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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
EASTERN PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case No : CAM/00MB/LSC/2010/0060

Properties : 14,20,29,38,39,40 & 44 Hunters Hill, Burghfield
Common, Berkshire RG7 3HL

Applicant : Sovereign Housing Association

Respondents : Ms. McCoid (14) , Mr Bentley (20), Miss Honti
& Mr Molnos (29), Mr Smith (38), Miss Dagless,
Miss Peek (40), Mr Eyley & Miss Crowley (44)

Hearing : 11th August 2010

Determination : 11th August 2010

Tribunal : Stephen Reeder (lawyer chair)
Richard Marshall FRICS FAAV (valuer member)
Peter Tunley (lay member)

Application : Application for a determination of liability to pay
service charges pursuant to section 27A of the
Landlord & Tenant Act 1985

DECISION

DECISION

Proposed works which are re-chargeable as service charges

The Tribunal determines that the following works items contained in the draft tender specification of proposed works dated 21st May 2010 are re-chargeable as service charges pursuant to both the NDC and WBHA leases relating to the properties listed above –

- 3B01 Renew rainwater goods
- 3B02 Renew fascia, soffits and barge boards
- 3B03 Renew the external PVC cladding
- 3B04 Localised re-pointing as required subject to inspection
- 3B05 Repair and redecorate pebble dash render as required subject to inspection
- 3B06 Renew the outer brick skin of cavity walls as required subject to inspection
- 3C01 Redecorate the canopies to the main entrance doors
- 3C02 Redecorate the communal entrance doors & surrounds to the flat doors
- 3D01-2 Renew & improve door frames & doors to communal electrical cupboards
- 3D03-7 Renew flooring to common areas
- 3D10 Redecorate the communal parts
- 3D11-17 Renew communal electrical wiring & lighting to internal common parts & 110C
- 110A Repair or renew roof services as require subject to inspection
- 110E Remove asbestos as required subject to inspection
- 310A Renew frames to communal windows and those within demised flats which bound the property
- 310B Renew the existing door entry system
- 310C Renew communal entrance doors

Proposed works which are not re-chargeable as service charges items

The Tribunal determines that the following works items contained in the draft tender specification of proposed works dated 21st May 2010 are not re-chargeable as service charges pursuant to the respective leases relating to the properties listed above –

- 3B07 Redecorate the balustrades to the balconies
- 3D08-9 Renew and redecorate the communal hall ceilings*
- 3E01-36 Re-wire & redecorate the internal parts of flats
- 110B Remove & re-instate satellite dishes, aerials & cables
- 110D Internal works to flats as required subject to inspection
- 310D&E Renew entrance doors to demised flats

*In relation to 3D08-09 the situation is not straight forward and the parties' attention is directed to paragraph 27 of the Reasons below.

The works project management charge

The Tribunal determines that the works project management charge contained in the draft tender specification of proposed works dated 21st May 2010 is re-chargeable as a service charge pursuant to the respective leases relating to the properties listed above, but that the proposed charge of 10% of the costs of the works is unreasonable and excessive. Having regard to

the nature and extent of the proposed works programme, and to the Tribunal's own knowledge of industry standards and costs a works project management charge of 6-7% will be reasonable.

The costs of the Tribunal

The Tribunal determines that there is no provision in the lease which permits it to re-charge the costs of and occasioned by these tribunal proceedings as a service charge now or in the future. In such circumstances there is no need for the Tribunal to consider any order pursuant to section 20C of the Landlord & Tenant Act 1987 precluding it from doing so.

REASONS

Parties & Attendance

1. Directions were issued by the Tribunal on 1st June 2010 which provided for a paper determination without the need for an inspection or hearing subject to objection by any party. Accordingly, the application was listed for a paper determination on 9th July. The Tribunal office was subsequently notified by the lessee of 38 Hunters Hill, Mr Smith, that all correspondence to him had incorrectly been addressed and sent to 39 Hunters Hill. He requested an adjournment of the 9th July determination and further requested an oral hearing. As a result Mr Smith was provided with the Tribunal's Directions Order, the paper determination was vacated and an oral hearing listed for today.
2. Direction 2 of the Direction Order required the applicant landlord to file and serve a statement together with all supporting information and documents relevant to the application. The same was provided and is included within a well considered and prepared bundle filed and served in advance of this hearing. Direction 3 of the Direction Order provided as follows –

The respondents must, whether jointly or separately at their discretion, by 4pm on Wednesday 16th June 2010, serve on the applicant a written statement which, by reference to the information, documents and statement provided by the applicant, shall –

- (a) *State whether the need for any of the proposed works is disputed and, if so, the basis for that.*
- (b) *State whether the estimated costs for those works are challenged and, if so, the basis for that.*
- (c) *State whether it is disputed that the respondent is liable for the reasonable costs of the proposed works and, if so, the basis for that.*
- (d) *State whether the due proportion, share or individual estimated cost stated by the applicant is disputed and, if so, the basis for that.*

3. No respondent has filed any such statement, information or documents. Mr Smith has not filed any such statement, information or documents. In the event Mr Smith has not attended today's hearing. He has given no prior notification to the Tribunal or to the applicant of not attending. The hearing was notified to commence at 10.30am. At that time the Tribunal has telephoned Mr Smith to confirm whether he is to attend the hearing. The clerk to the Tribunal and the Chair of the Tribunal have both talked to Mr Smith on the telephone. He has confirmed that he does not intend to attend. He has confirmed that he has not notified either the Tribunal or the applicant of this in advance of today. He states his reasons as –

- (i) The hearing falls within the school summer vacation ; and
- (ii) Having read the hearing bundle he has no substantive objection to the proposed works.

4. When asked why he has not notified the Tribunal or the applicant that he will not be attending the oral hearing that he has requested he replied "Why would I?". The Tribunal Chair has nonetheless asked him to state any issues which he wishes the Tribunal to raise with the applicant landlord whilst hearing the application. He identifies the issue of staged/instalment payments of the service charges relating from the proposed major works programme.

5. Mr Smith has forcefully objected to the Chair admonishing him for requesting a hearing and then neither attending the same nor giving prior notification that he will not be attending the same. He states that he intends to complain about the Tribunal's management of the application and misdirection of correspondence to flat 39. He may do

so and should direct any such complaint to the President of the Eastern Rent Assessment Panel at Quern House. Nonetheless, this Tribunal takes a very dim view of his conduct. Vacating the proposed paper determination, convening a three member panel and arranging a hearing venue for an oral hearing has involved a substantial cost to the public purse. The applicant, understandably, has attended so using officer time which would have been avoided by the proposed paper determination. These wasted costs could have been avoided by the simple courtesy of Mr Smith notifying the Tribunal and/or applicant that he no longer has any issue with the proposed works, no longer requires an oral hearing, and/or does not intend to attend the oral hearing which is listed. In the event, and on this occasion only, the Tribunal has excused his conduct, has not made any adverse costs order against him, and has disregarded his conduct when determining the application.

6. The applicant landlord has been ably represented by Linda Clark (leasehold services manager), Sean Craig (leasehold services project manager) and Paul Wright (senior project manager). In addition the applicant has provided us with a well considered and ordered bundle of documents for which we are grateful.

Parties to the Application

7. For the purposes of this application Hunters Hill consists of 48 flats in 4 purpose-built blocks each containing 12 flats. Those blocks are respectively numbered 1-12, 13-24, 25-36, 37-48. When issued this application was accompanied by a separate application in the same terms relating to a further block on the Hunters Hill estate. However, the landlord has sought and been granted permission to withdraw that application as the specification of proposed works has not been finalised and there is an urgent need to decide the instant application so that the major works programme can be progressed without further delay. As a result this application relates only to 1-48 Hunters Hill.
8. The applicant acquired the freehold reversionary interest in the flats in these blocks by a 'stock transfer' of the whole of each of the blocks block from Newbury District Council and/or West Berkshire Housing Association. 41 of the flats are occupied by assured tenants who are not subject to service charge covenants and so are not parties to this application. 7 of the flats are demised by long (125 year) leases granted by Newbury District Council and/or West Berkshire

Housing Association. It is these long leaseholders who are the respondents on this application. Those lessees and flats are Ms. McCoid (14), Mr Bentley (20), Miss Honti & Mr Molnos (29), Mr Smith (38), Miss Dagless (39), Miss Peek (40), Mr Eyley & Miss Crowley (44). All have been served with the application and with the Tribunal's Directions Order. None have made any replies or submissions in writing or otherwise to the Tribunal. None appear before us today.

Scope of the application

9. The applicant proposes a block refurbishment programme of major works to 1-48 Hunters Hill. Block 1-12 is wholly occupied by assured tenants and works to that block have been undertaken first and completed in January 2010. The final specification and actual costs for that block have been used to prepare the draft specification of works proposed for the remaining 3 blocks together with the estimated costs of those works. The applicant wishes to continue the refurbishment programme across the remaining three blocks which contain long lessees as well as assured tenants. This application is intended to provide a determination as to which of the proposed works may be recharged to those long lessees as service charges. This determination will therefore inform which of the proposed works are included in the final draft schedule of proposed works, and will be of use for the forthcoming consultation process pursuant to section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements)(England) Regulations 2003. A notice of intention to carry out works under this procedure has been sent to all lessees on 19th July and requires replies by 20th August. None have been received at this time. This application is restricted to determining liability to pay the costs of works as a service charge pursuant to the leases. The applicant accepts that we can make no proper determination as to the reasonableness of the proposed costs as they are estimates taken from an earlier contract and remain subject to the section 20 consultation process and to contractors being appointed for a settled contract price

The Tribunal's jurisdiction – the law

10. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of 'service charge' and 'relevant costs'

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) Which is payable , directly or indirectly, for services, repairs, maintenance, improvements¹ or insurance or the landlord's costs of management, and
 - (b) The whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose –
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19. Limitation of service charges : reasonableness

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

Section 20C : Limitation of service charges : costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be

¹ 'Improvements' were added to the definition of 'service charge' by the Commonhold & Leasehold Reform Act 2002

taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made –
 - (a)
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A. Liability to pay service charges : jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to:
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.

Liability – the lease provisions

11. The affected lessees hold their respective interests from leases granted by either Newbury District Council ('NDC') or West Berkshire Housing Association ('WBHA'). The standard NDC lease has different provisions to the standard WBHC lease. Nos 14 & 20 Hunters Hill are held on NDC leases. Nos 29, 38, 39, 40 & 44 Hunters Hill are held on WBHA leases.

The Newbury DC lease

12. The NBC lease includes the following relevant provisions –

Clause 1 defines the service charge as a proportion of the expenses and outgoings incurred by the council in the repair renewal maintenance expenses and outgoings mentioned in the Fourth Schedule and the details of which are referred to in clause 3(4)

Clause 1 defines the building as all that building consisting of dwellings of which the property forms a part

Clause 1 defines the demised property as the dwelling be it a flat or maisonette as described in the First Schedule

The First Schedule provides that the demised property includes the floor and its structure, the ceiling and its structure up to the joists for the floor above, the internal parts of structural or non-structural walls balcony or partitions, all pipes in the building which exclusively service the property, all landlord fixtures and fittings in the property, internal doors and door frames wholly within the property, all glass fitted in window or door frames, and the porch area if any situated immediately adjacent to the property.

Paragraph 1 of the Fourth Schedule provides that the expenses which are due from the lessee by a proportionate service charge include the expense of maintaining repairing redecorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the building and all parts thereof

Paragraph 1 of the Fifth Schedule sets out the landlord's obligations as being, inter alia, to maintain repair redecorate and renew amend cleanse repoint paint grain varnish whiten or colour (as often and in such manner as the Council shall think fit) the structure and exterior of the building but excluding any part expressly included in the property, the pipes serving the building and the property, the common parts including stairs rails windows doors ceilings and walls excluding those expressly included in the property.

Paragraph 5 of the Fifth Schedule states the landlord's obligation to pay all other expenses (if any) in and about the maintenance and proper and convenient management and running of the building".

The West Berkshire HA lease

13. The WBHA lease includes the following relevant provisions –

Clause 1 defines the service charge as a proportion of the expenses and outgoings incurred by the landlord in the repair renewal improvement (emphasis added) maintenance expenses

and outgoings mentioned in the Fourth Schedule and the details of which are referred to in clause 3(4)

Clause 1 defines the building as all that building consisting of dwellings flats or maisonettes of which the property forms one

Clause 1 defines the demised property as the dwelling be it a flat or maisonette as described in the First Schedule

The First Schedule provides that the demised property includes the floor and its structure, the ceiling and its structure up to the joists for the floor above, the internal parts of structural or non-structural walls balcony or partitions, all pipes in the building which exclusively service the property, all landlord fixtures and fittings in the property, internal doors and door frames wholly within the property, all glass fitted in window or door frames, and the porch area if any situated immediately adjacent to the property.

Paragraph 1 of the Fourth Schedule provides that the expenses which are due from the lessee by a proportionate service charge include the expense of maintaining repairing redecorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the building and all parts thereof

Paragraph 1 of the Fifth Schedule sets out the landlord's obligations as being, inter alia, to maintain repair redecorate and renew (including improving) amend cleanse repoint paint grain varnish whiten or colour (as often and in such manner as the Council shall think fit) the structure and exterior of the building but excluding any part expressly included in the property, the pipes serving the building and the property, the common parts including stairs rails windows doors ceilings and walls excluding those expressly included in the property.

Paragraph 5 of the Fifth Schedule states the landlord's obligation to pay all other expenses (if any) in and about the maintenance and proper and convenient management and running of the building".

14. The material difference between the leases is therefore the addition of "improvement" to the clause 1 service charge definition for the Fourth Schedule service charge items and Fifth Schedule landlord's obligations in the WBHA lease which is not found in the NDC lease.

The proposed works

15. The Tribunal has been greatly assisted by the 'scott' type schedule produced by the applicant in response to paragraph 2 of the Tribunal's Directions Order of 1st June. This is situated at page 263 of the bundle before us and should be read alongside this Decision. The items numbers used in the Decision summary in pages 1 and 2 above, and in the following paragraphs, are taken from that schedule. In interpreting liability under the respective leases the Tribunal is mindful that, in the event of any ambiguity in any clause it must ordinarily interpret that clause contra preferentem : against the landlord. For clarity each proposed works item is considered separately.
16. "3B01- Renew rainwater goods". The rainwater goods are dilapidated. It is reasonable to renew them. This item is within the scope of the renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
17. "3B02- Renew fascia, soffits and barge boards." These items are dilapidated. It is reasonable to renew them. These items are within the scope of the renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
18. "3B03-Renew the external PVC cladding". The existing PVCu cladding to the communal landings and staircases is dilapidated. It is reasonable to renew it. This item is within the scope of the renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
19. "3B04-Localised re-pointing as required subject to inspection". This is a provision item only and subject to inspection once scaffolding is erected. Insofar as an inspection finds defective pointing the raking out and repointing will be within the scope of the repair and renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
20. "3B05-Repair and redecorate pebble dash render as required subject to inspection". This is a provision item only and subject to inspection once scaffolding is erected. Insofar as an inspection finds defective/loose pebble dash render the hacking off and making good of the same will be within the scope of the repair and renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge .

21. "3B06-Renew the outer brick skin of cavity walls as required subject to inspection". This is a provision item affecting localised areas and subject to inspection once scaffolding is erected. Insofar as an inspection finds areas of the wall to be in disrepair then the renewal of the same will be within the scope of the repair and renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
22. "3B07-Redecorate the balustrades to the balconies". On inspection and upon consideration of both the NDC and WBHA leases it appears to the Tribunal that the balcony balustrades fall within the individual flats demised to individual lessees. Redecoration of the same is the responsibility of the lessees. However, it may provide value for money/economies of scale, to include such works in this block programme but this may only be achieved by agreement between the affected parties.
23. "3C01-Redecorate the canopies to the main entrance doors". The canopies clearly require redecoration. This item falls within the redecoration provision in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
24. "3C02-Redecorate the communal entrance doors & surrounds to the flat doors". This item relates to the masonry surrounds, reveals and soffits to the communal entrance doors and to two of the flat entrance doors. The same are retained as parts of the block. They require redecoration. This item falls within the redecoration provision in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
25. "3D01-2 Renew & improve door frames & doors to communal electrical cupboards". The cupboards are situated in the ground floor communal entrance halls where the electricity supply enters the blocks and serve all of the flats in each block. The doors and frames require renewal. It is proposed to renew with materials to comply with the prevailing FD30S fire resistant standards and warning signs. The Tribunal take the view that this is nonetheless a renewal rather than an improvement, and so falls within the scope of the repair and renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
26. "3D03-7 Renew flooring to common areas". The flooring to communal entrance hallways, stairs and landings is now 15-20 years

old and is dilapidating. It is reasonable, and should provide value for money/economies of scale, to include it in this block programme. The Tribunal notes the landlord's statement that it will consult on the new products/finishes to be specified in the final specification. These items fall within the scope of the renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.

27. "3D08/09 Renew and redecorate communal hall ceilings".

Decoration of communal hall ceilings falls within the redecoration provisions in both the NDC and WBHA leases. In principle it will be reasonable and should provide value for money/economies of scale, to include it in this block programme. However, the need for renewal of the ceilings was not readily apparent on the materials before the Tribunal today nor established by evidence at the hearing. If on close inspection the ceilings are in disrepair and renewal is required then the item may in principle fall within the renewal provisions in both the NDC and WBHA leases and the cost be rechargeable as a service charge. If in fact the ceilings will be disturbed and require renewal as part of the proposed renewal of communal parts wiring and lighting (3D11-17 & 110C) then the item may in principle fall within the renewal provisions in both the NDC and WBHA leases and the cost be rechargeable as a service charge. It appears from the specification (at page 222 in the documents bundle before us) that this item may actually intend a new suspended ceiling to house and mask the renewed electrical wiring. If this is the most cost effective way of achieving the renewal of common parts wiring and lighting (3D11-17 & 110C) then, subject to proper consultation with the lessees affected, the item may in principle fall within the renewal provisions in both the NDC and WBHA leases and the cost be rechargeable as a service charge. If the proposed ceiling renewal is neither a response to disrepair nor a necessary ancillary to electrical works then it will be an improvement which falls outside of the provisions of the NDC lease but within the provisions of the WBHA lease and so only rechargeable as a service charge to flats 29,38, 39, 40 & 44.

28. "3D10 Redecorate the communal parts". Decorations are now ageing and dilapidating. Redecorations appear to be well overdue. It is reasonable, and should provide value for money/economies of scale, to include the same in this block programme. The item falls within the scope of the redecoration provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.

29. "3D11-17 Renew communal electrical wiring & lighting to internal common parts & 110C". The communal electrical installations are now ageing and may be dilapidating. The scope of the renewal is provisional upon an inspection and report as directed by the contract administrator as per item 110C. If renewal is required then it will be reasonable, and should provide value for money/economies of scale, to include it in this block programme. In such circumstances these items will fall within the scope of the renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
30. "3E01-36 Internal wiring and decoration of flats". On inspection and upon consideration of both the NDC and WBHA leases it appears to the Tribunal that these items fall within the individual flats demised to individual lessees and is the responsibility of the lessees. However, it may provide value for money/economies of scale, to include such works in this block programme but this may only be achieved by agreement between the affected parties.
31. "110A- Repair or renew roof services as require subject to inspection". This is a provisional item subject to inspection when full access to the roof is available by scaffolding etc during the programmed works. If repair or renewal is required then it will be reasonable, and should provide value for money/economies of scale, to include it in this block programme. In such circumstances any required repair or renewal works will fall within the scope of the repair and renewal provisions in both the NDC and WBHA leases. The resulting cost can be recharged as a service charge.
32. "110B- Remove & re-instate satellite dishes, aerials & cables". As a matter of practicality this may be required to carry out the external works specified in items 3B03-06 and/or to enable erection of scaffolding. The landlord's repair and renewal obligations in the leases neither expressly nor obviously envisage a right to carry out such removal and reinstatement and recharge the costs as a service charge item. This is not surprising given such dishes, aerials and cables are installed and maintained by, and remain the responsibility of, individual lessees. It follows that some may have such equipment and others will not. Nor does paragraph 5 of the Fifth Schedule appear to be intended to encompass such removals and reinstatements affecting some but not all of the lessees. In interpreting liability under the leases the Tribunal is mindful that, in the event of any ambiguity it must ordinarily interpret the lease contra preferentem : against the landlord. The Tribunal determines that this item cannot be recharged

as a service charge. It is a management issue for the landlord. As a matter of practicality However, it may provide value for money/economies of scale, to offer to carry out such removal and reinstatement for all those lessees with that equipment and charge them a due proportion of the costs but this may only be achieved by agreement between the affected parties.

33. "110D-Internal works to flats as required subject to inspection". On inspection and upon consideration of both the NDC and WBHA leases it appears to the Tribunal that these items fall within the individual flats demised to individual lessees and are the responsibility of the lessees. However, it may provide value for money/economies of scale, to include such works in this block programme but this may only be achieved by agreement between the affected parties.
34. "110E-Remove asbestos as required subject to inspection". This is a provisional item to remove any asbestos which is revealed by the proposed works. It would not be unusual to find such materials when carrying out items such 3B02 (renewing facia, soffits and bargeboards), 3D03-7 (renewing flooring to communal areas), 3D11-17 (renewing communal wiring and electrics). In such circumstances mandatory legal and health & safety obligations arise which make the asbestos removal works a reasonable consequence of and part of those works.
35. "310A-Renew frames to communal windows and those within demised flats which bound the property". Communal windows fall outside of the demise of the individual flats. Para 3(iii) of the First Schedule to each of the leases expressly excludes window frames bounding the property" from the demise of individual flats. It follows that these window frames fall within the renewal provision of both the NDC and WBHA leases. On the materials before the Tribunal this item appears to be justified given their present condition. The resulting cost can be recharged as a service charge.
36. "310B-Renew the existing door entry system". Whilst the leases make no reference to the door entry system such a system is in place in all blocks. Paragraph 1 of the Fifth Schedule expressly obliges the landlord to repair and renew the common parts doors. The Tribunal reads the lease within its actual context and determines that this item falls within the renewal provisions in both the NDC and WBHA leases. This is a provisional item and the Tribunal were unable to test the system during the inspection to determine whether renewal is required. Doubtless this will be subject to proper inspection and

consideration during the statutory consultation process. If renewal is required then it will be reasonable, and should provide value for money/economies of scale, to include it in this block programme. In such circumstances any required renewal works will fall within the scope of the renewal provisions in both the NDC and WBHA leases and the resulting cost can be recharged as a service charge.

37. "310C-Renew communal entrance door". Paragraph 1 of the Fifth Schedule expressly obliges the landlord to repair and renew the common parts doors. On the materials before the Tribunal it appears that renewal is or will soon be merited. It is reasonable, and should provide value for money/economies of scale, to include the item in this block programme. In such circumstances the item will fall within the scope of the renewal provisions in both the NDC and WBHA leases and the resulting cost can be recharged as a service charge.

38. "310D&E-Renew entrance doors to demised flats". Upon consideration of both the NDC and WBHA leases it appears to the Tribunal that this item falls within the individual flats demised to individual lessees and so is the responsibility of the lessees. However, it may provide value for money/economies of scale, to include such works in this block programme but this may only be achieved by agreement between the affected parties.

The works project management charge

39. The proposed charge is 10% of the total budgeted costs. During the hearing the landlord stated that this charge is made to cover the costs of inspecting the block, drawing up the specification of works, producing all of the tender documentation, managing the tendering process, project management of the works on site, management and the staged and final payment process. It is specifically and discretely for managing the proposed works programme. The Tribunal cannot therefore accept the applicant's contention that paragraph 6 of the Fourth Schedule imposes a liability on the lessees to pay this management charge as a service charge. However, paragraph 1 of the Fourth Schedule read with paragraph 5 of the Fifth Schedule and in the context of the lease as a whole, do permit the applicant landlord to recover such a management charge as a service charge.

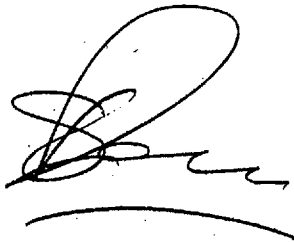
40. Accordingly, the Tribunal determines that the works project management charge contained in the draft tender specification of proposed works dated 21st May 2010 is re-chargeable as a service

charge pursuant to the respective leases relating to the properties listed above.

41. The applicant states that proposed percentage of 10% is taken directly from paragraph 6 of the Fourth Schedule. That paragraph and so that figure are intended to relate to the management costs of producing an annual certificate of service charge and so does not operate to set the works project management charge. The Tribunal applies its own knowledge of the sector and industry standards determines that, having regard to the nature and extent of the proposed works a management charge of 6-7% will be reasonable.

The costs of the Tribunal

42. Paragraph 5 of the Fifth Schedule does not impose liability on the lessees to pay the landlord's costs of this application as a service charge. The applicant accepts that there is no other provision in the lease which permits it to re-charge the costs of and occasioned by these tribunal proceedings as a service charge now or in the future.
43. In such circumstances there is no need for the Tribunal to consider any order pursuant to section 20C of the Landlord & Tenant Act 1987 precluding it from doing so.



Stephen Reeder
Lawyer Chair