1710

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UN/LIS/2016/0019**
Property	:	**Flat 4, Oaklands Court, 23 Vicarage Road, Broadstairs, Kent CT10 2SG**
Applicant	:	**Ms. Lucy Wood**
Representative	:	**In person**
Respondent	:	**Silverlake Trading Ltd**
Representative	:	**Mr C Pfundstein (Director)**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge M Loveday (Chairman)** **R Athow FRICS MIRPM** **P Gammon MBE BA (Lay Member)**
Date and venue of Hearing	:	**27 July 2016** **Margate Magistrates' Court,** **Cecil Square,** **Margate,** **Kent CT9 1RL**
Date of Decision	:	**3 August 2016**

DECISION

Background

1. This is an application under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") to determine liability to pay service charges. The matter relates to a block of six flats at Oaklands Court, 23 Vicarage Road, Broadstairs, Kent CT10 2SG. The Respondent company is the landlord of the building. The Applicant lessee seeks a determination as to certain service charges in service charge years 2014, 2015 and 2016, including the cost of major works. The Application includes an application under section 20C of the Landlord and Tenant Act 1985.

2. The background to the dispute is that the Respondent acquired the property as a development project in April 2014. The majority of the flats are in hand, and having improved the premises the Respondent intends to market these flats for sale. As part of its refurbishment, the Respondent has undertaken various works to the common parts and structure of the property. The main works to the building were carried out in two phases, each of which was subject to separate a separate s.20 consultation. The first phase of the building works was the subject of an earlier decision of a Tribunal on dated 7 September 2015 (Case no.CHI/29UN/LDC/2015/0021) which dispensed with the consultation requirements under LTA 1985 s.20ZA in respect of certain elements of the works. The Respondent incurred relevant costs of £12,211.50 for the first phase. The s.20 consultation has been concluded in respect of the second phase of the building works, for which the Respondent incurred relevant costs of £36,728.82. In addition, the Respondent has undertaken works to the garden areas which (it says) did not require any statutory consultation, and for which it incurred relevant costs of £3,144.74.

3. A case management hearing took place on 16 May 2016 at 10 Alfred Place, London WC1E 7LR. The Tribunal clarified that the service charges in issue were set out in three demands for payment dated 24 February 2016, namely for £2,035 [p.235], £6,121.47 [p.98] and £524.12 [p.103] (although each was confusingly given the same

reference number CRN 08797167). The three invoices related respectively to contributions towards the relevant costs of (1) the first phase of the major works to the building (2) the second phase of the major works to the building and (3) the 'garden' works.

4. At the CMC, with the agreement of the parties the Tribunal identified six issues to be determined. A hearing took place on 27 July 2016 following an inspection in the presence of both parties. At the hearing, the Applicant attended in person and called Ms Sally Bryant to give evidence. The Respondent appeared by its Director Mr. Christopher Pfundstein. Another of the Respondent's Directors, Mr. Daniel Robinson, also attended the CMC and gave evidence.

Inspection

5. Access to the communal hallway is to one side of the house and there is a canopy over the entrance. It is plain that extensive works have been carried out in recent months/years.

6. The property is located in St Peter's residential area of Broadstairs and comprises a substantial two storey detached house c.1860 in its own grounds with two full height bays at the front. The main entrance is at the left hand side of the building which is covered by a canopy with a fibreglass coating finish supported by timber uprights . The building has rendered and colourwashed elevations and a mixture of wood sash and casement windows. It appears the walls are of solid construction with no cavities visible during the inspection. There is a complex multi-pitch roof which has at some time been re-roofed with concrete tiles. Some of the lead flashings to the roof have recently been replaced and some walls on the upper roof area have been covered in mineralised felt. The original access onto the roof is through a small doorway from the loft area onto one of the two roof valleys, but this was accessed through one of the flats. It has now been replaced with a Velux-type roof light accessed off the small first floor landing into the communal loft area, and thence onto the roof. A rooflight which was understood to have been original has been replaced with a new one.

7. The property has been converted at some time in the past into residential accommodation and now comprises six self-contained flats. There is a communal entrance hall and staircase which serves flats 2 – 5 inclusive whilst flats 1 and 6 have their own entrance doors. Some of these flats are currently unoccupied due to them undergoing a substantial refurbishment programme. The external rendering on all elevations was good. There was also evidence of recent repairs to masonry and brickwork including the rebuilding of parts of the piers between the window openings at ground floor level.

8. In the garden were four fibreglass and metal faux Roman columns which had evidently been abandoned for some period of time and which were damaged and rusty. There was also a small "Genie" mobile scissor lift, which had evidently been left on site for some considerable time.

9. The Tribunal inspected the interior of Flat 4, which is located on the first floor to the front of the property. The wood framed sash windows have leaded panes. All the windows to the Flat are plainly of different appearance to the remaining windows in the building. Although internally they are in fair condition, the Tribunal were able to see from the windows of an adjacent flat that the lower parts of the exterior of one window sash and frame had rotted and large areas had come away.

The Lease

10. The Applicant's lease is dated 31 January 1992. The material service charge provisions are summarised below.

Issue 1: Windows

11. The Applicant relied on the Scott Schedule of Disputed items [p.21] and her Statement of Case [p.22] which she elaborated upon in oral submissions at the hearing.

12. The Applicant contended that certain relevant costs which formed part of the first and second phases of works were incurred in respect of window works and that there was no obligation under the Lease to contribute a service charge towards these costs. The Applicant relied on:

    a. The obligation to pay a "service charge" in clause 1 of the Lease [p.153].
    b. The definition of "service charge" in para 1(ii)(c) of Sch.4 to the Lease, which required the Applicant to pay "one-sixth part of all other expenditure on services for the estate".
    c. The definition of "Expenditure on services" in para 1(i) of Sch.4 to the Lease, which was reference to the expenditure of the Respondent in complying with its obligations under Sch.6.
    d. The obligations listed in Sch.6 which included a duty at para 1 "to repair the Estate (except the flat and other flats in the Building) including the structural load bearing walls".
    e. The definition of "the Flat" in clause 1 as "the property described in the First Schedule".
    f. Sch.1 to the Lease, which expressly included in the Flat "the internal walls and interior surfaces of the external walls between the floors and ceilings of the Flat together with all windows and window frames contained in such walls and the external door of the Flat."

    The Applicant argued that the above provisions expressly excluded "the windows and window frames" from her flat, and that they were also excluded from the "other flats in the Building" in para 1 of Sch.6. It followed there was no obligation on the lessor to repair the windows and window frames and no ability for the lessor to recover a service charge for the relevant costs of such work.

13. The Applicant's second argument was that the words "windows and window frames" should be widely interpreted and that "the Flat" included a number of areas forming part of the window structures. These included various timber elements - such as the jambs, headers,

casings and sills. They also extended to brick or masonry elements which formed the window openings - such as the piers between the windows and the lintels above (n.b. the Applicant did not use these technical phrases, but described the various elements at the hearing).

14. Thirdly, the Applicant argued that the respondent had incurred some of the relevant costs of the major works on repairs to the windows and window frames of the flats, including the various timber and masonry/brick elements identified above. She identified 32 items relating to windows amounting to £27,493 [p.26]. The Applicant stated that this list was compiled from the detailed estimates attached to the s.20 consultation notices, and she had done so because the (similarly detailed) lists of costs actually incurred [pp.236 and 99] were not available until recently. She was unable to reconcile her list of window works which were challenged with the Respondent's list of works actually carried out.

15. Mr Pfundstein relied on the Respondent's Statement of Case [p.91] and developed his arguments in oral submissions at the hearing. He accepted the Applicant's legal analysis in her first argument, and acknowledged that the Respondent could not recover any relevant costs incurred in window works to the flats.

16. As to the Applicant's second argument, Mr Pfundstein denied the expression "windows and window frames" in Sch.1 to the Lease was apt to cover structural elements of the building forming the window openings. The words solely related to the "glass and timber" parts of the windows and excluded the lintels and the brick piers framing the window openings.

17. As to the third argument, Mr Pfundstein stated that the Applicant's list of 32 "window" items included some 14 that solely related to the replacement of the pillars to the front bays which had structural cracks which could not be fixed. These were not (in accordance with his construction of Sch.1 to the Lease) works to the windows or window

frames. As to the remaining items, it was unclear how these related to the costs actually incurred. The Respondent called Mr Robinson to give evidence about the windows. Mr Robinson was the director who handled the construction side of the business and he as an experienced building contractor specialising in the refurbishment of sensitive period properties. He stated that the initial s.20 notices had included a proposal to replace the timber and glazing elements of the windows to the Applicant's flat, but this proposal was abandoned after the respondent found out the Applicant was not liable to contribute to the costs of windows and window frames. Mr Robinson's practice was to save all receipts for materials purchases, labour and hire costs etc. and at the end of the project to draw up a spreadsheet setting out these costs. That list formed the basis of the detailed schedules of relevant costs which were used to calculate the service charges and which were attached to the service charge demands. When preparing the schedules, he had carefully excluded any constriction costs which related to the windows and window frames for any of the flats. However, he had included cills, 6 lintels and rebuilt pillars, since he considered they were part of the structure. The Respondent contracted a bricklayer to redo the pillars at a cost of £480 and a plasterer to do the mouldings to the lintels and other areas at a cost of £1,980. These two items appeared in the schedules [p.102]. Mr Robinson accepted the Respondent had incurred some labouring costs to replace the other windows in the property. However, before preparing his "Schedule of Labouring costs" he had simply deducted anything for work done to the 'timber and glass' elements of the windows and window frames and omitted them [p.102]. Mr Robinsons was asked which further items in the Schedules might be deducted if the Tribunal found the costs of works to the pillars and lintels to be irrecoverable. He felt unable to say so, other than that a cost of £196.77 was incurred for lintels on 26 August 2015. In short, the Schedules did not include anything for windows or window frames.

18. The Tribunal's decision. The Tribunal's conclusions are as follows:

a. On the first argument, it is not disputed that the relevant cost of "windows and window frames" in the flats are not recoverable under the service charge provisions of the Lease. The Tribunal agrees with the Applicant's legal analysis on this point (see above).
b. On the second argument, the Tribunal finds that the expression "windows and window frames" is limited to the timber and glass elements of the windows in the flats. This is for three reasons. First, the words "windows and window frames" in Sch.1 are followed by the words "contained in such walls", a phrase which refers back to the "the internal walls ... and the external walls". The draftsman therefore distinguishes between walls and windows, and more particularly the walls "containing" the windows and window frames. This unambiguously points to the brickwork forming the window openings being outside the definition of "windows and window frames". Secondly, the obligation to repair in para 1 of Sch.6 includes an obligation to repair "the structural and load bearing walls" whilst excluding any obligation to repair the flats. Again, this seems to distinguish between structural walls and the flats. Thirdly, the Applicant's interpretation would create an uncertain and less commonly encountered boundary for the flats. The incorporation of timber and glass elements of the windows within the demise creates a relatively simple and natural division between each flat and the rest of the premises. That is not the case if brick piers and lintels are included in the demise.
c. As far as the third argument is concerned, the Tribunal recognises that the Applicant has had to work from the schedules of proposed works attached to the s.20 notice rather than the actual works carried out. It further accepts that the schedules of relevant costs attached to the service charge demands are opaque and that they are impossible to reconcile with the schedules of proposed works in the s.20 notices. However, the Tribunal accepts Mr Robinson's evidence that he

had excluded any works to the windows and window frames from the relevant costs which he used to calculate the service charge demands. It found Mr Robinson to be a truthful witness, and there were no obvious examples in the detailed schedules to suggest he was not telling the truth on this point. If the Applicant was right, one might have expected the schedules to the service charge demands to have included some items that unambiguously referred to windows, but there was effectively no "smoking gun" to show Mr Robinson had in fact included window works in the service charge demands.

19. The Tribunal therefore finds the relevant costs are not irrecoverable under the Lease on the ground that they include window works.

Issue 2: Crane (£2,350)

20. The Applicant referred to the costs of a "crane" which was included in the relevant costs of the first phase of the major works scheduled to the service charge invoices. There were four entries for a "crane" dated 28 June, 24 July, 29 August and 29 September 2014, each for £587.50 [p.236]. The "crane" costs had been mentioned in the previous Tribunal decision, where there had been some confusion about what they related to. The Applicant suggested there had never been a crane on site, but the Respondent had bought a cherry picker for its own use and used it to complete the work instead of hiring scaffolding. The purchase price for the cherry picker was then spread over four months and included in the service charge schedules. The cost of a crane was not "incurred" and in any event it was not reasonable to incur the purchase price for the cherry picker under LTA 1985 s.19(1).

21. Mr Pfundstein contended that the nature of the "crane" was a matter of semantics. The item in question was a scissor lift, which was the machine on site at the inspection. It could easily be described as a "crane" or a "cherry picker". The works had required high level access and enquiries revealed that scaffolding costs would have been in the

region of £3,250 for 6 weeks for the first phase of works alone and he produced an estimate for scaffolding dated 17 April 2014 [p.128]. In fact the first phase took 10 weeks, and this cost would have been even higher. Instead, the Applicant bought the scissor lift for around £2,350, and this had proved very effective. This was a saving to the Respondent.

22. The Tribunal's decision. The Tribunal accepts there has been a misunderstanding caused by the use of the word "crane" in the schedules, but this is not the essential issue here. The issue is whether it was reasonable for the Respondent to incur the cost of buying a cherry picker for this project, at a price less than the cost of hiring scaffolding. The Tribunal accepts that it will usually be reasonable to incur the relevant cost of purchasing small items such as small tools etc. even for a modest building project. However, large items of capital plant fall into a different category. Ownership of such plant remains with the contractor or developer at the end of the project and it has a capital resale value. The Tribunal considers it will therefore generally be unreasonable for a lessor to incur the entire capital cost of large items of construction plant and to seek to pass the full purchase costs of such items onto the lessees.

23. Having said that, there is no doubt that the Respondent has had a significant benefit from the scissor lift in facilitating the works. The Respondent has no doubt incurred depreciation costs and maintenance as a result of lending its scissor lift for this project. The Tribunal considers it would be reasonable to incur a cost for the lift, even if that cost is less than the purchase price. The Tribunal considers it would have been be reasonable for the Applicant to charge the notional cost of hiring a budget scissor lift for the time needed for high level access on site. Using its own experience and having inspected the completed works, the Tribunal considers it would be reasonable to require high level access for about 10 weeks. Again, using its own experience, it finds that an equivalent small scissor lift could be hired for approx. £175 per week + VAT. This suggests it would have reasonable to incur a cost of £2,100 instead of the cost of £2,350 included in the service charges.

Issue 3: Roman columns (£300)

24. Once again, the Applicant relied on the estimated cost of erecting the Roman Columns which appeared in the s.20 consultation notices. These cost amounted to £300 for the columns themselves and £615 for the labour cost of erecting them. The Applicant's case was simple. She contended that the columns had been purchased but never used. They had been abandoned in the garden and gone to waste. Such a cost was not "reasonably incurred" under LTA 1985 s.19(1)(a). The Applicant suggested that the columns could have been sold on ebay or otherwise.

25. Mr Robinson again gave evidence about the Roman columns. The original canopy over the doorway had been deeper and heavier. It had originally been intended to replace the canopy and provide new decorative columns to support it and these had been procured at a cost of £300 [p.198]. However, a better solution was found by making the new canopy lighter and shallower, so it could be supported by timber supports, and this solution was adopted. The pillars were therefore not needed. There was no market for such items on ebay or on the second hand market. No other costs were incurred other than the £300. Mr Pfundstein submitted that every construction project involved a small element of waste (such as left over building materials) and that this was no different.

26. The Tribunal's decision. The Tribunal finds that the only relevant costs incurred for the Roman columns was the £300. However, it does find that the relevant cost was not reasonably incurred. It is true that an element of wastage is inherent in even the best administered construction contract. Ultimately, it is a matter of degree whether that wastage becomes such as to be unreasonable. In this case, the Tribunal considers it was unreasonable to incur the cost of the Roman columns. The columns were discrete and relatively expensive individual items unlike other 'waste' materials such as sand or cement. The decision to purchase the columns was a single commissioning of a relatively

expensive single bespoke item - and the person who commissioned them ought therefore to have been 100% clear they would be needed. This was particularly the case given that (on the Respondent's own evidence) there was no resale market for the columns if they were not needed. The decision to commission the columns appears was plainly an unwise one – and it is hard to see how the incurring of this cost can therefore be said to be unreasonable.

27. It follows that the £300 relevant costs of the Roman columns was not reasonably incurred.

Issue 4: Entrance canopy (£3,258.50)

28. The replacement of the canopy formed part of the first phase of the works, and it was previously considered by the Tribunal as part of the s.20ZA decision in September 2015.

29. The Applicant contends the original entrance canopy was a substantial tiled construction. She argues that although it could have been replaced with another in keeping with the original without planning consent, planning consent would have been needed for any change. In fact, the new canopy was a lightweight asphalt construction with wooden uprights. The work was not of a reasonable standard under LTA 1985 s.19(1)(b).

30. The Applicant also contends the costs had also been demanded twice. The background to this is that the Applicant has sought to extend her lease under Chapter 2 of Pt.1 to the Leasehold Reform Housing and Urban Development Act 1993 and the grant of the new tenancy has been held up for some time. The Applicant referred to letters from Mr Pfundstein dated 9 December 2015 which mentioned the same three figures of £2,035 [p.179], £6,121.47 [p.185] and £524.12 [p.181] as appear in the service charge demands. In each case, Mr Pfundstein said that these three costs would be included in the completion statement for the "section 42 lease extension". The Applicant had paid the money

to her solicitors in order to complete the new tenancy and they were now held in escrow. She believed the cost of the canopy had therefore been demanded twice – once by Mr Pfundstein in December 2015 in connection with the new lease, and once in the February 2016 in the service charge demands.

31. The Respondent denied the canopy works had been charged for twice. Mr Pfundstein stated that the only item in the service charge demands that related to the canopy was a single item of £238.50 and the new canopy provided for at this cost was of a reasonable standard. There was some plastering work that was still outstanding but this had not been included in the service charge demands and it would not be. No planning consent was needed for the new canopy and this had been discussed with building control and planning.

32. The Tribunal's decision. As far as the standard of works which was carried out, there is no suggestion the relevant costs in the same charge demands seek payment for replacement of the canopy with something other than what was seen on site. It may well be that the work required planning consent (and the Tribunal did not see any evidence of this apart from the word of the Applicant). But the only issue for the Tribunal under s.19(1)(b) is whether the works in fact carried out were of a reasonable standard. Having inspected the work, the Tribunal is satisfied that the works to the canopy were of a reasonable standard.

33. As to the second point, the Tribunal is satisfied that the Applicant has not been asked to pay twice for the works. A sum of money in respect of service charges needs to be agreed to enable completion of the new tenancy under the 1993 Act. The payment in this case has been held in escrow, presumably awaiting the decision of this Tribunal on the Applicant's liability to pay the service charges. There is apparently therefore no 'double payment' and the Tribunal explained this position to the Applicant at the hearing.

Issue 5: Render repairs (£11,150)

34. The Applicant contended that the render repairs were not of a reasonable standard under LTA 1985 s.19(1)(b). In Autumn 2014, the Respondent removed the chimney stack to the flank wall of the property adjacent to her flat. The Applicant referred to photographs showing the original chimney. The brickwork was then stitched and the Tribunal was shown a photograph with the chimney removed and stitch slots cut into the wall [p.273]. The Respondent then apparently ran out of funds – Mr Robinson admitting this at a meeting on site on 20 July 2015. As a result, the external wall was left without rendering throughout the winter of 2015/16. Eventually, Mr Robinson contracted a Monocouch company which completed the whole process. As a result of all this, the wall was left exposed and there was damp ingress to the flat. Photographs showed the exterior with poor rendering [pp.276-280] and damp staining to the interior of the flank wall and the ceiling of a bedroom [pp.281-3]. In about November 2015, Thanet Council decided the flat was uninhabitable and unfit to be let out. The Applicant accepted that the rendering "looked fine, now", but that the works had not been of a reasonable standard in the way they were carried out. When pressed, the Applicant stated that her objections were that (a) the works took too long, with a break in the middle and (b) that insufficient precautions were taken to avoid damp ingress into her flat.

35. The Applicant called evidence from an independent witness, Ms Sally Bryant, who had formerly worked for the letting agents Cockett Henderson. Ms Bryant had managed and let Flat 4 for the Applicant and had experience of Oakwood Court going back to 2007. She stated that the tenants in the Flat had eventually moved out of the flat. When asked the reasons, Ms Bryant stated that they were "unhappy with the noise, nuisance inconvenience etc. etc." and that they had moved out because of a "rent increase" and "external issues". When questioned by Mr Pfundstein, Ms Bryant said they were "fed up living in a building site" but that they had not said they had moved out because of the rent. It was notable Ms Bryant did not mention damp in her evidence, a point the Tribunal returns to below. In her closing submissions, the

Applicant further pointed to a survey carried out for the Respondent on 30 December 2013 [p.129] which referred at para 6.00 to Flat 4 having "slight damp around an air vent on the RH wall". The fact that the premises were uninhabitable was shown by the 100% discount applied to Council Tax bills for 2015/16 [p.264] on the grounds of "unoccupied structural alterations/major repair".

36. The Applicant challenged nine separate items of cost under this heading amounting to some £11,150 - again the figures being drawn from the s.20 consultation notices.

37. Mr Pfundstein relied on evidence from Mr Robinson about the works. Mr Robinson stated that when the Respondent acquired the premises, the flank wall was poorly rendered, and that this was evident form the photographs. During the first summer, they did not remove the render. There was no question of damp penetrating through the solid brick to the flank elevation. The house was originally constructed with 1½ft thick brickwork and it was not rendered, the builder relying on the thickness of the brickwork to minimise the chance of damp penetration. Even had the Respondent removed the render, there would have been no damp penetration through the flank wall. However, the Respondent then discovered a large structural crack to the flank wall which had been masked by the render. It was therefore necessary to remove the chimney and render and to stitch the crack. Slots were cut as shown in the photographs [p.273] and the stitching was completed a few days later. Although it was possible the crack might have caused the damp in the flat, the most likely cause was (a) the poor state of repair of the windows and (b) condensation caused by lack of heating, poor ventilation and the lifestyle of the tenants. He suggested the photographs showed mould spotting which was more consistent with condensation damage than penetrating damp.

38. Mr Robinson stated that the only costs directly relating to the rendering was the £7,708 cost of the monocouch contractors, and he referred to a receipt from the plasterer dated 8 September 2015 [p.214].

This was included in the demand for the second phase of major works [p.102].

39. The Tribunal's decision. It should be borne in mind that the Tribunal is being asked to deal with the standard of the rendering works – it is not being asked to deal with any counterclaim for damages etc. The Tribunal does, however, accept that where LTA 1985 s.19(1)(b) refers to the "reasonable standard" of "services or works", it is entitled to consider the conduct of the works as they progress, even if the finished product is of a reasonable standard. For the avoidance of doubt, the Tribunal does find that the completed rendering works were of a reasonable standard when completed: So much was obvious on inspection.

40. There is nevertheless a stark dispute between the parties about the nature and duration of the rendering works as they progressed and the effect (if any) of any problems with those works. Perhaps surprisingly, the Tribunal has been shown little or no contemporaneous documentary evidence on either side. However, on balance the Tribunal prefers the evidence of the Respondent about how the rendering works progressed and the effect of any deficiencies. This is for the following reasons:

    a. The Applicant's allegations of damp ingress are bound up with allegation that the damp caused the flat to become uninhabitable. However, there is no unequivocal evidence to support this. Ms Bryant, an independent witness called by the Applicant, significantly failed to mention damp during the course of her evidence. On more than one occasion she listed the reasons the tenants had moved from the flat, but she stated they left because of the general nuisance caused by the works, not dampness. Similarly, the Council Tax bills relied on by the Applicant [p.264] include a short narrative suggesting the discount was applied because the property was unoccupied due to "Structural Alterations/Major Works". Again, no mention of damp.

b. There is some evidence to support the suggestion there was damp in the flat before the rendering works were carried out. The survey of 30 December 2013 refers to damp in Flat 4 at that time [p.143]. This was again evidence relied upon by the Applicant.
c. There is no real corroborative documentary evidence to support the Applicant's case. In her submissions and evidence she same across as a forthright person, who would be expected to articulate complaints forcefully. There was a lack of contemporaneous documented complaints about the progress of the works and damp ingress.
d. As to Mr Robinson's evidence, he does not profess to be an expert witness, but he gave an opinion about the thickness of the solid flank walls and the likelihood of damp penetration. The Tribunal is an expert Tribunal and finds that it would be most unlikely that a lack of rendering would cause damp to permeate through 1½ ft of solid brickwork over a relatively short period of time.
e. The inspection showed there might well be other causes of damp in the flat, such as the defective external window frames to the front bay.

41. The Tribunal therefore finds that – irrespective of whether the rendering works progressed quickly or slowly – the rendering works did not cause any damp ingress to the Flat. Moreover, the Respondent acted reasonably in relying on the thickness of the flank wall to avoid any damp ingress and had no need to take further precautions to protect the Flat.

42. The Tribunal therefore concludes that the works and services provided for rendering were of a reasonable standard.

Issue 6: Roof works (£1,950)

43. The Applicant challenged the relevant cost of roof works. She did not complain that the roof works resulted in any leaks etc. However, she challenged the costs on the basis that the relevant costs were included both in the letters from Mr Pfundstein dated 9 December 2015 and in the service charge demands dated 24 February 2016. The Applicant calculated the relevant costs in dispute as £1,950, based on the s.20 consultation notices.

44. The Tribunal's decision. In essence, this is the same objection raised above in respect of the canopy works. The Tribunal reaches the same conclusion and for the same reasons set out above.

LTA 1985 s.20C

45. The Application includes a claim for an order under LTA 1985 s.20C that the Respondents' costs in connection with the Tribunal proceedings should not be included in the relevant costs.

46. In fact, there is no obvious provision in the Lease which would enable the Respondent to include such costs in future service charges – a point which Mr Pfundstein accepted.

47. However, insofar as it is necessary to do so, the Tribunal would make an order under s.20C. Although the Respondent has succeeded in resisting most (but not all) the challenges made by the Applicant, the fact remains that its accounting is opaque. It is impossible to correlate estimated costs in the section 20 consultation with the relevant costs actually incurred. The vouchers and receipts for expenditure which was disputed were almost entirely lacking. Moreover, the parallel requirement to pay disputed service charges as part of the 1993 lease extension before those charges were determined by this Tribunal caused understandable confusion. It is therefore just and equitable to make an order under s.20C in the event that the Respondent did seek to recover any costs in connection with this Tribunal claim.

Conclusions

48. The Tribunal therefore determines:

a. The window works were properly included in relevant costs under the terms of the Lease.

b. It was not reasonable to incur a cost of £2,350 for the purchase of the scissor lift. The Tribunal finds a reasonable relevant cost would have been £2,100 - making a difference of £250.

c. The relevant cost of the Roman columns (£300) was not reasonably incurred.

d. The works to the canopy roof were of a reasonable standard and the Tribunal rejects the Applicant's challenge to the relevant cost of roof works on the basis of 'double counting'.

e. The works and services provided for rendering the flank wall were of a reasonable standard.

f. The Tribunal rejects the Applicant's challenge to the relevant cost of roof works on the basis of 'double counting'.

49. As far as the three demands for payment are concerned, the above represent the only objections raised by the Applicant. The Tribunal has upheld the challenges by the Applicant to the Roman columns (the relevant costs of which were £300) and to a small element of the 'crane' costs (£250). Both these were included in the £12,211.50 relevant costs used to calculate the service charge for the first phase of the major works. The relevant costs of the first phase of major works stand to be reduced by £550 to £11,661.50 and the Applicant's proportion of this (one sixth) is reduced to £1,943.58.

50. The Tribunal therefore determines under LTA 1985 s.27A that the Applicant is liable to pay service charges to the Respondent as follows:

(a) £1,943.58 (Phase 1 Major Works).

(b) £6,121.47 (Phase 2 Major Works).

(c) £524.12 (Garden Works)

51. The Tribunal further orders under LTA 1985 s.20C that the costs incurred by the landlord in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

Judge MA Loveday (Chairman)
3 August 2016

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

3. 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.

4. 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.