10390

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UB/LSC/2014/0056**
Property	:	**62C High Street, Cheshunt, Hertfordshire EN8 0AH**
Applicants (Tenants)	:	**Mr Roy Woodward**
Respondent (Landlord)	:	**Mr & Mrs PG Jeffries**
Managing Agent	:	**Mr MJ Colville of Manister Limited**
Date of Application	:	**19th May 2014**
Date of Hearing	:	**8th September 2014**
Type of Application	:	**A determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)** **Application under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings**
Tribunal	:	**Judge JR Morris** **Mr N Maloney FRICS FIRPM MEWI** **Mr D Cox**
Date of decision	:	**24th October 2014**

DECISION

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Decision

1. The Tribunal determines that the following contributions to the service charges are reasonable for the years indicated ending 30th June and will be payable when properly demanded with an accompanying note of the tenant's rights and obligations in accordance with section 21B of the Landlord and Tenant Act 1985.

Year	Contribution
2009	£1,081.94
2010	£884.20
2011	£812.13
2012	£846.06
2013	£1,013.11

2. The Tribunal orders that none of the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Reasons

Application

1. On the 19th May 2014 the Applicant made an application for a determination of the reasonableness and payability of Service Charges incurred for the financial years ending 30th June 2009, 2010, 2011, 2012, 2013 and to be incurred for the financial year 2014 (Section 27A Landlord and Tenant Act 1985)

The Law

2. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

3. 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, improvement 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 of 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 period*

4. 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 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.*

5. Section 21B Notice to accompany demands for service charges

(1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*

(2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*

(3) *A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.*

(4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*

(5) *Regulations under subsection (2) may make different provision for different purposes.*

(6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

6. Section 27A

(1) *An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party

(c) has been the subject of a determination by a court

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

7. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal, now subsumed into the First-tier Tribunal (Property Chamber). Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250.The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

8. The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants and an opportunity must be given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each

tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

The Lease

8. A copy of the Lease for the Property was provided dated 17th December 1986 which was between Longland Investments Limited (the Landlord) (1) and Maureen Elizabeth Bonus and Sandra Elizabeth Bonus (the Tenant) (2). The Lease is for a term of 99 years from the 4th June 1980 at a rent of £30.00 per annum.

9. The relevant provisions of the Lease were identified as follows:

10. Clause 3 of the Lease sets out the Tenant's obligations in respect of the service charge:
To pay to the Landlord for transmission to the Managing Agent hereinafter mentioned (or at the option of the Tenant to pay to the Managing Agent) as a maintenance contribution one tenth part of an annual sum of one thousand pounds being the estimated annual cost of doing the things (hereinafter comprehensively referred to as "maintenance") specified in the Second Schedule hereto such payments to be made in advance by two equal installments on the twenty fourth of June and the twenty fifth day of December in every year ... and in case in any year ending on the twenty fourth day of June the said sum of one thousand pounds shall with any balance carried forward form any previous year be insufficient to pay the cost incurred for the maintenance in that year then likewise (subject to the proviso to Clause 7 hereof) to pay to the Landlord or the managing Agent as aforesaid an additional maintenance contribution of an amount equal to one tenth of the deficiency

11. Clause 4 states that the Managing Agent appointed by the Landlord *shall be responsible to the Landlord and to all the tenants for the time being of the other parts of the Building for superintending maintenance*

12. Clause 7 states that the Landlord will *take all reasonable steps to control payment of maintenance contributions and use all reasonable endeavours to secure the performance by the managing agent for the time being of the duties to be imposed on him by his contract*

13. Clause 11 of the Lease sets out the Landlord's obligations which are, amongst of other things:
To maintain and keep in good repair and condition
(a) the main structure of the Building including the principle timbers and the exterior walls and foundations and the roof thereof
(b) the common parts
(c) the other parts of the Building not included in the foregoing sub paragraphs(a) and (b) and not included in this demise or the demise of any other part fo the building
(d) to observe the covenants set out in the Second Schedule hereof

14. The Second Schedule describes all the parts of the Building and common parts to be maintained which includes the main structure and the roof of the Building

The Inspection

15. The Tribunal inspected the Building and the Property in the presence of Mr Woodward, the Applicant and Tenant of the Property, Mr and Mrs. Jeffries, the Landlords, Mr Colville, the Managing Agent's Representative and Mr Geoffrey De Gerdon of Geoffrey De Gerdon & Co Ltd, the Landlords' Surveyors. The Tribunal found the Property to be as described by the Managing Agent in his representations. It is on the outskirts of the town centre and constructed over fifty years ago (during the 1960s). It comprises 5 retail units on the ground floor and 5 duplex maisonettes on the first and second floors accessed by an external staircase at the rear and a terrace at first floor level. Three of the retail units are let to one commercial tenant. There is a right of way from the road along the side of the Building over a walkway to the car park at the rear.

16. The car park area at the rear is flanked by the Building and by another block of maisonettes. The Building and the other block are adjacent and at right angles to one another. There are garages to the rear of the Building but these are within the demise of the ground floor retail units. On the day of the inspection the car park was very congested. There is no right within the Lease for a tenant of the Building to park in the car park at the rear but the landlord has allowed one vehicle per unit to be parked there.

17. The Building is a flat roof structure with tiles hung to the front and rear elevations. The windows and doors are a mixture of wood and upvc where individual tenants have replaced them. These parts of the Building are in fair condition. Problems with drainage of surface water from the roof were apparent, as guttering had been added to the roofline some of which was in poor condition. The roofline was a mixture of wood and upvc.

18. A common feature of the Application for each year in issue was the item in the service charges of roof repairs. The Tribunal therefore inspected the roof at the request of both parties. Access to the roof was obtained through a skylight in the Property. In the course of gaining access to the roof the Tenant pointed out the areas on the second floor where water had come in from the roof. The Tribunal noted staining on the walls and ceilings and that one of the ceilings had a hole in it said to be due to ingress of water.

19. The roof is comprised of board covered over with bituminised felt. There are two housings on the roof containing water tanks. One of these housings has been replaced. There is also telecommunications equipment on the roof. There was clear evidence of the bituminised felt having been repaired. A portion of the roof around the telecommunication equipment appeared to be in fair condition but other areas were in a very poor state and the sagging of the roof indicated that the board underneath the covering was failing. The undulations were likely to cause pooling of surface water leading to ingress of water in the event of any puncturing of the felt covering. The pooling and risk of water

ingress was likely to be exacerbated by at least two of the drains from the roof being covered. It was understood that this had been done to reduce leaks from the internal down pipes, which passed through the premises below.

Attendance at the Hearing

20. The hearing was attended by Mr Woodward, the Applicant and Tenant of the Property, Mr and Mrs. Jeffries, the Landlords, Mr Colville, the Managing Agent's Representative and Mr De Gerdon of Geoffrey De Gerdon & Co Ltd , the Landlords' Surveyors. Mrs Anna Fitzjohn, one of the tenants of 62B attended as an observer

Issues

21. The Applicant raised the following issues in the Application Form regarding the reasonableness of the cost of items of the service charge:

    Buildings Insurance for all years in issue

    Repairs particularly roof repairs and related surveyor's costs for all years in issue and the amount payable in respect of works for which a consultation procedure under section 20 of the Landlord and Tenant Act 1985 was required

    Cleaning for all years in issue

    Administration and Accounting for all years in Issue

22. Payability of the service charge was also in issue as it was alleged that no notice to accompany demands for service charges setting out the tenant's rights and obligations under section 21B was provided.

23. An Application was also made under section 20C of the Landlord and Tenant Act 1985 for an order limiting the service charge arising from the landlord's costs of proceedings although it was contended that the Lease did not permit such costs to be levied in the service charge.

24. The Respondents in written representations stated that they were surprised that the service charges were being questioned for the years 2009 to 2012 because the Tenant has made no complaint prior to 2013 and the demands had been paid. The Applicant stated that he did not know that he could challenge the accounts because he had not received the statutory notice, which should have accompanied the demands setting out the rights and obligations of the tenant. He said that he had questioned the roof repairs and related costs since 2009.

Evidence

25. Copies of the service charge account were provided for the years in issue in the Bundle.

Insurance

26. The Applicant stated in written representations that it had proven impossible for him to obtain actual insurance quotes due to being unable to find an

insurance company that would provide quotes who was not acting on behalf of a freeholder. He added that following inquiries he had been informed that based on the details provided the current premium might not be the cheapest that might be available but that it is "competitive". He therefore was prepared to accept his proportion of the service charge as reasonable, although to keep it competitive the Respondents should not assume that their existing insurer would continue to keep it competitive.

27. In response to the Tribunal's questions the Respondents confirmed that they employed a broker, TH March, who so far as they were aware went into the market place and obtained the best available quotations for the Building. The present policy was with Royal and Sun Alliance. The premium dropped in 2010 from £3,489.00 to £2,861.13 in 2011 because the Respondents had put pressure on the Broker to negotiate a better premium. It was confirmed that the Landlords did not receive any commission or repayment or other benefit out of the insurance premium paid or given to the Landlord, the Landlord's' agent or any associated individual or company.

28. It was said that for convenience the tenants have always paid the premium for the insurance as a separate item in accordance with the insurance year, which is from the 1st October to 30th November. The Insurance was agreed at the hearing not now to be in issue.

Roof Repairs

29. The Applicant said in written representations, in letters dated 30th July 2014, 12th August 2014 and 27th August 2014 and in a statement at the hearing that the roof required replacement. He said that the Respondent had repeatedly patched up the roof, which only moved the need for expensive substantial repair work in to the future and increased its cost by virtue of inflation and additional weather damage. He said that there had been a number of repairs over the years but he contended that major work was required to eliminate the recurring leaks into his Property.

30. He said that he understood from the Respondents that major work had been contemplated in 2006/2007 but the work was not carried out. He said that he had been told that the other tenants had not wanted the renewal of the roof and were happy with repairs. The Respondents had therefore taken the line of least resistance and only undertaken repairs. He submitted that if the tenants had been told the full details of the survey that was carried out in 2006/2007 and been told by the Respondents that the work was necessary and would be going ahead then they might have been more willing to accept the work had to be done. He added that because the works required a consultation under section 20, the tenants would have been informed the work was needed and that no further charges associated with the roof would be required once it was replaced and accompanied by a 20 year guarantee.

31. The Applicant submitted that the costs relating to the roof after 2007/2008 were unreasonable because the roof should have been replaced. He referred to the damage to his Property and that the water ingress made it difficult to live in the upper floor of his flat.

32. The Applicant also raised two additional points in relation to the roof repairs. Firstly he questioned why these were not carried out under the insurance and secondly whether the telecommunications equipment on the roof contributed to the damage or increased the cost of any work.

33. The Respondents' Managing Agent stated in written representations confirmed at the hearing that the main issue in relation to the repairs was the roof. He said that according to every expert that has been on the roof the Stramit board has degraded to differing degrees causing the water to pond on the roof especially during heavy rain. The water handling system, which amounts to three internal drainpipes, has exacerbated this.

34. He said that a major attempt was made in 2006/2007 to come up with a solution involving fully replacing the roof covering. The building surveyor spent a large amount of time researching the roof alternatives and preparing a detailed specification and discussing on site with interested contractors. Whilst this was going on the Managing Agents undertook informal soundings before issuing a section 20 Notice. However, it was clear that the majority of tenants were in favour of patching the roof when leaks occurred rather than the large expense of £8,000 per unit for a replacement.

35. He went on to say the issue was re-addressed in 2012 as a result of more serious leaks into flat 62E. The building surveyor prepared a further full specification and this is a large part of the building surveyors fees in the year 2012/2013. It was said that further discussion ensued but it was felt that given the increase in cost and tenants' previous reluctance to pay for a full replacement the matter was not pursued. On the 14th February this year the tenants were again asked whether the present system of repair should continue and only the Applicant said that the roof should be replaced.

36. The Respondents proposed the system used to re-cover 62D and E in 2013 for which the scaffolding was required has so far held and it is proposed that the same system should be applied over the remainder of the roof. It was commented that the cost of the scaffolding was part funded by the Landlords to avoid an on-going dispute but this does not mean that the full cost was not reasonable.

37. The Tribunal asked if a cost/benefit analysis had been done to determine whether it would be better to repair or replace. The Respondents' Managing Agent said that one had not been done as such. The Tribunal asked whether a consultation under section 20 had taken place for the roof repairs and related costs in 2011, 2012 or 2013 and the Respondents' Managing Agent said that it had not. It was asked why only informal consultations were undertaken in 2006/2007 and in February of this year. It was said that additional costs could be avoided by assessing the views of the tenants. The Tribunal asked how many new tenants had moved in since the informal consultation in 2007 and whether the prospective cost of the replacement could have been disclosed. The Respondents' Managing Agent said that flats A and B (40%) had changed hands at auction and completion was due at the end of end of September.

38. With regard to the additional points raised by the Applicant the Respondents' Managing Agent said that after protracted discussions with the insurers the decision was that no claim could be made as the roof problems were due to fair wear and tear and not a specific insurable event. In respect of the second point the Landlords stated that there would be no cost to the tenants for the removing of the telecommunications equipment to enable the roof to be replaced or repaired.

Electrical Repairs

39. The Applicant asked what the electrical repairs at a cost of £961.25 in the service charge for the year ending 30th June 2009 were, as he thought they might relate to the telecommunications equipment on the roof.

40. The Respondent's Managing Agent said that a new fuse board and some re-wiring was needed because the outside lighting circuit was deemed not to be up to the requisite standard by the electricity supplier, Eon, following an act of vandalism. A certificate of compliance was provided. It was added that a claim could not be made on the insurance because it did not cover vandalism.

Various Items

41. The Applicant asked for the cost of the item "Various" in the service charge for the year ending 30th June 2009 to be itemised and submitted that a consultation under section 20 should have been carried out as the cost was in excess of £250.00 per unit, namely £664.88.

42. The Respondents' Managing Agent provided the following breakdown:

a) Removal of the Water Tank	£1,912.82
b) Removal of water tank housing and replacement	£2,596.01
c) Repairs to terrace	£1,552.50
d) Building Surveyor	£ 587.50
Total	£6,648.83

43. The Respondents' Managing Agent stated that the tank on the roof was leaking and that the housing had started to degrade. It was decided that the work had to be carried out urgently, which together with the terrace repairs were carried out under the guidance of the building surveyor. The terrace repairs were said to be necessary because the bitumen surface had blistered where moisture had seeped in, causing a number of areas to rise, leaving concern that occupants would trip and fall. In response to the Tribunal's questions it was confirmed that no consultation under section 20 was undertaken due to the urgent nature of the work.

Boundary Wall, Path and Tree Removal

44. The Applicant stated that the work on the boundary wall, path and removal of the tree should have been the subject of a consultation under section 20. It was submitted that as it was recognised the wall required repair work in 2009

it could not be argued that there was no time to carry out a consultation. The total cost over two years was:

Wall Repairs (Part)	2011	£1,917.50
Tree Removal	2011	£300.00
Wall Repairs (Part)	2012	£1,527.50
Path	2012	£516.25
Total		£4,261.25

45. The Respondent's Managing Agent stated that in 2009 the boundary wall started to lean towards the adjoining yard caused by the large adjacent tree. The initial plan was to lop the tree, then remove it and tie bar the wall. However following the removal of the tree the movement of the wall increased and it became dangerous. Removing and replacing the wall was too expensive an option and therefore concrete beams were used and have proved effective. Following the above work the adjacent path became uneven and the path was replaced. The cost was spread over two years due to the pro forma invoice that was delivered and the lowest quote was chosen for the path.

46. It was considered that due to the amount of the subsidence excess it was not worth funding the wall repair through the insurance.

47. In response to the Tribunal's question it was confirmed that no consultation was undertaken under section 20. As with the roof and tanks the work was considered to be urgent.

Cleaning

48. The Applicant contested the cleaning cost for each of the years as follows:

2009	£750.00
2010	£455.00
2011	£300.00
2012	£490.00
2013	£300.00

49. He said that there has on occasion been rubbish dumped in the rear yard but this is a relatively rare occurrence. When this does happen it is obvious that someone has cleared up. However he said that monthly cleaning is not evident and that he has never seen anyone picking up litter or noticed any difference in the quantity of rubbish in the yard. He asked whether the cleaners attended at the same time each month or do they inform the Agent or is it just on trust that they attend?

50. The Respondents' Managing Agent stated that the cleaning contractors are tasked with attending the site once a month to litter pick at a cost of £300.00. The additional charges are to make a special visit if items are fly tipped. He said that he was aware of many instances of large items being dumped in the yard probably from those outside the area that know it is quiet. Some residents have on occasion thrown their rubbish bags over the edge of the terrace in the hope they will land in the paladin bins.

Administration and Accounting

51. The Applicant contested the administration and accounting cost, which is an annual unit charge, as follows:
    2009 £220.00
    2010 £225.00
    2011 £235.00
    2012 £235.00
    2013 £250.00

52. The Applicant said that the Managing Agent does not check that the services being paid for are actually being delivered effectively e.g. with regard to cleaning. He questioned whether there was provision in the Lease for the payment of the Agent. He felt that the Agent acted for the Landlord rather than providing services for the tenants who paid the service charge. He did not know what a reasonable charge would be.

53. The administration charge is for managing the property, engaging and paying contractors, issuing ground rent and service charge demands, keeping and preparing the service charge accounts and dealing with all contacts with the tenants. Recently tenants have asked the Agent to watch over the neighbouring property because the occupant has blocked the access to the rear. The tenants have also asked the agent to object to planning application made by a neighbour.

Payability

54. The Applicant contended that no notice to accompany the service charge demands setting out the tenant's rights and obligations under section 21B had been provided. The Respondents' Managing Agent conceded that this was correct.

Section 20C Application

55. The Applicant stated that an order under section 20C should be made for the limitation of service charge arising from the landlord's costs of proceedings. He said that the Respondents had not supplied notices of the rights and obligations of tenant under section 21B with the service charge demands and so he had not realized until he had recently been informed that he could apply for a determination of reasonableness. He said that no consultation had taken place and considered it unfair that the Landlords should be able to obtain the costs of proceedings which had been brought due to their non-compliance. He added that he did not believe the Lease permitted the Landlords to claim the costs of these proceedings in any event.

56. The Respondents' Managing Agent stated that the first they had become aware that there were any issues was in 2014 when the Applicant commenced proceedings. Prior to this the Applicant had paid the service charges. It was added that the consultation procedure under section 20 had not been carried out because of the urgency of the repairs.

Decision

57. The Tribunal accepted that although the Applicant had paid the service charge for the years in issue the lack of a notice setting out the rights and obligations under section 21B meant that he was unaware of the recourse he had to obtain a determination of reasonableness. It also found that the lack of a consultation under section 20 for qualifying works had meant that there had been little opportunity to question the policy of repair over replacement.

Repairs

58. A copy of the survey of the roof in 2006/2007 was not provided therefore it is not clear precisely what condition the roof was in at that time. However, from the Respondents' Managing Agents' evidence that *the building surveyor spent a large amount of time researching the roof alternatives and preparing a detailed specification and discussing on site with interested contractors* and its condition at inspection, the roof must have been deteriorating. Notwithstanding this the Tribunal accepted that between the surveys in 2006/2007 and 2012 it was reasonable to patch the roof with a view to making arrangements for a more permanent solution and while the cost of repair did not unduly increase year on year.

59. The Tribunal found that the escalation in the cost of roof repairs from £654.00 in 2009 to £1, 491.50 in 2011 and £2,640.00 in 2012, which took the annual unit cost just over the threshold for a consultation under section 20, should have alerted the Landlord and the Managing Agent to the need to replace the roof. In the absence of evidence to the contrary the Tribunal determined that the costs of repair for these years were reasonable. It was not disputed that the work was necessary or that it had not been carried out to a reasonable standard. However, the further increase to £3,438.00 in 2012 and £3,289.20 in 2013 were determined to be unreasonable, as action should have been taken for a more permanent solution.

60. Following its inspection the Tribunal agreed with comments in the letter from the Respondents' Managing Agents to the Applicant dated 14th February 2014 in which it was said *that the roof is time expired. We understand the boarding under the felt has lost it s strength in places which causes it to sag, thereby causing ponding which in turn exacerbates the problem by weight in certain areas and not allowing rainwater to drain away.* The roof survey of 2013 at a cost of £3,249.00 is determined reasonable in that it is the basis for arrangements being put in place for a permanent solution, namely a replacement roof, which will almost certainly require a consultation under section 20. The Tribunal took into account the case of *Marionette Limited v Visible Information Packaged Systems Limited* [2002] EWHC 2546 (Ch) with particular reference to paragraphs [95] to [98] in that case which drew a distinction between (1) the costs incurred in undertaking surveys in order to assess whether work is required and if so what work is necessary and (2) the costs incurred in the supervision of such works. The former are not qualifying works and so do not require the section 20 consultation.

Electrical Repairs

61. The Tribunal accepted that the electrical repairs in the year ending 30th June 2009 did not relate to the telecommunications equipment on the roof. It was not disputed that the work was necessary or that it had not been carried out to a reasonable standard. The Tribunal determined that in the absence of evidence to the contrary the cost of repairing the fuse board was reasonable and not eligible to be covered by insurance.

Various Items

62. The Tribunal found that it was not disputed that the collective works under the heading "various" in the service charge for the year ending 30th June 2009 were necessary or that it had not been carried out to a reasonable standard. Therefore the Tribunal determined that in the absence of evidence to the contrary the cost of these repairs was reasonable. However it was submitted that the works were qualifying and the consultation under section 20 should have been followed.

63. In determining whether the items identified as various were to be seen collectively and therefore qualifying works the Tribunal referred to *Phillips and Another v Francis and Another* [2012] EWHC 3650 (Ch). The Tribunal found that the works should be viewed collectively as qualifying works for that year and that a consultation under section 20 should have been carried out as the cost was in excess of £250.00 per unit, namely £664.88. The Respondent's Managing Agent confirmed that no consultation under section 20 was undertaken due to the urgent nature of the work. The Tribunal found that the urgency of the work was not of itself a reason not to carry out a consultation under section 20 and that an application under section 20ZA to dispense with the procedure should have been made. Therefore the Tribunal determined that the charge should be limited to £250.00 per unit.

Boundary Wall, Path and Tree Removal

64. The Applicant stated that the work on the boundary wall, path and removal of the tree should have been the subject of a consultation under section 20. The Tribunal found that it was not disputed that the boundary wall, path and removal of the tree in the service charges for the year ending 30th June 2011 and 2012 were necessary or that it had not been carried out to a reasonable standard. Therefore in the absence of evidence to the contrary the Tribunal determined that the cost of these repairs was reasonable In determining whether the items were to be seen collectively and therefore qualifying works the Tribunal again referred to *Phillips and Another v Francis and Another* [2012] EWHC 3650 (Ch). Although the cost of the work was spread over two service charge years the work was completed as a single remedial action in one period of 12 months. The Tribunal found that the works should be viewed collectively as qualifying works and that a consultation under section 20 should have been carried out as the total cost was £3,965.00 and therefore in excess of £250.00 per unit, namely £396.50.

65. The Respondent's Managing Agent confirmed that no consultation under section 20 was undertaken due to the urgent nature of the work. The Tribunal found that the urgency of the work was not of itself a reason not to carry out a consultation under section 20 and that an application under section 20ZA to dispense with the procedure should have been made. Therefore the Tribunal determined that the charge should be limited to £250.00 per unit.

Summary Tables of Determination for Repairs

66. The following are tables summarising the determination in respect of repairs for each year.

Repairs for year ending 30th June 2009				
Items	Total	Contribution Demanded	Contribution Determined	Tribunal Comment
	£	£	£	
L&M Roofing – roof repairs	517.00	51.70	51.70	Determined Reasonable
E Jaycock – leak repairs	137.00	13.70	13.70	Determined Reasonable
Connect Electrical – electrical repairs	961.25	96.13	96.13	Determined Reasonable
a) Removal of water tank	1,912.82	191.28	250.00	These 4 items should be treated as one. In the absence of a section 20 consultation being carried out the contribution is limited to £250.00
b) Removal of old tank housing & replacement	2,596.01	259.60		
c) Repair of terrace	1,552.50	155.25		
d) Building Surveyor	587.50	58.75		
Total	8,264.08	826.41	**411.53**	

Repairs for year ending 30th June 2010			
Items	Total	Contribution	Tribunal Comment
	£	£	
L&M Roofing – roof repairs	1,151.50	115.15	Determined reasonable
LGM Contractors – leak repairs	340.00	34.00	Determined reasonable
Surveyor's Fees - tank	444.69	44.46	Determined reasonable
Various – New bin, pest control	516.25	51.63	Determined reasonable
Total	2,452.44	**245.24**	

Repairs for year ending 30th June 2011				
	Total	Contribution Demanded	Contribution Determined	Comment
	£	£	£	
L&M Roofing – roof repairs	2,640.00	264.00	250.00	In the absence of s 20 consultation being carried out the contribution for this limited to £250.00
Days Fencing – wall repairs (part)	1,917.50	191.75	0	These 2 items should be included with the wall & path repairs in 2011. In the absence of a s 20 consultation being carried out the contribution for all 4 items is limited to £250.00
Ashley Trees – tree removal	300.00	30.00	0	
Total	4,857.50	485.75	**250.00**	

Repairs for year ending 30th June 2012				
	Total	Contribution Demanded	Contribution Determined	Tribunal Comment
	£	£		£
L&M Roofing/ K Payton – roof repairs	3,438.00	343.80	0	Determined unreasonable
Roof Survey	396.00	39.60	0	Determined unreasonable
Day's Fencing – Wall (part)	1,527.50	152.75	250.00	These 2 items should be included with the wall repair & tree removal in 2011. In the absence of a s 20 consultation being carried out the contribution for all 4 items is limited to £250.00.
Day's Fencing – Path	220.00	22.00		
Total	5,581.50	558.15	**250.00**	

Repairs for year ending 30th June 2013				
	Total	Contribution Demanded	Contribution Determined	Tribunal Comment
	£	£		£
K Payton – roof repairs	2,020.80	202.08	0	Determined unreasonable
Platinum Scaffolding	1,268.40	126.84	0	
Surveyor's Fees - roof	3,249.00	324.90	324.90	Determined reasonable
P Cole - redecoration	985.00	98.50	98.50	Determined reasonable
Total	7523.20	752.32	**423.40**	

Cleaning

67. At the inspection the Tribunal found the car park to be in fair condition. A charge of £400 to £500 per annum for keeping the area relatively clear of litter and fly tipped articles appeared reasonable in the absence of evidence to the contrary. It found that there being no increase in litter meant that litter picking was taking place. In making this determination the Tribunal took account of the openness of the site and that it was not practical to secure it with gates as this would limit the rights of others to use the area.

Administration and Accounting

68. The Tribunal noted that the charges for administration and accountancy were for managing the site and preparing the service charge accounts. In the absence of evidence to the contrary such as alternative quotations for the same work, the Tribunal determined that in the knowledge and experience of the members of the Tribunal these charges, which included both management and accounting, were reasonable.

Payability

69. The Tribunal found that no notice to accompany demands for service charges setting out the tenant's rights and obligations under section 21B was provided. Until the demands are re-served with these notices the service charges are not payable.

Section 20C Application

70. The failure of the Landlords and their Managing Agents to comply with the consultation procedures under section 20 of the Landlord and Tenant Act 1985 justified the Application and the Tribunal determined that it was just and equitable under section 20C of the Landlord and Tenant Act 1985 to order that the Landlord should not obtain any reimbursement of their costs arising from these proceedings through the service charge. In addition the Tribunal found that the Lease did not make any provision for the Landlords to claim the costs of these proceedings through the service charge.

Summary of Contributions Payable

71. The Tribunal determined that the total cost of the Buildings Insurance, Cleaning and Electricity for each year was reasonable and that 1/10th was payable by the Applicant when properly demanded and when section 21B of the Landlord and Tenant Act 1985 has been complied with.

72. The Tribunal determined that the unit cost of the Administration Charge for each year was reasonable and payable by the Applicant when properly demanded and when section 21B of the Landlord and Tenant Act 1985 has been complied with.

73. The contributions to the Repairs are determined to be reasonable and payable by the Applicant when properly demanded and when section 21B of the Landlord and Tenant Act 1985 has been complied with. Where the amounts for qualifying works were capped at £250.00 it is open to the Respondents to apply for dispensation from the consultation procedure under section 20 of the Landlord and Tenant Act 1985.

74. The following table sets out the contributions determined to be reasonable.

	2009	**2010**	**2011**	**2012**	**2013**
	£	£	£	£	£
Building Insurance	334.94	348.90	286.11	299.68	300.89
Repairs as determined by the Tribunal	411.53	245.24	250.00	250.00	423.40
Cleaning	75.00	45.50	30.00	49.00	30.00
Electricity	35.47	19.56	11.02	12.38	8.82
Administration and Accountancy	225.00	225.00	235.00	235.00	250.00
Total Contribution	**1,081.94**	**884.20**	**812.13**	**846.06**	**1,013.11**

75. No estimated costs for the year ending 30th June 2014 were provided.

Any party to this Decision may appeal against the Decision with the permission of the Tribunal. The provisions relating to appeals are set out in Part 6 of ***The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013****. An application for permission to appeal must be delivered to the Tribunal within 28 days after the Tribunal sends the Decision to the person making that application.*

Judge JR Morris