



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

Case Reference	:	LON/00AK/LSC/2013/0208 LON/00AK/LSC/2013/0158
Property	:	Various Properties at Moree Way, Edmonton, London N18 2UW N Taylor (Flat 4); J Primo (15); B Russell (23); A Ahmed (25); G Ahmet (27 & 127); A Obi (31); S Makepeace (33);
Applicants	:	M Jugessur (41); S Sahbaz (47); J Fionda (55); G Ibrahim & J Malone (58) B Donnelly (59 & 93); R Darko-Marfo (70); D Morris-Davidson & C Davidson (No.71).
Representative	:	Mr Donnelly and Mr Ahmet
Respondent	:	London Borough of Enfield
Representative	:	Mr Ranjit Bhoze QC, instructed by Enfield Legal Services
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Mr Robert Latham Mr W Richard Shaw FRICS Mr Alan Ring
Date and venue of Hearing	:	15 and 16 July at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	19 August 2013

DECISION

- (1) The Tribunal determines that the major works which the Respondent are in the process of executing at the eight block on the Moree Way Estate are reasonable and fall within the scope of the landlord's covenant to repair.
- (2) The Respondent have informed the Tribunal that they do not intend to pass on any of their costs in respect of these proceedings to the lessees through the service charge account, recognising that the leases do not permit them to do so. Had the Tribunal been required to do so, we would not have been minded to make an Order pursuant to Section 20C.
- (3) The Tribunal makes no order for the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of major works which the Respondent are in the process of executing to their eight blocks on the Moree Estate. Strictly, we are only concerned with seven of the blocks as none of the applicants is a tenant at Block 8.
2. The Tribunal is seized of two applications:
 - (i) On 27 February 2013, Mr Goskel Ahmet, the tenant of flats 27 and 127, applied for a determination of his liability to pay and the reasonableness of the major works. His application is at A7-A26 of the application bundle. Whilst he accepts that the blocks are due for external decorations, including decorations to the common parts, he contends that the other works in the programme are not required now and will not be required within the next ten years. His argument is that the works are to be financed under the government's Decent Homes Programme. But for this programme, the works would not now be proposed. He also asks for the Respondent's repayment plan in respect of the works to be extended from 3 to 10 years. This is a matter which is outside our jurisdiction.
 - (ii) On 20 March 2013, Mr Brendan Donnelly, the tenant of flats 59 and 93, made a separate application for a determination of his liability to pay and the reasonableness of the major works. His application is also

made on behalf of a number of other tenants. His application is at A20-29. He also contends that the works are unnecessary at this time.

3. On 2 April, the Tribunal gave Directions. The Tribunal consolidated the two applications. The following tenants are parties to this application:

- (i) N Taylor (Flat 4);
- (ii) J Primo (15);
- (iii) B Russell (23);
- (iv) A Ahmed (25);
- (v) G Ahmet (27 & 127);
- (vi) A Obi (31);
- (vii) S Makepeace (33);
- (viii) M Jugessur (41);
- (ix) S Sahbaz (47);
- (x) J Fionda (55);
- (xi) G Ibrahim & J Malone (58);
- (xii) B Donnelly (59 & 93);
- (xiii) R Darko-Marfo (70);
- (xiv) D Morris-Davidson & C Davidson (No.71).

4. The Blocks include the following flats:

- (i) Block 1 – Flats 1-23 (odds);
- (ii) Block 2 – Flats 25-47 (odds);
- (iii) Block 3 – Flats 49-71 (odds);
- (iv) Block 4 – Flats 73-95 (odds);
- (v) Block 5 – Flats 2-48 (evens);
- (vi) Block 6 – Flats 50-96 (evens);
- (vii) Block 7 – Flats 117-145 (odds);
- (viii) Block 8 (with which we are not concerned) – Flats 97-115 (odds).

5. On 30 April, pursuant to the Directions, the Applicants served their Statement of Case (at E87-88). They assert that the majority of the works are unnecessary and unreasonable. The specific works which they dispute are at E88.
6. On 17 May, the Respondent set out their Response to the Claim (at H92-101). The Respondent subsequently provided a series of photographs (at Q400 to 435) to illustrate their argument that all the works were required.
7. On 31 May, the Applicants served their reply to the Respondent's Response (at I102-104).
8. The Directions provide for the exchange of expert reports and for the experts to meet. The Applicants rely on Colin Rickard FRICS; whilst

the Respondent rely on Patrick Madigan BSc, MRICS. Mr Madigan is a Director of Capital Property & Construction. He prepared the Feasibility Report and Specification of Works for the contract. The experts met on 13 June 2013. There was little agreement between them, albeit that Mr Rickard did agree that there were many areas needing renewal or repair. The clear difference between them related to the state of the roofs, the most significant element in the Schedule of Works. The experts agreed that the roof to Block 7 was in a better condition than the other blocks on the Estate. The Respondent agreed to consider the option of repair to this roof, as opposed to renewal. We are satisfied that this has provided a useful reference point against which to test the respective position of the parties and the weight to be attached to the evidence of the two experts.

9. The Respondent produced a Bundle of Documents for the hearing to which we make reference in this decision. At the hearing, the Respondent added two additional leases to the Bundle. Mr Rickard produced an additional inspection report dated 1 March 2013 which had not previously been disclosed to the Respondent. The Respondent also produced a Supplementary Bundle of documents relating to roof repairs to Block 7, arising from the joint inspection. Reference to this Supplementary Bundle is pre-fixed by "SB___".
10. The relevant legal provisions are set out in the Appendix to this decision.

The Inspection and Hearing

11. Before the hearing commenced, we inspected the Moree Estate. Scaffolding was erected around all the blocks. Works were in hand. Works had yet to start to the roof of Block 7. We were shown round the Estate by Mr Ahmet, Mr Donnelly and Mr Madigan. Mr Bhowe QC was also in attendance. Mr Rickard was not available. We were provided with a number of photographs at the hearing. Our inspection provided us with a fuller impression of what is illustrated in the photographs.
12. We started the hearing at 14.00 on 15 July. Mr Bhowe QC appeared on behalf of the Respondent. He adduced evidence from Mr Madigan, whose statement is at PP399a-c and from Mrs Elipida Andreou whose statement is at P392-399. Mrs Andreou is an architect who is employed by Enfield Homes Ltd as their Senior Project Manager. Enfield Homes Ltd is an ALMO (Arms length Management Organisation) which manages the Respondent's housing stock.
13. The Applicants were represented by Mr Brendan Donnelly (tenant of Flats 59 and 93) and Mr Goksel Ahmet (tenant of Flats 27 and 127). Neither of these tenants occupies either of their flats. Their statements are at M381 and M382. They largely relied on the evidence of their expert, Mr Rickard who had inspected Block 7 on 1 March 2013 (report

produced at the hearing), the other Blocks on 22 March (report at O383-O396B) and had attended the joint inspection on 13 June (report at O391). Both Mr Donnelly and Mr Ahmet gave evidence and made closing submissions. A number of the tenants attended the hearing.

14. Mr Davidson, the tenant of Flat 71 attended. He occupies his flat under a shared ownership scheme. His landlord is the Metropolitan Housing Trust. They are not a party to the proceedings. We are satisfied that his case raises separate issues which are outside the scope of this application.

The Background

15. The Moree Way Estate was constructed in the 1950s and early 1960s. Little work has been carried out to the estate since it was constructed. However, the original construction was solid and the buildings have weathered well. The Estate consists of eight Blocks. We are only concerned with Blocks 1 to 7. Blocks 7 and 8 have commercial units at ground level. A particular issue has been the state of the roofs. Six of the Blocks have slate roofs; Blocks 5 and 6 have pan tile roofs.
16. The Respondent have an asset management database. This is compiled from previous repair and maintenance records and condition surveys. This database informs decisions on priorities for their capital programme. Ms Andreou emphasised how the demand for blocks to be included in the capital programme always exceeds the resources which are available.
17. After the Moree Way Estate had been identified for inclusion in the capital programme, the Respondent arranged for a feasibility study to be undertaken by independent surveyors, Capital Property & Construction. Mr Madigan, a Director of this firm, carried out a feasibility study in October 2012. His Report is at R436-483. The condition of the Estate is illustrated by photographs at R483-540. As part of their obligation to maintain their stock and to limit future maintenance costs, windows, roofs, fascias and soffits, rainwater goods, external repairs, external and internal decoration, lighting upgrade and environmental works are generally looked at under one contract, if these can be justified in terms of deterioration of the said elements.
18. It is apparent that Mr Madigan gave separate consideration to each block. However, given that Blocks 1 to 4 are the same age and design, there were a number of common defects. Although the natural slates to the roofs appeared to be in a fair condition, he noted numerous slipped, broken and missing slates which were consistent with nail fatigue/failure and defective or rotten battens. The existing underlay was in a very poor condition with numerous tears apparent from his internal inspection. The felt at eaves level appeared to be rotten. Daylight was observed within the loft spaces. The verges were in a very

poor condition with mortar either missing or significantly deteriorating. The lead work to the chimneys appeared tired and in some places had come loose. Given a combination of these factors, he concluded that it was not cost effective to undertake repairs. Rather he recommended the replacement of roof coverings, battens and felt. Blocks 5 to 8 are considered separately. He found the roof at Block 7 to be in a similar condition to that at Blocks 1 to 4. He identified a range of other defects. The windows and balcony doors were Crittal steel. He recommended that these be replaced. The existing asphalt to the flat roofs, balconies and bin sheds showed signs of crazing and cracking. He recommended that these be replaced. There was also evidence of spalling to the concrete window surrounds and projecting balconies. The Respondent also obtained a report from a Structural Engineer which detailed the repairs which were required. This report is at R509-532.

19. Mr Madigan subsequently drew up a Specification of Works (at K106-371) for which tenders were to be sought. The contractors were asked to quote for certain works, such as the replacement of the roofs, windows and asphalt. Provisional Quantities (PQs) were included for other items. Thus a PQ of £15,000 was included for asbestos testing and removal to Block 1 (see K203). Contractors were asked to quote a PQ for concrete repairs to window surrounds, soffits and balconies (see K208). The Respondent's Structural Engineer is to confirm where replacement is required. Tiles to the entrance door steps, communal staircase and window cills are only to be replaced where these are loose, cracked or damaged. A PQ is to be allowed for this (see K209). Again a PQ is to be quoted for repairs to concrete decking the need for which will only become apparent when the asphalt is removed (K211).
20. The Respondent invited tenders from six contractors. Five contractors responded. The Respondent provide an analysis of the three preferred bids at L372-380. They accepted the estimate from Apollo (Keepmoat). Works commenced on 2 April 2013. They are scheduled to be completed by October 2013. The estimates costs of the rechargeable works are:
 - (i) Block 1 – £196,325.
 - (ii) Block 2 – £196,519.
 - (iii) Block 3 – £196,317.
 - (iv) Block 4 – £196,301.
 - (v) Block 5 – £306,970.
 - (vi) Block 6 – £262,919.
 - (vii) Block 7 – £245,238.
 - (viii) Block 8 - £232,988.
21. Meanwhile, the Respondent carried out their statutory duties to consult. No issue is taken on this. On 31 January 2013, the Respondent notified their lessees of their potential liability for the works. This galvanised the Applicants into making their current

application to this Tribunal. Mr Donnelly complains that the cost of the works amounts to some 15% of the current capital value of the flats.

22. Mr Donnelly arranged for Mr Rickard to inspect Block 7 on 1 March 2013. In his evidence, Mr Rickard stated that he could not recall this inspection. The conclusions which he drew could not be more different than those reached by Mr Madigan. He was satisfied that the slating to the main pitch roof was in very good order with very few clipped slates. He could not see any defects to the asphalt works. He concluded that the proposed works were a waste of money. Mr Rickard also commented on a list of 17 items of work which subsequently became the basis of the Applicant's List of Items in Dispute (at E88). His comments were extremely dismissive. For example: (i) "Asbestos – I cannot see that this is applicable; (ii) Brickwork repairs – negligible or non-existent; (iii) concrete repairs – very minor; (iv) Render – minor or not applicable; (v) rainwater goods and balcony outlets – I could not see any defect; (vi) Fascias and soffits – not defective; (vii) windows and doors – unnecessary. There were other items on which he felt unable to comment.
23. Mr Rickard subsequently inspected the other blocks on 27 March (see O383-388). He considered all the roofs to be in good condition. Only minor attention was required. He recognised that external decorations were required. However, on the basis of his limited inspection, he concluded that the specification for extensive renewal was overstated and not required. Some day to day maintenance items were required. In cross-examination, Mr Rickard accepted that he had been provided with (i) Mr Madigan's Feasibility Study; (ii) the Specification of Works; and (iii) the tender Analysis. However, it is apparent that his two inspections were limited. He did not address the specific defects identified by Mr Madigan or the works which he had considered necessary to remedy the same. His overall conclusion was that the scope of the works proposed was excessive and fell outside the landlord's obligation to repair.
24. As a result of the directions given by this Tribunal, the parties exchanged their respective Statement of Cases. On 13 May, the experts met. Mr Rickard now accepted that some works were required. In an e-mail dated 14 June, he conceded that many areas needed renewal or repair (see SB4). However, he retained his view that the roofs were generally in a good state of repair. Mr Madigan accepted that the level of deterioration to the roof of Block 7 was not as significant as that for the other roofs. He took instructions from the Respondent and confirmed that they were willing to consider repairs as opposed to renewal (see SB2).
25. On 18 June, C&C Roofing inspected the roof. They prepared a Schedule of works (at SB5). This confirmed that there were numerous slipped, broken and missing slates. The underlay was in very poor condition

and there were numerous tears. The lead to the chimneys was looking tired. The valleys would need to be stripped back to allow a new Code 5 lead valley.

26. On 9 July 2013, Russell Roofing provided an estimate for the proposed works (at SB8). Their estimate for the works of repair is £32,680. The cost of renewal had been estimated at £36,313 (see L379). The roof is constructed with diminishing slates. Russell Roofing note that experienced specialist labour will be required to cut the slates.
27. Mrs Andreou gave evidence that that the Respondent would have seriously considered the option of repair had the estimate come in at some £5k to £7k. However, given that the cost of replacement was only £4k more than repairs, she was quite satisfied that it made economic sense to replace the roof.
28. Despite the joint inspection, in his report of 13 June, Mr Rickard maintained his position that the roof was in a very good condition with only a few clips apparent and guttering previously renewed. He concluded "the roof clearly should be retained". He did not prepare a Schedule of the Works which he considered were necessary to put the roof in a good state of repair. In evidence, he suggested that it could be repaired at a cost of £1.5k to £2k. No works were required to the fascias or soffits. The work would take "a week or two".
29. In cross-examination, Mr Rickard was referred to the photographs at Q401. Mr Madigan had given evidence that that the soffit boards had been tested and found to contain Asbestos Insulation Board. Despite this evidence, Mr Richkard contended that by and large there was nothing wrong with the soffits. It would be possible to clad the timber fascia in plastic. It would be possible to wash down the soffits. In his opinion, it was not necessary to remove the asbestos. He would rub it down and paint it. He was not concerned about the risks associated with working with asbestos. He noted that if he did the work himself, asbestosis would take 40 years to kill him.
30. In his separate report of 18 June (at O391), Mr Rickard accepted that there were various areas requiring renewal or repair. He did not specify the extent of the renewal or repair which he accepted whether by reference to the Feasibility Report or the Schedule of Works. Mr Donnelly asserted that as a result of the Decent Homes Programme, the Respondent had a financial incentive to carry out capital works which were not strictly required. This was disputed by Mrs Andreou who explained how this was no more than a consent to borrow. Capital resources were in short supply and the Respondent had to prioritise demands on those resources.

The Issue in Dispute

31. This application has been made at an intermediate stage. On the one hand, the Applicants do not challenge the statutory consultation process. On the other hand, the tenants have yet to receive any formal demand in respect of the proposed works. The application was rather precipitated by the letter dated 31 January 2013, whereby the tenants were notified of their estimated liability in respect of the works. The issue which we are required to determine is whether the major works fall within the scope of the landlord's covenant to repair. By Section 19 of the Act, the landlord is only able to recover the cost of those works in so far as they have been "reasonably incurred".
32. The tenants seek to argue that the works are not "necessary" at this moment of time. The works should only be done when they are "absolutely needed" (see A15). In his closing submissions, Mr Donnelly emphasised that the Respondent had an incentive to package everything up together in their major works programme. There had been no proper cost benefit analysis.
33. We are therefore asked to focus on whether the proposed works fall within the scope of the landlord's covenant to repair. If not, the costs would not be reasonably incurred. We are not asked to consider the reasonableness of the cost of the works for which the tenants have yet to be billed. Mr Bhose QC suggested that these costs fell under two heads:
 - (i) Works for which Apollo (Keepmoat) have quoted a firm price. This extends to works to the roofs, windows and asphalt. If we find that these works fall within the landlord's covenant to repair, it would be difficult for the tenants to subsequently challenge the reasonableness of the cost of these works given that the Respondent have gone through a process of competitive tendering.
 - (ii) Works for which a PQ has been quoted. This includes asbestos testing and removal; repairs to window surrounds, soffits and balconies, repairs to tiling and repairs to concrete decking. Much of this must be approved by the Respondent's Structural Engineer. It is not open to this Tribunal to second guess what PQs the Respondent may approve. Equally, there will be practical difficulties in the tenants subsequently seeking to challenge such decisions.
34. There is one practical advantage in the Tribunal being required to determine the proposed scope of the works at this stage. The tenants' expert has had the opportunity to inspect the condition of the Estate before the works have been executed. Areas have now been exposed which enable a better assessment to be made as to the scope of any

repairs that are required. We have been able to inspect the condition of the Estate and the state of the roof at Block 7. This has assisted us in assessing the expert evidence adduced by the parties.

The relevant Leases

35. We have been provided with three sample leases:

(i) Lease between the Respondent and Mr and Mrs Sahbaz, dated 15 December 2003, in respect of 47 Moree Way (Block 2) at B42-76. Mrs Sahbaz is a party to these proceedings. By Clause 7(2), the landlord is required to repair and keep in a reasonable state of repair the structure and exterior of the block. Clause 3(2)(G) permits the landlord to make any improvement to the block and the estate and to recover a fair proportion of the cost thereof from the tenant. It is not necessary to consider the definition of "the Estate" or the manner in which the service charge is apportioned.

(ii) Lease between the Respondent and Ms Codling, dated 24 June 2002, in respect of 127 Moree Way (Block 7) at B77-110. Mr Ahmet currently holds this leasehold interest. This is in similar terms to the above lease.

(i) Lease between the Respondent and Mr and Mrs Cowling, dated 16 October 1989, in respect of 93 Moree Way (Block 4) at B111-151. Mr Donnelly currently holds the leasehold interest. This lease also makes similar provision in respect of repairs and improvements. Clause 7(2)(a) includes the additional phrase "and the external doors of the flat". However, this difference is not significant.

The Tribunal's Decision

36. We are required to determine whether the major works specified in the Schedule of Works to seven of the eight blocks on the Moree Way Estate fall within the scope of the landlord's covenant to repair. Section 19 requires us to consider whether the costs to be incurred in respect of these works will be "reasonably incurred". We are satisfied that these are primarily works of repair, rather than improvement. We therefore focus on the covenant to repair.

37. A particular issue has been the state of the roofs. At paragraph 9 of their Statement of case (at E88), the Applicants put their case on the main pitch roofs in this way: "very good order replacement not required". The Respondent set out their case as to why replacement is justified at H97.

38. It is common ground that the roof of Block 7 was in a better condition than the roofs of the other blocks. Works to this roof were deferred

pending the hearing of this application. The experts were able to carry out a joint inspection of this roof. Our inspection enabled us to make a more informed assessment of their evidence. If we are satisfied that the Respondent were justified in replacing this roof, they would be justified in replacing the other roofs.

39. The issue for us is whether a reasonable and prudent landlord would have been entitled to conclude that this roof was beyond reasonable economic repair and required replacement. Inevitably, the point at which a new roof is required is a matter of judgment. It is the lessor who is under the contractual obligation to keep the roof in repair who must make this judgment. The landlord must act reasonably. This issue is one of expert opinion.

40. We have been asked to consider three options in respect of repairs to the roof of Block 7:

(i) Replacement at costs of £36,313.20 (see L379). We note that the second lowest estimate for this work was £63,243. The argument for this is that the roof is some 60 years old and is at the end of its natural life. This estimate was based on the Feasibility Study carried out by Mr Madigan in October 2012 (at R470-1), and the Specification of Works which he subsequently prepared (at K339-40).

(ii) Repairs at a cost of £32,680 (see SB8). This estimate, provided by Russell Roofing, is based on the roofing Condition Report prepared by C&C Roofing on 18 June 2013 (at SB5). This identified the practical problems of repairing the roof, given the use of the diminishing slates when the roof was constructed. The estimate provided by Russell Roofing reflects the scope of the works identified by C&C Roofing.

(iii) Repairs at a cost of £1.5k to £2k as recommended by Mr Rickard. Mr Rickard has not prepared any Schedule of Works. He was unable to provide any detailed critique of either the Feasibility Study or the Specification of Works which had been drawn up by Mr Madigan. Mr Rickard had been at the joint inspection which had lead to the respondent commissioning the roof Survey Report from C&C Roofing. Neither was Mr Rickard able to provide any detailed critique of this report. His memory was poor. He was unable to remember what he had inspected or what he had seen.

41. Mr Rickard has not produced any Schedule of works sufficient to satisfy us that a programme of works less than that for which Russell Roofing provided in their estimate. We rather prefer the evidence adduced by the Respondent. Given the choice between repairing the roof at a cost of £32,680 and replacing the same at £36,313, we are satisfied that the Respondent were entitled to conclude that it was more cost effective to replace the roof.

42. Having reached this conclusion on the roofs, we address the other areas of dispute more briefly:

(i) Asbestos Works. The Applicants contend that it is not necessary to remove the asbestos as no works are required. The soffit boards have been tested and have been found to contain asbestos. £15k has been included as a PQ for each block for additional asbestos testing and further asbestos removal where repairs are required to the soffits (see K203). We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(ii) Bin store alterations. The Applicants contend that no works are required as they are not used. The Respondent informed us that the tenants are not to be charged for this work.

(iii) Brickwork Repairs. The Applicants contend that no works are required as any damage is minimal. Some damage to the brick work is illustrated in the photographs at Q404-406. This was also apparent on our inspection. This work is only to be carried out as considered necessary. We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(iv) Concrete repairs. The Applicants contend that any works are very minor. Some damage to the concrete is illustrated in the photographs at Q407-410. This was also apparent on our inspection. This work is only to be carried out as considered necessary. Such works must be approved. We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(v) Render. The Applicants contend: "minor or not applicable". Some damage to the render is illustrated in the photographs at Q440 and was apparent on our inspection. It is common ground that the work required is limited. We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(vi) Tiles to front doors. The Applicants contend: "good condition; replacement not justified". Some damage is illustrated in the photographs at Q411. This was also apparent on our inspection. The Respondent have no intention of replacing a large number of tiles. Tiles will only be replaced if they are cracked or missing. This is a PQ. We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(vii) Balustrading metalwork repairs. The Applicants contend: "negligible or not applicable". Some damage is illustrated in the photographs at Q412-413. This was also apparent on our inspection. This is only a PQ. The extent of the works will become apparent when the asphalt is removed. The Respondent have no intention of carrying

out any unnecessary works. We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(viii) Asphalt works and felt roof. The Applicants contend: "good condition; no works required. Mr Rickard conceded that he had not been able to inspect the asphalt. He had therefore commented "I cannot see any defects" (Report of 1 March in respect of Block 7). The Respondent do not intend to make any charge for the asphaltting to bin stores and pram sheds. Some damage is illustrated in the photographs at Q414-5. This was also apparent on our inspection. We are satisfied that this is reasonable and falls within the landlord's covenant to repair.

(x) Loft insulation and fire breaks. The Applicants had contended: "should be done under normal yearly general repairs". Mr Rickard had been unable to comment on this (see Report of 1 March in respect of Block 7). On 30 June 2013, the Applicants notified the Tribunal that this item is no longer in dispute (see J105B).

(xi) Fascias and soffits. The Applicants contend: "not defective. No repairs required". The state of the soffits is illustrated in the photographs at Q421-2. The soffit boards to all the blocks are Asbestos Insulation Board. The soffit boards are connected to timber fascia boards which are starting to rot in certain areas. Timber repairs are required to the affected areas. In addition, the existing paintwork to both the fascias and soffits is also showing signs of cracking, blistering and peeling. The Respondent consider that the most effective way to deal with this is to remove the existing defective fascia boards and asbestos based soffit boards and replace them with UPVC fascias and soffits. This has been done to all blocks except Block 7. It is to be done to Block 7. We are satisfied that this is justified as a work of repair. We reject Mr Rickard's evidence on this point (see para 29 above). Work affecting asbestos is not something that a responsible landlord can ignore.

(xii) Rain water goods. The Applicants contend: "not defective. No repairs required". The original rainwater goods were cast iron gutters downpipes and gutters. Some of these have been replaced. A number of defects are illustrated in the photographs at Q423-4. We accept that repairs to cast iron rainwater goods are expensive and requires regular maintenance. New UPVC rainwater goods are to be installed in all blocks. We are satisfied that the current rainwater goods are in disrepair and that the work proposed is the cost effective solution.

(xiii) Windows and doors (common). The Applicants contend: "replacement not required as windows not defective; doors renewed". The communal windows are of old Crittall manufacture. They could be repaired. However, bars would be required to meet current safety requirements. If the crittalls are to be retained, they would require continuous maintenance and cyclical decorations. We are satisfied that

the replacement with UPVC double glazed units will reduce future maintenance and is a cost effective approach to the repairs that are required.

There is a particular issue in respect of the glass screens at ground floor and first floor levels to Block 5. Mr Rickard agreed that this showed signs of age. If clear glass is required, it makes sense to replace the whole unit.

We note that windows and doors to flats are an individual charge. Where the tenants have replaced the windows and/or their front door, and where these comply with current standards, no cost will be passed on through the service charge.

(xiv) External and internal decorations. The Applicants had contended: "should be done under normal yearly general repairs." On 30 June 2013, the Applicants notified the Tribunal that this item is no longer in dispute (see J105B).

(xv) Ancillary works. The Applicants contend: "not required". The ancillary works listed in the tender document are part enabling works and part provisional spot items. They include items such as the removal of satellite dishes and cutting back tree branches to erect scaffolding. We are satisfied that they are justified.

(xvi) External and internal lighting. The Applicants contend: "recently done; not required". We are told that lighting is only to be replaced to Block 5. Blocks 7 and 8 were merely shown as provisional. It is now accepted that all Blocks, except Block 5, have had new lighting in the recent past.

(xvii) Contingency sums. The Applicants contend: "not required". We are satisfied that it is appropriate to include a contingency sum to cover unforeseen extras. If no additional works are required, the tenants will not be charged.

(xviii) Professional fees. The Applicants contend: "not chargeable as works not required". Professional fees are charged for the design specification, the leasehold consultation and administration on site. We are satisfied that such fees are properly chargeable.

(xix) Drying areas. The Applicants had contended: "good condition except (Blocks 4; 3 and 1)". On 30 June 2013, the Applicants notified the Tribunal that this item is no longer in dispute (see J105B). We are told that tenants are not to be charged for these works (see P398).

Application under s.20C and Refund of Fees

43. At the hearing, Mr Bhowe QC informed the Tribunal that the Respondent do not intend to pass on any of their costs in respect of these proceedings to the lessees through the service charge account as the leases made no provision for this. . Had the Tribunal been required to do so, we would not have been minded to make an Order pursuant to Section 20C given our determination in favour of the Respondent.
44. At the end of the hearing, the Applicants made an application under Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for a refund of the fees that they had paid in respect of the application/hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicants.
45. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham
Tribunal Judge
19 August 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.

- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Regulation 13

- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.