



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

Case Reference : **CHI/00HB/LSC/2020/0089**

Property : **Flats 1-7, 99B and Flats 2-7, 99C
Redland Road, Bristol, BS6 6RA**

Applicant : **The List of Applicants
annexed**

Representative : **Mr Peter Baptiste**

Respondent : **R G Securities (No.2) Limited**

Representative : **HML Group Limited, Mr Mencner**

Type of Application : **s.27A**

Tribunal Members : **Judge Dovar
Mr Robinson FRICS**

**Date and venue of
Hearing** : **12th April 2021, Remote**

Date of Decision : **21st May 2021**

DECISION

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1. This is an application for the determination of service charges. The covering letter to the application set out the following issues:
 - a. Whether historic neglect to the external parts had led to an increase in the cost of service charge contributions;
 - b. Whether historic neglect has resulted in a dry rot infestation which thereby increased the service charge costs above those that would otherwise have been charged;
 - c. Whether work that was carried out to the external parts of Flat 1 by DPSW was not to a reasonable standard and what works the Respondent should carry out to prevent any return of dry rot;
 - d. Whether 2.5% of major works costs, was recoverable by the managing agents as an administration charge.
2. In addition, a Scott Schedule appended to the application identified 24 items that were challenged. Although it was said that the sum challenged was £110,113.02, it was not readily apparent from that Schedule which particular items of costs were challenged. In general, the items on the Schedule focussed on similar themes to those set out in the covering letter, namely the impact on service chargeable costs of historic neglect and dry rot.
3. On 27th January 2021, the Tribunal gave directions to the Applicants to provide better details of their case. This was due to a concern that the application raised matters that were outside of the Tribunal's

jurisdiction and the Applicants were reminded that it was restricted to determining liability to pay service charges.

4. On 3rd February 2021, the Applicants provided clarification of their application. From that document, and with some updates at the hearing, the following costs were identified as being subject to challenge under this application:

- a. Remedial works from April 2017 to March 2018, to address leaks from the flat roof, initially thought to be in the sum of £300; later clarified by the Applicants as £1,041;
- b. Works undertaken to address dry rot by DPSW between April 2018 and March 2019 at a cost of £4,060;
- c. The replacement of a rotted balcony by Almondsbury Forge at a cost of £2,250; and
- d. Further dry rot works between April 2020 to March 2021 estimated to cost £50,000. By the time of the hearing, this sum had been reduced to £38,620.89 in line with that charged by Kilbury Construction.

5. A remote hearing was convened on 12th April 2021, at the end of which, the Tribunal considered that it would be assisted by a breakdown of the costs of the more recent dry rot treatment and directed for those to be provided. It also gave the parties the opportunity to provide further submissions in respect of those costs. A supplementary bundle was provided on 6th May 2021. Whilst neither party made any

further submissions, the Applicants sought to challenge an additional £900 in respect of removal costs occasioned by the recent dry rot works.

The Property

6. The property comprises 14, 1 and 2 bedroom flats. It was originally two semi-detached dwellings and each still has its own entrance porch. The renovation and conversion to flats was completed in 2008. The sample lease provided to the Tribunal coincides with that chronology as it is dated 12th June 2008.
7. Flats 1 and 2, 99B are relevant to this application in that it is parts of those flats to which costs have been incurred in dealing with dry rot. Flat 2 is directly above flat 1 and has access through a bedroom to a balcony, above which sits a flat roof. The entrance to flat 1 is under the balcony.
8. Further, there are flat roofs above flats 6 and 7, 99B and 99C, which have been the subject of remedial works, the cost of which is challenged.

Repairing obligations and Service Charge

9. The sample lease provided, of flat 7, 99b, provides that the tenant is to pay a service charge, being their relevant proportion of the landlord's costs of complying with the Fifth Schedule.
10. The Fifth Schedule provides for the landlord to:

- a. manage, maintain and repair the Estate (paragraph 1 of Part A);
- b. paint and decorate the external parts at least once in every five years or more often if necessary (paragraph 7 of Part A);
- c. repair and renew and maintain when necessary the Common Parts (paragraph 2 of Part B). The Common Parts are defined as the main structure roofs external walls boundary walls foundations ... not included in any Lease or Tenancy (Interpretation section).

Factual Background

11. As mentioned above the Property was converted into 14 flats in 2008.
12. In July 2014 a home buyers survey was carried out by Maggs and Allen in respect of flat 2. That noted that the living room and bedroom windows were badly rotted and that it was possible that there was dry rot within the window of the bedroom which led onto the balcony.
13. Mr Phelps of Just Lets wrote to the Respondent on 11th November 2020 stating that external decoration was carried out in the summer/early autumn of 2014.
14. The Respondent acquired the freehold interest on 25th September 2015.
15. In June 2016, the flat roof above the balcony to flat 2, 99B was replaced. The Applicants were critical of the works that were carried out. They pointed to three significant errors: the guttering was not

put back properly leaving a gap; the roof sloped inwards, towards the building; and a rain water downpipe was permitted to discharge directly onto the flat roof.

16. In May 2017, flat 1 reported water ingress through the walls and ceiling around the area of the balcony structure. In July 2017, dry rot became apparent in flat 1.

17. On 24th October 2017, the Respondent obtained a quote for works to remedy the dry rot. They did not commission any report prior to this. The quote was for a total of £2,810, being

a. £1,785 for:

- i. treating walls affected by dry rot, by drilling holes into affected areas and applying a dry rot solution;
- ii. brick areas affected to have the sand/cement hacked off and then the area injected with dry rot treatment, external walls were to be injected up to 4 metres high;
- iii. dry rot treatment around main front door, by removing sand / cement from the door frame and applying anti-fungal paste to the woodwork to prevent dry rot and the existing timber on part of the balcony was to be treated.

b. and £1,025 for:

- i. hacking off rendering and then replastering and paint with external masonry paint;

- ii. injecting the window reveal in a bedroom with dry rot solution.
- 18. In January 2018, the Respondent issued section 20 notices in respect of proposed works to address the dry rot; those works included removing the door to flat 1 and treatment.
- 19. In about May 2018, the remedial works were carried out. Also, at this time, or a little later, the timber balcony to flat 1 which had become rotten was replaced by a steel one at a cost of £2,250.
- 20. An invoice from DPSW for £4,060 dated 27 June 2018 sets out the works that were actually carried out. Worryingly that refers to wet rot, when it should have been dry rot. That included:
 - a. the application of wet rot treatment (which is the £1,785 work identified in the 2017 Quote above);
 - b. replastering (the £1,025 identified in the 2017 Quote); and
 - c. treatment the area under the balcony for wet rot, the replacement of a rotten wooden lintel with a concrete one and the replacement of a wooden sash window.
- 21. The actual dry rot treatment was sub-contracted to DJ Williams who provided a certificate of guarantee, strangely dated 16th September 2017 (i.e. before works or even the initial quote). That referred to rising damp, re-plastering, timber treatment and masonry sterilisation. The closest the guarantee comes to the works set out in either the quote or invoice is to provide cover for 'active Masonry

Fungi' in the areas treated. There is no record other than the Invoice of the areas that were treated and even that is vague.

22. In September 2018, Western Building Consultants surveyed the Property and concluded that it was in need of external decoration. They commented that

'The main 'breach' identified concerns the condition and external finish to the windows, doors and high level joinery. Advancing rot is evident and as such we would recommend all timber elements are (where required) repaired and redecorated.'

23. In May 2019, the Respondent considered the dry rot treatment had completed and emailed

'all dry rot works have completed and all affected timber removed.'

24. In October 2019 when dry rot appeared again in the door frame to flat 1, Timberwise, a specialist property care and preservation company carried out a report on the property. They noted dry rot in the main reception of flat 1 and the study and that

'The dry rot has been affecting these timbers for a very long time.'

25. They appended photographs of exposed timbers with dry rot in an area adjacent to that where the works in 2018 had been carried out. They

also noted that works had been carried out to the garden flat 2, and that further fungi was present around the front rear door.

26. A further section 20 consultation was commenced in January 2020 to deal with the dry rot.

27. In January 2020, Shaw and Company Chartered Surveyors inspected the Property and produced a report. In relation to flat 1, they considered that the dry rot was due to the door frame not being removed as part of the previous works. They state

‘A combination of remedial works or render work has been undertaken but would appear not to have sufficiently treated the timber door frame where the dry rot had previously occurred, consequently the dry rot has returned.’

As for flat 2, they stated

‘The dry rot is not ‘dry’, the moisture ingress present having been removed which was probably from the leaking guttering downpipes through the thick masonry walls. Within the floor void the dry rot does not appear to be current but it is unclear to the extent of the damage caused by the dry rot, because only a small section of the floor has been lifted.’

28. In their summary they considered that the dry rot was historic.

29. New and more extensive dry rot works were carried out between September and December 2020 by Kilbury Construction at a cost of £38,620.89. The specification of these works included

[flat 2]

“...Flat 2 ... including floor joists between Flat 1 ... & Flat 2 ... and replacement of the affected areas of the lathe & plaster ceiling of Flat 1, ... Removal and replacement of stud walls of the study in Flat 2 ...’

‘Replace the kitchen/reception floor to match existing...[Flat 2]’

[Flat 1]

‘Remove the external door & door frame and dispose ... £80.00 ... If Dry Rot has affected the external wall. Hack off render to the affected area, plus at least 1.0 metre either side of this area ... £130.00

...Apply a surface application of fungicidal solution to the brickwork and wire brush the surfaces £118 ...

Once dry redecorate render to match existing £128...

Where the door and door frame have been removed, apply a surface application of fungicidal solution to the brickwork and wire brush the surfaces £118”

30. The final account, included additional costs for the frame to the door of flat 1. There were no material omissions.
31. External redecoration works are planned and the section 20 consultation process has begun, but no demands have been made for the cost of those works.

The Dry Rot

32. The Applicants consider that the dry rot arose because of the works to the flat roof above the balcony in 2016, which allowed water to flow onto the external wall of flat 1, where the dry rot had manifested itself.
33. If that is the case, then they say that they should not have to pay for the remedial works that were carried out in 2016. In essence, their claim is that the landlord was in breach of covenant in causing and permitting the balcony roof to be and remain in a defective condition. As a result of that breach, they suffered loss in that they had to pay the cost of the remedial dry rot works through the service charge. Therefore, they are entitled to set off against any service charge owed for those works, their damages for breach of covenant.
34. Further, in any event, they do not consider that the 2018 dry rot works were to a reasonable standard and therefore should be capped (under s.19 of the Landlord and Tenant Act 1985).
35. There is evidence that dry rot had already taken hold prior to 2016 when the balcony roof works were undertaken. Not only does the homebuyers report in 2014 indicate that it may have been present in the window to flat 2 at that time, but also the report from Timberwise noted in 2019 that there was dry rot in the study and main reception of flat 1 that had been there for a very long time.

36. The impression formed by the Tribunal on the evidence before it, is that the works to the flat roof, whilst appearing to be sub par, did not cause the dry rot, at most they may have exacerbated the condition. Further, it is not clear what the cause of the dry rot was and therefore it is not possible for the Tribunal to determine whether it is a result of historic neglect by the landlord or from another source, or even if it was already in existence prior to the conversion and grant of the flat leases in 2008.
37. As for the standard of work, part of the reason for the Tribunal seeking additional information was to see if there was any overlap between the work carried out in 2018 and the more extensive works in 2020. It is notable that the 2020 works included, removing the external door frame to Flat 1, treating the surrounding area and applying fungicidal solution to the brickwork and then applying new render. There was a paucity of description of the works that were carried out in 2018, so matching the two was not an easy task. However, it does appear that there was a significant overlap. Contrary to what the Respondent contended at the hearing, much of the work carried out in 2018 was done again in 2020.
38. The Tribunal struggles to see what benefit accrued from the works carried out in 2018. The failure to carry out a proper survey (as was eventually done in 2019) meant that the works were of limited if any value. In Shaws' Report of January 2020, they note that

'they would appear not to have sufficiently treated the timber door frame where the dry rot had previously occurred, consequently the dry rot has returned.'

39. Further, it is not clear what the guarantee covered if not the recurrence of the dry rot to the same area. It was necessary to remove the frame in 2020, which had been treated in 2018. The surrounding masonry also had to be treated in 2020, as it had been in 2018. The Respondent's explanation as to why the guarantee had not been relevant was not satisfactory. The Respondent was unable to say why the insurer had refused cover. The reason for this was the managing agent's personnel had changed with the result that not only was there no one who knew what had happened, but the relevant employees emails had been deleted.
40. For those reasons the Tribunal disallows the costs of the 2018 works to the extent that they related to dry rot works, being the £1,785 and £1,025 identified in both the 2017 Quote and 2018 Invoice.
41. The costs of subsequent dry rot works carried out between September and December 2020 amounted to £38,620.89. The Applicants contend that they should not have to pay this amount as had the original works been carried out correctly, the dry rot would have been eradicated. Further, the original works had the benefit of a guarantee which should be used to cover the costs of the new works.
42. Firstly, as set out above, the Tribunal does not consider that the works to the balcony roof were causative of the dry rot. It seems to have

been in existence prior to that. The Applicants have failed to establish the cause, let alone that it was as a result of the Respondent's breach of covenant. Further, there was an absence of evidence as whether or not the failure to address the full extent of the rot in 2018 had led to an increase in the costs of the works in 2020.

43. The works in 2020 were more extensive and followed a survey of the properties. There is no suggestion that in themselves they were not to a reasonable standard and they are allowed in full. It also follows that the additional £900 challenged in the supplemental reply for relocation costs incurred as a result of these works, fails.

Balcony Costs

44. The next item challenged is £2,250 in respect of Almondsbury Forge Works Limited replacing the balcony to Flat 1. This sum appeared in the year end accounts under the heading General Repairs, dated 19th August 2018.
45. It was at the hearing that the Applicants clarified their challenge to this amount on the basis that the replacement balcony structure was necessitated by the original timber structure decaying due to the poor works to remedy the flat roof in 2016.
46. There was little evidence of the cause of the deterioration of the timber balcony or its age. Whilst the homebuyers report in 2014 noted that the timberwork to the terrace was in need of redecoration, that shortly pre-dated the external decoration confirmed by Mr Phelps.

47. The Tribunal noted this was an old building which had been subject to conversion and was not satisfied on the evidence as to the cause of the deterioration. Ultimately it considered it was more likely that this was an item of general maintenance arising from deterioration due to age. Accordingly, the replacement costs are allowed.

Roof Works

48. The Applicants challenge £1,041 in respect of cost of repair to the flat roof. This comprises:

- a. an estimated £100 to remedy two leaks that occurred in 2018/19;
- b. £689.04 to remedy 10 leaks in the 2019/20, as identified in the accounts; and
- c. £252 to remedy 6 leaks in 2020/21 as notified by HML.

49. The Applicants contend that these sums should not be payable as they arise from HML's failure to manage the building properly, including a failure to obtain a survey of the roof when they commissioned a building survey in September 2018. Had they done so, then it is said the Respondent would have carried out more extensive roof works, as they currently propose to do.

50. The Tribunal considers that these items are properly payable by the Applicants. It is often a choice of the landlord whether to carry out patch repairs or more extensive works. The amount payable for patch repair is not so excessive over the years so as to make the

Respondent's choice to carry out patch rather than full repair unreasonable.

Additional sums

51. On 18th March 2021, the Applicants sought to add a further challenge in the sum of £10,621 in respect of external redecorations proposed for the period March 2021 to April 2022. This was the increased costs of the external decorations caused by historic neglect. The Tribunal was concerned about the late raising of this challenge, but in any event was satisfied that the Applicants had not made out the challenge. Firstly, no demand has yet been made for the cost of these works and secondly, there was insufficient evidence before the Tribunal as to the impact, if any, of any historic neglect.

Section 20C

52. The Applicants have had limited success on their application. The majority of their challenges have failed. The Tribunal does not consider it just and equitable to make an order under section 20C.

Conclusion

53. The only deduction to be made from the service charge costs is the sum of £2,810 for the service charge year ending 2019, when the costs of the first dry rot works were added to the service charge account following the invoice dated 27th June 2018.

Judge Dovar

Annex – List of Applicants

1. Stephen Lane: Flat 1, 99B
2. Daryl & Helen Beggs: Flat 2, 99B
3. Matt Shephard: Flat 3 99b
4. Matt Silverstone: Flat 4 99b
5. Paul and Jane Burton: Flat 5 99B
6. Michael Ware and Andrea Summers: Flat 6, 99B
7. Joe Baptiste: Flat 7 99B
8. Matt Smith: Flat 2 99C
9. Martin Broomfield: Flat 3 , 99c
10. Gill Dann: Flat 4 99C
11. Sophie O'Kelly: Flat 5, 99c
12. Robert Moran: Flat 6, 99C
13. Charles Ansell: Flat 7, 99C

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.