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**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/11UE/LSC/2012/0052**

Property : Flats 1 and 16
The Alders,
Alder Bank,
WillowBank,
New Denham,
Bucks
UB9 4AY

Applicants : The Alders Limited (by its agent
Arko Property Management)

Respondents : Ms. Oborn (Flat 1)
Mr. and Mrs. M. Rider (Flat 16)

Date of Applications : 16th April and 8th May 2012

Type of Applications : Applications for (i) a determination of
liability to pay a service charge,
pursuant to section 27A of the
Landlord and Tenant Act 1985 ("the
1985 Act")
And (ii) a dispensation from the
consultation requirements, pursuant
to section 20ZA of the 1985 Act

Date of Hearing : 11th September 2012

Tribunal :

**Mrs. J. Oxlade
Ms. M. Krisko BSc (EST MAN) FRICS
Miss. M. Henington MRICS**

**Lawyer Chairman
Valuer Member
Valuer Member**

DECISION

For the reasons given below we make the following decisions:

- not all service charges incurred in the years 2008/9, 2009/10 and 2010/11 were reasonably incurred;
- not all service charges demanded as estimated expenditure for the years 2011/12 and 2012/13 are reasonable;
- the section 20ZA application is refused, and accordingly the service charges payable in respect of the works to the car park shall be limited to £250 per flat
- the Respondents shall pay £250 each towards the Applicant's costs of bringing the application under section 27A of the 1985 Act.

REASONS

Background

1. The Alders Limited is the freeholder ("the lessor") of a three-storey modern block of 15 flats, situated at The Alders, Denham ("the premises") with appurtenant land consisting of a car park to the front of the building (up to, but not including the garages) and gardens to the rear (up to, but not including a stream). Flat 1, is demised to Mary Oborn and Flat 16 to Mr. and Mrs. Rider ("the lessees").
2. By application received on 16th April 2012, Arko Property Management ("the managing agents") sought determination of liability to pay and the reasonableness of service charges for the years 2008/9, 2009/10, 2010/11, pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). At the time of issuing the application the managing agents said that a number of lessees had not paid their service charges; by the date of the hearing only two had complied with the directions to file evidence, and so to formally oppose the charges in respect of flats 1 and 16.
3. Attached to the application was a copy of the lease for flat 1 which required the lessor to insure the premises and to undertake certain works,

and for the lessee to make a contribution to the costs incurred. A copy of the lease of flat 16 has not been provided, but it was not suggested that it differed in any material respects (save as to description of demise) to the lease of flat 16.

4. On 8th May 2012 the managing agents issued a second application, pursuant to section 20ZA, for dispensation with the consultation requirements in respect of works to the car park by way of resurfacing, which work was carried out in October 2009. They also sought determination of the reasonable estimated service charges for 2011/12 and 2012/13, as the lease provides that the lessor could demand service charges on account of costs to be incurred in the forthcoming year.
5. The two applications were listed for hearing at the same time on 11th September 2012, by which time the Applicant sought a determination of reasonableness and payability in respect of flats 1 and 16.

Inspection

6. Prior to the hearing, the Tribunal inspected the premises in the presence of the lessees of Flats 1 (Ms. Oborn), 5 (Mr. Shobeiry), and 16 (Mr. Rider), Mr. Peter Doherty (the witness of Ms. Oborn), and Mr. Okines (of the Managing Agents).
7. The Tribunal noted the car park and entrance to it; the front of the block, and such of the rear of the block as was visible from the garden of flat 16; the three communal porches and stairways to each section of the block. We declined to see the rear of the block from the garden of flat 3, as the point to be made by the lessee of flat 1 at the hearing amounted to a complaint about what had not been done (in respect of which no service charge had been demanded), and so did not fall within our jurisdiction.
8. The block was built in the early 1960's of brick construction under a tiled roof, and with decorative tiling under some of the windows. There was communal access via 3 porches, 2 of which are single storey. The windows to the flats and common parts have been replaced, as have the doors to the common parts. There are gardens located to the rear of the building demised to the ground floor flats, and a tarmaced apron to the front of the block butting up to a row of garages. The block is located close to the River Coln, and within walking distance of the centre of Uxbridge.
9. The Tribunal were invited to look at the exterior, and in particular the guttering and downpipes, soffits and fascias, and the car park. The Tribunal were invited to inspect the interior of two of the porches, and to note damp staining in the porch leading to the lessees flats. The Tribunal

noted the presence of a heater in the porch servicing flats 14-16, but none in the other two porches, and were asked to note the damp in the porch.

10. The Tribunal took particular note that:
- the exterior and common parts of the block were all in reasonable condition internally and externally,
 - the internal common parts of the porches were carpeted, well-decorated, and reasonably clean,
 - the ground floor porch serving flats 1-6 had damp staining around the inside of the communal front door, and externally with 3 "blown" bricks; unlike the other porches there was no painted finish to the bricks below the damp course line,
 - there was a generally damp feel to the inside of the porch to flats 13-16, although the damp course was apparent,
 - there was an absence of staining from the gutters (except from the overflow) and no evidence that the gutters were leaking - although we did note that they were very shallow, and short outside flat 16 (front),
 - the general condition of the surface of the car park included ponding and disclosed lines showing the laying of the surface in sections.

Hearing

11. The inspection was followed by the hearing at which all of the above-named attended.
12. At the outset of the hearing we set out the limitations on our jurisdiction:
- that we did could not appoint a manager at this hearing as requested by Mr. Rider, as no application had been made, no manager(s) had been proposed, and none was due to attend the hearing;
 - that we did not have the power to compel the freeholder or managing agent to attend to repair/disrepair in the building.
13. Mr. Shobeiry attended the hearing and wanted to speak on various subjects. He said that he had been ill and so unable to comply with the directions made to file evidence and to identify himself as a party. Mr. Okines did not object. The Tribunal said that it would give Mr. Shobeiry permission to speak, save that if his evidence went beyond referring to matters which the other two lessees were challenging, then we were unlikely to permit him to do so, because the scope of the hearing would expand and the lessor would not have had the opportunity to provide

evidence on these yet unknown points. Mr. Shobeiry was not joined as a party to the proceedings

Evidence

- 14. We undertook a thorough review of the service charge accounts for the years 2008 to 2011, and estimates for 2012 and 2013, and in doing so considered the service accounts, invoices/receipts, and invited oral evidence from all present. Some of the points made were rehearsed at the hearing in 2010, and so there was a considerable overlap; in addition there was a considerable repetition in the oral evidence of the lessees, such that in the afternoon hearing each party was limited to 5 minutes on each item of the budget - save in respect of the car park, each speaker was given 10 minutes. To this end the parties had been asked to look at the repairs and maintenance costs over the short adjournment, to be in a position to focus on the relevant points in the afternoon. The Tribunal indicated that it would also take into account the evidence contained within the witness statements, which did not require repetition in oral evidence. The Tribunal has read all of the evidence adduced, including the witness statements filed by both parties.

- 15. At the end of the hearing, the Tribunal reserved its decision.

Jurisdiction

- 16. The LVT has jurisdiction to determine payability and reasonableness of service charges by virtue of section 27A of the 1985 Act, which provides as follows:

“(1) An application may be made to a LVT for a determination whether a service charge is payable, and if so, 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) date at or by which it is payable, and
- (e) the manner in which it is payable”.

.....

(3) An application may also be made to a LVT for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description a service charge is payable for the costs, and if it would, 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) date at or by which it is payable, and
- (e) the manner in which it is payable.

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

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

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

17. *Section 19 of the 1985 Act, provides:*

“Relevant costs should be taken into account in determining the amount of the service charge payable for period –

- (a) only to the extent that they are reasonably incurred and
- (b) where they are incurred on the provision of services of the carrying out of works, only if the service or the works are of a reasonable standard;

and the amount payable shall be limited accordingly”.

18. The LVT has jurisdiction to determine whether the requirement to consult lessees when service charges for works in excess of £250 (for any one flat) shall be dispensed with, by virtue of section 20ZA of the 1985 Act, which provides as follows:

“20ZA (1) Where an application is made to a LVT for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”

19. The following provisions are also relevant to these proceedings:

Section 20B

“(1) If any of the relevant costs taken into account in determining the amount of any service charges were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply, if within the period of 18 months beginning with the date on which the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by way of a service charge”.

Section 20C

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... LVT...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application”.

.....

(3) The Court or Tribunal to which the application is made may make an order on the application as it considers just and equitable in the circumstances”.

Findings

20. Having carefully considered the totality of the evidence filed both oral and written, and the submissions made, for the reasons given below the Tribunal makes the following findings:

- the lessees of The Alders suffered prejudice by the failure of a section 20 compliant consultation procedure in respect of works to the car park, such that the Tribunal refuses to grant the lessor’s application for a dispensation from the statutory consultation requirements pursuant to section 20ZA, thereby limiting their contributions to the statutory maximum, namely £250 per flat;
- not all service charges incurred in the years 2008/9, 2009/10 and 2010/11 were reasonably incurred;
- not all service charges demanded as estimated expenditure for the years 2011/12 and 2012/13 are reasonable;
- the lessee of flat 1 had notice at the appropriate time of the service charges incurred in the years 2008/9, 2009/10, 2010/11, and 2011/12, so that section 20B of the 1985 Act does not operate to preclude recovery of the service charges for these periods against flat 1;
- on 20th March 2010 the lessor gave notice to the lessee of flat 1 that the implied waiver in respect of insurance was to cease immediately and accordingly insurance premiums are payable by the lessee of flat 1 from that date onwards; payment of the service

charge is not conditional on the landlord having served a copy of the policy on the lessee;

- the Tribunal has no jurisdiction to order any set off against the service charges found due and owing by the lessees of flats 1 and 16, in respect of items which they have personally paid for; the Tribunal not being satisfied that the lessees did so with the lessor's permission or acquiescence, nor that the works were done by the lessee because there had been a failure on the part of the lessor to do the works after due warning had been given by the lessee that the works were required to be done.

21. The Tribunal makes these findings for the following reasons and has, for ease of reference, set out in a schedule (Appendix A) the service charges payable as a result of this decision.

Reasons

Car Park Re-surfacing

22. In the statement of case relating to the 20ZA application, Mr. Okines set out the background to the work being done, and the agreement on funding.
23. The freeholder came under pressure in 2009 from some lessees, to re-surface the car park; works which had been mooted since 2005, when a quote was first obtained. The tarmac had disintegrated in places, so causing ponding of rainwater, and was a trip hazard. There are photographs of the condition at pages 14 to 16 of the bundle. However, as there were insufficient funds in the service charge account to do the works the freeholder offered to pay the costs up front, on an understanding that the lessees would reimburse him as a service charge item over 3 years. The works were done in late 2009.
24. Thereafter, all lessees - except the lessees of flats 1, 3, and 6 - signed a letter (pages 185 onwards) in May 2010 ("the agreement"), which read as follows:

"I... agree that the cost incurred for resurfacing the car park should be taken out of the service charge account over the next three years, without deduction. We are fully aware of our rights under section 20 of the Landlord and Tenant Act 1985 and have received a copy of the summary of our rights with our service charge bills. I/we consider it reasonable that Starcourt Management Limited have taken advantage of the landlord's offer of payment over three years without interest".

25. Mr. Okines frankly admitted that he had just become involved with the development at that point, and had advised against how this was being done. However, he was advised that the vast majority of lessees, the freeholder, and Starcourt Limited (the lessees' management company that had run the development for many years) were all for it. There were meetings on the subject of the car park, which were attended by some of the lessees, including the lessee of flat 1. There were quotes obtained from MBC Construction dated 5th October 2009 (page 179), O'Hara Brothers dated 11th September 2009 (page 180) and Spadeoak on 22nd April 2005 (page 181). He was unable to explain why it was that MDC (who did the work) were paid £16,617.50 (£14,450 plus vat at 15%) as opposed to £14,662.50 (£12,750 plus vat at 15%) in their quote; particularly since Mr. Bannister had talked in terms of the costs being £15,000. Further, it was hard to obtain clear information from the freeholders as one of the freeholders subsequently died and the other is seriously ill, and so has not filed a statement to assist. Mr. Okines readily conceded that the statutory consultation procedure had not been followed, and that the application for dispensation was unusual. He emphasised that this all happened at a time when the development was being run by the lessees; they were actively involved in the decision-making, and his company's involvement revolved around trying to get the lessee of flat 1 to pay unpaid service charges.
26. Mr. Rider said that there was an absence of proper consultation. He was told that the freeholder had agreed to pay, as the car park looked so bad. Two of the lessees - Mr. Bannister and Mr. Searle – had been the keenest to have it done, because they liked their cars. Had there been time, he would have obtained advice from acquaintances in the business as to what needed to be done, and what it should cost. He had seen some of the work done, and thought that though they started off well, the work only took 1 ½ days, and was rushed. When he received the draft agreement (attached to a letter from Arko dated 21st April 2010, page 273-4) he initially refused to sign, but did so having come under heavy pressure from Mr. Bannister and Mr. Searle. He said that he was tricked into signing it as he was told it was about getting Mary Oborn to pay her service charges, and did not know his rights. Mr. Searle had refused to leave his house until it was signed. He initially said that he had not got a copy of the agreement, until Mr. Okines pointed out that he (Mr. Rider) had supplied the copy of the one signed by him. It appeared that the demand for £16,617.50 was a double charge for vat (close to £12,750 plus vat at 30%).
27. Mr. Shobeiry said that he bought the flat recently as a probate sale, but did not have any information about these costs.

28. Ms. Oborn initially said that she had not been consulted at all, but then agreed that she had attended one meeting about this on 21st September 2009 (page 19). However, she said that she was not kept informed, nor properly consulted, though she agreed that she received the letter at page 273-4. Had she been properly informed then she would have raised questions about this, perhaps obtained alternative quotes, checked out the guarantees, but certainly questioned more. She would have sought advice from one of the other residents, who was a civil engineer. She had tried to track down MDC, and concluded on the information available to her that they had used a false address. She was concerned that the specification was not clear as to what area was included – as the entrance way did not form part of the premises, and yet the works were done at the same time. The quality of work was in question: the falls were wrong – so leading to rain water flooding into her garage; the material was already breaking up, and cracking.
29. Having inspected the premises the Tribunal is satisfied that works were needed to the car park, as the “before” photographs do show a poor surface, in parts. The Tribunal finds that the new surface appears to be reasonably well finished as there is no visible deterioration arising from three harsh winters – although we were told that the falls resulted in water penetration into Ms. Oborn’s garage. The Tribunal has inadequate evidence to make any finding about the reasonableness of the costs.
30. The test to be applied is whether the failure to consult lessees in accordance with the statutory procedure prescribed in section 20, has caused prejudice to the lessees. Having considered the totality of the evidence filed and the submissions made the Tribunal refuses the application to dispense with the consultation procedure for the following reasons.
31. Although the poor surface is a potential trip hazard or ice trap which is better avoided, there is no evidence before us that that there was any great urgency in getting the works done; indeed, in the meeting convened on 21st September 2009 there was no suggestion that this work was imminent, and yet the works were done by the middle/late of October 2009. The evidence suggests that there was a desire on the part of some of the lessees to get the work done before the winter, and a freeholder willing to spend the money. It was this combination which led to the works being done, but without proper consultation. The results of this accelerated process, and so absence of proper and effective consultation, are clear:
- (i) there is a discrepancy between the costs of the works quoted (£14,662.50) and that which was invoiced by the contractor (£16,617.50), which has not been explained,

- (ii) there is a lack of clarity over the extent of the works to be included, as the entrance road had works at the same time, yet does not fall within the definition of the property, and so cannot form part of the service charges payable by the lessees,
 - (iii) there is no evidence that the financial viability of the contractor selected was researched, and so the enforceability of the warranty,
 - (iv) there was no like for like comparison of the two alternative quotes, which speak in different terms,
 - (v) there was no apparent consideration of holding funds against snagging problems or how quality control was to be assessed,
 - (vi) the quotes were not sufficiently detailed to know exactly what the contractor was proposing to do i.e. the number of layers.
32. The Tribunal accepts the evidence of the lessee of flat 1 that had she had more time, she would have made enquiries. It may well be that had there been greater time given, the points made at paragraph 31 (i) – (vi) would not have arisen.
33. After the event the managing agents asked the lessees to sign an agreement, so that payment of these costs could be taken from the service charge fund over three years. Those agreements - which all signed except the lessees of flats 1, 3, and 6 – do not satisfy us that as a whole there has not been material prejudice to a good proportion of the lessees. The fact of the agreement, does not prohibit the Tribunal from considering the section 20ZA application (as it arguably could as to the reasonableness of the service charges, by virtue of section 27A(4)(a)).
34. The Tribunal is satisfied that the failure to follow the statutory procedure has resulted in prejudice to the lessees and so the application to dispense is refused. Accordingly, as between them and the freeholder the lessees' contribution to the costs is capped at £250 for each flat.
35. For completeness sake we should say that in light of the findings in respect of the section 20ZA application, it is unnecessary for the Tribunal to consider the reasonableness of the costs for the car park, as we are satisfied that the costs for the work done exceed the £3750 payable by the lessees (£250 per flat x 15 flats). It is also unnecessary for the Tribunal to determine Mr. Rider's claim that he signed the agreement under duress. If the Freeholder seeks to enforce the agreements in the County Court, no doubt the Court will consider the point, if raised.

Service Charge Accounts

36. The Tribunal considered the service charge items for each of the years, both past years and future years, and makes the following findings.

Managing Agents Fees

37. Managing agents' fees were £368.63 (2008/9), £1744.00 (2009/10), £2749.50 (2010/11) and estimated at £2808 (2011/12) and £3060 (2012/13).
38. Mr. Okines recognised that the lease provided at Clause 6 of the 3rd Schedule that managing agents fees were limited to 10% of the service charge expenditure (and reserve) funds in the year, as follows:

“An addition of ten percentum of the cost of all the forgoing contributory services to cover the costs of management”. He made the point that 10% is unrealistically low in the current climate and that in the current year his company was charging the bare minimum, of £156 per annum per flat.
39. Mr. Rider recalled a meeting at which he was told that the costs would be £100 per flat per annum, and both he and Ms. Oborn was concerned that the costs of Mr. Okines attending the premises were at enormous travelling costs. Mr. Rider was concerned about meetings cancelled without notice, and all were concerned that the managing agents did not keep logs of their calls, or to action them.
40. Mr. Okines set out the services which are included within the annual fee, that travelling time is not included, save for evening meetings. He undertakes as many inspections as necessary, but will usually do one month and cover all their properties in one go.
41. The Tribunal finds that the lease limits the managing agents fees to 10% of the actual spend on the building in any one year (plus any sum demanded for the reserve) and unless and until an application is made for variation of the lease pursuant to section 35 of the Landlord and Tenant Act 1987, there is no power to vary this.

Insurance Premium

42. The insurance premiums were £2109 (2008/9) £1665 (2009/10), £1531 (2010/11), and estimated as £1400 (2011/12) and £1850 (2012/13).
43. Mr. Okines said that his company were not managing the premises when the insurance for 2008/9 was arranged. He described the process that his company employ: by putting the work out to two brokers, they seek block insurance, which has reduced the costs substantially. The managing agents received 12.5% of the premium, which they made clear to the lessees and the freeholder when they took over – hence the lower managing agents fees – and this would cover all the work done by the managing agents in the event of a claim. The rebuilding costs have been

assessed by way of indexing, and they have not gone to the expense of instructing a surveyor to do so. He pointed out that the schedule of insurance for 2010/11 referred to "The Alders" (p253).

44. Ms. Oborn said that she had not received the insurance documents as ordered by the Tribunal at the last hearing, and consider that her requirement to pay the insurance was conditional on that. She questioned whether her flat was in fact insured at all by the managing agents and continued to do so herself. She did not dispute having received the notice (page 232) that the waiver in respect of insurance had ended, but pointed out that the letter was signed by Starcourt Management, not the freeholder.
45. The Tribunal finds that the insurance taken in respect of the Alders from 2010 onwards included the block known as The Alders, and so included flat 1. Further, the Tribunal finds that the costs of insurance are reasonable.
46. The Tribunal also finds that the waiver in respect of insurance in respect of flat 1 - referred to in paragraph 39 of the LVT's decision on 28th January 2010, case CAM/11UE/LSC/2009/0108 – was terminated upon service of the letter dated 25th March 2010 (p232). The notice, served by Starcourt Management, was effective to end the waiver. The Tribunal does not find that the waiver can (as that letter implied) operate retrospectively, and therefore can only apply from 25th March 2010. Accordingly, the lessee of flat 1 is liable to make contribution to the insurance costs from that date onwards. For the year 2009/10 this amounts to £27.75 (calculated as follows) £1665/15 flats/ 1/4 day in March to ¼ day in June).

Auditors Fees

47. The auditor's fees were for 2008/9 (£300), £473 (2009/10), and £300 thereafter.
48. Mr. Okines said that they have continued to use the same auditors, who do not charge VAT, and relied on the LVT's earlier finding in 2010 that £300 was reasonable. The cost for 2009/10 was slightly higher as there was time spent unravelling the costs for that year, due to the change of management.
49. Ms. Oborn said that the costs were excessive, particularly as so little effective management was done.
50. The Tribunal finds that as the lease requires the auditing of service charge accounts, it is reasonable to pay an auditor to do so. In our experience £300 per annum is the industry norm for a development of this size . The

additional sum in 2009/10 related to advice given to the Directors (page 49), which charge the lease did not allow, and so in respect of that alone the Tribunal declined to allow that invoice. Otherwise, £300 was reasonable for auditing,

Secretarial Fees

50. Secretarial fees of £52 were charged for 2008/9, but Mr. Okines said that there were no documents to support this, and did not oppose a finding that they could not be added to the service charge account.

Repairs and Maintenance

51. The repairs and maintenance amounted to £1590.49 (2008/9), £348 (2009/10), £985 (2010/11), £1227 (2012/13) and £1180 (2013/14). Mr. Okines relied on the receipts in the bundles to substantiate the figures.
52. The parties had the luncheon adjournment to consider the schedules, invoices, and to prepare their responses.
53. Mr. Rider said that he had never been consulted on any of the works done, and was concerned that when work was done it was without any proper quality control. He had photographs of the guttering, which was not properly cleaned out, and the contractor ended up putting a screw through the pipework. There had been repeated visits and the guttering was still overflowing. He had correspondence with the managing agents concerning his complaint about this (pages 36, 37, and 43). He felt that he was being bounced from the old management to the new management, and that they were making up letters. Ms. Oborn said that she had made complaints, but apparently there are no records of her calls. There were photographs in her bundle particularly showing the condition of the porch. Mr. Shobeiry said that he had called in December 2011 as there were overflowing gutters, and bits growing out of it. He had also written, but simply received a letter asking for payment, and considered that he had been ignored.
54. Mr. Okines said that he had responded by email to queries raised, but as this was the first time the point was being made, he had not produced them.
55. The Tribunal's function is to consider whether what has been spent is recoverable under the lease and whether the work was done at a reasonable cost and to a reasonable standard. The Tribunal does not have the power to require the managing agents to undertake certain works. The Tribunal had previously noted that the gutters and downpipes were respectively shallow and of a narrow gauge for the job in hand.

56. The Tribunal finds, in scrutinising the invoices that the sums are reasonable, save the following. In 2008/9 the account included £90 for an electric heater (page 16) which we understand to have been installed in the hallway for flats 13-16; as the lease does not allow for communal heating this sum is not payable under the lease, and so the annual amount for repairs and maintenance for 2008/9 is £1500.49. The sums spent in 2009/10 are all accompanied by receipts and the Tribunal finds £348.36 is reasonable and payable. In 2010/11 there are repeated invoices for the unblocking of drains, some by the same company; the Tribunal is not satisfied that the managing agents have checked that the works claimed to have been done in respect of the drains has been done at all, or to a satisfactory standard - which the repeated and frequent visits calls into question – nor that the unblocking of the gutters was done to a suitable standard or at all. In light of the comments of Mr. Rider, and the invoices filed the Tribunal is not satisfied that the receipts at pages 96, , 102, and 120 were reasonably incurred. Accordingly, that leaves £503.39 for 2010/11. The sums set in the budget for repairs and maintenance are reasonable.

Cleaning/window cleaning

57. The cleaning and window cleaning costs were £225 and £280 respectively (2008/9), £300 and £350 (2009/10), £335 and £420 (2010/11), £300 and £450 (2011/12) and ££360 and £450 (2012/13).
58. Mr. Okines said that the window cleaning was £70 for the windows to the front of the building only and these were done every 6/8 weeks. The cleaners were £25 per month for one hours work cleaning all three porches.
59. Ms. Oborn and Mr. Shobeiry said that the cleaners came and left quickly, doing a poor job. They failed to vacuum properly or at all, and the window cleaner did not do Ms. Oborn's, and he told her that this was "because she did not pay". She had photographs of her sills. Mr Shobeiry said that the window cleaner does not get up on a ladder, but uses this pole and spray system. Mr. Rider considered that Mr. Bannister's flat got special attention, that the windows for his flat were not done at all, or not properly.
60. The Tribunal finds having inspected the premises, the state of cleanliness, and the amount of work needed, that the costs of cleaning the communal parts and the windows were reasonable as to hourly rate and length of time allowed. In short, the costs are on the low side, which are likely to be reflected in the standard achieved.

Electricity

61. The electricity costs were £477 (2008/9), £542 (2009/10), £592 (2010/11) and estimated at £600 for the following two years.
62. In respect of *electricity* we noted that the bills were largely based on estimates, which would result in fluctuations when the meters were finally read, but which showed a familiar and fairly even upward trend, which we found to be reasonable. Whilst the Lessee objected to the constant lighting in the communal parts (as opposed to being on a timer) the lease does not limit the hours of lighting and in light of the age of the occupants and security issues, we did not consider that this was unreasonable.
63. There is a heater located in the hallway serving flats 13-16, which was to combat damp. Mr. Shobeiry (who has some experience in refrigeration) made the point that the installation of such a heater would have no effect, and that ventilation was the way forward. So far as it affects service charges, we find that as the lease does not permit the heating of the hallway as a service charge the costs cannot be borne by the service charge account. No party was able to suggest a formula. Doing the best we can, taking into account Mr. Rider's evidence about the amount of time that the heater is on, we reduce the allowable electrical costs by £30 per annum. Otherwise, the Tribunal found the costs to be reasonable and payable.

Fire Assessment/Alarm

64. A fire risk assessment was undertaken in 2010/11, at a cost of £235. Mr. Okines said that there was a recommendation to install fire alarms, and hence the budget of £400 for the year 2012/13 for the works to be done.
65. Ms. Oborn said that the fire brigade would do such an assessment for free. Mr. Rider said that there was no provision in the lease to do such work.
66. The Tribunal finds that the lessor's compliance with statutory requirements and ensuing costs falls within an implied term in the lease to comply with health and safety requirements. The Tribunal was not satisfied that such an assessment could be carried out for free by the Fire Brigade and found the costs to be modest in comparison with industry standards, and so reasonable. It follows that any recommendation for works to be done must be sensibly budgeted.

Legal Costs

67. There were legal costs of £770.88 (2008/9), and £1353 (2009/10).

68. Mr. Okines conceded that these could not be recovered. There was a question in respect of £881 for 2010/11, but this was in fact a credit to the account.

Minor Items

69. There were miscellaneous sums in the accounts for sundries of £15 and £34 which largely seem to relate to Company matters and hall hire. The lessor has not established that these are recoverable under the lease and so we do not find that they are reasonable or recoverable.

Section 20B

70. Ms. Oborn sought to rely on section 20B of the 1985 Act, saying that she had not received any notification of the service charges within 18 months of the sums being incurred.
71. In light of the hearing taking place in September 2012, and the bundles being delivered in August 2012, this would only affect costs incurred prior to February 2011.
72. Mr. Okines said that as Ms. Oborn claimed that she does not receive her post, he arranges for her fellow lessees (Directors of the former management company) to post letters through her door. He pointed to documents at pages 157 – 162, which are service charge demands from 2009 onwards. They also send service charge accounts and budgets.
73. Ms. Oborn's evidence is to the effect that she is denied all services, and gets no post, or very delayed post. She relied on the witness statement of Mr. Doherty on this point.
74. The Tribunal finds that Ms. Oborn has had notice of the service charges within 18 months of the costs being incurred. The Tribunal notes by way of example that Ms. Oborn was present at the meeting held on 21st September 2009 at which (page 270) it was said that the abbreviated accounts for the year end 31st June 2009 had been distributed to all; the Tribunal notes that at paragraph 21 of the decision dated 28th January 2010, that she had attended to discuss those accounts. There was a concession made by her that she received the letter from the managing agents dated 21st April 2010 (page 273) concerning the costs of resurfacing the car park. Mr. Doherty refers to being aware of a letter delivered (albeit late) concerning a meeting on 29th March 2011. Taken together there is evidence that the lessee was served with sufficient information as to the costs incurred or likely costs.

75. Accordingly, the Tribunal finds that section 20B of the 1985 Act does not apply to preclude recovery of the service charges for the years that form the basis of the applications.

Reserves

76. Mr. Okines said that, as the lease provides and in accordance with good management practice, a sum is demanded to set aside for reserves, of £200 per flat twice a year, so £400 per flat per annum, giving a total of £6000 per annum.
77. In light of future foreseeable expenditure the Tribunal considers this reasonable, and recoverable under the lease. The lessees made the point that the account was in the name of the defunct former management account, and we record that it was agreed that this would be amended to "The Alders".

Costs

78. The lessor seeks costs in respect of these applications, and points to the provision at Schedule 5, clause 2 that the lessee covenants to pay "all costs charges and expenses (including Solicitors' costs and surveyor's fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court". It was the lessor's case, as set out in the case summary, that these proceedings were a precursor to forfeiture.
79. The Court of Appeal in the case of 69 Marina, St. Leonards-on-Sea, Freeholders of v Oram [2011] EWCA Civ 1258 held that a similarly worded clause in a lease can give rise to a finding by the LVT that the costs incurred by the lessor in the LVT are recoverable.
80. The Tribunal accepts that the section 27A application was made as a precursor to forfeiture, there being a number of lessees who had not paid their service charges – but who had not issued their own applications for determinations under section 27A. The Tribunal notes that the lessee of flat 1 has not paid the service charges which were found reasonable and payable as a result of the 2010 proceedings, and so made no payment towards service charges since 2008.
81. The Tribunal notes however, that (a) no cost schedule was provided, (b) no apportionment of costs was made between (i) the two applications (s27A and S20ZA) or (ii) as between parties. That latter point is not without significance because when the proceedings were issued there were 6 or so flats which were in arrears of service charges.

82. In the circumstances using its skill and knowledge as an expert Tribunal well used to considering the reasonableness of costs the Tribunal finds that the lessees of flats 1 and 6 should make a contribution to the Applicant's legal costs of the section 27A application in the sum of £250 each.

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Joanne Oxlade

(Chairman)

23rd October 2012

	2008/9	2009/10	2010/11	2011/12 (estimate)	2012/13 (estimated)
Insurance	2109 ¹	1665 ²	1531 ³	1400	1850
Auditors	300	300	300	300	300
Cleaning	225	300	335	300	360
Window cleaning	280	350	420	450	450
Repairs and maintenance	1500.49	348.36	503.39	1227	1180
electricity	447	512	562	570	570
HSS and fire equipment				235	400
Car park resurfacing		3750			
reserves				6000	6000
Sub Total	4861.49	7225.36	3651.39	10482	11010
Managing agents fees (10%)	486	722.53	365.13	1048.20	1101
Total service charges	5347.49	7947.89	4016.52	11530.20	12111

¹ Not payable by flat 1

² of which £27.75 payable by flat 1

³ 1/15th of annual insurance costs payable by flat 1 in this year and every year thereafter