



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

Case Reference : CAM/26UJ/LSC/2022/0035

Property : 6 Durrants House, Gloucester Court, Croxley Green, Herts WD3 3FT

Applicants : Mr Selwyn Michael Langley, acting in person for himself and also for –

Ms J Child & Ms J Anderson, 5 Durrants House.
Mr M Hale, 10 Durrants House.
Ms Carroll, 12 Durrants House.
Ms M Kelly, 15 Durrants House.
Mr S Miles, 3 The Courtyard.

Respondents : (1) Beechcroft Developments Ltd
(2) The Beechcroft Foundation

Represented by : Mr Stan Gallagher of counsel.

Application : Application, pursuant to s27A of the Landlord & Tenant Act 1985, to determine the liability to pay and reasonableness of service charges and administration charges.

Tribunal Members : Judge Stephen Reeder
Roland Thomas MRICS

Date of hearing : 1 November 2022 – convened remotely by CVP platform
Date of Decision : 1 November 2022
Date Written : 22 November 2022

DECISION

DECISION

1. The tribunal determines that the following sums are payable and reasonable as service charges -

2017

- Replacement of missing roof tiles @ £514
- Management fee @ £10,270

2018

- Management fee @ £10,526

2019

- Scaffolding @ £600
- Roof leak @ £595
- Fitting of snow guards @ £235
- Trace and access @ £985
- Management fee @ £10,960

2020

- Gutter repairs @ £670
- Gutter repairs @ £559
- Management fee @ £10,960

2021

- Painting to windows @ £368
- Replacement of roof tiles and repair to gutter @ £348
- Checking roof leaks to flats 11, 13 and 15 @ £586
- High level gulley clean and flat 11 @ £360
- Roof repairs and maintenance @ £466
- Trace and access water ingress to flat 11 @ £360
- Trace and access water ingress to flat 13 @ £360
- Guttering and reclaimed roof tiles @ £790
- Water ingress to flat 11 @ £404
- Call out to communal hallway to flats 4,5 & 6 @ £126
- Laptop @ £1055
- Management fees @ £11,450

2022

- Roof repairs to the Cube @ £250.80 (£501.60 invoice reduced by 50% by Respondents)
- Roof repairs to the Cube @ zero (£774 invoice reduced by 100% by Respondents)
- Roof repairs flat 15 @ zero (£393.60 invoice reduced by 100% by Respondents)
- Roof repairs to the Cube @ £624
- Roof repairs flat 6 @ £384
- Roof repairs and report flat 6 @ £824.80
- New printer @ £209.99
- Printer ink and staff conference diaries @ £45.45
- Surveyors fees @ £900
- IT support @ £476.07
- Additional hours estate manager @ £2141.86
- Management fees @ £11,544

2. Any application in relation to fees and/or costs and/or the making of any order pursuant to s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and/or a costs shifting order pursuant to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 will be dealt with by short written arguments as provided for in the reasons below.

REASONS

The property and the parties

3. The application relates to service charges demanded in respect of 6 Durrants House (lessee Mr Selwyn Michael Langley), 5 Durrants House (lessees Ms J Child & Ms J Anderson), 10 Durrants House (lessee Mr M Hale), 12 Durrants House (lessee Ms Carroll), 15 Durrants House (lessee Ms M Kelly) and 3 The Courtyard (lessee Mr S Miles), all of which demised premises form part of Gloucester Court, Croxley Green, Herts WD3 3F ('Gloucester Court').
4. Gloucester Court is a conversion (completed in 2014-2015) of Durrants House, (a Tudor/Jacobean revival-style country house constructed in the late 1880's) which is a grade II listed historical building, to add a courtyard development and modern addition to provide 19 residential properties comprising both houses and flats. Durrants House has original clay tile covered roofs which provide a maintenance challenge. The conversion has provided a variety of roof shapes and pitches which, on the evidence and information before the tribunal, itself provides a maintenance challenge.
5. Mr Selwyn Michael Langley is the lessee of 6 Durrants House which he occupies as his home and is the lead applicant. He has presented the application and acts for the other applicants in accordance with the written authorisations filed with the tribunal as directed by the case management order made by Judge Hardman on 11 July 2022.
6. The First Respondent, Beechcroft Developments Ltd is the landlord of the development and landlord named in the relevant leases.
7. The Second Respondent, the Beechcroft Foundation Ltd is a party to the leases as management company and does not make any charge for its functions under the lease.
8. Ethical Leasehold Management ('ELM') is the managing agent appointed by the Second Respondent. It is a not-for-profit company with registered charitable status.

The procedural history

9. The application is dated 12 June 2022. Judge Hardman made a directions order on 11 July 2022. The matter was heard by remote video (CVP) hearing on 1 November 2022. The tribunal made its determination on 1 November 2022.

The application, scope and issues

10. The application challenges the service charges for the accounting years 2017 to 2022 inclusive as follows -

2017

- Replacement of missing roof tiles @ £514
- Management fee @ £10,270

2018

- Management fee @ £10,526

2019

- Scaffolding @ £600
- Roof leak @ £595
- Fitting of snow guards @ £235
- Trace and access @ £985
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2022

- Roof repairs to the Cube @ £501.60
- Roof repairs to the Cube @ £774
- Roof repairs flat 15 @ £393.60
- Roof repairs to the Cube @ £624
- Roof repairs flat 6 @ £384
- Roof repairs and report flat 6 @ £824.80
- New printer @ £209.99
- Printer ink and staff conference diaries @ £45.45
- Surveyors fees @ £900
- IT support @ £476.07
- Additional hours estate manager @ £2141.86

- Management fees @ £11,544
11. The total value of the disputed service charges is stated as £82,511.97 across the whole of the estate and all of the accounting years.

The hearing

12. The tribunal convened a remote video hearing by CVP (cloud video platform) on 1 November 2021. Neither party requested an in-person hearing in response to the directions order. Having regard to the issues raised and evidence and information filed on the application, and to the current ongoing Covid-19 related public health emergency, the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings.
13. The Applicants were represented by Selwyn Michael Langley, the lessee and occupier of 6 Durrants House acting in person for himself and for the other named lessee applicants as he confirmed at the outset of the hearing. The lessee of 15 Durrants House, Ms M Kelly, attended for the morning of the hearing but did not attend for the afternoon session. An observer Ms Gamble joined for some of the hearing. None of the other lessees attended.
14. The First and Second Respondents were jointly represented by Stan Gallagher of counsel assisted by Louise O’Sullivan who is Head of Operations for the managing agent ELM, by Lorraine Collis who is Chief Executive of the managing agent ELM, and by Chris Thompson who is a director of both Respondents.
15. The hearing ran for a full day from 10am to 5pm. Evidence was heard from Mr Langley for the Applicants, and he was questioned by Mr Gallagher for the Respondents. None of the other Applicants or other lessees of Gloucester Court filed written statements or gave oral evidence. Ms O’Sullivan filed a statement on behalf of the Respondents and gave oral evidence. She was questioned by Mr Langley. Mr Thompson was available to give evidence and answer questions but having regard to the evidence already received in a full hearing day and the paucity of time remaining the tribunal took the view that his evidence was not necessary for it to make determinations on the issues raised on the application. The tribunal is grateful to each of those named who dealt with the numerous issues raised in the application and navigated their way around a bundle of documents comprising 580 pages succinctly and with perspicacity.
16. Prior to the hearing neither the Applicants nor the Respondents requested that the tribunal inspect Gloucester Court. At the end of the full one-day hearing, and without any prior application or request including in the position statement filed on the day prior to the hearing, the Respondents’ counsel in concluding submissions raised the issue of a tribunal inspection of Gloucester Court. Having considered the hearing bundle with particular regard to the service charges challenged, issues raised and the photographs in the documents bundle and narrative descriptions included in the evidence the tribunal was, notwithstanding that very late request, satisfied that it was neither necessary nor proportionate to delay this Decision in order to inspect 6 Durrants House, Durrants House or Gloucester Court and its grounds in order to determine the issues raised in the application.

The documentary evidence and materials considered

17. Judge Hardman made a directions order on 11 July 2022. In response to the directions in that order the parties provided the tribunal with an agreed bundle of documents which comprises 580 pages

arranged in two paper volumes. The tribunal has had careful regard to the documents filed in that bundle. In addition, counsel for the Respondents filed a succinct written opening submission the day before the hearing. Mr Langley for the Applicants took no objection to the tribunal reading that and we did so.

18. During the hearing has had particular regard to the following documents (adopting the pagination of the bundle) : the application (7), the Applicant’s statement of case (28), the Applicant’s supplemental statement of case (383), the Respondents’ statement of case (82), the Respondents’ supplemental statement of case (580), the Scott schedule of disputed service charges (94), the statement of Louise O’Sullivan of the managing agent ELM for the Respondents (104), the statement of Christopher Thompson as director of both Respondents (82), the lease of 6 Durrants House property (268), the agreement between ELM as managing agent and the Second Respondent (85), the accounts for year ending 30 April 2017 (203), the accounts for year ending 30 April 2018 (209), the accounts for year ending 30 April 2019 (221), the accounts for year ending 30 April 2020 (230), and the accounts for year ending 30 April 2021 (239).

The lease

19. The tribunal is provided with a copy of the lease in respect of 6 Durrants House. The parties have confirmed that this lease is in common form for each of the Applicants’ properties situated in Gloucester Court development.

20. That lease includes the following provisions of particular relevance to the issues before the tribunal.

21. The lease provides –

Definitions (1) - the accounting year is the period of 12 months ending on 30 April

Definitions (1) – the maintained property includes the internal common parts

Definitions (1) – the maintained property includes all external and structural parts of the residential Units... and all service installations not used solely for the purpose of an individual residential unit.

Definitions (1) – the maintenance expenses are the moneys actually expended or reserved for the periodical expenditure by or on behalf of the Foundation or the Landlord at all times during the term in carrying out the obligations specified in Schedule 4 and Schedule 5

Definitions (1) – the service installations include channels pipes watercourses soakaways and gutters.

Definitions (1) – the tenant’s proportion is a 1/19 share of in respect of the maintenance expenses and a fair and reasonable proportion of the costs reasonably incurred by the estate management company in maintaining the managed land.

Clause 7.1 - The Foundation covenants with the Landlord and the Tenant to carry out the works and do the things set out in Schedule 4 as appropriate.

Schedule 4 clause 4.2 - The Foundations obligations include repairs and maintenance to improve maintain repair amend renew cleanse repaint and redecorate and otherwise keep

in good and tenanted condition the maintained property

Schedule 5
clause 6.1 - The maintenance expenses include inspecting rebuilding repointing improving redecorating cleaning or otherwise treating as necessary and keeping the residential units and every external part thereof in good and substantial repair and condition and renewing and replacing all worn and damaged parts thereof..

Schedule 5
clause 6.2 - The maintenance expenses include redecorating the internal common parts and the external parts of the buildings including all doors door frames windows and window frames so often as in the opinion of the Foundation it shall be reasonably necessary and carrying out all remedial works to the structure of the residential units.

Schedule 5
clause 6.21 - The maintenance expenses include such sum as shall be considered reasonable and properly necessary by the Foundation (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be expected or to be incurred at any time in connection with the maintained property.

Schedule 5
clause 6.23 - The maintenance expenses include all other expenses (if any) incurred by the Foundation in and about the maintenance and proper and convenient management and running of the estate.....

22. In interpreting the lease the tribunal has careful regard to the decision of the Upper Tribunal in *Arnold v Britton* [2015] AC 1619 and so directs itself to the natural and ordinary meaning of lease clauses under consideration, the other relevant provisions in the lease, the overall purpose of the clause, the related provisions, the lease as a whole, and further has regard to the facts and circumstances known or assumed by the parties at the time the lease was executed, and to commercial common-sense (disregarding any subjective evidence of any party's intentions).

The law

23. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter 'the LTA 1985') sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

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.

24. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.

25. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

26. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an order to reduce or extinguish the tenant's' liability to pay an administration charge in respect of litigation costs.
27. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.
28. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

Discussion and determinations

29. During the hearing Mr Langley for himself and the other named Applicants confirmed that they do not challenge their liability under the lease provisions to pay any of the service charges challenged.
30. During the hearing Mr Langley for himself and the other named applicants confirmed that, subject to the reasonableness of the individual service charge cost items considered later in this Decision, the relevant costs and resulting service charge demands are not challenged.
31. During the hearing Mr Langley for himself and the other named applicants confirmed that there is no challenge to the sums charged as a management fee in any of the relevant accounting years provided that the management service was adequate and commensurate with that fee. The challenge was that in each accounting year the management service was not adequate and so the charge was not reasonable and should be reduced. Mr Langley proposed a reduction of 25% for each accounting year and accepted that this was an arbitrary percentage intended to reflect the management failings.
32. The challenged charges were considered by accounting year and in the order of the application.

2017

Roof works

33. The Applicants' challenged the £514 charge for the replacement of missing roof tiles. There was no challenge to the cost of the work done. It was not disputed that ongoing periodic 'patch' replacements were necessary to protect the fabric of the building. It was argued that the approach of making ongoing periodic 'patch' replacements was unreasonable and is (as Mr Langley put it succinctly and directly) "money thrown away" because what was needed was a major overhaul of the roofs by stripping off and replacing all of the tiles.
34. It was said that this need arises from defective roof works at the time of the conversion of Gloucester Court in 2014-2015 with the roof works completed in 2013-2014.
35. The bundle contains a report from Andrew Billingham C.Eng FI Struc E MCA Arb MRICS (et al) dated 11 September 2018. Mr Billingham opened a section of the roof to inspect and reports that the tiles used at conversion were a mixture of old reclaimed and new, that some fixing nails were misaligned and missed the rafters, that nail fixings extended to thirteen courses but not to the eaves or first row, and that many of the reclaimed tiles had broken nibs and no nail holes. Mr Billingham states in his report "put simply the tiles should not fall off within the first 15 years [after conversion]...the roof suffers from the defective workmanship and materials by those employed by Beechcroft [at conversion]".
36. Mr Langley pursued an argument that repeat repairs were necessary as a number of the replaced roof tiles (being old tiles with no nibs or nail holes) themselves slipped and had to be repositioned or replaced. The Respondents argued the planning authority required them to re-use original tiles or replace them with old tiles wherever possible. That is not surprising given that Durrants House is a historical building and that the development of Gloucester Court sought to respect that. Mr Langley's averment of a requirement to replace using modern tiles based on BS 5534 is ill-conceived. BS 5534 itself expressly acknowledges that its requirements may not be appropriate where traditional and/or reclaimed materials are used on historically or architecturally important buildings. Further, and to put scale context on the argument pursued, Mr Langley was unable to disagree with the Respondents' statement that only approximately 60 tiles had slipped and been replaced since 2017, and only approximately 20 currently needed replacing or repositioning on a roof with approximately 100,000 tiles.
37. Mr Langley directed the tribunal to the LABC warranty certificate in the bundle dated June 2015 which provides insurance in respect of defects until June 2017 and structure until June 2025 and stated that a warranty claim has been re-made in respect of the roof in July 2022 but no decision has yet been made. He accepted that the major overhaul of the roofs by stripping off and replacing all of the tiles he proposes would require very significant expenditure and may require listed buildings consents. He was unable to say that all of the lessees or indeed all of the Applicants positively supported the approach he proposed.
38. The tribunal determines that it is clear from the evidence that it was not unreasonable to make the periodic 'patch' replacement works that were necessary to protect the fabric of the building. Indeed, this is not in dispute. The recharged cost of £514 is not challenged and given the costs of access, materials and labour for a property of this type is clearly reasonable.
39. The Applicants' argument that such periodic 'patch' replacement works become unreasonable due to the lack of a major overhaul of the roofs by stripping off and replacing all of the tiles in this and the following accounting years is not accepted by the tribunal. The slipped tiles have not caused

any material water ingress or other deleterious effects on any of the lessees' homes. The major overhaul of the roofs by stripping off and replacing all of the tiles Mr Langley proposes would require very significant expenditure and may require listed buildings consents. It would result in very significant service charge demands. The Respondents' approach of carrying out periodic repairs and then liaising with the lessees about levying a service charge contribution toward building a reserve fund facility for such works is reasonable and indeed is good management in the circumstances.

Management fee

40. The Applicants' challenge to the management fee (being £10,270 apportioned across the 19 properties) is predicated on a number of grounds which relate to the management service provided which Mr Langley argues is not to a reasonable standard commensurate with the management fee charged.
41. One ground is an alleged failure to provide a reasonable and commensurate service because of the failure to commission the major overhaul of the roofs by stripping off and replacing all of the tiles. This is rejected by the tribunal for the reasons set out above.
42. A further ground is an alleged failure to provide a reasonable and commensurate service because of the failure to commission repointing works to a boundary wall which abuts the public highway. It is said that this work had been required for approximately 7 years. This is an original wall. It was the subject of two reports (referred to as the 'First Billingham Report' and the 'Beechcroft Report') in 2016 as a result of which the advised works were carried out in early 2017. In such circumstances the tribunal considers that this does not constitute a management failure in the 2017 accounting year but is reasonable delivery of appropriate management given the nature of Gloucester Court. Nor can that fact that no further re-pointing work has been carried out to the wall in the later accounting years be properly described as a management failure. There is no compelling evidence of a need for such works now or for such works being needed other than as part of a long term planned maintenance package.
43. A further ground is an alleged failure to timeously schedule a major works programme to deliver external decorations so that the costs of the currently proposed programme are unreasonably high due to excess dilapidation and due to increased materials costs. An initial s20 notice was served in October 2021 but withdrawn in November 2021 for more work on the proposed specification. In September 2022 a further s20 notice was served with a proposed specification (said to be hand delivered to all residents on 9 September 2022). Mr Langley states that he did not receive the specification until 18/19 September 2022 after he requested a copy. There is no similar complaint from any other Applicant or lessee in evidence. The proposed works will not be carried out until 2023. Mr Langley argued that this chronology evidences a management failure to comply with the lessor covenants.
44. The tribunal notes that clause 4.2 in schedule 4 to the lease provides that "the Foundations obligations include repairs and maintenance to improve maintain repair amend renew cleanse repaint and redecorate and otherwise keep in good and tenatable condition the maintained property. There is no evidence before the tribunal to establish that the external parts of Gloucester Court have been permitted to dilapidate so as not to be in a good and tenatable condition. There is no evidence before the tribunal to establish that the costs of the necessary works have been inflated or increased by dilapidation.
45. The tribunal notes that clause 6.2 of schedule 5 to the lease provides that "the maintenance expenses include redecorating the internal common parts and the external parts of the buildings including all doors door frames windows and window frames so often as in the opinion of the Foundation it shall be reasonably necessary and carrying out all remedial works to the structure of

the residential units. The last external decorations were completed in 2014. This programme is scheduled for 2023 following a period of building the Reserve Fund to deliver the same. The obligation under the lease is to provide such maintenance “as often as in the opinion of the [the Respondents] it shall be reasonably necessary”. On the evidence before it the tribunal determines that there is no management failure as suggested. The landlord covenant has been complied with by the process engaged to schedule the major works in 2023. The increase in materials costs is market wide and related to macro-economic conditions which could not reasonably be foreseen. Mr Langley very fairly acknowledged that during the hearing. The delay in commencing works from 2021 (the originally proposed works year) to 2023 is due in material part to the difficulties caused by Covid-19 restrictions placed on individuals and their households which affected both property management, technical preparatory works, contractor and materials availability, and a perfectly reasonable decision by ELM to restrict estate visitors to only those which were essential given the older age centile of the residents. The most strongly argued ground of this challenge is once again that more extensive works should have been scheduled and so a management failure in that the proposed specification makes provision for some roof tile works but does not specify stripping and re-tiling the whole of the roofs. This argument is rejected by the tribunal for the same reasons set out earlier.

46. A further ground is an alleged failure to demand sufficient service charge contributions into the Reserve Fund in each of the accounting years challenged. Mr Langley argued that the sum to be demanded for this purpose should be “looked at every year and reviewed every 5 years”. He takes the view that the demanded sums have been too low and that the “fund projection has been all over the place. He stated that as a “pure guesstimate” the proposed major works in 2013 will cost £100,000 and any shortfall in the fund may prejudice lessees who do not have available funds to meet a shortfall. The tribunal explored the Reserve Fund contribution demands for the relevant accounting years and found the following : 2017 balance of £4,802 and demand for £9,500 ; 2018 balance of £14, 302 and demand for £10,000 ; 2019 balance of £22,694 and demand for £15,000 ; 2020 balance of £33,647 and demand for £20,000 ; 2021 balance of £52,594 and demand for £10,000 ; and 2022 balance of £71,539 and demand for £10,000. Ms O’Sullivan gave evidence that the current balance of the fund is £81,500 against projected costs of £100,000 leaving an approximate shortfall of £2,000 per lessee. She stated that EML as agent consider the reasonable demand each year and make a proposal for the Foundation to consider and reach a decision. She described requests from lessees in 2021 to reduce the demand from the previous year. She stated candidly that whilst Mr Langley argues for a higher demand the lessees as a group did not support that, and the demand was calculated by striking a reasonable balance between differing views. Again, the tribunal must acknowledge that there is no evidence from any other Applicant or lessee to support Mr Langley’s argument.
47. The tribunal reminds itself that clause 6.21 in schedule 5 to the lease provides that “the maintenance expenses include such sum as shall be considered reasonable and properly necessary by the Foundation (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be expected or to be incurred at any time in connection with the maintained property”. The tribunal considers that the demands are within the available scope of what is necessary and reasonable to fund the estimated major works costs. They have been arrived at by a reasonable procedure which has itself provided a reasonable outcome when the quantum of the Reserve Fund is considered against the estimated major works cost.
48. For the reasons set out the challenge to the management charge based on a poor management service is rejected by the tribunal.

Duplication of costs and charges between ELM and the estate manager

49. The Applicants pursued a separate ground of challenge to the management charge in this and in each of the accounting years based on a duplication of management tasks and resulting costs

between ELM and the estate manager at Gloucester Court. The court heard evidence that the estate manager is employed by ELM and is on site for 3 hours per day for 5 mornings each week. The budget allows an additional 24 hours for holiday or planned absence, and for 30 hours overtime each year. The manager works from an office on the estate which is furnished with the usual office equipment including a laptop computer and printer. Louise O’Sullivan gave detailed evidence identifying the different tasks delivered by the estate manager the ELM ‘back office’ respectively. The estate manager walks the estate, inspects and checks the communal parts, cleans the communal parts and arranges basic gardening and oversees the gardening team. She has standing financial authority up to £500 to ensure timely response to service needs. She was described as the “good neighbour offering” as the on-site point of contact for the residents. The estate manager costs are clearly identified in the service charge accounts before the tribunal. Conversely, on Ms O’Sullivan’s evidence the ELM management charge is for the ELM ‘back office’ services which are administering repairs, works and services, obtaining all necessary permissions and consents, paying the related contractor invoices, contracting necessary contracts such as energy and insurance, administering the service charge accounts, liaising with lessees including periodic meetings, and administering s20 major works proposals, specification and process. The necessary general overheads of the ‘back office’ are included in the management charge. It is clear to the tribunal on the evidence before it that there is in fact no duplication or of management tasks and resulting costs between ELM and the estate manager at Gloucester Court.

50. For the reasons set out the challenge to the management charge based on duplication or of management tasks and resulting costs between ELM and the estate manager at Gloucester Court is rejected by the tribunal.

2018

51. The challenge to the management fee of £10,526 is based on the same grounds as for 2017. It is rejected by the tribunal for the same reasons set out above in respect of that accounting year.

2019

52. In relation to the recharges for scaffolding @ £600 and works related to a roof leak @ £595 it is clear from the evidence that these are necessary actual costs arising due to the ongoing challenge of repairing areas of the roofs at Gloucester Court as necessary. Again, this distils down to Mr Langley arguing that a major overhaul of the complete roofs is necessary (which has been dealt with earlier in this Decision) rather than an actual challenge to the works down or costs recharged in relation to the same. The tribunal determines that these charges are both payable and reasonable.
53. In relation to the recharges for the fitting of snow guards @ £235 which Mr Langley argues are to stop slipped tiles caused by defective workmanship falling outside the estate office, it is clear on the evidence that they were fitted after proper consideration that they were needed. The tribunal reminds itself of clause 4.2 in the 4th Schedule to the lease which provides that “the Foundations obligations include repairs and maintenance to improve maintain repair amend renew cleanse repaint and redecorate and otherwise keep in good and tenantable condition the maintained property”. There is no challenge the sum which is clearly reasonable. It is payable under the lease.
54. In relation to the recharge for trace and access @ £985 Mr Langley again argues that this would not have arisen had a major overhaul of the roofs been made. Such major works have not been carried out for the reasons rehearsed earlier in this Decision. That is not therefore a basis to challenge this recharge. Water ingress to a lessee property reasonably requires trace and access to identify cause, remedy and repair as good management. Those actions are clearly within the duties

imposed by the 4th and 5th schedules to the lease. There is no challenge the sum which is clearly reasonable. It is payable under the lease.

55. The challenge to the management fee @ £10,960 is based on some or all of the grounds pursued in relation to previous years. The tribunal rejects that objection for the reasons given for previous years.

2020

56. The two gutter repairs @ £670 and £559 respectively are challenged on the basis that they are remedying inherent defects to the gutters provided in in the 2014-2015 conversion works, wherein the gutter were “cut short” and so leaked on the car port. It is not challenged that they were necessary as ongoing repairs under the landlord’s repairing covenant in the lease. The sums themselves are not challenged. The Respondents confirmed that, as with other similar items which are said to date back to the conversion, in the event that a warranty claim recovers the costs then an adjustment by credit will be provided to lessees. On the evidence before it the tribunal determines that the charges are payable and reasonable.

57. The challenge to the management fee @ £10,960 is based on some or all of the grounds pursued in relation to previous years. The tribunal rejects that objection for the reasons given for previous years.

2021

58. The charge for painting to windows @ £368 is challenged on the basis that it should have been included in the major works package originally intended for 2021 and now to be delivered in 2023. The Respondent explained that the charge refers to windows in the courtyard development which in its opinion had reached a state which did require earlier repainting. The tribunal considers that this is a reasonable use of clause 6.2 in the 5th Schedule to the lease which provides for “redecorations to windows and window frames so often as in the opinion of the Foundation it shall be reasonably necessary”. The tribunal determines that the charges are payable and reasonable.

59. The charges in relation to replacement of roof tiles and repair to gutter @ £348, checking roof leaks to flats 11, 13 and 15 @ £586, high level gulley clean and flat 11 @ £360, roof repairs and maintenance @ £466, trace and access water ingress to flat 11 @ £360, trace and access water ingress to flat 13 @ £360, guttering and reclaimed roof tiles @ £790, and water ingress to flat 11 @ £404 are all challenged on the ground again that they arise due to defective roof works art conversion and should be remedied by a wholesale remaking of the roofs. The tribunal rejects that argument for the reasons given when previously raised. The tribunal determines that the charges are payable and reasonable.

60. The charges in relation to the call out to communal hallway to flats 4,5 & 6 @ £126 relates to one of the new parts of Gloucester Court dating from the 2014-215 conversion. Water ingress and/or damp was reported in 2020 and a specialist contractor investigated to identify the cause it was remedied in 2022. The tribunal considers that this was a reasonable response within the landlords repairing covenant in relation to a defect in communal parts outside of the demised premises.

61. In relation to the recharge of the cost of the computer for the estate office @ £1055, Mr Langley queried whether this cost was taken from the Reserve Fund and/or not already recharged as party

of the management fee. Ms O’Sullivan confirmed that it is not. It is an office essential in 2022 for the Gloucester Court estate office and is owned by the Foundation. The tribunal reminds itself of clause 6.23 in schedule 5 to the lease which provides that the maintenance expenses include all other expenses (if any) incurred by the Foundation in and about the maintenance and proper and convenient management and running of the estate. The tribunal considers that this item clearly falls within the scope of that clause and that the sum recharged is reasonable.

62. The challenge to the management fee @ £11,450 is based on some or all of the grounds pursued in relation to previous years. The tribunal rejects that objection for the reasons given for previous years.

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63. These accounts are yet to be audited and the Respondent made clear they may be subject further adjustment. The following determinations are made with that caveat.
64. In the Scott Schedule filed and served in advance of the hearing the roof repairs to the Cube recharged at £501.60 was reduced by 50% to £250.80, the roof repairs to the Cube recharged at £774 were removed entirely, and the roof repairs to the Cube recharged at £624 were removed entirely. These three adjustments reflect the recovery of the removed costs from a construction warranty claim.
65. The charges in relation to roof repairs flat 15 @ £393.60, roof repairs flat 6 @ £384, and roof repairs and report flat 6 @ £824.80 are each challenged on the ground again that they arise due to defective roof works art conversion and should be remedied by a wholesale remaking of the roofs. The tribunal rejects that argument for the reasons given when previously raised. The tribunal determines that the charges are payable and reasonable.
66. The recharge of a surveyors fees @ £900 is challenged by Mr Langley as he states he does not know what it relates to. It is apparent from the documents in the bundle and confirmed by the Scott Schedule and by Ms O’Sullivan in evidence that it is payment for services to date for the surveyor appointed to manage the external redecoration programme. Lessee liability for such relevant costs is clear from the lease. The sum itself is not challenged. The tribunal determines that the charge is payable and reasonable.
67. In relation to the new printer @ £209.99 and printer ink and staff conference diaries @ £45.45 Mr Langley queried whether these costs were not already recharged as party of the management fee. Ms O’Sullivan confirmed that they are not. They are office plant and consumables for the Gloucester Court estate office and are owned by the Foundation. The tribunal reminds itself of clause 6.23 in schedule 5 to the lease which provides that the maintenance expenses include all other expenses (if any) incurred by the Foundation in and about the maintenance and proper and convenient management and running of the estate. The tribunal considers that these items clearly fall within the scope of that clause and that sums recharged are reasonable.
68. In relation IT support @ £476.07 Mr Langley’s objection was based on not knowing what this cost refers to. Ms O’Sullivan gave evidence that this was annual cost of engaging the contractor ‘Saqqara IT Support’ to provide remote support to the estate manager. It includes all necessary software and other licensing, together with telephone support as needed. The cost is calculated on a per computer basis (and there in only one for the estate manager) and economies of scale are achieved as this contractor is engaged across the ELM offices. The tribunal considers that these items clearly fall within the scope of clause 6.23 of the 5th Schedule to the lease and so are payable, and further that the sum itself is reasonable.

69. In relation to the additional hours for the estate manager @ £2141.86 Mr Langley's objection was based on not knowing whether the hours were merited. He did not question liability to pay under the lease and had no objection to the hourly rate. Ms O'Sullivan stated the budget allows for an additional 55 hours per annum but this had been exceeded in this year. The sum related to 131 hours over the year (or 2.5 hours per week) She gave evidence that any such extra hours had to be fully explained by the estate manager and must be signed off by her area manager Suzi Jay. She further stated that the overspend would be explained by the area manager when she presents the accounts at the annual lessee meeting. The tribunal considers that there is currently no evidence before it to undermine the payability or reasonableness of the sum claimed.
70. The challenge to the management fee @ £11,544 is based on some or all of the grounds pursued in relation to previous years. The tribunal rejects that objection for the reasons given for previous years.

Fees and Costs

71. As the hearing ran from 10am until beyond 5pm the parties agreed that any application in relation to fees and/or costs and/or the making of any s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and/or a costs shifting order pursuant to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 should be dealt with by short written arguments (limited to 2 sides of A4 respectively). It is directed that both the Applicants and the Respondents must, within 14 days of receipt of this Decision, file their written argument with the Tribunal office and serve it on the other party. The Tribunal considers that it will be reasonable and proportionate to determine any such application and related arguments on the documents and without a further hearing.
72. If the Respondents seek their costs in relation to this application they will need to address liability to pay such costs under the lease. If the Applicants seek reimbursement of the issue fee and/or hearing fee they will need to address the merits of such orders. In considering whether to exercise its power to award costs the Tribunal will need to have regard to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd* [2016] UKUT 0290 (LC).



Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

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ANNEX - RIGHTS OF APPEAL

- a. 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.**
- b. 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.**
- c. 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.**
- d. 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.**