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

| | | |
|---|---|---|
| **Case Reference** | **:** | CHI/00ML/LSC/2021/0080 |
| **Property** | **:** | 137 Calendula Court, Donald Hall Road, Brighton BN2 5DN |
| **Applicant** | **:** | Elizabeth Sarah Carter |
| **Representative** | **:** | Deborah Spurgeon |
| **Respondent** | **:** | Brighton and Hove City Council |
| **Representative** | **:** | Mr S Allison, counsel, instructed by Irwin Mitchell LLP |
| **Type of Application** | **:** | Determination of service charges |
| **Tribunal Member(s)** | **:** | Judge D R Whitney<br>Mrs A Clist MRICS<br>Mr E Shaylor MCIEH |
| **Date of Hearing** | **:** | 12th and 13th October 2022 |
| **Date of Decision** | **:** | 12th December 2022 |

---

**DECISION**

---

© CROWN COPYRIGHT

## Background

1. The Applicant seeks a determination of liability to pay service charges, pursuant to section 27A Landlord and Tenant Act 1985 ("the Act"). The service charges in dispute date back to years ending 31 March 2016 and 31 March 2017.

2. Calendula Court is one of a number of large blocks in an estate owned by the Respondent. The 2016 costs include the cost of major works to the roof, windows, external masonry and rendering. The 2017 costs relate to lift replacement. The Applicant seeks to challenge her liability to pay and the reasonableness of such costs. The Applicant also seeks orders limiting recovery of the Respondent's costs in the proceedings under Section 20C of the Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

3. Various sets of directions were issued by the Tribunal which have been substantially complied with. We were provided with an electronic bundle and an addendum bundle which was admitted. References in [ ] are to the page numbers within that bundle. The bundle ran to some 1549 pages.

## The Law

4. The relevant law is contained with various sections of the Landlord and Tenant Act 1985. Copies are annexed hereto marked "A".

## Inspection

5. The Tribunal did not inspect and neither party requested us to do so. We had sight of various photographs within the bundle. The Tribunal viewed the building and locality via publicly available platforms.

## Hearing

6. The hearing took place in person at Havant Justice Centre over two days. Ms Spurgeon represented the Claimant who was in attendance together with her expert Mr Pearce and Mr Plant (one of the Applicant's witnesses). Mr Allison of counsel represented the Respondent together with Ms Dear of Irwin Mitchell Solicitors. The Respondent's expert, Mr Brown, was in attendance throughout together also with Mr Gage for the Respondent. Other witnesses were called remotely by video.

7. At the start of the hearing the Tribunal dealt with the Applicant's case management application to add to the bundle various documents. This was not opposed and the documents from page 1487 to 1549 were admitted. The representatives for each party had submitted skeleton arguments and the Tribunal confirmed it had seen and read these documents.

8. The Tribunal noted that at pages [739 and 740] there appeared to be the witness statement of Shula Rich but the same was effectively blank. Ms Spurgeon confirmed she was not looking to call Ms Rich.

9. The parties agreed that the Tribunal did not need to consider the lease terms as the proportion charged to the Applicant was agreed and it was also agreed that under the terms of the lease [581-603] the Respondent was entitled to undertake works such as those in dispute and recover the costs, subject to the same being properly required and reasonable.

10. On the first day Ms Spurgeon presented the case for the Applicant. She called the Applicant to give evidence and Mr Plant. All were cross examined by Mr Allison. She also sought to rely upon the witness statement of Mr Rehman although he did not give oral evidence. Mr Allison then called his witnesses of fact.

11. On day two the Tribunal heard from the respective experts and Mr Allison's submissions and a reply from Ms Spurgeon. The hearing concluded at about 14.50pm on the second day.

## Witnesses of fact

12. We set out below the pertinent evidence given by the various witnesses.

<u>Applicant's witnesses</u>

Mr Rehman

13. The Applicant relied upon a statement from Mr Rehman [731-732]. He did not attend and was not cross examined. The Tribunal can only place limited weight upon his evidence save where unchallenged by the Respondent.

14. Mr Rehman relied upon his report dated 1st September 2016 [1089]. Whilst he accepted that the lift may no longer be manufactured or supported by its manufacturer he believed it would be possible for the lift to continue to be repaired and supported.

Miss Sarah Carter

15. Miss Carter relied upon her witness statement [718-730]. She was cross examined at length.

16. Miss Carter explained how she followed the Respondent's complaints process. She explained how matters had to await a dispute over the early works to other buildings on the estate of which the Property was part known as Phase 2. The works to the Property were part of Phase 3. It appears a settlement was reached by the Respondent with residents dissatisfied with Phase 2 works. Further Miss Carter believed other settlements had been reached by the

Respondent with leaseholders affected by similar works at other developments owned by the Respondent.

17. Miss Carter explained she had instructed Mr Plant who had produced a report for her. She relied upon the advice he had given to her.

18. Miss Carter accepted some repairs had been undertaken to her windows but did not accept they required replacement.

19. In respect of the lift Miss Carter believed it was simply a policy decision of the Respondent to replace the lift and replacement was not necessary. She was not aware of any significant problems with the lift.

20. On questioning by the Tribunal Miss Carter stated there was no mould or condensation issues within her flat.

Mr James Plant

21. Mr Plant relied upon his witness statement [733-738].

22. Mr Plant had produced a report in November 2014 [747-765] and in January 2015 [1053-1056]. He is a Chartered Building Surveyor but gave evidence as a witness of fact relating to matters he had observed. The bundle also contained various other emails sent by him.

23. He accepted the witness statement was not in his exact words but he "sanctioned" the same.

24. He explained the Property is a T shaped building on a slope. It was possible to see external elevations using windows in stairwells on each floor and from going up the slope to look at the roof. He had inspected internally the Applicant's flat and also one other which he recalls was 117.

25. Mr Plant accepted there was some surface rust to the railings to the roof but they were galvanised. He felt the detailing to the upstands was in his words "Rolls Royce". He accepted that it may be when the felt was taken up issues may have been seen but he did not observe any.

26. Mr Plant accepted some concrete repairs would be required and referred to the fact that certain of the photographs indicated repairs had been previously undertaken.

27. Mr Plant stated he noted the windows in the two flats he inspected within Calendula Court were in good repair although some maintenance may be required. He did not believe they required replacement. He estimated the cost of repairs should be no more

than £500 per flat. He stated he had similar windows in his own home which had been in situ for 35 years.

Respondent's Witnesses

Mr Trevor Howson

28. Mr Howson confirmed his statement [1339-1346] was true save that as of June 2022 he no longer worked for the Respondent.

29. No questions were raised of Mr Howson. His statement stood as his evidence.

30. He supported the lead Quantity Surveyor then employed by the Respondent for the oversight of these works who had sadly passed away. He provided an explanation as to how the final costings were arrived at.

Mr Stuart Buckley

31. Mr Buckley confirmed his statement [1170-1177] was true save that:
   - paragraph 19 the balconies were overcoated with a SIKA system
   - paragraph 22 he confirmed he had not inspected any windows in Calendula Court
   - paragraph 23 he was referring to the estate as a whole and not Calendula Court specifically
   - paragraph 27 should delete "..and a detailed review of the conditions of the windows."
   - paragraph 28 the roof drain referred to was on Cherry Court

32. Mr Buckley confirmed neither he nor his colleague Jason Paine who wrote the Pod LLP feasibility report [85-104] had visited any properties within Calendula Court.

33. Mr Buckley explained that he and his colleague both still worked for Pod LLP and had undertaken the works together although Mr Paine completed the feasibility report for Calendula Court. He further explained he had been involved with other projects for the Respondent in respect of overcladding blocks including the two earlier Phases for this estate and some involvement in the Clarendon Estate.

34. He explained that the Respondent wished to improve insulation to prevent fuel poverty for residents.

35. He explained that on the roof there was a fundamental flaw with the outlets which were too small and led to the water overflooding the roof.

36. He explained that concerns over the brickwork were raised once the scaffolding was in place. He understood all was stabilised and repaired but did not know why there was no charge for this work. He explained the cladding company would have tested to ensure the brickwork was strong enough to allow the External Wall Insulation (EWI) overcladding to be attached, in view of the fact they would give a guarantee for the cladding.

37. He explained that he had not visited Calendula Court. He and his colleague had requested access of flats via the Respondent. A whole day was spent on the estate looking at dwellings identified by the Chairman of the Residents' Association. He confirmed he did not know who were the members of the association. He agreed the flats had no forced ventilation and accepted condensation could be a mixture of lifestyle and construction.

38. Mr Buckley explained that his firm had a long term agreement with the Respondent and MEARS, the Respondent's contractor. A representative of the Respondent would tell them what works to do although they billed and were paid by MEARS. They would be given a full brief but this was not in the bundle.

39. The overcladding was rolled out throughout the Respondent's housing stock over a number of years. Pod LLP was asked to provide condition reports and asked to meet certain standards as to thermal loss so as to make the buildings exceed then current Building Regulation minimum standards.

40. Mr Buckley explained that they had asked for access to dwellings. For what was called Phase 4 the Respondent had agreed it would be a good idea for Pod LLP to go into more flats and they did so.

41. On questioning by the Tribunal Mr Buckley accepted it was perverse to have reference to "In Flat Survey Results" within the Calendula Court report [94] given they had not been in any flat within the building.

Mr M Fenton-Smith

42. He confirmed his statement [1160-1163] was true.

43. He was the Regional Manager for MEARS plc.

44. In respect of Phase 3 he was only involved in pre construction work and his role in the company changed before the works commenced.

45. He explained that the agreed specifications had agreed maximum price costings included to give the client some certainty.

Mr M Richardson

46. He confirmed his statement [1152-1154] was true. He confirmed he still works for the Respondent. As of April 2022 he is the Quality Assurance Manager.

47. He confirmed he was attending site to review work undertaken and so that the council could sign off the work as complete.

Mr J Deamer

48. He confirmed his statement was true [1093-1099].

49. Mr Deamer was an Engineer employed by the Respondent with responsibility for lifts within its housing stock. He relied on the Frankham Consultancy Group Report from September 2008 [627-671] which had recommended that lifts required modernisation including Calendula Court.

50. He explained that report had given three options and the council had opted for modernisation whilst retaining certain components. As a result of the report the council had approved funding.

51. He believed the lifts to be nearly 60 years old. In his experience lifts have a lifespan of 30-35 years. In a single lift block such as Calendula Court the lift failing is more of an issue. He accepted some work may have been undertaken in 2001 but he believed this was principally aesthetic.

52. He confirmed that the annual maintenance costs under the framework agreement would be reduced by about 10% since it was a new lift.

53. He candidly admitted he had not considered the fact that the year before other major works were undertaken by the Respondent. He confirmed he reported the need for the works to a manager who would then consider the financial matters.

54. He confirmed any useful components would be kept and may be re-used on other blocks but the value was relatively small and Calendula Court may itself in the past have benefitted from using components salvaged from other council lifts.

Mr G Gage

55. Mr Gage confirmed that his statement [1122-1127] was true save that he was now Head of Housing, Investment and Asset Management. His statement confirmed he joined the council in 2016 as the Council's Major Projects Manager.

56. Mr Gage explained in his statement about the two sets of major works and the various consultations.

57. He agreed that there was an issue over staining to the overcladding. He explained there had been algae staining to another block which had needed to be washed down with a heated pressure jet at a cost of about £20,000 in 2016. This was to a 14 storey block in Kemptown. His view was that for Calendula Court the current cost would be about £20-25,000 and would have to be undertaken every 5 to 8 years. No scaffolding would be required for this work.

58. Mr Gage on questioning by the Tribunal explained that the Council would now look to avoid undertaking major works in consecutive years.

59. Mr Gage confirmed as far as he was aware Phase 4 was not proceeded with.

60. This concluded the witness evidence. The Tribunal then heard from two experts.

Mr Ian Pearce: Applicant's expert

61. Mr Pearce confirmed his expert report within the bundle [1487-1532] was true.

62. His report conclusions included that in his opinion the window and roof replacements were not justified. Further there was no robust evidence justifying the installation of the EWI. He recommended the service charges could be challenged.

63. Mr Pearce confirmed he had acted for a group of leaseholders who challenged the service charges in respect of similar major works undertaken to other properties on the estate. He confirmed he had considered all the documents within the bundle including the Pod LLP feasibility report. He attended site in 2017.

64. Mr Pearce stated that both Mr Buckley and Mr Plant suggested the roof condition was satisfactory. He stated he saw no evidence of water overflowing the roof. He understood that the roof has been overlaid and he would expect this to last for 25 years and potentially to have a guarantee. He believed there was little clear evidence as to what any defect was with the roof.

65. Mr Pearce accepted the outlets on the roof perhaps needed some work although there was no evidence of overflow. However the method adopted making a funnel with a grille now means these get blocked with debris. In his view the change was not the right thing to do and leaving open would have been better. He did accept if the roof is cleaned regularly you will not get blockages.

66. In his opinion the existing roof was a quality felt roof approximately half way through its life span. Whilst the drainage ducts were not ideal there was no need to undertake works at that time.

67. Mr Pearce accepted the upstands may well have needed to be repaired and replaced if the roof works were necessary.

68. Mr Pearce accepted works to balcony and agreed amounts in final accounts were reasonable.

69. He suggested Mr Buckley agreed cavity wall insulation was an option. In his opinion this would be a better option. He took the view the overcladding system used whilst dealing with certain cold bridging did not remedy all. In particular he referred to the lift shaft. He referred to page [107] a thermal imaging photograph. He suggested this demonstrated not substantial heat loss from the flats themselves, but heat loss from curtain walling and windows.

70. He suggested that Pod LLP did not look at other systems, only considered installation of EWI. The system was installed to achieve the requirements the Respondent wanted without robust consideration.

71. Mr Pearce disputed the concrete repair costs. He indicated he would expect the furring costs [1515] to be part of the fixed price quote. He thought all costs of the concrete repair should be included within the agreed [556] . He accepted on questioning that £48,000 might be reasonable for work undertaken.

72. Mr Pearce suggested he had spoken to Alsecco, the contractor supplying the EWI, who had told him that for the installation of the EWI to work the windows required replacing. Mr Pearce challenged the Pod LLP feasibility report on the basis that Mr Buckley accepted neither he nor his colleague who prepared that report had been in any flats within Calendula Court. He went on the evidence of Mr Plant being the only eyewitness.

73. He stated that he presumed Alsecco will have satisfied themselves that EWI could be safely installed to the brickwork notwithstanding the identified issues with the brickwork. In his view the brickwork repairs were required to a high standard due to the suction forces from the wind around the building

Mr Tim Brown: Respondent's expert

74. Mr Brown relied upon his statement [1396-1442] he confirmed the same was true and accurate.

75. In short his report gave his opinion that the works were reasonably required, undertaken to an appropriate standard and at a reasonable cost.

76. Mr Brown accepted that inevitably there would be some environmental staining. His view was the timescales proposed as to cleaning and the like were reasonable.

77. He stated that the EWI will unquestionably last 25 years as there is a warranty for this length of term.

78. In respect of the roof, he acknowledged he did not have the benefit of seeing the original. He felt from the photographs he has seen it would be reaching the end of its life.

79. He accepted that there was no need for retrospective compliance with the Building Regulations. He stated that the brickwork would have to be in a stable condition to fit the EWI. Alsecco would have inspected and signed off the works to enable them to give the 25 year warranty.

80. He did not accept the project was flawed and disagreed the lift shaft was a thermal bridge. Likewise he felt the balconies were limited thermal bridges. He accepted that the floor slabs were also thermal bridges.

81. He confirmed he had been the Respondent's expert in respect of Tribunal proceedings relating to Phase 2 which had been settled between the parties. He was also the Respondent's expert in respect of the Clarendon Estate.

82. When questioned on the appropriateness of Mr Buckley's advice contained within the Pod LLP feasibility report to the Respondent in light of not undertaking an internal inspection of the subject property, Mr Brown affirmed that as a Chartered Surveyor it would be best practice to alert the client as to the limitations of such advice and recommend further investigation and verification of assumptions before relying on such advice.

Parties' submissions

83. Both parties had filed and served skeleton arguments which the Tribunal had before it.

84. Ms Spurgeon made submissions on behalf of the Applicant.

85. She submitted that the Respondent had a pre-determined policy to remove fuel poverty and reduce ongoing maintenance. In her submission a more considered approach was required which took account of the difference between council tenants and long leaseholders such as the Applicant.

86. She suggested it was clear the Pod LLP feasibility report was simply an exercise to justify the works. The report was a "cut and paste"

from other reports. The EWI was to achieve levels in excess of Building Regulations and was forced on leaseholders.

87. Finally, she submitted that the windows and roof did not need replacing.

88. Mr Allison referred to his skeleton argument. In particular he relied upon Waaler v Hounslow London Borough Council [2017] EWCA Civ 45 and paragraph 37. He submitted it is not just the process to be considered but the outcome.

89. He stated that it was not just the Pod LLP reports relied upon but wider evidence. He asked the Tribunal to note the cost of Pod LLP was not re-charged to the leaseholders.

90. He suggested there were economies of scale achieved by undertaking all works together and as part of phased major works across the estate as a whole.

91. The Respondent must take account of all occupiers. The majority of occupants are council tenants and so the council is expending its own funds.

92. In respect of the lift he submitted the Frankham report specifically considered Calendula Court. The leaseholders were told of the likely costs in advance and had plenty of forewarning the works were to be undertaken.

93. Mr Allison did not believe Paragraph 5A was engaged. In respect of Section 20C he stated this would only benefit the Applicant and his submission it should not be made on the outcome.

94. Ms Spurgeon invited the Tribunal to make an order pursuant to Section 20C on the basis there had been failures and the bringing of the Tribunal proceedings was a matter of last resort.

95. At the conclusion of the hearing the Tribunal confirmed with all parties that they had said everything they wished to say.

## Decision

96. Firstly, we wish to thank all of the parties for their considered evidence and submissions.

97. We record after the conclusion of the hearing an email was received from the Applicants representative inviting us to consider certain other documents and submissions. The Respondent agreed we should have sight of BKR Sustainable Solutions Insulation Option Analysis and Brighton and Hove Council's guide to Condensation Eradication but not the other document. Also we should not consider further submissions. We record we have only considered

those documents to which the Respondent did not object and have not considered the further submissions. Our determination is only on those issues addressed by the parties at the hearing.

98. Whilst we did not inspect the Property we have used readily available resources to view the Property externally. We are told that the Property is a two bedroom flat in a seven storey block being one of five blocks making up the Phase 3 major works to the Bristol Estate in which it is situated. The bundle contained various photos of the block and affected areas.

99. We record that all parties accepted that the lease essentially allowed the recovery of the costs in dispute as repairs and no issue was taken over this. Further it was accepted valid demands had been issued. The sole issue was one as to whether or not the costs incurred were reasonable.

100. Much was made as to the delay. Both sides sought to attribute blame to the other. Whilst we do not think any of this is relevant to the issue we have to determine it is plain that the Applicant had been seeking since consultation began on the proposed works to raise her concerns. That is clear from the documentation within the bundle.

101. We also record that the Respondent was well aware that the cladding works were controversial. They had faced Tribunal applications in respect of both of the earlier Phases and these were settled. Further, on other estates involving similar works of overcladding it had faced Tribunal proceedings. We record this since at points it was suggested due to the passage of time information was not available. We would certainly expect a council to have retained such information, particularly given the circumstances.

102. We were satisfied that all the witnesses of fact were trying their best to recall the events. We comment on certain of the witnesses.

103. Mr Buckley found himself in the invidious position of giving evidence essentially about a report he had not written. We were unclear why his partner who wrote the report and remained a partner with Pod LLP had not given evidence. Mr Buckley did candidly admit that certain aspects of the feasibility report were perverse. Pod LLP had used a template report for each of the blocks on the estate, failing to overtype and make the narrative appropriate and applicable for Calendula Court.

104. Mr Plant was an impressive witness. He saw first hand the state of the Property in advance of the works and appeared to be the only person who gave evidence (of fact or as an expert) who had done so. We considered his evidence measured and of great use to us in determining the issues before us.

105. We were surprised that Mr Gage was unable to answer certain questions. He referred to the fact he had not been in post at earlier times but given his now senior position we would have expected him to have familiarised himself with matters more generally to answer questions.

106. Turning to the experts, we have considered both of their reports carefully. Both have assisted us in making our determination and we do not favour one over the other. Both have had a long involvement in the project.

Lift repairs

107. We are satisfied that the cost of such works are reasonable.

108. The Frankham report [626-671] of September 2008 at [670] specifically considered Calendula Court and suggested works in 2013 at an estimated cost of £100,000. This report estimated the lift dated back to 1957 and was modernised in 2000.

109. We accept the evidence of Mr Deamer. Whilst the lift may not have been failing on any significant number of occasions, given the height of the block and the fact it was a single lift building a failure which could not be repaired would cause significant problems. It was in our judgment reasonable for the Respondent to undertake the replacement works as recommenced by Frankham. They in fact delayed these works for longer than Frankham recommended.

110. We accept Mr Rehman's evidence that repairs might have been possible. However the test is whether the works were works a reasonable landlord might have undertaken. It may well be that there was a range of options but we are satisfied that undertaking these works was reasonable as previously recommended by Frankham.

111. Undertaking them in the year immediately after the EWI/Phase 3 works plainly placed additional strain on leaseholders including the Applicant. However the leaseholders had been made aware possibly as long as five years earlier that these works were likely and the cost of the same.

112. Reference is made to obtaining some financial benefit from the "old" lift. Mr Deamer explained that certain parts would be kept if still of value but in his evidence it was hard to quantify. He referred to the fact that blocks which may have included Calendula Court would have benefitted already from such parts. Overall we are satisfied that the Respondent was not required to calculate and value any retained parts.

113. We are satisfied that the full cost of the lift works are reasonable and the Applicant is liable to pay her proportion of the same.

Phase 3: Generally

114. Works had been undertaken to the Bristol Estate in phases. The works to Calendula Court and 4 other blocks was Phase 3 of these works. It was the last of such works to the Bristol Estate.

115. The driving force for such works appears to be a policy decision by the Respondent that it wished to improve the thermal insulation to its housing stock to assist its tenants to avoid fuel poverty. This was clearly a legitimate aim, but it is unclear what consideration was given to long leaseholders given the inevitable high capital cost of such works.

116. It certainly seems to this Tribunal from the evidence that the undertaking of the works was a fait accompli and any real consideration or consultation in respect of Phase 3 was not expected to change the plans. We are supported by this on the evidence of Mr Buckley who conceded it was perverse for his colleague to have "cut and pasted" sections as to internal inspections when none had taken place to flats within Calendula Court. Little real consideration took place as to other systems which may have been adopted.

117. In our judgment the Council's processes in undertaking the major works were flawed. We do, however, acknowledge the judgment in Waller to which we were referred. It is important we consider the outcome. To that end it is important to consider what repairs were undertaken and what benefit has been achieved.

Phase 3 Works: Roof

118. We are not satisfied that it was reasonable to undertake the roof works at this time.

119. It appeared to be accepted by Mr Buckley that the roof was not in poor condition. It had previously been overlaid in or about 2005. No one had any records what if any guarantee was in existence. Mr Buckley referred to water overflowing the roof as a result of defective gullies but there was little or no evidence. Further, all accepted the solution installed was perhaps not operating as it should given the grating to the same was becoming blocked.

120. Mr Plant also gave evidence as to the roof. He was clear that the roof was not in poor order. He accepted that when works were undertaken it may be that works would be required to the upstands to the railings but nothing was apparent from his inspection. Further he was not aware of any water overflowing.

121. We are satisfied that the roof covering was not in need of repair and replacement. However, this has happened. We are satisfied that the new roof has been installed to a good standard and we are told has a

guarantee. The Applicant has gained the benefit of such a new roof which at some point would have been required. No one seeks to challenge that the works have been undertaken to a reasonable standard. We also take account of the fact that timings for such major works is never a perfect or exact science. It is reasonable for a landlord to undertake such works often as part of other works to take account of the economies of only having scaffolding erected once and other associated costs of works. Further a prudent landlord would replace such a flat roof in advance of it failing.

122. We have found as a matter of fact that roof works were not reasonably required at that time. Given the betterment gained by the leaseholder we are satisfied it is reasonable that she ought to pay something towards the costs of such works. We assess that there should be a reduction in the costs of the roof works of 25% of the costs. We reach this figure taking account of the fact that it appears likely the existing roof would not reasonably have required replacement for a further 5 to 10 years.

123. In reaching our decision we have focussed predominantly on the evidence of the experts, Mr Buckley and Mr Plant.

Phase 3: window replacement

124. The Respondent suggests the windows to the blocks were at the end of their reasonable lifespan. It is suggested that whilst Pod LLP had not entered any flats within Calendula Court they had assessed the Bristol Estate as a whole and assessed the windows as requiring replacement.

125. Mr Plant gave evidence that in the two flats he entered in Calendula Court whilst some maintenance would be required this was not significant. In his view such uPVC windows could easily last for a longer period of time, he had similar in his own home.

126. There was a suggestion made that windows required replacement for the ease of fitting the EWI. It appeared to be accepted that certainly the EWI could be better fitted with new windows but it would be possible to fit with the windows in place.

127. In a way similar to the roof, we are not satisfied that the Respondent had any real evidence that windows within Calendula Court required replacing. It appears that as part of the major works undertaken to the Bristol Estate under Phases 1 and 2 they had determined that replacement of windows would take place. As a result this method carried over to Phase 3. This is evidenced by the cutting and pasting of the Pod LLP report as accepted by Mr Buckley in his evidence.

128. The only real evidence we have as to the state of windows within Calendula Court comes from Mr Plant. He found minor repairs only

were required. He suggested that the life expectancy of the windows may be considerably longer.

129. Whilst we accept that in a typical house it may well be that windows may last longer, we are cognisant of the fact this is a 7 storey tower block on a sloping site overlooking the sea. In our judgment this would affect negatively the life expectancy of such windows. Further, it is for the landlord to determine as and when replacement is appropriate. It is quite right that they do not wait until windows are failing totally and to that extent works may be reasonably required before windows fail.

130. In this instance we have no real evidence as to defects. On the evidence we have it seems that it would be reasonable to assume the windows could have been fit for purpose for a longer period. Some repairs were identified as having been undertaken using the repairs log but little of any significance. Again we acknowledge that undertaking such replacement at the same time as other works produces economies of scale which it was reasonable for the Respondent to take account of.

131. However we are not satisfied that the windows required replacement at this time. In our judgment if proper consideration was given replacement would not have taken place until a future date. Taking account of our findings we reduce the cost of the window replacement by 15% to take account of this unreasonably early replacement. This figure takes account of the benefit of undertaking replacement as part of major works and the betterment achieved for the Applicant.

Phase 3: External works

132. It appears to be accepted by all relevant witnesses and experts that Calendula Court required external works. In particular we are satisfied that once works were commenced brickwork repairs were required and the extent of such works would only have become apparent upon the erection of the scaffolding. When questioned on the matter, Mr Buckley did seem to concede that the most severe defects were localised areas of the elevations, rather than to the whole. Further, Mr Pearce commented that the standard of repair would need to go beyond regular re-pointing works for the safe and appropriate installation of EWI.

133. Reference is made to the fact that brickwork costs are not separately charged, but we accept the Respondent’s evidence that such costs were included by the contractor within the overall project costs. Further, we accept this could be said to amount to a benefit to the Applicant leaseholder as no separate charge was made.

134. Looking at the concrete charges again we accept that significant concrete repairs were required and the amounts could only be

ascertained once the works began. The Respondent had entered into a contract which effectively fixed the amounts and we agree that this was reasonable. It would seem certain costs of the concrete work arguably should be within that fixed cost and not charged separately.

135. Finally we consider the External Wall Insulation. It was clear that such work was undertaken as the Respondent had determined that improvements to the thermal efficiency of their housing stock was a priority. Further we find it was the Respondents policy to specify EWI and no other scheme or method was properly considered. Whilst such aspirations are to be commended, it is necessary to consider whether such works were reasonably required.

136. It is correct that we now know the state of the brickwork to Calendula Court was defective in localised areas, principally below windows. This was not known prior to the works being undertaken. Modest repairs only appear to have been envisaged.

137. It was suggested at points that EWI was a "no maintenance" solution. It is accepted this is not the whole picture as regular pressure cleaning is required.

138. Overall our judgment is that the cost of the works were unreasonably high due to the method adopted. Works were required, but we find that a reasonable landlord considering all matters could and should have adopted a cheaper method or could have considered deferring the works to this block until a future date for all works to be undertaken at the same time. In our view if a more robust feasibility survey had been undertaken this would have been apparent. In our view, the cost should be discounted to take account of the fact that we consider the works to have been undertaken in advance of when was reasonable and the installation of EWI to have increased the costs.

139. We consider that the works could have been delayed some 4 or 5 years. We accept the works have a guarantee of 25 years but the EWI does have ongoing significant cleaning costs. Taking account of all factors we believe the amount should be reduced by 25%.

Section 20C and Paragraph 5A

140. We are satisfied that Paragraph 5A is not engaged and so there is no need for an order to be made given the Applicant and Respondent have agreed a payment plan.

141. We have considered whether an Order pursuant to Section 20C should be made. We accept the making of an order now would only benefit the Applicant.

142. We accept the Applicant has been challenging these issues and has made plain she wishes to try to reach agreement with the Respondent. She has had some success in her challenges, and has, we find demonstrated that the council had predetermined the route it wished to adopt. That was the Respondent's prerogative but it did use various guises to try and suggest otherwise, in our judgment.

143. We are satisfied that an order should be made in the Applicant's favour.

Conclusions

144. We find that certain percentage reductions should be made to the figures. We invite the parties to agree the actual figures and if they are unable to do so either party may seek further directions from the Tribunal within 42 days of the date this decision is sent out.

145. Finally we make an order pursuant to Section 20C of the Landlord and Tenant Act 1985 preventing the Respondent recovering the costs of these proceedings from the Applicant.

146. We make no further orders.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.