10492

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/OOCN/LSC/2014/0013**
Property	:	**Stirling Court, Stirling Road, Birmingham B16 9BE**
Applicant	:	**Stirling Court Management (Birmingham) Company Limited**
Representative	:	**Metropolitan PM Ltd, Chartered Surveyors and Property Managers, t/a MetroPM**
Respondents	:	**Mr Paul Wyman and Ms Michelle Padovani (1)** **Ms Lynda Mather (2)** **Mr John Baugh and Mrs Tina Baugh (3)** **Mr Surinder Dajwa (4)** **Mr Peter Cheung (5)** **Mr Ian Robinson and Ms Eileen Williams (6)** **Jadex Management Ltd (7)** **Mr Justin Hewitt (8)** **Mr Jeff Matthews (9)** **Mr Shaun Glaze (10)** **Mr David Stollard (11)** **Mr Stephen Mc Arthur (12)**
Representative	:	**None**
Type of Application	:	**Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge C Goodall LLB** **Mrs S Tyrer FRICS** **Mr D Douglas**
Date and venue of Hearing	:	**3 November 2014 at the First-tier Tribunal Hearing Centre, Bull Street, Birmingham**
Date of Decision	:	**17 December 2014**

DECISION

Background

1. Stirling Court ("the Court") is a block of twelve residential flats, all let on long leases. The freehold is owned by the Applicant, with each Respondent owning shares in that company. The windows and the roof are in poor repair. The Respondents disagree about how to tackle the repairs, and these proceedings have been brought to resolve the areas of dispute.

2. The Tribunal was informed that the directors of the Applicant are Mr Robinson, Mr Hewitt, Mr Darren Oakley and Mr David Stollard. In August 2013 the directors appointed MetroPM, a firm of chartered surveyors and property managers, to manage the Court. They have acted as the agents for the Applicant in bringing this case.

3. The Tribunal inspected the Court on 3 November 2014 in the presence of Mr Dale Jones from MetroPM and Mr Robinson. The application was then heard at the Tribunal Hearing Centre, Bull Street Birmingham. Mr Jones represented the Applicant. Mr Robinson (5th Respondent), Mr Birks (representing Mr Hewitt, the 8th Respondent), and Mr Darpinder Bajwa (representing Mr Surinder Bajwa, the 4th Respondent) attended the hearing. Written representations had been received in addition from Mr Cheung, the 5th Respondent, and from Mr Glaze, the 10th Respondent, which were considered by the Tribunal. No representations have been received from, and there was no attendance by, the 1st, 2nd, 3rd, 7th, 9th, 11th and 12th Respondents.

The inspection

4. The Court is a four storey, rectangular building built in brick, with a mansard roof. The twelve flats are arranged around a central access door leading to a central lobby with stairs leading to the upper storeys. Flats 1, 2, 3 and 4 are on the ground floor, each being similarly sized. There are then three flats on each of the first and second floors. One on each floor is larger, having the equivalent footprint (approximately) to two smaller flats. So flats 5, 6 and 7 are on the first floor and flats 8, 9 and 10 are on the second floor, with flats 5 and 8 being the larger flats. The top floor consists of two flats (nos 11 and 12) each of which is approximately the equivalent size of flats 5 and 8.

5. Overall, there are approximately one hundred and twelve windows. These are wooden single glazed sash windows, painted white. Around eight of these windows are in the communal central staircase, the rest being windows to the private flats. The Tribunal did not carry out a detailed inspection, but it is quite apparent that the windows are generally in very poor condition. The paint is peeling badly and there are many parts where the paint has disappeared entirely leaving exposed and rotting sills and frames.
6. The mansard roof is constructed of felt with tile hung elevations and dormer windows set within. Surface water from the roof is collected into a

valley gutter which is concealed behind a parapet wall on the front elevation.

The history

7. In October 2012, the previous managers of the Court commissioned a defect report on the roof. Its findings included:

    a. The uppermost part of the mansard roof was generally in good condition, but with minor areas of ponding;

    b. The tile hung sections of the mansard roof were in poor repair with tiles identified as cracked missing or broken. The tile hung sections were beyond economic repair:

    c. The lead covering and flashings to the dormer roofs and cheeks have deteriorated and it would be ill advised to leave these in position;

    d. The asphalt perimeter gutters and parapet were significantly defective and should be replaced.

8. The report gave indicative costs of repair totalling £150,000.

9. One of the early tasks of MetroPM in their appointment as managing agents in the summer of 2013 was to obtain estimates for window and roof replacement. Six contractors were approached for the windows. Five provided estimates for replacement of all windows in uPVC. One estimate was not comparable as it did not include access costs. The other four ranged from £90,275 plus VAT to £118,375 plus VAT. One estimate for replacement in aluminium was also obtained at a cost of £163,500 plus VAT. An estimate for replacement with hardwood windows was obtained at £188,000 plus VAT. An estimate for refurbishment of the existing windows came in at £127,220 plus VAT. One estimate was obtained which incorporated the cost of repairs to the roof as well as window replacement. This showed a cost of £140,000 plus VAT for uPVC windows and £165,000 plus VAT for timber windows. One contractor was approached for a separate contract for roof repairs, the estimated price being £36,844 plus VAT.

10. As a result of obtaining these estimates, MetroPM issued two notices to all Respondents on 9 August 2013 under section 20 of the Landlord and Tenant Act 1985 ("the Act"). One notice gave notice of intention to enter into an agreement to carry out works to replace the windows, and the other separate notice gave notice of intention to carry out works to the roof.

11. The Applicant held a general meeting on 14 November 2013. Mr Jones was in attendance (the Tribunal was informed that MetroPM as a corporate body is the company secretary of the Applicant). Although the minutes are

not agreed, working from the draft minutes, the Tribunal was informed that repair work on the fabric of the Court was discussed. Costing information was provided and the meeting was informed that there were insufficient funds available to carry out these works, so that a service charge would need to be levied to collect enough to fund the replacement of windows and the repairs to the roof and valley gutter. The minutes record that the proposed sums to be levied were £108,330 for the windows and £80,000 for the roof.

12. Following the general meeting, MetroPM issued service charge demands for the levy ("the major works levy") each dated 20 December 2013. The charge to the owners of all flats except 5, 8, 11 and 12 is £13,446.76, and the charge for flats 5, 8, 11 and 12 is £20,188.98. Three flat owners have paid; two have given what is described as "an undertaking to make payment".

13. The only financial resources available to the Applicant are a reserve, according to the latest accounts made up to 30 April 2013, of just over £15,000. In addition, the Applicant has sold extended leases of five of the flats and apparently has cash in the company of approximately £31,000. The Applicant has no access to borrowings.

14. For various reasons (of which there is more detail in the next section), the rest of the Respondents have not paid the levy. As a means of endeavouring to resolve the arguments against the payment of the levy, the Applicant commenced these proceedings on 30 June 2014.

Reasons for disputing the major works levy

15. Summarising the written submissions to the Tribunal from the Respondents and the oral evidence of the Respondents who were present at the hearing, the following reasons have been given for disputing the major works levy:

    a. Mrs Williams (joint owner with Mr Robinson of Flat 6) and Mr Robinson together give the following reasons:

        i. They agree that in principle the windows require refurbishment or replacement, but have specific concerns as set out below;

        ii. The valley gutter repairs should already have been carried out under a previous contract which was paid for on an ad hoc basis by all Respondents;

        iii. There are insufficient quotations to assess whether the major works levy is reasonable;

        iv. The windows should be repaired rather than replaced;

v. uPVC windows are not appropriate for the frontage of the Court;

vi. The windows belong to the property rather than being the responsibility of the Applicant;

vii. The proper time for collection of the major works levy is at the end of the financial year;

viii. It is not possible to do all the major works simultaneously because of health and safety regulations.

b. Mr Cheung (flat 5) is fully supportive of the proposed major works, but he considers the proposed apportionment of the cost is unfair. He would prefer each Respondent to be responsible for their own cost of replacement, with the communal area windows being recovered under the leases.

c. Mr Glaze (flat 10) agrees that the major works are needed but he disagrees with the amount of his levy. He disputes that the general meeting in November 2013 provided authority for the issuing of the major works levy demands. He also disputes that he received the section 20 consultation notices issued in November 2013. He also disputes that the major works need to be carried out urgently. He points out that the consultation process requires copies of estimates and he has seen none yet. He considers that the major works levy is not fair or reasonable.

d. Mr Bajwa (flat 4) disputes that the consultation exercise was carried out correctly. He is also concerned that repairs which he considers are needed to cure a damp problem at his flat have not been carried out. He, like Mrs Williams and Mr Robinson, query the proposed roof cost because repairs were carried out a few years ago and they should not need to be carried out again.

e. Mr Birks said that Mr Hewitt was wholly supportive of the proposal to carry out the major works and considered that they should be progressed as quickly as possible and at the lowest cost. His view was that the windows should be replaced with uPVC windows as these were maintenance free and would improve the resale value of the flats.

The issues and the Tribunal's conclusions

16. In order to reach a determination in this case, and to consider each of the concerns of the Respondents expressed above, the Tribunal considered the following:

a. What jurisdiction does the Tribunal have to determine the matters in dispute between the parties?

b. What do the leases of the flats say about responsibility for maintenance of the windows and roof?

c. Does the Tribunal consider that the major works should be carried out and if so when?

d. Should the windows be replaced or repaired, and in what materials?

e. Are the December 2013 invoices due and payable?

f. Has the Applicant consulted properly on the proposed works?

g. What account should be taken of the Respondents ability to pay?

h. Can the major works contracts be carried out in one contract so as to comply with health and safety concerns?

i. Should Mr Bajwa's concern about damp in his flat be taken into account?

j. Is the outcome of this decision affected by the previous works on the roof, as is suggested by Mrs Williams and Mr Robinson and Mr Bajwa?

k. What is the way forward taking all of the above issues into account?

a. What is the law on the Tribunal's jurisdiction?

17. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 (" the Act").

18. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

    The person by whom it is or would be payable
    The person to whom it is or would be payable
    The amount, which is or would be payable
    The date at or by which it is or would be payable; and
    The manner in which it is or would be payable

19. In effect, this gives an opportunity for both a proposed budget for service charges to be raised with the Leasehold Valuation Tribunal and a further opportunity for the sums then actually spent, when they are known, to be challenged.

20. Section 19(1) of the Act provides that:

> "Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –
>
> (a) Only to the extent that they are reasonably incurred, and
>
> (b) Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:
>
> and the amount payable shall be limited accordingly."

21. So the Tribunal has the power to make a decision, which becomes binding on the parties, that a service charge is due, whether for proposed future expenditure, or for expenditure that has already been incurred. In exercising that power, the Tribunal must be satisfied that any proposed expenditure would be reasonably incurred, and if it has already been incurred, that it was reasonably incurred and that the work has been carried out to a reasonable standard.

b. What do the leases say?

22. The Tribunal was informed by Mr Jones that the leases are all on similar terms. A full copy of the lease for flat 8 was provided in the hearing bundle. The leases each grant a lease of an individual flat in the building known as Stirling Court Stirling Road Edgbaston.

23. In clause 1, the main structural parts of the building including the roof foundations and external parts thereof (but not the glass in the windows) are excepted and reserved (i.e. not included) in the leases of the individual flats.

24. In clause 2(2) the lessee covenants to pay a specific proportion of a service charge for

> "the expenses and outgoings incurred by the lessor in the repair maintenance renewal and insurance of the said building and the provision of services as set out in the Third Schedule"

25. The specific proportion payable differs between the flats. All flats except for 5, 8, 11 and 12 are to pay two twenty-eighths of the cost. Flats 5, 8, 11 and 12 are to pay 3 twenty-eighths.

26. The "expenses and outgoings incurred by the lessor" include:-

> "a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the lessor of his accountants or managing agents (as the case may be) may in their

discretion allocate to the year in question as being fair and reasonable in the circumstances" (clause 2(2)(e)).

27. Clause 2(2)(f) provides in addition:-

> "The lessee shall if required by the lessor with every quarterly payment of rent reserved hereunder pay to the lessor such sum in advance and on account of the service charge as the lessor or his accountant or managing agent (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment".

28. The service charge year is 7 April to the following 6 April. There is provision for an annual account to be prepared and provided to the lessees.

29. Clause 6(1) is the lessor's covenant:-

> "Subject to the payment by the lessee of the rents and service charge and Provided that the lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to maintain repair redecorate renew amend clean repoint paint grain varnish whiten and colour (a) the structure of the building and in particular but without prejudice to the generality therefor the roofs foundations external and internal walls as bound the flat or the rooms therein and timbers including joists and beams of the floors and ceilings therefore chimney stacks gutters and rainwater and soil pipes therefore (b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under and upon the said building ..."

30. The Third Schedule sets out the expenses for which the service charge can be levied and includes the expenses of complying with the lessor's covenant in clause 6(1).

31. This summary shows that the Applicant is responsible for maintenance repair and renewal of the structure (which includes the roof) of the Court. The cost of carrying out that obligation is recoverable through the service charge in the proportions set out in the leases. Service charge demands can be made in anticipation of future expenditure and on account of that expenditure, and a demand can be issued quarterly.

32. But there is an important question. Are the windows part of the structure, or do they form (as Mrs Williams, Mr Robinson, and Mr Cheung contend) part of the individual flats? No party presented any authorities on this issue. The Tribunal at the hearing referred to cases on this particular point. In *Irvine v Morgan [1991] 1 EGLR 261*, the decision was that the structure of a house included the windows. This was a case about the correct interpretation of a lease into which was implied a covenant by the landlord "to keep in repair the structure and exterior..". The judge said this:-

"I have come to the view that the structure of the dwelling-house consists of those elements of the overall dwelling-house which give it its essential appearances, stability and shape.

...

Windows pose a slightly different problem. I have some hesitation about this, but bearing in mind that one is talking about a dwelling-house, and rejecting as I do the suggestion that one should use 'load-bearing' as the only touchstone to determining what is the structure of the dwelling-house in its essential material elements, I have come to the conclusion that windows do form part of the structure of the dwellinghouse. My conclusion might be different if one were talking about windows in, let us say, an agricultural building. The essential material elements may change, depending on the nature and use of the building in question. In the case of a dwelling-house, it seems to me that an essential and material element in a dwelling-house, using ordinary common sense and an application of the words 'structure of the dwelling-house' without limiting them to a concept such as 'load-bearing', must include the external windows and doors. Therefore, I hold that windows themselves, the window frames and the sashes do form part of the structure. It follows that, since these are the sash windows, it would be invidious to separate the cords from the sashes and the essential furniture from the frames. So, in my judgment, the windows including the sashes, the cords, the frames and the furniture are part of the structure of the dwelling-house."

33. The Tribunal sees no reason to reach any different conclusion for the Court than was reached in *Irvine v Morgan*, which has been followed in a number of subsequent decisions (see for instance *Sheffield City Council v Hazel St Clare Oliver 2008 WL 3909333*). The Tribunal determines that the windows form part of the structure of the Court and therefore the leases oblige the Applicant to maintain repair and renew them under its repairing covenant.

c. Should the major works be carried out and if so when?

34. No Respondent has argued that the major works are unnecessary. There is an argument about whether they are necessary now, and the extent of them, but not about the eventual need to do something. The managing agents have advised that the Applicant should carry out the works. The Tribunal is satisfied that the decision to carry out the major works, in principle is the correct decision.

35. The next question is therefore when should the works be carried out? There is disagreement between the Respondents, with Mr Glaze articulating the point that the works are not necessary now. Ultimately, the Tribunal's role is to determine whether the proposed or actual incurring of the cost of the major works is reasonable, not to make the decision for the Applicant. The decision about when to incur cost is therefore one for the board of directors (no doubt considering carefully the advice of their

appointed managing agent, and possibly subject to ratification at a general meeting of the company, again if so advised).

36. On the facts in this case, the Tribunal's inspection causes it to take the view that there is some degree of urgency. Mr Jones said at the hearing that the condition of the Court is now causing concern to the insurers, who have increased the excess payable on the property insurance policy because of the condition of the Court. The roof condition report suggested, in October 2012, that there is extensive damage to the valley gutter and that the top floor dormer windows, verges and fascia boarding was in very poor condition. The Tribunal therefore takes the view that if the Applicant decides to proceed with the major works with some urgency, that would be a reasonable decision.

d. Windows - Repair or replacement, and materials to be used.

37. These are not matters for the Tribunal to determine at this point, as its role is not to decide for the Applicant, but to consider whether the Applicant's decision is reasonable. No concrete proposal has been put to the Tribunal on which it could reach a decision. In so far as a decision of the directors of the Applicant can be challenged in the future on the grounds that the cost of the major works was not reasonably incurred, the Tribunal will make two observations. The first is that from everything seen at the inspection and the condition survey on the roof (which commented on the windows on the top floor), it would be extremely difficult to mount an effective challenge to a decision to replace the windows rather than repair, particularly as the one estimate for repair was higher than the estimates for complete replacement. The second observation is that uPVC windows of good quality are extremely common and considered generally to be an acceptable choice for new windows in appropriate settings. They are of course generally cheaper than wood, and require much less maintenance.

e. Consultation

38. Under section 20 of the Act, no service charge payer can be required to contribute more than a fixed sum (currently £250) towards costs incurred in carrying out works until that service charge payer has been consulted using the procedure set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). Put very shortly, these require that a notice of intention to carry out works is issued in writing on each tenant describing the works proposed, the reasons why the landlord considers the works are necessary, and inviting comment (which the landlord must take into account). The landlord must also invite tenants to suggest names of contractors from whom the landlord should try and obtain an estimate. The second stage is for the landlord to serve a second notice giving details of the estimates for the proposed works (including any from contractors suggested by the tenants), inviting comment (which the landlord must regard to), and allowing tenants to inspect the estimates. If the landlord then chooses a

contractor who did not supply the lowest estimate, there is a third stage requiring the tenants to be given a further notice stating the reasons for awarding the contract to the chosen contractor and summarising the observations received from the tenants. Full details of this process are contained in the Consultation Regulations.

39. Mr Jones accepted at the hearing that the consultation process which had commenced in August 2013 had not been completed. He said that following the Tribunal's determination, and obviously subject to his instructions from the Applicant, he intended to start a new consultation process. This would obviously be a prudent course, as the directors of the Applicant would wish to safeguard against the possibility that the Respondents were not under an obligation to pay anything more than £250 for the major works. Under that new process, the Respondents should receive all estimates to which they are legally entitled. If not, the Respondents would have a right to return to the Tribunal to challenge compliance with the Consultation Regulations.

f. Are the invoices issued in December 2013 due and payable?

40. The Tribunal is quite satisfied that it is and was reasonable for the directors to make a decision in principle to carry out the major works. The next issue is therefore how should those works be funded? The only funds available to the Applicant are funds collectable from the Respondents by virtue of their covenants to pay a service charge in their leases. Unless the Respondents pay in accordance with their leases, the works cannot be carried out and the Court will deteriorate year on year.

41. The amounts requested in the December 2013 invoices are reasonable sums, in the view of the Tribunal, to meet the likely costs of the major works. The levy for the windows matches the estimates obtained for the carrying out of the window replacement work. The roof work levy is greater than the one estimate for those works, but is substantially less than the sum estimated as required in the roof condition report. Mr Jones said at the hearing that the amount of £80,000 levied for the roof works was his estimate and the Tribunal does not consider this to be an unreasonable sum at this stage.

42. In the view of the Tribunal, however, the Applicant should not seek to collect the sums raised in the December 2013 invoices until the consultation process for the works those invoices are intended to fund has been completed. It is clear from the minutes of the AGM held on 14 November 2013 that the levy was required to fund (i.e. pay for) the works. This expenditure requires to be consulted upon before it can all be legally recovered from the Respondents.

43. The Tribunal would also bring to the Applicants attention the requirement that any demand for payment of a service charge (including one on account of anticipated expenditure) must be accompanied by a summary of

the rights and obligations of tenants in relation to service charges under the Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007 ("the Summary of Rights Regulations") (see section 21B of the Act). The copies of the major works levy demands supplied to the Tribunal did not obviously comply with these requirements. It may be that full copies of what was issued were not provided to the Tribunal. But if there is any doubt on this issue, the prudent course would be for these major works levy demands to be re-issued in the correct statutory form.

44. In the light of the preceding two paragraphs, there are legitimate grounds for a Respondent withholding payment of the December 2013 invoices at this point. When the Applicant has a clear plan about what works to do, and when and how, the cost (as long as that plan is reasonable) will be payable by the Respondents in the proportions set out in their leases as long as consultation is carried out correctly and the invoices are in correct form.

g. Ability to pay

45. In *Garside v RFYC Ltd [2011] UKUT 367 (LC)* the Upper Tribunal said:

> "20. It is important to make clear that liability to pay service charges cannot be avoided simply on the grounds of hardship, even if extreme. If repair work is reasonably required at a particular time, carried out at a reasonable cost and to a reasonable standard and the cost of it is recoverable pursuant to the relevant lease then the lessee cannot escape liability to pay by pleading poverty. ..."

46. This is the general principle. But the case also clarified that a detrimental financial impact of carrying out works upon lessees was capable of being a material consideration when considering whether the phasing of the costs were reasonably incurred. If it were possible to spread the cost through phasing of the works, it **might** be arguable that to incur them all in one year, when it was known that would be likely to cause financial hardship, could be unreasonable.

47. The directors of the Applicant therefore have to consider in principle whether there is any sensible way of spreading the cost to make the financial impact manageable for the Respondents, if financial hardship is a known issue. The Tribunal cannot determine whether to do this, even if it had had financial information about the Respondents and had known more about the proposed scope and scheduling of proposed works. This is a matter for the Applicant, no doubt taking good professional advice. It is quite possible (without the Tribunal ruling on this point) that the access and scaffolding needs for both elements of the major works are such that there would be a significant cost saving by doing the works at the same time. If so, that factor would need to be balanced with any financial benefit

obtained by phasing the cost of works, and a reasoned decision made by the Applicant.

48. The Tribunal is of the view that there is undoubtedly a duty to have regard to the Respondent's ability to pay by considering whether the cost can be phased if this is raised by the Respondents or known anyway. However it is now some eleven months since the invoices for the service charge levy were raised so that each Respondent should have had time to make arrangements to fund the levy or to explain that Respondent's position. It would therefore not be reasonable to expect the Applicant to alter its intention to proceed with the major works together (if indeed it does have that intention) unless an individual Respondent puts a reasonable proposal forward for discharging that Respondent's obligation to contribute towards the cost of the major works via a phased procurement process which the Applicant considers is reasonable and workable. Any Respondent who wishes to do this should respond urgently.

h. All major works in one contract.

49. This issue relates to Mrs Williams's and Mr Robinson's suggestion that the works could not be done together because it would cause health and safety problems. Again, this is ultimately a matter for the Applicant, who would no doubt wish to ensure that any chosen contractor adopted good practice in its health and safety and CDM management processes. No further detail explaining this point was given. The Tribunal would be surprised if a competent contractor was unable to carry out the works under one contract if this were the preferred route, but the solution is for the Applicant to take good professional advice when placing the contract or contracts.

i Damp in Mr Bajwa's flat

50. This issue is not one that was raised in the application to the Tribunal and cannot form any part of this decision. If Mr Bajwa considers that the Applicant is failing to comply with its repairing obligations, and that this is causing him loss, he would need to consider proceedings in the County Court. It was Mr Jones's case that a considerable amount of money has already been spent in the last 5 years to resolve the damp problems in flat 4.

j. Previous roof works

51. Around 7 years ago, it is said by Mrs Williams, a levy raised about £30,000 for the carrying out of roof works which should have included works on the valley gutters, which should therefore not need to be done again. There was no documentation or evidence presented to the Tribunal about these works, except that Mr Jones understood the works were to the flat roof, which the roof condition report had confirmed was in reasonable condition. Certainly, the condition report confirmed that as at October

2012, the valley gutters were not in good condition and would need to be re-asphalted. The Tribunal accepts this position and does not consider that the previous contract works have any impact upon the major works now proposed.

k. The way forward

52. This case is unusual in that the Applicant is owned by the Respondents, so that in effect the parties have brought proceedings against themselves. The Tribunal does not criticise anyone for this. It is clear that an impasse has been reached and it is proper for an application to the Tribunal to be made to endeavour to resolve this. But decisions now have to be made by the Applicant as the condition of the Court is deteriorating. As a limited company, the Applicant has processes in place to make decisions on the vote of a majority, whether the decision is a board decision or a company decision in general meeting. The test of whether any decisions made will withstand scrutiny in the event of a further application to the Tribunal depends upon reasonableness. It is now therefore the task of the Applicant to make the necessary decisions, which must be reasonable decisions, in order to take forward its responsibilities to maintain, repair and renew the Court.

Summary

53. The Tribunal determines that the liability for carrying out the major works to the roof and the repair or replacement of the windows at the Court lies with the Applicant.

54. The service charge demands for a levy towards the costs are of a reasonable amount. The Tribunal considers they are not payable at present as consultation has not been completed.

55. The Applicant will therefore need to consult on the proposed major works in accordance with statutory requirements in the Consultation Regulations (or obtain dispensation) if the cost of the major works is to be recoverable.

56. It would be reasonable to carry out the major works at the Court in the near future; indeed there is a good basis for the Applicant proceeding as quickly as it can.

57. The decisions about whether the windows should be repaired or replaced, and what materials they should be constructed from if replaced, are not decisions for the Tribunal to take. Recognising that the Applicant is therefore exposed to the risk that any Respondent may choose to challenge such decisions in the Tribunal, some very limited guidance has been offered. But the Applicant must ultimately be responsible for making a reasonable decision on these aspects.

Appeal

58. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)