12338

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HN/LSC/2016/0116
Property	:	115-123 Seabourne Road, Bournemouth, Dorset, BH5 2HG
Applicant	:	Mr M Leigh
Representative	:	Ms E Orner of SPL Property Management LLP
Respondents	:	The Lessees as listed in Appendix B attached.
Type of Application	:	Section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge J F Brownhill
Date and venue of Hearing	:	12th June 2017 Best Western Hotel Royale, Bournemouth
Date of Decision	:	26th June 2017

DECISION

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1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.

2 The Applicant applied for a determination of reasonableness of the major works figure relating to proposed works to the rear elevation of the property 115-123 Seabourne Road, Bournemouth, Dorset, BH5 2HG (hereinafter referred to as 'the property')[16].

Summary

3 The Tribunal finds that the sums detailed by the Applicant in the 2017 service charges budget in relation to major works are, in the Tribunal's view reasonable, and payable under the terms of the leases.

4 The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985.

Inspection

5 The Tribunal had the benefit of inspecting the exterior of the property on the morning of the hearing. Present at the inspection on behalf of the Applicant were Ms Emily Orner, and Ms Kasin Luvamiec from SPL Property Management LLP (the Applicant's managing agents)(hereinafter referred to as SPL) and Mr Tom Green (surveyor). The following leaseholders attended the inspection: Ms Anson; Mr Fenn; Mr Hardy and Ms Deeds; Ms Shead and Ms Frost.

6 The property is a purpose built block of flats and maisonettes, constructed from masonry brick work under a flat roof. A number of maisonettes and a flat are accessed from the rear of the property. Four of these are accessed by their own individual external metal staircases. A photograph showing the rear elevation appears and the four external staircases appears at [106]. Behind the property is a block paved car park/ bin store area.

7 The Tribunal noted the following matters of particular note during its inspection:

a. Each the maisonettes has its own metal staircase:

i. It was clear that the metal staircases were in need of maintenance and redecoration works with widespread rusting visible to the same.

ii. Further the landing plate at the top of the staircase to number 117A looked to be in a significant state of disrepair with a hole appearing in the same. Other landing plates could also be seen to be in a state of disrepair though not to the same extent.

iii. The tread spacing to the stairs at 121A was significantly wider than would usually be expected and was a potential hazard for falls and trips having no stair risers.

iv. There were different styles of outside lights above each of the metal stairways. While the Tribunal did not see these lights in use, it was told that they were operated from inside the respective maisonettes and that they were all in working order;

b. There was some sagging to the mild steel lintels above a number of the windows on the rear elevation on various floors, causing the red brick over such lintels to have cracked and moved.

c. Three service boxes were mounted to the rear elevation of the building. The Tribunal were told that these served the rear flats and maisonettes.

d. The cast iron soil and vent pipes attached to the exterior of the rear elevation were in a significant amount of disrepair. Failed patch repairs (attempted with what appeared to be duck tape) were visible in numerous places, with gaping holes to the same present. In addition outside one property, the soil pipe was broken at the bottom and was partly discharging directly onto the ground, with waste effluent evident around the same.

e. There was a gravel filled French drain running part of the length of the building. The level of the gravel could be seen to have exceeded, and therefore bridged, the damp proof course within the property.

f. To the far right hand side of the building, was a step down to a pedestrian passage, which ran the width of the building, linking the front and rear. At the rear elevation end of this passage was on the left, an internal storage cupboard. This was adjacent to a flat entrance door, although it belonged to the flat above. While a drain was visible to the higher part of the car park/ storage area above the passageway there was no drain within the passage. The Tribunal were told that during heavy rain this area, down the step into the passage, flooded causing water to enter the internal cupboard, which in turn then seeped through into the adjacent flat. The bottom of the wooden cupboard door showed signs of damage consistent with such occurrences.

g. The brickwork to the rear elevation had in places been obviously patch repaired. However, aside from these patch repairs there remained extensive disrepair to the brick work over the entire rear elevation. In places the bricks were so weathered that there were visible holes through the depth of the elevation and there was extensive and significant spalling of the brickwork. There was also missing and friable cement pointing evident over the entire rear elevation.

h. There were also areas of bricks which could be seen to have deflected. The Tribunal noted that the expert surveyor, Mr Green, in his report of July 2016 at [112-5.02(v)] attributes this to a number of failed wall ties within the cavity. He also records that numerous other walls ties were, on inspection, noted to be extensively corroded. He refers also to the cavity of the masonry wall as being saturated, with rainwater freely entering the cavity. While the Tribunal were not able to inspect the cavity of the masonry wall, given the state of the bricks and pointing

visible during the inspection and referred to in paragraph (g) above, Mr Green's findings in this regard was not surprising.

i. While the Tribunal did not see inside individual properties, the Tribunal were shown, through one window, extensive damp staining evident to the internal window reveals.

The hearing and factual background

8 The hearing took place at the Best Western Hotel Royale, where, in addition to those who had attended the inspection Mr Leigh (the Applicant) attended for the morning part of the hearing, and Ms Hogg (accompanied by a Mr Cavnally) also attended. Ms Frost did not attend the oral hearing. While many leaseholders spoke and asked questions, during the course of the hearing, Mr Shead took a central role in presenting the case of the objecting leaseholders. The objecting leaseholders were identified in the Respondent's statement of case as [79] Mr De Vreede; Mr Butt; Mr Hard and Ms Deeds; Mr Shead and Ms Frost; and Mr and Mrs Anson.

9 The rear elevation of the building has been in need of works for a number of years. Without seeking to set out the detailed history the following summary is of use:

a. In February 2014 a surveyor (Graeme Todd at Bennington Green Associates) was contacted and asked to inspect the rear wall of the building. It was in poor condition and several flats were said to be reporting water ingress [81-3.2]

b. Mr Todd produced a report after his inspection [98]. This was titled an 'abridged report'. That title has caused some consternation.

i. The Applicants maintain and led evidence that it was an abridged report in the sense that it did not profess to deal with the entire building, only the rear elevation.

ii. The objecting Leaseholders cited the opening paragraph of the report [99-2.1] as indicating that it was not a sufficient basis on which to formulate these costly and extensive works: "This abridged report has been prepared upon our clients instructions and this does not purport to represent a detailed thorough Building Surveyor's investigation and report but rather provides our initial and brief observations, conclusions of recommendations."

iii. In his report, Mr Todd described the water ingress which was occurring internally as resulting, in his view, from the state of the rear facade of the building [99-3.1]. He concluded that water was penetrating through the spalled brickwork and missing/ loose pointing and was causing dampness and water penetration to a number of flats internally. He also referred to damp at low levels internally arising from a bridged or failed damp proof course [100]. Mr Todd referred to two options to remedy this disrepair: firstly "...taking down and rebuilding in stages the

whole of the outer leaf of the rear external wall and flank wall with a suitable fair face brick." The Second option he referred to was that "it **may** be possible to carry out minor brickwork repairs prior to applying a new render finished over the existing brickwork..." [100](emphasis added).

c. Mr Todd produced two specifications of works (relating to the two options) [107][108]

d. There was then an attempt by SPL to carry out the section 20 consultation process. There were various complaints about this process by the Respondent, with certain leaseholders not receiving some of the notices.

e. Quotations were obtained on the basis of Mr Todd's specification of works concerning option 1 (rebuilding the rear elevation) in around April 2014. One of the companies who provided a quotation was a firm called Acorn Construction.

f. Many leaseholders (including Mr Leigh, who is both freeholder and the leaseholder of two flats) objected to the works, primarily being concerned with the significant costs involved. Also at this time Mr Leigh was seeking planning permission to add a number of flats to the roof the building. Mr Leigh's planning permission application was refused in February 2015 [82-3.11].

g. SPL then sought to continue with the section 20 consultation process. As part of that process updated quotations were sought from a number of the companies who had previously tendered for the works, including Acorn Construction. At this stage Mr Todd's specification of works was still being used.

h. Quotations were returned and a stage 2 statement of estimates was sent to all leaseholders on 11/03/2015. Again a number of the leaseholders objected to the works. And again the works were put on hold (there also seemed to be a renewed planning application submitted by Mr Leigh at around this time);

i. That planning application was refused again in November 2015.

j. By letter dated 13/01/2016 leaseholders were invited by SPL to attend a meeting on 19/01/2016 to discuss how to move forward with the works. Complaint was made by a number of the leaseholders of the short notice given of this meeting, and also of the accuracy of the report as to the outcome and discussion at the meeting.

k. The Section 20 process was restarted by SPL following this meeting. On the 29/01/2016 a new notice of intention was issued to all leaseholders [194]. It was proposed that the works would consist of rebuilding the rear exterior elevation of the property. This time instead of using the Bennington Green/Mr Todd one page specification of works, another surveyor, Mr Green of Greenward Associates had been instructed and had drawn up a more detailed specification of substantively the same

works [153]. The Tribunal heard, and accept that Mr Green's schedule of work added detail to Mr Todd's previous specification of works; but the substantive nature of the works themselves remained the same.

l. There were a number of responses received by SPL to that notice [83-4.3, to 4.7].

m. Greenwood Associates tendered the works to a number of contractors, including those nominated by leaseholders. As Acorn Construction had previously provided the lowest quote for the work, they were once more approached to submit a tender.

n. Various companies returned quotations. However, Acorn Construction did not submit a quotation by the deadline. Acorn Construction were chased for a quotation, and a figure was provided on 31/03/2016. However there was no breakdown of that figure, such as to allow for a proper analysis of the quotation. Ms Orner of SPL stated that Acorn Construction (Acorn) were repeatedly chased for a breakdown but to no avail [84-4.13]. In addition the Tribunal heard from Mr Green who explained that in his 20 or so years in the business, he had never had to engage in the degree of chasing and follow up he has done with Acorn Construction in relation to this project. He was prepared to do this due to their potentially much lower quote and he had experience of their work which he considered to have been of a good standard in those instances.

o. Greenwood Associates completed a tender report in March 2016 [159] recommending that the tender from Prestige Building Contractors Ltd (Prestige) be accepted [164].

p. Greenwood Associates subsequently completed a 'rear wall and roof condition report' in July 2016 [109], this appears to have been obtained by SPL as a result of pressure from various leaseholders concerning the perceived inadequacy of the Bennington Green 'abridged' report. Mr Green concludes in his report that [113-6.00(ii)] the rear elevation "....could be repaired but these works would be more expensive than the rebuilding of the brickwork. A specification has been prepared for the replacement; I am of the opinion that this is the most economic route for the leaseholders to follow."

q. On the 10/11/2016 a stage two notice was issued to the leaseholders with covering letter and tender report from Greenwood Associates [213]. At this point as Acorn Construction had not submitted a breakdown of their quotation, they were not included in the tender report.

    i. A number of the leaseholders pointed out that other companies had not submitted a breakdown of their quotations by the deadline and yet they had been included in the tender report. Ms Orner and Mr Green explained that these companies had, unlike Acorn Construction, subsequently submitted a breakdown for their quotation.

r. As can be seen from the notice at [213] the cost of the works is considerable, with quotations then ranging from £135, 500 + vat up to £195,684 + vat.

s. In response to chasing by an individual leaseholder (Ms Coyle, now Mrs Anson), on the 15/02/2017 Acorn submitted, to her, a breakdown of their previous tender price [252]. She in turn passed this onto SPL. As will be noted from [252] their quoted price £100,243.39 was significantly lower than the others received through the tender process.

t. As a result of this communication, and only because the Acorn price for the works was so much lower than all of the others, SPL and Mr Green once more contacted Acorn to further investigate their tender. It will be noted that this was occurring many months, indeed nearly a year, after the closing date for tenders. Mr Green arranged (after a further delay) to meet Acorn at the property in order to discuss the detail of the work with them. Mr Green explained to the Tribunal that he had been concerned that the tender was not in accordance with the schedule – hence his site meeting with them. Mr Green confirmed in answer to a question by Mr Anson that he had in fact met all of the contractors (save Acorn) at the property during the consultation process.

u. As a result of this site meeting, a new quotation was submitted by Acorn on 24/04/2017 [266][268]. This time amounting to £129,473.39 (including VAT). While this was a higher price than their previous tender it was still significantly cheaper than all the other companies who had tendered for the project.

v. Mr Green pointed out to the Tribunal that the Acorn quotation was subject to a number of qualifications [268], and explained how he proposed to manage those qualifications, including by use of an additional contingency sum. Even with the provision of this additional contingency, Mr Green assured the Tribunal and the leaseholders that Acorn were still cheaper than Prestige (the next lowest tender). Mr Green confirmed that he had worked with Acorn before and was aware that they had carried out this type of work before.

w. At the hearing Mr Green indicated that he had recommended to SPL that the contract should be placed with Acorn. This was the first time that the leaseholders had been informed of this. Ms Orner, in answering a question from Mr Shead stated that SPL and the Applicant had not yet made a formal decision to proceed with Acorn; She highlighted that the recommendation from Mr Green had been made after the Applicant's statement of case had been filed and the bundle prepared. She also referred to waiting for the outcome of the Application to the Tribunal, and requiring some clarification on the qualifications to Acorn's tender.

<u>The Section 20 Consultation process.</u>

10 The Tribunal made it clear at the outset that the relevant consultation process to be considered was that which occurred in 2015/2016, and not the abortive and criticised 2014 process. Mr Orner assured the Tribunal that the costs of the 2014 Section 20 process were not, and would not, be sought from the leaseholders.

11 The Tribunal asked the Respondents to identify what, if any criticisms they made of the current section 20 process. Mr Shead explained that the Respondents did not take issue with the validity of the current section 20 process. None of the other leaseholder's present demurred from this position.

12 Ms Orner helpfully clarified to the Tribunal that as the most recent stage 2 notice had not referred to the Acorn tender, that SPL would be re-issuing the stage two notice so as to include Acorn's price.

13 Subject to SPL re-issuing the stage 2 notice as described above, the Tribunal considered that the section 20 consultation process had been complained with in relation to the major works.

The lease

14 The Tribunal were provided with copies of two sample leases – one in relation to a flat and another relating to a maisonette. Ms Orner suggested that she had no reason to believe that all of the leases for the flats and maisonettes in the building were not in these forms. She confirmed that a sample of leases had been examined to this end. The tribunal had no reason to doubt that this was the case.

15 The Tribunal noted the following relevant provisions of the leases:

a. Various terms which are used in the lease (the Property; the Reserved Property; and the Premises) are defined in the first, second and third schedules [24][29][30]. Of particular note is that The Reserved Property is defined in the Second Schedule as [29] "All THOSE the main structural parts of the building or buildings ... situate on the property including the foundations main load bearing walls external staircases and roof of the Building and the joists or beams within the Building (but not the interior faces of such of the external walls as bound the Building) and all cisterns tanks sewers drains pipes wires ducts and conduits (not demised and used solely for the purpose of any unit within the Building) which serve the Building ..... and all that party of the Property that comprises the access ways drives forecourts parking areas bin stores....cycle stores.... intended for use by more than one unit within the Property and falling within that part of the Reserved Property as is edged green on the Plans ("the Amenity Area" including the pedestrian access through the Building at ground floor level ....and the hallway ....."

b. The Lessor's obligations [25-3] are contained in the Seventh Schedule [38] and in so far as relevant to this application, provide at:

   i. paragraph 4 as follows [39][63]: "The Lessors shall subject to compliance by the Lessee with its obligations under clause 13 [*and 18*] of the Sixth Schedule hereto keep the Reserved Property and additions thereto in good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts....."

   ii. Paragraph 6 [39] provision for setting up a reserve fund;

   iii. Paragraph 7 [39] provision for the lessor to employ a firm of managing agents

c. The Lessee's obligations [25-2] are contained in the Sixth Schedule [32][57A] and provide:

   i. At paragraph 8 that the service charge year runs from 1st day of January to the 31st day of December in each calendar year [40-8]

      1. The Tribunal noted that while previously the service charge accounts had appeared to run from 1st July to 30th June each year [312], this had now been rectified by SPL for the 2016 year [324] and so the service charge year was as stipulated in the leases;

   ii. For an obligation to pay the service charges at paragraphs 13 [35][60] and additionally as required by paragraphs 18 [62] or 19 [37]; and

   iii. At paragraph 15 that the lessee is "To pay all reasonable costs (including Solicitors costs and Surveyors fees) reasonably incurred by the Lessor: (a)..... (b)... (c) in connection with any breach of covenant or the recovery of any monies due from the Lessee under this Lease."

The works and their cost

16 Historically it appeared that they had been disagreement by the leaseholders as to the nature of the required works to the rear elevation; At one point a number of the leaseholders contended that the rear elevation did not need to be taken down and rebuilt. This was seemingly based on comments made in the 'abridged' report by Mr Todd of a possible alternative to the rebuilding works, and also on a 'report' by Bryan Hoile Associates at [198] and [200] which suggested that "It may be more economical to deal with the obvious defect, i.e. low level damp in one flat, water ingress around some window reveals and replacement of the damaged area of brick work rather than carry out works to the whole elevation."[201]. It appears that Greenward Associates had sought to discuss this suggestion with Bryan Hoile Associates, but no response was received to their communications [111-4.00(v)].

17 The Tribunal also noted that it appeared that another leaseholder had sought an independent report from The Building Consultancy Bureau. A copy of that report was not before the Tribunal, but it was quoted in the Respondent's statement of case at [74-g)] as concluding that "..the wall is inherently weak and in poor condition to such an extent it would be impractical to complete a general repair.... thus, overall I would concur with the view of Messrs Greendale [*sic*] the external leaf should be reconstructed in its entirety".

18 Having considered both those reports the objecting leaseholders indicated in their statement of case [74-g] that the "..leaseholders accept that works are required to address the water ingress problem, however it is maintained that the works should be limited to those to address the water ingress problem only.". During the hearing it was confirmed that the leaseholders accepted that the rear elevation needed rebuilding. The Tribunal clarified with the leaseholders the extent of the lessor's repairing obligation as provided within the lease – namely to "keep the Reserved Property ..... in good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts..". To the extent therefore that items of work fell within the ambit of that provision, and were reasonable, they were within the lessor's repairing obligations and covered by the service charge provisions.

19 Within the Respondent's statement of case, at [73] there was reference to what appeared to be an argument that historic neglect had increased the costs of the works. The Tribunal noted the following:

a. The Applicant had purchased the building in late 2013, and by 2014 was investigating works to the rear elevation. The works were put on hold in 2014 as a result, in part, of objection by leaseholders to the costs of such works.
b. One leaseholder pointed out at [277] that in fact it was the delay and objections by other leaseholders which had caused the cost of the works to increase, referring to an increase in the price of the works between 2014 and 2016;
c. Mr Green explained that the works due to be undertaken under his specification of works were the same as those being recommended under Mr Todd's specification of works from 2014; he had produced a more detailed specification to ensure that there were no hidden extras or costs which came to light part way through or at the end of the works, but the nature of the works required was the same. His evidence to the Tribunal had been that if the works had proceeded on the basis of the shorter specification prepared by Mr Todd that there would have, in all probability been additional costs at the end of the works.
d. The 'high point' of this argument was contained in a solicitors letter at [207] para 10 where it was stated that it was "..unclear whether the freeholder's breach of their repairing obligations in carrying out repairs may have exacerbated the problem making the cost of repair significantly higher than it might have been. Our client's position is reserved in this regard."

20 The Tribunal sought to clarify with Mr Shead and the other leaseholder's present at the hearing the difficulties with and evidential requirements of

running such a 'historic neglect' argument. None of the Respondents sought to advance such an argument at the hearing.

21 The Tribunal noted that the Applicant had set the 2017 budget on the basis of the quotation received from Prestige Building Contractors Limited (Prestige). This was because at the time that the budget was set it had been recommended by Mr Green, in the tender report, that the contract be placed with Prestige. At that point an acceptable or sufficient breakdown of their tender had not been received from Acorn.

22 At the date of the hearing, a final determination had not been made by the Applicant to proceed with the Acorn quotation, the Applicant was therefore requesting that the Tribunal made a determination of reasonableness on the basis of the figures/ costing contained within the Prestige breakdown. That was the quotation which had been used to set the major works budget within the 2017 service charges budget.

23 The Tribunal noted that while the Acorn quotation was cheaper than that provided by Prestige, there was, on Mr Green's recommendation, a need to add an additional contingency to the Acorn price to take account of the qualifications stipulated in its tender. That would therefore increase the true amount of the Acorn quotation – though Mr Green stated that even with the additional contingency the Acorn price would still be lower than the Prestige quotation.

24 Ms Orner on behalf of SPL made clear that the service charge demands had been made and would be collected on the basis of the Prestige quotation for the works. She explained that if, as seemed likely, Acorn were awarded the contract on the basis of their most recent quotation that they would not be issuing new demands but rather revising down the initial 2017 budget. Ms Orner explained that they would then issue a credit for the difference when the second stage of consultation had ended (see paragraph 10 above).

25 The Tribunal reminded itself that a lessor is not obliged to proceed with the lowest tendering contractor as long as the cost was still reasonable. A lessor would though have to explain why it had chosen a higher price and on what basis this could be said to be reasonable. There are a number of factors, aside from cost, which might reasonably and properly influence a lessor's choice in this regard – including for example views on reliability of the contractor, the speed with which the contractor might be able to start the works (if they are urgent), qualifications to the quotation and the contractors behaviour through the tender process.

26 The objecting leaseholders raised issues within their statement of case, querying a number of aspects of the proposed works and the respective costs of those items. Each of these were examined and discussed with the parties, and Mr Green at the hearing. Considering each in turn:

Allegations of betterment

27 At [75-2-1] the objecting leaseholders contend in their statement of case that a number of items included within the specification of works amount to betterment and are not relevant to the water ingress problem. They also assert

that other works were merely cosmetic and don't need to be completed at the same time as the major works as they significantly increase the costs. In particular the Respondents' referred to:

a. **New window and door lintels.** Item 1.6 on the Specification of works [155]. This item was in fact agreed between the Respondents and the Applicants at the hearing. The specification of works included a figure representing an allowance in relation to this item in case, when the existing lintels were removed during the rebuilding process, it was clear that they were in such a state of disrepair that they could not properly be reused. It was accepted that once the works commenced it would become clear whether this item of work was in fact required (or whether the existing window and door lintels could be reused). There was therefore no issue in this regard on which the Tribunal were required to make a determination. However, and for the avoidance of doubt, the Tribunal can indicate that it would have found this item of work to fall within the ambit of lessor's repairing obligations, that it was reasonable and that the costs, as stipulated in the Prestige Schedule of works (£5,800 [190]), were reasonable. The Tribunal noted that the Acorn quotation was for £4,850 [266] in respect of this item.

b. **Replacement of defective ironmongery.** Item 1.8.4 on the specification of works [155].

    i. This item was in fact agreed between the Respondents and the Applicants. It was accepted that once the works commenced it would become clear whether this item of works was in fact required. The specification of works included a figure representing an allowance in case, once the windows were removed, it became apparent that there were items of defective ironmongery which needed replacement.

    ii. There was therefore no issue in this regard on which the Tribunal were required to make a determination. However, and for the avoidance of doubt, the Tribunal can indicate that it would have found this item of work to fall within the lessor's repairing obligations, that it was reasonable and that the costs, as stipulated in the Prestige tender (£600 - provisional [190]) were reasonable. The Tribunal noted that the Acorn quotation didn't include an individual price for this item [266], only a global figure for the work to the windows. It was also subject to a qualification at [268].

c. **Cleaning of glazing on completion.** Item number 1.8.5 of the specification of works [155]

    i. Mr Shead submitted that the leaseholders already paid an annual cost for window cleaning, and therefore did not consider this to be a necessary item to include with the works.

    ii. Mr Green explained that he could omit this item from the schedule works, but that in reality none of the quotes which were in contention (Prestige and Acorn) had costed this item of work

separately, and it would, in Mr Green's view, be included as matter of course when the works to the window were completed. However by including it in the schedule of works it emphasised that this was expected.

iii. The Prestige quotation did not include a specific cost for this item [190]. However they had at item 2.70 included a completion cost of £9,450 [192], which Mr Green stated would include matters such as this within it.

iv. The Acorn quotation did not include a separate charge for this item, as distinct to the other charges for windows [266]. Acorn had also included a charge for completion costs of £2,000 [268].

v. The Tribunal found that it was entirely reasonable and sensible to include this as an item within the works specification. It would be expected as a matter of best practice, and illustrated to contractors what was expected. Further there was no specific additional cost associated with the same. The Tribunal also found that this item of work was within the ambit of the lease, arising as it did as a consequence of the disrepair to the rear elevation and the works to rebuild the same.

d. **Repair service boxes as required**. Item 1.5.3 of the specification of works [154].

i. This item was in fact agreed between the Respondents and the Applicants at the hearing. It was accepted that once the works commenced it would become clear whether this item of work was in fact required. The specification of works included a figure representing an allowance in case, once the service boxes were removed and given that they were old and plastic, they cracked and would need to be replaced.

ii. There was therefore no issue in this regard on which the Tribunal were required to make a determination. However, and for the avoidance of doubt, the Tribunal can indicate that it would have found this item of works to fall within the lessor's repairing obligations, that it was reasonable and that the costs, as stipulated in the Prestige tender (£950 [189]) were reasonable. The Tribunal noted that the Acorn quotation didn't include an individual price for this item [266], only a global figure for the demolition work.

e. **Extensive refurbishment of metal staircases**. These are within the definition of reserved property. Item 2.0.0 [156] on the schedule of works;

i. Mr Shean indicated on behalf of the objecting leaseholders that he was happy that the staircases were to be repaired. There was no demur from this position by the other leaseholders present at the hearing. Mr Green explained that the staircases would each

be removed and he would then inspect them. Each tread would be mechanically cleaned.

ii. There was a discussion about works to alter the existing stair treads to 2 of the staircases. Mr Green stated that these works were required in order to comply with the relevant health and safety requirements. The costs of that would be taken from the contingency cost factored into the price of the works.

iii. Mr Green also explained to the Tribunal and the leaseholders how he proposed to manage the fact that the Acorn quotation did not include any allowance for repair of the external staircases, merely redecoration; Mr Green stated that there would need to be provision for an additional contingency in respect of the same and that this would be added to the Acorn price. This would, in Mr Green's view, prevent any need for further sums to be claimed in relation to these works at the end of the works.

iv. Ms Deeds asked why the external staircases could not be replaced by entirely new ones. She referred to having identified that similar styles of new staircases could be purchased on line for circa £3,000. Mr Green explained why that would not work in the current situation; Namely that if new staircases were to be installed (as opposed to merely repairing the existing staircases) they would need to comply with new and more stringent health and safety requirements, and be of a much higher specification than that which was currently in place. They would, in Mr Green's view need to be of an entirely different design and with entirely different fixings to the building. He continued by stating that in his view he didn't think that there was £3,000 worth of repairs to the existing staircases in any event.

v. The Tribunal found that the proposed works to the external metal staircases were within the ambit of the lessor's repairing obligations under the lease and that they were reasonable.

vi. No specific challenge was made to the costing of the works to the staircases. The Tribunal considered the Prestige quotation of £15,000, noting that included not only redecoration but also refurbishment works, while the Acorn figure of £6,250 [266] related only to redecoration and would have an additional contingency sum added to it (Mr Green indicated the type of level of contingency sum he was considering). The Tribunal noted that other quotations received referred to sums of £17,500 [179]; £17,630 [169]. The Tribunal considered that a cost of up to £15,000 as contained within the Prestige quotation in relation to this item was reasonable.

f. **New soil and vent pipes**. Item 2.1.0 of the specification of works [156].

i. At the hearing there was an acceptance by all parties that these works were required and that they were within the ambit of the lessor's obligations under the terms of the lease and were reasonable. Had it not been agreed, the Tribunal would have had no difficulty in so finding in any event.

ii. There was however some concern expressed by Mr Anson about the price of this item within the Acorn quotation. Mr Anson pointed out that Acorn had used a figure of £5,250 [266] in relation to this item, while Prestige had quoted a figure of £2,000 [191]. Mr Green was asked whether Acorn could be asked to revise their quotation downwards in relation to this matter. Mr Green while saying that it could be attempted didn't think that it would result in a lower overall price "They have globally priced the job, I can ask the question but I don't think the result will be a decrease in price. There are variations in tenders, and peaks and troughs, but overall the price will probably stay the same." In this regard Mr Green also pointed out that Prestige had put in a figure for preliminary items (i.e. item 1.2.0) where-as Acorn had not.

iii. The Tribunal accepted Mr Green's evidence in this regard, noting that it accorded with their own experience in such matters. The Tribunal considered that the prices included within the Prestige quotation were reasonable.

g. **Removal of current and replacement of all existing gutters and downpipes.** Item 2.3 of the specification of works [157].

i. At the hearing there was an acceptance by all parties that these works were required and that they were within the ambit of the lessor's obligations under the terms of the lease and were reasonable. Had it not been agreed, the Tribunal would have had no difficulty in so finding in any event.

ii. Mr Green confirmed to the Tribunal that the gutters and downpipe would be replaced with UPVC equivalents, and that this would mean there would not be a need to redecorate the same – unlike with existing cast iron guttering and downpipes.

iii. There was no argument from the Respondents that the figures quoted in relation to this item of work were unreasonable. The Tribunal noted that Prestige quoted some £3,550 [192] in relation to these items while the Acorn quotation gave a figure of £2,189.10 [266]. Other companies had quoted as follows in relation to this item of work: £5,150 [170]; £4,150 [180]. The Tribunal concluded that the figure quoted by Prestige was reasonable.

h. **Installation of a French drain.** Item 2.2.0 on the specification of works [156].

i. The Tribunal queried with Mr Green the reasonableness of these works as detailed and whether merely reducing the level of the gravel in the existing French drain would be sufficient to alleviate the problem, and remove the current bridging of the damp proof course. Mr Green explained that in his view, the level of the gravel was only part of the problem; there would still be a need to back the brickwork within the existing French drain, otherwise as now, the water would merely collect in the drain and saturate the brickwork seeping through into the building, as was currently happening.

ii. The Tribunal considered that the works as described amounted to works to remedy disrepair. The existing state of the French drain caused bridging (disrepair) to the existing damp proof course and contributed to the saturation of the rear elevation. The method of repair proposed was in the Tribunal's view a reasonable and proportionate way of remedying the problem and ensuring that there was no future repetition of water ingress by this route.

iii. No other issue was highlighted by the Respondents during the hearing in relation to this item of works or its cost. The Tribunal considered that the cost of this item within the Prestige quotation (£6,200) was reasonable (albeit it at the higher end of the comparable quotes). The Tribunal noted that Acorn's quotation for this item of work was £4,200. Other companies had quoted £5,434 [169]; and £6,375 [179]. The Tribunal reminded itself that the Prestige quote was the second lowest quote overall obtained by the Applicants, and, as referred to above, the practice of companies to look at and price a job globally.

i. **Installation of a drainage channel across the pedestrian side passage.** Item 2.4.0 on the specification of works [157].

i. Mr Green explained that this item of works was required to stop water pooling in the communal area (the passageway). Mr Green referred to the block paving having been previously installed in the car park area thus raising the height of that piece of ground. This meant that the passageway was now the lowest point, and so water flowed down there. The Tribunal heard evidence from leaseholders that when it rained this area often flooded as water ran off the block paved area of car park above it, and collected, pooling in the communal passageway, often to a depth of a number of inches (6-12 inches was mentioned by one leaseholder). This in turn meant that water ingressed into the storage cupboard to one side of the passageway and from there seeped into the adjacent flat causing dampness and water penetration internally. The Tribunal accepted the leaseholders direct evidence in this regard.

ii. The objecting leaseholders did not advance an argument during the hearing that this item was outside the ambit of the lessor's repairing obligations under the lease.

iii. The Tribunal concluded that the current state of this part of the building and retained area meant that the passageway was not in a good and tenantable state or condition. If, when it rained, water collected to a depth of several inches in this area it could not be said to be in a good and tenantable condition; a flooded passageway with an accumulation of water is not, in the Tribunal's view, in a good and tenantable condition. The Tribunal therefore considered that works were required by the lessor under paragraph 4 of the seventh schedule of the leases in order to rectify the same. Having reached a decision in this regard the Tribunal did not consider it needed to go onto consider the potential application of the principle espoused in Rylands v Fletcher (1868) L.R. 3 H.L. 330 and whether this added to the issue under discussion.

iv. The Tribunal considered that the proposed method of repair was reasonable being both proportionate and appropriate, especially in light of the other works being undertaken to the rear elevation and the French drain (in the vicinity) of this passageway.

v. Mr Anson queried whether a regime of maintenance would need to be instigated once the works were completed to ensure that the drain which was to be installed did not become blocked. The Tribunal assume that such acts of maintenance will need to be organised by SPL.

vi. The Tribunal noted that the Respondents raised no particular argument in relation to the quoted costs of this item. The Tribunal found that the cost as quoted by Prestige in relation to this item was reasonable £500 [192]. The Tribunal noted that Acorn had quoted £600 [266] in relation to this item of work and others had quoted £950 [170]; and £675 [180].

j. **Supply and install LED lights**: item 2.5.1 of the specification of works [157].

i. Mr Shead submitted that the provision of LED lights was not something which was reasonably required. It did not address the disrepair to the rear elevation nor the water penetration suffered by a number of the flats.

ii. Mr Green stated in his evidence to the Tribunal that there were currently four different types of light fitting attached to the rear elevation externally and lighting the external staircases. The existing lights would need to be removed in order to take down and rebuild the rear elevation, he stated "I don't know what I will find [when this happens]. I will have to see if they are of sufficient quality to be refitted. This item relates to an allowance in case the existing lights cannot be refitted. If they can be fitted,

then they will be." The Tribunal noted that at [292-4] solicitors on behalf of one leaseholder acknowledged that some lights (albeit it not all) were in a poor condition. Mr Green explained, in response to a question from Mr Fenn that as there were external staircases he needed to ensure as a health and safety requirements that there sufficient and appropriate lighting to these.

iii. Mr Shead expressed the view that the cost attributed to this item of work was excessive. It was noted that Acorn quoted £1,300.00 [266] in relation to this item and that the Prestige quote was for £700 [192]. Mr Shead submitted that such fittings would individually cost in the region of £50 (but no documented evidence in this regard was produced). Mr Green gave evidence that even if one assumes a cost on the basis of a £50 cost per light fitting, plus £100per hour as the cost of an electrician to put up and then test the fitting, for four lights this was £600 (150 x 4 = 600) and seemed very reasonable.

iv. A number of leaseholders queried whether Acorn Construction could be approached to see if they would match the figure quoted by Prestige in relation to this item. Mr Green stated as has already been detailed above in connection with other items of work, that while this could be attempted, it was not usual and given that Acorn had provided the lowest price quotation overall, it would be unlikely that they would alter their position in relation to this item.

v. The Tribunal considered that this item was within the ambit of the lease and was potentially required as a consequence of the works needed to remedy the disrepair to the rear elevation and that it was reasonable. The removal and refitting (or replacement if required) of these lights arose as a consequence of the works to rebuild the rear elevation. The Tribunal also considered that the price given within the Prestige quotation for this item was reasonable.

Other costs/ challenges

28 The objecting leaseholders also sought to challenge the inclusion of an administration fee for SPL in respect of the major works [76]. They argued that they already paid an annual fee to SPL to manage the building (£2,650 in 2017 budget). A fee was additionally being paid to Greenward Associates (Mr Green) of 7% of the cost of the works to manage the major works, and that it was unreasonable for SPL to seek to charge leaseholders an additional fee in relation to these major works as well. The objecting leaseholders submitted that the work which was covered by this additional fee was still management of the property and it was yet another expense for leaseholders.

29 Ms Orner for SPL stated that Mr Green's fee covered the technical specification and supervision of the works, including signing off works throughout the programme and at completion. That required the technical specialist expertise of a surveyor and was not something that SPL as managing agents were competent to provide. Ms Orner explained that SPL's existing agreement with the freeholder specifically excluded section 20 works. Thus the work they had carried out, and would carry out in the future, in relation to the section 20 process (drafting notices, liaising with the surveyor, collecting monies, payments to the contractor during the works and post completion) was not covered by their existing management agreement with the lessor. Ms Orner explained that SPL's fee had been set at 7% of the net contract cost, plus VAT. The Tribunal is aware, and Ms Orner and Mr Green both separately confirmed their similar experience, that such fees are often in the region of 10-15% of the contract price. Ms Orner explained that as she had been involved with the project for some time, she felt that considering this, and given that Mr Green was also involved and when looking at the overall figure involved (given the scale of the contract) that a 7% fee was appropriate. She noted in particular that when the contract price had, in 2014, been estimated in the region of £80,000, a 12.5% fee was being envisaged by SPL. However now that the costs had increased, in her view 12.5% of that higher cost was unreasonable, hence the reduction in the percentage of the fee to 7%.

30 The Tribunal find that it was entirely appropriate for SPL to charge a separate fee in relation to section 20 works, and indeed that this amounted to standard practice amongst most managing agents given the different type of work involved in dealing with a section 20 process and managing a major works contract – even with the involvement of a surveyor overseeing the works. A section 20 consultation was a technical legal process. In the Tribunal's view, the fee of 7% of the final net expended contract cost, plus VAT was reasonable. It was also within the ambit of the lessor's powers under the lease, in particular paragraph 7 of the Seventh Schedule to the lease [39] and was therefore recoverable through the service charge.

31 The Respondents also sought to clarify whether there were guarantees connected to these major works and the terms of the same. Mr Green stated that there would not be an insurance backed guarantee in relation to the major works; the work being undertaken under the major works contract was not insurable work. He referred to the fact that he would be inspecting and signing off the contractor's work on a regular basis, and before each interim payment was made. The contractor would enter into a JCT contract with stage payments, and as usual a 6 year limitation period would apply in the event of any breach of contractor etc. He also described how a retention of 2.5% would be held for 12 months after completion of the works to cover any problems which subsequently arose.

32 The Tribunal considered this approach to accord with usual and expected practice and to be reasonable.

33 Within the bundle before the Tribunal there was reference to attempts to see if the major works to the rear elevation were covered by an existing insurance policy. SPL deal with this issue at paragraph 7.0 of the Applicant's statement of case [87]. It is clear that there have been two attempts now to ascertain whether the major works fall within the ambit of the existing insurance and whether an insurance claim in respect of the same could be made.

34 The Tribunal notes:

a. that in additional to the usual block buildings insurance cover there was an additional insurance policy taken out as a result of internal works which were completed to the ground floor in or around 2012 [223]. No external works were completed at that stage or as part of those works;

b. An application to the insurers was submitted in April 2015, and again in December 2016. Both such claims have been rejected after inspection and investigation the insurer's agent.

c. [207-9] one leaseholder's solicitor accepted that it was unlikely that the damp and water ingress would be covered by the block insurance cover;

d. Ms Orner was very clear that the insurance claims were rejected as the damage in question arises from wear and tear (not an insured risk) and in any event the additional insurance cover in place only covered the ground floor flats internally and therefore exterior work was not included.

35 The Tribunal accepted Ms Orner's evidence in this regard.

36 Finally at one point in the documentation before the Tribunal the objecting Respondents suggested that payments should be made in respect of the 'administration fees' charged by SPL, that these should be paid by leaseholders in different proportions to those stipulated under the lease [76-a].

37 The Tribunal explained to the Respondents at the hearing, that such charges, if reasonable, were permitted under the terms of the lease (see clause 7 of the seventh schedule) and formed part of the service charges. The proportion of service charges which leaseholders paid was fixed by the terms of their leases. It was not within the Tribunal's powers to vary such proportions on an application of this sort and in any event the Tribunal saw no good reason for doing so.

Section 20C application.

38 The Tribunal explained to Mr Shead and the other leaseholders present at the oral hearing, the provisions of section 20C of the Landlord and Tenant Act 1985 and that an application could be made so that all or any of the costs incurred by the Applicant in connection with the proceedings before the

Tribunal were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholders or any other person or persons specified in the application. A Tribunal may make an order under section 20C if it considered it to be just and equitable to do so. Mr Shead indicated that he wished to make an application for an order under section 20C on behalf of the objecting leaseholders.

39 Without attempting to list every point made in relation to his argument in this regard, Mr Shead referred to:

a. the significant amount of work undertaken by the leaseholders in submitting documents for the bundle;

b. the fact that only at the hearing had leaseholders been informed that Mr Green was recommending that the contract for the major works be placed with Acorn.

c. That the objecting leaseholders had had to exert significant time and effort, including from solicitors, in compelling the lessor and SPL to obtain a full survey concerning the major works as opposed to merely relying on the 'abridged' report of Mr Todd.

d. Criticism of the 2014 section 20 process; and

e. The insufficient notice and alleged inaccurate reporting of the meeting on the 19/01/2016.

40 Mrs Hogg, another leaseholder stated that a lot of the leaseholders' anxieties had arisen prior to Ms Orner's involvement "Once Ms Orner was allocated the job things have improved.... before her it was very haphazard.... historic issues have affected our confidence." Ms Deed and others reiterated this, referring to a 'general sense of mistrust'. The Tribunal noted that Ms Orner joined SPL in July 2015, but didn't start actively working on the programme of major works until January 2016, specifically in relation to the meeting on 19/01/2016.

41 Ms Orner on behalf of the Applicant and SPL indicated that they were seeking to recover the costs of these proceedings before the Tribunal through the service charge provisions. She referred to paragraph 15 of the Sixth Schedule in this regard. As stated above this provides that the lessee is "To pay all reasonable costs (including Solicitors costs and Surveyors fees) reasonably incurred by the Lessor: (a)..... (b)... (c) in connection with any breach of covenant or the recovery of any monies due from the Lessee under this Lease." She argued that:

a. those leaseholders who had not paid the major works element of their 2017 service charges were in breach of their obligations under the lease (see clause 13 [35] and 19 [37] of the Sixth Schedule). The service charge demands were issued to the leaseholders on 05/12/2016 and were due to be paid by 01/01/2017; and

b. further or alternatively she argued that the application to the Tribunal was made in connection with the recovery of monies due from the leaseholders under the lease. On the 07/11/2016 SPL had written to

leaseholders advising them, amongst other things, that they were going to make an application to the FTT "..to alleviate any potential problems with the collection of these service charges". The Application to the FTT was made on 16/11/2016 [15].

42 Ms Orner was very clear that none of the costs from/arising out of the previous section 20 process, from 2014, were being (or had previously been) sought from the leaseholders through the service charge, nor would they be.

43 Ms Orner also stated that:

a. The short notice of the meeting on the 19/01/2016, was a result of a date being imposed on SPL by Mr Leigh. Ms Orner indicated that the leaseholders had asked for Mr Leigh to attend any such meeting. She rejected any assertion that the outcome of the meeting had not been accurately reported.

b. Ms Orner explained that SPL had considered that the 'abridged report' was a sufficient basis on which to proceed with the section 20 works. They had engaged Mr Green to elaborate on Mr Todd's specification of works and he had done this in January 2016 [153]. That expanded specification of works had not changed the nature of the required works, indeed only three minor items had been added; all that the expanded specification of works had done was to make clear the extent of works required in relation to each item.

c. Mr Green told the Tribunal that in his view there was not any need at that point for a condition report. "I have produced the full schedule of works on the basis of the abridged report and an inspection. It was enough. The Bennington Green report, the 'abridged report' is badly titled that is all. It isn't a full report on the building. It's a limited report. It is a standalone report. It isn't an 'abridged report' in the proper sense of those words". Mr Shean indicated that at no stage had the leaseholders been told that the surveyor, Mr Green, had advised that a full report wasn't required.

d. Ms Orner then continued pointing to her letter at [208] from March 2016, specifically at paragraph 2.2 when writing to solicitors acting for one leaseholder in which she had made the point that about the misleading title of the 'abridged report'.

e. She explained that no leaseholder had nominated Acorn Construction as part of the section 20 process, it was SPL who had suggested contacting them again as they had previously been the lowest bidder. Ms Orner accepted that Mrs Anson (then Ms Coyle) had been chasing Acorn in order to obtain a breakdown of their quote within the 2016 tender process.

f. The Tribunal heard evidence from the parties about how, finally, Acorn Construction had been encouraged to submit a breakdown of their 2016 tender figure, but that this had not been received until February 2017. Mrs Anson explained it had taken her three phone calls 'that is all' to get this breakdown out of Acorn. Mr Green stated that in his

opinion Acorn had not been co-operative, it had taken six weeks after the February 2017 email until they have arranged to meet him on site, and he again stated "In 20 years I've never chased a contractor so much for a price."

g. Ms Orner explained that the reason the Applicant had brought the application was because of historic issues connected to the project and that it was important to ensure that the project now moved forward; she needed to be sure that she could take the necessary steps to collect the require service charges before placing the major works contract. She referred to the fact that while the usual budgeted service charges for 2017 had been collected from leaseholders, SPL had suspended collecting the monies for the major works until the Tribunal gave its determination on the application. She explained that in bringing these proceedings in the FTT, the Applicant had sought to avoid the need for further costs, including solicitors costs, in the County Court.

44 The Tribunal also noted that at [91-13.6] in the Applicant's statement of case, it was stated that SPL "...await the decision of the Tribunal before enforcing collection of the element of the service charge which relates to the major works".

45 The Tribunal considered that the provisions of the lease (in particular clause 15(c) of the Sixth Schedule) did entitle the Applicant to seek his costs of the Tribunal proceedings through the service charge.

46 The application was brought to ensure that monies due in relation to the major works and under the lease could be recovered. It was clear that that fell within the ambit of clause 15(c) of the Sixth Schedule of the lease [36]. While the application to the Tribunal was made before the demands for the 2017 service charge were sent out, it was clear, in the Tribunal's view given the letter from SPL of 07/11/2016 [215] that the application was being made "...in connection with .....the recovery of any monies due from the Lessee under the lease." While those monies were not yet 'due' at the time of issue of the application, they fell due on 01/01/2017, and as anticipated by SPL, a significant number of leaseholders have not paid the sums due in relation to the major works. The Tribunal considered that the provisions of lease in this regard included a situation where steps are taken in relation to the collection of monies which will fall due within the period of time that the application is before the Tribunal. It is not, in the Tribunal's view, necessary for those sums to have fallen due and to remain unpaid before the application is issued in order to fall within the relevant wording of the lease. The overwhelming majority of the work and costs incurred in bringing the application to the Tribunal were incurred after the date when the service charges fell to be paid (01/01/2017). The only likely cost incurred prior to that date is the application fee of £100 [15].

47 The Tribunal noted that the Applicant had been entirely successful in the substance of their application. Even having received the Applicant's statement of case, matters remained contested. The Tribunal considered that it was

necessary for the Applicant to apply to the Tribunal in order to ensure that there was a final determination in relation to this matter and so as to allow service charges to be collected and ensure that the works moved forward. The fact that the leaseholders met and spoke to Mr Green had clearly alleviated a number but not all of the objecting leaseholder's concerns; there were still matters in dispute on which the Tribunal was required to give a determination. The Tribunal noted the evidence of some leaseholders that things had been better since Ms Orner's involvement with the project. The Tribunal however did agree that the information concerning the recommendation to accept the Acorn's quotation could have been disseminated in advance of the hearing.

48 The Tribunal did not consider it just and equitable to make an order under section 20C and so do not do so. However it should be noted that in not making a section 20C order the Tribunal is **not** making a determination as to whether any such costs which are said to have been incurred by the Applicant in the Tribunal proceedings are reasonable. Those are not issues for determination under a section 20C application and they were not specifically argued before the Tribunal at the hearing.

49 The Tribunal was heartened to note that SPL proposed to engage in more and better communication with the leaseholders in the future, including if possible uploading onto the online notice board the ongoing position in relation to stage payments and assessment etc throughout the course of the works

Conclusions

50 The Tribunal were acutely aware of the large sums of money involved in the major works project and the consequent large service charge demands which were causing significant amounts of anxiety for the leaseholders. However the work required was significant, it was being proposed and managed in a proportionate and reasonable way and in accordance with the relevant legislative requirements and provisions of the lease. The sums claimed by the Applicant for the major works under the 2017 budget were, in the Tribunal's view reasonable and payable under the terms of the leases.

51 The Tribunal did not consider it just and equitable to make an order under section 20C and so do not do so.

Appeals

52 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.

53 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.

54 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.

55 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.

Appendix A

Landlord and Tenant Act 1985

Section 18 Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, 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 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

.....

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to an appropriate 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 the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]

Appendix B

The Respondent Leaseholders

Flat/ Maisonette	Leaseholder(s)
115	Mr and Mrs Anson
115A	Mr Fenn
117	Mr and Mrs Anson
117A	Mr De Vreede
119	Mrs Leonardi
119A	Mr Butt
121	Mr Leigh
121A	Mr Hardy and Ms Deeds
123	Ms Hogg
123A	Mr Shead and Ms Frost
125	Mr Leigh
65A (Darracott Rd)	Mr Leigh