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LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/00JA/LDC/2011/0015

Subject Property: Cumberland House, St Mary's Court, Peterborough PE1 1UN

Applicants
Landlord & Freeholder: Cross Keys Homes Ltd, Shrewsbury Avenue Peterborough PE2 7BZ

Respondents: The Long leaseholders of the 22 flats held on long leases whose names and addresses are annexed to the Application

Date of Application: 13th December 2012

Type of Application: Application to dispense with the consultation requirements in respect of major works (Section 20ZA Landlord and Tenant Act 1985 as amended ("the 1985 Act"))

Tribunal: Dr JR Morris (Lawyer Chair)
Mr R Brown FRICS (Surveyor)
Mr F Davey (Lawyer Member)

Date of Hearing: 7th March 2012

Attendance:

Representing Applicants: Mr Robert Gerard, Assistant Head of Asset Management
Mr Peter Meadwell, Property Manager
Ms Claire Pudney, Senior Leasehold Officer
Mr Michael Rowan, Senior Project Manager
Mr Richard Brown, Project Surveyor

Respondents: Mrs DL Shoarian-Sattari Flat 54
Mrs JR Wilson Flat 51
Mrs JWA Garrod Flat 76

Observer: Ms S Raven, Vice Chair Resident Tenant's Association

DECISION

- The Tribunal decided that the statutory consultation requirements should not be dispensed with in respect of the qualifying works undertaken on the Left Hand Lift.

Background

1. On the 13th December 2011, the Tribunal received an application under Section 20ZA of the Landlord and Tenant Act 1985 for dispensation from all or any of the consultation requirements contained in Section 20 in relation to the replacement of a lift at the Subject Property. There are two lifts at the Subject Property. This Application only related to the Left Hand Lift. The Applicant said that a full consultation procedure had been conducted in respect of the Right Hand Lift.
2. The Subject Property is a 12-storey block of 70 flats. 22 flats are let on long leases and the remaining 48 flats are wholly owned by the Applicant and are let on short-term tenancies. The Applicants considered the works to be urgent and placed the order for commencing the work on 10th August prior to making the application to the Tribunal on 13th December 2011.

The Law

3. Under section 20 of the 1985 Act:
 - If a service charge item results in the contribution of any tenant being more than £250 it amounts to “qualifying works”. In order for the landlord to re-claim the full cost of the work the specified consultation procedure must either be complied with or dispensed with by a Leasehold Valuation Tribunal.
 - If an agreement is entered into for a period of more than 12 months and results in the contribution of any tenant being more than £100 in any accounting period it amounts to a “qualifying long term agreement”. In order for the landlord to re-claim the full cost of the work under the long-term contract the specified consultation procedure must either be complied with or dispensed with by a Leasehold Valuation Tribunal.
4. The consultation procedures vary depending on specified circumstances and are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Tribunal found that there were alternative procedures, which may apply, in the present case.
5. The first procedure that may be applicable is under Schedule 3 of the 2003 Regulations. This procedure applies where qualifying works are undertaken in the course of a qualifying long-term agreement. It was noted from the Applicant’s representations that following an Official Journal of the European Union Procurement process in August 2008, the Mears Group Limited were appointed as the Applicant’s long term partnering contractor for responsive and planned works. This amounted to a long term qualifying agreement. The Applicant instructed Mears Ltd as part of this arrangement to obtain quotations from suitable competent lift contractors or manufacturers to establish the cost of repairing the lifts. The cost of repairing the lifts was found to require a contribution from any one tenant to be more than £250 and therefore they were qualifying works.
7. Schedule 3 states that a **Notice of Intention and Proposal** to carry out qualifying works must be served on all the tenants. The Notice must:
 - a) Describe in general terms the works proposed to be carried out or where the description can be inspected at a reasonable place and time with facilities to make copies free of charge
 - b) State the landlord’s reason for the proposed works
 - c) State the estimated expenditure

- d) Invite observations to be made in relation to the works and the expenditure in writing
 - e) With a time limit for responding of no less than 30 days.
- The landlord is under a duty to respond to any observations in writing within 21 days

6. Alternatively, the second procedure that may be applicable is under Schedule 4 Part 2 of the 2003 Regulations. This procedure applies where qualifying works are undertaken. The Procedure may be summarised as being in 4 stages as follows:

Notice of Intention to carry out qualifying works must be served on all the Tenants.

- a) The Notice must describe in general terms the works proposed to be carried out or where the description can be inspected at a reasonable place and time with facilities to make copies free of charge
- b) State the landlord's reason for the proposed works
- c) State the estimated expenditure
- d) Invite observations to be made in relation to the works and the expenditure in writing
- e) With a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants

A Notice of the Landlord's Proposals must be served on all tenants in which an opportunity is given to view the estimates for the works to be carried out. In the Proposal the Landlord has a duty to have regard to tenants' observations, which were made following the Notice of Intention. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given to the tenants if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract. The Landlord has a duty to have regard to the tenants' observations made following the Proposal They must be summarised and the Landlord's response to them set out.

8. Section 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

The Lease

9. Copies of 6 Leases were provided; five were from between 1980 to 2004 when Peterborough Council was the Landlord and one from 2004 to date when the Applicant was Landlord. The Leases were as follows:
 Flat 86 Cumberland House dated 17th December 1984
 Flat 83 Cumberland House dated 19th September 1988
 Flat 72 Cumberland House dated 23rd December 1991
 Flat 54 Cumberland House dated 9th October 2000
 Flat 94 Cumberland House dated 27th January 2003

Flat 15 Cumberland House dated 5th July 2010 which were said to be typical. A copy of the Lease for the Subject Property was provided. The Leases are for a term of 125 years from 26th September 1983.

10. It is understood that all the long leases have the same terms. Under Clause 2.4 of the long lease the Respondents are liable to pay a variable service charge of "a proportionate part of the expenses and outgoings incurred by [the Landlord] in the repair maintenance and renewal... of the Building and the provision of services therein and the other heads of expenditure as the same are set out in the Fifth Schedule". The Fifth Schedule includes at 5.1 (A) (b) the passenger lifts.

The Evidence

Applicant's Case

11. Mr Robert Gerrard, Assistant Head of Asset Management for the Applicant, provided a written statement as follows, which has been précised in parts:
- a) Following an extensive Official Journal of the European Union Procurement process in August 2008, Mears Group Limited were appointed as the Applicant's long term partnering contractor for responsive and planned works.
 - b) Within the 2011/12 planned works programme it was intended to replace the two lifts at the Subject Property. The 2011/12 planned budget was approved in April 2011 by the Applicant's Board and included an allowance of £244,800 for the replacement of the two lifts at the Subject Property following repeated repairs being undertaken through the service contactor, Otis Lifts Ltd.
 - c) The lifts were originally installed in 1964 and have not been refurbished since this date but required a major component to be replaced in 2004
 - d) The Applicant instructed Mears Ltd as part of the long term partnering arrangement to obtain quotations from suitable competent lift contractors/manufacturers to establish the cost of the works. Pre qualification questionnaires were undertaken and a comprehensive brief was established for the lift specialists to price against.
 - e) In the course of preliminary research it was evident that there was a limited number of companies in the market place which were able to demonstrate the ability to undertake the works with Otis and Stannah being the only two which were clear in their abilities to price for the works.
 - f) Over the past twelve months the lifts have had an increasing number of breakdowns with one or other lifts being out of service for varying periods of time. This led to the right hand lift developing an intermittent fault on 2nd June with Otis Lifts Ltd finally taking this lift out of service on 28th June 2011 and seeking specialist control gear technicians to attend on site. This fault led to the lift being out of use for 3 weeks.
 - g) During this period the second lift was being used heavily, increasing the likelihood of a failure to this lift. It was felt by the Project Manager for service and cyclical works that the required planned works for 2011/12 to renew the lifts should be brought forward as a

matter of urgency and the Asset Management Team and Land and Property Department concurred with this view.

- h) It was considered that the normal consultation period would need to be replaced by an application to the Leasehold Valuation Tribunal for a dispensation on the grounds that the works were urgent with heightened risks and severe consequences to vulnerable residents.
 - i) The Asset Management Team negotiated with Otis Ltd and Stannah Lifts Ltd to establish the best price for total refurbishment of the lift installations and quotations were obtained which showed Otis Ltd as giving best value for the works.
9. A diary of events was provided which was said to set out the consultation process which following the breakdown of the lift on the 2nd June and 28th June moved into an accelerated programme as follows:
- In April 2011 Cross Keys Homes approved the 2011/2012 programme of planned works and budget which included the refurbishment of 2 high rise passenger lifts to Cumberland House.
 - In June 2011 the planned works are made available on the Cross Keys Homes website.
 - In June 2011 an intermittent fault with the right hand lift occurred which resulted in several thousands of pounds of software repairs to control the gear due to the age and condition of the lifts.
 - On 28th July 2011 the Land and Property Department notified leaseholders by post of the Applicants intentions to undertake major refurbishment works of the two lifts urgently at the Subject Property and requested them to attend a meeting on 3rd August 2011 (Copies provided).
 - On 1st August 2011 copies of the invitations were delivered by hand to all tenants at the Subject Property.
12. The letter dated 28th July 2011 made the following points:
- It was intended to refurbish the two lifts serving the Subject Property because there was a risk "of both lifts failing at any time due to the age and condition of a number of parts. Many of the parts needed to repair the lifts are no longer available..."
 - It was stated that the cost could amount to approximately £3,514.00 per flat.
 - A meeting would be held on Wednesday 3rd August 2011 at a stated venue at 6.00 p.m. which the letter stated was "to give you [the Leaseholders] the opportunity to raise questions with us [the Landlord] before we commence our formal consultation procedures"
 - The letter went on to state that "further formal s. 20 consultation letters regarding the specification, reasons and estimated costs for the lift refurbishment. As the works are likely to be carried out urgently it may be that we are unable to complete formal consultation with you. In this event we will apply to seek dispensation from the Leasehold Valuation Tribunal and carry the work out as quickly as possible. We will notify you if this happens."
13. The Agenda of the meeting of the 3rd August was provided. The main meeting was with both short and long leaseholders. The Agenda items included an explanation of the history of the lifts from 1964 and their condition to date, an explanation of the repair work to be undertaken and how it will be carried out. There followed a meeting with the long leaseholders only, to discuss the financial implications.

14. A copy of notes made at the meeting by the chair was provided which recorded the options available as follows:
 - 1) Replace the lifts with extensive work at an estimated cost of £300,000 plus VAT
 - 2) Replace lifts by a new less disruptive method than in 1) developed by Otis but still at an estimated cost of £300,000 plus VAT
 - 3) Total refurbishment of the lifts replacing everything except carts guide rails and weights at an estimated cost of £240,000 plus VAT
15. A document was also provided which set out answers to questions likely to be asked by leaseholders including: why is the work needed now, why does the leaseholder have to contribute, why is there an additional percentage charge on the basic cost and how is the work to be paid for by the leaseholder?
16. A further series of documents was provided dated 28th September 2011, which related to the consultation procedure for the Right Hand Lift. The Application only related to the Left Hand lift although the description of all the expenditure related to both lifts.
17. In oral evidence the Representatives for the Applicant submitted that the repairs were qualifying works under a long term qualifying agreement to which Schedule 3 of the 2003 Regulations applied. Therefore dispensation from an abbreviated procedure was being sought. It was said that the lifts had been there a long time and they were scheduled for replacement as was evidenced by the allocation of funds for replacement of the two lifts in the 2011/12 budget. There had been an increase in problems with the lifts since April 2010. A spreadsheet summarising the repairs required from April 2010 to December 2011 was provided which recorded some 35 call outs between the two lifts.
18. It was stated that the problem became acute in early July 2011 and e-mails were produced to illustrate the increasing problems with the lifts as follows:
 - 8th July from Ms Robbins to Mr Gerrard reporting that Otis maintenance engineers were unable to repair electronic equipment
 - 14th July from Mr Gerrard to Ms Daniell White, Project Surveyor listing faults with the lifts
 - 20th July from David Thorogood of Otis to Ms Daniell White listing works carried out and the remedial action taken, which was forwarded the following day by Ms Daniell White to Mr Gerrard
 - 20th July to 21st July between Mr A Manji, Leaseholder of Flat 71 and Ms Daniell White relating to problems with the lifts
 - 22nd July from Ms Daniell White to Mr Gerard recording a meeting with Stannah Lifts.
19. The Tribunal asked when was the decision made to carry out the qualifying works on the lift. It was stated that Daniell White had been appointed as the surveyor in July with the repair of the lifts as her first priority. Mr Gerard said that there was no formal meeting. He made the decision for the works to be carried out on or around the 20th July 2011.
20. In response to the Tribunal's question regarding when it was recognised that the lifts required substantial works, the Applicant's Representatives stated that the Applicant had started to consider replacing the lifts early in 2011 and had made inquiries as to suitable contractors who would be capable of carrying out the work and the likely cost. The Subject Property is the only high-rise building owned by the Applicant and therefore it did not have a cost base upon which to make an assessment. It was needed to establish not only what was needed but also what would be a reasonable cost. The budget figure of £244,800 was put to

the Applicant's Board and approved in April 2011 and was in the event found to be very close to the actual cost to replace both the lifts.

21. In response to the Tribunal's question as to when the Respondent Leaseholders were informed it was stated that the overall budget for Cross Keys Homes is approved in April of each year and it would then be usual practice to prepare the estimate of costs for each property and then to send out copies of the service charge budget and demands in September. The Tribunal commented that under paragraph 2.4 (g) of the Second Schedule of the Lease the advance payment of the service charge is to be made on the 1st April of each year. The issuing of the budget and demand in September meant that long leaseholders were paying in arrears rather than in advance.
22. The Tribunal stated that what it would expect under the terms of the Lease, is that the service charge budget would be prepared early in the calendar year and the demands issued at the end of February for payment by April 1st. In the present case it would be anticipated that any section 20 procedures for budgeted works would be commenced at about the same time. It appeared to the Tribunal that the approval of the overall budget for the whole of the Applicant's housing stock by the Applicant's Board in April of each year was more with the provision of services in respect of properties that were subject to short tenancies than those that were subject to long leaseholds where the differences in leases and properties might require a more individual approach. The relevance of this observation here is that although the decision to carry out work at the Subject Property was made by the Applicant in April the Long Leaseholders were not informed until the end of July. The Applicant's Representatives stated that a Tribunal had previously told them that they should not inform leaseholders of work too early, as this would be pre-emptive.
23. In response to the Tribunal's question regarding the relationship between the Applicant and Mears Group Limited the Applicant's Representatives stated that Mears had a contract with Otis for the maintenance of the lifts and project managed the installation. However, the contract for the installation was between the Applicant and Otis. The Tribunal noted that the consultation procedure was organised by the Applicant rather than Mears and the initial investigations regarding contractors and prices for the April budget and the subsequent obtaining of quotations for the work itself appeared to be carried out by the Applicant rather than Mears. The Tribunal therefore questioned whether the lift installation was actually qualifying works under a long term qualifying agreement to which Schedule 3 applied, or whether they were stand alone qualifying works to which the more extensive procedure under Schedule 4 Part 2 should apply. The Applicant's Representatives stated that the relationship with Mears was a partnership and that they worked together.
24. The Tribunal commented, that taking into account that the lifts were 45 to 50 years old, their renewal should have been part of an ongoing capital maintenance plan and should not have been urgent works. In reply, the Applicant's Representatives stated that it had come up on their data base as part of ongoing maintenance and referred to the April Budget and said that they had been scheduled for replacement. However it was added that the works had become urgent and reference was made to the catalogue of faults listed in the Summary between April 2010 and December 2011 provided and the e-mails in July 2011. It was said that the urgency of the works was clear when it was realised that both lifts might fail. It was said that because of the long lead in time of 17 weeks between placing an order and having the work carried out it was necessary to obtain dispensation. The order was placed on the 10th August 2011 and the work was commenced in January 2012. It was added that some consultation had taken place in the form of the meeting which although not in full compliance

was nevertheless well attended and no objections or observations were made either at the meeting or in response to what was said to be the full procedure in respect of the Right Hand Lift in September.

Respondent's Case

25. Mrs Sattari stated in written representations, which she confirmed orally at the hearing that the Applicant "had enough time to carry out formal consultation procedures with the leaseholders and tenants. This was not urgent work and should have been considered as an ongoing situation since the lifts were installed in 1964." She also said "the figure of approximately £250,000 or £3,500 per property for refurbishing not even renewing" was "strongly disputed". It was added that "the money has been demanded without concern as to whether it can be paid."
26. Mrs Sattari added orally that very short notice was given for the meeting and neither she nor her husband was able to attend. She felt that the decision to have the work done had already been made and that no opportunity was given to make representations.

Decision

27. Firstly the Tribunal addressed the issue of whether Schedule 3 or Schedule 4 Part 2 applied. The Tribunal took the view that initially it would consider the case as if the procedure as set out in Schedule 3 of the 2003 Regulations applied. This procedure has significantly fewer stages than that of Schedule 4 Part 2 and if it was found that the Applicant had not fulfilled its obligation under Schedule 3 and it was also decided that dispensation should not be granted then the same decision would be made if Schedule 4 Part 2 applied.
28. Secondly the Tribunal noted the extent to which the procedure in Schedule 3 paragraph 1(2) had not been followed. The main elements of this procedure are:
- a) A Notice describing the works proposed
 - b) which states the landlord's reason for the proposed works
 - c) and the estimated expenditure
 - d) and invites observations to be made in relation to the works and the expenditure in writing
 - e) With a time limit for responding of no less than 30 days.
- The landlord must then respond to any observations in writing within 21 days
29. The letter of the 28th July 2011 sent to all Leaseholders complied with paragraph 1(2) (a) to (c). However it did not invite observations but informed leaseholders that they could attend a meeting on Wednesday 3rd August 2011 in order to give an opportunity to raise questions before formal consultation procedures commenced.
30. The Tribunal found that if Schedule 3 of the 2003 Regulations applied then the Applicants had failed to comply with the requirements of Paragraph 1(2) (d) and (e) and the related requirement to respond to observations within 21 days. The Tribunal therefore needed to determine whether it was reasonable to dispense with those consultation requirements.
31. The Applicants submitted that the works were urgent and that therefore there was no time to undertake the full procedure required by Schedule 3. The Tribunal agreed that there was urgency in that the lifts were requiring frequent repairs and it was becoming difficult to obtain

replacement parts. However, the tribunal found that it was not yet an emergency as it was found that at least one lift was working at any one time.

32. So far as the submission that there was insufficient time to carry out the full consultation was concerned the Tribunal found that the Applicant was aware of the need to replace or substantially refurbish the lifts in April 2011. The Applicant had stated that because of the age of the lifts the work would have appeared as an item in its database for projected work in 2011. This was further shown by an assessment of the cost having been made and upon which the funds had been allocated in April 2011. In answer to a question by the Tribunal as to why at this point the Applicant had not commenced the consultation procedure immediately it was said that quotations were not available and to issue a Notice of Intention and Proposal under Schedule 3 would have been pre-emptive. The Tribunal accepted that the figure of £244,800 was not based on a firm quotation or estimate but was equally well more than an astute guess by an experienced surveyor. The Tribunal did find it to be founded on discussion with contractors, formal or otherwise, as to the extent, means and cost and soundings as to both the ability and suitability of a contractor to carry out the work. The Tribunal took the view that if the results of these discussions enabled the Applicant's Board to make a decision, then in the present case, there was sufficient information to serve a Notice of Intention and Proposal on the Leaseholders. The Leaseholders would then have been aware of the work, have had time to consider its implications to them, make observations on the work and expenditure and receive a considered reply.
33. Notwithstanding the missed opportunity referred to above, the Tribunal considered whether the action that was taken by the Applicant was sufficient to make dispensing with the outstanding requirement reasonable. In doing so the Tribunal considered two points. Firstly the extent to which the action that was taken by the Applicant mitigated the failure to comply with the requirements of paragraph 1(2) (d) and (e) of Schedule 3 and secondly whether the Leaseholders were prejudiced by the failure to comply.
34. The Tribunal considered the contents of the letter dated 28th July 2011 to all the Leaseholders. The Tribunal took the view that even though the Applicant thought it was necessary to truncate the procedure it needed to invite Leaseholders to make observations on the proposed works and expenditure in writing within a specified period of time and a response should have been made to any observations. The Tribunal was of the opinion that such opportunity could have been afforded the Leaseholders if the order was placed at the end of August rather than on the 10th August 2011 and would have made little difference to when the works were carried out. The Tribunal was of the opinion that the document which set out likely questions and prepared answers for the Leaseholders did not negate the need to give an opportunity for observations.
35. The Applicant attempted to meet the requirement to give Leaseholders an opportunity to make observations by calling the meeting of the 3rd August 2011. The Tribunal considered the notice, form and aftermath of the meeting fell significantly short of complying with important elements of the outstanding consultation procedure. The Tribunal found the notice given for the meeting was short and the letter of the 28th July 2011 calling the meeting said it was to give an opportunity to raise questions before the formal consultation procedures were commenced. The purpose of the meeting was therefore not presented as being in lieu of a part of the consultation procedure, which was its purpose so far as the commencement of the work on the Left Hand Lift was concerned.

36. From the copy provided to the Tribunal of the notes made by the chair at the meeting there was an explanation of the options available in respect of the lifts and the reasons why Otis was to be granted the contract together with a statement as to how the work was to be carried out. It appeared to the Tribunal that the information was presented as if a decision had already been made. A further meeting was held after the main meeting for long leaseholders alone regarding finance at which it was understood a payment scheme was explained. No minutes of the meeting were made and circulated after it for those unable to attend and no opportunity was given to the Leaseholders to make observations following a period of reflection.
37. The Tribunal then considered whether there was any prejudice to the Leaseholders as a result of the failure to comply with the consultation procedure. The Tribunal approached the question from the point of view of a Leaseholder. The first a Leaseholder would have heard directly about the qualifying works from the Landlord would have been by the letter dated 28th July 2011. This would have informed the Leaseholder of a meeting which was to take place prior to the commencement of formal consultation. It gave the impression that there was no immediate need to make observations and none were asked for, much less a date by which such representations would have to be received. It was stated that the meeting was a preliminary exercise and was not part of the formal consultation procedure. It was stated that an application might be made to a Leasehold Valuation Tribunal for dispensation of consultation requirements but notification would be sent if this happens giving the impression that such application would be made prior to the carrying out of the works. No details of any payment options scheme were sent with this letter.
38. As mentioned above, the Tribunal found from the copy of the notes made by the chair that, if the Leaseholder had attended the meeting he or she would have had the impression that the decision to award the contract had already been made. It appeared that it was only at the meeting on finance held with the Leaseholders only that there was an explanation of the payment scheme. No mention is made of an opportunity to make observations regarding the expenditure.

Determination

39. The Tribunal therefore found that from April 2011 there had been an opportunity for the Applicant to commence the consultation procedure. The Applicant had omitted to do so and then sought to abbreviate the procedure when it considered there was a risk of both the lifts breaking down. The attempt to truncate the procedure amounted to giving the Leaseholders Notice of the Landlord's Intentions and Proposals but failing to give them any reasonable opportunity to make observations in relation to the works and the expenditure and therefore no response to any concerns or alternatives that they may wish to put forward. As a result the Leaseholders suffered prejudice as the opportunity to make observations in this case was of importance to the consultation procedure. The Respondent Leaseholders in their representations stated that in their observations they would have questioned the Applicant's perception of the urgency and extent of the work and how the cost was to be met. If these observations had been made they would have been deserving of a response. Therefore the Tribunal determined that because of the failure to give the Respondent Leaseholders an opportunity to make observations pursuant to the procedure as set out in Schedule 3 of the 2003 Regulations it was not reasonable to grant dispensation.
40. The Tribunal was not convinced by the submission by the Applicant's Representatives that the repairs were qualifying works under a long term qualifying agreement to which Schedule

3 of the 2003 Regulations applied. Mears appeared to have little or nothing to do with the decision to renew or refurbish the lifts and did not appear to play any part in the process of obtaining quotations and selecting and engaging the contractor or the consultation procedure. Nevertheless the Tribunal was of the opinion that if it were found that the consultation procedure in Schedule 4 Part 2 applied, then the determination would be the same, as that procedure has a further stage, which had not been complied with. It was therefore unnecessary to make a finding on that point.

41. The Tribunal made its determination in accordance with the information provided in the Application which was on the basis that the work was being carried out on the lifts separately and that as a result a consultation procedure was required for each lift. Therefore the determination is that dispensation is not reasonable in respect of the qualifying works to be carried out on the Left Hand Lift. However, the Tribunal found that the quotations obtained for carrying out the work were for the renewal or refurbishment of both lifts together and the costs referred to in the Notice of Intention and Proposal contained in the letter of 28th July 2011 related to the Leaseholders' contribution to the cost of the work on both lifts.
42. In addition this is not an application to consider the reasonableness of the works or the reasonableness or payability of the service charge, which will arise from this expenditure. If there is any dispute about those matters, then it will have to form the basis of an entirely separate application.

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J.R. Morris (Chair)

Date: 27th April 2012