FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2022/0157**
Property	**:**	**39a Mount Adon Park, London SE22 0DS**
Applicant	**:**	**Ms H E Morin**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Southwark**
Representative	**:**	**Mr J Walker**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Prof R Percival** **Ms A Flynn MA MRICS**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **5 February 2024 and 15 April 2024**
Date of decision	**:**	**5 June 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £3,448.80 was payable by the Applicant in respect of the service charge relating to the major works undertaken in 2017.

(2) The sum charged in 2021 for roof repairs and included in the sum for block responsive repairs was reasonably payable.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondents costs of the proceedings may not be recovered in the service charge nor as an administration charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charges relating to major works for the service charge years from 2016/17 to 2021/22.

2. The relevant statutory provisions referred to may be consulted at:
https://www.legislation.gov.uk/ukpga/1985/70/contents
https://www.legislation.gov.uk/ukpga/2002/15/contents

The background

3. The property which is the subject of this application is one of four flats in a converted Victorian or Edwardian detached house. Flat 39a comprises part of the ground floor and the whole of the half-basement.

4. This application is dated 20 February 2022. The application has been subject to serious and avoidable delay. The sequence of directions indicates the course of events.

5. On 17 June 2022, the first set of directions were made by the Tribunal, by valuer chair Mr Waterhouse. Those set out the issues as they then appeared to the Tribunal, which were expressed as follows:

> For service charge year 2016/ 2017, the application notes "QHIP Batch", also "major works".
>
> For service charge year 2017/2018 "major works"
>
> For service charge year 2018/2019 "major works"
>
> For service charge year 2019/2020 "major works"

For service charge year 2020/2021 "regular" service charge year 2021/2022 "major works".

6. The hearing date was set for 31 October 2022.

7. On 29 September 2022, the first directions were varied, by Judge Dutton. The variations start with the deadline set for the service of the landlord's case. That had been 2 September 2022. It was rescheduled for 31 October 2022. This implies that the Tribunal were satisfied at that date that the Applicant had provided the tenant's case by that point. Those directions also made the Respondent responsible for providing the hearing bundle, the deadline for which was made 16 December 2022. The hearing date was set for 12 January 2023.

8. On the 12 January 2023, the date set for the hearing, a case management hearing took place, the Tribunal being Judge Hansen and Mr S Johnson. A full Tribunal indicates that the case had been expected to be substantively heard on this date.

9. Mr Walker attended from the Respondent. The directions relate that the Applicant had contacted the Tribunal in advance because she had contracted covid-19 and could not attend. The Tribunal considered that, having regard to the overriding objective (Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), rule 3), the case management hearing would go ahead.

10. The directions included that the Applicant's documents entitled "Notes and Evidence" and "Section 20 Schedule and Statement" should stand as the Applicant's case.

11. That direction was stated to be subject to what was said to be the striking out of any claim for compensation, and a calculation of the sums at stake, as it then appeared.

12. The Tribunal also stated that the total indicated was subject to a further consideration. It was said that the Applicant had admitted (in a document dated 5 July 2019) that the sum of £2,421.42 was owed to the Respondent. The directions referred to section 27A(4) of the 1985 Act, and said that it would be for the Tribunal hearing the application to determine the legal effect of the admission.

13. The 12 January 2023 directions went on to provide that "[i]nsofar as the tenant intends to dispute any regular (annual revenue) service charge items for the years 2020/21 and/or 2021/22 the tenant shall by 27 January 2023 send to the landlord" a further schedule detailing those challenges in the normal way.

14. The deadline for the landlord's case was set at 10 February 2023, that for the tenant's (discretionary) reply as 24 February 2023, that for the bundle as 24 March 2023. The hearing was to be listed, following receipt of listing questionnaires by the parties, for a date three months from 3 April 2023.

15. The final set of directions were dated 6 November 2023, a Monday. Those set out, as the background, that the directions were made at a case management conference, again attended by Mr Walker, but not the Applicant. This came about because the Respondent had contacted the Tribunal on the afternoon of Friday 3 November 2023, "requesting an adjournment on the basis that it had not had proper time to prepare due to the Applicant's late sending of a schedule in purported compliance with the previous directions dated 12 January 2023". The directions note that the Applicant also asked for an adjournment, but said that she had complied with the directions.

16. The directions state that the Applicant's document entitled "Section 20 Schedule and Statement" should stand as her statement of case. The directions went on to note that the Respondent had made disclosure, and to direct that the Applicant may provide further written clarification of the schedule, and if she did, that the deadline was 24 November 2023. The respondent was directed to send its case to the Applicant (in the same terms as in previous directions) by 15 December 2023. Provision was made for the Applicant to make a reply by 9 January 2024, if she chose to do so, and for the Respondent to produce a hearing bundle by 19 January 2024. The hearing was scheduled for 5 February 2024.

17. By Friday 2 February 2024, no bundle had been received by the Tribunal. In the afternoon, Judge Jack, the procedural judge to whom he issue had been referred, ordered (in an email sent to the Respondent by the case officer) that, unless a bundle was received by 4.30pm, the Tribunal would consider debarring the Respondent under rule 9(3)(a) of the 2013 Rules.

18. For the Respondent, Mr Walker responded by asking for the hearing to be converted into a case management hearing or a mediation. Judge Jack responded (again via the case officer) that it was too late to do so without any input from the Applicant, and the application should be made to the Tribunal on 5 February.

19. On the morning of 5 February 2024, the Respondent emailed a bundle to the Tribunal office and to the Applicant.

20. In advance of the hearing, the Respondent indicated that it would be applying for the hearing to become a case management hearing.

The lease

21. The lease is dated 31 October 1994, for a term of 125 years. It was granted under the right to buy provisions in the Housing Act 1985.

22. The lease defines the building as 39A to 39D Mount Adon Park, that is, the converted house in which the flat is situated. The lease provides that, if the building does form not part of a council estate, references to "the estate" have no effect. The building is a street property surrounded by houses not, we understand, owned by the Respondent, and thus is covered by this provision.

23. The Respondent covenants to keep in repair the structure and exterior of the building (clause 4(2)) and the communal areas (clause 4(3)), and to paint the exterior and the communal parts (clause 4(4).

24. Provision is made in the third schedule for the service charge. The service charge year is from 1 April each year. Provision is made for an estimated service charge to be served before the start of the year, to be paid in quarterly instalments. As soon as practicable after the end of the year, the Respondent must notify the lessee of the actual service charge, and a reconciliation process is provided for (demands if in deficit, surplus to be credited).

25. By paragraph 6(1) of the third schedule, the lessee's proportion of the costs payable by the Respondent. The Respondent may use any reasonable method of apportionment. It appears that the Respondent uses a room-weighting system, the result of which is that the Applicant pays six twenty-seconds of the overall costs.

The hearing and inspection

26. The Appellant represented herself. Mr Walker represented the Respondent.

27. At the close of the hearing on 5 February 2024, we indicated that we considered that an inspection would be helpful. Due to an administrative error in the Tribunal office, the original date given for the inspection had to be vacated. In the end, we were able to inspect the property in the morning of 15 April 2024. The inspection was attended by the Applicant in person, the Respondent having declined to attend. In the afternoon, there was a short hearing to allow the parties to make representations in the light of the inspection.

28. The issues before the Tribunal were the actual cost of the major works which took place in 2017, which was demanded on 20 September 2020, and one demand for subsequent roof works in the service charge year 2020/21.

Preliminary applications

29. As a result of the exchanges related under "Background" above, we considered (on 5 February) that we had before us applications to convert the hearing into a case management conference or a mediation, and to disbar the Respondent.

30. We rejected the applications to convert the listing into a mediation or a case management conference. The use of the Tribunal's mediation scheme requires a separate listing, with various incidents, including for instance the availability of three separate rooms; and the parties had not been provided with the materials necessary to prepare properly.

31. We also declined a case management conference. This case has taken far too long to come to a conclusion. There have already been two occasions on which a listing for a hearing has been turned into a case management conference as a result of the lack of preparation of the parties, particularly the Respondent. We were not prepared to allow any further delay.

32. As to the debarring of the Respondent, Mr Walker accepted that there had been problems with the preparation of documents, and he did not have his witnesses available. We concluded that it would be appropriate to debar the Respondent, but nonetheless to ask Mr Walker to remain, to answer questions from the Tribunal and to make submissions or observations when invited to do so. Mr Walker did so, we add, conspicuously courteously and helpfully, both at the hearing and the reconvene following the inspection. We are grateful to him, and to the Applicant for her helpful, to the point and succinct submissions.

The admission

33. Although not dealt with in this order at the hearings, it is convenient to consider first the effect of an admission made by the Applicant.

34. The Respondent demanded £2,421.42 by way of advance service charge on 16 February 2016, that being a part of the Respondent's estimate of her liability in relation to the major works. The Respondent sought to claim this sum in the County Court. We were not provided with copies of the served and dated claim form (only the Respondent's undated copies), but the particulars of claim were dated 1 July 2019.

35. On 5 July 2019, the Applicant signed an admission of that specified amount.

36. Section 27A of the 1985 Act provides that "[n]o application … may be made in respect of a matter which – (a) has been agreed or admitted by the tenant, …". The Respondent submitted that the signed admission excluded the relevant "matter" from the jurisdiction of the Tribunal. The final sum for the major works was £8,241.52 (ie the advance sum plus

the final balancing demand). The Respondent's submission was that the "matter" admitted, was the cost to her of the major works, up to the sum specified in the submission. The Respondent's position was, accordingly, that it was only a balancing figure of £1,840.15 that was before the Tribunal.

37. We accept the Respondent's submission that the admission removes from our jurisdiction consideration of the advance service charge that was the subject matter of the County Court action. We reject the Respondent's submission that it covers the final actual service charge, up to the amount specified in the admission.

38. The Applicant formally admitted that she owed the Respondent the relevant sum in payment of a demand for an advance service charge – that was the "matter" admitted. The final service charge demanded represents the work actually carried out. That is a distinct obligation, which she did not admit. It is, therefore, before us to determine. Because she paid the advance service charge, the actual final demand was for the surplus of the actual cost over the advance service charge, but it is the final total cost which is before us to determine.

39. That is clear as a matter of law. We also note that it is also the case that, if the Respondent's position were right, absurd consequences would follow. It would mean that admitting a reasonable estimate in advance of the cost of works to be done would make a lessee (finally) liable for work that was, once undertaken, unreasonable in amount (as is the case here, in part), and even, presumably, liable for work that was never done at all (as is also the case here, in part). The state of affairs here is that the Applicant was obliged to pay the advance service charge, and then subsequently to have been credited with the surplus arising because the quality of the work (or some of it) was unreasonable or not done. Our task is not to undertake that accountancy exercise, but to determine the reasonableness and payability of the final service charge demand.

The cost of the major works

40. At the first hearing on 5 February, we had before us photographs provided by the Applicant showing what we considered to be very poor quality workmanship and persisting disrepair at the property, taken within a period of up to and somewhat over a year after the completion of the works. When we put the photographs to Mr Walker, he fairly agreed that the apparent quality of the work was low. However, we were concerned that it might be the case that the photographs, being selective, did not provide a reasonable picture of the quality of the workmanship overall. If was for this reason that we decided to inspect the property. For the reasons given above, the inspection was somewhat delayed.

41. We review the work done or claimed to have been done item by item below, and give our view of what we saw at the inspection when it is relevant to do so. However, we record here our overall conclusion

following the inspection was that the photographs *did* give a fair impression of the quality of the work undertaken, with the proviso that, seen together, the quality of the work was, in some respects, if anything worse than we had anticipated from the photographs. We did take account of the time that had elapsed between the major works and our inspection in coming to our conclusions.

42. We use hereunder the headings making up the work available on a document called "Street Properties 2016/17 QHIP – Batch 3 Contract Final Account" provided in the bundle, supplemented by the more detailed material provided in the document immediately following it in the bundle, with the heading "Mount Adon Park 39A – 39D". The figures are those for the whole of the works in each case, before they are broken down by the percentage contributions attributable to each flat.

43. *General Repairs* (£531): This item broke down into three components - £450 for "external survey inspection of building", £36 for fire safety signage and £45 for "specialist fire safety". We were provided with no evidence of a survey having been prepared. We have not seen a document of that description, nor the sort of specification of works that we would expect to result from a survey. A proper survey by a chartered surveyor resulting in appropriate documentation would justify a fee of that order. However, there is nothing to suggest that anything more than a short list of jobs to be done was ever prepared, and accordingly we disallow this element of expenditure. We saw some fire safety signage in the communal hall, and are prepared to accept that, at some point, some attention was given to fire safety such as to justify the other, unhelpfully described, fee.

44. We conclude that £81 was reasonably incurred under this heading.

45. *External walls brickwork/stonework and redecoration external &/or internal* (£1,515.28 and £3,254.22): We consider these two items together. During our inspection, it would not have been possible to distinguish between work done in the former category and its subsequent decoration.

46. Overall, we concluded that the quality of the work done under these descriptions was so poor that, inspected today, it was difficult to believe that any work had been done in the recent past.

47. We observed large cracks and deformation in the original window sills both at ground and first floor level, rendering coming away, ornamental stonework on the front right hand corner of the building (as observed from the road facing the house) having broken off, very poorly repaired bricks in some places (ie coarsely accomplished infills of cement), and general significant spalling of brickwork. The quality of paintwork was very poor including poor coverage of painted surfaces, and in some places, a complete absence of paint, peeling on numerous surfaces, and

paint splatters on brickwork and windows. It was the Applicant's evidence that much of the paintwork was on surfaces that had not been rubbed down or properly prepared, and that accorded with our observation.

48. We think it right to take the exceptional step of not allowing anything for the external works covered by this category. The painting and repairing of the exterior of a building serves two purposes. It protects the fabric of the building from the elements, and serves an aesthetic function. The work we observed could not properly be said to adequately perform either.

49. The moderately sized internal communal hallway had been adequately painted, and we allow £500 for that. That is the full extent of service charges reasonably payable under this heading.

50. *Roof* (£3,901.41): The house is situated on a steep incline, going down from the road, and has a large front garden. As a result, it was reasonably easy for us to view the front elevation of the roof. Of course, there were parts of the roof that we could not view, but we were not provided with any photographs or other evidence as to work on those parts.

51. There were three elements to the charge relating to the roof. They were "repairs as required to roof slates" (£1,013.85), "extra scaffolding required for repairs to chimney stack" (£1,600), and "renew flashing plus roof ridge tiles" (£1,287.56).

52. On inspection, there were two or three missing or misplaced roof tiles evident, but no more. We could not, from that, conclude that the contractors had not done any repairs to roof tiles, whether on this face or other parts of the roof, when the works were undertaken. On that basis, we concluded that the charge for that element was reasonably incurred.

53. The ridge tiles, however, present more difficulties. On our inspection, we concluded that, on visual inspection, the ridge tiles did not look as if they had even relatively recently been replaced.

54. In order to test our views in respect of the ridge tiles, we took the decision to look at the photographs of the roof than can be seen using the Google Street View function on Google maps. This allows one to view the property on a number of dates, in this case August 2022, April 2021, April 2019 and June 2014 (we did not consider earlier dates).

55. When we did so, we concluded that, as to the replacement of the ridge tiles, the earlier photographed confirmed the view we had come to on inspection. However, when we looked at the photograph dated April 2019 – so, around 18 months or so after the work had been done – it

became apparent that new mortar had been applied to a section of the ridge tiling. That section was the lower two thirds of the ascending ridge visible on the right hand side. We concluded that, while we were correct that the ridge tiles did not appear to have been replaced, work had been done to re-seat those in that section with new mortar.

56. Accordingly, we concluded that some work had been done on the roof tiles, albeit the ridge tiles had not been renewed.

57. The short apex of the roof appears to be finished with lead flashing, and we assume that that is the flashing referred to in the more detailed document. Again, we concluded on the basis of our inspection that it was more likely than not that the flashing had not, in fact been replaced. This was confirmed by the earlier photographs. The appearance of the apex is broadly the same in the dated previous photographs.

58. As should be clear from the foregoing, we could not view, either during our inspection or using Google Street View, any part of the roof behind that which can be seen from the road.

59. On the face of it, unlike much of the rest of the external fabric of the building, the ridge tiles were in reasonable repair. In such circumstances, for a contractor to re-mortar existing ridge tiles, where the mortar was failing but the tiles themselves were in reasonable condition, is an appropriate step to take. We can see that that was done to a section of the ridge tiles visible, and we do not know what else took place behind what we can see. We do not have any alternative quotation or other assessment that would allow us to more precisely value the work that was done.

60. We conclude that, where it is apparent that some work has been done, and we cannot exclude that more was done elsewhere on the roof, the Applicant has not demonstrated that it is more likely than not that the charge was unreasonable.

61. Accordingly, we conclude that the charge in relation to the roof tiles was reasonably incurred.

62. We now consider the implications of our use of the Street View photographs. We had, in fact, shown the parties the current photograph on Street View during the first hearing (by reversing the screens available for the use of the panel in the hearing room), and they had confirmed that we had identified the correct building (which of course was in any event obvious, given our inspection).

63. We did not consider the possibility of consulting previous photographs on Google Street View before the conclusion of the hearing. For the most part, we found its use reassured us in the safety of our conclusions in

respect of the roof. It did, however, make a difference to our consideration of the charge in respect of the roof tiles, as we say above.

64. First, we do not think it improper to consult Street View per se. The function is available free to all, and is well known. It is an extension of the Google Maps mapping function. It is no less public or ubiquitous than the maps themselves.

65. Nonetheless, had it occurred to us earlier, we would have sought the Applicant's representation on the street view photographs, and, despite our having disbarred the Respondent, we would also have invited Mr Walker's observations. We have considered whether we should have sought some way of securing observations from the parties following our decision to view the photographs after the hearing, such as inviting written submissions from the parties. For the following reasons, we do not think that it would be proportionate to do so.

66. In the circumstances of this case, the one observation that changed, rather than merely confirmed, our views on inspection is that relating to the work on the ridge tiles. Both parties (despite the debarring of the Respondent) had had the opportunity to say anything they wanted to say in relation to this category of work, and the Applicant had made it clear that she could say little about the roof works, other than her general concern about the quality and extent of the work done throughout. She made the point that she did not have access to the roof, so was prevented from going further than she had.

67. While we would have invited Mr Walker's observations, there was no procedural right for the Respondent to make representations, given we had disbarred it. In any event, our use of Street View favoured the Respondent.

68. Finally, comparing the photographs before and after the works made it very clear that new mortar had been applied. It is difficult for us to envisage what either party could have said that would have made any difference.

69. None of these factors negatives the desirability of allowing representations to have been made by the parties. They are, however, relevant to the proportionality of inserting yet a further stage in this already old case. When our decision is made available to the parties, they may, within 28 days, apply for us to review our decision under rule 55 of the 2013 Rules/section 9 of the Tribunals, Courts and Enforcement Act 2007, in the context of an application under rule 52. If the Applicant, and with our leave, the Respondent, wish to make further observations on the Street View photographs, they may do so in that context, and we will consider them when we consider whether to review and amend this decision.

70. We turn to the extra scaffolding for repairs to the chimney stacks.

71. From the road, we could see nearly all of the two chimney stacks towards to the front of the building, and a little of the tops of the two towards the rear of the building. It was quite clear that the pointing on the two forward stacks was old and in relatively poor condition (although not dangerously so). We also noted a deformation to bricks on the left hand edge of the left hand stack. If there had been any repairs to the chimney stacks, they were not evident; and it would have been reasonable for the Respondent to have undertaken repointing and repairs to the brickwork that we did see.

72. We could not determine from our inspection alone that *no* such work had been done. However, no repairs to the stacks was charged in the detailed document. Putting the lack of a charge for repairing the stacks with the fact that some repair would have been reasonable, we do not consider that the charge for extra scaffolding was reasonable. It would have been reasonable to have erected the extra scaffolding to inspect the stacks, and then to have decided that repairs were not necessary, had that been the case. But the evident need for re-pointing and repairs that we could observe means that that could not have been a reasonable decision.

73. No charge may reasonably be made under this element of the roof heading.

74. The sum of £2,301.41 was reasonably incurred in respect of the roof.

75. *Doors* (£845.56): While not entirely clear, it appears that this item related to the painting of the front door, and/or other doors. In any event, the Applicant did not make a particularised challenge, and we therefore do not find the sum unreasonable.

76. *Windows* (£5,744.82): This figure is derived from four headings in the more detailed document, described as follows "overhaul windows, repair window frames & cills, re putty window glass as required if window frames be timber"; "Repair/ replace deteriorated window sashes & bottom/ top rails of their frames"; "Fit window draught excluders & renew angel fillets"; and "Renew window casements & reglaze glass in timber frame, apply mastic to seal around window frame edges".

77. We were able to inspect the windows in the Applicant's flat both internally and externally, and the other windows externally. It is not easy to break down our conclusions in a way that speaks to the breakdown in the detailed document set out above, so we record our observations and conclusions in broad terms.

78. Two moderately sized sash windows had been replaced in the Applicant's flat, both to a satisfactory standard (both single glazed). There was also

evidence of repair to a further window in the flat. However, our external inspection provided no evidence that any other windows had been replaced. Those that we could see – which was, externally, most of those in the building, although obviously less clearly those above the ground floor – remained in evidently poor condition. The right hand ground floor bay window looked as if it would allow water ingress, and we could see mould growth on walls through the windows. The stone cills were in a poor or very poor condition throughout, with some large cracks, in some cases cracks running right through the stonework, deformation of the surface etc. Apart from the new windows and the repair we mention above, there was simply no evidence that any significant work had been done.

79. Taking account of what we could see on the inspection, and doing the best we can applying our general experience and expertise in relation to building costs, we think it reasonable to allow £1,500 for the work that we were able to conclude had been done.

80. *Drainage* (£198.44): We do not know, and the parties could not tell us, to what this heading related. In the absence of a formulated challenge, therefore, we cannot conclude that it was unreasonably incurred, and allow it.

81. *Scaffolding* (£2,500): Initially, the Applicant had objected to this cost on the basis that the scaffolding had been in place for a matter of months, mostly while no work was done. Mr Walker indicated that the cost was a one-off cost, not the cost of continuing rental. On this basis, we did not understand the Applicant to contest this cost. We consider it, in any event, to be a reasonable one.

82. *Preliminaries* (£4,942): We were not given a list of what cost were included in this figure. There were separate costings for design and for profit and overheads. We would usually understand a figure for preliminaries to include the provision of a site office and portable toilets for the contractors, sometimes plant, such as generators or earth movers and cherry pickers, or site fencing and security, as well as such matters such as the provision of electricity and water supplies etc, on a large scale contract.

83. The Applicant's objection was simply that she did not know what it was supposed to cover, and that on its face it appeared very high.

84. For the reasons given above, we did not have witness evidence from the Respondent in relation to this heading.

85. If we exclude the additions for professional fees and the Respondent's own management fee, the total cost of the works in the demand was £25,902. The figure for preliminaries is therefore 23.6% of the total (ie

excluding the preliminaries figure itself). The corresponding percentage for the project as a whole is slightly different, at 22.9% (preliminaries £195,104, total cost excluding preliminaries £852,834). Our understanding is that the normal range for preliminaries in construction projects is from about 5% to 15%, the upper range being reserved for the higher end of costs in relation to large scale projects, far from repairs to small domestic properties.

86. We share the Applicant's apprehension as to the amount of this cost. Were the works as described to be undertaken on a simple contract relating only to this property, we would not usually expect to see a separate charge for preliminaries at all, but if there were to be one, it would certainly not be nearly £5,000 for a converted house containing four flats.

87. However, we must also accept that it is reasonable in principle for the Respondent to undertake a major works project involving a large number of its properties. In those circumstances, some substantive contribution to the overall preliminaries costs is reasonable. However, the choice to undertake the project in that way can only be reasonable if the charges that it generates are nonetheless within the reasonable range in the context of the obligations under the lease of this particular flat. The problem we are faced with is that a charge of this magnitude in respect of these works on this building does appear to us be wholly unreasonable on its face. There is no suggestion that a site office, toilets, supplies of electricity and water or large plant, or fencing etc was actually present or used (and the Applicant's evidence was that none were evident).

88. It is reasonable for the Applicant to pay a proportion of an overall charge for the preliminaries necessary to set up and organise the project, provided that the charge to the Applicant is within a reasonable range.

89. Coming to a figure of what that would mean, in the circumstances of this case, means we cannot do much more than make an educated guess. If a charge for preliminaries were being made for an individualised contract for this building alone (which, in any event, would be unusual, as we note above), we would expect no more than, say, £300 to £500 to be reasonable. Given the nature of the contract, we cannot see that a charge at more than 5% (ie the bottom of the range for large contracts) can be justified. Rounding, we allow £1,000.

90. The reasonable figure for preliminaries is £1,000.

91. *Design* (£556.34): Again we have no evidence as to this element. The applicant objects that there was no design work required or undertaken in relation to the building. Unlike preliminaries, design must necessarily be entirely site-specific. A designer can only design something relating to a specific building. It is evident that no design can possibly be necessary in relation to the works done on this property. They are all

specified in a manner to be directly undertaken by the tradespeople concerned. A share of any design work required in relation to other properties cannot come within the repairing covenant. The costs specified under this head are not recoverable.

92. *Contractors profit and overhead* (£1,203.83). Profits and overheads are routinely charged separately from the direct costs of works in a contract of this scale, and we do not consider that this proportion of the at least putative costs of the work is unreasonable.

93. *Inflation allowance* (£708.92): Under currently prevailing conditions, an allowance for inflation in building and other costs in respect of a contract of this nature is reasonable, and there was no particularised challenge to the amount of the sum allowed. It was reasonably incurred.

94. *Calculation*: In re-calculating the reasonable service charge as a result of our conclusions above, we follow the methodology used in the Respondent's final account summary document.

95. The costs reasonably incurred under the heading "works" amount to £10,839.16 in total, which amounts to £2,956.13 for the Applicant, applying the Respondent's weighting. Added on to that are a fee of 6.06% for professional fees (£179.14), giving a total of £3,135.27. Added to this total is the Respondent's management fee of 10%, as warranted by the lease, which gives a final total of £3,448.80.

96. *Decision*: The service charge that was reasonably payable in respect of the major works was £3,448.80.

Further roof works charged in 2020/21

97. Originally, the Applicant had assumed that further roof works had taken place in each of three years. The Applicant produced section 20 notices of intent relating to roof repairs dated 23 July 2020 (estimated cost to her of £335.74), 19 January 2021 (£196.16) and 14 February 2022 (£531.62).

98. However, we think the final conclusion at the hearing was that in fact a charge had only been made for roof works in one year as part of the regular service charge. That was charged in a demand dated 21 September 2021, in the category described as "block responsive repairs". The estimated sum in this category had been £7.43. The charge when the actual service charge was arrived at was £614.89. It appears that some roof works were done in that year, but it is not clear how much of the block responsive repairs related to that, although, given the contrast with the estimate, it might be assumed that it was the bulk of that charge. We note in passing that the scaffolding was apparently still in place until well into 2022.

99. The Applicant could not say what work had been done. Her initial argument was essentially that, if further patch repairs were necessary in each of 2020, 2021 and 2022, we should infer that the initial roof works were not property conducted. Mr Walker was not able to assist us with what works were undertaken, entirely understandably.

100. Given that it was accepted that roof works were only actually charged in one year, the argument from repetition of patch repairs is not available to the Applicant. In the absence of any account of what was actually done, we do not consider that the Applicant has been able to raise an allegation that the expenditure (whatever it was) in that year was unreasonably incurred.

101. *Decision*: The service charge for block responsive repairs charged on 21 September 2021 was reasonably incurred.

Applications for additional orders

102. The Applicant applied for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings; and an order for the reimbursement of the application and hearing fees, under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13.

103. Insofar as the orders under section 20C and paragraph 5A are concerned, we consider these applications on the basis that the leases does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that was the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

104. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

105. Such orders are an interference with the landlord's contractual rights, and should not be made as a matter of course.

106. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. In this case the landlord is a large local authority.

There is no reason to suppose that allowing the applications would put it in particular difficulty.

107. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

108. The Applicant has been substantially successful, reducing the overall charge for the major works, the key issue, from £8,241.52 to £3,448.80. That somewhat underestimates the Applicant's level of success, as (as we note above), she did not make substantive challenges to some elements of the charge. As part of the overall circumstances relevant to our decision, we take into account the seriously defective nature of a substantial proportion of the major works. In the circumstances, taken as a whole, we think it appropriate to make an order in favour of the Applicant as to the whole of such legal costs as might be charged (either through the service charge or as an administration charge), rather than to apportion our orders.

109. *Decision*: The Tribunal orders

(1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant; and

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished.

Rights of appeal

110. 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 London regional office.

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

112. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

113. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Prof Richard Percival **Date:** 5 June 2024