FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KF/LSC/2025/0669**
Property	**:**	**64A and 64B The Broadway, Thorpe Bay, Southend on Sea, Essex, SS1 3HH**
Applicants	**:**	**(1) Michael Dyer** **(2) Margaret Smargiassi**
Representative	**:**	**Michael Dyer and Rosa Smargiassi-Harris**
Respondent	**:**	**South Essex Homes**
Representative	**:**	**Mr H Lederman, counsel**
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 Katie Neave** **Mr Roland Thomas MRICS**
Venue	**:**	**Remote hearing by CVP**
Date of decision	**:**	**9 July 2026**

DECISION

Decisions of the tribunal

(1) The tribunal determines that:
   a. the demands numbered 864114 and 838707 are payable by the First Applicant, Michael Dyer, in full.
   b. the total sum payable for the roof replacement works completed at the block in 2022 is £53022.88, of which the First Applicant's share is £19305.63 and the Second Applicant's share is £19793.44. The costs have been met in part from a reserve fund. The total sum payable by way of service charge, taking account of the reserve fund contributions, is, in the First Applicant's case £10,518.54 and in the Second Applicant's case, £6384.81.

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

(3) The tribunal determines that the Respondent shall pay the Applicants £341.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by them.

The application

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 the 2020/21 and 2021/22 service charge years.

The background

2. The background to this application is set out in the following bundles of documents, which we have considered carefully:

   (i) the Applicant's bundle, which was divided into 6 sections;

   (ii) the Respondent's 311-page bundle;

   (iii) the skeleton argument prepared by Mr Lederman; and

   (iv) the "before and after" images of the chimneys produced by the Respondent during the hearing.

3. 64 The Broadway, Thorpe Bay, Southend on Sea was originally built as a convent, and later housed a school. In more recent years it was converted

into residential accommodation and now contains three flats arranged over three storeys. The ground and first floor flats are let on long leases to the Applicants, the terms of which are set out in more detail below. The First Applicant is the leasehold owner of 64B, which is the first floor flat. The Second Applicant is the leasehold owner of 64A, the ground floor flat.

4. The Respondent is the Applicants' immediate landlord. The Respondent retains the top floor flat, which is let to a social tenant.

5. The service charge year runs from 1 April to 31 March in every year.

6. Neither party requested an inspection of the property and the tribunal did not consider that an inspection was necessary, and nor would it have been proportionate to the issues in dispute, which primarily relate to major works to replace the roof of the block completed in 2022.

The hearing

7. At the hearing, which took place on 8 June 2026 by video conference, the First Applicant appeared in person, the Second Applicant was represented by her daughter, Ms Rosa Smargiassi-Harris, and the Respondent was represented by Mr Lederman.

8. We heard oral evidence from Mr Dyer, who adopted the Applicants' statement of case and reply as his evidence in chief. He was cross-examined by Mr Lederman. Both parties made submissions in turn on each of the items referred to in their completed scott schedule. We reserved our decision.

The issues

9. At the outset of the hearing, the parties agreed that the following issues remain in dispute and require determination:

    (i) The payability and reasonableness of the two service charge demands numbered 864114 and 838707, both of which are addressed to the First Applicant and his wife and concern Flat 64B.

    (ii) The reasonableness of the cost of the roof works, the particular challenges having been set out in the scott schedule.

10. Having heard the evidence and submissions and having carefully considered the documents referred to above, we make determinations on the issues as follows.

The Lease

11. We were provided with copies of the leases of Flat 64A and Flat 64B, the material terms of which were as follows:

    (i) By clause 3A, the lessee is required to pay to the lessor "such annual sum as may be notified to the lessee by the lessor from time to time as representing the due proportion of the reasonably estimated amount required to cover the costs and expenses incurred or to be incurred by the Lessor in carrying out the obligations or functions contained in or referred to in this Clause and Clauses 4 and 6 hereof and in the covenants set out in the Ninth Schedule hereto (such costs and expenses being hereinafter together called the "Management Charges") such estimated amount to be payable annually in advance on the days for payment of rent…"

    (ii) By clause 3B, the lessee is required to "pay to the Lessor on demand the amount by which the estimated sum paid by the Lessee to the Lessor under sub-clause (A) of this Clause in respect of the Management Charges is less than the due proportion of the total monies properly and reasonably expended or retained by the lessor such due proportion being 36.41 per centum of the total…" (the percentage is 37.33 in Flat 64A's case).

    (iii) By the ninth schedule of the lease, the lessor covenants to "keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts)…the main structure of the Property including…all roofs and chimneys…"

Findings of fact

12. As set out above, the block was initially occupied as a convent and later a school before being converted into residential flats. As constructed, and indeed until the roof replacement works in 2021/2022, perhaps unusually, it did not have any soffits – instead the block's render and pebbledash continued underneath the fascias and behind the guttering.

13. The block has not been well maintained by the Respondent in the relatively recent past. The Applicants raise very many instances of what they say are examples of disrepair in the block. However, we need only make specific findings about the matters that are relevant to the issues

in dispute in these proceedings, which in general relate to the condition of the block's roof. We find, having considered the documents in the bundle and having heard the evidence of the Applicants, that in replies to enquiries regarding the First Applicant's purchase of his flat in 2012, the Respondent asserted that it would "shortly" be renewing the roof of the block. However, this did not take place. The roof leaked repeatedly from 2014 onwards and the Respondent carried out patch repairs when leaks were reported. In 2020, it was reported in a homebuyer's report prepared for the Second Applicant that several roof slates were damaged or missing and that repairs were required. We find that the roof was at the end of its serviceable life by 2020 at the latest.

14. On 15 November 2021 works to replace the roof commenced. The contractor selected by the Respondent was Diamond Build PLC. The original time estimate for the work was 45 working days, however there is no dispute that the work in fact took 102 working days to complete. The works were finished on 7 April 2022, however after this date various snagging issues, such as a leak in the dormer and a broken roof tile, were identified and were fixed by the contractor.

15. The work to replace the roof was not carried out in a considerate manner by the contractor, and this caused distress and inconvenience to the occupiers of the block. In particular:

(i) The temporary toilet facilities used by the workmen left the ground contaminated and this was not adequately cleaned by the contractor. Mr Dyer's evidence about this point was not disputed and we accept it.

(ii) The external windows and window frames to the flats were left dirty during the works and were not cleaned by the contractor after the job was completed. The Applicants had to arrange for their own window cleaner to carry out a deep clean of the windows and frames at a cost of £250. Again, Mr Dyer's evidence about this point was not disputed (save for to point out that there was no window cleaner's invoice for the deep cleaning). We accept Mr Dyer's clear and straightforward evidence about the need for and cost of the window cleaning after the completion of the roof works, notwithstanding the lack of an invoice.

(iii) The contractor was not careful to clear up during and after the works and the Applicants found nails and other debris from the roof scattered around the external areas of the block after the work was completed. Mr Dyer's evidence about this point was not disputed and we accept it.

(iv) It was accepted by Mr Lederman that minor damage was caused to the block by the contractor during the works, namely to small areas of tiling between the ground floor brickwork and the pebbledash, on two of the corners of the block. The tiles have become chipped and broken and have yet to be repaired. Though the Applicants also asserted that the pebbledash itself had been damaged, there was no clear photographic evidence of this damage. We are not satisfied on the balance of probabilities that the pebbledash finish to the property was damaged during the works.

(v) On one occasion during the works there was heavy rain overnight. Because the roof had not been covered over by the contractor as it should have been (by tarpaulin or canopy etc.), water entered the block into the storeroom, and also into the first and ground floor flats. Mr Dyer's evidence about this was not disputed and we accept it. The rainwater caused damage to the internal parts of the flats. In particular, Flat 64B had to replace a ceiling light fitting and the carpets and rugs in both flats were damaged. The Applicants were distressed and inconvenienced by the leaking water, which entered their homes in the middle of the night.

16. During the works, the contractor packed up the old Welsh slates that had been removed from the roof and took them away from the site. Neither the Applicants nor the Respondent knows what happened to the slates after this. We accept what is said in the Respondent's statement of case about the slates, which is that the removal, handling and disposal of the slates was a matter for the roofing contractor under the terms of the contract. This was in our judgment a clear, straightforward and reasonable explanation. The Applicants complain that the contractor's fee for the roofing works should have been lower, as a credit should have been applied for the value of the slates. However, Mr Dyer accepted that he had not obtained any alternative quote or other evidence to show that comparable contractors would have given any such credit or would have been able to carry out the works at a lower cost, taking account of the value of the slates.

17. The Applicants were also concerned that they had been charged for works to clean horsehair from the slates, which was in their view unnecessary and unreasonable if the slates were to be disposed of. However, upon closer scrutiny of the pricing schedule for the works during the hearing, they accepted, and we find, that the charge was not to clean the slates but rather to remove the boarding and the felt beneath them. This work is an ordinary part of a roof replacement project.

18. As to the quality of the roofing works, it is apparent from the photographs provided by the parties, and we find, that the rendering to the chimney stack in the northeast corner of the block was not finished in a smooth, even and straight fashion. Further, it is unclear, because the Respondent has not explained, why two of the chimney stacks were repointed and then rendered on the same day. On the face of it, repointing <u>and</u> rendering a chimney would be unnecessary – it would be more usual to do one or the other. We explored these points with the parties during the hearing, however the Respondent was unable to explain why the works were carried out in this way.

19. The works carried out by Diamond Build included the installation of soffits, though there were no soffits in place previously. Though the Respondent's original plan was to install soffits to all four sides of the block, in the event the soffits were only installed on three sides. The Respondent said in a letter dated 17 December 2024, and we accept, that the soffits could not be installed on one elevation of the block due to the design of the gable end. Though the Respondent said in its statement of case that the soffits were installed to protect the roof timbers and to improve the durability of the roof, there was no explanation about how the absence of a soffit on one side of the block affected the protection and durability offered by their installation.

20. Further, we find having considered Mr Dyer's straightforward evidence, together with the photographs in the hearing bundle and the email of Wright Roofing & Guttering dated 16 March 2026, that the soffits were installed without facia vents or a continued ventilated soffit. Instead they were screwed into the pebble dashing course onto battens. It was not suggested otherwise by the Respondent.

21. We find that the soffits should have been ventilated. The lack of ventilation and the absence of a soffit on one side of the block is not likely to protect the roof timbers or improve the durability of the roof. Lack of adequate ventilation within a roof void can lead to problems with condensation which can in turn lead to deterioration of the timbers.

22. We raised these points with the parties during the hearing, however the Respondent did not offer any explanation about these matters, and nor did it seek permission to provide any further evidence on this point.

23. The guttering along the south side of the building was not properly fixed as the contractor did not evenly space the guttering clips. This causes the guttering to sag during rainfall and water to spill over onto the building. Though the Respondent asserted that these issues were addressed by the contractor during the defects liability period after the works were completed, the Applicants have produced an email from a local roofing contractor dated 16 March 2026 which states (in our view, reliably) that the guttering is still not properly fixed. Further, Mr Dyer's oral evidence on this point was clear, straightforward and unshaken in cross-

examination. The problem can be resolved quickly and easily by installing more gutter clips.

24. During the hearing, the Applicants also asserted that the insulation installed by the contractor in the top floor retained flat, apparently as part of the roof replacement work, was poorly installed because the insulation was not fixed securely, and an electrical consumer unit was coming away from the wall. Though Mr Dyer had raised this point in correspondence with the Respondent, it was not an issue identified in the scott schedule prepared by the parties, and in our judgment it would have been unfair for the Applicants to be permitted to raise it as in issue in dispute in these proceedings as the Respondent had not had an opportunity to respond to the allegations in its statement of case, and nor was Mr Lederman able to address the issue in submissions. We accordingly make no findings on this issue.

25. The roof work was of a sufficient standard to receive a Building Regulation Compliance Certificate on 3 May 2022.

26. On 17 December 2024, the Respondent agreed to make discretionary payments of £1500 each to the Applicants in respect of the issues that they raised in formal complaints relating to the roof works.

<u>The tribunal's decision</u>

<u>Demands numbered 864114 and 838707</u>

27. These demands concern the First Applicant only, as they are addressed to him and his wife.

28. Invoice 838707 is dated 18 November 2021. It is a demand for the annual actual maintenance charge for the period 1 April 2020 – 31 March 2021 in the sum of £490.28. Invoice 864114 is dated 28 October 2022. It is a demand for the annual actual maintenance charge for the period 1 April 2021 – 31 March 2022 in the sum of £470.47.

29. The First Applicant's complaint about these demands is that he has not been provided with an adequate breakdown of the cost to allow him to determine how much should be paid and/or whether the demands are correct.

30. The Respondent provided in the hearing bundle a spreadsheet from its contractor listing the various costs that the Respondent had incurred in maintaining the block in the 2020/21 and 2021/22 service charge years. Most of the expenditure in 2020/21 was incurred in the investigation of a roof leak and inspecting the roof, which by then featured a large number of slipped, cracked or missing roof slates. The Respondent charged to the service charge £170.85 and £686.62 in respect of two

inspections and investigations carried out in or around July and October 2020. In 2021/22, the only charge for general repairs was £630.26. It is apparent from the spreadsheet that this cost relates to the investigation of a leak into the bedroom of Flat 64B through the flashing on the dormer window above.

31. On 13 January 2022, the Respondent agreed in writing that, as no section 20 consultation had taken place in respect of the charge of £686.62, the total cost of this work would be limited to £250 per flat. However, as the Applicants are only required to pay around a third of this cost, the cap makes no difference to the sum payable in Flat 64B's case.

32. Mr Dyer agreed that these inspections and investigations had taken place and that the contractor had taken some interim steps to temporarily stop water ingress into the building, however he said (and we accept) that these steps were not sufficient to resolve the problem once and for all as by then the roof had reached the end of its useful life and required replacement. He pointed out that there was no contractor invoice for any of the work and said that he required an invoice before he would be willing to make payment.

33. The leases do not require the Respondent to provide a breakdown of expenditure or a contractor's invoice as a condition precedent to the Applicants' liability to make payment for the service charge. The Respondent has given what is in our judgment a reasonably detailed breakdown and explanation of the relevant costs that have been demanded as a service charge by these two invoices.

34. The First Applicant's challenge to the payability and reasonableness of the service charges must be based on some evidence that the charge is unreasonable or otherwise not payable. It was not suggested that the inspections could have been carried out at a more reasonable cost. Though the roof was by this time at the end of its serviceable life and was shortly to be replaced, it was not suggested that in 2020 and 2021 the Respondent should have done anything other than inspect the roof in response to reports of a leak and put in place temporary measures to alleviate any immediate risk of serious water ingress. We find that this is what the Respondent did and that its actions were reasonable, as was the cost of the inspection and temporary measures put in place.

35. We therefore find that the demands numbered 864114 and 838707 are payable by the First Applicant in full.

<u>The roof works</u>

36. The total cost of the roof works was £55,143.20 of which Flat 64A's share was 37.33%, Flat 64B's share was 36.41% and the Respondent was

responsible for the balance. Some of the cost was met from the reserve fund and some demanded by way of service charge.

37. The Applicants raise a number of points in their scott schedule, with which we deal in turn below.

Chimney stacks

38. We find for the reasons set out above that the chimney stacks should not have been repointed and rendered, and that the rendered finish to the north-east chimney is not straight or smooth as it should be. We find that the work was not of a reasonable standard for these reasons. We consider that these issues do affect the relevant costs payable by the Applicants for this element of the works, though we do not agree that the total deduction should be £3705.00 as the Applicants assert. £3705.00 is the total cost of the rendering and repointing works, from which the Applicants have benefited. We set out below our assessment of the deduction to be made from the total cost of the works, which we assess having stood back and assessed the contractor's workmanship in the round.

Loft insulation

39. The Applicants' case is that there was no loft insulation in the roof of the block before the works were completed, and that this caused their flats to be more expensive to heat. This is not in our judgment relevant to any issue that we are required to decide – we are required to determine whether the relevant costs of the roof works were reasonably incurred and whether the works are of a reasonable standard. Save for the issue with the retained top floor flat, which we have not permitted the Applicants to raise at this late stage, no issue is taken with the standard of the insulation works, nor with the decision to install insulation at all (which the Applicants agree should have been installed as part of the project), nor with the cost of the works.

40. For these reasons, we do not accept that the relevant costs of the works payable as a service charge ought to be reduced by £1469.37 as the Applicants assert.

Old slate tiles

41. As set out above, the Applicants have not obtained any alternative quote or other evidence to show that comparable contractors would have given any explicit credit for the value of the slates removed from site, or would have been able to carry out the works at a lower cost, taking account of the value of the slates.

42. This is the Applicants' application, and it is for them to produce some evidence that the charges are unreasonable. They have not done so, and we have accepted the straightforward explanation given by the Respondent about the responsibilities for the slate in the works contract. In our judgment, the evidence before us is not close to being sufficient to establish on the balance of probabilities that the relevant costs of the roofing works were not reasonably incurred because of the lack of an explicit credit for the value of the old slates.

Overrunning project

43. We have found as a fact that the works to replace the roof took much longer to complete than the Respondent and the contractor originally planned. We do not accept, as the Applicants assert, that we have jurisdiction to impose a penalty on the Respondent in respect of the length of time that the project overran. In our judgment, the overrun is one factor to consider when we assess the contractor's workmanship in the round below.

Damage to block / rainwater ingress during works / window cleaning / poorly fixed guttering / lack of care by the contractor

44. We have made findings of fact about these issues above. We do not accept, as the Applicants assert, that we should make a deduction of £3174.52 from the total cost of the roof works. This is an excessive sum. Though we do not doubt the frustration, stress and inconvenience of, for example, the rainwater ingress in the middle of the night, on the facts as we have found them to be the damage caused was relatively minor. In our judgment, these issues are further factors to consider when we assess the contractor's workmanship in the round below.

Soffits

45. Taking into account our findings set out above, we consider that the Applicants have raised points about the decision to fit soffits to this block, given that there were no soffits in place before the roof replacement, and given the lack of ventilation and the absence of soffits on one elevation, that the Respondent has failed to adequately answer. Though we accept that the cost of installing soffits at the block is potentially a cost that could be recoverable as a service charge under the terms of the lease, provided that a reasonably competent surveyor would advise the installation of soffits as part of the replacement of the roof, in this case the Respondent has failed to give any clear answers about (i) why it decided to install soffits (that is to say, what problem their installation was intended to address); (ii) how it is said that the soffits are efficacious given that they have not been installed to all sides of the block; and (iii) why the soffits have been installed without adequate ventilation, which is likely to undermine their efficacy.

46. For these reasons, we find that the cost of installing soffits at the block was not reasonably incurred, and nor was the work of a reasonable standard.

47. The cost of installing soffits, as set out in the pricing schedule, was £1352.32. We deduct this sum from the total cost of the roofing works of £55,143.20.

Overall deductions

48. We take into account the offer that the Respondent has already made to make a discretionary payment of £1500 to each of the Applicants to address what the Respondent identified and accepted as their unacceptably slow responses to the Applicants' queries in relation to the works. Though this payment is not directly linked to the standard of the works, it is closely linked to the Respondent's management of the project and the standard of service provided. It would in our judgment therefore be wrong to leave these payments out of account when considering whether there should be any deduction from the relevant costs of the work. There was no suggestion that this offer was no longer open for the Applicants to accept, and indeed Mr Lederman's submission that we should take the offer into account could not have been made if the offer could not now be accepted.

49. Standing back and considering our findings of fact in the round, we find that the appropriate deduction in the total cost of the works to be made to reflect the poor finish on the chimney stack, the decision to carry out both repointing and rendering works, the overrunning project and the damage and other matters identified above is a further £750.00. Though we do not doubt that the issues raised by the Applicants were inconvenient and irritating, ultimately a substantial project has been completed, the roof itself is functioning and watertight, and the majority of the work has been completed to a reasonable standard. On the facts as we have found them to be, the Applicants' complaints are about relatively minor matters and do not justify a large deduction in the relevant costs.

50. The total deduction to be made from the total cost of the roof work to reflect our findings set out above relating to the reasonableness and standard of the works is therefore £2102.32.

51. The total sum payable for the roof replacement works completed at the block in 2022 is £53022.88, of which the First Applicant's share is £19305.63 and the Second Applicant's share is £19793.44. The costs have been met in part from the reserve fund. The total sum payable by way of service charge, taking account of the reserve fund contributions, is, in the First Applicant's case £10,518.54 and in the Second Applicant's case, £6384.81.

Application under s.20C and refund of fees

52. No application for an order under section 20C of the 1985 Act was made.

53. At the end of the hearing, the parties made submissions as to whether the fees paid by the Applicants in respect of this application should be paid by the Respondent. We have reduced the total service charge by over £2000 in light of our findings about the substandard quality of some of the work and the lack of care with which it was carried out. The Applicants have been successful in their application, though they have not achieved the full reduction in costs that they sought and we have found their complaints to relate to minor matters. In our judgment, the application and hearing fees ought to be paid by the Respondent accordingly.

Name: Judge K Neave **Date:** 9 July 2026

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).