



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

Case Reference : **BIR/47UC/LSC/2019/0006**

Property : **Belle Vue Heights, 37 – 39 Wells Road,
Malvern, Worcestershire WR14 4RJ**

**Applicants (Freeholders
& Landlords)** : **Heritage (Colwall) Developments Ltd
Belle Vue Heights LLP**

Management Company: **Belle Vue Heights LLP**

Representative : **Taylor Clarke Ltd**

Respondents (Tenants): **Gary & Harjit Keane (Flat 1)
Tim & Gillian O’Gorman (Flat 2)
Bradley Crouch (Flat 3)
Lifestyle Investments (Malvern) Ltd (Flat 4)
Alastair Myers (Flat 5)
Jeremy Neilson (Flat 6)
Christopher & Julie Warren (Flat 7)
David & Fyonah Smith (Flat 8)**

Representative : **Russell & Co Solicitors for the Leaseholders
of Flats 2, 3, 4, 5, 6,7 & 8; the Leaseholders
of Flat 1 represent themselves**

Date of Application : **20th August 2019 Received 27th August 2019**

Type of Application : **A determination of the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985)**

Tribunal : **Judge JR Morris
Mr R Bryant-Pearson**

Date of Inspection : **13th January 2020**

Date of Decision : **6th February 2020**

DECISION

© CROWN COPYRIGHT 2020

Decision

1. The Tribunal determines that the costs to be incurred for the Proposed Works are not reasonable.

Reasons

Application

2. The Applicant seeks a determination, under section 27A(3) of the Landlord and Tenant Act 1985 (“the 1985 Act), before works are undertaken to a development known as Belle Vue Heights 37 – 39 Wells Road, Malvern, Worcestershire WR14 4RJ (“the Property”), as to whether the service charges to be incurred in relation to the works are reasonable and payable.
3. The proposed works that are said to be required are to install a damp-proof membrane to remedy the ingress of water from two balconies off the ground floor flats (Flats 2 and 6) into the two lower ground floor flats (Flats 1 and 5) below. The cheapest quotation obtained by the Applicants is £23,430.00 per balcony including VAT being a total of £46,860.00 for both balconies (“the Proposed Works”).
4. The Respondents object to the cost of the works for the reasons given in their Statements of Case.
5. Directions were issued on 28th August 2019 which were amended on 18th September 2019 and further amended to give the Respondents time to make submissions. A stay was also requested. This was initially understood to be to provide an alternative plan for the Proposed Works but it was subsequently made clear that it was intended to enable the Respondents to set up a Right to Manage Company. The stay was refused by the Procedural Judge who was of the opinion that the purpose of the stay could not be realised within a reasonable time.

Preliminary Issue

6. As stated above, the Tribunal received an Application under section 27A of the 1985 Act in relation to Belle Vue Heights, 37 and 39 Wells Road, Malvern (the Property) from Heritage Developments (Colwall) Limited which stated that the freeholders of the Property were Heritage Developments (Colwall) Limited and Belle Vue Heights LLP.
7. The Respondents confirmed in their Statement of Case that these two companies are the freeholders, Heritage Developments (Colwall) Limited being the Registered Proprietor of number 39 and Belle Vue Heights LLP being the Registered Proprietor of number 37. In addition, Belle Vue Heights LLP is named in the Lease provided for Flat 2 as the Management Company. However, the Application only named Heritage Developments Limited as the Applicant.

8. This was mentioned at the Inspection and Mr John Clarke of Taylor Clarke Ltd, the managing agents, said that he thought the Application had been made in the names of both companies. Having inspected the Property and finding that the Application relates to the Proposed Works to the balconies of Flat 6, which is situated at number 37, and Flat 2, which is situated at number 39. Also taking into account what Mr Clarke said, it appears to the Tribunal that the omission of Belle Vue Heights LLP from being named as an Applicant was an oversight. In addition, the Tribunal considered that it was in the interests of justice for all parties that Belle Vue Heights LLP should be joined.
9. Therefore, pursuant to rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal was of the opinion that Belle Vue Heights LLP should be joined as a party to the proceedings.
10. It is understood that the director of Heritage Developments (Colwall) Limited is also one of the partners of Belle Vue Heights LLP and so would have had notice of the Application and that Taylor Clarke Ltd act for both businesses.
11. The Tribunal informed the parties of its intention to join Belle Vue Heights LLP as an Applicant and that any representations in respect of this direction must be served on the Tribunal and other parties by 23rd January 2020.
12. In the absence of any such representations Belle Vue Heights LLP was added as an Applicant to these proceedings.

The Law

13. The relevant law is as set out in Annex 2 of these Reasons.

Description of the Property & Inspection

14. The Tribunal inspected the Property in the presence of Mr John Clarke, the Applicant's Managing Agent and the Tenant Respondents, in particular the Tenants of the Flats inspected who were: Mrs Harjit Keane (Flat 1), Mr Tim O'Gorman (Flat 2), Mr Alastair Myers (Flat 5) and Mr Jeremy Neilson (Flat 6).
15. The Property comprises what was originally a pair of semi-detached houses, believed to have been constructed in the latter half of the 19th Century. The side of the Building numbered 37 is owned by Belle Vue Heights and the side of the Building numbered 39 is owned by Heritage (Colwall) Developments Ltd. The Tribunal believes the combined building was converted about 12 years ago to form 8 apartments/flats, two on each floor. The configuration of the block (as viewed from Wells Road) is such that Flat 1 is the lower ground floor flat on the right-hand side of the building with Flat 2 on the ground floor (i.e. level with Wells Road) with Flats 3 and 4 above. The lower ground floor flat on the left of the building is Flat 5 with Flat 6 on the ground floor and Flats 7 and 8 above.
16. At the time of the conversion works, the opportunity was taken to extend the lower ground floor at the rear to provide extra living space for the two lower ground floor flats. Also, below the two lower ground floor flats, two

garages/storerooms were built. These extensions are accessed from the steep driveway constructed at the right-hand side and rear to provide vehicular access to a levelled parking area serving the flats and the adjoining former church premises on the right-hand side. The layout of the extensions is such that the two garages/storerooms are in the middle with external concrete steps each side to provide personal rear access to each of the lower ground floor flats.

17. The lower ground floor flats numbered 1 and 5 each benefit from an external area over the garages/storerooms whereas the single-storey extensions to Flats 1 and 5 provide balconies for the ground floor flats, numbered 2 and 6.
18. The single-storey extensions to Flats 1 and 5 are of brick faced cavity wall construction which internally is probably dry lined with plasterboard and skimmed. The roof of these extensions is believed to be of concrete beam and block construction to provide the floor of the balconies to Flats 2 and 6. These balconies have dwarf brick parapet walls over which there is balustrading of reconstructed stone balusters and pillars capped with reconstructed stone copings. Stainless steel rods were built in between each of the reconstructed stone balusters to meet building regulations relating to the maximum permissible width between balustrading to balconies etc.
19. The submissions have evidenced that, within a few years of construction of these rear extensions, a problem of ingress of dampness to the lower ground floor flats started to occur and, despite attempts at remediation over the years, the problem has persisted.
20. The Tribunal understands that the ingress of dampness was originally considered to have been through the tiled upper surfaces of the balcony areas. The Tribunal was informed, at the time of the Inspection that these tiled surfaces were covered with glass fibre so as to provide a seal which they hoped would cure the problem.
21. The balcony to Flat 6 was covered by the Freeholder not long after the conversion but it was noted at the Inspection that this is now beginning to 'lift' and the leaking into Flat 5 below has increased.
22. The balcony to flat 2 was covered by a specialist contractor at the expense of the Tenant, Mr O'Gorman much more recently. The Tenant of Flat 1, Mrs Keane, said that the resurfacing significantly reduced the ingress of water by 80%.
23. Nevertheless, the ingress of water continued from both the balconies of Flats 1 and 6 into Flats 2 and 5 respectively. Given that the ingress of water has increased now that the covering to the balcony of Flat 6 is lifting but has been reduced now the covering has been laid to the balcony of Flat 2 it appears there must have been some ingress from the floors of the balconies.
24. However, the present ingress into Flat 1 and at least some of the ingress into Flat 5 appears to be largely due to the dwarf parapet walls (beneath the balustrading) having been constructed without a damp-proof course (DPC). It

was found at the Inspection that an attempt at DPC provision was made to the brickwork beneath the balustrading to Flat 6, apparently by silicon derived injection and the balustrading itself has been treated with a sealant. However, at the Inspection it was apparent from the water staining on the ceiling adjacent the wall below the balustrade in flats 1 and 5 that this has not been successful.

25. The ingress of water in Flat 1 which appears to be coming through the dwarf wall and balustrade above was at the time of the Inspection being caught in a tray in the void between the ceiling and the beam and block floor of the balcony. The water from the tray then overflowed through a pipe through the wall to the outside. This is intended as a temporary measure.
26. The Tribunal noted that, presumably at the time of the conversion, plastic rainwater goods (guttering, some plastic hoppers and down-pipes) were installed around the building. The Tribunal was informed that these had overflowed in the past exacerbating water ingress issues over the balconies.
27. The Tribunal considered that these rainwater goods are not of high quality and may indeed be inadequate so that some upgrading/replacement may be necessary in the not too distant future but such work did not appear to be essential within the context of the work required in respect of this Application.
28. The Tribunal also noted that areas of brickwork needed to be repointed and holes filled. Seals around windows also needed to be checked. As with the rainwater goods, this work is subsidiary to the Proposed Works of the Application.
29. In the event of a fresh quotation being obtained these subsidiary repairs and replacements to the brickwork and rainwater goods might be included.

The Lease

30. A copy of the Lease was provided for Flat 2 which was said to be the same as all the Leases in the Property except for the description of the specific demise. The Lease is for a term of 125 years from 1st May 2007. The Lease refers to the Leaseholders as Tenants and this terminology has been used in these Reasons.
31. The Relevant provisions of the Lease are:
32. Clause 1.6

“The Main Structure” means the structure of the Block including in particular

1.6.2 all floors and ceilings of the Block and the slabs joists or beams to which they are attached (but excluding the screed and floor finishes and the ceiling plaster board and finishes)

1.6.3 all exterior walls of the Block and all internal load bearing walls but excluding any plaster and other finishes applied to the internal faces of such walls

1.6.5 the structural parts of any balcony patio or roof terrace

33. First Schedule Part 1 The Flat The demise includes at Paragraph 5

The floor surface and any decorative railings or any patio balcony or roof terrace co-extensive with and used solely by the Flat

34. Second Schedule Part 1 The Service Costs Paragraph 3

The costs of or on account of:

- 1. The performance and observation of the covenants and obligations of the Management Company contained in the Fifth Schedule to this Lease*
- 2. The maintenance repair renewal and replacement (whether by the Management Company or any other person) of all party walls party structures and other things used presently in common with any adjoining property within the Development*

35. Fifth Schedule Paragraph 2 Covenants by the Management Company

Subject to the charge bind paid by the Tenant

- 2. To keep in good and substantial repair reinstate replace and renew and where applicable lit decorated tended cultivated landscaped paved and appropriately surfaced: -*

2.1 the Main Structure

36. The Tribunal found that the Proposed Works are part of the Main Structure and the costs to be incurred came within Service Charge. Although some of the works included items that came within the Demise and therefore were, in the normal course of events, the responsibility of the Tenants. Nevertheless, these items, e.g. the tiles or other appropriate material to protect the damp proof membrane, were required as a result of the repair work on the Main Structure, and therefore in the opinion of the Tribunal were part of “making good” and so chargeable to the Service Costs.

Written Submissions

37. Both parties provided written submissions the contents of which are précised and paraphrased below. The Respondent’s submissions were in two parts with one Statement of Case being made by the Tenants of Flats 2, 3, 4, 5, 6, 7 and 8 (2 – 8) and another Statement of Case being made by the Tenants of Flat 1.

Applicants' Submission

38. The Applicants' Representative said in its Statement of Case that the two balconies to the rear of the Building are both leaking into Flats 1 and 5 which are lower ground floor flats.
39. The leaks began occurring in Flat 5 shortly after completion. The Applicants applied a glass fibre layer to the balcony floor of Flat 6 above. In addition to the glass fibre layer the Tenants have paid for a silicon injected damp proof course in the dwarf wall around the balcony and below the balustrade and have had the balustrade painted with a water proof coating. It appears that these measures had a degree of success because at the time of the Application it was believed water was not leaking into Flat 5, therefore, the Respondents questioned whether work should be carried out on both balconies. It is understood that since the Application the leak has returned to Flat 5. In any event doubt was expressed as to the longevity of the repair and it has been recommended that a damp-proof course be installed as is included in the Proposed Works.
40. The leaks have been occurring in Flat 1 for about 7 years and a number of minor repairs have been attempted to eradicate the ingress without success. The Tenant of Flat 2 has laid a glass fibre layer applied to the balcony floor. Although this has reduced the water ingress it has not eradicated it. A mechanism is in place to catch any water coming through and deposit it outside the Building before it reaches the ceiling but this is not a long-term solution.
41. A survey carried out by a damp surveyor (copy provided) gave a number of suggestions as to where the leaks are coming from but it does not specify the exact source. However, it has recommended that a damp-proof membrane (DPM) is installed under the balcony surfaces to prevent water from getting through (Recommendations 4 and 5). This has become the basis for the Proposed Works.
42. A Structural Engineer's Report (copy provided) was commissioned which included plans and a specification for the Proposed Works.
43. A Notices of Intention under section 20 of the 1985 Act were served on 4th December 2018 and quotations were obtained from two local builders based on the Structural Engineer's specification, the cheapest of which is £23,430.00 per balcony. (copies provided). During the statutory period of the Notice no contractors were nominated by the Tenants. The Statement of Estimates was served on 4th April 2019 which outlined the quotations that had been received.
44. A letter signed by four Tenants was received on 10th April 2019 expressing disagreement with the quotations and saying that other solutions should be sought. The Tenants nominated a number of other contractors and a Director and Partner of the Respondents and the Respondent's Managing Agent met with these contractors but none were willing to carry out the specified works.

45. The Damp Investigation Survey Report set out the following recommendations:
1. Repair and cleaning of the guttering and downpipes and replacement at a lower level to a larger size;
 2. Repointing of brickwork and replacement of spalled and damaged bricks;
 3. Filling of holes in stone surrounds;
 4. Insertion of DPC;
 5. Laying of DPM to balcony floors;
 6. Repainting and resealing of windows;
 7. Making good to damaged ceilings;
 8. Dehumidifying.
46. The Structural Surveyor's Report set out the following specifications:
- Removal of existing stone balustrade and balcony floor (detailed drawing provided);
 - DPC tray to be inserted within the cavity wall and DPC to be inserted in the mortar joint below the stone surround (detailed drawing provided);
 - Floor to be constructed of timber joists replacing existing balcony floor (specifications for size and quality provided);
 - Drainage gully to be notched into joist;
 - Insulation to be placed between floor joists (specification given);
 - Furring strips to be laid on joists to provide fall;
 - External quality structural plywood to be laid over furring strip;
 - Continuous DPM to be laid over the plywood and into the drainage gully. The DPM specified is a firestone Rubber cover EPDM (ethylene propylene diene terpolymer) Roofing System;
 - Rubber pads to support paving over DPM;
 - Lightweight paving to be laid to protect DPM.
47. The Quotations for carrying out the works as per the specifications in the Structural Surveyor's Report were:
GF Hill - £46,860.00
Sean Morris Builders - £53,631.16

Respondent's Submissions

Tenants of Flats 2 – 8

48. The Tenants of Flat 2 – 8 provided a Statement of Case which stated that it is only the surface of the balcony that is the responsibility for the individual tenants of Flats 2 and 6. The responsibility for the structure of the balconies was that of the Management Company or Landlord and any costs for repair would potentially be included in the Service Charge subject to them being reasonable. It was added that the cost of such remedial work was not, in the view of the Tenants, reasonable because it had been caused by the poor workmanship by Applicants' developer or builder in the course of the conversion.

49. Flat 2 had been rented out by the Applicants following the conversion, during which time it must have been apparent that the balcony leaked. Subsequently the Flat was sold to the present Tenants, Mr and Mrs O’Gorman, but the latent defect of the leaking balcony was not declared. It was said that despite promises the Applicants did nothing to remedy the defect. Mr and Mrs O’Gorman, believing the leak was through the tiled upper surfaces, covered them with a glass fibre tray. This was not done out of any a sense of legal obligation but merely out of neighbourliness, as the Leases provide for the occupiers of flats with balconies to be responsible for the maintenance of the floor surface and the balustrading but not, as in this case, for the remedying of design and/or building failures to the structure. The Applicants agreed to provide protective rubber tiles to the new surface but failed to do so.
50. It was said that a similar glass fibre tray had been laid over the tiles on the balcony to Flat 6 not long after conversion. This was submitted in the Statement as having been successful subject to a minor repair.
51. It was submitted as an alternative to the Proposed Works new glass fibre trays should be laid on both balconies together with rubber tiles to protect them. It was said that a number of national companies specialise in this work, one such being Polyroof (a copy of their brochure was provided). The work would cost £5,000 a balcony and would be backed by a 20 year insured guarantee the work being carried out by a fully qualified and accredited company. The Proposed Works of demolishing and rebuilding are disproportionate when compared with the alternative put forward by the Tenants of Flats 2 – 8.
52. The Tenants of Flats 2 – 8 also observed that for the same cost of the Proposed Works conservatories could be constructed over the balconies which would remedy the leaks.
53. The Tenants of Flats 2 – 5 made a number of representations regarding the state of repair and management of the Property which the Tribunal found were not relevant to the Application and therefore are not part of this Decision and Reasons.

Tenants of Flat 1

54. The Tenants of Flat 1 provided a Statement of Case in which they said that the ingress of water into the Flat since 2012 had been very stressful. The Tribunal is not unsympathetic to the trauma experienced as a result of the leak. However, the Tribunal’s jurisdiction is specific to the Application and it can only take into account information relating to whether the costs to be incurred for the Proposed Works are reasonable.
55. The Tenants of Flat said that since 2012 no specific cause for the leak had been found and therefore any attempt to remedy it had been trial and error. The Tenants of Flat 1 provided a time line to explain inter alia, the nature of the leak and the remedial work that had been undertaken, the main points of which are as follows:

1. On 29th June 2012 the ceiling in the right-hand corner of the living room had given way. The Tenants provided photographs of the hole which revealed what appears almost certainly to be a concrete beam and block floor to the balcony above the Flat and below which are joists from which is suspended the ceiling.
 2. On 5th July 2012, Mr Graham Munn, a Building Insurance Inspector viewed the damage and advised that to deal with the leak the existing stone tile floor covering on the balcony should be removed and a glass fibre layer be put down over the entire balcony surface. As glass fibre is prone to degradation by UV (ultra violet light) exposure, use of patio furniture etc., an appropriate protective layer should be applied on top. The existing stone tiles might be re-used as the protective layer if salvageable.
 3. In October 2012 Flat 2 was sold to the present Tenants.
 4. In March 2014 the Tenants of Flat 2 had a glass fibre membrane applied to the entire balcony although this was over the existing stone tiles and no protective tiles were placed on top.
 5. Notwithstanding that the membrane was over the stone tiles and there were no protective tiles the water ingress reduced, by what the Tenants estimated was, 80%. However, there continued to be a 20% residual leak.
 6. In 2015, in an attempt to diagnose the root cause of the residual leak, Damp Detectives were commissioned but could not find the cause. It was suggested that a sealant should be applied to the balustrade and this was done by the Tenants of Flat 2.
 7. In 2017 covers to the air bricks were fitted but these did not remedy the leak.
 8. In April 2018, Alpine Surveys, the providers of the report which formed the basis for the Proposed Works, made their recommendations. Following this report the Structural Engineers Geomex Ltd were employed to provide specifications for the works.
56. The Tenants of Flat 1 said that having put up with the leak for 7 years they were now resigned to the “blanket” approach along the lines of the Proposed Works.

Decision

57. The Tribunal considered that good construction practice would require a DPC through the dwarf walls and under the balustrade of the balcony and a DPM over the surface of the floor of the balcony, suitably protected. From the evidence adduced and from the Inspection the Tribunal found that these were not part of the original conversion works.

58. The Tribunal considered the Damp Investigation Survey Report, the Structural Surveyor's Report and Specifications and the quotations that had been submitted by the Applicant. It also considered the alternative proposals put forward by the Tenants of Flats 2 - 8.
59. It is not for the Tribunal to specify the exact manner in which remedial action or repairs should be executed. Nevertheless, to determine whether the cost to be incurred for the Proposed Works by the Applicant would be reasonable it is necessary for the Tribunal to consider whether they are likely to effectively remedy the problem that has been identified by both parties.
60. Firstly, the Tribunal considered the remedy put forward by the Tenants of Flats 2 – 8.
61. Although the Statements of Case of the Tenants of Flats 2 – 8 state that the balcony to Flat 6 (above Flat 5) is not leaking, doubts were expressed at the Inspection by the Tenants as to the whether this was the case. It was noted that tarpaulin was protecting the floor and the glass fibre surface was lifting. It was also questionable whether the combined silicon injected damp proof course and sealant treatment on the balustrade was still effective. The Tribunal was far from convinced that the remedial action taken would hold in the long term, even if it was doing so now.
62. The glass fibre surface over the balcony floor of Flat 2 was said by the tenants of Flat 1 to have reduced the ingress by 80% but it had not eradicated it and the Tribunal noted the water staining on the ceiling adjacent to the external wall in Flat 1.
63. The alternative remedy put forward by the Tenants of Flats 2 – 8 appeared to be 'more of the same'. That is to say covering over what was there without addressing the underlying problem of a lack of a DPC throughout the dwarf walls and DPM across the balcony roof below the tile covering.
64. Secondly the Tribunal considered the Proposed Works in the light of the Damp Investigation Survey Report.
65. Notwithstanding the inconclusive nature of the Damp Investigation Survey Report as to the precise source of the ingress of water, it recommends a DPC for the dwarf walls and balustrade and a DPM for the balconies (recommendations 4 and 5)
66. In the knowledge and experience of the members of the Tribunal to effect the Survey's recommendations and to remedy the leaks as described in the Statements of Case and as seen by the Tribunal at the Inspection it is likely that anything less than a lead damp proof course across the entire width of the dwarf brick walls to the balconies would be ineffective. The leadwork should be dressed over the upstand of the damp-proof membrane or covering to the balcony floor. The Tribunal anticipates that the reconstituted stone balustrading would then be properly reinstated. In addition, the existing glass fibre floor covering and tiles should be removed and a new damp proof membrane would need to be applied to the surface beneath (subject to the

integrity of its construction) and taken up the walls all around by at least one course of brickwork and capped with the lead flashing (this would be the lead also forming the DPC). The damp proof membrane must be properly protected, and the upper wearing surface should be of tiles or other approved material.

67. The reason for removing the stone tiles presently on both balconies is to provide a sound, smooth flat surface upon which the DPM can be laid avoiding edges and undulations which risk the DPM being punctured or compromised.
68. The Structural Engineer was under the impression that the balcony floor was constructed of timber joists and in the specification requires them to be removed and replaced. The evidence in the form of photographs provided by Mr and Mrs Keane, Tenants of Flat 1, taken when a section of the plaster ceiling in the relevant area of their flat had been removed, shows the floor to be of beam and block construction. Mr Clarke, the Applicant's Managing Agent, said at the Inspection that he too was under the impression that the construction was beam and block.
69. On the understanding that the floor is constructed of concrete beam and block there is almost certainly a screed which will need to be removed to expose the substrate and a new screed provided with a minimal fall towards the outer wall, over which a new damp proof membrane would be applied in the manner referred to above.
70. The glass fibre covering to the balcony floor serving Flat 6 (above Flat 5) is beginning to fail as are the DPC measures on walls and balustrade. For a repair to be properly effected here it would be reasonable to expect the Management Company to employ contractors to remove the glass fibre covering and the tiles beneath and lay a DPM as well as the DPC as stated above.
71. The glass fibre covering to the balcony floor serving Flat 2 (above Flat 1) appears to have performed better than that of Flat 6 and the Tribunal was informed this over-covering was more recently applied. Whilst a DPC is still required beneath the balustrading, it may be that (after further investigation at the rear right corner, especially) stripping off the glass fibre over-covering and tiles etc. to reveal and rework the substrate, may be postponed, because, if properly protected, the glass fibre covering could perform adequately for the time being. However, this solution is not ideal and the Tenants of Flat 1 will wish to have the reassurance that repairs to be carried out in the near future will provide a permanent solution. Also, the Tenant of Flat 2 is entitled to have the tiled floor area properly reinstated, as was originally provided. It would be reasonable, therefore for the Tenants of Flats 1 and 2 to expect the opportunity to be taken for similar works to be executed to this area as to that of the balcony serving Flat 6.
72. Notwithstanding that the parties have sought advice from numerous sources with regard to the necessary remedial action, the Tribunal considers that it

would now be necessary to obtain advice and quotations from at least two contractors to carry out the work as set out above.

73. The Tribunal therefore finds that the basic proposal of removing the existing dwarf walls and balustrade and the removal of the flooring to the balconies to enable a DPC and DPM to be laid are in principle reasonable. However, there are flaws in the Proposed Works which are the subject of the Application which make the costs to be incurred, as per the quotations, unreasonable.
74. In particular the quotations are calculated upon the Structural Engineers specification which is based on the balcony floors being constructed of timber. As stated above the evidence points to the floor being of concrete beam and block construction. In the Tribunal's knowledge and experience this has a significant effect upon the nature, type and amount of the work that is required. The Structural Engineers envisaged the removal and replacement of the entire balcony floor whereas, if the floors are beam and block only the top surface of tiles together with the screed will need to be removed.
75. The balustrade and probably several courses of the dwarf walls will need to be removed but the extent of this may be different from what the Engineer envisaged if a lead dressed DPC is used.
76. Instead of reinstating the balustrade it was suggested that conservatories be constructed over the balcony areas or for different balustrading to be provided. Whilst such options, subject to planning consent, may be considered this is not a matter for the Tribunal, but in any event the provision of a DPC to the walls and DPM to the floor, as stated above, is likely to remain necessary.
77. The Statements of Case refer to the developer or builder having some liability for remedying the water ingress due to failures in construction or a failure to disclose the problem prior to the purchase of a flat. This is not a matter that comes within this Application.

Conclusion

78. The Tribunal finds that remedial action is necessary but considers that advice and quotations must be obtained for repair work based on what is now understood to be a concrete beam and block construction of the balcony floors with a substantial damp-proof course (DPC) inserted and damp-proof membrane (DPM) laid and appropriately protected, as identified in the Tribunal's decision.
79. Therefore, the Tribunal determines that the costs to be incurred for the Proposed Works are not reasonable.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this 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.

ANNEX 2 - THE LAW

1. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
2. Section 18 Meaning of “service charge” and “relevant costs”
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period
3. Section 19 Limitation of service charges: reasonableness
 - (1) Relevant costs shall be taken into account in determining the amount of a 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 or the carrying out of works, only if the services or works are of a

reasonable standard; and the amount payable shall be limited accordingly.

- (2) 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.

4. Section 27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.