



12/25

**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : CAM/38UC/LSC/2016/0064

Properties (in Oxford) : Evenlode Tower, Blackbird Leys, OX4 6JA
Foresters Tower, Wood Farm Road, OX3 8PZ
Hockmore Tower, Pound Way, OX4 3YG
Plowman Tower, Westland Drive, OX3 9QZ
Windrush Tower, Knights Road, OX4 6HX

**Applicant
Represented by** : Oxford City Council
Mr. J. Bates of counsel (Knights)

Respondents : the leaseholders of the 54 flats set out in the
Application

Represented by Mr. M. Fraser of counsel (Solomon Taylor &
Shaw) for the Oxford Tower Block Leaseholder
Association

plus Dr. Stefan Piechnik and Mr. Karol Biegus
as self representing individual Respondents

Date of Application : 7th September 2016

Type of Application : to determine reasonableness and
payability of service charges and
administration charges

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

**Date and Venue of
Hearing** : 12th, 13th and 14th September 2017 at Cambridge
County Ct., 197 East Road, Cambridge CB1 1BA

DECISION – PLOWMAN TOWER

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1. It is the determination of the Tribunal that only those works and services determined as payable in the Scott Schedule annexed to this decision and forming part of it (“the Scott Schedule”) will be deemed to have reasonably incurred service charges so far as the long leaseholders are concerned, and can accordingly be the subject of payments on account.
2. The Applicant has agreed to recalculate the demands to be sent out to the Respondents and in the event that the arithmetic is not agreed by any Respondent, they have liberty to apply to the Tribunal to resolve that issue.

3. An order is made pursuant to section 20C of the **Landlord and Tenant Act 1985** preventing the Applicant from recovering its costs incurred in this application before the Tribunal as part of any future service charge.
4. The applications by the Respondents Dr. Pietchnik and Mr. Biegus for costs orders are refused.
5. With regard to the balance of this application relating to the other tower blocks, this stands adjourned generally with liberty to apply for reinstatement. If no such application for reinstatement is made pursuant to this paragraph or paragraph 2 above by 30th June 2018, then the main application will stand as having been dismissed without further order.

Reasons

Introduction

6. Plowman Tower, Westland Drive, Oxford OX3 9QZ ("Plowman") is a 15 storey block of 84 or 85 flats which are mainly occupied by the Applicant's secure tenants. It is said to have been constructed in about 1966 of reinforced concrete frame and floor slabs with a flat roof. Leasehold titles to some of those flats have been acquired by the Respondents or their predecessors in title under the right to buy provisions. On the 14th November 2016, the Applicant commenced substantial works to the block and the contractual completion is in November 2017.
7. Most, if not all of the long leaseholders of this block and the other 4 blocks to be considered within these proceedings oppose the reasonableness of the works, the anticipated cost and the payability of the service charges being demanded by the Applicant on account of the cost of these works. The demands sent to the Respondents in Plowman have been demands for payments on account. The Tribunal is unaware, for the moment, as to whether final demands have been sent to the other Respondents.
8. Thus, this case is unusual in the sense that the Tribunal has been given a Scott Schedule of works with a request to determine which services and works, when finally costed, will be recoverable from the Respondents in Plowman in a situation when only a demand for a payment on account has been made. The approach set out in paragraph 2 of the decision above was agreed by the parties and it is hoped that agreement can be reached.
9. With regard to the other tower blocks, it is hoped that this decision will give the parties sufficient guidance to come to an agreement in respect of their service charges. If not, no doubt an application will be made for a reinstatement of this application or, perhaps, a further application under section 27A of the **Landlord and Tenant Act 1985** ("the 1985 Act") based upon the final figures.
10. The Tribunal has already made decisions at the request of the parties on various points of law and these are set out in a decision dated 27th February 2017. That decision should therefore be considered with this decision. Before the start of this hearing the Tribunal was presented with 14 lever arch files of documents. It is made absolutely clear that whilst all of the documents have been taken into account in this decision, the parties must realise that it is completely impracticable to refer to every document or point made in these reasons.
11. According to the Applicant's witness, William David Graves, the Landlord Services Manager for the Applicant, at page 169(o) of bundle 2, the anticipated cost of the works to Plowman will be £3,779,273.00 plus design and project management costs

and each long leaseholder will be expected to contribute £48,766.00 on the basis of the figures known at this time. The Applicant has said that it will allow long leaseholders to pay over time.

12. The whole issue of the works to the 5 blocks has caused controversy in the local press and many of the comments made by some of the unrepresented Respondents within their written statements and representations, set out what has happened over the years and the reasons for their discontent. The Tribunal members have carefully considered this 'evidence'. However, it will not be repeated or set out in this decision because it is largely irrelevant to the issues to be determined.
13. In the Tribunal's view, the main issue to be determined is whether the Respondents are liable to pay for any of the services and works either by statute or contractually through the leases. If so, was it reasonable to do the works?
14. Whether the cost of the works is reasonable is not for this Tribunal in this application because it is only considering a payment on account. However it can and does express a general view in respect of the anticipated cost of some of the items. Just because the Applicant has entered into a fixed price contract does not necessarily mean that the amount claimed is reasonable within the confines of the 1985 Act. Paragraph 16A of Schedule 6 of the **Housing Act 1985** also provides that the leaseholder shall only pay a reasonable part of the costs incurred by the landlord as services charges.

The Leases

15. The Tribunal has already determined that service charges in respect of these leases are limited to the works and services that the Applicant has covenanted to provide under the leases. The wording of all the leases is not exactly the same but, in essence, the Applicant is bound to repair and maintain the structure of the building to include the roof, pipes, cables (including for televisions), the main entrance, passages, landings, staircases, windows, doors, balconies, stores, drying areas, lifts and grounds including parking areas, fences and walls. Service charges can include the cost of a caretaker.
16. Mr. Bates, on behalf of Oxford, sought to persuade the Tribunal that the rights set out in Schedule 4, paragraph 12 of the leases gives Oxford additional rights to repair and maintain than are set out in the main covenant at clause 7.3. This assertion is based on the premise that any service or work mentioned in Schedule 4, paragraph 12, is the subject of an implied covenant that the tenants have to pay towards such service or work as part of the service charges.
17. The Tribunal does not accept that proposition. Schedule 4 simply imposes restrictions and stipulations on the tenants. Paragraph 12 gives the Applicant rights to enter the demise to carry out certain works. If some of those works are not included in the covenant to repair and maintain, the paragraph does not mean that those works, by definition, can be subject to further service charges. The paragraph only gives the Applicant rights to enter the demise and make good all damage caused. It does not involve a covenant to do any more works or provide any more services than make good any damage it has caused at its own cost.
18. There has been some discussion about whether balconies are included in the demises. There seems to be general agreement that they are but the position is far from satisfactory. The demise definitions in the leases do not specifically mention the balconies. They refer to the demises being coloured pink on the plans attached. The problem with this is that on the counterpart leases (which is all the

Tribunal has had access to) the plans of flats 2, 6, 41, 49, 57, 71 and 75 are small scale and it is not clear whether the balconies are included. On the other hand, the plans of flats 8, 11, 18, 22, 23, 24, 36, 42 & 68 are very clear in showing the balconies included in the demises.

19. There is an added complication in that Schedule 2, which gives the leaseholders rights, says in all cases except flats 6 and 49, that the leaseholder has the right of way on foot only in common with the Council and others to use what is described as an 'access balcony' to and from the demised premises. The leases to flats 6 and 49 have the same clause but with the words 'access balcony' crossed out.
20. The flats seen by the Tribunal have the balcony leading off the living room. The balconies are self contained and the only access to them is via the flat. Thus, to describe them as 'access balconies' does not make sense. No-one apart from the long leaseholder can get to or use the balconies in practical terms. Thus, it also does not make sense just to give them a right of way on foot only because that will not give them the right to have a table and chairs there and for them to sit and enjoy the balcony.
21. It is the view of the Tribunal that it was the intention of the parties at the commencement of the leases that the balconies were to be included in the demises subject to the liability of the Council to maintain them.

The Law

22. Any landlord of a long residential lease is bound by the provisions of the lease and sections 18-27A of the 1985 Act. A tenant only has to pay service charges if they have been or are to be reasonably incurred, and the services provided and the amount demanded are reasonable. Such tenant has usually paid a substantial capital sum for the right to occupy the flat and presumably parliament intended that a landlord of such a person should understand that and not do unreasonable things.
23. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
24. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether a claim for a payment on account of a service charge before it is incurred is reasonable and, if so, whether it is payable.
25. Section 20 of the 1985 Act requires consultation with the tenants when dealing with large anticipated service charges. It should be said that the consultation process for local authorities in the Applicant's position, particularly with one of these Design and Build Procurements, involves much less tenant participation than would be the case of a landlord undertaking specific contractual repairs or maintenance. In such circumstances the tenant would be invited to nominate contractors and the landlord would have to take heed of reasonable representations from tenants. It must also be said that the chances of a long leaseholder fully understanding the consultation process in the circumstances of this case where any costings are not known until the process is over are unlikely. As has already been determined in this case, the required consultation process appears to have been followed in this case.
26. The parties have, between them, referred the Tribunal to many decided cases

including the High Court, the Court of Appeal and the Upper Tribunal and its predecessor all of which are, of course, binding on this Tribunal. Those cases have been considered but, at the end of the day, there is no finite definition of what is or may be repairs and maintenance as opposed to improvements.

27. One of the most recent cases is **Waalder v Hounslow LBC** [2017] EWCA Civ 45 which, as the title suggests, also involved a local authority. The main difference in that case was that the right to buy leases did provide for improvements. However, it was still necessary to consider the difference between repairs and maintenance on the one hand and improvements on the other. Lord Justice Lewison, in giving the lead judgment of the Court of Appeal, set out a short summary of cases raising the sort of issues the Tribunal must bear in mind when considering the difference between the two. He said, at paragraph 14:-

- i) *“The concept of repair takes as its starting point the proposition that that which is to be repaired is in a physical condition worse than that in which it was at some earlier time: **Quick a Taff-Ely BC** [1986] QB 809*
- ii) *Where the deterioration is the product of an inherent defect in the design or construction of the building the carrying out of the works to eradicate that defect may be a repair: **Ravenseft Properties Ltd. V Davstone (Holdings) Ltd.** [1980] QB 12*
- iii) *Prophylactic measures taken to avoid the recurrence of the deterioration may also be repair: **Ravenseft***
- iv) *In principle where there is a choice of methods of carrying out repair, the choice is that of the covenantor provided that the choice is a reasonable one: **Plough Investments Ltd. v Manchester CC** [1989] 1 EGLR 244*
- v) *At common law there is no bright line division between what is a repair and what is an Improvement: **McDougall v Easington DC** [1989] 58 P & CR at 207*
- vi) *The use of better materials or the carrying out of additional work required by building regulations or in order to conform with good practice does not preclude works from being works of repair: **Postel Properties Ltd. v Boots the Chemist** [1996] 2 EGLR 60*
- vii) *Where a defect in a building needs to be rectified, the scheme of works carried out to rectify it may be partly repair and partly improvement: **Wates v Rowland** [1952] 2 QB 12.”*

28. On the question of reasonableness, he added, at paragraph 29, some helpful assistance with regard to the test to be used when considering the issue of reasonableness by saying “*Whether the costs themselves were reasonable for the works in fact carried out must also, as it seems to me, be decided by reference to an objective test just as that test would be applied to deciding whether a price was a reasonable price. I can see no warrant for applying a different test when the question is whether it was reasonable for the landlord to carry out the works at all*”. The importance of these words is that the court was rejecting submissions on behalf of the local authority that if the landlord reasonably takes the view that works are necessary to deal with underlying defects, then such landlord does not have to take the tenants’ views into account and the cost will have been incurred reasonably.

29. Mr. Bates, on behalf of the Applicant, relies upon the Upper Tribunal case of **Assethold Ltd. v Mr. N.M. Watts** [2014] UKUT 537 (LC) to say that the word ‘maintain’ means more than just keeping up with repairs. However neither the Respondents nor, indeed, the Tribunal fully understood what was being suggested. The wording used was that maintenance “*includes a duty to prevent the subject of*

the covenant from falling out of its original condition...". Everyone accepts that maintenance includes work to prevent possible defects occurring which may require repair in the future. However, the crucial words relied upon by the Applicant include the phrase "*falling out of its original condition*". In other words, both repairs and maintenance always refer back to the original condition of the premises and the building unless, of course, it can be established that statutory or regulatory requirements dictated changes.

30. In the case of a defective building, the law would suggest that the leaseholders would still not be responsible for correcting the defect. Woodfall, at paragraph 13.035 says "*a covenant to repair does not involve a duty to improve the property by the introduction of something different in kind from that which was demised, however beneficial or even necessary that improvement may be by modern standards. So a landlord of an old basement premises not constructed with a dampcourse or with waterproofing for the outside walls was not bound by his repairing covenant to render the place dry by waterproofing the walls*". The case of **Pembury v Lamdin** [1040] 2 AER 434 CA is quoted where the facts were as stated.
31. Even if the need to maintain included remedying a defect, there would no doubt be contractual issues for the landlord to sort out with the designer and/or builder before service charges could be claimed. In the case of this building, the only possible defect suggested by the Applicant's expert involved damp penetration, condensation and mould but even he acknowledged that much of this sort of problem is caused by lifestyle issues. There were no statutory or regulatory requirements to change or 'upgrade' the building.

The Inspection

32. The members of the Tribunal inspected parts of the block on the 30th January 2017 in the presence of Hilary Napolitan and Colette Bane from the Applicant's solicitors, the witness Mr. Graves, Richard Crook from the contractor, Darren Hazell from OTLA, Dr. Stefan Piechnik from flat 57 and Ms. P Liu from flat 68.
33. It is constructed of a reinforced concrete frame with RC infill panels to 2 elevations and cavity brick and block infill panels to the remaining elevations. It has a flat roof mainly covered with paving slabs. The windows and external doors to the flats i.e. the doors to the balconies are uPVC double glazed. The inspection took place before the works to the main building had really commenced with the only real evidence of work to the building being the removal of a canopy over the main entrance door.
34. As far as the roof was concerned, there was evidence of ponding. The Tribunal members noted from the report of the head of Oxford City Homes to the Executive Board dated 3rd December 2007 that "*infrared thermographic imaging has shown that only Hockmore Tower has significant problems and that these could be overcome by patching*". The Tribunal was not shown any particular evidence of damage or leaking save for evidence from Mr. Graves that there had been 11 instances of water penetration (not analysed or evidenced) in the period 2013-2016. The balustrade was formed of concrete columns and beams with infill wire mesh panels. The columns and beams were deteriorating and were blown and cracked in places.
35. As far as the external cladding is concerned, the brickwork was generally in good condition as were the reinforced concrete panels. The edges of some concrete beams were showing signs of deterioration but the majority appeared sound.

36. There was no sprinkler system, smoke ventilation or fire retardant to walls. Neither the entrance lobby fire door, single leaf fire doors, nor CCTV were said to be in disrepair. There were no heaters in the plant spaces. Both lifts were working and not said to be in disrepair. The fire alarm system was said to be working but there had been some unidentified problems.
37. The flat entrance doors the members saw were not in disrepair. The windows and balcony doors to the 2 flats inspected were sound and all others looked sound where visible from either street level or the balconies of those flats inspected. There was no visible evidence of damp or mould growth.
38. The 2 balconies inspected had low grade chrysolite asbestos panels to the balustrading. They were sound as were the panels on other balconies viewed from ground floor and from the 2 balconies inspected. It was noted that some of the reinforced concrete end walls were deteriorating and blown.

The Hearing

39. The hearing was attended by counsel for the Applicant and the Residents' Association (OTLA) together with 2 self representing Respondents, Dr. Stefan Piechnik and Mr. Karol Biegus, one expert – the other arrived later – and the Applicant's witness, Mr. Graves. There were a number of other people present who were other long leaseholders, representatives of instructing solicitors and observers.
40. It should be recorded that both counsel, the 2 self representing litigants and the witnesses behaved impeccably throughout. It was clear that besides putting their cases forcibly and correctly, their only intent was to help the Tribunal for which it is grateful.
41. It was agreed by all those addressing the Tribunal that Mr. Bates would open his case, he would then call Mr. Graves to give evidence and be cross examined on issues relating to the planning of the works, and the 2 expert witnesses would then give evidence jointly. They would give their views and then all representatives, self representing Respondents and the members of the Tribunal would be able to question them. They could raise questions of them jointly or individually and the experts could discuss the questions between themselves in everyone's hearing. The self representing Respondents were reminded that if their cases did not accept the evidence of the experts on any issue, then they should cross examine them or possibly lose the right to pursue the issue in question.
42. The 1st day of the hearing progressed, as planned and the experts completed much of their evidence. On the 2nd day, they completed their evidence and Mr Graves then completed his evidence. There was no request to call any other evidence. Neither of the self representing Respondents wanted to give evidence after both counsel indicated that they did not want to cross examine them and the Tribunal confirmed that their statements in the bundles had been read by the Tribunal and would be considered as their evidence.
43. On the 3rd and final day, the represented and unrepresented parties gave their final submissions. Both counsel had put their submissions into written form to add to their very helpful skeleton arguments submitted at the commencement of the hearing. Dr. Piechnik helpfully suggested that he subsequently put his submissions into written form but it was agreed that this would not be necessary.

Discussion

44. The Respondents, understandably perhaps, concentrate on some rather 'loose' language used by politicians, contractors and officials over the years. The works have often been described as 'improvements'. For example, Mr. Graves, in paragraph 17 of his statement (page 147 in bundle 2), quotes from a 'Property Improvements Report' dated 23rd April 2012 which basically says that all the works are improvements. The problem is that the words 'repairs', 'maintenance' and 'improvements' in the circumstances of this case have particular and very relevant meanings in law which is not to say, of course, that they are necessarily easy to interpret. Broadly, the leases say that the long leaseholders must pay towards reasonable repairs and maintenance but not towards improvements.
45. The Tribunal does not take any particular note of this loose language. When people are not concerned with the technicalities, they will often say that any work of repair, maintenance or change is an 'improvement' when, technically, it is often far from it. As a simple example, the replacement of a defective window opening handle could be described as an improvement because it enables the window to be opened when it could not be opened before due to the defect. However, it is clearly, in truth, a repair. It is for the Tribunal to determine whether any particular item of work is an improvement in the technical or contractual sense, or not.
46. It also has to be understood that not only repairs are to be undertaken by a landlord. There is also the requirement to maintain the building to avoid the need for repairs. This is mentioned because some people seem to take the view that unless there is a known defect and a repair is being undertaken, they do not have to pay anything, which, as a matter of law, is not correct.
47. Another relevant issue is the problem faced by local authorities when they have a tower block built for secure tenants and find themselves forced to let some of those flats out on long leases under the 'right to buy' provisions. The role of a landlord of secure tenants is different in many ways to that of long leaseholders. With the former, the local authority is able to just press ahead and do whatever it wants to the property in maintaining and improving the structure and facilities. Its only realistic curbs are political ones, financial ones or litigation following a breach of contract. However, a secure tenant is hardly likely to litigate to stop repairs, maintenance or an improvement to his or her home when no service charges are involved.
48. The further problem encountered by local authorities is that advice is often given when there have been disasters such as Knowsley Heights in 1991, Garnock Court in 1999 and several others since. A public enquiry is now in the process of analysing the causes of the fire at Grenfell. No doubt, further recommendations will be made. As a landlord concerned about the safety and welfare of its secure tenants, it is perfectly understandable that it would want to upgrade any tower block to make it as safe as possible. Suggestions of possible corporate manslaughter charges following the Grenfell disaster are no doubt galvanising many local authorities into action. The Applicant is to be given credit for pressing ahead with its upgrades to ensure that the highest possible standards are achieved for its secure tenants.
49. The difficulty is that being a landlord of leaseholders with long leases involves a completely different role. Just because an upgrade is deemed, by the local authority, to be desirable, does not necessarily mean that it is reasonable in an objective sense or that the costs are recoverable under the terms of the leases. Most 'right to buy' leases encountered by this Tribunal include the provisions that service charges can be recovered for improvements. That is probably to ensure that as far as possible, the different functions of a local authority do not prevent such authority from recovering the cost of improvements from its long leaseholders. For some

inexplicable reason, the leases in this case do not contain such a provision even though they seem to have commenced after the **Housing Act 1985**.

50. With long leases, the landlord has to be reasonable and some might say that undertaking a huge amount of work to a property all at the same time – when such works could and should be planned over a period of time – and then demanding nearly £50,000 from each leaseholder, could be said to be unreasonable in itself. Very few people would have instant availability to such resources, although it is the fact that financial arrangements have been put in hand to help long leaseholders pay over a longer period. However, that will not stop them worrying about such a large debt.
51. It is, of course, trite law to say that the means of the long leaseholder are usually immaterial. However, the issue was touched on briefly by the President of the Property Chamber in the Upper Tribunal decision in **Waalder** [2015] UKUT 17 (LC) at paragraph 46 when she said;

“Where works of repair are required and there is a reciprocal duty on a leaseholder to contribute to the cost of repair then the lessee’s means are usually irrelevant to the issue of whether costs are reasonable incurred. This is subject to the limited circumstance where an unexpected increase in service charges and the financial impact of such an increase may well be relevant considerations in a decision on how and when to effect repairs”

52. The reason why all this work is being undertaken at once is largely historic and involves the way in which national and local governments have gone about financing the running of local authority housing stock. In the last few years, power has been given back to local authorities to upgrade their stock and then keep the rental income, which was not the case before. In Oxford’s case, the Tribunal is told that this has involved the council borrowing some £199m. As soon as that happened, Oxford City Council started thinking about upgrades to these 5 Tower Blocks. They decided not to phase the work over a number of years because they thought that, overall, the cost would be more. The problem with Design and Build Procurements is that the contractor wants to be on the site for as short a time as possible. Any suggestion in the tender process that the contractor would have to be on site for longer than was strictly needed, would lead, in Mr. Graves’ view to a higher tender.
53. It was this set of circumstances which led to Mr. Bates’ submission to the Tribunal that the particular position the Applicant found itself in is the reason why an exception should be made to rule applying to private landlords.
54. He said that (a) the Council is a housing authority with wider obligations than a private landlord; (b) it has to balance the needs of its secure/introductory tenants with those of its long leaseholders and (c) it has to consider constraints imposed by central government. The conclusion he reaches is that the Respondent long leaseholders have to be treated differently to long leaseholders of private landlords. The Tribunal does not accept that argument. The issues in this case are governed by the terms of the leases and by sections 18-27A of the 1985 Act.
55. That is not to say that the Tribunal does not have the greatest sympathy with the Applicant. Oxford City Council does have to be extremely mindful of the matters raised by Mr. Bates. When right to buy leases were thought about, a proper consideration of the issues would have made it perfectly clear that this sort of conflict could well occur. But the fact of the matter is that the then central government did

not disapply the 1985 Act for right to buy long leaseholders. The 'reasonableness' test is the same whether the landlord is a local authority or a company or individual. The wording of the leases has to be interpreted in the same way.

56. Even if it could be argued that the terms of the lease are ambiguous, the *contra proferentem* rule is likely to be invoked. It is not, of course, the only rule of interpretation but it is, perhaps the most relevant to problems involving ambiguity. It translates from the Latin literally to mean "against (*contra*) the one bringing forth (the *proferens*)". The principle derives from the court's inherent dislike of what may be described as 'take it or leave it' contracts such as residential leases which are the product of bargaining between parties in unfair or uneven positions. To mitigate this perceived unfairness, this doctrine was devised to give the benefit of any doubt to the party upon whom the contract was 'foisted'.
57. In the case of **Granada Theatres Ltd v. Freehold Investments (Leytonstone) Ltd** [1958] 1 WLR 845, Mr. Justice Vaisey said, at page 851, that "*a lease is normally liable to be construed contra proferentem, that is to say, against the lessor by whom it was granted*".
58. Thus, whatever the laudable intentions of Oxford City Council may have been when starting upon these works, the fact of the matter is that they knew or ought to have known that much of the work involved improvements to the building and the cost of such improvements would not be recoverable from the long leaseholders.
59. All the subject leases allow the Council to collect monies on account of service charges for the following year. They do not specifically allow for a sinking fund. Oxford say, quite openly, that they have never arranged to collect monies for a sinking fund to help leaseholders cope with large service charge bills and, as has been said, that is reflected in the leases. In the Tribunal's view this does highlight the conflict of roles. The Applicants' secure tenants don't have to pay up large amounts of money at one time and such an issue is therefore not relevant for them. It is good management practice to have a sinking fund for properties with long leases together with a clear plan setting out what maintenance is required over future years. The anticipated cost can be built up to cover such costs and the works spread over the years to avoid sudden large bills. The reasons for this are obvious on any objective view.
60. As to the works themselves, they can, perhaps, be divided into 3 distinct parts. There was clearly a decision by the Applicant to upgrade the building as a whole. This word was used by the Applicant's expert, Mr. Shaw, on many occasions to describe much of the work involved. The decisions made to update the lifts and repair damaged roof, concrete, ties, balcony roofs and floors etc. can, perhaps, be addressed separately. The 3rd category consists of the design and project management costs.

Conclusions - upgrading

61. Prior to embarking on this project, the Council had commissioned condition surveys on the tower blocks from two companies, Martech and Rolton. Both reports revealed a need for repairs to the concrete structure and inadequate wall ties but neither recommended cladding or re-roofing or replacement of the windows. The 2013 investigation by Arcadis did not recommend cladding either. Recommendations for further investigations were not followed up by the Council. As the Applicant's expert acknowledged, the project was undertaken to increase the thermal efficiency of the building, to help eliminate damp and mould and to increase

protection against the effects of fire and reduce the risk of fire. Works undertaken to wiring and media equipment were also described by him as an upgrade.

62. The first part of the works involved enclosing the balconies, new exterior cladding, new windows and doors, a new extractor system, new fire alarms and new signage. The other part of the work seems to have been undertaken on the basis that 'we might as well do the work as the contractors are on site'. There has been no suggestion that wiring, CCTV equipment, media equipment etc. were defective or in need of maintenance.
63. The Invitation to Tender document commencing at bundle 9 page 1200, invites tenders by 12th January 2015. It is described as a 'Refurbishment Project'. This document is of particular significance because decisions already made by the Applicant are clear to see. Of relevance to this heading, each contractor's tender must include, i.e. the contractor must undertake work to include, the new ventilation system, the fire detection system, the sprinkler system, enclosing the balconies, asbestos removal, signage, cladding, replacement windows and insulation upgrade. Under the heading 'Refurbishment Requirements/Scope of Works' at page 1214, works to the external envelope include 'Cladding system', 'Replacement windows' and 'Replacement roofing' and so the Council had by then determined that those works should form part of the project. On any view these are all 'upgrades' as described by the Applicant's expert, or, in other words, things that were not there before and, therefore, improvements.
64. If one adds to that by recording that there is no evidence that any of these upgrades are required by Statute or Regulation, none of them involve any investigation or analysis of any reports of faults and none of them involve a proper cost/benefit investigation, the case for taking them out of the service charge regime is overwhelming.
65. As a simple example, the uPVC windows and doors in the flats are being replaced with aluminium ones. The 2 experts agreed that the present view of the industry, based on evidence including windows and doors of the same age as the ones in Plowman, is that uPVC and aluminium lasts about the same time i.e. 35-40 years. In this case, the experts agreed that the pre-existing windows and doors are about 22 years old. The evidence of Mr. Graves was that over a recent 3 year period, there had been just 8 repairs to the windows and 11 to the doors in a building of 84 or 85 flats. When asked to explain what those repairs involved he could not be specific but did mention, rattling handles and their being 'draughty'. There was no mention of a need to actually replace any window or door.
66. As far as the windows and doors are concerned, the cost of these items has been produced at bundle 10, pages 2084 (the doors) and 2086 (the windows). It is difficult to see whether the cost should be divided by 84 or 85. Mr. Graves said that there are 85 flats but it appears that the cost may have been divided by 84 because, presumably, there is a caretaker. In any event, the cost would appear to be £1,060 or £1048 per door plus £5,804 or £5,735 for the windows per flat depending on whether is it 84 or 85. This figure excludes scaffolding, any contractor's overhead or profit and supervision but may include windows in the common parts.
67. Dr. Piechnik and Mr. Biegus have raised the issue of the cost of the replacement of the windows and doors. On behalf of the local authority Applicant, it seems to be suggested that cost is irrelevant because it cannot be challenged by a tenant. This is a Design and Build Procurement upon which the statutory consultation process has taken place. The contractor was not asked to split its tender into individual costings

for each item and the Applicant is therefore obliged to pay the total sum, however, it may be split in the final figures. In these circumstances, it is said, it would be unreasonable to expect the landlord to pay for any of the cost incurred save for some unidentified works which had been accepted as being improvements and would be removed from the claims in any event.

68. For this argument to succeed, it has to be proved that sections 19 and 20 of the 1985 Act are bound together so that if there has been a consultation, the tenant is bound to pay the resulting charge to the landlord. The Tribunal does not accept that view but, as it happens, the claims in respect of the new windows and doors to the flats are not considered to be reasonable. They are not payable for reasons unconnected with the link between sections 19 and 20 and the Tribunal will not therefore deal with this issue any further.
69. As a matter of law, section 20 of the 1985 Act deals with consultation requirements and defines the 'relevant contribution' to be paid by the leaseholder as "*...the amount which he **may be** required under the terms of his lease to contribute (by the payment of service charges)...*" (our emphasis). In other words, mere compliance with the consultation requirements only gives the landlord the right to claim more than the capped figures of £250 or £100 depending on whether it is qualifying works or a qualifying agreement. It does not say that the service charges are automatically reasonable if there has been consultation.
70. The fire precautions include the new alarm system, fire doors, access panels/hatches, sprinkler system, emergency lighting and automatic opening vents, and these form the basis of the upgrading of this building. The evidence is that these works may be desirable, particularly for a landlord of secure tenants, but there is no statutory or regulatory reason for the works and no evidence to suggest that such works are a repair or general maintenance. The Council's Fire Risk Assessment did not identify any need for attention to the fire doors, signage or wall finishes. Dr. Piechnik also provided the Tribunal with photographs of the pre-existing signage which appeared to do its job.
71. The other items listed are ventilation, heating, electrics and asbestos. Again, there is no evidence to suggest that any of these works are needed save to support the fire precautions and other upgrading work which this Tribunal has determined are not repairs or general maintenance.
72. It was said that much of this work was needed to deal with a substantial damp and mould growth problem. Once again the evidence of this was scant, to say the least. Mr. Graves said that between 2003 and 2016, there had been 87 reports of damp and 75 of mould growth i.e. about 6 or 7 for each per year. There was no evidence to suggest the cause of or extent of the problems giving rise to the reports and Mr. Graves said that it was possible that the damp and mould in some of these reports related to the same incident. He also acknowledged that these matters were often linked to lifestyle issues. People who did not open windows and dried clothes indoors etc. often found that there was damp in the air which caused this sort of problem. It is also of note that the clothes dryers on the roof, as provided by the Applicant had fallen into disuse by the tenants. Drying clothes in the flats without a mechanical dryer with a condenser would undoubtedly create moisture and increase evidence of damp and possibly mould.
73. The Tribunal observed that there was no visible evidence of damp or mould in the 2 long leasehold flats seen on their inspection which, Mr. Graves accepted, suggested that (a) it was possible to live in these flats and have no damp or mould and (b) it was

therefore probably more likely to be a lifestyle issue rather than a defect in the building. In any event, if the flats do suffer from poor thermal efficiency, this is either a design defect or it is a reflection of increased thermal efficiency over years in methods of construction since this tower block was built. In either case **Pembery v Lamdin** applies.

Conclusions – repairs and maintenance

74. As far as the roof is concerned, this has proved to be a very difficult issue because there has simply been no evidence whatsoever that the roof to this building was in such serious disrepair that it needed replacing. Mr. Graves said that there had been 11 reports of water ingress between 2013 and 2016 without any investigation as to exactly what they consisted of, what caused them and what was done to effect repairs. He also said that the decision to replace the roof was that of the contractor.
75. When the Tribunal members inspected the property, they were accompanied by Mr. Richard Crook from the contractors, who said that his company had carried out a detailed inspection and yet they have not produced any report or, apparently, been asked for such a report. The Tribunal also notes from the Invitation to Tender document in bundle 9 at page 1214, that the contractor had been told to quote on the basis that the roof was to be replaced. When this was pointed out to Mr. Graves, he was unable to say who had made that decision and why, which struck the Tribunal as being highly unsatisfactory when it was known that this substantial item was being challenged.
76. As can be seen from the Tribunal's own observation at the inspection, there are parts of the roof which are in need of maintenance. However, there is no evidence that the repair works required would have involved stripping and replacing at least 25% or more of the roof covering so as to invoke the Building Regulations requirement to upgrade to current standards. The fact is that no evidence at all was produced to give the Tribunal any idea as to the pre-existing condition of the roof. The experts agreed that thermal imaging, core sampling and/or moisture mapping reports are the kind of evidence that would be required to support the conclusion that the insulation beneath the roof covering requires complete stripping and repair.
77. As has been referred to in the 'Inspection' heading of this decision, there was some evidence that thermal imaging tests were undertaken in about 2007 and these revealed that the Plowman roof did not have any significant problems. There is no subsequent condition report. It is possible that (a) the roof was leaking at a limited number of points which could have been patch repaired and (b) the insulation and structure of the roof had not been compromised. The actual evidence available, or rather the lack of it, leads the Tribunal to conclude that a complete replacement of the roof could not be justified and such work has completely obliterated the evidence needed to make a sound and reasoned decision. It is therefore the reluctant decision of the Tribunal that the cost of renewal is simply unreasonable and nothing is payable because no calculation can be made as to what would be a reasonable sum.
78. On the question of the roof, Mr. Fraser, on behalf of OTLA sought to persuade the Tribunal that if a repair to the roof was established as being needed without replacement, then the cost of replacement must be excluded from service charges before any question of reasonableness was considered. The Tribunal did not accept that argument. If it is established, as in this case, that the roof is in need of some repair, then the question as to whether replacement or some other method of dealing with the problem becomes a matter of reasonableness. In fact, the cost has been excluded for other reasons as stated above.

79. As to the maintenance of the balcony roofs and floors, the concrete and wall ties repairs are concerned, the decisions of the Tribunal will be known from the Scott Schedule. In essence, the Tribunal considers these are necessary repairs and/or maintenance and some effort will have to be made to separate these costs and assess a reasonable amount to be charged. If necessary, the experts will have to be invited for their views and encouraged to discuss further. It should be noted that both experts agree that the costs of scaffolding would have to be incurred for this work.
80. The work to the lifts is another difficult subject because the cost in the contractor's breakdown will be about £72,000. For 2 lifts in a 15 storey building, this seems a very high figure for a refurbishment. Nevertheless, the lifts are old and there appear to have been a number of breakdowns. Mr. Graves said that the lifts are obsolete and parts have to be obtained from Italy with a consequential delay. He then tried to insist that repairs were generally effected on the day of call out by the long term maintenance contractors, Cotswold, who had prepared a report setting out some serious examples of parts wearing out and the desirability of remedial work.
81. The problem with this report is that it had clearly been commissioned with these works in mind. No mention is made of having reported the need for substantial renovation to the Applicant over the several years Cotswold had maintained the lifts. Nevertheless, on balance, the Tribunal determined that it would be sensible and reasonable for a full upgrade of the lifts as maintenance. This would include the change to have the lifts stop on each floor rather than every other floor as the cost of that would not be a material increase. The consequences for secure tenants and long leaseholders alike, are severe if the lifts fail and substantial works to prolong their working lives are justified.
82. As was also pointed out by Mr. Fraser, and accepted by the Tribunal, a covenant to maintain may have a different interpretation when it is applied to plant and machinery. This is referred to in 'Dilapidations: The Modern Law and Practice' by Dowding and Oakes who say, at 13-14, "*In the context of service plants such as lifts or boilers a covenant to maintain is likely to be held to require the covenantor not only to remedy such defects as may arise, but also to take proper steps to ensure that defects do not arise*". It then quotes Young J. in the case of **Greetings Oxford Koala Hotel Pty Ltd. v Oxford Square Investments Pty Ltd** [1989] 18 N.S.W.L.R. 33 who said "*The word 'maintain' carries with it the connotation that the landlord is obliged not only to attend to cases where there is a malfunction of the lift, but also to take preventative measures as should ensure that the lifts should not malfunction...*". In the light of the repair and maintenance works recommended in the Cotswold report and the age and potential obsolescence of the working parts, the works to the lifts fall within the service charge provisions.
83. On this item, the Tribunal repeats its comment on quantum as set out in the paragraphs above on the concrete repairs and wall ties, etc. In other words, some effort will have to be made to agree a reasonable cost.

Conclusions – design and project management costs

84. Finally the Tribunal noted the substantial design and project management costs. The figure of 32% for overheads and profit is considered by the Tribunal, using its expert knowledge and experience, to be a reasonable figure. However, in view of the determinations made, such costs will need to be reduced quite dramatically and proportionately to cover only the work determined as reasonable.

Costs

85. The Applicant has conceded that it will not claim its costs of representation before this Tribunal from the long leaseholders. It says that it will not oppose an order being made pursuant to section 20C of the 1985 Act and the Tribunal therefore makes such an order simply for the avoidance of doubt.
86. The Respondents Dr. Pietchnik and Mr. Biegus also apply for an order that the Applicant pays their costs incurred within these proceedings because, they allege, the Applicant has behaved unreasonably throughout – rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**.
87. The sole ground for such an application is that a party has “*acted unreasonably in bringing, defending or conducting proceedings*” (rule 13(1)(b)). The law concerning these applications has been helpfully considered in detail quite recently in the Upper Tribunal case of **Willow Court Management Co. (1985) Ltd v Alexander** which was heard with 2 other cases under citation number [2016] UKUT 290(LC). This must now be considered as the leading case on these applications.
88. The first thing to be determined is the nature of the unreasonable conduct. Willow Court confirmed that the definition of unreasonable conduct is still, in essence, that set out by the then Master of the Rolls in **Ridehalgh v Horsefield** [1994] Ch 205. At pages 232 and 233 in that judgment, ‘unreasonable’ is said to be “*conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive - but cannot be described as unreasonable simply because it leads in the event to an unsuccessful result*”.
89. Whilst the Tribunal can understand the frustration felt by these Respondents, and, indeed, the considerable efforts they have made in their own representation, the Tribunal determines that the Applicant’s conduct in furthering its case within these proceedings does not amount to unreasonable conduct in its technical sense, as defined in **Willow Court**.

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Bruce Edgington
Regional Judge
4th October 2017

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying

with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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1	IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)								CLAIM NO: CAM/38UC/LSC/2016/0064
2	BETWEEN								
3	OXFORD CITY COUNCIL								Applicant
4									
5	and								
6									
7	VARIOUS LEASEHOLDERS AS IDENTIFIED								
8									
9	IN THE ORIGINAL APPLICATION								Respondent
10									
11	Schedule of Chargeable Items of Work - Plowman								
12	Work	Description	Reason for doing the work	ment	OTLA response	Leaseholder response	Council response	FTT response	
13	Works to flats				Please note: the answer "Yes" below only indicates that OTLA considers the item to be <i>prima facie</i> recoverable under the lease, and is without prejudice to any contention that the item constitutes something beyond "repair". The explanations for saying "No" are set out in detail in OTLA's Statement of Case to which this Schedule is attached.	GENERAL NOTE - 1. Internal works: According to our leases, the landlord has right to inspect for any deficiencies given 2 days notice, then give notices of non-compliance indicating necessary repairs, and only after the leaseholder does not comply gains the right of lawful entry to perform required specified repairs (FOURTH SCHEDULE p.8). NONE of this has happened. 2. The Applicant cannot even provide plans or costing of internal works to support any right or demands that encroach on the right of peaceful occupation of the premises defined in the First Schedule of The	Access was gained to flats, where required. For example, there were investigations across all Towerblocks in October and November 2013, with some intrusive surveys for example in vacant flats in Windrush and Foresters being conducted in January 2014. The Armstrong York asbestos reports for example were obtained by gaining access to these flats. Crucially, "there is something to be said for having complied with the accepted standards (i.e. Building Standards)"(Postel Properties Limited v Boots The Chemists Limited (1996) 2 All ER 60, per Mr J Kennedy. In other words, whether a repair amounts to a repair or improvement must be		

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14							<p>leases.</p> <p>3. The Council is claiming that all items of work it is undertaking are 'Repairs' rather than 'Improvements'. A repair has to be work undertaken to remedy a fault; this response identifies how most of these items are actually new items, and therefore cannot be regarded as repairs and should thus a Council responsibility, not the leaseholder.</p>	<p>judged in light of the Building Regulations. Whilst Building Regulations inspectors only have certain powers, it is the responsibility of the landlord to achieve a satisfactory means of escape and fire protection to the people within the building. Whilst the towerblocks would have complied at the time they were built with the relevant standard, this is not a meritorious argument for failing to achieve a standard which complies Pursuant to Jenkins v J This definition of an imp</p>	

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18		Asbestos removal; within flats and balconies, including making good disturbed finishes; refer to Armstrong York asbestos reports	Asbestos will need to be disturbed to undertake the works therefore it will be required to be removed as it presents a significant hazard to both the tradesmen undertaking the works and residents. Under legislation such as the Control of Asbestos at Work Regulations 2002, asbestos as a whole in a building needs to be managed, once located, hence the need to manage it inside and outside the flats.	Sch 5, 8th Item	Repair	Yes, if (a) the works have no option but to disturb the asbestos, and (b) the works that require disturbance of the asbestos are themselves recoverable under the lease.	There is no immediate need or requirement to remove any asbestos, so is not a repair itself; only as it is proven necessary as a consequence of the actual repair (not improvement) works being undertaken by the Council.	Under the Control of Asbestos Regulations 2012 ("the 2012 Regulations"), an employer is required to manage the asbestos in them to protect anyone using or working on the premises from the risks to health that exposure to asbestos causes. If you want to do any building or maintenance work in premises, or on plant or equipment that might contain asbestos, you need to identify where it is and its type and condition; assess the risks and manage and control these risks. (Extract from HSE website). See in particular regulations 5 and 6 of the 2012 Regulations. Reference is made to the Armstrong York reports of August 2013 which show sampling within the flats and, for example, in No 54 the presence of chrysotile in the balcony and the airing cupboard. In No 60 chrysotile was found within the airing cupboard and balcony and crocidolite within the lounge. In relation to No 60, all the items are easily disturbed and in relation to No 53 the balcony is described as occasionally likely to be disturbed and usually inaccessible or unlikely to be disturbed.	The need to disturb asbestos arises from the installation of the cladding and the work to the balconies which the Tribunal has determined amounts to an improvement. Both experts agreed that if it wasn't for these works the asbestos would not have to be touched. Thus these works are a
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20		Replace flat entrance doors; new doors; frames - as architect door schedule; fire rated; ironmongery and making good disturbed finishes	Where current flat entrance doors do not meet current fire safety standards, they will be repaired to meet that requirement. The Council wishes to maximise the safety of residents by not ensuring that all doors are adequately fire rated.	Sch 5, 3rd and 8th Item	Repair	No. Only applies to the doors to the block as a whole.	If it's the individual flats, then each leaseholder should be approached separately that they must have doors that meet certain specific regulations, otherwise then this is optional and should not be forced on leaseholders. Therefore this should not appear in schedule of costs to all leaseholders.	The windows are more than 15 years old in most instances and the majority were installed in the 1980s. PVC windows and doors are accepted in the industry to have a life of 25 years. As the replacement windows and doors are for replacement, they form part of a controlled fitting under Requirement L1B, i.e. a service or fitting for which L imposes a requirement (4.17). In addition 4.19 of L1B states that "where windows, rooflights or doors are to be provided, reasonable provision in normal cases would be the installation of draught-proofed units whose performance is no worse than given in Table 1. Two	it was agreed by the experts that the doors to the flats are not in disrepair. Some of the letterboxes may breach fire regulations but these can be repaired without having to be replaced. Replacement of the doors is an improvement and the cost is not recoverable

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21								<p>common doors on each upper floor have glass in them. Safety glass is governed by K4 and glazing, "with which people are likely to come into contact whilst moving in or about the building shall if broken on impact; break in a way which is unlikely to cause injury; or resist impact without breaking or be shielded or protected from impact". So this applies. Where one door is replaced then the whole set of doors in the building have to</p>	

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23		Repairs to flat entrance doors identified in door schedule		Sch 5, 3rd and 8th Item	Repair	No. Only applies to the doors to the block as a whole.	as above	As above.	as above
24		Allow for flat entrance necessary door repairs and replacements throughout including repairs to smoke seals		Sch 5, 3rd and 8th Item	Repair	No. Only applies to the doors to the block as a whole.	as above	As above.	as above

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25		Replace balcony doors; including removal of existing wall to fix new door where applicable; supply and fix new doors, frames, ironmongery and make good disturbed finishes	The current balcony doors were installed in the 1980's and are now reaching the end of their useful life. Also the new doors will help to enhance the thermal efficiency of the block.	Sch 5, 8th Item	Repair	No. Only applies to the doors to the block as a whole.	Forced arbitrary improvement. There is no definition nor history or repairs to prove these doors have reached 'end of life' in any terms, particularly economic efficacy of repairs. Given that additional external wintergarden, installation of the new balcony doors constitutes unnecessary thermal double-proofing, beyond current building regulations, which should be achieved by windows themselves only. Lastly, it appears that new balcony doors are some 20-30cm narrower than prior ones, a serious hindrance for the disabled. The specification does not mention a large wooden infill beam within the	As the remaining balcony structure is being replaced, they are controlled under Requirement K. Repairs may be prospective in nature, see for example <i>Southall Court (Residents) Ltd v Tiwari</i> [2011] UKUT 218 where the roof covering was nearing the end of its useful life and the decision taken by the landlord to replace it was held unreasonable. The Upper Tribunal held it was not open to the tribunal to conclude otherwise on the basis that it might also be reasonable to wait 12 to 18 months until such time as the roof tiles had reached the end of their useful life. The winter gardens will not be providing 'double thermal-	The evidence was that there had been 11 complaints about the balcony doors over a 3 year period. No details were given or known about and no general assessment of the condition of the balcony doors had been made. The doors would, in any event, be much less exposed to the elements after enclosure of the balconies which would mean much less need for complete integrity. The Applicant has not satisfied the Tribunal that this work is a repair or maintenance. Not payable.

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26							<p>walls of high rise building, as can be seen in construction of the Everlode Tower Block. This specific change (improvement) design has never been shown to or consulted with residents, as such changes in sizing and removal of existing walls contravenes the right to manage the property premises by leaseholders.</p>	<p>proving as they are not thermally sealed. This was explained when the proposed balcony system was exhibited to residents at the consultation sessions as part of the design process (prior to tendering and held in the nursery located at the bottom of Plowman Tower for Mr Piechnik). As referenced previously, the application of insulation under Part L of the building regulations requires a level of insulation which by default reduces the large wooden beam. The reduction in width of the specific reduction is</p>	

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	Decorations allied to sprinkler works, including decorations to sprinkler pipework and accessories, decoration and making good finishes disturbed	In order to make good any finishes disturbed by the installation of the sprinkler system	Sch 5, 3rd and 8th Item	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	There were no sprinkler systems, this is arbitrary improvement at the Applicants' own consideration. No 'decoration' has been carried out in any event on the work done to date, the pipes are running inside extruding from the existing walls. This encroaches onto the right of leaseholders to decorate interiors as they wish, and given large change of appearance and purpose of these areas must be considered an improvement.	This is required as part of guidance issued by Oxfordshire Fire and Rescue Service ("OFRS") due to the level of repairs to existing situations in the blocks. The system was shown to us as a package of measures that were to be provided to the building in order to bring this building up to a modern standard. Although Building Regulations have no retrospective effect in relation to the introduction of sprinklers, the power to enforce the installation lies within the fire risk assessment legislation under the Regulatory Reform Order which is enforced by the Fire Service. As part of this process the building would be assessed	The Tribunal has determined that the new sprinkler system is an improvement. The same applies to this work, the cost of which is therefore not recoverable as a service charge

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31								<p>against modern standards for safety and any deficiency rated as high, medium, or low risk, the landlord/ owner should then take steps to protect the building occupancy from these risks, if not the Fire Service have powers to enforce changes where there is a risk to life or critical issues in the fire safety to the building. As soon as any system is proposed to be installed to a building, such as sprinklers, then the new system will be installed. Had the Council not ad</p>	

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35		<p>U10 - General ventilation; remove any existing ventilation fittings not required; supply and installation of local multipoint extract fans within apartments; Nuair MEVDC2 or equal and approved; with kitchen, bathroom and WC extract air valves; fan mounted at high level in airing cupboard located above the cylinder; exhaust terminal ducts routed above kitchen cabinets; discharges via extract louvers mounted in external wall separate from openable window; flat ductwork, fittings, dampers, grilles, louvers, diffusers, supports and brackets and making good.</p>		Sch 5, 3rd, 8th and 9th items	Repair	No. No basis for recovering for ventilation.	<p>Forced improvement. Mechanical ventilation was not present before, which precludes "repairing" anything. It may be that the ventilation is needed due to the decision to install upgraded windows without trickle ventilation, which is against the FENSA regulations, however this has never been explained to residents. This is a single-sided decision of OCC, never consulted.</p>	<p>Ventilation is included in the 8th paragraph to 5th schedule as "the repair, maintenance, decoration and renewal...of vent". As the existing system is being replaced as it is defective, then the installation of a new system forms a fixed building service and therefore a controlled service under Requirement F1 and L1B. There is no requirement under the replacement window legislation under regulation L1B to provide trickle ventilation unless the existing windows that are being replaced had these installed already. Mechanical ventilation was present. It was formed of a communal air duct extending vertically through the middle of the blocks,</p>	<p>The experts agreed that the pre-existing system involving extractor ducts in each flat linked to a central internal duct to the roof was working save for the fan at the top which was wearing out. The need for the new system was said to be for increased fire protection. Even if this work was not an improvement, the experts agreed that suitable dampers and self sealers could have been used at far less cost. This work is an improvement and not recoverable</p>

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40		V22 - General LV Power; supplies to sprinkler pumps; including dedicated control panel provided by the sprinkler specialist (as S63 clause); all electrical & power and control wiring from sprinkler control panel to be completed by sprinkler specialist	Power supply to the sprinkler system	Sch 5, 8th and 9th items	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	As pointed out in response to S63, the Council admits itself that sprinklers are an improvement, not a repair. This work is part of that improvement.	Please see above.	see previous decision
41		V22 - General LV Power; supplies within each apartment; to new mechanical ventilation device; install switch to ventilation device within the kitchen, upgrade bathroom lighting switch to double pole, and wiring to facilitate ramping up the fan. Make good any finishes disturbed.		Sch 5, 8th and 9th items	Repair	No. No basis for recovering for ventilation.	This work comprises different elements: Required to support U10 (as pointed out in relation to that point, this is an improvement) Bathroom lighting switch - the switch in my bathroom is a pull cord operated switch located on the ceiling, with a return current protected circuit. It is not broken, and does not require repair. Hence both these aspects are improvements, not repairs.	Ventilation is included in the 8th paragraph to 5th Schedule to the lease as "the repair, maintenance, decoration and renewal...of vent". The existing system is being replaced as it is defective, so the installation of a new system forms a fixed building service and therefore a controlled service under Requirement F1 and L1B.	There is no evidence that the pre-existing system was defective. A fan was wearing out. As has been determined, the new ventilation system is an improvement and not recoverable.

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		V22 - General LV Power; supplies within each apartment; new circuit, wiring and containment for fire alarm, making good		Sch 5, 8th and 9th items	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	The current alarm is adequately sensitive, sounds any time there is smoke in the kitchen. This is an improvement	Paragraph 4 of the Fifth Schedule provides that the maintenance and renewal of fire prevention systems (where applicable) is covered by the service charge. It is denied that "services to which the tenant is entitled" at paragraph 14(2) of the Housing Act 1985 is limited to those matters which the landlord has covenanted to provide in the lease. Rather, the tenant is entitled to those services required by statute including a fire prevention system. Further, the fire prevention system was already in place and therefore needs maintaining and renewing in accordance with the lease. The new system therefore becomes controlled under	There is no evidence that the existing fire alarm system is defective. It provides a level of protection and there is no current legal requirement to upgrade it. The new alarm system is an improvement and the cost is not recoverable as a service charge
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44	<p>W20 - Radio / TV / CCTV; IRS installation; supply and install an integrated reception system (IRS) within each block to serve all apartments to provide terrestrial digital signal as Rolton's specification; IRS to also provide for 2 sat system such as Hotbird should it be required, television and audio aerials and Satellite dish to roof; multi switch and amplifiers; multi-service plate at termination, flush mounted in stainless steel, further outlet plate within main bedroom; cables concealed within overcladding externally to avoid trunking to flats; wiring and containment; make good disturbed finishes</p>	<p>Owing to the current system being faulty due to the vandalism of cables, many residents do not benefit from a fully working communal TV and radio aerial system. The installation and location of the new system internally will allow access for the Council to undertake repairs, protect it from vandalism and hence reduce ongoing rechargeable costs to Leaseholders.</p>	<p>Sch 5, 8th and 9th items</p>	<p>Repair</p>	<p>Yes.</p>	<p>Improvement. Unnecessary given the low use of wired comms in the era of cable and internet. Some flats used satellite dishes, which will be forcibly removed, most would have cable internet. The new system is an improvement in apparently adding capability to transmit satellite and TV. Overall this appears a consequential repair to the deficiency introduced by adding external cladding (an improvement) and the ambition of the council to have a 'clean line' of appearance of the building, far beyond prior design</p>	<p>The current system of tenants adding their own satellite dishes and aerials to the property is not lawful under the leases, in particular under Schedule 4 clause 7(16) which prohibits the making of any structural alterations or additions to the premises. Express permission would be required. The Council would not give permission for any satellite dishes or aerials now as the maximum on a block of this size is four. This is a blanket national planning restriction https://www.planningportal.co.uk/info/200130/common_projects/48/satellitv_and_radio_antenna/4. Further, and in any event, the installation cannot be permitted when</p>	<p>The evidence is that there is nothing wrong with the existing system. If the Applicant has allowed more satellite dishes to be installed than it wanted, that is a matter for it to deal with. The work stated is clearly an improvement. The long leaserholders have not agreed to pay for this improvement and the cost is therefore not recoverable</p>

	A	B	C	D	E	F	G	H	I
47		<p>W50 - Fire Detection and Alarm; supply and install an independent stand-alone grade D Category LD2 smoke detection and fire alarm to every flat as Rolton's specification; heat detectors to kitchen, smoke detectors to living room, all wiring and containment; making good disturbed finishes</p>	<p>To meet current building regulation and fire safety standards by replacing elements of the fire detection and alarm system which are now reaching the end of their useful life.</p>	<p>Sch 5, 8th and 9th items</p>	<p>Repair</p>	<p>No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.</p>	<p>The Council has not responded to observations from OTLA, requesting clarification as to what is wrong with the current system. A 'replacement' cannot be viewed as a 'repair' unless the existing system is not working, and there is no evidence to support this. Either an unnecessary repair for an individual leaseholder (in which case an improvement to the individual at the council's own expense), or a replacement (improvement) that has not been justified.</p> <p>In addition, the Rolton specifications available for me for these works quote an address in London as place of</p>	<p>Again a restrictive interpretation of repair is used by Mr Piechnik. Prospective repairs are still repairs. Please see above.</p> <p>The current works are to comply with Approved Document P, and, in particular P1 which states that "reasonable provision shall be made in the design and installation of electrical installations in order to protect persons operating, maintaining or altering installations from fire and injury. The requirements relate to those operating at low and extra-low voltage both in or attached to a dwelling or in the common parts of a dwelling serving one or more dwellings.</p>	<p>The Tribunal considers that the new alarm and detection system is an improvement. There is no evidence to suggest that the existing system is in need of repair or maintenance. Not payable.</p> <p>Again, there is no evidence that the existing system is failing or in need of maintenance. Thus, this is an improvement and is not payable</p>
48		<p>W51 - Earthing and bonding installation</p>	<p>To meet current building regulation and electrical safety standards</p>	<p>Sch 5, 8th and 9th items</p>	<p>Repair</p>	<p>Yes.</p>	<p>The council has not specified what the current deficiency is that justifies the current earthing and bonding needing repair and upgrade (improvement) to current building regulations</p>	<p>The current works are to comply with Approved Document P, and, in particular P1 which states that "reasonable provision shall be made in the design and installation of electrical installations in order to protect persons operating, maintaining or altering installations from fire and injury. The requirements relate to those operating at low and extra-low voltage both in or attached to a dwelling or in the common parts of a dwelling serving one or more dwellings.</p>	<p>Again, there is no evidence that the existing system is failing or in need of maintenance. Thus, this is an improvement and is not payable</p>

	A	B	C	D	E	F	G	H	I
49		Y81 - Testing and commissioning	To meet current building regulation and electrical safety standards	Sch 5, 8th and 9th items	Repair	Yes.	Related to item W51. The council has not specified what the current deficiency is that justifies the current earthing and bonding needing repair and upgrade (improvement) to current building regulations	Please see above.	see above - not payable
50		Y82 - Identification - Electrical; Labelling	To meet current building regulation and electrical safety standards	Sch 5, 8th and 9th items	Repair	Yes.	Related to item W51. The council has not specified what the current deficiency is that justifies the current earthing and bonding needing repair and upgrade (improvement) to current building regulations	Please see above.	see above - not payable
51									
52	Works to common areas								
53		Asbestos removal; within communal areas, including making good disturbed finishes; refer to Armstrong York asbestos reports	Asbestos will need to be disturbed to undertake the works therefore it will be required to be removed as it presents a significant hazard to both the tradesmen and the residents.	Sch 5, 8th item	Repair	Yes, if (a) the works have no option but to disturb the asbestos, and (b) the works that require disturbance of the asbestos are themselves recoverable under the lease.	Any disturbance that reveal asbestos, that needs removal as a consequence, is the result of various individual improvements, and thus comprises part of those improvements.	Please see above.	It was agreed by the experts that no asbestos related works were to be done to the common parts - not payable
54		Replacement of lobby fire doors as door schedule; new double leaf doors; frames, ironmongery; door holders with automatic fire release; includes new double doors to bin stores; making good disturbed finishes	The integrity of fire doors varies block by block. The proposed works will ensure all doors which should be compliant, are repaired or replaced as necessary for the benefit of all residents.	Sch 5, 3rd, 7th, 8th item	Repair	No, unless these are doors serving as entrance to the block as a whole.	The Council has failed to explain exactly what integrity is currently compromised that requires the doors to be replaced. As this will vary from block to block, the costs should be split proportionately; in any case, such replacements should be justified in advance of any work being carried out.	Please see above. The integrity of fire doors varies block by block. The proposed works will ensure all doors which should be compliant, are repaired or replaced as necessary for the benefit of all residents.	No evidence that existing doors are faulty or in disrepair. There is no requirement to upgrade them. This is an improvement and is not payable

	A	B	C	D	E	F	G	H	I
55		Replacement of single-leaf fire doors as door schedule, refuse chute and stair lobby; new single leaf fire doors, frames, ironmongery; making good disturbed finishes	As above	Sch 5, 3rd, 7th, 8th item	Repair	No. unless these are doors serving as entrance to the block as a whole.	The Council has failed to explain exactly what integrity is currently compromised that requires the doors to be replaced. As this will vary from block to block, the costs should be split proportionately; in any case, such replacements should be justified in advance of any work being carried out.	The requirement is due to guidance given by Oxfordshire Fire and Rescue Services (OFRS) for the building due to the level of repairs to existing situations in the blocks. Data from OFRS shows an increased risk of fire in the blocks - fires per 1000 people / year - Tower blocks 3.2; whole of Oxfordshire 0.52. This means that the residents of these blocks have statistically had 6 times as many fires as would be expected within Oxfordshire. Please see further above.	As previous item. Not payable.
56		Replacement of fire doors to risers as door schedule; hardwood architraves / frames, including basic ironmongery; making good disturbed finishes	As above	Sch 5, 3rd, 7th, 8th item	Repair	No. Not entrance doors.	The Council has failed to explain exactly what integrity is currently compromised that requires the doors to be replaced. As this will vary from block to block, the costs should be split proportionately; in any case, such replacements should be justified in advance of any work being carried out.	Please see rows 30 to 32 above.	See previous entry and decision which applies equally to this item - not payable

	A	B	C	D	E	F	G	H	I
57		Replacement of access panels/hatches to SVP risers as door schedule; one-hour fire rating; making good disturbed finishes	The integrity of access panels/hatches varies block by block. The proposed works will ensure all access panels/hatches which should be compliant, are replaced as necessary for the benefit of all residents.	Sch 5, 3rd, 7th, 8th item	Repair	No. Not entrance doors.	The Council has failed to explain exactly what integrity is currently compromised that requires replacement of these items. As this will vary from block to block, the costs should be split proportionately; in any case, such replacements should be justified in advance of any work being carried out.	Please see above. The costs are split per block.	See previous entry and decision which applies equally to this item - not payable
58		Allow for door repairs throughout including repairs to smoke seals; making good disturbed finishes		Sch 5, 3rd, 7th, 8th item	Repair	No, unless these are doors serving as entrance to the block as a whole.	Unclear how many doors need replacement or repair. No plans or costings were ever provided. Current cost schedule inappropriate to assess. And any justified costs should be spread proportionately between blocks	Please see rows 30 to 32 above. The costs are split per block. The integrity of fire doors varies block by block. The proposed works will ensure all doors which should be compliant, are repaired or replaced as necessary for the benefit of all residents.	See previous entry and decision which applies equally to this item - not payable
59		New wall finishes; apply onto existing finish including to skirtings; fire retardant / intumescent and anti-graffiti paints; to achieve Class 0; base and top coats	Application of class 0 decorative finishes to prevent the spread of fire in communal areas are a requirement of the building regulations.	Sch 5, items 5 6 and 8	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	Only repair if class 0 paint is a regulatory requirement. Provide specific reference.	The Regulatory Reform (Fire Safety) Order 2005 makes clear the importance of fire protection products conforming to the relevant standards. On the basis that Class 0 paint is already in place then this would have to be replaced as the Building Regulations do not permit a lesser protection than already in situ to be applied.	See previous entry and decision which applies equally to this item. Further, there is no evidence to suggest that the existing paint is not Class 0 or that new wall finishes are required. Not payable.

	A	B	C	D	E	F	G	H	I
60		Decorations allied to sprinkler works, including decorations to sprinkler pipework and accessories, decoration and making good finishes disturbed	In order to make good any finishes disturbed by the installation of the sprinkler system	Sch 5, item 3, 6, 9	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	As pointed out in response to S63, the Council admits itself that sprinklers are an improvement, not a repair. This work is part of that improvement	Please see rows 30 to 32 above.	Same decision as main decision on sprinkler system - not payable
61		Ceiling finishes; ceiling redecoration throughout; emulsion paint to existing substrate; fire retardant / intumescent and anti-graffiti paints; to achieve Class 0; base and top coats; make good disturbed finishes	Application of class 0 decorative finishes to prevent the spread of fire in communal areas are a requirement of the building regulations.	Sch 5, item 3, 6, 9	Repair	Yes.	Only repair if class 0 paint is a regulatory requirement. Provide specific reference.	This repair is part of the guidance issued by the OFRS due to the level of repairs to existing situations in the blocks. Reference is made to Rows 30 to 32 above.	Same decision as in 59 - not payable
62		Ceiling finishes; replace damaged suspended ceiling tiles to GF communals (new entrance lobby measured separately); make good disturbed finishes	Necessary works to maintain the ceiling finishes in good and substantial repair.	Sch 5, item 3, 6, 9	Repair	Yes.	This is a necessary repair as a consequence of Council negligence. The storage room ceiling has been damaged for at least 3 years and needs repair. Exposed asbestos was notified to OVV from 2013 in the storage area where ceiling was flooded. There were two surveyors who assured me that everything is OK. This Scott schedule does not appear to include this item at all, at least not in the scope proportional to damage.	The Council considers that there has been a blurring of the issues here. This item on the Scott Schedule refers to repairing the existing lobby ceiling; reference to the store and asbestos, the Council had to verify the location of all asbestos materials which the contractor might come into contact with as part of the project. Whilst the presence of asbestos does not necessarily present a hazard, any work to it presents a change in risk and so such is managed by the works.	The experts agreed that there are no suspended ceilings Not payable
63		Supply and install smoke ventilation to corridor/ stairwells; 1.5m2 AOV direct to outside; 2nr. per floor	To meet the requirements of the latest fire safety guidance and advice, the Council wish to enhance the safety of all residents for future years. The Council wishes to follow this advice.	Sch 5, item 3	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	Appears to be voluntary decision to enhance safety, thus an improvement.	Please see above.	No existing system and no evidential need for repair or maintenance - not payable as it is an improvement

	A	B	C	D	E	F	G	H	I
64		Fire stopping to refuse chutes: include to refurbish existing refuse chutes		Sch 5, item 3	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	as above .	See the comments at Row 30 to 32 above. See section 10 of document B3.	This is an improvement - not payable.
65		Supply and install new signage as architect's drawings	Signage throughout the blocks has failed and is beyond repair. Reinstating signage gives the blocks identity and gives clear direction to residents and visitors to the correct floor and facilities. Ensuring adequate, up to date signage also is critical in the event of a fire. The Council is not prepared to ignore such recommendations and put the lives of residents at risk.	Sch 5, item 3	Repair	Yes.	A repair would comprise simply replacing the previous signage as it was. Additional branding relating to individual blocks identity is an unnecessary expense for individual leaseholders - if the Council wishes to do this, then it is an improvement	This is not an improvement. Fire signage is required to be in place and should be evidenced under the Fire Risk Assessment for the building. The signs are inconsistent in format and instruction so the signs need standardising either to the British Standard or to the European Standard and there should be no mix in signage types, in particular under paragraph 3 of the Health and Safety (Safety Signs and Signals) Regulations 1996.	Photographs of the pre-existing signs show that they have not 'failed'. The fire risk assessment said that the existing signs were satisfactory. The only conclusion to be drawn is that new signs are needed for the 'upgrade' which is an improvement. Not payable
66									
67	Works to common areas (M&E)								
68	Mechanical & Electrical Costs								
69	Mechanical Works to engineer's specification								
70		S61 - Dry Risers; relocate dry riser inlet breaching valves from current position to external wall; include for any additional venting or draining provision dictated by height changes; provide inlet box at the base of each riser complete with breaching valve and drain valve; provide automatic release valve and all components as specification; making good disturbed finishes	To meet the requirements of the latest fire safety guidance and advice, the Council wish to enhance the safety of all residents for future years. The Council are not prepared to ignore this advice and put the lives of their residents at risk.	Sch 5, item 3	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	Appears to be voluntary decision to enhance safety, thus an improvement	Please see above. The position of the dry riser installed at the time of construction is unacceptable to OFRS. Therefore it is reasonable to adopt the OFRS' guidance for the benefit and safety of all residents.	This involves relocation only . No evidence to suggest that this is a repair or needed for general maintenance. Not payable

	A	B	C	D	E	F	G	H	I
71		V51 - Local Electric Heating Units; supply and install electric fan heaters and associated thermostatic control to provide frost protection to unheated plant spaces, such as plantroom, water booster room and sprinkler pump room; making good disturbed finishes	To prevent freezing of equipment and pipes and resultant replacement/repair costs.	Sch 5, item 9	Repair	Yes.	The Council has not provided any evidence that freezing has ever been a problem, or that anything has been or is damaged as a result. Any change to the existing provision without exact declaration of the relevant legal normative requirements applicable to old-builds is an improvement.	The provision of trace heating (or frost protection) to prohibit future failures is a reasonable expense to maintain the property and its installations. This provision of trace heating is accepted as a reasonable and cost effective application which is adopted by design consultants in conjunction with the requirements of building regulations.	No evidence to suggest that any frost damage has occurred in the unheated plantroom or water booster room. The sprinkler system is an improvement. This is not a repair or maintenance and is not payable
72									
73	<u>Electrical Works to engineer's specification</u>								
74		V20 - LV Distribution; re-supporting all electrical cabling; assume 2no. 240mm ² submains cables from switchroom to every floor (owned by Scottish and Southern Energy - approval to be sought) as specification; removal of existing plastic cable cleats and ties; replacing with new fire resistant cable ties; fixings to cable trays shall be suitable metallic fixings	To meet the requirements of the latest fire safety guidance and advice, the Council wish to enhance the safety of all residents for future years. The Council are not prepared to ignore this advice and put the lives of their residents at risk.	Sch 5, items 3 and 5	Repair	Yes.	This work appears to have been carried out in 2013 as an improvement (as nothing damaged, and appears the choice of the council to reduce fire risks above the required legal obligations) - reference letter 1st Nov 2013)	BS5839-Part 1: 2002 clause 26.2 (f) requires a method of cable support in confirmation of this and the recommendation made by HM Coroner in the Shirley Towers incident was to do this. Therefore in the note of the meeting between OFRS and the Council of 12 March 2013 it is recorded that "it is recommended that Building Regulations are amended to ensure that all cables, not just fire alarm cables are supported by fire resistant cable supports".	Once again, this is an upgrade of the installation with no evidence of disrepair. It is an improvement rather than a repair, general maintenance or a requirement of law. Not payable

	A	B	C	D	E	F	G	H	I
75		V21 - General Lighting; replace fluorescent lighting and controls; supply and install new LED wall mounted light fittings to stairwells, corridors and communals such as ThorLux Dot or equal and approved; decorative lighting to main entrance areas such as ThorLuxG3 LED downlighter (IP65) or equal and approved; PIR and photo cell controlled fittings to communal area lighting	Necessary works to maintain the communal lighting in good and substantial repair. LED fittings specified to reduce existing lighting costs and save energy.	Sch 5, item 5	Repair	Yes.	Whilst I welcome reducing costs and saving energy, there is nothing wrong with the existing General Lighting - hence this is an improvement	Again it is acceptable for repairs to be prospective, i.e. to extend the life of the repairs. Most light fittings have reached the end of their economical life.	There is no evidence that light fittings had reached the end of their economical life or that they are not working. An improvement and not payable.
76		V22 - General LV Power; supplies to all fixed equipment; landlord lighting, external lighting, car park lighting; TV distribution systems, amplification and distribution equipment; fire alarm systems including final circuit wiring	Necessary works to maintain the electrical installations in good and substantial repair.	Sch 5, items 5, 6, 8, 9	Repair	Yes.	The Council has not established any malfunction in this area, or that the work needs to be carried out as preventive maintenance, hence this is an improvement. My TV works well with the use of internal antenna.	Please see previous row. This item relates to the provision of a power supply to all communal electrical equipment, not specifically TV aerials.	See previous decision
77		V40 - Emergency Lighting; Replace self-contained emergency light fitting; new emergency lighting system to all landlord areas; internal and external; over all emergency exit door and escape route doors; all wiring and containment and making good disturbed finishes	To meet the requirements of the latest fire safety guidance and advice, the Council wish to enhance the safety of all residents for future years. The Council are not prepared to ignore this advice and put the lives of their residents at risk.	Sch 5, items 3 and 5	Repair	Yes.	The Council has not established any malfunction in this area, or that the work needs to be carried out as preventive maintenance, hence this is an improvement	Emergency lighting requirements are set out at paragraph 5.36 of section B1 of the Approved Document B. Standards for installation of adequate artificial lighting which complies with BS 5266 1:2005.	See previous decision
78		W10 - Telecommunications; liaise with BT or suitable and approved telecoms company to supply and install dedicated telephone line for lift installations and 'redcare' facility for external fire alarm protection; all wiring and containment to BT's requirements and specification	Necessary works to maintain the telecommunication installations in good and substantial repair.	Sch 5, item 9	Repair	Yes.	The Council has not established any malfunction in this area, or that the work needs to be carried out as preventive maintenance, hence this is an improvement. In particular there are currently emergency phone in lifts and I am not aware of any malfunction of those. Is matching BT specifications and requirements a legal requirement for old-builds?	Again, prospective repairs to lengthen the life of telecommunications is permissible.	The Respondents say that there is an intercom in the lift with no evidence that it does not work. The remainder of this item is part of the 'upgrade', is an improvement, and is not payable

	A	B	C	D	E	F	G	H	I
79		W20 - Radio / TV / CCTV; CCTV repositioning; existing CCTV to be repositioned to survey the extended lobby/entrance areas	To maintain the continued security of the lobby areas for the safety of residents	Sch 5, item 3	Repair	No. The Council has not covenanted to provide, maintain or repair a security system. Irrecoverable due to statutory restrictions on RTB leases.	This work is a consequence of the arbitrary design change in the lobby shape. Hence an improvement.	The entrance lobbies are being extended; such charge is not passed on to the leaseholders. However, the relocation of the CCTV is required as numerous security cameras are not located in effective areas following re-analysis of their positioning regardless of the new entrance lobby.	It was admitted in evidence that this is purely an improvement as it is required because of a change in the lobby area which has not been charged to the long leaseholders. It is not a repair or maintenance - not payable
80		W30 - Data Installation; liaise with BT or suitable and approved telecoms company to provide external data transmission services; ISDN lines for CCTV, install cable basket within ceiling for telecoms basket; cabling and wiring associated; include Cat 6 cabling and containment from GF incoming broadband connections to distribute within electric risers to central WI-FI transmitters on each floor to provide wireless internet to multiple apartments, making good.		Sch 5, item 9	Repair	Yes.	This work is unnecessary, as nothing in this area is defective. Individual leaseholders can make their own arrangements, and this work is an improvement.	The current system of tenants adding their own satellite dishes and aerials to the property is not lawful under the leases, in particular under clause 7(16). Further, and in any event, the installation cannot be permitted when external cladding is in place. There are currently no integrated systems for TV. The landlord has covenanted at clause 7(3) to maintain the television cable and the electrical supply cables; the service charge contributions include the cost of provision, maintenance, repair, renewal and decoration of "communal television aerials and associated equipment". Therefore, this is within	This is not a necessary item of work as either a repair or general maintenance. Not payable

	A	B	C	D	E	F	G	H	I
81								the repairing obligations of the landlord. The overall cost of the new system and the benefit of residents having a fully working communal TV and radio aerial system, plus a streamlined system for repairs and protecting the system from vandalism will result in overall costs savings. These works are in line with the new telecommunications referred to at line 35 above. They are required to maintain the continued security of the building for the se	
82		W50 - Fire Detection and Alarm; replace fire alarm system to communal and landlord areas; supply and install category L1 detection system throughout the entire landlord and communal/corridor areas; complete with smoke detectors, sounder and fire alarm panels; fire alarm panel flush mounted within main entrance; Stay-Put policy being adopted with L1 detection system signalling directly to fire services; interfacing to lifts, AOV's, access control and fire shutters where applicable; all wiring and containment and making good	To meet current building regulation and fire safety standards by replacing elements of the fire detection and alarm system which are now reaching the end of their useful life.	Sch 5, item 3	Repair	No. The Council has not covenanted to provide, maintain or repair a fire prevention system. Irrecoverable due to statutory restrictions on RTB leases.	The Council failed to establish actual history of defects as to characterise this as repair. "reaching end of useful life" is unclear and thus choice to repair completely arbitrary improvement. This goes against the basic engineering principle: "ain't broken - don't touch"	Again, prospective repairs are permitted.	These improvements are not required for existing buildings and cannot be described as repairs or general maintenance. Not payable
83		W51 - Earthing and bonding installation	To meet current building regulation and electrical safety standards	Sch 5, item 9	Repair	Yes.	appears to refer to arbitrarily chosen improvements above, and thus improvement as consequence.	Please see above.	see previous decision
84		W52 - Lightning Protection; determine requirement for lightning protection; design and install lightning protection system complete with arresters, making good	Replacement of the existing lightning protection system is necessary to enable the overall works. Retaining the existing system would prevent the proposed insulation and cladding system being installed, would cause damage if not replaced and would not be able to be maintained or tested.	Sch 5, item 5	Repair	Yes.	The Council has not established any malfunction in this area, or that the work needs to be carried out as preventive maintenance, hence this is an improvement	Please see above.	See previous decision

	A	B	C	D	E	F	G	H	I
85		X10 - Lifts; carry out lift improvement works as detailed in Rolton's specification; making good disturbed finishes	Necessary works to maintain the lifts in good and substantial repair.	Sch 5, item 2	Repair	Yes.	Improvement, as explicitly stated in the title of the item itself. Specifically with regard to make them stop at each, rather than every other floor. Lifts appear in good working condition, main malfunction was due to external flooding from technical shaft. After moving in I was perplexed because the Landlord services were not able to provide plans of water cutoff valves, nor had any emergency information in case of leaks. After locating cutoff valves, I had to insist that they are made functional. Thus if lifts are indeed damaged as to be repaired, this is due to negligence of the landlord to provide efficient water flood protection and cutoff measures in sensitive parts of the building. Any history of lift problems must precede the refurbishment project start in 2012. Apart from occasional breakdowns, all was fine until ca 2015. The lifts were particularly poorly maintained in 2016, as if they were predestined to fail on demand.	Prospective repairs to lifts are permissible. Attached is a copy of the lift condition report dated October 2013 which comments "Although all lifts are currently in service and working, the question has to be asked as to what will be required to keep the lifts in a good safe working service for the next 25 years" (page 2). Under 3.1 condition it refers to work that should be done as a minimum, including upgrading stop buttons, signage, overhauling gear unit, replacing control panel and works to the shaft (page 5). It is understood that one lift is out of service across	Payable for the reasons set out in the decision.
86									
87		Y81 - Testing and commissioning	To meet current building regulation and electrical safety standards	Ancillary to the above	Repair	Yes.	only for the actual repairs	Please see above.	Not payable - relates to improvements

	A	B	C	D	E	F	G	H	I
88		Y82 - Identification - Electrical; Labelling	To meet current building regulation and electrical safety standards	Ancillary to the above	Repair	Yes.	only for the actual repairs	Please see above.	Not payable - relates to improvements
89		Supply and install collars to new connections in risers		Ancillary to the above	Repair	Yes.	without detailed plans, unclear what this refers to.	Please see above.	Not payable - relates to improvements
90									
91	Works to the external envelope & structural repairs						<p>GENERAL NOTE: Majority of the items in the top of this section in works schedule is costed NIL, or "provisional". Some are clearly marked as "if required". The applicant refused to provide any detail of history of structural damage for any of the blocks, so this appears to be fully funded by the council 'fishing expedition' for any repairs to substantiate the large refurbishment project.</p>	Structural repairs have been recommended in the condition reports produced for the Council. For example, a concrete and brickwork condition survey dated 18 December 2013. For example, even on a visual survey, "areas of delaminated material such as spalling concrete and failing previous repairs appeared to be loose in some areas...other observations; satellite dish fixings perished and held in by connecting wires and pigeon netting only; occasional loose bricks and missing mortar joints were found".	

	A	B	C	D	E	F	G	H	I
92	Preparatory works to the existing structure and façade: brick/ render/ concrete/ stone						None of that should be allowed as repair, unless there is a prior evidence of serious damage requiring repairs in order of £1.6M net (2.2M with overheads). In reply to the OTLA observations, the applicant assured that costs are set and will not increase. Given that the contractors are supposed to look for their own work, it appears to be possible only by funding from excessive overheads.	The relevant reports are attached. The reasons why this should be disallowed are not set out in sufficient detail.	
93		Concrete repairs - Surveys and testing; allow for full surveys to identify concrete and reinforcement repair and galvanic cathodic protection requirements, and testing for carbonation and chloride contamination as engineers specification	Necessary repairs to maintain the structural integrity of the tower block.	Sch 5, item 8	Repair	Yes.	This is not a repair but a paid for "survey" to find problems where the landlord has no prior evidence of damage. If problems found, "local" repairs to reinstate and protect are repairs - costs should be proportionate to costs incurred in individual tower blocks. Extremely costly insulation of whole walls because of one or two chipped bricks is not repair but improvement	This item relates to the contractors' surveys which are a necessary pre-condition of them accepting responsibility and risk for all structural repairs. The extent of repairs varies from tower to tower, such costs being relevant to those towers.	This appears to relate to the tests carried out to see whether repairs to concrete are needed and is thus part of general maintenance and payable

	A	B	C	D	E	F	G	H	I
94		Concrete repairs - remove chlorides and contamination if discovered through surveys as engineer's specification; repair and replace concrete and reinforcement to engineer's specification; include galvanic cathodic protection system, protective corrosion inhibitor	as above	Sch 5, item 8	Repair	Yes.	If problems found, "local" repairs to reinstate and protect are repairs - costs should be proportionate to costs incurred in individual tower blocks. Extremely costly insulation of whole walls because of one or two chipped bricks is not repair but improvement.	This was a necessary preliminary step to isolate immediate issues which needed to be rendered safe and come up with a specification of repair works which could be considered on a cost effective basis. Indeed the concrete reports made recommendations on the basis of "do nothing, do something temporary or effect a proper repair" as set out in the works required (page 28 to 29 section). Failed concrete surfaces are visible from the ground. If problems found, "local" repairs to reinstate and protect are repairs - costs should be proportionate to costs incurred in individual tower blocks. Extremely costly insulation of whole walls because of one or two chipped bricks is not repair but improvement. The costs are apportioned between the blocks.	The actual repair work is payable as general maintenance as identified by the tests referred to above
95									
96		Concrete repairs - Anti-carbonation coating	as above	Sch 5, item 8	Repair	Yes.	where documented as needed. Repair, but costs proportionate to individual tower blocks	The costs are apportioned between the blocks.	the evidence was that no anti- carbonation coating was needed - not payable

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97		Concrete repairs - investigative works, preparation and localised repairs to damaged/spalling concrete as engineer's specification; proprietary repair mortar (externally); including making good to disturbed surfaces	as above	Sch 5, item 8	Repair	Yes.	What are "investigative works"? That looks like seeking or possibly can amount inventing or making damage to charge repair. Who controls that? For example at the entrance there is a big fresh crack, which is not visible in pictures taken immediately after dismounting.	Please see attached reports and above. Structural repairs have been verified by Rolton (OCC consultants) prior to, during and following works by the contractor.	Payable if this is a simple repeat of previous items which it appears to be
98		Concrete repairs - investigative works, preparation and localised repairs to damaged/spalling concrete as engineer's specification; proprietary repair mortar (internally); including making good to disturbed surfaces	as above	Sch 5, item 8	Repair	Yes.	as above	Please see attached reports and above. Structural repairs have been verified by Rolton (OCC consultants) prior to, during and following works by the contractor.	Appears to be repair and general maintenance which is payable
99		Masonry ties repairs - Remedial works for replacing corroded, or missing cavity wall ties and cavity clean resulting from works as engineer's specification	as above	Sch 5, item 8	Repair	Yes.	These should be small local works, with proportionate costs	Please see attached reports and above. The section entitled "Works required" in the concrete and brickwork section states "any areas of low wall tie density can be addressed through the localised installation of remedial wall ties"	Payable as repair and/or general maintenance

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100		New structural steel and masonry parapet support posts to render and metal rainscreen cladding as structural engineer's details if required	To enable the installation of the cladding system	Sch 5, item 8	Repair	Yes.	repair only if this does not change the structural soundness above originally planned. Otherwise improvement. No detailed information has been supplied by the Council to justify the cost.	Again this takes too restrictive a view of repair. The existing roof level parapets were/are damaged by steel re-bar corrosion due to their exposed location and were found to be beyond repair, the parapets could not therefore be retained and at minimum required to be re-built. This item allows for the replacement of a suitable parapet system to meet current requirements.	The experts agreed that this was primarily to support the cladding. Without that function, the parapet could have been repaired. The only amount payable is the cost of that repair
101	<u>Overcladding works (refer to Rolton's drawings for fixing details)</u>			Sch 5, item 8	Repair		Cladding is a wholly new element over large surfaces of the building that change the appearance of the	The cladding is an integral part of providing external wall insulation. Insulation cannot be installed	

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102							<p>buildings as far as to require architectural advice and respective planning permissions. beside photographic evidence of few chipped bricks, the applicant did not reveal the history of any serious damage requiring costly repair to existing cladding, nor clear rationale for adding new insulation to the Plowman Tower. In consultation materials the energy improvement and in improvements in the appearance of blocks were advertised as flagship political agenda of the Council, and bears all marks of area regeneration programme, reducing fuel poverty, etc, etc..., not problem-guided repairs.</p>	<p>without relevant protection. Insulation is required to manage the defect of condensation and heat loss in the properties. Cladding is a controlled element under the renovation of a thermal element of the building under Requirement L1B. The choice in materials has, amongst other factors, been selected as a result of one of the project key performance indicators, namely to provide materials and finishes with a 30yr minimum life span. As a result, the need for major works of this nature in the coming 30 or more years is removed. Accordingly, additional value for money to leaseholders. Per Mr J Kennedy in Postal Properties Limited "I believe that I can take into account that there would be some countervailing advantage to the occupiers of the building in terms of lower heating charges, and also that building insulation is a subject which is receiving increasing legislative attention".</p>	
103									

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104		Trespa panelling or equal approved; fixing on metal sub-frame bracket system and providing ventilated cavity; 80mm Kingspan K15 insulation or equal approved to achieve minimum u value specified; 12mm cement particle board		Sch 5, item 8	Repair	Yes.	repair only if this existed before and has clear history of damage progression limiting the lifespan of the building occupancy in foreseeable future. Otherwise improvement.	Again this is a too restrictive interpretation of repair.	The cladding is deemed to be an improvement - not payable
105		Plasterboard, skim and skirting finishes internally to Trespa clad areas; installed on SFS frame, including decoration and making good	In order to make good any finishes disturbed by the installation of the cladding system	Sch 5, items 7 and 8	Repair	Yes.	repair only if this existed before and is damaged. Otherwise improvement.	Again this is a too restrictive interpretation of repair.	See previous decision
106		Mesh infill balustrade; 1100mm high; perforated infill panels		Sch 5, item 8	Repair	Yes.	repair only if this existed before and is damaged. Otherwise improvement.	Again this is a too restrictive interpretation of repair. Necessary to maintain compliance with building regulations (namely approved document K).	See previous decision
107		Curtain wall cladding system; powder coated insulated aluminium spandrel panels; (windows measured separately); provision of openings to architect's details		Sch 5, item 8	Repair	Yes.	repair only if this existed before and is damaged. Otherwise improvement.	Again this is a too restrictive interpretation of repair. When cladding is proposed then it forms part of the controlled element under the renovation of a thermal element of the building under Requirement L1B. The cladding is an integral part of providing insulation which is required to manage the defect of condensation and heat loss in the properties.	See previous decision

	A	B	C	D	E	F	G	H	I
108		<p>Vitrabond Aluminium cladding system or equal approved; Nano coating; including 80mm Kingspan K15 insulation or equal approved, vapour control membrane and adjustable bracket support system; intumescent cavity barrier; fire stopping; corners (floor to floor fixing uplift costs included separately)</p>	<p>To address the existing poor thermal efficiency of the block which does not meet building regulations and to ensure that the repaired structure is protected to provide a fully insulated, weathertight, low maintenance external envelope. Also to improve the energy efficiency of each flat to address fuel poverty and to provide the block with a low maintenance future for a further 30 years or more.</p>	Sch 5, item 8	Repair	Yes.	<p>repair only if this existed before and is damaged. Otherwise improvement.</p>	<p>As per the previous row. In addition the application of fire stopping on the external face of the building will reduce the risk of external fire spread which has been the cause of secondary fires in other tower blocks and, as a known risk, the Lessor is obliged to take action where such can reasonably taken.</p>	See previous decision

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115	<u>Windows /</u> <u>Enclosed</u> <u>Balconies</u>						<p>Improvement. Aluminium cased, different sizes and with solar film. In consultation the windows were consistently claimed to be improved, with example of triple gazing shown. If repair, the windows should be replaced with same type using trickle ventilation as advised by other councils http://www.oldham.gov.uk/download/downloads/d/584/building_regulations_replacement_windows</p> <p>All windows in my property (57 Plowman Tower) function</p>	<p>As part of the design value engineering pre- tender, costs savings that may be achieved if PVC or composite windows were installed were considered. However, the objective of providing the 30- year lifespan required could not be achieved by a cheaper means than the chosen product, powder coated aluminium window and door sets.</p> <p>As above. There is little point in a piecemeal repair. If thermal savings are to be achieved, replacement of all windows is required.</p>	

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116							<p>propeny, after minimal maintenance (ca £50 over past 4 years, one gear mechanism and additional draftproof tape). All but one window in the publically accessible staircase appear sound too. Many bear evidence of poor maintenance (use of inappropriate fittings for the type of the window).</p> <p>Excessive examples include one window's tilt-open panel (14th floor) screwed to the frame, one other misshaped, most likely by prolonged strain due to inappropriate fittings.</p>		

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117							<p>Other window problems appear to be addressable by appropriate brassware (tilt-turn striker plates - functional replacement cost in retail ca £8, best would be to recast exact same type at maybe twice that price, or recycle brassware from other blocks in gradual refurbishment process) and appropriate gear systems. Notably the Landlord repair services were not able to advise about the correct type of fitting nor stocked any. Case statement shows the repair quote of such windows costs in order of £200-300.</p>	<p>As stated above, the windows have reached the end of their life and to maintain an objective of a 30-year future life, the existing window elements such as glass, frames, seals and ironmongery would not last for that period; individual replacement would be more expensive both in material cost as material costs will increase over time, and resource in enabling such repetitive repairs.</p>	

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123		Enclosed balconies - Remove existing balcony balustrade mesh/board system or other (remove mesh/board - concrete upstands to be retained)	To enable the installation of the enclosed balconies	Sch 5, item 8	Repair	Yes.	Improvement. Double insulation above the improved balcony windows and doors. Effectively a conservatory, extending the flat area by ~10%, potentially subject to trigger council tax increase (not excluded by the Applicant). In advertising materials during consultation the Applicant called the balconies "winter garden" as adds new aspect of the whole-year-round use to the balcony space.	The balustrading needs to be replaced and, because of the disturbance to the integrity of the balcony as a whole, the asbestos panelling would need to be removed. As the balcony structure is being replaced then it becomes controlled under Requirement K. The balcony is not a thermally protected area, however, and it is not an extension to the flat. As to non-use of the balconies raised by Mr Biegus, due to the flying gantries being used to undertake repairs to the complete elevation throughout the duration of the works, the health and safety of residents was a primary concern and a risk of residents being caught by the moving machinery existed if balconies remained in use. Further, the balcony balustrade was known to contain asbestos material and had to be removed early in the contract by a certified contractor to safeguard the safety of residents and the workforce; as the reinstatement of the balustrade is not due until later in the contract due to the sequencing of works, the balconies could not be safely used by residents. The existing	The Tribunal determines that this is purely an improvement. As it is agreed that the balcony forms part of the demises, query whether the Applicant has the right to interfere with the balconies in this way. Not payable,
124									

	A	B	C	D	E	F	G	H	I
129		Additional works to enclosed balcony roofs; 14th floor balconies concrete slabbed roofs; single ply roof coverings on plywood board, dressed into new drainage channel, include additional insulated cladding strip required fixed to structure		Sch 5, item 8	Repair	Yes.	as above	As above. Repairs necessary to maintain the balcony floor	The only repair/maintenance work is to the roofs and floors. When costed as a separate item, they are payable
130		Enclosed balconies - Metsec backing wall, fixed to balcony slabs, dpm, Aluminium / Insulated Render / Brickslips to match external cladding; Trespa lining to solid balustrade internally; including provision for all openings, abutments, junctions and head details etc.		Sch 5, item 8	Repair	Yes.	as above	As above. These works are necessary to provide weathered and robust junctions between various wall, floor, soffit, door and balustrade elements.	see previous decision
131		Enclosed balconies - Trespa panel insulated system or equal approved finish to balcony reveals, and walls; including insulation and fixings; allow to work around rwp's in balcony areas	as above	Sch 5, item 8	Repair	Yes.	as above	As above. Works necessary to provide insulation that is required to repair defects such as condensation.	see previous decision
132		Extra over for Metsec Frame to balcony; wall extended by approx. 500mm	as above	Sch 5, item 8	Repair	Yes.	as above	As above	see previous decision
133		Balconies soffits as architect's details; decoration to existing concrete	as above	Sch 5, item 8	Repair	Yes.	as above	As above	see previous decision

	A	B	C	D	E	F	G	H	I
134		New floor finishes to balconies; decoration to existing concrete and bitumen	as above	Sch 5, item 8	Repair	Yes.	<p>as above, and also part of forced interior decoration onto leaseholders. According to the deeds of my lease, point.8.2 the medial side of any wall (i.e. presumably floor too!) belongs to me and i have the sole right to decide on its finish and decoration.</p> <p>In advertising materials the design is supposed to stop pigeon nesting, but this function correctly fulfilled by current mesh-net at a miniscule fraction of the cost. Some tenants decided to remove these, and similarly they can keep the external windows open, so this does not even address the problem.</p>	<p>The First Schedule provides simply that the "internal walls between such levels", i.e. between the flat below and above are the tenant's. Any external floors do not form part of the structure between the floors of the flat and the ceilings of the flat below it as the balcony floor does not reach the ceiling of the flat below it and can only apply to the internal floors. This is made clear by the landlord's repairing obligations which largely match those areas not within the demise (8th paragraph of 5th Schedule).</p> <p>The landlord has weighed up all different options and Mr Plechnik has highlighted the problem with "policing" the use of the meshnet. The enclosed balcony represents the best solution given current safety legislation and the difficulty of policing meshnets.</p>	general maintenance and payable
135									
136	Roof works						<p>GENERAL NOTE: roof surface used to be communal area accessible to residents. Currently it is closed to residents and available only to mobile mast operators for profit. This profit</p>	<p>Main roof areas were historically used for residents to dry clothes. However, its use had to unfortunately be withdrawn due to on-going anti-social behaviour and high</p>	

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137							<p>does not appear to contributing to the maintenance of the related structures where they would be the major contributor to wear and tear.</p> <p>Also lack of cloth airing facilities (and explicit permission to use balconies for that purpose) may have encouraged residents to dry cloths in the flats contributing to reported in press moisture and mold problems, problems addressed by insulation, windows, heating and ventilation at the cost to leaseholders, even though can be traced to denial of roof access to increase profit to the landlord.</p>	<p>maintenance costs to reinstate the area following such behaviour. The presence of balconies on all flats provide equal drying facilities. Mobile phone companies have a contractual and statutory right to access the roof to maintain and renew their structures pursuant to agreement with the Council and paragraphs 2 and 23 of Schedule 2 to the Telecommunications Act 1984 (as amended by the Communications Act 2003). The profit derived from contracts for telephony is irrelevant to matters in hand.</p> <p>The landlord cannot control how the individual leaseholders choose to dry their laundry and any consequential effect on the ventilation of the building. This does not detract from the health and safety need to close the roof during the works.</p>	
138									

	A	B	C	D	E	F	G	H	I
139		Allow for repairs to existing roof surface finish; regulating course prior to laying new roof to even out roof	Necessary works to maintain the roof in good and substantial repair.	Sch 5, item 8	Repair	Yes.	<p>repair only if this element existed before, is damaged and any aspect of performance is not increased above minimum legal norm or initial specifications. Otherwise improvement. Notably the landlord quotes 10% improvement on regulatory insulation performances. Better access to the roof serves only landlords purpose as the beneficiary of the roof rental to mobile mast companies.</p>	<p>Reference is made to the repair v improvement arguments in the statement of case and the comments above. When a roof covering is stripped off to be replaced then this is then controlled under Requirement L1B through the renovation of a thermal element (see the definitions at pages 6 and 7 of Requirement L1B and includes the need for the provision of insulation to the roof and ventilation to the roof under Requirement C2. In requirement C, pages 39 et seq deal with roofing requirements. Improvement thermal insulation does benefit tenants by reducing energy bills, for example, but in fact the precise</p>	Not payable - see decision

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140								beneficiary of the statutory requirements is irrelevant when the obligation is imposed by statute. Attached are the roofing reports by Langley Roofing system which sets out the following process 3.23 Redundant Penetrations - Remove: "The contractor must identify all redundant penetrations and carefully remove and dispose to suitable waste container. Make good holes in deck/substrate surface" hence the work falls under L1B.	
141		Roofing system; finishes as architect's details; Bauder or equal approved; 140mm insulation to achieve minimum u value as architect details; repairs to roofs including drainage repairs if required, to deal with ponding issues etc.; working around telecom / mobile masts	as above	Sch 5, item 8	Repair	Yes.	repair only if this element existed before, is damaged and any aspect of performance is not increased above minimum legal norm or initial specifications. Otherwise improvement. Notably the landlord quotes 10% improvement on regulatory insulation performances. Better access to the roof serves only landlords purpose as the beneficiary of the roof rental to mobile mast companies.	Again this adopts a too restrictive interpretation of repair. See previous box. Works necessary to maintain the roof in good and substantial repair and comply with relevant building regulations.	see previous decision

	A	B	C	D	E	F	G	H	I
142		Parapet as architect details; proprietary pressed metal capping; plywood and DPM, EPDM seals and all associated works	as above	Sch 5, item 8	Repair	Yes.	repair only if this element existed before, is damaged and any aspect of performance is not increased above minimum legal norm or initial specifications. Otherwise improvement, in particular if this may serve the landlords interest in improving acces and safety for mobile masts, from which they, and only they derive profit. Any architectutal advice is also typical for improvements, not straightforward repair/replacement.	As per the previous box. As above re structural work to the parapets and defective parapets that require replacement.	This is to do with the roof and is not payable - see above
143		Balustrades at roof level - Allow to cut off/demolish concrete beam and column at high level and replace with new mesh / perforated panels balustrade; include waterproofing to posts and fixings	as above	Sch 5, item 8	Repair	Yes.	as above	As above re structural work to the parapets and defective parapets that require replacement.	the experts agreed that this could have been a repair and costed as such
144									
145							Importantly the above list is very short, just 79 positions. This number of positions appears to be reached by page 4 of the 9 in the cost schedules. Beyond this point, leaseholders have been left to investigate item by item which elements are missing, and anything not mentioned (especially design fees, insurances, overheads) should be not accounted as. In particular Project management, cannot be considered as	The design and project management costs comprise the colts of the Council's officer time and costs from EC Harris and Arcadis, including preliminary survey costs. To clarify, the design and project management costs are sought to be recovered as per the demands of 4 January 2016 but no further charges for internal costs or Arcadis costs after the schedule was issued were sought to be recovered, as a gesture of goodwill.	

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146	<p>repair, as the contractor provides full representation and representatives on-site, not justifying additional ~10% surcharge for unknown aspects of the project management by the Applicant's staff. What exactly do they 'repair'?</p>								