



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

Case Reference : **CAM/00KF/LBC/2021/0005**

Property : **Flat 11, The Pickfords Building, 16-22 Priory Avenue, Southend on Sea SS2 6LB**

Applicant : **The Pickfords Building Management Company Limited**

Representatives : **Robert Dempsey & Sharon Wallace
Directors**

Respondent : **Robert Leonard Investments Limited**

Representatives : **Perry Howard Gamon & Martin Harvey
Gamon, Directors**

Type of Application : **Application for a determination whether a breach of a covenant or condition in a lease has occurred (Section 168 (4) Commonhold and Leasehold Reform Act 2002)**

Tribunal : **Judge John R Morris
Mr G Smith, MRICS, FAAV, REV**

Date of Application : **14th June 2021**

Date of Directions : **13th August 2021**

Date of Hearing : **18th November 2021**

Date of Decision : **2nd December 2021**

DECISION

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Decision

1. The Tribunal determines that the Respondent is in breach of the following covenants of the Lease:
Paragraphs 14 and 18 of Part 2 of the Seventh Schedule of the Lease; and
Paragraphs 40 and 51 of Part 3 of the Seventh Schedule of the Lease.

Reasons

Introduction

2. The Application is for a determination that the Respondent is in breach of a covenant or condition in a lease between the parties (Section 168 (4) Commonhold and Leasehold Reform Act 2002).
3. The covenants of the Lease which the Respondent is said to be in breach relate to keeping the Demised Premises in repair and are listed as being: Paragraphs 14 and 18 of Part 2 of the Seventh Schedule of the Lease; and Paragraphs 40 and 51 of Part 3 of the Seventh Schedule of the Lease.
4. A hearing was held on 18th November 2021 which was attended by Mr Robert Dempsey and Ms Sharon Wallace, Directors and representatives of the Applicant and Mr Perry Gamon Director and representative of the Respondent. Ms K Wallace was also present.

The Law

5. Section 168 of the Commonhold and Leasehold Reform Act 2002 states:
 - (1) *A Landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c20) (restriction of forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless (2) is satisfied.*
 - (2) *This subsection is satisfied if it has been finally determined on an application under subsection (4) that the breach has occurred or the tenant has admitted the breach*

The Lease

6. A copy of the Lease for the Property 11 was provided dated 31st May 2006 between Robert Leonard Estates Limited (1) and Robert Leonard Investments Limited (2) and The Pickfords Building Management Company Limited (3). The Property is demised for a term of 125 years from 1st January 2004. A copy of the HM Land Registry freehold title number EX418519 was provided which showed the Applicant as the Registered Proprietor from 4th June 2008 and a copy of the HM Land Registry leasehold title number EX771555 was provided which showed the Respondent as the Registered Proprietor from 30th October 2017. The relevant parts of the Lease are:
7. Clause 1 of the Lease
 - 1.17 *‘Service Installations’ means sewers drains channels pipes watercourses gutters mains wires cables conduits aerials tanks and soakaways and nay apparatus for the supply of water electricity telephone or television signals and other services or for the disposal of foul or surface water and water gas and electricity meters.*

8. The First Schedule, Part one, The Flat

Paragraph 5

The plasterwork of the ceilings and the surfaces of the floors including any tiling

Paragraph 7

Any balcony or balconies or terrace of the flat

But Excluding:

Paragraph 11

Any part of the Building and any part of any balcony or terrace lying below the floor surface or lying above the surface of the ceilings

9. The Second Schedule, Part Two, The Maintained Property

Paragraph 1

The main structure roof and foundations of the Building (including balconies and terraces if any) and all main timbers and joists and all external parts of the Building (but not including the glass in the windows of the Building other than in any windows or doors in the entrance hall passages landings and staircases in the Building which are used in common by the owners or occupiers of any two or more of the Flats) the paintwork and decoration of the external surfaces of windows and doors and balconies sand terraces (if any) of the Flats and the Service installations within or serving the Estate (other than those which exclusively serve individual Flats or are maintainable at public expense).

10. The Seventh Schedule, Covenants by the Lessee, Part Two, Covenants enforceable by the Lessor and the Management Company:

Paragraph 14

To repair and keep the Demised Premises and every part thereof...in good and substantial repair order and condition at all times...including the renewal and replacement forthwith of all worn and damaged parts...

Paragraph 18

Not to cause any damage to any part of the building...to make good any damage caused by any act or omission of the Lessee or any person expressly or impliedly...with the Lessee's authority...

11. The Seventh Schedule, Covenants by the Lessee, Part Three, Covenants enforceable by the Lessor and the Management Company and lessees of other Flats

Paragraph 40

Not to permit any liquid to soak through the floor of the Demised Premises and... make good all damage...caused

Paragraph 51

Plots 10 and 11 only: Not to place any Astro turf or like material on the terrace forming part of the Demised Premises or items other than small garden pots

Description and Inspection

12. The Tribunal inspected the Building and property on 18th November 2021 in the presence of the subtenants and Mr Robert Dempsey.
13. The Tribunal found that the Pickford's Building ("the Building") in which the Property is situated has been converted into 11 flats from a warehouse. The conversion of the Building was undertaken in 2004 to 2005 by the Robert Leonard Group. The Building was originally three storeys with brick elevations and a flat roof. The fourth floor was added in the course of conversion. There are three flats on the ground, first and second floors, and two on the fourth floor one of which is the Property. The top two flats each has a large terrace which was part of the original roof. The terraces have a brick parapet over a metre in height. The terraces are demised to the two flats.
14. The top two flats have a metal alloy roof which appears to have a shallow fall to guttering and downpipes which discharge onto the terraces. From this the water flows into a wide shallow gutter which runs around the perimeter of the terrace below the foot of the parapet. From the terrace there are rainwater downpipes which take the surface water to the drains at ground level. There are nine downpipes on the exterior of the Building although some are for foul water from the flats and some are for surface water. The Tribunal identified two downpipes removing surface water from the terrace of the Property although it was informed at the hearing that there were three.
15. The Tribunal could not make a full invasive inspection and so was reliant upon what the parties understood to be the composition of the floor of the terrace and upon its own knowledge and experience of building practice. The roof is understood to be laid upon timber joists overlaid with timber decking. It is believed from a recent inspection that there is a waterproof membrane over the decking but it is not known what this constitutes.
16. What is agreed is that a Kemper System waterproof layer was applied. The Applicant stated in its Statement of Case, and this information was not disputed by the Respondent, that that the Kemper product used is likely to be Kemperol V210, laid as a cold liquid applied complete waterproofing resin system comprising primer, fleece and polyurethane resin which are laid in one step to bond. It is considered to be a long lasting, durable and protective waterproof coating in accordance with BS476-3:1958 and Building Regulations 2000 and as a result, there is no NHBC requirement for an additional waterproof membrane. It was suggested that at the time of laying its properties may have been guaranteed for either 10, 15 or 20 years depending on what quality fleece was used and if a guarantee was requested. The product information supplied said that if laid on a terrace or similar it should be protected with a suitable resin wear course, which in this case would appear to be Kemper dur stone colour resin or similar intended to provide a more hardwearing finish. Product details were provided.

17. The Tribunal noted from the product information that it appears to have a relatively lower profile to some alternatives, which makes it suitable for situations where there are complex details such as gutters.
18. The Tribunal noted from the written statements of case and oral statements at the hearing, that since it was laid at the time of the conversion, the Property's terrace floor had deteriorated and was beginning to crack and break up. The Respondent said that the Property has always been sublet and the subtenant tripped over a section of the flooring that had lifted. This occurred in about 2016 and in response the Respondent arranged for a new surface to be laid.
19. The Tribunal found from its inspection, confirmed in the written statements of case and oral statements at the hearing, that the new surface was of asphalt which was laid across the whole surface of the terrace including the gutters. From the Tribunal's knowledge and experience asphalt is prone to softening in warm weather and if it is to be used on terraces and areas where there is more than occasional pedestrian passage e.g., for the purpose of inspection and clearing gutters, the surface should be overlaid with a wearing covering such as appropriate paving. The Tribunal found that the area had not been overlaid, the asphalt was exposed and had been pitted due to the garden furniture having been placed directly onto the surface.
20. The terrace of Flat 10 still had the original surface, which the Tribunal found from its view of the parts that could be seen from the Property, to be in fair condition, perhaps due to the terrace being more sheltered.
21. In particular the Tribunal found from its inspection that the asphalt covering sat higher than the original Kemper System covering. This was apparent not only from where the two surfaces abutted but also in respect of the gutters. The asphalt had made the gutters shallower than the original covering. In addition, the aperture around the downpipe that the tribunal could see was made smaller due to the thickness of the asphalt as compared to the Kemper System, bearing out the Kemper product information that it appears to have a relatively low profile making it suitable where there are complex details such as gutters.
22. The greater thickness of the asphalt as compared with the original Kemper System covering was also apparent in a small area of the Property's terrace where the subtenant had had a store. From the written statements of case and oral statements at the hearing, the contractor who had laid the asphalt in 2017 had not lifted the store leaving an area of the original surface in place. It was apparent from where the two surfaces abutted that the asphalt surface was higher than the original and that it had made the gutters shallower.
23. The Tribunal also found from its inspection that there was pooling of water in several areas of the gutter but in particular where the asphalt abutted the area of the original surface which had been under the store and adjacent to the gutter of Flat 10.

24. The Tribunal found that the falls to the gutters and the size of the aperture where the water entered the downpipe had been compromised when the new asphalt surface was laid. It is likely that the thickness of the new surface compared with the original made it difficult for the contractor to maintain the falls and the aperture resulting in the water not being expelled from the terrace efficiently.
25. The Tribunal considered that the present problem may be exacerbated by the placing of large plant pots and troughs in the gutters impeding the flow.
26. At a point close to the area where the store had been placed there appeared to have been a fissure in the asphalt which the subtenant had attempted to fill by the use of a mastic or similar sealant. It is in this area that Flat 9, which is the flat directly below the property, has suffered water ingress.
27. Following its inspection of the property, the Tribunal inspected Flat 9. It found that about a metre from the fissure in the asphalt there was a clear sign of water ingress from the ceiling down the wall.

Applicant's Case

28. The Applicant provided a written Statement of Case which was confirmed orally at the hearing.
29. The Applicant described the building and the property which is incorporated into the account above. The Applicant then set out the background to the alleged breach. In summary this was that the terrace floor covering had been re-laid inappropriately and as a result surface water leaked from Flat 11's terrace into Flat 9's living room. The Applicant submitted that the surface of the terrace is part of the demise and therefore the floor covering is the responsibility of the Respondent Leaseholder.

The Applicant's detailed account is précised and paraphrased as follows:

30. The Applicant stated that the Flat 11 terrace floor covering requires urgent remedial work as it is damaged in at least one place causing water ingress into the flat below which is Flat 9. The Applicant submitted that the reason for the ingress of water was due to the terrace floor covering being re-laid with an inappropriate material by the Respondent approximately three years ago.
31. The Applicant stated that around 2017, the Flat 11 subtenant noted that the original terrace flooring was cracked and raised in places (photographs provided) and this caused him to trip and sustain an injury, which was reported verbally to the Respondent's managing agent, Ayers & Cruiks. This was later confirmed in an email from Ayers & Cruiks to the Applicant's managing agent, Sorrell, which notes flooring was "uneven, blistering in places and starting to fail." (Copies provided)
32. The Applicant said that later in 2017 Ayers & Cruiks arranged resurfacing work with asphalt to most of the Flat 11 terrace. One area, incorporating a

drainage gutter, was not asphalted due to the presence of a store which has subsequently been removed.

33. It is not known what grade of asphalt was used and whether most of the old Kemper was removed or asphalt was overlaid. It is understood there are different types of asphalt including mastic asphalt which can be of different grades including recreational duty advised to be less likely to mark and soften, and asphalt concrete. The latter can let water seep through whereas the former is virtually waterproof. When used on a terrace or balcony asphalt the Applicants said they had been told that asphalt is often overlaid with promenade tiles or similar and may require sealing every few years as it can crack due to changes in temperature. The Leaseholder of Flat 10 placed promenade tiles over most of the terrace soon after purchase for additional resilience and protection.
34. The subtenant of Flat 11 said that no-one returned to inspect the resurfacing work after it was finished despite his concerns although this was promised. He said that the asphalt floor softens and dents in the sun and therefore does not make an ideal floor surface. He states he raised this point and was told it would be sealed with a sun-reflective coating, but this did not occur.
35. Following the asphaltting work, the Applicant said that water has pooled in the non—asphalted area of the drainage gutter and similarly in another drainage gutter which was asphalted, adjacent to Flat 10 (photographs provided). The Applicant submitted that when the asphalt was laid the drainage channels gradients affecting all of Flat 10, were lost, causing water to pool thereafter. The subtenant said that water has to be swept to the downpipe manually. It was said that in contrast, the gutters of Flat 10 have a gradient to allow run off (photographs were provided).
36. The Applicant went on to state that following the asphaltting work, the subtenant of Flat 11 and the adjacent Flat 10 Lessee advised that they complained numerous times to Ayers & Cruiks about the poor standard of work, loss of drainage channels and pooling water. Flat 10 said that he complained specifically on 20th and 22nd February 2018, and several times thereafter, both verbally, in writing and in person and to the Respondent directly and to Sorrell. It is understood that no action was taken to correct the work and the terraces were not inspected until 3 years later and after a leak was reported by the Leaseholder of Flat 9.
37. In October 2020 evidence of a leak was noticed by the lessee of Flat 9, situated below Flat 11. The leak has damaged a wall and ceiling with evidence of damp (photographs provided). Flat 9 advised the subtenant of Flat 11 of the leak and he advised Ayers & Cruiks who viewed and confirmed the damage to Flat 9 in an email to the Applicant's managing agent. The area of Flat 9 affected by the leak sits generally below where the shed was placed. This is in the area where the drainage gutter was not resurfaced and where water pooled on the original surface. Although the leak in Flat 9 was not directly below the apparent fissure, the position of the ingress may be due to the water tracking in the roof void.

38. The Applicant stated that prior to this date there had not been any problem with regard firstly, to the flow of water from the roof and terraces to the downpipes and secondly, with regard to leaks either in respect of the roof or the terraces.
39. An email from Ayers & Cruiks to Sorrell dated 16th November 2020 notes that the type of asphalt laid was as a “wearing course only and provides no water proofing quality to the original roof.” Ayers & Cruiks arranged for a building surveyor to report on the terrace floor. The surveyor cut through the asphalt surface to inspect the integrity of the waterproof coating and reported it was intact. This was checked in one flat area of the terrace only which had been re-laid with asphalt. The surveyor had informed the Leaseholder of Flat 10 that in Clause 3 of his report he stated the drainage issues of Flat 11 needed to be corrected.
40. The Applicant stated that in April 2021 it contacted Specialist flooring contractor CSJ Freeman & Sons who provided a report. This advised that the leak is most likely coming from a point on or around the edge of this drainage gutter near to where the shed stood. It stated that “repairs (meaning the resurfacing with asphalt) have been poorly completed against the fall, one of which has failed with water ingress reported by the flat below, the other (drainage gutter) in my opinion (adjacent to Flat 10 will fail sooner rather than later. Both of these areas require immediate attention”. The Applicant suggested that where the two different surfaces were joined some damage occurred and the integrity of the join leaves the area more prone to water ingress.
41. The Applicants referred to a number e mails (copies of which were provided) which they said indicated that the Respondent admitted a breach of the Lease as follows:
- 16th November 2020 from Ayers & Cruiks to Sorrell:
“...the asphalt covering was a wearing course only and provides no waterproofing quality to the original roof.
 - 2nd March 2021 from Ayers & Cruiks to Sorrell, copy to Mr P Gamon:
“...admittedly there were issues with levels in gullies after the work (resurfacing with asphalt in 2017) was done...” and
“...they were told by your firm at the time that it [the floor surface covering] was not the landlord's responsibility and was down to our clients [Robert Leonard investments Ltd] to remedy. Unfortunately, this statement wasn't contested at the time and the work took place.”
 - 2nd March 2021 from Sorrell to Ayers & Cruiks, copy to Mr P Gamon:
“Subsequent contractors have attended and advised that the previous works have had a detrimental effect on...the balcony area as the levels have been changed which has resulted in pooling etc. A number of contractors refuse [to quote] to carry out repairs due to the poor state and have insisted that the whole area is renewed.”

42. The Applicant submitted that the Respondent Leaseholder is responsible under the Lease for repairing the terrace floor covering. The Respondent Leaseholder replaced the floor covering inappropriately which resulted in a leak in Flat 9. The responsibility for remedying the inappropriately laid terrace floor covering is that of the Respondent not the Applicant.
43. The Applicant referred to an exchange of correspondence between the Applicant and the Respondent regarding liability.
44. The Applicant said that Drysdale, Solicitors, had been consulted and advised in an email dated 10th March 2021 (copy provided) on the specific point “that the main structure of the balcony is the responsibility of the management company but the surfaces would be the individual tenant’s responsibility.”
45. The Applicant added that the insurance company advised that in general any business undertaking work on the terrace should be properly qualified and insured, the work should be carried out with due diligence and the covering used appropriate. They stated it was the responsibility of the Lessee or their agent to ensure this was the case. They advised that even if the contractor had subsequently stopped trading, if they had insurance in place at the time, potentially a retrospective claim could be made for work that was later shown to be faulty.
46. The above was confirmed at the hearing.

Respondent’s Case

47. The Respondent in a written statement stated that he accepted that the surface of the terrace is the responsibility of the Lessee but that the roof of the Building is the responsibility of the Management Company and Freeholder.
48. The Respondent said that it had re-surfaced the terrace three years ago. The Applicant now states that the Respondent is in breach but it is not clear how. If the roof is sound then there would not be a leak into Flat 9. The Respondent questioned what under the Lease was the roof and what was the terrace.
49. It did not appear fair to the Respondent that the Applicant Management Company would accept liability only for the roof that covered the two top flats. However, it did accept liability for that part of the roof which formed the terraces of the two top flats even though water from the roof over the two top flats discharged onto their terraces. By making the two Lessees of the top flats responsible for the surface of the terrace, they were in effect being made liable for a substantial part of the roof.
50. The Respondent added that if it was to be responsible for the roof by being liable for the cost of resurfacing the terrace it wanted to be sure that any material that was put down and for which the Respondent was liable, was agreed to be appropriate.
51. With regard to the work that was carried out, the Respondent’s representative objected to it being referred to as of poor quality or “botched”. The

Respondent had taken advice and the contractor had recommended the asphalt covering as it was flexible and the structure of the roof was timber and so subject to movement.

52. At the hearing the Tribunal commented that there is usually some specific mention of gutters, downpipes etc which are commonly part of, what is referred to in this Lease as, the Maintained Property.

Decision

53. Firstly, the Tribunal considered the physical condition of the Building and the Property with regard to the terrace taking into account the evidence, submissions and its findings on inspection.

54. The Tribunal found as follows:

- 1) The original Kemper System surface of the terrace of the property had failed over a number of years and was replaced in 2017.
- 2) The surface of the terrace was replaced by an asphalt covering.
- 3) The Tribunal found:
 - a) The asphalt covering was thicker than the original Kemper System covering making the gutters shallower and the aperture to the downpipes smaller, comparison being made with the gutters and apertures of Flat 10 which still had the original Kemper System.
 - b) The falls to the downpipes which drained the surface water from the roof of the Building and the terrace of Flat 11 were compromised in that there was pooling of water in the gutters which was an indication that the surface water was not flowing away down the pipes efficiently. This was identified in the report of CSJ Fletcher and in correspondence between the parties. This finding was not withstanding that the subtenant of Flat 11 had placed pots and troughs in the gutter and in front of the aperture to the downpipes. These may have the effect of absorbing water but also may obstruct the flow and exacerbate the pooling.
 - c) The asphalt was pitted due to there not being promenade tiles or similar to ensure that the asphalt covering was resilient to use as a terrace on which there was regular pedestrian traffic.
 - d) There was an apparent fissure near to where the new asphalt covering abutted the original Kemper System covering which was filled with a mastic like substance.
 - e) There were signs of significant water ingress into Flat 9 at a point near to the apparent fissure in the asphalt covering.

55. Secondly, the Tribunal considered the liability of the parties under the Lease for the maintenance of the terrace.

56. To determine this the Tribunal must interpret the words of the lease.

57. Firstly, it looked at the First Schedule, Part one, The Flat.

- a) The introduction describes the Demise as *All that flat edged in red on the Plan and numbered as stated in the Particulars*. From this the

Tribunal found that the area edged red included the Flat and the terrace up to but not including the parapet.

- b) Paragraph 5, states that *the surfaces of the floors including any tiling* are part of the Demise and Paragraph 7 includes *any balcony or balconies or terrace of the Flat* are part of the Demise. From this the Tribunal found that the surface of the terrace of the Property (Flat 11) was part of the Demise.
 - c) The First Schedule, Part One, goes on to exclude from the Demise at Paragraph 8 *The main structure, roof and foundations of the Building (including the main structure and railings of any balcony)* and at Paragraph 11, *Any part of the Building and any part of any balcony or terrace lying below the floor surface or lying above the surface of the ceilings*. From this the Tribunal found that the joists and other supporting timbers upon which the floors and surface of the terrace lies is not part of the Demise. It is less clear as regards the decking and the timber floor but the Tribunal is not required to make a determination on that.
58. Therefore, the Tribunal finds that the surface of all the floors of Flat 11 including any tiling in the bathrooms or kitchen, carpets or laminate in the living rooms or bedrooms and the covering of the terrace down to the decking are under Paragraph 14, Part One of the Seventh Schedule, the responsibility of the Respondent as Leaseholder of Flat 11 as part of the Demise. It also finds that the joists and other supporting timbers upon which the floors and surface of the terrace lies are not part of the Demise and are part of the Maintained Property (see below) and therefore the responsibility of the Management Company.
59. Secondly, the Tribunal looked at the Second Schedule, Part Two, The Maintained Property. The Maintained Property is under the Fifth Schedule repaired and maintained by the Management Company through the service charge or, as referred to in the Lease, the Maintenance Expenses, which are payable by all the Tenants. This is the part of the Lease that led the Respondent to question whether the whole of the terrace is to be maintained by the Respondent or whether the Management Company has a responsibility for a proportion of it as being part of the roof from which all the flats benefit.
- a) Paragraph 1, defines the Maintained Property as *the main structure, roof and foundations of the Building (including balconies and terraces if any) and all main timbers and joists and all external parts of the Building*. As stated above the effect of this is that the joists and other supporting timbers upon which the floors and surface of the terrace lies are not part of the Demise but part of the Maintained Property and therefore the responsibility of the Management Company.
 - b) Paragraph 1, goes on to state that the Maintained Property also includes:
the Service installations within or serving the Estate (other than those which exclusively serve individual Flats or are maintainable at public

expense) and Sub-clause 17 of Clause 1 of the Lease states that 'Service Installations' means sewers drains channels pipes watercourses gutters mains wires cables conduits aerials tanks and soakaways and any apparatus for the supply of water electricity telephone or television signals and other services or for the disposal of foul or surface water and water gas and electricity meters

From this the Tribunal found that, notwithstanding the gutters are above the main timbers and joists and are within the area *edged in red on the Plan* which delineates the Demise, nevertheless they are part of the Maintained Property.

60. The definition of Service Installations clearly refers to gutters which catch and remove the surface water from the roof of the Flats below and which do not exclusively serve individual Flats. Therefore, the Tribunal finds that the gutters are part of the Maintained Property and their repair and maintenance is the responsibility of the Management Company.
61. Thirdly the Tribunal considered whether the Respondent is in breach of the Lease taking the Tribunal's findings and interpretation of the Lease into account.
62. The Tribunal found that by reason of Paragraph 14 of Part Two of the Seventh Schedule, the Respondent covenanted to repair and keep the Demised Premises and every part thereof in good and substantial repair order and condition at all times including the renewal and replacement forthwith of all worn and damaged parts. The Tribunal finds that this requires the Respondent to repair, replace or renew the surface of the terrace excluding the gutters.
63. As a practical point the Tribunal noted on its inspection that the resin wear course, which in this case would appear to be Kemper dur stone colour resin was still intact on the terrace of Flat 10 and had a metal beading around its edge beyond which was the gutter. This might assist in a demarcation of the terrace surface, which is the responsibility of the Respondent, as the Leaseholder of Flat 11, and the gutter which is the responsibility of the Management Company. It is recommended that the remedying of the gutter be agreed between the parties.
64. The Tribunal finds that the work that the Respondent carried out on the terrace, excluding the gutters is not fully compliant with Paragraph 14 of Part Two of the Seventh Schedule, in that the asphalt lacks protection such as paving and so does not meet the standard of good and substantial repair order and condition.
65. The Tribunal finds that the work that the Respondent carried out has compromised the falls of the gutters and the apertures in the parapet to the downpipes. In addition, on the balance of probabilities, the leak that has occurred in Flat 9 is as a result of defective repair work carried out by the Respondent or its contractor. Therefore, the Tribunal found that under Paragraph 18 of Part Two of the Seventh Schedule the Respondent is *Not to*

cause any damage to any part of the building and if it does so it must make good any damage caused by such act or omission of the Lessee.

66. The Tribunal found that under Paragraph 40 of Part Three of the Seventh Schedule, the Respondent must not permit any liquid to soak through the floor of the Demised Premises and must make good all damage caused.
67. The Tribunal finds that on the balance of probabilities the repairs, renewal or replacement of the surface of the terrace of Flat 11 has resulted in the leak that that has occurred in Flat 9 which is a liquid, namely water, soaking through the floor of the Demised Premises of Flat 11 into Flat 9. Therefore, the Tribunal determines that the Respondent is in breach of Paragraph 40 of Part Three of the Seventh Schedule of the Lease.
68. The Tribunal found that under Paragraph 51 of Part Three of the Seventh Schedule, the Respondent must not place any items other than small garden pots on the terrace forming part of the Demised Premises of Flat 11.
69. The Tribunal finds that the Respondent or its subtenant has placed large garden pots on the terrace and, as evidenced by the indents in the asphalt covering, has placed garden furniture on the terrace forming part of the Demised Premises of Flat 11. Therefore, the Tribunal determines that the Respondent is in breach of Paragraph 51 of Part Three of the Seventh Schedule of the Lease.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.