



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/29UN/LSM/2019/0013

**Property** : Northumberland Court, Northumberland Avenue, Margate CT9 3BS

**Applicant** : Mark Blooman, Manager

**Representative** :

**Respondents** : Leaseholders

**Representative** : -

**Type of Application** : Determination of Service Charges section 27A of the Landlord and Tenant Act 1985

**Tribunal Members** : Judge Tildesley OBE  
Mr D Banfield FRICS  
Mrs J Playfair

**Date and venue of Hearing** : 19 February 2020  
Margate Law Courts, The Court House,  
Cecil Square, Margate, Kent CT9 1RL

**Date of Decision** : 25 February 2020

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**DECISION**

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## **Summary of Decision**

1. The Tribunal determines a service charge on account of £155,000.00 (£100,000 for repairs and maintenance + £55,000 for standing items) for 2019/2020.

## **The Proceedings**

2. The Applicant tribunal-appointed manager seeks a determination, pursuant to section 27A Landlord and Tenant Act 1985 that the lessees should be required to pay a service charge on account in the sum of £298,335.00, including major works for 2019/2020.
3. On 23 October 2019 the Tribunal issued directions to progress the matter. A case management hearing took place on 18 December 2019 when the hearing date of 19 February 2020 was fixed. The parties accepted the offer of mediation which was held on 24 January 2020 and proved unsuccessful in resolving the dispute.
4. There are 42 leaseholders at the property, 26 of whom objected to the Application. Of the remaining 16 leaseholders, six agreed with the Application and ten did not respond.
5. At the hearing Ms McChesney of Flat 3 and Mr Abbott of Flat 27 represented the leaseholders who objected to the application. They were assisted by Mr Kinnear, a building surveyor, and related to Mr Abbott and Mr Plank, the son of Mrs Plank at Flat 8. Mr Smith of Penthouse 1 agreed with the application and was permitted to speak and ask questions. There were ten other leaseholders present at the hearing.
6. Mr Blooman presented his application in person. Mr Blooman had given an indication that he would not engage solicitors for this application so as to avoid the leaseholders from having to reimburse the legal costs through the service charge.
7. Mr Blooman provided the bundle of documents. References in this decision to documents are identified by their page numbers in [ ]. The Tribunal admitted in evidence an additional witness statement of Mr Blooman dealing with insurance [811-840] to which no objections were raised.
8. The Tribunal inspected the property in the presence of the parties prior to the hearing at Margate Law Courts.

## **The Dispute**

9. The dispute concerned the allocation of £240,000 for repairs and maintenance in the budget. Mr Blooman's position was that the

figure of £240,000 was derived from the information known at the time of his appointment. The information included tender returns given in the statement of estimates dated 20 March 2019 [286-289]. The tender returns were based on a specification which originated from the findings in the McFarland report dated 12 February 2019 [273].

10. The leaseholders who objected to the Application at the beginning raised a range of issues, many of which were not matters that the Tribunal could take account of when determining an estimated service charge. The leaseholders to their credit modified their objections in the response of 3 February 2020 [801-809]. They argued that the information which formed the basis of the estimated figure of £240,000 was unreliable, and that Mr Blooman should have regard to the financial impact of the increased budget upon the leaseholders by spreading out the costs of those works over a number of years. The leaseholders proposed a figure of £100,000 for repairs and maintenance which would produce a service charge of around £150,000 for 2019/2020.

## **Background**

11. The freehold of the property is owned by Northumberland Court (2008) Limited which is registered at HM Land Registry under title number K21230. The Tribunal understands that the members of the Company comprise 26 leaseholders of the flats in the building.
12. Northumberland Court Residents (Cliftonville) Limited (“The Residents’ Company”), holds a head lease of the property for a term of 999 years from 25 December 1950.
13. The Residents’ Company has granted under leases for terms of 999 years less one day from 25 December 1950 to the owners of the flats<sup>1</sup>. Under the terms of those leases, the Residents’ Company is required to insure the property, to keep the property in a good state of repair and decoration, to keep the hall stairs, landings and passages properly carpeted and cleaned and keep the lifts in good order. In return for the services the leaseholders are required to contribute to the costs of the Residents’ Company by way of a service charge.
14. On 25 April 2019 the Tribunal issued a summary decision determining the interim service charge for the year ended 30 June 2019 at £192,230 which was followed by a fully reasoned decision on 8 May 2019 (case ref. CHI/29UN/LIS/2018/0058).
15. The Tribunal in its decision recorded that the building required substantial investment to prevent further deterioration to the fabric of the building, caused by its construction and exposed position

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<sup>1</sup> The under lease for Flat 12 is for 99 years less one day from 31 May 1961

overlooking the Thames Estuary and North Sea. The Tribunal described that the directors of the Residents' Company had over the years since 1988 commissioned ten reports on the condition of the property which had highlighted priority works to be carried out but the directors had not acted on those reports. The Tribunal highlighted that budgets had been prepared during those years but there had been ongoing arrears which meant there was not the funding for the intended works. The difficulties over funding had been compounded because the terms of the underleases did not allow the Residents' Company to maintain reserves.

16. On 27 August 2019 the Tribunal appointed Mr Mark Blooman MRICS of B2 Chartered Surveyors of 9/27 The Broadway, London N8 8DR as Manager of the Property for a period of two years in accordance with section 24(1) of the Landlord and Tenant Act 1987.
17. The Tribunal decided it was just and convenient to make an Order under section 24(1) of the 1987 Act because it considered the property to be a complex building which had been extended and converted to residential accommodation since its construction as an hotel in the 1930's. As far back as 1988 severe cracks appeared in the external structure which were investigated by structural engineers who made various recommendations. In 2013 Peter Holliday and Associates identified high priority works (action now) for the external structure, some of which remain to be carried out. There have been subsequent reports of structural engineers and building surveyors emphasising the urgency of works to the roof, steel frame, and the concrete and external render. The planned maintenance schedule prepared for the Board in 2017 recommended a spend of about £840K over 10 years (2018 -2028) to bring the building back into repair.
18. Further the Tribunal decided that the challenges posed by the current disrepair of the building were magnified by the high service charge arrears compounded by the problems posed by serial non-payers and genuine cases of hardship, and by the factional conflict and mistrust that existed within the leaseholder community.
19. Finally the Tribunal found that the current Board was ill-equipped to deal with the immense challenges that prevailed at Northumberland Court.
20. On his appointment Mr Blooman arranged for a certificate of service charge expenditure for the year ended 30 June 2019 to be issued by the head leaseholder's accountants.
21. The certificate recorded an expenditure of £82,470 producing an underspend of £109,760 from the estimated budget. Mr Blooman's interim demand for the 2019/20 the service charge included a

credit to each leaseholder for his/her share of the underspend from the previous year.

22. Mr Blooman was of the view that some leaseholders were using non-payment of service charge as a method to delay any works taking place because underspend credits hitherto had to be returned each year. Mr Blooman pointed out that the Management Order permitted him to set up a reserve which should deter those leaseholders adopting this strategy whilst the Management Order remained in force.
23. Mr Blooman reported that there were currently service charge arrears of £71,232.77 comprising £18,582.84 which predated his appointment and £52,649.93 which post dated his appointment.

### **Inspection**

24. The property comprises a former hotel constructed in the 1920's and later extended and converted into a block of flats. It is located overlooking the sea on corner plot at the junction of Palm Bay Avenue, Northumberland Avenue and Beresford Gardens. To the rear is a block of garages accessed from Beresford Gardens not relevant to the current application.
25. The property incorporates the main four storey block containing the entrance hall, a three-storey section known as the annexe facing Beresford Gardens partly over a vehicular entrance (the underpass) together with single storey areas. The various roofs are flat and whilst most originally had asphalt finishes some have been overlaid with felt.
26. The elevations are largely brick faced with balconies at three levels on the main block. The balconies and some other areas are smooth rendered with a painted finish. The brickwork to the annexe section has been painted. The majority of windows appear to be replacement double glazed units.
27. The inspection largely confirmed the observations contained in the GCSI report of May 2013. On the Northumberland Avenue elevation the Tribunal noted some isolated cracks to the balconies with some spalling to the underside. The elevation facing Palm Bay Avenue showed some localised cracking and mould growth to the rendered sections. On the main block's Beresford Road elevation the Tribunal noted the distorted section of flat roof over the single storey area and localised cracks to the render. The annexe section appeared not to have been maintained to the same standard as the remainder with poor external decoration and some cracks to the

brickwork and lintels. The rear elevation of the main block also displayed cracks to some areas of render.

28. The Tribunal then inspected the “underpass” and noted the exposed supporting steelwork displaying various levels of corrosion and the two substantial but temporary props giving additional support.
29. The Tribunal then looked at the common parts to the annexe and noted the ill-fitting front door, lack of working lights and the inoperative window catches. In Mrs Betty Day’s ground floor flat (Flat 7) the Tribunal saw significant staining to the ceiling of the rear bedroom located under a flat roof. The Tribunal also noted a false ceiling had been installed in other areas of the flat which remained unmarked.
30. Entering the stairwell on the Beresford Road frontage the Tribunal saw areas of damp penetration below the windows and were shown the inadequate cill arrangement allowing rainwater to penetrate. The Tribunal also noted the damp staining to the top floor corridor.
31. The Tribunal’s surveyor member accompanied by Mr Blooman and Mr Kinnear then accessed the roof above the main section and noted that it appeared to be asphalt with a felt covering. Areas of distortion were noted together with some patch repairs. Looking down on to the roof above the front penthouse the inadequate drainage was apparent with an undersized outlet and down pipe discharging onto a terrace. At a slightly higher level separated by a rendered upstand was the asphalt finished roof above the Beresford Road frontage. Significant areas of pooling water were noted together with cracks to the rendered upstand. The flat roof to the tank room was visible but could not be inspected. From this vantage point it was possible to look down on to part of the roof above the annexe which appeared to be asphalt covered behind an adequate parapet. The roof above Mrs Day’s flat had some standing water and displayed mould growth.
32. The Tribunal noted the crack above the door to the rear entrance to the main block and the pooling water on the balcony above. From this point the Tribunal was also able to see the cracked render where the balcony rails were fixed.

## The Budget for 2019/2020

33. The budget is set out in the table below.

<b>Expenditure Item</b>	<b>Amount (£)</b>
Accountancy	720.00
Management Fees	24,000.00
Buildings Insurance	23,000.00
Lift Insurance	615.00
Cleaning	3,500.00
Communal Electricity	2,100.00
Gardening	3,000.00
Regulatory Testing	1,400.00
<b>Total (Excluding Repair and Maintenance)</b>	<b>58,335.00</b>
Repair and Maintenance	240,000.00
<b>Total Budget</b>	<b>298,335.00</b>

### The Budget (Excluding Repair and Maintenance)

34. This part of the budget which totalled £58,335.00 was derived from the estimated service charge for 2018/2019 approved by the Tribunal in its decision (case ref. CHI/29UN/LIS/2018/0058) except for insurance.
35. Mr Blooman allocated a sum of £23,000.00 for insurance which included an additional cost of £4,185.29 over and above the current policy cost of £18,814.71. Mr Blooman's rationale for the additional cost was that he had questions about whether the cover in place

would pay out in the event of a claim. The additional cost would provide a contingency if the insurance had to be changed.

36. Under the policy the insured had a duty of care to ensure that all reasonable steps were taken to prevent future injury or damage which included and was not limited to any of the issues which had been raised in the survey (“McFarland”).
37. Mr Blooman stated in evidence that he was no longer seeking to include in the budget the additional cost of £4,185.29 for insurance. Mr Blooman explained that he was now satisfied that an overcautious approach had been taken in respect of the risks to the property when the policy was taken out. Mr Blooman believed that the risks to the property had been exaggerated in the “McFarland Report” and that he was intending to carry out his own survey to confirm his expert opinion. Once that survey had been completed, Mr Blooman intended to furnish the details to the insurers which would obviate the need for the contingency of £4,185.29. The costs of the survey required Mr Blooman to consult the leaseholders. In order to expedite the survey Mr Blooman had applied to the Tribunal to grant permission for shorter timescales to carry out the consultation on the survey (“the dispensation application”).
38. Mr Blooman put forward a figure of £54,149.71 for the part of the budget excluding repairs and maintenance [797]. The leaseholders agreed with this figure.

### **The Repairs and Maintenance Budget**

39. Mr Blooman gave in evidence a revised sum of £229,348.00 instead of £240,000.00 for the repairs and maintenance budget [773]. The principal reason for this change was a reduction in the estimate for concrete and steelwork testing from £33,000.00 to £17,938.00. The other elements making up the revised sum of £229,348.00 were £50,000.00 for the works to the underpass and annexe; £151,410.00 which included a three per cent increase on the tenders for the major works set out in the statement of estimates dated 20 March 2019<sup>2</sup>; and £10,000 for routine maintenance.
40. Mr Blooman questioned the conclusions of the McFarlane report. Mr Blooman observed that the Report was recommending a proprietary solution to the potential disrepair of the concrete and steel structure which would require future monitoring by McFarlane. Mr Blooman considered that the solution proposed was inappropriate and expensive. Mr Blooman advocated an interpretative approach for the concrete repairs which would employ techniques to arrest corrosion and allow deferment of

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<sup>2</sup> Mr Blooman had checked with the contractors the appropriate uplift in the tenders.



repair over time at a lower cost than the proposed proprietary solution.

41. Mr Blooman also noted that McFarlane was intending to use its own contractors from Northern Ireland to carry out the testing and required works which in his view added unnecessary costs. Mr Blooman, however, pointed out that he could only move forward if he had the funds to carry out the concrete testing and rendering damaged parts safe. In this respect Mr Blooman had indicated a figure of £17,938.00 which was significantly below the original estimate of £33,000.00.
42. Mr Blooman's assessment of the costs of the concrete testing and repairs chimed with the Respondent leaseholders whose own enquiries had revealed that the testing could be achieved at a lower cost than what was originally proposed.
43. Mr Blooman said that the estimate of £50,000 for the repairs to the underpass represented the "worse case scenario". Mr Blooman considered that the structure of the underpass required further investigation. At this moment in time Mr Blooman was not convinced of the integrity of the remaining concrete to the underpass, pointing to the cracks in the render on the side facing the public highway, and that the ceiling which was hidden by cladding had not yet been exposed. Mr Blooman also had insufficient information regarding drainage and foundations in the area of the proposed works at the rear of the underpass. Finally Mr Blooman preferred to await the outcome of the concrete testing on the main structure of the building before carrying out the necessary repairs to the underpass in case the solution adopted for the underpass prejudiced the proposals for the main structure.
44. The Respondent leaseholders contended that the causes of the potential collapse of the underpass had already been investigated by local contractors which included a structural engineer's report from a Mr Ian Marsh B Eng (Hons) [607 -644]. The Respondent leaseholders relied on quotations from Stonaco Fabrications Limited in the sum of around £4,000 to erect a galvanised goal post frame and cladding to the rear of the underpass [647-655] to suggest that the estimate of £50,000 was grossly inflated. The Respondent leaseholders considered that the works to the underpass should be carried out urgently in order for Mr Blooman to gain their trust.
45. Mr Blooman acknowledged that he was unable to ascertain the basis upon which the specification for the major works in the sum of £151,410.00 had been drawn up. Mr Blooman went as far to suggest that large parts of the specification were fluff.

46. Mr Blooman, however, stated that his investigations revealed that major works were needed to the property, particularly the main roof which he said required renewal. Mr Blooman said that once he had completed his investigations he intended to update the ten year planned maintenance schedule. This would enable him to prioritise repairs according to severity, introduce cathodic protection to maintain the status quo and allow for deferment of other major repairs so as to spread the costs of the works over a period of time which in turn would make the service charges more manageable.
47. The Respondent leaseholders contended that the sum of £151,410.00 for major works had not been substantiated, and that it imposed a burdensome service charge on the leaseholders which was reflected in the high numbers of leaseholders not paying the service charge. The Respondents believed that a compromise should be reached in order to move forward. The Respondents proposed a budget of £100,000 for repairs and maintenance which they said was fair and reflected the approach taken in *Garside*.
48. There was no dispute between the parties with the allocation of £10,000 for routine repairs.

### **Consideration**

49. The dispute in this case turns on the reasonableness of the on account costs of £240,000.00 for repairs and maintenance which Mr Blooman revised downwards to the sum of £229,348.00.
50. The test for the reasonableness of on account costs is governed by sub section 19(2) of the 1985 Act which provides that
- “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”.
51. The language of subsection 19(2) suggests that the statutory ceiling applies at the time the leaseholder’s liability arises. If, at that date, the on-account payment is greater than a reasonable sum, the leaseholder’s contractual obligation is to pay only the lesser reasonable sum<sup>3</sup>. Under sub-section 19(2) the Tribunal is concerned only with the reasonableness of the proposed amount.

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<sup>3</sup> UT Decision in *Charles Knapper and others v Martin Francis and Rebekah Francis* [2017] UKUT 3 LC Para 30.

52. In the Upper Tribunal decision of *Charles Knapper and others v Martin Francis and Rebekah Francis* [2017] UKUT 3 LC Para 30. Martin Rodger QC Deputy Chamber President indicated:

“In principle it seems to me that the FTT was correct in disregarding matters which became known only after the appellants’ contractual liability arose. Those facts did not turn what had been a reasonable sum into an unreasonable sum. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked”.

53. Mr Blooman suggested to the Tribunal that the figure of £240,000 was reasonable because it was based on the information known at the time of the demand for 2019/2020 on 23 September 2019. In this regard Mr Blooman’s contention was consistent with the decision in “*Knapper*” which established the principle that the question of the reasonableness of the proposed amount should be assessed against the circumstances known at the time of the demand.

54. Martin Rodger QC, however, in the later decision of *Avon Ground Rents Limited v Mrs Rosemary Cowley and Others* [2018] UKUT 92(LC) emphasised that whether an amount is reasonable as a payment in advance is not generally to be determined by the application of rigid rules, but must be assessed in the light of the specific facts of the particular case. In this regard Martin Rodger QC at [51] referred to the Lands Tribunal decision in *Parker and Beckett v Parham* LRX/35/2002:

“It is not inconsistent with the Tribunal’s decision in *Knapper* for the likelihood of a particular event occurring during the period covered by an advance payment to be taken into account in determining the reasonableness of the amount of the payment. In *Parker* the Tribunal mentioned at several points that the certainty that works would be carried out, and thus the certainty of the anticipated costs, were matters which it was permissible to take into account in considering the reasonableness of the advance payment: “if the cost of the works is uncertain, so that there is a wide range of possible outcomes around the amount that the LVT has found to be reasonable, that could well be something that could affect the reasonableness of an advance payment”.

55. In this case Mr Blooman carried out his own investigation of the information he inherited about the costs of the proposed major works. Mr Blooman’s concluded that the costs in the “McFarlane” report were excessive and unrealistic and that he had no confidence in the specification for the major works which produced a tender in

the region of £150,000.00 In the Tribunal's view, these are relevant considerations when determining the amount of the advance service charge for repairs and maintenance.

56. The Tribunal is satisfied with Mr Blooman's explanation for the estimate of £50,000.00 for the underpass. The Tribunal notes that it is the amount for the "worse case scenario". The Tribunal observes that Mr Blooman supplied a revised figure of £17,938.00 for the concrete testing and there is no dispute between the parties regarding the £10,000.00 allocation for repairs and maintenance. The Tribunal finds that at this moment in time there is too much uncertainty about the priorities for the major works, and how those major works should be phased over time.

### **Decision**

57. The Tribunal decides that the amount of £240,000.00 for major works is unreasonable. The Tribunal finds that the sum of £100,000 is the amount that is reasonable for repairs and maintenance in the 2019/2020 service charge budget. The sum of £100,000 should allow Mr Blooman to complete the necessary repairs to the underpass, carry out the concrete testing and urgent repairs, attend to routine maintenance and carry over any underspend as a reserve.

58. The Tribunal, therefore, determines a service charge on account of £155,000.00 (£100,000 for repairs and maintenance + £55,000 for standing items) for 2019/2020.

59. The Tribunal makes the following observations:

- The Tribunal was impressed with Mr Blooman's expertise and independence of thought that he has brought to the situation. Equally the Tribunal was grateful for the constructive approach taken by the leaseholders and their recognition of the issues that are relevant to the Tribunal's jurisdiction.
- There is a recognition by all parties that major works are required to the property. The Tribunal noted that there was unanimity amongst the experts about the defects to the property and the repairs required. Mr Blooman intends to update the ten year repair and maintenance programme which will identify the priorities and the capacity for phasing the works over time. The benefit of this approach is that it should restore confidence in the building and assist in maintaining values which is a concern of the leaseholders. It would also mean that service charges would be higher than hitherto. The challenge for the leaseholders is to co-operate

with Mr Blooman in the production of a fully costed maintenance programme.

- Mr Blooman is under an obligation to collect the service charges, in particular those arrears that accrued prior to his appointment. The Tribunal has acknowledged the leaseholders' concerns with the 2019/2020 budget and understands that the amount set should now be within the bounds of affordability. Mr Blooman has indicated that he would consider cases of genuine hardship.
- Mr Blooman is invited to seek the directions of the Tribunal if he has questions about whether proposed works are repairs and or improvements. This was raised in relation to the proposed repair to Mrs Day's roof.
- Mr Gould for the Resident's Company questioned why Mr Blooman had not accepted the invitation of the new Board to a meeting. This ultimately is a matter for Mr Blooman. Under the Management Order the Residents' company is required to give all reasonable assistance and co-operation to Mr Blooman in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the said rights, duties or powers by due process of law. Mr Blooman in turn is obliged to act fairly and impartially in his dealings in respect of the Property.

## **RIGHTS OF APPEAL**

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.