FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference HMCTS Code	:	**CAM/26UC/LSC/2023/0021 F2F (day one) and CVP Remote (day two)**
Properties	:	**26,32,34,36,38 and 40 Bridge Street, Hemel Hempstead, HP1 1EF**
Applicant	:	**Zas Venture Limited**
Representative	:	**Lester Dominic Solicitors**
Respondents	:	**The leaseholders named in the application**
Representatives	:	**1.Brethertons LLP (26,34,36,38) 2.Mr Islam (32) 3.Mr Ullah (40)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Ruth Wayte Mr Gerard Smith FRICS**
Date of Hearing	:	**29 and 30 July 2024**
Date of decision	:	**27 August 2024**

DECISION

Decisions of the tribunal

(1) Nothing is payable by the Respondents in respect of the Applicant's expenditure for the year ending 24 March 2021.

(2) £300 is payable by each Respondent in respect of the Applicant's expenditure for the year ending 24 March 2022.

(3) £175 is payable by each Respondent in respect of the Applicant's expenditure for the year ending 24 March 2023.

(4) The tribunal makes the determinations as set out under the various headings in this Decision.

(5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Respondents through any service 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 payability of certain service charge items for three years from the year ending 24 March 2021 through to 24 March 2023. The application stated that the total amount in dispute was over £107,000, with almost £18,000 claimed from each leaseholder. The main item was work to the first floor yards and walkway ("the resurfacing works"), carried out in 2022 at the stated cost of £96,000.

2. As stated in the application, a previous decision of the tribunal dated 17 March 2022, case reference CAM/00KA/LDC/2021/0035 is relevant to the resurfacing works. More detail is provided when considering that item below but in summary that was an application for dispensation from consultation made by the Applicant after the works had been commissioned. After a hearing, by which time the works had been completed, the tribunal gave dispensation but subject to conditions and caveats. That application also concerned the Head Leaseholder of 28 and 30 Bridge Street, Hightown Praetorian & Churches Housing Association Limited ("Hightown"). The Applicant had not included them in this application due to differences with the Head Lease which covers both properties and the additional complicating factor that the freehold for number 28 is no longer held by them. However, the contributions sought by the Applicant were generally divided by 8 to reflect the 8 maisonettes numbered 26 to 40 Bridge Street.

3. Following a case management conference held on 2 May 2024, the hearing was listed for 29 and 30 July 2024. The tribunal inspected the property at 10am on the first day and the hearing was held at nearby premises by consent to avoid unnecessary delay. The second day was held by CVP (video conferencing). The Applicant was represented at the hearing by Counsel Thomas Cockburn, with director Asad Chaudhary and property manager Qalab Ali (Westcolt Surveyors) as witnesses. The leaseholders of 26, 34, 36 and 38 Bridge Street were represented by Counsel Harley Ronan ("the represented leaseholders"), with Graham Lambert of number 36 and their expert John Byers of LBB Chartered Surveyors as witnesses. Mr Islam acted as the representative for his father in relation to number 32 and Mr Ullah for his father of number 40 Bridge Street.

4. Both counsel had provided skeleton arguments in advance of the hearing and the parties had completed a schedule of disputed service charges as required by the directions. That schedule identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of management fees charged for each year;

   (ii) The payability of the contribution sought in relation to building insurance taken out by the Applicant for each year;

   (iii) The payability and/or reasonableness of the charge for the resurfacing works and associated professional fees;

   (iv) The payability and/or reasonableness of other disputed items for 2022 and 2023 as detailed below.

   (v) Whether an order should be made under section 20C of the Landlord and Tenant Act 1985.

5. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows. The relevant legal provisions are set out in the Appendix.

The property and background to the dispute

6. The six maisonettes are part of a parade constructed in the development of Hemel Hempstead as a new town in the 1950s and 60s. The parade consists of retail shops with residential flats situated above. There are flat roofs over the flats and shops, with the main roof of the shops forming an access walkway and terrace for the flats, which each benefit from a private front yard and have shared use of a communal drying area, accessed by steps the other side of the walkway. The yards

were originally separated from the walkway and each other by brick walls and planters. There was also a brick wall between the walkway and the drying area. These walls were mainly replaced with mesh fencing as part of the works in issue, although parts of the wall between the walkway and the drying area remain. From street level, access to the flats is via a staircase at either end of the parade. At the hearing it was confirmed that one of those staircases falls within the freehold title of Mr Ullah's father. It appeared that the other staircase may well now be in the ownership of the Applicant but no submissions were made to that effect or as to the date of transfer. This decision therefore proceeds on the basis that as at the date the service charges were demanded from the respondents, neither staircase was in the ownership of the Applicant.

7. Before the Applicant bought the freehold in or around January 2016, it was owned by a company called Hazel Grove Limited, which Mr Byers confirmed owned a large part of the new town estate. Mr Lambert confirmed in his witness statement that there had been little maintenance carried out by Hazel Grove and a corresponding low level of service charge. The communal areas, in particular, were (and remain) in a poor state of repair. After the Applicant purchased the property, they appointed Land Commercial Surveyors as their managing agent in or around May 2018. A list of works and a bill was sent to each leaseholder on 24 May 2018, amounting to £2,755.17. Mr Lambert paid that amount, despite the fact that there is no entitlement to an interim service charge from any of the lessees as set out below.

8. It would appear that Land Commercial Surveyors were unable to raise sufficient monies for the planned works and in due course the Applicant appointed a new managing agent, Westcolt Surveyors. Again, they indicated that they wished to improve the property and Mr Ali held a meeting on site in May 2021 to discuss leaseholders' concerns.

9. Following that meeting a section 20 Notice of Consultation was served on the leaseholders by Westcolt on 26 May 2021. As detailed below, the notice mainly referred to works apparently required following a Fire Risk Assessment dated 16 January 2021. There was passing reference to reinstating insecure brick walls on the first floor walkway and terrace.

10. On 14 June 2021 Hertfordshire Building Control served a notice under section 78 of the Building Act 1984 in respect of loose brickwork to the wall between the walkway and the drying area and coping stones on the top of the wall of the drying area overlooking the service yard to the rear of the parade. In his evidence to the tribunal dealing with the application for dispensation, Mr Ali said that Notice prompted the condition survey carried out by Mr Madden, a consultant for Westcolt, on 22 June 2021 (report dated 9 July 2021). That said, the tribunal

dealing with the dispensation application found that the immediate danger identified by the council had been obviated prior to that visit by the removal of the loose brickwork and coping stones by Mr Islam and one of the leaseholders.

11. On 12 and 19 July 2021 the leaseholders contacted Mr Ali in relation to clearance of the refuse caused by the removal of the brickwork, which had fallen onto the drying area. He confirmed that contractors had been instructed and on 22 July 2021 two skips were delivered to the rear service yard.

12. On 24 and 27 July, 10 and 21 August and 1 September 2021 the Applicant's contractor attended the site and removed the remaining brick wall between the walkway and the drying area, together with all the boundary walls to the leaseholders' yards. Those brick walls were replaced with metal mesh fencing.

13. Over the next couple of months, the resurfacing works were carried out as set out in more detail below. They were said to have been completed by the time of the hearing of the dispensation application in March 2022.

14. On 14 June 2022, Westcolt sent an end of year certificate of expenditure for 2020/21 to each leaseholder, requesting £815; an end of year certificate of expenditure for 2021/22, requesting £15,661.88 and a request for an estimated service charge of £3,521.50 (adding up to a budget of £28, 172) for 25 March 2022 to 24 March 2023.

15. On 9 May 2023, Westcolt sent the certificate of expenditure for 2022/23 to each leaseholder, requesting £1,376. On 10 May 2023 Westcolt sent a further demand to each leaseholder for £3, 884 (a total of £31, 072) being a payment on account based on a budget for 25 March 2023 to 24 March 2024.

16. All of the service charge demands were based on a 1/8th contribution, reflecting the eight maisonettes but ignoring the commercial leases below. The invoices for contributions towards the Applicant's insurance premium were dealt with slightly differently, as detailed in the appropriate section below.

The leases

17. Unfortunately, the relevant provisions in several of the leases are slightly different and therefore it is appropriate to set out the relevant parts in turn:

Number 26

"*The Building*" is defined as Shop No.8 and Maisonette No.26 Bridge Street. "*The Demised Premises*" includes the yard in front of the Maisonette and the boundary walls.

By Clause 2 (3)(a) the tenant covenants:

"*To pay to the Lessor as and when demanded the proportion fairly attributable to the Demised Premises…of the costs and expenses properly and reasonably incurred by the Lessor in the period of twelve months expiring on the Twenty fifth day of March in each year…in carrying out any of its obligations under Clause 3(3) hereof (including as the Lessor may deem it desirable or expedient to do so the costs to the Lessor of providing a caretaker to carry out such obligations) or in repairing renewing replacing maintaining or cleansing any mains pipes sewers drains conduit wires cables or other conducting media for the supply to the Demised Premises in common with other premises of the services mentioned in paragraph (3) of the First Schedule hereto or in periodically resurfacing the entrance hallways stairways landing corridors and passageways (if any) coloured yellow on the Plans numbered 1 and 3 annexed hereto or in carrying out any repairs or maintenance or cleansing in respect thereof and of painting the exterior of the Demised Premises…*".

For this lease, the yellow colouring only covers that part of the walkway immediately in front of the maisonette and yard and around the side to where the communal staircase from street level joins the walkway.

By Clause 2 (3)(b) the tenant covenants:

"*To pay to the Lessor as and when demanded a sum or sums equal to the premium or premiums…expended by the Lessor in each year for effecting or maintaining the insurance referred to in Clause 3(3) hereof*".

The landlord's obligations under Clause 3 (2) are:

"(i) *Subject to the compliance by the Lessee of its obligations hereunder to keep in repair the main walls and structural frames of the Building the exterior and roof and foundations of the Building and all such mains pipes sewers drains conduits wires cables and other conducting media as serve the Demised Premises in common with other parts of the Building but are not maintained or repaired by the local authority or any other statutory authority or competent body*

(ii) well and sufficiently to maintain repair cleanse decorate and light where necessary the entrance hallways stairways

landings corridors passageways (if any) shown coloured yellow on the Plans No.1 and 3 annexed hereto

(iii) as and when considered necessary by the Lessor to paint in a good and workmanlike manner the exterior of the Demised Premises"

Under clause 3(3) the landlord covenants:

"*At all times during the said term to keep insured the Demised Premises and the remainder of the Building with a reputable insurance office in the joint names of the Lessor and Lessee…*"

Under the First Schedule to the lease the tenant has the right to pass and repass over the entrance hallways stairways landings corridors and passageways giving access to the Demised Premises. The tenant also has the right to use the drying area at the rear.

Number 32

Mr Islam's father is the original tenant (with his wife) under this lease which defines the "Demised Premises" as the maisonette. The yellow colouring covers the whole of the walkway and the staircases at either end of the parade and the drying area is coloured blue. Rights of access and use are given to both areas as above and include under 1 (5) "*The exclusive right at all times for the tenant to use the paved patio area shown for the purpose of identification only hatched black on the said drawing situated to the rear of the first floor of the Demised Premises".*

By Clause 2(3) the tenant covenants:

"*To pay to the Landlord on demand a fair proportion…of any costs charges and expenses properly and reasonably incurred by the Landlord in maintaining repairing renewing rebuilding cleansing and discharging any outgoing in respect of any party walls party structures sewers drains gutters pipes ducts conduits meters wires cables and other conducting media and also the said refuse chutes and periodically resurfacing the accessways shown coloured yellow on the said drawing and other things the use of which is common to the Demised Premises and other premises*"

There is no covenant to contribute to the Landlord's insurance, despite the covenant by the Landlord in Clause 3 (2) to:

"*At all times during the said term to keep insured the Demised Premises and the remainder of the said Building with a reputable*

insurance office in the name and for the benefit of the Landlord (but with the Tenant's interest recognised by the insurance office)…"

Under Clause 3(3) the Landlord also covenants:

> *(a) To keep and maintain in good and substantial repair order and condition as far as reasonably practicable the structural frame of the Demised Premises including the foundations floor slabs main load-bearing walls pillars ceiling and roof and external walls thereof but not including any doors or window frames*
>
> *(b) To use its best endeavours as far as reasonably possible to keep the access way the said Building in good decorative repair and condition and to keep the same and also the said refuse chute well and sufficiently cleansed and lighted*

Numbers 34, 36 and 38

These leases again define the Building as the shop and maisonette above. They are in materially the same terms as the lease for number 26 in respect of the tenant's liability to contribute to the landlord's costs at clause 2(3) and insurance at 2(4) ("*as referred to in clause 3(3)*"). The landlord's liability to insure in clause 3(3) is also the same i.e. in joint names.

The landlord's covenants to repair are differently worded at clause 3(2):

> "(i) *Subject to the compliance by the Lessee of its obligations hereunder to keep in repair the main walls and structural frames of the Building the exterior and roof and foundations of the Building and all such mains pipes sewers drains conduits wires cables and other conducting media as serve the Demised Premises in common with other parts of the Building but are not maintained or repaired by the local authority or any other statutory authority or competent body*
>
> *(ii) Well and sufficiently to maintain repair cleanse decorate and light where necessary the common parts of Bridge Street aforesaid including the entrance hallways stairways landings corridors passageways refuse chutes and drying area which are provided or made available by the Lessor for the benefit of the Demised Premises in common with other premises in Bridge Street aforesaid*

(iii) Periodically to clean the windows of the common parts and to comply with the requirements of any competent authority in relation to fire precautions and to maintain the door answerphone equipment

(iv) As and when considered necessary by the Lessor to paint in a good and workmanlike manner the exterior of the Demised Premises

(v) To maintain and as and when considered necessary by the lessor to repair the yard shown hatched black on the said drawing

(vi) To maintain the wired Radio and Television system connected to the Demised Premises."

The tenant has the right of access over the access way coloured yellow, which extends the full length of the walkway and includes both staircases, and use of the drying area "*in common with lessees and occupiers of other premises in Bridge Street*".

Number 40

This lease is in materially the same terms as the above leases in respect of the tenant's liability to contribute to the landlord's costs at Clause 3(3) and insurance at 3(4). The landlord's liability to insure the Building at clause 4(3) is also the same. The difference here is with the wording of the landlord's repairing covenant at clause 4(2):

"*To keep in repair the main walls and structure (including the ground floor ceiling joists but not the first or second floor ceiling joists) and roof of the Building and all such mains pipes sewers drains conduits wires cables and other conducting media as serve the Demised Premises in common with other premises but are not maintained or repaired by the local authority or any other statutory authority or competent body*".

The rights of access and shared use of the drying area are also the same as the leases for 34, 36 and 38.

18. None of the leases contain any modern service charge procedure requiring statements of expenditure or accounts. There is also no ability for the landlord to obtain monies in advance of expenditure or build up a reserve fund.

19. In terms of the Applicant's interest, at least until recently, its title only covered 8-40 Bridge Street, excluding both staircases but including the

commercial premises on the ground floor. Mr Ali's second witness statement had exhibited an email from Westcolt to Mr Ullah dated 1 June 2021 confirming that at that date the communal stairway at 2-6 Bridge Street and the rear car park was owned by Kitchcap (Abbey) Ltd and the other side of the parade including the other staircase was owned by Mr Ullah's father. That email confirmed that Westcolt are only instructed by the Applicant and therefore only focused on their client's demise. That same email contains some apportionment of service charges between the residential and commercial users, on the basis of shared use and states that Westcolt plan to use the same process for other works once they have their condition survey for the block.

Disputed service charges 2020/2021

20. The certificate of expenditure and demand dated 14 June 2022 set out two items for 2020/21, namely management fees of £2,800 and Building Insurance of £3,720. It would appear that 12.5% or £815 was sought from each leaseholder, despite the fact that the lease for number 32 contains no tenant's covenant to contribute to the landlord's cost of insurance. In any event, the Applicant has conceded that since the insurance costs were incurred by them more than 18 months before the demand, they are not payable by virtue of section 20B of the Landlord and Tenant Act 1985 ("the 1985 Act").

21. That leaves the management fees of £2,800. They were disputed by the respondents on the basis that they were not recoverable under the lease, may have been incurred prior to 14 December 2020, were not reasonably incurred or reasonable in amount.

22. Mr Ali, a director of Westcolt Surveyors, confirmed in his first witness statement that his company had been managing the maisonettes since early 2021. The bundle contained a management agreement dated 20 January 2020 and in cross-examination, Mr Ali clarified that although his company had been appointed at that time, due to a dispute between the freeholder and their previous agents, in practice his work did not start until 2021.

23. The primary objection to this item for this year and subsequently is that the lease does not provide for recovery of managing agents' fees. The Applicant accepts that there is no specific clause but maintains that they are payable as part of the cost of "carrying out" the Landlord's obligations or similarly a part of the landlord's repairing obligations for those leases which are phrased differently. Mr Cockburn relied on *Norwich City Council v Marshall* [2008] LRX/114/2007 where the President held that the lessee was required to pay a fair share of the landlord's supervision and management costs in complying with the Council's obligations to keep the property in repair, despite the lack of a specific clause in respect of those costs. That said, wider management

costs would not be payable but the President indicated that consultation on major works and service charge statements might be, depending on a finding by the tribunal that the expenditure was reasonably incurred in complying with the obligations in the lease.

24. Mr Ronan, for the represented leaseholders, argued that the managing agents' costs were not a cost of performing the works but more accurately a choice by the Applicant to delegate or outsource the act of arranging the work. In any event he argued that the costs were not as a matter of fact the costs of carrying out any works, pointing to Mr Ali's second witness statement where he provided a long list of the work carried out by Westcolt, which made only passing reference to the maintenance and repair of the property. He also argued that the costs were not reasonable due to the poor service by Westcolt, for example the persistent habit of claiming interim payments not due under the lease. In cross-examination of Mr Ali, he came up with a further reason to object to the fees on the basis that the agreement appeared to require 3 months' notice to terminate after the initial 12 month period, making it a Qualifying Long Term Agreement that required consultation. Mr Ali had apparently not understood his agreement to require any additional notice.

25. Mr Ullah and Mr Islam also relied on the lease in support of their argument that the management costs were not recoverable. In addition, Mr Islam had found several poor reviews of Westcolt's service on line, which he maintained were an accurate reflection of the quality of their work. Mr Ali replied that the reviews all related to a particular property where 11 out of 110 leaseholders were dissatisfied with the result of another tribunal.

The tribunal's decision

26. The tribunal accepts that *Norwich City Council v Marshall* is authority which supports payment of managing agents' fees if the expenditure is incurred in relation to the Landlord's obligations under the lease (and was "*properly and reasonably incurred*" as required by the leases). The fees will also be subject to the statutory protections in section 19 of the 1985 Act, namely they must be reasonably incurred, of a reasonable standard and reasonable in cost.

27. Westcolt's invoice for 2020/21 is dated 29 January 2021 and lists services from 23 March 2020 to that date, including preparing and issuing a service charge budget, sending service charge demands, organising service contracts and keeping records of expenditure. As detailed above, the lease does not require a budget and there is no provision for payment of an interim service charge. The first demands for actual costs were not in fact sent to the leaseholders until June 2022 and the only items claimed for 2020/21 are the management fee of £2,800 and the insurance. The first contact with the leaseholders to

discuss works to the property took place in or about May 2021, after the end of the first period in dispute.

28. In the circumstances, there is no evidence to support the Applicant's claim that Westcolt were carrying out their obligations under the lease in 2020/21. There are some emails in the bundle dealing with the apparent dispute between the Applicant and their previous agents but of course this is not evidence of Westcolt carrying out repairs or other works. None of the alleged work carried out by Westcolt in their invoice dated 29 January 2021 relates to the Applicant's obligations under the lease and in fact, there is no evidence that any of it was actually done at that time. That is consistent with the fact that both Mr Chaudary and Mr Ali confirmed in their witness statements that Westcolt only started to manage the block in 2021. Westcolt may have commissioned a Fire Risk Assessment in January 2021 but that is dealt with below as the invoice is dated 2 February 2022. The tribunal therefore determines that nothing is payable by the leaseholders in respect of the management fees for 2020/21.

Disputed service charges for 2021/22

29. The end of year expenditure certificate sent to the leaseholders on 14 June 2022 lists the following items:

Management fee	£2,800
Building Insurance	£4,360
Section 20 consultation	£2,000
Fire Risk Assessment	£648
Asbestos survey	£300
Condition survey	£2,000
Fly-tipping clearance	£3,587
Resurfacing works	£96,000
Professional fees at 12%	£12,000
Accounts	£1,600
Total	£125,295

The Applicant has since withdrawn the claim for accountancy fees as there is no provision in the lease for their recovery and indeed for any accounts.

Resurfacing works and professional fees

30. Continuing with the reverse order, we will next consider the resurfacing works and professional fees claimed by Westcolt in respect of those works. The Certificate of Expenditure actually described the works as the "Removal and Disposal of First Floor Roof/Walkway Surface and Supply and Install First Floor Roof/Walkway Resurface". The witness statement by Mr Chaudary, the sole director of the Applicant company,

stated that these works needed to be carried out urgently due to the water ingress onto the ground floor commercial units and the damage that was being caused to the structure of the building. Although no expert or other evidence was provided in support of this claim, Mr Ullah and Mr Islam maintained that in the circumstances, the commercial properties should pay their share of the work. This led to the tribunal requiring copies of the commercial leases to be included in the hearing bundle.

31. Mr Chaudary described the shop leases as FRI or fully repairing and insuring. He was less clear about why the works to the roof of those properties should be paid entirely by the residential leaseholders above. In fact, all of the commercial leases contain provisions requiring the lessees to pay a share of the insurance and contribute to the landlord's costs of repairing the common parts/those parts of the Building outside the commercial demise and used in common with others in addition to being responsible for their own repairs. As stated above, several of the leases identify the Building as the shop and maisonette, confirming the relationship between the two. Mr Ali had recognised that the insurance, taken out by the Applicant in respect of the shops and flats, should be apportioned between the shops and the flats but again was less clear about why the works to the roof were not, despite his email referred to in paragraph 19 above, maintaining that he was acting on the owner's instructions in charging the entire costs to the residential leaseholders.

32. Reverting to the works themselves, the represented respondents maintained that no charges were payable as the works were not reasonably incurred and were not of a reasonable standard. Mr Ronan also argued that the dispensation given by the tribunal in the previous decision did not cover the works and the costs were not incurred in the relevant period. Mr Ullah maintained that the Applicant has not incurred £80,000 + VAT at all, having established that the invoices from the stated contractor had been created in 2024 and obtained alternative quotes for the same works at a much lower cost.

33. The Applicant's justification for the works started with the condition survey carried out by Paul Madden, a consultant working for Westcolt, dated 9 July 2021. In his report Mr Madden, who did not provide a witness statement or give evidence, considered the walkway, enclosed front yard spaces and the drying area. He noted that the majority of the yard spaces were in reasonable order, with some small ponding areas and a patch to the surface of number 36. Part of the walkway was noted to have a missing section of mineral felt and part of the felt was lifting. He concluded at paragraph 2.13 that "*The patch of lifting felt requires replacing and the entire walkway having a new surface finish applied. The surface of the drying area also requires a new surface finish. The yards ideally require unifying and a new surface finish applied. Any paving slabs or promenade tiles would require lifting and removing*."

34. An undated Specification of Works was also prepared by Mr Madden for Interface Properties Limited which covered all the works in the Condition Report and identified the resurfacing work as follows:

"*3.1.3 Strip off and remove any overlaying coverings to the existing asphalt, including paving slabs and promenade tiles and dispose of.*

3.1.4 Prepare existing surfaces and apply new fibreglass coating, Fibrespan or similar approved, in accordance with the manufacturers recommendations. New coating to have an insurance backed guarantee for a minimum of 15 years."

35. As stated above, the Applicant did not consult with the leaseholders in respect of these works but subsequently applied for and obtained dispensation from the statutory requirements. Dispensation was given in respect of the resurfacing of the walkway and maisonette yards as set out in the specification but not in relation to the boundary walls for number 32 or replacement of the walkway wall with mesh fencing. It was made a condition of dispensation that no charge be made to the leaseholders in respect of the replacement of their boundary walls and planters with mesh fencing. Mr Ali gave evidence at that hearing and stated that the works cost approximately £114,000 as opposed to about £200,000 to reinstate the original layout, exclusive of VAT. The tribunal was clear that the cost of resurfacing would be a matter for an application by either party under section 27A (paragraph 106) but calculated the cost of the works as stated by Mr Ali as being £80,000 plus VAT (having deducted the estimated cost of the wire fences – paragraph 108).

36. Mr Ali had also confirmed in those proceedings that the works had been carried out by Amira Group Ltd. However, the only invoices disclosed in these proceedings came from Essex Shopfitters Ltd, dated 17 February 2022 (resurfacing works) for £80,000 plus VAT and 21 February 2022 (fencing) for £15,000 plus VAT. As part of his response to the Applicant's Statement of Case, Mr Ullah pointed out that both of these invoices were actually created in March 2024, which resulted in a letter from Essex Shopfitters Ltd to the Applicant dated 14 May 2024 confirming that although the invoices had originally been raised on the stated dates, the Applicant could not find them and as the laptop which created the original invoices had been stolen, they needed to be recreated. The letter states that the works were carried out by Essex Shopfitters Ltd and an unnamed contractor. Again, Mr Ullah pointed out that Essex Shopfitters Ltd starting trading on 29 December 2021, after the works had been completed. In response, Mr Chaudary in a witness statement dated 17 June 2024 stated that the Director, Aziz Nasir had started the works as a sole trader operating as Sign "Management" Solutions which was subsequently taken over by Essex Shopfitters Ltd. No mention was made of the Almira Group in the statement but when asked about them by Mr Ronan, Mr Chaudary

stated that although they had quoted for the works, "due to issues" Mr Aziz took over the job.

37. Mr Chaudary's witness statement also exhibited an "Interface Payment Schedule", supported by copy bank statements said to evidence payment to "the company" for the works as per Mr Aziz's instructions. That listed monies paid to Sign Maintenance Solutions and Essex Shop Fitters over a period of time from 28 May 2021 to 4 May 2023. Monies from three different bank accounts (two in the name of Interface and one in Zas), including cash from bank and cash from rents were said to amount to £117,586 and therefore prove that the cost of the works had been incurred by the Applicant.

38. In addition, Mr Ali had obtained a "specification after the event" dated 26 May 2024, from a quantity surveyor working for Westcolt. It was unclear where the information to compile the specification had come from, Mr Chaudary states in his witness statement that a surveyor visited the site but the specification refers to the contractor's "visual report". Over £7,000 for mesh fencing, together with several other unevidenced items, were added together to arrive at a total of £96,018.93, using Building Cost Information Service (BCIS) figures – commonly used for insurance claims.

39. The represented respondents had obtained expert evidence which supported their challenge as to the need for, cost and standard of the works. Mr Byers had produced two reports: dated 8 April 2024 and 28 June 2024. In Annex C of his first report he considered paragraph 3.1.4 of the Specification. He was unable to conclude whether the works were necessary (as opposed to patch repairs), he considered the cost of £96,000 to be unreasonable and made the following general comment: "*From photos provided to me from when works were underway, a new fibreglass coating appears to have been laid over oriented strand boards (OSB) which were loose laid over the old (probably original) asphalt coverings. I do not know why the boarding was added. It has resulted in a poor, unstable and uneven roof finish. In several places patch repairs can be seen to have been carried out already, where I assume leaks have arisen. Numerous areas of covering are lifting underfoot. The coverings are uneven, leaving large areas of ponded water which are wet and slippery. The roof covering work is not of a satisfactory standard.*" He also concluded that given the way the work was carried out it "*is probably of no, or limited value to the property*".

40. At the time of his first report, Mr Byers only had the Condition Survey and Specification. Once the invoices from Essex Shopfitters Ltd ("ESL") had been disclosed by the Applicant, he prepared a supplementary report specifically looking at the cost of the works. He pointed out that the work was undertaken on parts of the roof which were not within the Applicant's title and should therefore be reduced to the correct surface area, reducing the price quoted by ESL to £80,640,

calculated at £274.29/m². However, he considered this price was too high even for work of a reasonable standard, stating that from his experience £160/m² was the average price he would expect. That, together with the additional work caused by the removal of the boundary walls, led to a further reduction to about £48,790 + VAT as a reasonable cost. However, given the poor quality of the work, he felt that it would probably have to be done again in short order – estimating 2-3 years as the lifespan of this roof as opposed to 20-25 years. Taking that into account he considered that the reasonable cost of the roof was in the range of £11,709.60 to £14, 637.

41. Mr Byers was cross-examined at length by Mr Cockburn for the Applicant. He accepted that the original surface to the walkway and terrace was many years old and that if the patches of felt were lifting, leaks would probably be caused to the commercial premises below. Eventually that would cause damage to the concrete slab beneath. However, he stated that the resurfacing works undertaken were not suitable, given the use of the roof as a walkway and terrace for the flats. They may have been a benefit to the commercial premises below, at least in the short term but provided no real benefit to the leaseholders, particularly when you took into account the ponding caused by the uneven finish and slippery conditions during wet weather. His preference would have been for a heavy-duty finish laid over the original asphalt, protected by promenade tiles along the walkway and in the yards to the flats. Having been taken to photographs showing that the boards had been laid in wet weather, which would cause further damage, he proposed that his previous assessment of the reasonable cost of the works should be further reduced by 25% or more to reflect the poor workmanship and failure to follow the specification.

42. Mr Ullah had also made enquiries about the likely cost of the works. He had taken photographs as the work was being carried out and pointed out that the contractor had used 11mm OSBs as opposed to the 18mm claimed. He provided evidence to show that the cost of the materials used was about £10,000 at most. He had also obtained alternative quotes of £65-70 per m² from First Rate Flat Roofing (using 18mm boards, a 600g fibreglass system in anti-slip and with a 10 year insurance backed guarantee) and HomePro, using Fibrespan, which he believed provided the actual coating, for £29,690 plus VAT. He admitted that his measurements were probably too low but submitted that his evidence showed that the original price was excessive, even without taking into account the quality of the work.

43. The Applicant failed to obtain its own expert evidence but in response to Mr Byers' first report, Mr Chaudary's witness statement clarified that given the impact of Covid on building projects at the time, the likely costs of following the recommendations of Paul Madden and the leaks to the commercial premises below, "*The landlord's mitigating position in the interest of all concerned parties, being the leaseholders, the commercial tenants and the council was to carry out the urgent works*

as an interim temporary measure to prevent any further water ingress into the commercial unit and to prevent damage to the structure of the building." He admitted that the works did not correspond with the schedule and claimed the costed schedule referred to in paragraph 38 identified the works actually undertaken.

44. In cross-examination, Mr Chaudary was unable to be specific about the difference between the actual works and the specification. He also claimed that it was Mr Ali's decision to depart from that specification. He confirmed that he had used Mr Aziz and his company for other works to different properties over the years and confirmed that he also became his tenant but after the works had been completed and only for use as a registered office address with many other companies. When challenged as to the date of some of the payments in the schedule referred to in paragraph 36, in particular a payment of £4,445 made on 28 May 2021, prior to the works starting, Mr Chaudary claimed it was for materials.

45. The hearing bundle contained many photographs of the works as they progressed, mainly taken by Mr Lambert and Mr Ullah. Mr Lambert's witness statement, on which he was not challenged by the Applicant, detailed the removal of his private fencing without warning, while he and his wife were away and a conversation with Qal (Mr Ali), who assured him that once the floor was complete it would be reinstated. Once he returned from holiday, he witnessed the work which was being carried out by two workers, initially with hand tools before he allowed them to use his power supply. His fencing panels were used as temporary barriers once the wall to the drying area had been demolished and despite Mr Ali's reassurances, ugly mesh fencing was erected in place of the garden planters and brick walls. Mr Lambert also witnessed the sheets of OSB being screwed into the old surface with standard 50mm screws, with no effort being made to level the surface. After the boards had been laid, a light green layer of glue was provided. This work took place during a very wet week in October 2021 with no attempt to protect the boards from the weather. No attempt was made to advise the leaseholders which areas had been treated, which resulted in several accidents. The following stages of the fibreglass surface and dark green paint covering were also carried out without guidance to the occupants, who had to use the area to access their properties.

46. Once the work was completed, it initially looked reasonable and he was informed the floor came with a 25 guarantee. However, it soon became clear that the work was of a poor quality. There was significant ponding in wet conditions, turning to ice in cold weather and making the surface slippery even in warmer conditions. Many areas have also become "bouncy" where the OSB was not secured properly, these areas split the surface and have been patch repaired with some form of white, unsightly resin. He considered that the works were unsuitable for an area which has a large amount of foot traffic. He considered that the

leaseholders should not have to pay anything for the works and in fact the Applicant should be reimbursing them for the removal of their brick boundary walls and planters.

47. Mr Islam had also provided a written statement from Priscilla Boateng, his father's tenant since late 2018. She confirmed that her front yard was in a much poorer condition following the works than beforehand.

48. Mr Ali presented himself for cross-examination on the second day of the hearing. He maintained that the resurfacing works were "client-led". The Applicant had chosen the contractors and he was unable to be clear about what the changes to the specification were and even the name of the subcontractor who had applied the fibreglass coating. He accepted that there was no evidence of health and safety on site during the works but maintained that he had raised issues with the contractor at the time.

49. For completeness, a guarantee from ESL was produced in the Bundle. It records the installation being completed to the satisfaction of the "owner/purchaser/tenant" on 28 February 2022. It is for 20 years, does not have insurance backing and contains a number of conditions and exceptions. Most notably, it states that "*ESL cannot be held responsible for the failure or poorly installed building products (materials) that have been installed by outside contractors underneath the ESL roofing system*" or "*damage caused by excess foot traffic*". It also states that the guarantee will be revoked if any outside contractors walk on the roofing system without permission. Mr Chaudary stated that the repairs had been carried out by ESL under the guarantee but Mr Byers thought it was of little value and was written for a roof rather than a walkway.

50. Mr Cockburn argued for the Applicant that the costs of the work were recoverable under the leases, although acknowledged that the plan for number 26 limited their liability to just a small area of the walkway. He maintained that there was evidence from Mr Chaudary as to the need for the works but they were temporary, with a more permanent strategy to be introduced in due course. He accepted that there were some difficulties in proving the costs incurred by the Applicant but submitted that Mr Byers had given figures for the value of the works, which were of some benefit to the leaseholders.

51. Mr Ronan in response stated that the tribunal could not be satisfied that the stated costs had been incurred, he invited the tribunal to conclude that Mr Chaudary's evidence was evasive, inconsistent and inherently unreliable. He also argued that the dispensation given by the tribunal was for the works in the Specification, not the temporary works the Applicant now states were done as an alternative. In any event the costs were not reasonably incurred. There was no evidence that the works were urgent or required, no explanation as to why a

proper tender had not been undertaken and the overall cost was patently unreasonable. The commercial leases apparently have benefited from the works but the leaseholders have not. In the circumstances, nothing was payable by them.

The tribunal's decision

52. As stated above, the tribunal inspected the premises on the first day of the hearing. The surface of the walkway and yards was faded and patchy. The weather was warm and sunny but there were some remaining wet patches from rain over the previous week. Ridges caused by the edge of the boards were clearly visible, together with the repairs carried out since the work was completed just over two years earlier. The walkway in particular was very bouncy, providing clear evidence that the boards underneath were insecure. The tribunal agreed with Mr Byers that the area would probably need to be completely resurfaced in the next 2/3 years.

53. In general, the tribunal found the Applicant's evidence unsatisfactory. Both witnesses were vague and evasive, each blaming the other for the issues with the works. The documentary evidence was similarly unsatisfactory, in particular as to the actual works done, the identity of the contractors and the actual cost.

54. In all the circumstances, the tribunal determines that nothing is payable by the leaseholders in respect of the resurfacing works. The Applicant has failed to meet their evidential burden that the works undertaken were required or to establish the actual or reasonable cost. The original Condition Survey recorded the yards as being in a reasonable condition and this is supported by photographic evidence in the bundle and the witness statement of Mr Islam's tenant. No evidence was provided by the Applicant to show the site of the alleged leaks into the commercial premises below. If a temporary repair was indeed necessary, why could it not have been limited to the walkway at a much lower cost?

55. In any event, the tribunal does not accept the invoice from ESL is evidence of the cost of the works. The letter from ESL explaining why it was (re)created in 2024 is not credible. An "after the event" specification is also of no real evidential value but the tribunal notes that the cost stated in it for the "installation of new fibre resin system including sundries to roof as per photos" is £31,859.50. This figure is similar to the quotes obtained by Mr Ullah and Mr Byers' estimates and in our judgment probably brings the likely cost of resurfacing the walkway and terraces nearer to around £40,000, or half the cost claimed by the Applicant excluding VAT, once other costs are taken into account. For the avoidance of doubt, the tribunal does not accept that the Applicant has incurred that cost. The "Interface Payment Schedule" is similarly unreliable, contains a myriad of payments from and to

different entities over a timespan that pre-dates Mr Chaudary's decision to have the works done and during a period when Mr Chaudary agreed that he used ESL for work on other properties owned by the Applicant.

56. Even if the works did cost in the region of £40,000 plus VAT, those costs were not reasonably incurred and the works are not of a reasonable standard. Quite apart from the lack of evidence that a total resurface was required, the Applicant chose the wrong solution and an incompetent contractor. We accept Mr Byers' evidence that a fibreglass coating is inherently unsuitable for a roof used as a walkway and terrace. Painting that coating over insecure, poorly fitted and thin OSB sheeting has exacerbated the problem to the extent that this temporary solution will, on a balance of probabilities, only last another 2-3 years before it needs to be completely redone. In those circumstances, the cost should be further reduced to reflect that fact, we consider to the likely cost of the materials or £10,000. This is consistent with Mr Byers' evidence and represents the lifespan of only about 5 years compared to the 20 year "guarantee" by the contractor. In addition to the risk of tearing caused by the unstable surface underneath, the uneven surface is a real hazard to the residential occupants. The removal of the leaseholders' brick walls and planters, without their consent, is in breach of their leases. The replacement metal fences are out of keeping with the rest of the parade and poorly fitted, obscuring one of the staircases to the drying area. Despite the fact that the Dangerous Structures Notice was said to be one of the reasons for carrying out the works, parts of the remaining wall to the walkway remain in disrepair and were clearly not attended to at the time.

57. Assuming that the resurfacing works have cured the leaks to the commercial premises, which Mr Ullah denies, any short-term benefit is to the shops as opposed to the flats. All of the leases state that any contribution must be based on an amount "*fairly attributable*" (or similar) to the demised premises. Given the stated reason for the works and the negative impacts on the residential occupiers, we consider that the cost of them should fall on the commercial leases. This may well be different for the next time, provided that future works are properly planned and executed, real consultation is undertaken with the leaseholders and the solution is suitable for both commercial and residential occupants. That said, we consider the starting point should probably be at least 50:50, although there may be an argument for a greater percentage to be payable by the commercial premises given the relatively limited use of the roof by the residents. Of course, that will also vary given the terms of the leases themselves. Number 26 in particular only appears to be liable to contribute to a small area of the walkway.

58. Westcolt had also sought professional fees of £12,000, being 15% of the alleged cost of the works. Mr Cockburn conceded that the fee would need to be reduced to the cost of the works determined by the tribunal

but even £1,500 (15% of £10,000) is too much. Despite claiming in his second witness statement that Westcolt charged the Applicant "*for engaging professionals, project management to cover works to the balconies and walkway, for contract administration and health and safety*", he was unable to evidence any of that work. He had previously given evidence that Amira Group Ltd were the contractors. In these proceedings the contractors became ESL and neither were engaged by Westcolt, who were also unable to identify the subcontractor used by ESL. There was absolutely no evidence of any project management, contract administration or health and safety (apart from Mr Ali's alleged complaint to the contractors).

59. Again, the tribunal determines that nothing is payable by the leaseholders in respect of professional fees. Again, the Applicant has failed to satisfy their evidential burden that Westcolt provided any services to justify professional fees for the resurfacing work. Although Mr Chaudary, when asked about the works, stated that Mr Ali had made the decisions; Mr Ali maintained the works were "client-led" and could not answer any questions about them either. Given the poor quality of the works, the tribunal agrees with Mr Byers that any supervision actually carried out was of an equally poor quality and again does not justify payment. Even if any payment was justified, it would be payable in this instance by the commercial tenants given the previous finding above.

Fly tipping clearance

60. ESL had also provided an invoice dated 10 February 2022 for £2,090.17 plus VAT, said to be for the removal of rubbish from the roof terrace (drying area), including "*sofa beds, mattresses, kitchen units, bath suits* (sic) *and others*". Again, this had been (re)created in 2024. The Applicant maintained that these costs were payable by the leaseholders as they amounted to "cleansing" the common parts. It was not clear when this was said to have been done. Mr Chaudary's witness statement attached copies of photographs said to show the extent of the waste. The first photograph showed a mattress and other items on an upper balcony for one of the flats on Waterhouse Street, rather than the drying area. The second appeared to be items near the staircase also at that end of the parade, in an area outside the Applicant's title. There were other photographs showing items in the drying area, which included the bricks removed by the leaseholders following service of the Dangerous Structure Notice. At the other end of the drying area were a number of household items including mattress bases.

61. The represented leaseholders maintained that the costs were not contractually recoverable, as removal of fly-tipping was not "cleansing" within the meaning of clause 3(2). They also challenged the cost. Mr Ullah had received a different copy invoice from ESL, for the same amount but dated 6 September 2022 and indicating that 4 full van

loads were removed. He had removed some of the waste himself and obtained a quote for £480 for the rest, which he submitted would amount to less than one van load. He also provided a photograph of the rear service yard with rubbish which he said had been fly tipped by the contractors working on the roof and included Mr Lambert's fencing.

The tribunal's decision

62. Again, the tribunal determines that nothing is payable by the leaseholders in respect of this invoice. Given the considerable doubts about the documentation provided by ESL, the tribunal does not accept that the invoice is genuine. In the circumstances, the Applicant has failed to satisfy their evidential burden that the costs claimed were incurred by them at all, even before we get to the reasonable cost and whether the monies are recoverable under the lease. The tribunal is aware that some rubbish was cleared by the contractors during the resurfacing works (reference is made to skips arriving) and considers it far more likely that the rubbish on the drying area was removed at that time and was therefore within the cost of those works. We have already determined that nothing is payable by the leaseholders for the resurfacing works.

Fire Risk Assessment and Asbestos Survey

63. These surveys were apparently commissioned by Westcolt, although the second statement by Mr Ali only mentions the asbestos survey, which he says was carried out in the "internal communal area". The fire risk assessment was carried out on 16 January 2021 by Fire Safety Techs Limited but apparently only charged to Westcolt on 2 February 2022 (£648). The asbestos survey was carried out in June 2021 and the invoice is dated 16 June 2021 (£300).

64. The Fire Risk Assessment was carried out under the requirements of the Regulatory Reform (Fire Safety) Order 2005 ("the Order"). It focused on the common parts of the property, including at least one of the stairwells. 16 flats are recorded, which is more than the number of properties at 8-40 Bridge Street. It recorded issues with the door to "the" staircase, including the lack of a lock and the internal lighting, referred to items on the second floor of the premises and recommended installing lighting on the external communal areas. An alarm was recommended within the internal stairways. The overall risk rating was said to be moderate, requiring full controls within 3 months. The photograph appeared to be of the staircase owned at the time by Kitchcap Limited.

65. Mr Cockburn submitted that the Order requires the person in control of the property to assess the risks. As the property consists of more than two sets of domestic premises, the Order applied to the building's structure and any common parts and all doors between the domestic

premises and common parts. He submitted that two of the leases contained specific provision for payment for fire safety and the clause for general maintenance of the common parts was sufficient to provide liability from the other leaseholders.

66. Mr Ronan denied that the leases provided for recovery of this sum. In particular, he argued that the covenant by the landlord to comply with "*the requirements of any competent authority in relation to fire precautions*" means notices served by the Fire Department or the local authority rather than secondary legislation. In any event this clause only applied to 34, 36 and 38 Bridge Street; the standard and more limited covenants in respect of the shared areas made no reference at all to fire safety.

67. Mr Ullah's challenge to the report was based on the fact that most of it concerned the stairwell which was owned by Kitchcap (Abbey) Ltd, not the Applicant. Their agent, Guy Pewter of Chapman Petrie surveyors, confirmed that the stairs were maintained by their clients with a corresponding obligation on the users to pay their fair share on demand. A Fire Risk Assessment on the stairs had been carried out by MetroSRM LLP in February 2018 at a cost of £295 +VAT. It concluded that the risk from fire was low, with the property manager having no responsibility for the doors to the staircase. No fire alarm was required, simply a Fire Action Notice with suitable and sufficient instruction for the building occupants. The most significant finding was a need to upgrade the door and door frame to the electrical intake cupboard. The report stated that tenants are responsible for their own demise but the landlord could be held responsible if the tenant endangers other tenants. He maintained that in the circumstances there was no need to repeat the assessment.

68. The asbestos survey was apparently recommended by the Fire Risk Survey and appears to have been carried out in the stairwell as it is not clear what else would comprise an "internal communal area" and Mr Ali was unable to be more specific. There is no report, simply an invoice for £300. Mr Cockburn maintained that the survey was a prerequisite to other works in the building and therefore recoverable under the general repairs clause. Mr Ronan submitted that the clause did not permit surveys, as opposed to actual acts of repair or maintenance.

69. Mr Ullah's challenge was again based on the fact that the survey was to the internal staircase which was owned by Kitchcap. The work was also unnecessary as Kitchcap had already carried out a survey in January 2018 at a cost of £354. No asbestos was found in the stairs but some asbestos was detected in the cement upstand above the entrance door, cement panels to roof sofit and deck tiles adjacent to flat 6.

The tribunal's decision

70. The tribunal determines that nothing is payable by the leaseholders in respect of either the cost of the fire risk assessment report or the asbestos survey. The reason is that on the evidence provided, the tribunal is not persuaded that either was reasonably incurred. In particular, the Applicant's title did not include either staircase. That means that Zas Ventures were not the "responsible person" under the Fire Safety Order in respect of either staircase. The leases also pass responsibility for maintenance of the front doors to the leaseholders which again excludes them from the responsibility of the Applicant. That would leave only the external common parts, which would hardly require an independent assessment.

71. The Applicant was unable to confirm where the asbestos survey was carried out other than it was in the internal common parts. This must be a reference to the stairwell which was not owned by them. In any event, the survey carried out by Kitchcap did not need to be repeated. If Mr Ullah was aware of it, it would not have been difficult for the Applicant or Westcolt to establish that it had been done.

Westcolt's Fees

72. It makes sense to consider Westcolt's fees together: amounting to a total of £6,800; made up £2,800 for management, £2,000 for the section 20 consultation and £2,000 for the Condition Survey carried out by Mr Madden.

73. Taking the section 20 consultation first, the preliminary notice was sent out on 26 May 2021, shortly after the meeting between Mr Ali and the leaseholders on 19 May 2021. In his email to Mr Ullah after that meeting, dated 1 June 2021, Mr Ali recognised that there were three interconnected freehold titles and that the communal staircase was outside the Applicant's demise. Despite stating that Westcolt were only instructed by Zas Ventures Limited and would therefore focus only on that demise, the section 20 consultation mainly included works to the communal stairways. There was a single reference to reinstating "*unsecure brick walls on the first floor, walkways, balconies, garden terraces and flower beds*". The consultation does not appear to have progressed beyond the initial letter and none of the work in the notice appears to have been carried out, apart from the asbestos survey referred to above. The invoice to the Applicant for £2,000 refers to a "section 20 consultation notice procedure".

74. Mr Ronan for the represented respondents argued that the cost of the notice was not recoverable as it was not a cost of performing the landlord's obligations under the lease and in fact, the works referred to were largely not the works set out in clause 3(2) of the landlord's repairing obligations. He also challenged the cost as objectively unreasonable. Mr Ullah and Mr Islam mainly based their objections to this item on the fact that most of the works were in relation to the

staircases which were not part of the Applicant's title. Mr Cockburn for the Applicant argued that the section 20 notice was part of the process of the landlord complying with his repairing obligations under the lease and therefore payable by the leaseholders, who had an obligation to contribute towards repairs to the common parts, including the staircases.

75. The condition survey is a further £2,000 claimed for this period. It was a general survey of the residential part of the parade, including the staircases. The report is dated 9 July 2021 and the invoice to ZAS Ventures Limited 26 June 2021. A specification of works based on the report was subsequently drawn up by Mr Madden but it would appear that the works carried out to date did not follow that specification and the "detailed and more accurate costs" anticipated by Mr Madden have not arisen.

76. Again, the represented respondents argued that the cost of the survey was not contractually recoverable from the leaseholders as it was not a cost of carrying out the Applicant's obligations in clause 3(2) of the leases. Mr Cockburn for the Applicant maintained that it was clearly part of that clause as in order for the landlord to perform its obligations, it needs first to understand the state of repair the property is in and what works to carry out.

77. Finally, Westcolt also charged their standard management fee of £2,800, invoiced to the Applicant on 1 April 2021. As before, the invoice refers to preparing and issuing the service charge budget, sending demands, organising and negotiating service contracts, setting up a bank account and keeping and maintaining records of expenditure. As stated above, the first demands were not in fact sent out to the leaseholders until 14 June 2022. No mention of works was made in the invoice.

78. Both parties maintained their arguments for and against the management fees as set out in respect of the charge for 2020/21.

The tribunal's decision

79. In contrast to 2020/21, Westcolt did carry out some work in terms of meeting the leaseholders and arranging the condition survey during this period, although their role in respect of the resurfacing works appears minimal. As stated above, the tribunal accepts that *Norwich City Council v Marshall* is binding authority that where a lessee is required to contribute to the cost of a lessor's repairing obligations under a lease, that can include management costs incurred in relation to those obligations.

80. With this in mind, the tribunal determines that the condition survey is payable. That is clearly directly related to works to the property, although it included the stairways which are outside the Applicant's title. Mr Byers opined that the cost of the survey was reasonable. Given the requirement in the commercial leases to contribute to the lessor's costs of maintaining the building, the tribunal considers that the appropriate share should be 1/16th as opposed to 1/8th per residential leaseholder, amounting to £125.

81. The section 20 notice is more difficult, not least as it was based on the fire risk assessment, which we have held was not reasonably incurred. On balance we consider that nothing is payable for that initial notice due mainly to the focus on property which was not owned by the Applicant but also that it was unreasonable in amount, consisting of one standard letter with no evidence of any further procedure having been carried out.

82. That leaves the management fees. As stated in *Marshall*, in the absence of a broader clause permitting managing agent's fees, only those fees which are reasonably incurred for the landlord to comply with their repairing obligations are payable. Again, there was little evidence of Westcolt having been involved in works being carried out to the property, other than arranging the survey. £350 per leaseholder is too much for this limited role. In all the circumstances, the tribunal determines that £175 per leaseholder is a reasonable cost for the liaison with them in respect of works required to the property and carried out during that period. For the avoidance of doubt, we do not consider that the contract with Westcolt is a Qualifying Long Term Agreement requiring consultation, despite its rather confusing notice provisions.

Buildings Insurance

83. The Certificate of Expenditure dated 4 March 2022 claims £4,360. The hearing bundle contained no evidence of the actual premium, which included the commercial premises as well as the flats and Mr Ullah had challenged the amount claimed previously, by pointing out that his father's insurance for a different but similar part of the parade was at a much lower cost. As stated above, the lease to number 32 omitted a clause requiring a contribution to the insurance from the leaseholder. The other residential leases required a contribution to the landlord's insurance "*referred to in clause 3(3)*", which provided that the insurance must be in the joint names of the landlord and tenant. It was common ground that the insurance was not in joint names. For the avoidance of doubt, this is an important omission as it would prevent the leaseholders from making their own claim. Mr Ullah maintained that this failure had led to his father's mortgagee insisting that he take out his own insurance as a result.

84. The Applicant sought a 20% contribution from the other residential leaseholders on the basis that their obligation was to pay the premium as opposed to their own share of the cost. Mr Cockburn argued that it was not a condition precedent that the insurance be in joint names and relied on *Brickfield Properties v Georgiades* [2020] UKUT 118 as authority that the same breach of covenant by the landlord did not prevent the tenant from paying for the insurance, stating that very clear words would be required to make the tenant's liability to pay dependent on the landlord's compliance with their covenant to insure. The represented Respondents relied on the provision in their covenant quoted above as the clear words limiting their contractual liability. Mention was also made of the earlier decision of *Green v 180 Archway Road Management Company Ltd* [2012] UKUT 245, where it was held that cost was not payable as the leaseholders' covenant referred to insurance "*in accordance with*" the obligation to insure in joint names, which the landlord had failed to do.

The tribunal's decision

85. The challenge on payability really came down to whether there is any difference in the meaning of a covenant for a leaseholder's contribution to the landlord's insurance "*in accordance with*" or as "*referred to*" in a landlord's covenant to insure in joint names. The tribunal accepts that where there is no specific reference to that covenant, *Brickfield Properties* is authority that the landlord's breach does not excuse the tenant's liability to contribute.

86. On balance, the tribunal agrees with Mr Ronan that there is no meaningful difference between those phrases. The insurance "*referred to*" in the landlord's covenant to insure is to insurance in joint names (apart from number 32 which has no corresponding covenant to contribute) and as set out above, there is a significant disadvantage to the leaseholders in simply being mentioned as an interested party.

87. No evidence was provided as to any difficulty in obtaining that insurance, or indeed the actual cost of the premium. Mr Ullah's arguments in respect of the premium and the fact that the apportionment between the commercial and residential premises was unfair, given the difference in cover and risk, also has some force. In any event, the tribunal does not agree that the landlord can increase the tenant's shares due to the omission of covenants to contribute in other leases. That would not be payment of **the** premium for insuring **the demised premises** (our emphasis) as required by the lease and is also unreasonable in terms of section 19 of the 1985 Act. That said, the primary basis for our determination that nothing is payable for the insurance is that the leases as drafted only requires the tenants (except for number 32) to contribute to insurance in joint names, something which the Applicant should be able to remedy for future years.

88. Taking all of the above determinations into account, this means that a total of just £300 is payable by each of the Respondents for the period ending 24 March 2022. For the avoidance of doubt, this amount needs to be set off against any credit balance held by Westcolt. Mr Ali confirmed that Mr Lambert's payment of £2,755.17 is held to his credit. Mr Islam has also paid at least £200 in advance and may also have paid for the Landlord's insurance by mistake (following a demand by the Applicant).

Disputed service charge items for 2022/23

89. The Certificate of Expenditure contained five items: management fee, building insurance, section 20 consultation, fire risk assessment and accounts. As stated above, the Applicant now accepts that there is no entitlement to claim for accounts. The tribunal also determines that nothing is payable for the insurance as it is not in joint names as required by the lease (and number 32 is not liable in any event).

Fire Risk Assessment

90. Risk Assessment Limited invoiced Westcolt for a second assessment on 21 March 2023 (although the report indicates it is the third assessment in three years). It states there are 16 flats in the parade, suggests a Grade A fire alarm is required in the communal staircase but is otherwise very similar to the earlier report, which is unsurprising bearing in mind that no works had been carried out following the first assessment.

91. The parties relied on the same arguments as before, with Mr Ullah pointing out that it was also unreasonable to repeat the exercise given that nothing had changed. Mr Cockburn pointed out that the assessment company had recommended a further assessment in 12 months.

The tribunal's decision

92. Again, the tribunal determines that nothing is payable for this report. The Applicant faces the same difficulties with its failure to evidence that it is the person in control of the staircases in particular but the additional reason is that given the lack of any work in respect of the first (or any subsequent) report, it was patently unreasonable to commission a further report.

Management fees and section 20 consultation

93. Again, we will consider the management fees and section 20 notices together as both are claimed by Westcolt, amounting to £4,800 in total. Strictly speaking, the section 20 notices do not fall within this year in

any event as the invoice does not appear to have been sent to the Applicant until 14 November 2023, despite the notices being sent to the leaseholders on 25 July 2022. This notice indicated an intention to carry out the works described in the Condition Survey and Specification. Again, nothing has progressed past the initial letter as far as we are aware.

94. Both parties maintained their previous argument about the contractual obligations under the lease. Mr Ronan maintained his challenge as to the cost and Mr Ullah pointed out that some items did not exist, for example a communal satellite/TV aerial.

95. The same arguments were also made in respect of the management fees.

The tribunal's decision

96. We consider that some management fees are payable in respect of Westcolt's services, although again no actual work appears to have taken place other than the installation of solar-powered LED lighting on the mesh fencing separating the walkway from the drying area. Again, we consider that £175 per leaseholder is a reasonable cost to reflect that part of the management that is connected with the landlord's repairing obligations and that this includes payment for the initial section 20 notice.

97. The Applicant's lack of success in these proceedings is due to their failure (and that of their chosen agent) to properly read the leases and consider respective liabilities for the works given the layout of the property, as well as their failure to provide sufficient evidence to support the amounts claimed. In particular, it should have been obvious that the commercial premises would need to pay a share for repairs to their roof and that the works were really for their benefit and not for the leaseholders. Westcolt's fees took no account at all of the limited service charge provisions in the lease and their fees were generally excessive, for example the apparent fixed fee of £2,000 for very limited consultation, which did not progress into actual work. The claim for £12,000 for allegedly managing the resurfacing works was particularly cynical, given the total failure to provide any evidence at all in support of that claim – even the correct identity of the contractor (wrongly identified by Mr Ali in the dispensation proceedings shortly after the works had completed).

98. There is no doubt that this property would benefit from an overhaul, including the communal stairway from Bridge Street which we understand may now be in the Applicant's ownership and control. However, given the limitations of the leases, all parties (including the commercial tenants and Hightown) should agree the scope of any works and preferably the contractor who will undertake them, with a

properly costed specification of works prepared beforehand. As stated above, given the terms of the commercial leases, it is likely that those tenants will also have to pay at least 50% of the cost of any works, certainly in relation to the structure of the building, including the roofs.

Application under s.20C

99. The Represented Respondents had made applications for orders under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to them through any service charge. There is in fact no provision in the lease enabling the Applicant to do so but for the avoidance of doubt, given the findings of this tribunal which are overwhelmingly in favour of the Respondents, the tribunal determines that it is just and equitable for orders to be made under section 20C of the 1985 Act.

Name: Judge Wayte **Date:** 27 August 2024

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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" includes 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.

Section 19

(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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable 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

(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) Subsection (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 incurred 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 be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, Paragraph 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.