FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LSC/2024/0307**
Property	**:**	**15 and 17D Redcliffe Place, London SW10 9DB**
Applicant	**:**	**Ms Suzanne Blakey (No.15)** **Meryl Kuethe (17D Redcliffe Place)** **Bob Luwar (17D Redcliffe Place)**
Representative	**:**	**n/a**
Respondent	**:**	**Mark Winstanley**
Representative	**:**	**Daniel Watney LLP**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge N O'Brien, Ms A Flynn FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**22 January 2025**
Date of decision	**:**	**12 February 2025**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the costs of repair to the pitched roof of No 17 Redcliffe Place and the cost of repair to the flat roof of no.15 Redcliffe Place have not been reasonably incurred.

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

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the applicants through any service charge or as an administration charge.

(4) The tribunal determines that the Respondent shall pay the Applicant £330 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(5) The tribunal adjourns consideration of the question of the Applicants' liability to pay the service charges demanded in respect of the major works undertaken in 2024 to a further hearing on a date to be notified.

The proceedings.

1. The Applicants seek 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 them in respect of works of repair to the exterior of No.15 Redcliffe Place (No.15) and No.17 Redcliffe Place (No.17). The First Applicant is the leasehold owner of a flat on the ground floor and first floor of No.15. The Second and Third Applicants are the leasehold owners of the basement flat of No.17; Flat D. The Respondent is the freehold owner of both No.15 and No.17.

2. No. 17 is a substantial 5 storey Victorian villa which faces onto Finborough Road but which has its main entrance to the side of the building on Redcliffe Place. No. 15 is a smaller 3 storey building facing onto Redcliffe Place which appears to have been built to the side and rear of No. 17. In the application the buildings are together referred to as a 'converted end of terrace house consisting of 5 flats'. Two of the flats are let to the Applicants on long leases and the remaining three flats are retained by the Respondent and let on short-term residential leases.

3. The application relates to part only of an extensive programme of works of redecoration and repair to the exterior of 15 and 17 Redcliffe Place which commenced in 2024. An initial consultation notice was served on the leaseholders on 4 December 2022 and a second stage consultation notice was served on the First Applicant on 8 December 2023 and

contained a proposed costed schedule of works. It was not received by the Second and Third applicants until April 2024. The leaseholders' objections relate to the the cost of repairs to the roofs of both No.15 and No.17 (Items 3.7 and 3.9 on the schedule of works sent to the First Applicant in December 2023) as well as to provisional costs which were also included in that schedule. A copy of the schedule is included in the bundle filed for the hearing at page 106. They argue that the roofs of both buildings underwent substantial repair in 2012 and that the present need for further repairs has arisen due to default on the part of the Respondent. They also object to paying the cost of proposed window repairs however the Respondent has subsequently accepted that the obligation to repair windows lies with the leaseholders and as such is not recoverable by him as a service charge.

4. The Applicants initially sought also to challenge their liability to pay towards the cleaning of the exterior elevations of the buildings (item 4.2) however the First Applicant confirmed in the course of the hearing that she no longer sought to challenge that cost. They also challenged the cost of repairs to the roof above the portico attached to No. 17 (Item 3.10). Mr Watney informed the tribunal that the Respondent had not and did not intend to carry out the work to the portico described in the schedule, as it has transpired that the portico roof requires more extensive repair. Consequently those specific costs are not recoverable.

The hearing

5. The First Applicant appeared in person and was accompanied by her daughter who was her predecessor in title. The Second and Third Applicants did not attend. The respondent was represented by Mr Daniel Sterne of Daniel Watney LLP, the Respondent's managing agent.

6. The tribunal was supplied with an agreed bundle consisting of 194 pages for the hearing. In addition in the course of the hearing the First Applicant supplied the tribunal with two photographs showing a view of No. 17 and No. 15 from Redcliffe Place and a photo of the façade of No. 17 facing onto Finborough Road.

6. None of the parties requested an inspection and the tribunal did not consider that one was necessary to resolve the issues in dispute.

The issues

7. At the start of the hearing the tribunal, with the assistance of the parties identified the relevant issues for determination as follows:

   (i) Whether the cost of the repairs to the roofs of No. 15 and no. 17 has been reasonably incurred

(ii) Whether the various provisional sums included in costed schedule of works sent to the applicants in December 2023 are reasonable

(iii) Whether the management fee charged by the Respondent's agent in respect of the works should be reduced.

8. In the course of the hearing we questioned the Applicants' liability to pay service charges in respect of both buildings. The photos indicate that No. 17 and No. 15 Redcliffe Place appear to have been separate dwellings at some point in the past. No.15 has its own front door leading onto Redcliffe Place. We remarked that the First Applicant's lease required her to pay 25% of the Service Expenditure (Paragraphs 3 and 5 of the Fifth Schedule to her lease). The Service Expenditure is defined as the total expenditure incurred by the lessor in carrying out its obligations under the Fifth Schedule. The Fifth Schedule obliges the lessor to 'maintain and keep in good and substantial repair and condition' the main structure of the Building . 'The Building is defined in Clause 1 of the lease as '15 Redcliffe Place including its grounds and common parts'.

9. The lease for 17D Redcliffe Place is in similar terms. It requires the leaseholder to pay 25% of the Service Expenditure (Paragraph 1 and 3 of the Seventh Schedule). The Service Expenditure means the total expenditure incurred by the lessor in carrying out its obligations under the Fifth Schedule. The Fifth Schedule obliges the lessor to 'maintain and keep in good and substantial repair and condition' the main structure of the Building. 'The building' is defined as '17 Redcliffe Place including its grounds and common parts' by Clause 1 of that lease.

10. The Respondent has sought payment of 25% of the total cost of the works programme relating to both 15 and 17 Redcliffe Place from the First Applicant, and 23% of the total cost from the Second and Third Applicants. It was not clear why the First Applicant would be liable for 25% of the cost of repairs to No.17 nor why the Second and Third Applicant would be liable for 23% of the cost of repairs to No. 15. The First Applicant confirmed that the Applicants wanted the Tribunal to consider this issue however they had not expressly raised it in their application notice. Mr Watney was not able to assist the tribunal as to why the applicants were liable to pay towards the total cost of works to both buildings. We considered that the Applicants should be allowed to raise this issue, given its central importance to the extent of their respective liabilities, but that it would not be fair to permit them to raise it without giving the Respondent a fair opportunity to respond. Further directions will follow this determination which will be limited to the reasonableness of the sums sought.

Legal Framework

11. Section 19 of the Landlord and Tenant Act 1985 (LTA 1985) provides;

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

(a)only to the extent that they are reasonably incurred, and

(b)where they are incurred on the provision of services 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.

12. The Tribunal has the power to permit a set off against service charges due in an obvious case of breach of an obligation to keep the demised premises in repair (*see Continental Properties v White LRX/60/2005*).

Repairs to the Pitched Roof of 17 Redcliffe Place £17,914

13. The essence of the Applicants' objection to the cost of repairs to the roof of No.17 is that both No.15 and No.17 underwent extensive roof repairs in 2012 as part of a programme of works to the exterior of the buildings which cost in excess of £1,000,000. Ms Blakey was in the process of purchasing her daughter's leasehold interest in her flat at that time. The Applicants argue that the cost of repairs to the roof of No.17 in 2024 was not reasonably incurred because the Respondent ought to have obtained a comprehensive warranty from the contractor who carried out the works to the roofs of No.15 and No.17 in in 2012 and/or the Respondent should have complied with the terms of the guarantee which it did obtain which required the roof to be inspected annually.

14. It is not clear what the Respondent's case is in this regard. He has not filed a statement in response. The only response he has provided to the application are his comments in response to the Schedule of disputed costs completed by the Applicants in accordance with the tribunal's directions. In this response the Respondent confirmed that the 2012 works involved a complete overhaul of the roofs with replacement of the roof insulation and roof coverings. He also confirmed that further repairs were now required because the roof covering replaced in 2012 had become debonded from the insulation underneath, exposing the roof to a risk of wind uplift and which has led to water penetration into the top floor flat. The Respondent accepts that the warranty which it had

obtained in respect of the roof works in 2012 has been invalidated because a condition requiring annual inspections had not been met. In the hearing Mr Watney described the 2012 guarantee as being ‘not worth the paper it is written on’. He explained that the only guarantee that was in place was a guarantee from the manufacture of the materials used to repair the roof in 2012 and that the previous contractor had declined to honour that guarantee in any event because the roof had not been regularly inspected by the Respondent.

The tribunal’s decision

15. The tribunal determines that the cost of pitched roof repairs to of No.17 has not been reasonably incurred. These are the costs at item 3.7 of the estimate sent to the First Applicant in December 2023. The Respondent, having spent a significant sum of money on repairs to the roof in 2012 ought either have ensured that he had procured a comprehensive guarantee for at least 20 years, and/or should have ensured that he complied with the terms of the guarantee that he had obtained. We note that water penetration into the top floor flat of No.17 was noted in 2017, about 5 years after the repair works were undertaken. This indicates that the repair works carried out in 2012 were not done to a reasonable standard. In our view one would expect a roof repair such as the one undertaken in 2012 to last at least 20 years if not longer. Had the works been done to a reasonable standard there would be no need for this item of repair.

16. Consequently we consider that the item has not been reasonably incurred. Additionally the failure to carry out the 2012 works to a reasonable standard in our view amounted to a breach of the requirement to keep the roof in ‘good and substantial repair and condition’ as required by Paragraph 6(a) of the Fifth Schedule.

Cost of Repairs to the Flat Roof of No.15

17. The issue with the cost of the repairs required to the flat roof are essentially the same as proposed repairs to the pitched roof of No. 17. Additionally the First Applicant argues that the need for repair to the flat roof above her flat is due to damage to the surface of that roof caused by the Respondent’s tenants using it as a sun terrace. In response to questions put to him by the tribunal Mr Watney confirmed that the roof of No.15 had been damaged by the tenants of a second floor flat in No. 17 which is let by the Respondent to short-term tenants. He informed us that the tenants gained access to the flat roof of No. 15 via a door which leads directly from their flat onto the flat roof above Ms Blakney’s flat. The Respondent’s tenants had been given a key to that door at the start of their tenancy. The damage was caused by their furniture piercing the roof covering and occurred in or about 2016 which was when the First Applicant first experienced water penetration into the upper floor of her flat.

The tribunal's decision

18. The tribunal determines that the cost of repairs to the flat roof were also not reasonably incurred. While we accept that the roof requires repair we consider that the need for repair has arisen due to the Respondent's default in not preventing his tenants from accessing the flat roof of No.15. Additionally we consider that cost has been reasonably incurred because the Respondent did not obtain a sufficiently comprehensive warranty from his contractor in 2012 and failed to comply with the terms of the warranty he did obtain.

Provisional Costs

19. The Schedule of Costs referred to above includes £1000 for unforeseen repairs to rainwater goods, £500 for unforeseen repairs to drainage and £2,000 for making good internally following the re-roofing works. This was in addition to a contingency sum of £10,363, which is about 9.9 % of the total cost. The Respondent has agreed to remove the charge of £500 and it is not clear whether the provisional sum for repairs for rainwater goods was required or not. Given that there was already an allowance of £10,363 for contingency it is the view of the tribunal that these additional provisional costs were not reasonable.

Management Fee

20. Mr Watney told the tribunal that the management fee was calculated at 10% of the cost of the works and includes CDM consultancy costs. We did not consider this to be an unreasonable in the circumstances and is in keeping with the level of fees generally charged by managing agents for overseeing works of this nature.

Application under s.20C and refund of fees

21. At the end of the hearing the First Applicant made an application for a refund of the fees that she and the other applicants had paid in respect of the application. Having heard the submissions from the parties and taking into account the fact that the Applicants have been largely successful in the specific challenges they raised in their application, we make the order sought

22. In the application form the Applicants applied for an order under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances to make the orders sought so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge.

Name: Judge N O'Brien **Date:** 12 February 2025

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).