FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UB/LSC/2024/0114
Property	:	Chailey Court, 27 Winchester Rd Basingstoke, RG21 8UE
Applicant	:	Elmbirch Properties Ltd
Respondent	:	The Long Leaseholders of Chailey Court (see list annexed)
Type of Application	:	s.27A LTA '85
Tribunal Members	:	Judge Dovar
Date of Decision	:	21st May 2025

DECISION

Introduction

1. This an application for the determination of the liability to pay and reasonableness of service charges for the year end 2024 in relation to roof works which have been undertaken at the Property.

2. On 10th March 2025, there was a case management hearing, which the Applicant attended, but none of the Respondents. Directions were given, including one notifying that this matter would be dealt with without a hearing if no objection were made. No objections have been made and this matter has been determined without a hearing.

The Property

3. The Property is a converted office building which now houses 23 residential apartments. The roof to the Property comprises a sectional pitched roof clad with fibre-cement slates as well as two small flat rooves, one with a liquid membrane cap, the other a singly ply rubberised cover.

The Roof

4. It is the cost of the works to one of the flat roofs that is the subject of this application. The Applicant landlord seeks to recover remedial costs of £27,000.06 plus associated professional fees of £1,476.58. Those sums have been paid and the work has been carried out. That roof had been leaking and a report from Ellis Sloane & Co, surveyors, dated 26th February 2020 identified that the membrane had been poorly installed and the lead flashing poorly detailed. Given the number of issues found

they recommended replacement was requested to be undertaken under warranty.

5. The Application asks in the alternative, whether if the costs do not fall to the service charge, who should pay them. This is reflective of some of the Respondent Leaseholders' position as set out below. The Tribunal does not have jurisdiction to make any order as to who should pay the costs, other than to determine whether they are payable as service charges. Therefore this determination is confined to that question.

The Applicant's case

6. The Applicant contends that the costs of the roof works should be payable through the service charge. It is the cost of the repair of an item that falls within the terms of the residential leases and is for the benefit of the Respondents (see clause 7.1, and the Third Schedule, paragraph 1). The cost of the works, they say, is not otherwise recoverable; i.e. not through any insurance, nor under any guarantee or warranty, nor through a claim against the developer, or the freeholder or managing agents.

7. The Applicant says they have attempted to claim on a guarantee (a Premier Guarantee New Homes Warranty 'the Warranty') on the basis that the difficulties with the flat roof are as a result of poor construction in the first instance. A previous claim in respect of the other flat roof had been covered by the Warranty.

8. To support their contention that funds cannot provided under the Warranty they have provided:

    a. The rejection of a claim made on 24th February 2023;

    b. A letter in support of that rejection from Marley Risk Consultants dated 25th May 2023, which considered that a claim under the Warranty failed as the issue was one that seemed to arise from storm damage and in any event further remedial works had been carried out to the roof, thus invalidating the Warranty;

    c. A similar view as to prospects of a claim given by Mr Wellings, BSc (Hons) MRICS, MFPWS of Wellings & Co. Surveyors;

    d. A letter from Sampson Coward solicitors to the Applicant stating that it is unlikely that there could be a successful claim under the Warranty or under s.1 of the Defective Premises Act 1972. Further the solicitors consider that any claim against the developer may have been lost given the amount of time that has elapsed since the development and transfer of the building. However, they did require further information was on this latter consideration; but suggested that it was ultimately unlikely to be cost effective to pursue litigation and it would be better to pass the costs through the service charge.

9. The Applicant also contends that the costs are not recoverable from the managing agents (either the current or the former). There is little detail

as to why it is not recoverable from the current managing agents, but their involvement significantly post dates any issue with the roof (and in their statement, the Respondents do not seriously take issue with them). As to the former, Remus, it is said that they have invalidated the Warranty by carrying out patch repair on the roof. The Applicant says that no claim can realistically be brought against them as: a.) it would be difficult to quantify the loss; and b.) the leaseholders asked for their removal and so communication with them is difficult.

The Respondents' case

10. In response to this application, the Respondents, through their residents association contend that the sums are not payable by way of service charge. They claim that both flat roofs were defective from at least the date of the conversion to residential use in around 2015 and that it was the then managing agents, Remus, who invalidated the Warranty and caused substandard works to be carried out to the roof. The defects were obvious to both flat roofs from around 2016 and yet only one was covered by a payment under the Warranty as Remus only made a claim for that part. They also complain that the then director of Remus became the Applicant's managing director and are concerned that this has led to a failure by the Applicant to pursue Remus.

11. The Respondents do appear to have confused the works in respect of which this application relates. They have complained about the selection of the contractor engaged to carry out the remedial works, and have identified that contractor as the B&L Group. They have also provided a

warranty from that entity. But this relates to work carried out a number of years ago and it is not those costs that are now claimed. The current works, for which the costs are claimed, were carried out by Salnor Roofing Services Limited. A firm that the Respondents comment is a 'reputable company'. Further, the Respondents focus on the sum of £5,348 for the roof works, which is a sum relating to previous works to the roof, not the cost of the works which are subject to these proceedings.

Decision

12. There is no dispute that the roof was in disrepair and required remediation. That engages the provisions of the lease and makes the costs ostensibly a service charge item. Further, there is no dispute that the costs have actually been incurred by the Applicant and have been paid to the contractor.

13. Marley Risk's letter, rejecting the claim under the Warranty, shows that the interventions by Remus and the developer were factors which were considered by them to have meant that cover under the Warranty was lost. However, cover was also, and primarily, avoided on the basis that the risk was not covered; being storm damage.

14. Remus when appointed, were acting as managing agents for the Applicant. To that extent, their actions are those of the Applicant. They were acting with the express or apparent authority of the Applicant. The Applicant does not say that a claim could not be brought against them. It says that it would be difficult to quantify and has somehow been made

more difficult because, at the request of the leaseholders, they were replaced as managing agents.

15. Neither of those arguments has much merit. The quantification is surely the cost of the works, less any excess. The fact that they are no longer managing agents is no bar to a claim being made against them and did not impact on what they had done whilst they were acting as agents. If Remus's actions have caused the loss of cover under the Warranty, then that is a claim that could be brought by the Applicant. There is no indication that any such claim has been intimated, let alone put formally.

16. The difficulty that the Respondents have is that given the costs are ostensibly service chargeable costs, it is not clear how they say legally they should not pay them. There is nothing in the lease which seems to preclude them being paid on the present facts.

17. Further, whilst s.19(1) of the Landlord and Tenant Act 1985 can cap costs that would otherwise be payable, it does so only if those costs were not reasonably incurred and or the standard of work was not to a reasonable level. There is no complaint about the standard of work. Given the roof needed fixing, it seems to me that it was reasonable to incur the costs. The costs had to be paid as the Warranty had been avoided.

18. The fact that recourse may be had to other sources for the cost of the repair, does not remove it from being a service charge item. At best it would mean that the Applicant may be able to obtain money from third parties and if they do so, they that should be credited to the service charge account. The Respondents may well have a claim against the

Applicant to compel them to pursue other means of obtaining redress for the issues with the roof, but they have not been presented in this application.

19. I am therefore not satisfied that the Respondents have made out any case that they are not primarily obliged to cover the cost of the roof repairs under the service charge provisions in their leases. The secondary considerations as to whether the Applicant has any obligation to pursue alternative routes to pay for the repairs and if so, whether there is any prospect of recovery, is not a matter that I am able to determine in this application. Therefore the sums are payable.

JUDGE DOVAR

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.