2017 and a Notice of Estimates was issued on 23rd June 2017. The work being completed in or about September 2017. These works did not appear to include any elements of the roofs themselves.

The Leases

21. The Respondent's statement of case provided a brief outline of the various leases at the development together with six specimen leases and identified the provisions in those leases that it deemed material to the application. At the second hearing, Ms Traynor took the Tribunal, efficiently through those provisions which, broadly, allow for the recovery by the Respondent of the cost of works as a service charge and either define the lessee's percentage contribution to those costs or indicate how that contribution is to be ascertained.

The Applicants did not challenge the validity of any of these provisions in the respective leases.

The Submissions of the Parties

The Applicants

22. At the second hearing, Ms Harris and Ms Barber presented the case on behalf of the Applicants. As indicated above, their challenges were principally regarding the Garage Roof works and the Block Roof works, but also included (see above, paragraph 19) allegations about the quality of General Maintenance undertaken at the development and of Historic Neglect.

23. In respect of the Garage Roofs, a significant issue raised by the Applicants was that in January 2019, the existing Garage Roofs were damaged. Ms Barber is clear in her evidence that it was a storm that caused the damage. A corresponding insurance claim was lodged by the Respondent's in-house insurance department. This elicited the following response from the insurers in refusing the claim:

"it would appear that the garages were constructed during late 60's early 70's with no evidence of any previous maintenance or repairs since then. Whilst there were storm conditions on the day in question there is no evidence to show that it was the storm that caused the damage. You will be aware that a flat roof has a limited lifespan and on this occasion it would appear that the storm has highlighted the pre-existing poor condition/end of the roof lifespan and unfortunately this is not something that we can consider under the policy."

Some works were carried out to the garages in 2017 (see above, paragraph 20), although not to the roofs and there were accusations by the Applicants that these works were of a poor standard endorsing a general feeling amongst leaseholders of the Respondent's poor performance in terms of the management and maintenance of the development. Prior to the damage in 2019, leaks to the garage roofs had been reported but, in the opinion of the Applicants, very little action was taken by the Respondent.

24. In the opinion of the Applicants if the roofs had been adequately and properly maintained and repaired, when leaks were reported, it is probable that:

a) the storm damage in 2019 may not have been so extensive as it was;
b) the insurers would have considered a claim based on the roofs being regularly maintained;
c) costs of replacement would not be so high if action was taken many years ago when reports of leaking were first raised and when storm damage occurred.

Following the incident in 2019, the Garage Roofs were not repaired and to some garages such as Ms Barber's garage, a temporary roof covering of battened down plastic sheeting was made. This was in place until the works that were completed recently. Consequently, there was a significant period during which some

Applicants were unable to use their garages in the manner that would normally be expected i.e., they were not fit for purpose and during which, therefore, there was discernible neglect by the Respondent.

25. In respect of the Block Roofs, the Applicants' challenge arose because, following the main roof survey and costings referred to above, the Respondent had adjusted the service charge demands to accumulate funds for the roof replacement works. The impact on individual leaseholders varied according to their respective service charge contributions, but to give an example, one Applicant leaseholder's service charge rose from £120.00/£140.00 per month to £584.00 per month. Increases of this magnitude are unaffordable for many leaseholders. Ms Barber said that for her personally, it had created a desperate financial situation which had affected her health.

26. This raised two questions for the Applicants, why the roofs had not been kept in better repair (further evidence of neglect on the Respondent's part over time), and, secondly, why a reserve fund had not been put in place over an extended period to accumulate the funds with a view to covering such an eventuality. In respect of the first point, there did not appear to be a maintenance schedule or regular maintenance of any kind.

The Respondent

27. On behalf of the Respondent, Ms Traynor asked Mr Tom Haskins (employed by the Respondent as a Senior Property Manager) at the second hearing to present his witness statement. Mr Haskins confirmed that he was responsible for the management of the properties at Woburn Crescent and provided additional commentary in respect of the Garage Roof works and the Block Roof works.

28. With regard to the Garage Roofs, Mr Haskins said that he believed the insurer's comments in response to the claim regarding the poor condition of the roofs was due to the age of the roofs rather than a lack of maintenance. The reason for the delay in carrying out the works to the Garage Roofs (2019 to 2024) was simply a lack of funds. Noting that there were repairs to the garages in 2017, the Tribunal asked if a survey had been carried out before the specification for these works was prepared. Unfortunately, Mr Haskins was unable to answer this question as he was not involved in the management of the development at that time. In this respect, the Tribunal was seeking to ascertain the reason behind the specific works carried out in 2017 and whether the roofs were excluded from the these works for a reason? Further, responding to a question from Ms Harris, Mr Haskins confirmed that the garages and the development were always properly insured and confirmed to the Tribunal that the usual perils were and are covered. The Applicants also raised concerns about the quality of the current Garage Roof works. Mr Haskins said the surveyor appointed to oversee these works would as a matter of course be carrying

out a final inspection of the works and a snagging list produced that the contractor would deal with.

29. In the respect of the Block Roofs, Mr Haskin's witness statement offered the following relevant evidence. As a consequence of the 2018 Maylands report, the October 2020 - September 2021 budget letter that was issued to the leaseholders stated, "We recently arranged for a condition survey to be carried out on the roof. The survey found the roof to be in a fair condition but noted a number of defects. It was found that the felt overlay is blistered in many locations, and the roof is holding water. The report recommended the roof be recovered in the near future. The cost of recovering the roof is estimated to be in the region of £557,440, exclusive of VAT and fees. It is our intention to collect a contribution towards the cost of these works in next years' service charge".

30. Mr Haskins continued that the reserve fund was not allocated with sufficient monies as, historically, the required funds were built into the budget as a service charge item and paid within that year. However, noting the amount required for the Block Roof replacement, a reserve was introduced. The budget that was issued to the leaseholders for the year 2021/22, and communicated to them in February 2022, included a reserve fund sum of £100,000.00 "for the cost of… replacing the roof covering on each block and upcoming health and safety works". The letter which accompanied this budget went on to state that "The roofs at the development have been identified as being past the point of repair and require replacement, therefore there is a need to building funds up to ensure these works can be carried out".

31. In addition, Mr Haskins observed within his witness statement and also in response to a direct question from Ms Harris, that there was no evidence of leaks or failings in the roof until December 2023 when a problem was reported at No 35 and in respect of which a contractor was sent to carry out repairs.

32. The Applicants also questioned the Respondent about a payment plan to ease the financial burden caused by the increased service charges. In response, it was indicated that a plan was initially offered, but, following a complaint from one of the leaseholders that not all were being treated equally, it was withdrawn.

33. In terms of reserve funds collected, Mr Haskins said that at the end of the 2023 service charge year, £364,000.00 had been collected and that by September 2024, this would be £564,000.00. The works were expected to start by the end of the year on a block-by-block basis. In response to a question from the Tribunal relating to whether the service charge budget would be adjusted downwards when the Block Roof funds had been collected, Mr Haskins advised that a planned maintenance schedule was being prepared for the development and that

considerations that arose from its preparation would be incorporated into any future collection of reserve funds.

Summary of Statements on substantive issues

The Applicants

34. On behalf of the Applicants, Ms Harris said that the Respondent had failed to act decisively and promptly even when survey reports, such as the Maylands report, showed that works were urgently required and that, in addition, a reserve fund should have been created for both sets of roofs in 2018. It is well known that flat roofs have a limited life. Further, the refusal of the insurance claim in respect of the Garage Roofs, should have been challenged, as the failure of the insurers to meet the claim led directly to increased costs for the leaseholders.

35. Continuing, Ms Harris said that many leaseholders at the development were pensioners, and or, on limited incomes, and simply could not afford the increased service charge. She said that, whilst they disputed the reasonableness of the charges, they had also wanted answers from the Respondent about the management and maintenance of the development. These had been sought informally via mediation and other means but were not forthcoming. Ms Barber said that the Respondent presented a "brick wall" to queries. Ultimately, therefore, the Applicants felt that they had no option but to make an application to the Tribunal. The Applicants seek a fair and reasonable solution.

The Respondent

36. On behalf of the Respondent, Ms Traynor stated, initially, that she had much sympathy for the Applicants and the leaseholders of the development in terms of the financial impact of the works. However, the Applicants had not substantiated their case by challenging any specific charge or cost nor had they provided any evidence that the service charges were not payable or that they were unreasonable. The Respondent had properly consulted on both sets of works and had appointed the contractor who had submitted the lowest tender in each case. From the initial survey of the Block Roofs in 2018, the costs of the works had only risen by 5.6%. Hence there were no grounds for saying that the costs had risen because of the delay in implementing the works.

    Further, the Applicants' position relating to General Maintenance is a generalised challenge that lacks detail and fails to raise specific issues with the consequence that the Respondent cannot properly address this issue. Accordingly, the Respondent reserves its position in this regard.

Finally, the essence of the Applicants' contention that there has been Historic Neglect on the Respondent's part is that the Respondent has breached its repair and service charge obligations, historically, causing loss to the Applicants. In the Respondent's submission, arguments relating to Historic Neglect should not aid the Tribunal in determining the question of whether a specific service charge is payable but, rather, give rise to questions of counterclaim or set-off. Hence, insofar as the Tribunal has jurisdiction to determine whether there is a breach of historic repair or service charge obligations, it is for the Tribunal to consider whether the Applicants have an equitable right to set-off and whether there is supporting expert evidence. In short, the Tribunal may consider setting off any liability of the Respondent to the Applicants for increased costs arising from any failure of the Respondent to repair. However, no increased costs have been evidenced nor has any set-off been claimed. The Tribunal cannot, therefore, consider set-off.

Positions adopted in relation to the applications for Orders under section 20C of the Act and under paragraph 5A of Schedule 11 of the 2002 Act

The Applicants

37. The Applicants tried hard to resolve matters with the Respondent in various ways including mediation, but to no avail, with result that an application to the Tribunal was inevitable; an application that was pursued without the benefit of legal advice which the Applicants could not afford. In this circumstance, it would not be fair and reasonable to allow the Respondent to add any of its Tribunal costs to the service charge and, thereby, increase the already significant costs that the Applicants face.

The Respondent

38. In considering these applications, it is essential for the Tribunal to take into account the practical and financial consequences for those who will be affected by any order(s) made and bear those consequences in mind when deciding on the just and equitable order(s) to make, if any. The Respondent was obliged to defend the application and, therefore, should be entitled to claim its reasonable costs through the service charge. Consequently, the Respondent's position in relation to these applications is as follows:

    a) The Respondent has nothing to answer in this application. Bald assertions have been made with no expert evidence in support;
    b) The Respondent believes it will be successful on the issue before the Tribunal;
    c) It would not be just and equitable for an order to be made under section 20C of the Act or paragraph 5A of Schedule 11 to the 2002 Act; and

d) Accordingly, the Tribunal is invited to dismiss the Applicants' application for orders under section 20C of the Act and paragraph 5A of Schedule 11 to the 2002 Act.

The Tribunal's determination

39. It is clear from the evidence that the fundamental concerns of the Applicants relate to the way in which the development has been, and is, managed and maintained by the Respondent. They consider that there has been a lack of proactive management which has resulted in higher repair costs and better budgeting may have meant the earlier collection of reserve funds, thereby, avoiding or mitigating the crippling financial burden some leaseholders now face.

40. The application before the Tribunal, however, is for a determination as to whether or not service charges, are reasonable, due and payable.

41. There was no challenge by the Applicants to the costs being recoverable under the terms of the respective leases nor does the Tribunal find issue with the same.

42. As to whether the costs of the two sets of roof works are reasonable, the Applicants have no issue *per se* with the quotations obtained for the works carried out (the Garage Roofs) or to be carried out (the Block Roofs). Their argument was, broadly, that there was a lack of ongoing maintenance at Woburn Crescent and this "historic neglect" had increased the costs of the works carried out or planned.

43. The Applicants were advised at the Case Management Hearing that for the Tribunal to consider "historic neglect", they would need to provide expert evidence from a Building Surveyor or similarly qualified professional to the effect that the costs of the current works had been increased due to a lack of past maintenance. In other cases, some Tribunals have found evidence of this, to the ultimate effect that service charges were offset by the increased charges caused by the lack of maintenance. At the second hearing, the Applicants said they could not afford to engage surveyors (or solicitors) to aid their case. In the absence of any compelling evidence, to substantiate their claim, it is not possible for the Tribunal to contemplate any offset of the charges. In this regard, the comments by the insurers regarding the Garage Roofs are insufficient to take the Applicants' proposition forward. As to the Block Roofs, the Applicants, similarly, did not adduce any compelling evidence to show that the condition of these roofs was attributable to an absence of maintenance by the Respondent which may, for example, have been made manifest by multiple roof leaks or constant repairs.

44. In addition, the Applicants took no issue with the consultation procedures conducted by the Respondent in relation to the works. Where the leaseholders had suggested a contractor, the Respondent included them in the list of contractors

from whom tenders were sought. Following the consultation procedure for each set of works, the Respondent had instructed specialists to manage the tender process and, ultimately, instructed the contractor that tendered the lowest bid.

45. Accordingly, the Tribunal finds that the service charges in respect of the Garage Roof works, and the proposed Block Roof works are reasonable and payable.

46. The lack of a reserve fund being created is not a consideration that is material to a determination as to whether service charges are reasonable or payable. However, the lack of such a fund in a development believed to be originally constructed in the 1960s with extensive flat roof areas, indicates to the Tribunal that the management of the development has tended to be reactive rather than proactive. The Tribunal finds it somewhat ironic that the Respondent has now commissioned a planned maintenance schedule after renewal works to the Garage and Block roofs have been carried out or commissioned. A timelier schedule may have reduced the crippling burden that the leaseholders now face and may well have removed the *casus belli* for this application. In addition, the impression created by the Applicants' submissions was that the reaction to their concerns was not, always, as 'sympathetic' or understanding as it might have been.

Applications for Orders under section 20C of the Act and under paragraph 5A of Schedule 11 to the 2002 Act

47. On behalf of the Applicants, Ms Harris said that they had made the application as a last resort after failing to obtain information requested from the Respondent (see above), and, in this circumstance, it would be unfair if the Applicants were made to carry the Respondent's costs.

48. As indicated above, Ms Traynor said that the Applicants had not proved their case and, hence, it would be unfair to deprive the Respondent of its right to recover costs when it was unable to do so under the terms of the lease.

49. The purpose of section 20C is to give the Tribunal the power to prevent a landlord recovering its costs via the service charge when it is not able to recover them by a direct order from the Tribunal. There is also guidance in previous cases to the effect that an order under section 20C deprives the landlord of a property right and, therefore, the Tribunal's discretion should be exercised sparingly (see, for example, *Veena-v-Chong*: Lands Tribunal [2003] 1EGLR 175).

50. However, in *Tenants of Langford Court (Sherbani) v Doren Limited LRX/37/2000*, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 in which the applicant tenants had been successful, the Lands Tribunal (Judge Rich QC) made the following remark:

"28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."

39. The Applicants have not had success with their application. However, the second hearing may not have been required if the Respondent had provided the necessary information for the first hearing. The Tribunal had made it obvious from the CMC onwards that it would want to consider the two sets of works in detail and the history behind the same. Accordingly, exercising its discretion, the Tribunal makes an Order under section 20C of the Act to the effect that the Respondent may not recharge the costs of the first hearing (including preparatory work e.g., the skeleton argument for the first hearing) as, following *Sherbani* above, the Tribunal would not consider it just and equitable if the Applicants were made to carry the Respondents' costs in this respect.

Appeal

40. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of the decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Appendix One - Applicant leaseholders.

Property	Leaseholder(s)
2	Steve Allcock
3	Rob & Louise Johnson
4	Joyce & Harry Boughton
6	Emma Forbes
7	Kelvin & Ann Burgess
9	Brian Mulligan
10	Ken & Helen Turner
11	Jennifer Allen
12	Pat Foster
14	Cathy Taylor
15	Daman Johal
17	Linda Coen
19	Mark and Emma Connor
21	A Morgan
22	Carol Igoe
23	Kerrie Barber
24	D Cremin
27	Krasimira Hristeva
28	Eunice Geary
29	Y Fallon
30	Marlene Hartley
31	Elizabeth Green
33	Elaine Twine
35	Jaime Parsons

Appendix Two – Relevant Legislation

Application under Section 27A of the Landlord and Tenant Act 1985

Sections 18 and 19 provide:

18 **Meaning of 'service charge' and 'relevant costs'**

(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) 'costs' include overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19 **Limitation of service charges: reasonableness**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services for the carrying out of works, only if the services are of a reasonable standard;

and the amount shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction, or subsequent charges or otherwise.

Section 27A, so far as relevant, provides:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-section (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were included for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would payable.

The 'appropriate tribunal' is this Tribunal.

Application for an Order under Section 20C of the Landlord and Tenant Act 1985

20C **Limitation of service charges: costs of proceedings**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal, … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
…
(aa) in the case of proceedings before the First-tier Tribunal, to the tribunal;
…

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Note: The purpose of section 20C is to give the Tribunal the power to prevent a landlord actually recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal. The discretion given to the Tribunal is to make such order as it considers just and equitable.

Application for an Order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Paragraph 5A of Schedule 11 provides:

Limitation of administration charges: costs of proceedings

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Note: The table referred to in sub-paragraph 3(b) confirms that if the proceedings to which the costs relate were proceedings in the First-tier tribunal, then the First-tier Tribunal is the relevant court or tribunal.