FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference :	CHI/00HN/LIS/2018/0023
Property :	Flats 1–70 Wimbledon Hall, 3 Derby Road, Bournemouth BH1 3PP
Applicant :	Aster Group
Representative :	Capsticks Solicitors LLP
Respondents :	Mr N Goold (Flat 3) Mrs J Board (Flat 20)
Representative :	---
Type of Application:	Section 27A Landlord and Tenant Act 1985 – service charge determination
Tribunal Members :	Judge P.J. Barber Mr M J F Donaldson FRICS MCIArb MAE
	Poole Court & Tribunal Centre, Park Road, Poole, Dorset BH15 2NS
Venue & Hearing Date:	19th & 20th February 2019
Date of Decision:	11th March 2019

DECISION

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Decision

(1) The Tribunal determines that the sums of £513.763.68, & VAT for major works, and also 15% of the net amount of those costs in respect of management fees, are reasonable estimates on an on-account demand basis, for service charge demands in respect of the Property, and are payable by the lessees in the proportion of 1/70th each, being the proportion used and adopted and based on custom and practice, in lieu of the proportion of 1/69th referred to in the leases.

(2) The Tribunal determines pursuant to Section 20C of the 1985 Act that none of the Applicant`s costs in relation to these proceedings are to be regarded as relevant costs for determining service charges payable by any of the lessees as identified in the application.

Reasons

INTRODUCTION

1. The application made and dated 12th April 2018, is for determination in relation to costs on an estimated basis and proposed in respect of major works, and as to whether such costs would be reasonably demanded on account and payable under the terms of the leases. Directions were issued on 16th May 2018, followed by a telephone case management hearing on 21st June 2018, further directions on that same date, another telephone case management hearing on 11th October 2018, followed again by further directions. The Property comprises 70 flats, of which 22 flats are held on long leases and the remainder are subject to short lets by the Applicant landlord. The two named Respondents, Mr N Goold of Flat 3 and Mrs J Board of Flat 20 are those lessees remaining in dispute with the landlord in the matter.
2. The Applicant has provided a bundle of documents to the Tribunal, comprising various documents including copies of the application, the directions, two specimen leases, statement of case, witness statements, work specifications and tender documents.
3. The Property consists of two purpose built, five storey buildings and 70 flats in total.
4. In broad terms, the total value of the disputed works as identified in the application, was £457,376.01, although this figure has now increased, and the major works to which the application relates, are the following:

   Replacement Roofing

   Insulated Panels

   Roofline including fascias, soffits and rainwater goods

   Cavity insulation

   Re-pointing & brickwork repairs

   Removal of redundant gas heater flues

   External decorations

   TV satellite dishes

INSPECTION

5. The Tribunal inspected the Property in the presence of Mr Fieldsend of counsel for the Applicant, Mr Greenhalgh, Ms Jerrard and Ms Towler of the Applicant, and Ms Barstow of Capsticks LLP. In addition, the Respondents Mr Goold and Mr and Mrs Board attended the inspection. Mr Witek of the contractor MPS ("Mitie"), was also present. The major works were, by the time of the inspection in course of being carried out and both blocks were surrounded by scaffolding. The Property comprises two separate blocks, each of 35 flats, with garages at ground floor level and residential storeys above; the buildings were constructed in or about 1981, under flat roofs. The external walls variously comprise vertical sections of face bricks with windows inset, and alternating with vertical sections of cladding or fascia panels with windows inset. Access to the Property is by means of a driveway off Derby Road; the driveway is tarmac surfaced and there is some general parking provision on the northern boundary.

6. The Tribunal inspected the covered bin store and adjoining open recycling area, on the northern side of the Property; the covered bin store has key pad operated door entry, and the sides are enclosed partly by block work and wire mesh, under a flat, but slightly sloping roof; an accumulation of moss and other growth was noted on the roof when viewed from the grassed banks, at a higher level, near to the main residential blocks. The Respondents drew attention to black plastic bin bags in some of the metal recycling containers.

7. Both blocks were enclosed by Heras type fencing, and there were chutes installed for debris removal, and also mechanical hoists. Re-pointing work was noted to be in progress. Owing to an infirmity Judge Barber did not ascend the scaffolding ladders or inspect the roof, and Mr Donaldson carried out such inspection with various others of those present. Various TV satellite dishes mounted on the roof, could be seen from ground level. A number of damaged vertical cladding panels were observed; some were cracked and others had holes where previous gas fire flues had been removed.

THE LAW

8. Section 27A Landlord and Tenant Act 1985 provides that:-

(1) An application may be made to the appropriate 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, the date at or by which it is payable, and

(d) 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 the appropriate 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)-(7)….

REPRESENTATIONS

9. At the outset of the hearing, Judge Barber advised the parties that Mr Donaldson`s firm acted as managing agent for a number of clients, one of which has recently instructed Mr Fieldsend of counsel, but in relation to an entirely separate matter and concerning a property in Kent. Judge Barber said it was appropriate to draw the attention of the parties to this, and asked if there was any objection; however none was made. In addition, Judge Barber referred to the late filing of a skeleton argument for the Applicant on the day before the hearing; Mr Fieldsend said he had been partly involved in the matter at an earlier date. The Tribunal was satisfied however, that the skeleton argument did not introduce new evidence.

10. The Tribunal then asked the parties to narrow the issues by confirming the matters actually remaining in dispute; the parties agreed that the only matters in dispute are:

    Replacement roofing

    Insulated panels

    TV satellite dish works

    Management fee being 15%

    The Tribunal invited the parties each to provide their evidence, one by one on each of the above matters. In addition the Tribunal referred to the application in respect of costs, made by Mr Goold under Section 20C of the 1985 Act; the Tribunal suggested that the parties should make their submissions in regard to Section 20C, following presentation of their evidence on the disputed matters. It was noted that two model form leases had been provided at Pages 18-81 of the bundle; whilst they contain slight differences, they were confirmed as being broadly in similar form.

11. Mr Fieldsend opened by clarifying the revised total estimated costs for which a determination was being sought; he referred to a revised figure of £513,763.68 in the Mitie bid at Page 541 of the bundle, which amount is subject to VAT. In addition the Applicant seeks a determination as to reasonableness of management fees estimated at a flat rate of 15%, but calculated upon the gross cost of the works, that is to say, including VAT. Accordingly the relevant amounts are as follows:

    £513,763.68 - Net total estimated cost of the Mitie works

    £102,752.73 - VAT at 20%

    £616,516.41 & 15% management fees

    In regard to the issue of whether or not the leases allow for "improvements" to be recharged by way of the service charge, Mr Fieldsend referred to various provisions in the leases and in particular, Clause 4(E); he submitted that an obligation to "*keep …. in good repair and condition*" signifies more than just repair, and added that he would be referring to case law including *Credit Suisse v Beegas Nominees*

Ltd [1994] 1 EGLR 76 and *Welsh v Greenwich London Borough Council (2001) 33 HLR 40*.

12. Replacement Roofing & TV satellite dish relocation:

12.1 Mr Fieldsend called Mr Greenhalgh, the Applicant`s Asset Manager (Stock Condition) to give evidence; Mr Greenhalgh clarified the nature of the proposed work by confirming that the new layers being installed are an over-deck rather than a deck as such. Mr Greenhalgh referred to the cross-sectional roof drawing at Page 543 of the bundle and confirmed that only the top two layers of mineral felt and fibreboard are being removed, and not the 25mm layer of asphalt or the 50mm layer of woodwool slabs, beneath the asphalt.

12.2 Mr Greenhalgh referred to the leaseholders wanting to have an insurance backed guarantee for the roof works, which require a layer strong enough to which new materials may be applied; he said that the existing woodwool layer is friable and had to be tested as to its integrity. So far, tests of the woodwool on the roof of Nos. 36-70 had shown that it was suitable, and approximately one quarter of the roof of Nos. 1-35 had been tested with a similar result. In regard to the need to apply insulation in course of the new work, Mr Greenhalgh said that Building Regulation Part L1B requires similar insulation for this type of replacement, as for new builds.

12.3 Mrs Board suggested that the reason why the roof was failing, was due to third parties having been allowed to access the roof at various times, to install TV satellite dishes; Mrs Board similarly questioned why a three-layer covering was now being installed in place of the previous two-layer covering. Mr Greenhalgh said that a three-layer covering should last for 20 years, and he was surprised that the current two-layer covering had lasted as long as it has. Mr Greenhalgh said that the Applicant did not know who may have damaged the roof.

12.4 Mrs Board asked why access is not controlled. Mr Greenhalgh said that access was probably obtained via a hatch which he thought was kept locked for most of the time, but for which residents may nonetheless have had access to keys.

12.5 In regard to relocation of the TV satellite dishes mounted on the roofs, Mrs Board submitted that the service charge head referred to in Clause 7 Part II of the Fourth Schedule of her lease, at Page 46 of the bundle, includes costs in relation to all conduits, other than those serving exclusively individual flats, and that accordingly the cost of relocating each satellite dish ought properly to be recharged individually to the occupiers benefitting.

12.6 Mrs Board also questioned Mr Greenhalgh concerning any Building Regulations requirement for the new roof layers to include the additional cost of insulation. Mr Goold said that the underlying asphalt layer had been the original roof until 1999, when the two-layer deck was added on top; he submitted that Building Regulation L1B only requires insulation to be included if the waterproof element was removed, rather than replacing a layer; he added that Parliament does not require insulation at any cost, but only if there is an economic case for it. Mr Greenhalgh countered this by saying that L1B would require insulation if practicable, where the water proof covering on a flat roof is being replaced. The Respondents referred to Mr Greenhalgh`s statement in the bundle at Page 265, where mention was made of a roof survey in 2017. Mr Greenhalgh said that the outer layer had failed, although the woodwool underneath remained dry and in

tact; he added that the asphalt layer would originally have been the water proof layer but that it would not have been covered, unless it had become defective. The Tribunal asked Mr Greenhalgh to explain how water was getting in, if the woodwool layer of the roof is nevertheless dry and in tact, and would become soggy and disintegrate if made wet. Mr Greenhalgh was asked if the damp marks in the ceilings of upper storey flats in the buildings, could be due to condensation. Mr Goold questioned the evidence as regards leaks through the roof having occurred; Mr Greenhalgh said that there had been numerous reports of such problems. Mr Goold said that such evidence as there was, did not support whole roof replacement works.

12.7 The Tribunal asked if the Applicant may wish to make any concession regarding the costs relating to relocation of TV satellite dishes; Mr Fieldsend took instructions during the lunch adjournment on the first day of the hearing but on resumption, advised and explained that no concession would be offered; he highlighted the charitable status of the Applicant and also submitted that the Respondents sub-let their flats and do not personally occupy them.

12.8 Mr Goold said that the roof works proposals had started in 2017, but that it was only after the survey in December 2017, that the Applicant had decided to use the IKO roofing solution with an extended guarantee of 25 years, but at an added cost of £40,000 & VAT. Mr Goold submitted that this resulted in extra costs of £788.00 per leaseholder, but that as a result of the decision in *Garside v RFYC Limited [2011] UKUT 367 (LC),* reasonable people should not be expected to cope with large increases at short notice.

12.9 Mr Greenhalgh said that the increased cost was however not just as a result of the extended warranty provision, but was as a result of the passage of time and inflation, or changes in market conditions. Mr Goold submitted that the Applicant should however, have discussed the increased costs arising from the IKO roofing solution, with leaseholders before proceeding and that it was more than just a minor specification change. Mr Greenhalgh countered by saying that the Applicant could not consult indefinitely and ultimately that it had to make a decision and proceed with the necessary work.

12.10 The Tribunal asked what financial assistance might be offered to lessees to off-set or mitigate the effects of the major works costs; it was confirmed for the Applicant that no assistance would be offered to non-resident lessees who were engaging in commercial letting; however the earliest that charges for the part of the works being carried out in 2018/19, would be demanded would be in or about August 2019, with the balance not being demanded until August 2020, thus spreading the burden of these major works costs.

12.11 During re-examination, Mr Greenhalgh said that in his view the cause of the water leak problems was through the roof; he confirmed that he has more than 40 years` experience as a surveyor, mostly in relation to social housing and that it is common for roofs of this type to fail; he added that the more layers which are added, the more difficult it is for water to get in. Mr Greenhalgh added that in his view the solution effected in 1999, to add two layers, was an expensive solution with short life expectancy, possibly reflective of the then owner`s intention to sell the Property some 6 or 7 years later. Mr Greenhalgh referred to Page 340 of the bundle being he said, a record of 46 roof repairs carried out between 2013 and 2018. Mrs Board questioned Mr Greenhalgh`s qualifications.

12.12 In regard to the intended bin store works, Mr Fieldsend questioned the nature of Mrs Board`s challenge and referred to various works carried out recently by the Applicant, which he said had not been re-charged via the service charge, including the installation of key pads for entry, peripheral railing, a CCTV camera and lighting. Mrs Board said she only visits the Property about once a week, having she said, had to let it from Christmas 2018 onwards, in order to pay for the works; she said the flat had otherwise mainly been intended for her children. Mrs Board said that she would agree to pay, if the respective general refuse and recycling waste areas were reversed, such that general waste is stored in bins in the uncovered area.

13. <u>Insulated Panels</u>

13.1 In regard to the decision to replace all the panels, it was submitted for the Applicant that some of the panels had been noted as being defective, some of these were cracked or had holes where redundant gas fire flues had been removed; it was suggested there was a correlation between cold rooms and the damaged panels.

13.2 Mr Greenhalgh said that the Applicant decided to replace all the panels regardless of the tribunal`s decision, adding that repair had been discounted, giving the on-going costs of painting / washing every 5 years. Mr Greenhalgh said that the replacement panels will be less costly to repair and that if only the original 20 failed panels referred to by the Respondents, were replaced, the result would be a patchwork of colours; also it would be disproportionately expensive in future, to replace future failed panels only as they became defective. Mr Greenhalgh said that the product selected involves an aluminium frame and is one of the few available, which has been demonstrated to be appropriately fire proof in the light of the *Grenfell Tower* disaster; he added that in future the new panels would be capable of being cleaned using an extended “wash and reach” system. Mr Goold questioned the costs and referred to a sum of £9,300 for replacing the 20 failed panels, “like for like” in 2017. Mr Greenhalgh said he strongly suspected there would be lots more panels needing attention, as he said is now the case. Mr Goold said it had to constitute an “improvement” for 200 mostly serviceable panels to be replaced.

13.3 Mrs Board said that she had not objected to this work, although she questioned any savings in future maintenance costs; Mr Board added that at the inspection it was mostly the larger panels which were less good. Mr Greenhalgh said he expected the new panels to last 40 years and that he had been told that they were of an approved type; he confirmed that certification will be obtained for the new panels.

13.4 Ms Jerrard gave evidence for the Applicant, saying that until 2014 the panels had been maintained every 6 years, but at that time the Applicant`s Planned Maintenance Team had identified that other work would be needed, requiring scaffolding, so it would be cost effective to wait until then, to address the panel failures.

13.5 Mr Goold referred to delays by the Applicant in recent years in providing audited accounts; Mrs Jerrard apologised and said that she is about to issue audited accounts on a back dated basis since 2014. In regard to the proportion of service charges for each flat, Mrs Jerrard explained that whilst the leases refer to a 1/69th share being payable, this reflected the fact that there was originally a caretaker`s flat and since that arrangement had been discontinued, lessees were charged 1/70th. Mr Goold questioned how many lessees wanted an extended

guarantee for the roof works; Mrs Jerrard referred to responses given during the Section 20 consultation process, as a result of which the Applicant revised the specification in order to obtain a longer warranty. Mr Goold complained that lessees had not been given an option as to whether or not to go for the IKO roof system with a longer warranty, but at extra cost.

13.6 In regard to the sinking fund, Mrs Jerrard confirmed that it will be applied towards the cost of these works. Mrs Board asked if it was reasonable for private lessees to subsidise a charity by expecting the lessees to contribute towards the costs of removing TV satellite dishes, for which not all had the benefit. Mrs Board added that she is not asking for time to pay, but just wants the amount to be reasonable.

14. Management fees

14.1 Mrs Jerrard confirmed for the Applicant that the works to be covered and included under this estimate heading will be the work of:

Initial Surveys

Writing of specification

Re-writing specification

Going out to tender

Reporting on quotes

Section 20 consultation

Supervising all works

Complying with CDM Regulations

Mrs Jerrard confirmed that costs are on a provisional basis and have to be approved by the Clerk of Works, with the Applicant`s Contract Manager. The Respondents referred to a multi layered arrangement; Mrs Jerrard said that concern was more perceived than real. Mrs Board asked which provision in the leases allows for a fixed 15% management fee; the tribunal reminded the parties however, that the determination is not in respect actual costs, but in regard to whether the suggestion of 15% is reasonable as a budget estimate.

14.2 Mr Fieldsend said that it is the Applicant`s policy to calculate the 15% against the gross contract costs including VAT. Mrs Jerrard accepted that it might be helpful for the Applicant to set out accepted service standards with leaseholders more clearly. The Respondents expressed concern that large numbers of the Applicant`s staff had been present at various meetings, adding they said, to costs, and that similarly Mitie have a substantial hierarchy.

15. Section 20C Costs

Following submissions made by Mr Goold, Mr Fieldsend briefly took instructions and confirmed to the Tribunal that the Applicant will not pass on any of the costs of these proceedings to leaseholders.

16. Closing Statement – Mrs Board

16.1 Mrs Board said that in her view, repair is to restore to the original state, and improvement is to make it better than before; she said that although Mr Greenhalgh had been unclear regarding whether or not the Applicant had given

permission to various occupiers to go on the roof to install satellite dishes, the Aster document at Page 561 of the bundle stated that permission was granted for the dishes to be installed, and Mrs Board felt that Aster had not managed the issue well. No indication has been given as to how similar damage will not be caused again in the future and it would be unsatisfactory for the upgraded roof to be damaged again.

16.2 Mrs Board also referred to the issue of roof insulation; she said that L1B does not require an additional layer to be insulated and that the Applicant was installing insulation without checking cost effectiveness and/or feasibility over a 15 year pay-back period. Mrs Board said that the required "U" value is 0.35 and not 0.18 as Mr Greenhalgh suggested; she also questioned the extent of Mr Greenhalgh`s qualifications, and said that as it was not proved that L1B requires insulation, it is therefore an improvement.

16.3 In regard to the satellite dishes, as it was unclear if permission had been given, the lessees should not be liable for the relocation costs and she cited Clause 7 Part II Schedule 4 in the leases. Mrs Board said that the Applicant regards lessees as "cash cows" to subsidise its social housing business and that the improvements were questionable. Mrs Board said that 15% is excessive as a management fee and resulted in a conflict of interest, encouraging the Applicant to go for higher works costs. Mrs Board referred to the various Aster staff present at the hearing and added she was not prepared to pay more than 10% of the net costs of the works for management fees.

17. <u>Closing Statement – Mr Goold</u>

17.1 Mr Goold said that in regard to the roof, he supports Mrs Board in her submissions and that if the asphalt is the water tight layer, then Part L1B does not mandate the installation of insulation. Mr Goold also objected to the increase in costs by changing to the IKO system; he added that Mr Greenhalgh should have known that the IKO system would prove to be more expensive and lessees informed, and the financial impact considered by the Applicant in the context of the decision in *Garside*.

17.2 In regard to the panels or cladding, Mr Goold referred to the difference between the reduced cost of £9,300 previously envisaged for more limited work, and the subsequent £63,000 costs for what will now be an improvement, and beyond a repair, with insulation being added. Mr Goold said that the Applicant`s Section 20 officer had referred to only 20 defective panels, with the rest remaining serviceable. Mr Goold accepted there may now be more damaged panels but at the time the application was made, he said it was unreasonable to decide to replace all the panels.

18. <u>Closing Statement – Mr Fieldsend</u>

18.1 Mr Fieldsend handed to the Tribunal copies of the decisions in a number of cases which he send had been alluded to in course of the evidence as follows:

Waaler v Hounslow London Borough Council [2017] EWCA Civ 45

Credit Suisse v Beegas Nominees Ltd [1993] Ch.d

Welsh v Greenwich London Borough Council (2001) 33 HLR 40

Garside v RFYC Limited [2011] UKUT 367 (LC)

Waaler v London Borough of Hounslow [2015] UKUT 17 (LC)

Daejan Properties Limited v Griffin [2014] UKUT 0206 (LC)

Waverley BC v Arya [2013] UKUT 0501

Mr Fieldsend referred to the issues to be determined and said that the lessees will still not be precluded from challenging actual costs later on; he added that the application is in respect only of prospective or proposed costs. Mr Fieldsend referred to *Waaler* which provided, he said at Page 2823, that works may be part repair and part improvement. In regard to *Credit Suisse*, he said that obligations to keep in good repair and condition, are capable of having separate and different meanings and that "good condition" refers to more than just repair. Similarly he said *Welsh v Greenwich* at Page 439 refers to "good condition" making a significant addition to the obligation to repair, such he said, as to include improvement.

18.2 Mr Fieldsend referred to the decision in *Waverley*, which he said establishes that in-house costs are recoverable by way of management fees. In regard to *Garside*, Mr Fieldsend said that any argument in regard to financial hardship is to be supported by evidence.

18.3 As regards *Daejan*, Mr Fieldsend said that notwithstanding any historic neglect, Section 19 recoverability of the costs of works did not depend on how the need arose. Mr Fieldsend said that of 22 lessees, only 2 are challenging the estimates and he added that extraordinary levels of consultation had been carried out; views had been listened to and he added that ultimately a decision has to be taken and regard had to observations, whilst not necessarily pleasing all. Mr Fieldsend said the fluidity of the specification demonstrated this, adding that other lessees wanted an extended roof guarantee.

18.4 In regard to timing, Mr Fieldsend said that the earliest costs would arise in July 2019, with the balance in July 2020, at least 2 years after the revised specification was produced. Mr Fieldsend repeated that the roof works are required, and that on the evidence, the life expectancy of the present two layer covering was already ended; he added that there was no evidence that the installation of the satellite dishes was the sole cause of any damage to the roof.

18.5 In regard to insulation, Mr Fieldsend said that whatever criticism may be made as to Mr Greenhalgh`s qualifications, he was more qualified than the Respondents who had offered no evidence as to any relevant training they may have had. Mr Fieldsend said the report from IKO at Pages 382 & 394 in the bundle, referred to the requirement for insulation to meet current legislation. Mr Fieldesend said that the removal of the top 2 layers, is the removal of the waterproof membrane and therefore insulation is needed; he added that the asphalt is not the waterproof membrane now. Mr Fieldsend said the work is not an improvement, but simply necessary to carry out the repair in compliance with Building Regulations.

18.6 Similarly Mr Fieldsend said the work to relocate the satellite dishes was necessary in furtherance of the roof works, from which it cannot be separated. Mr Fieldsend strongly rejected the notion that his client regarded the lessees as "cash cows".

18.7 In regard to the bin store works, Mr Fieldsend said that Mrs Board`s objection is not relevant. In relation to the fascia panels, Mr Fieldsend said that it is known that the boards are failing and that later repair would incur significantly higher cost; he added that the proposal is a fire combustion approved post-Grenfell system and that the decision is rational given that other panels would otherwise continue to fail.

18.8 Mr Fieldsend said in regard to cost, that tendering had properly occurred and the originally lowest tenderer Topek, had increased its tender, such that Mitie became the preferred option. In relation to the management fee, Mr Fieldsend said this is recoverable in principle and that the 15% is an estimate not an actual amount; he added that the item includes many elements as listed above.

CONSIDERATION

19. The Tribunal, have taken into account all the case papers in the bundle and the oral evidence given at the hearing.

Roof Works & TV Satellite Dish Relocation

20. Whilst it is curious that the woodwool layer was apparently dry, it was nevertheless clear from the inspection that areas of the roof covering were lifting and had failed and that as a result work is necessary to the roof; also, it is apparent that the two layers added in or about 1999, would have from that time onwards, become the water proof layer. No clear evidence in regard to Building Regulation requirements had been provided to the Tribunal in the bundle; however the Tribunal notes from its own knowledge and experience, from Part L1B Sections 5.7 & 5.8, that where a water proof membrane on a flat roof is replaced, the thermal element should be improved. Accordingly the Tribunal considers the proposed replacement of the two top layers including insulation to be reasonable.

21. 21.1 In regard to the bin store roof, the objections raised by Mrs Board are not considered by the Tribunal to be of direct relevance to whether or not the work actually being proposed is reasonable.

21.2 In regard to relocation of the satellite dishes, the Tribunal accepts that such work is inevitably ancillary to and necessary as a result of replacing the top two roof layers; it is not directly relevant to payability of service charges, as to the identity of the persons who may or may not have caused any damage to the roof in course of making such installations.

22. In regard to the increased cost of the IKO roof system, the Tribunal accepts that the landlord must ultimately make a decision about the carrying out of the works, and that it had in this case carried out consultation beyond the statutory requirements of section 20 of the 1985 Act, and further that the works as proposed, are reasonable.

Insulated fascia panels

23. On the evidence provided, the Tribunal accepts that the Applicant had assessed the panels in or about 2014 and determined then, that some were becoming defective. Given that at the inspection, more panels were noted to be defective, the Tribunal considers that the Applicant`s decision to replace all the panels whilst the scaffolding is in situ, is reasonable and that it would be disproportionately costly only to replace further panels at a latter date as and when they fail. The Tribunal accepts Mr Fieldsend`s argument that the obligation in clause 4(E) in the leases to

"*keep.....in good repair and condition*" entails more than just repair alone, taking into account the decisions in *Credit Suisse, Waaler* and *Welsh*. The works envisaged appear to be part repair and in regard to the addition of insulation, part improvement; however, the Tribunal accepts that it is reasonable to construe the term "good condition" in the leases, as admitting in the context of residential leases, action to ensure acceptable levels of thermal insulation and the avoidance of internal condensation and/or mould growth. The provisions of Building Regulation Part L1B Sections 5.7(b)(i) and 5.8 are also noted and taken duly into account.

Management fee 15%

24. In regard to the remaining items claimed in the applications, the Tribunal notes that the list of works envisaged by the Applicant is extensive and it considers that on an estimated basis, a management fee assessed at 15% of the net costs of the major works would be reasonable. However the fact remains that the leases do not provide for a fixed percentage management fee to be charged and accordingly the lessees would be entitled to challenge actual costs at a later date if they so wish. The Tribunal does not however consider it usual to apply a flat rate percentage to gross costs and that accordingly, the 15% is applicable only to the net estimated cost of the major works.

Section 20C Costs

25. In this regard, the Tribunal notes the assurance given by Mr Fieldsend and accordingly makes a formal determination that none of the Applicant`s costs relating to this application, shall be recharged via service charges, to the lessees as identified in the application.

26. In regard to the argument raised about the proposed charges being unreasonable at short notice by reference to the decision in *Garside*, the Tribunal notes that no evidence of financial hardship has been adduced and also that in reality, the costs are to be split over the service charge years 2019 and 2020, and also being some time after the revised specification details and proposed costs were notified to lessees.

27. The Tribunal does express some sympathy with the lessees in regard to complaints as to poor management by the Applicant, particularly noting Mrs Jerrard`s confirmation that audited accounts dating back to 2014, are only now to be provided to lessees. No doubt the Applicant will ensure in future that it complies properly in this regard with the requirements of Clauses 3 & 4, Part 1 of the Fourth Schedule of the leases.

28. In addition, the Tribunal considers it to be poor management for the Applicant to allow uncontrolled access to the roof areas by third parties and no doubt it will ensure for the future that the access hatches are properly locked and made secure and keys not generally accessible to all. This is an issue of some importance for the purposes of avoiding inadvertent damage in future to the new roof surfaces, and also from a health and safety perspective.

29. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal
appointed by the Lord Chancellor

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.