FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference: CAM/26UG/LSC/2024/0031.
Property: 35 Allen Close, Wheathampstead, St Albans, AL4 8TH

Applicant: Preethika Peiris

Represented by: In person

Respondent: St Albans City and District Council

Representative: In House Legal Department, Ms Miller

Type of Application: Service Charges

Tribunal members: Judge Granby, Mr Thomas MRICS

Date of Decision: 06 July 2025

DECISION

Introduction

1. This is an application for a determination of the payability of service charges pursuant to s.27A of the Landlord and Tenant Act 1985

2. The Applicant is Mrs Preethika Peiris, the property that is the subject matter of the Application is 35 Allen Close, Wheathampstead, St Albans, Al3 8TH ("the Flat"). The Respondent is St Albans City and District Council who are the freeholder of the building in which the Flat is situated, that building consists of eight flats four of which are let on long leases and four of which are retained by the Respondent and let on short leases ("the Building").

3. The Lease is dated 10 April 1989 between the Respondent on the one part and Alan William Turner on the other part for a term of 125 years from 10 April 1989 ("the Lease").

4. The Tribunal was informed during the hearing that the registered leaseholder of the property is the estate of Mrs Peiris's late husband and, by Mrs Peiris, that she is the executor of her husband's estate albeit no will or grant of probate or letters of administration has been provided. There is no statutory limit to who may apply for the determination of the payability of a service charge, although the Tribunal may strike out applications that are an abuse of process. No objection was made by the Respondent to the Applicant bringing the application and in the circumstances it appeared right to the Tribunal to make a substantive determination.

Summary

5. The Tribunal determines the sums demanded payable in full.

The Application

6. The Application is dated 14 May 2024 and seeks a determination in respect of items within what are said to be the service charge years 1 April 2023 – 31 March 2024 and 1 April 2023 and 31 March 2024 the item identified as being in dispute is "major works £12285.02" this is identified as consisting of:

a) Roof replacement with a total cost of £76,128.37 (the contribution by the relevant leaseholder being said to be £9,516.05 "plus management fee".

b) Communal windows consisting of (excluding the management fee) £9,933 for scaffolding adaptation and £15,185.27 for communal windows, the total amount required from the leaseholder being £3,139.79.

7. These sums match a demand date 14 September 2023 which includes major works in the sum of £12,285.02.

The parties cases

8. The Applicants case is set out in the application and repeated verbatim in her statement of case this is that the quotation is "bogus", the costs are very high (which the tribunal takes to mean "unreasonable in amount within the meaning of s.19 (1) of the Landlord and Tenant Act 1985) and that it is the landlords responsibility to maintain the Building.

9. The Applicant did not claim that the works undertaken were unnecessary and/or unreasonably incurred, i.e. there is no dispute in this case that the works needed to be undertaken.

10. The Respondents case is that the roof of the Building was at the end of its life and as the windows were deteriorating it was efficient to replace these at the same time. In respect of the roof the Respondent identified that there had been a large number of responsive repairs (which the Tribunal takes to be what are sometimes called patch repairs) and that the point had come where it was more efficient to replace the roof that to continue to patch it, particularly as asbestos had been found which would complicate responsive repairs. The Respondent was undertaking a program of major works to a number of properties in the area so this was, it says, the right time to replace the roof.

The hearing

11. The Applicant appeared in person via telephone and confirmed she had the bundle provided by the Respondent.

12. The Respondent was represented by Ms Miller an in house solicitor. The Respondents witnesses; Mr Ategwogboye, a repairs officer; and,

Mr Lorente, a surveyor, attended and confirmed their statements (which affirmed the Respondents case described above) and answered questions from the Tribunal. Mrs Peiris chose not to cross examine either witness.

The evidence and submissions

13. The Tribunal has no hesitation in accepting the evidence of Mr Ategwogboye and Mr Lorente, indeed there was not suggestion that the Tribunal should not. In response to questions both witnesses, in similar terms, elaborated that the (unchallenged) view of the Respondent's officers was that the roof of the Building had reached the end of its life (appearing to be at least 40 years old) and in was economical to replace the roof now rather than continue patch repairs. Mr Lorente confirmed that the new roof of the Building was a 'life for like' replacement of the old in that tiled areas were replaced with tiles resting on batons and a flat roof area previously covered with a felt membrane was recovered with a felt membrane.

14. Mr Ategwogboye confirmed his written evidence that the actual cost of the works had exceeded the amount predicted in the notices of intention but the Respondent only sought to recover the sums originally anticipated. The Tribunal accepts this (unchallenged) evidence. Mr Ategwogboye also stated that the sums demanded from the leaseholder had been expended before being demanded.

15. The bundle included the consultation undertaken by the Respondent (in the form applicable to long term agreements). The notice of intention in respect of the roof works is dated 3 October 2022 and that in respect of the windows is dated 14 December 2022. Although the Applicant, not having provided a witness statement, did not give evidence, the Applicant confirmed in the course of submissions that she had not responded to the notice of intention.

16. The Applicant suggested in the course of submissions that the cost of the works was excessive and that, while she had not obtained alternative quotes, she had spoken to local contractors who had suggested that the Respondent was in the habit of overpricing. The Application also refers to a general (although, save in the case of the repair of a gate, entirely unparticularised) habit of the Respondents of excessive charging.

17. The Tribunal rejects the Applicants submissions insofar as they claim that the quotation obtained by the Respondent and reflected in the notice of intention (and ultimately the demand made) is "bogus" (in the sense of fraudulent or fabricated) that is a grave allegation that ought not to have been made without an evidential foundation.

18. The Applicant was taken by the Tribunal to the provisions in respect of service charge recovery and invited to comment on them. The Applicant maintained her position that the repair of the roof was the Respondents responsibility. The Tribunal's decision in that respect is set out below.

Applicable Law

19. To be payable a service charge must be recoverable under the terms of the Lease. The lease is described more fully below.

20. S.19 (1) of the Landlord and Tenant Act 1985 provides:

19Limitation of service charges: reasonableness.

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

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

21. The leading case on what is reasonable is *The London Borough of Hounslow v Waaler* [2017] EWCA Civ 45 where the Court of Appeal held that what was reasonable was a question of outcome not simply of process.

22. In *Gell v 32 St John's Road (Eastbourne) Management Co Ltd* [2021] EWCA Civ 789; [2021] 1 W.L.R. 6094 the Court of Appel reaffirmed the longstanding proposition derived from *Yorkbrook. Investments Ltd v Batten* (1985) 18 HLR 25 that it is for the party challenging the payability of a service charge to raise a prima facie case on their pleadings that a service charge is not reasonable in amount.

23. In *Sovereign Network Homes v Hakobyan & Ors* [2025] UKUT 115 (LC) (per the President) the Upper Tribunal affirmed that the process in this Tribunal is adversarial not inquisitorial – the function of the Tribunal is to resolve the dispute as identified by the parties on their pleaded case, there are very limited circumstances in which it is appropriate for the Tribunal to take point of its own motion.

24. In *Sheffield City Council v Oliver* LRX/146/2007 the Lands Tribunal held that external windows were, in general terms, part of the structure and exterior of a building.

The Lease

25. Clause 1 of the Lease provides that the lessee shall pay *"…(iii) such sums as are discharged by the Council in pursuance of its obligations under Clause 5 (2) & (3)…"*.

26. Clause 5 contains the Respondents covenants. Clause 5 (3) (a) obliges the Respondent:

"(3) to maintain repair redecorate renew amend clean repair repoint paint grain varnish whiten colour:

(a) the structure of the said building and in particular but without prejudice to the generality thereof and roofs foundations external and internal walls….[sic]".

Discussion

27. There is no dispute that the works undertaken by the Respondent fell within the Respondents repairing obligation under the lease – that is clearly correct, the roof is expressly part of the repairing covenant and the windows form part of the structure and exterior of the building.

28. There is also no dispute that the works were required (albeit the Applicant does not expressly concede the point), insofar as it is necessary for the Tribunal to decide the point it is satisfied that the Respondent was both contractually entitled to undertake the works and reasonably incurred the costs of doing so. The Tribunal accepts the evidence given that the roof had reached a point where it was reasonable (indeed prudent) to replace it as part of a major works program. The Tribunal also finds that the Respondent was entitled as a matter of contract to replace the windows at the same time and reasonably incurred the costs of doing so, indeed there is no suggestion to the contrary.

29. There is no dispute that the leaseholder is liable for one eighth of the relevant costs.

30. Taking the Appellants two arguments in turn:

There is no contractual entitlement to recover the costs

31. This is one of the most straightforward points of construction that the Tribunal will ever be called on to decide.

32. The Applicant is entirely correct that the lease imposes repairing obligations in respect of the structure and exterior of the building on the Respondent.

33. The Applicant is entirely wrong to suggest that the lease does not impose on the leaseholder an obligation to pay a proportion of those costs – as set out above clause 1 (iii) of the Lease expressly imposes on the leaseholder an obligation to pay the landlords costs of complying with, inter alia, clause 5 (2) of the Lease.

The costs are excessive

34. It is insufficient as a matter of law for the Applicant to seek to impugn the costs claimed simply by asserting that they are excessive or to suggest in a general sense (without providing evidence) that the Respondent has a practice of overcharging (see *Gell*).

35. The Tribunal does not have the information to second guess the amounts demanded by the Respondent and is not required to do so. However, for the avoidance of doubt, applying its own experience, there is nothing in the information provided that causes the Tribunal concern as to the amount charged.

36. As set out above the claim that the costs are "bogus" is, if taken literally, an allegation of fraud. There is no basis for such a claim and the Tribunal rejects it.

Conclusion

37. The sums demanded are payable in full.

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 rpeastern@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.