

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case number: CAM/00MD/LSC/2009/0099

Property: Block 1-15,
Block 2-16,
Block 18-32,
Block 34-48
Block 50-64,
Winvale, Slough, Berkshire SL1 2JQ.

Applicant: Slough Borough Council

Represented by: Mr Martin Strutt of Counsel instructed by Mr T Roffe of
People 1st who called
Mr J Craig Senior Project Manager People 1st
Mr P Robinson DIP ARH, RIBA Robinson Kenning
Gallagher
Mr P Wright Curtins Consulting Ltd
Mr A Steel IEng AMIStructE of Adams Consulting
Engineers Ltd
Mr R Bruce FRICS of Tuffin Ferraby Taylor
Miss K Hedges Data Collection and Information Manager
People 1st

1st Respondents

- (3) Mr A Hayes
- (4) Mr. N Khan
- (7) Mr. K Ashcroft
- (9) Mr. and Mrs. R Sulamjee
- (12) Mr. P Planel
- (13) Mrs. P Connolly
- (14) Mrs. Z Farooq and Mr. M Ramsan
- (15) Mr. and Mrs. Z Choudhary
- (18) Mr and Mrs. H Sawant
- (20) Mr. J Singh
- (24) Mr. and Mrs. R Khan
- (26) Mr. S Hussain and Mrs P Akhtar
- (28) Mr. and Mrs. C Dawson
- (30) Mr. and Mrs. I Webb
- (42) Mr. and Mrs. S Samuel
- (44) Mr. R Bowerbank
- (50) Miss. A Stasiewicz
- (56) Ms. V Gudge
- (60) Miss. S Pleace and Mr. T Wright
- (64) Mr. and Mrs. R Khan

Represented by Mr. C. Dawson (28) and Mrs. R. Khan (64) of
Leaseholders at Winvale (LAW).

2nd Respondent (8) Mrs. R Hussain
3rd Respondent (36) Ms. A Harvey (deceased) (Mr Warren)
4th Respondent (54) Ms. B Kadoma

Applications: Application for a determination of the reasonableness and payability of service charges in respect of proposed major works (Section 27A (3) Landlord and Tenant Act 1985) (The Act).

And an application for dispensation from serving notice of major works under section 20ZA of the Act.

And an application for the limitation of service charge arising from the landlord's costs of proceedings in the Leasehold Valuation Tribunal (Section 20(c) of the Act).

Tribunal: Mr. R. Brown FRICS (Chairman)
Mrs. J. Oxlade
Miss M Krisko BSc Hons (Estate Man) BA FRICS

DECISION

1. Regarding the Application under section 27A of the Act the Tribunal determines that the works proposed, subject to the detailed itemisation below are reasonable and are to be considered to be repairs not improvements under the terms of the leases. As to the proposed cost and standard of these works the Tribunal, for the reasons given below, makes no formal determination this stage.
2. Regarding the Application under section 20ZA of the Act the Tribunal grants dispensation in respect of those works in relation to the wall ties only. For the avoidance of doubt and for the reasons given below dispensation is not granted in respect of the BT cabling works.
3. An order is made by consent of the Applicant under Section 20C Landlord and Tenant Act 1985 preventing the Applicant from recovering the costs of these proceedings (in so far as the lease permits) by way of the service charge.

REASONS

The Application

1. It is not in dispute between the parties that the leases require service charges to be paid for the repair and maintenance of the building as described in more detail below.
2. The Application made by Slough Borough Council relates to a proposal for major works to the roof, windows and external cladding of the buildings.
3. The enabling works already undertaken comprise:
 - Fixing of stainless steel wall ties to secure the existing external cladding
 - The installation of new media service cables to the existing cladding so that on completion of the over-cladding they will be hidden.
4. The Major works to be undertaken and for which prior approval is sought comprise:
 - Recovering and extension to the existing flat roof to accommodate the new cladding.
 - Replacement double glazed windows.
 - Over-cladding of the entire exterior to replace the defective wall insulation.
 - Associated works including enclosing the common stairways, modification and upgrading of the drainage.

The Law

5. Extracts from the relevant law are at **Appendix 1**.

The Leases

6. There are 40 units of accommodation in five blocks, 17 of which remain in the ownership of the Applicant and are let on secure tenancies. The remaining 23 are held by individuals on long leases originally purchased by Respondents under the 'Right to Buy' legislation.
7. The Tribunal were provided with leases (**detailed at Appendix 2**) which are similar but fall into four different types: A, B, C and D. The significant difference being (for the purposes of the matters in hand) that Type B leases allow the Landlord to recover the costs of improvements.
8. The Leases in respect of Flats 8, 14 and 26 are still subject to capping under section 125 of the Housing Act 1985.
9. The leases all make slightly different provision for the proportion payable by each lessee. However the effect of this with regard to major works is that provided the extent of the work on each block is the same the charge per unit will be the same. The Applicants have taken the view and it is not disputed by

the Respondents that this will be the case and therefore the total costs should be divided by 40 to calculate the share attributable to each flat before making due allowance for the varying lessee covenants detailed above.

The Property and the Tribunal's Inspection

10. The Tribunal inspected the estate and the common access stairways (but not any individual flat internally) on the 5th February 2010 in the presence of representatives of both parties and afterwards held a Pre-Trial Review following which Directions Order No 2 was issued.
11. The estate comprises five blocks of eight flats located close to Junction 6 of the M4.
12. The blocks are four storey of 'Laing Easiform Type 2' non traditional construction typical of the local authority construction of the late 1960s. The blocks are accessed via a door entry system at ground floor level but are in part open to the elements above ground floor level.
13. Whilst it was evident that over the years maintenance work had been carried out including replacement windows and recovering the roof in 1998. It was evident to the Tribunal that due to the nature of the original construction the buildings were due for more extensive repair and improvement.

The Hearing

14. A hearing was held at the Copthorne Hotel, Slough over the 26th, 27th and 28th May 2010.
15. The Tribunal being aware that the Respondents were unrepresented indicated that they would where and when necessary use their inquisitorial powers.
16. During the proceedings various matters were either agreed between or conceded by the parties and these are listed below:

Conceded by the Applicant

- The Applicant acknowledged that the amount recoverable from the lessees is restricted by the terms of the various leases and the capping provisions (Housing Act 1985) applicable to Flats 8, 14 and 26.
- That the proposed balcony works were unnecessary and only required preparation repainting.
- That the TV cabling had been double counted but removed from the final submitted figures.
- That the provision of 2 different sets of media cables was unnecessary.
- That recovery of the cost of the wall ties would be limited to £159,000.00
- That the provision of a pitched roof to replace the existing flat roof was unnecessary at this time.
- The original drainage scheme was overambitious and therefore withdrawn.

Conceded by the Respondent

- That the work to install wall ties was necessary.

Applicant's Case

17. The Applicants case is that in 2008 they carried out an audit (Curtins) of all their 'non –traditional' housing stock, and following that audit various defects were identified at Winvale:
- The existing felt **roofs** had reached the end of their effective lives and it was proposed to replace the flat roofs with pitched roofs which would have a longer life expectancy. The new insulation would amount to an improvement and allowed at 100% of the cost.
 - The upvc **windows** were failing in terms of double glazed units leaking and collecting moisture, mastic failure allowing moisture to enter the wall cavity
 - The original construction omitted the fitting of wall ties between the two skins of the wall with the result that horizontal cracking has occurred. **Wall ties** have been installed to stabilise the building. This work has already been completed.
 - The original **cavity wall insulation** had decayed causing heat loss and condensation within the properties. Attempting to remove old insulation was not advisable and so it was proposed to re-clad the entire external walls to the blocks with an insulated cladding, followed by an **external render**. This proposal has a 20 year warranty.
 - The **external drains** had become blocked with tree roots and required replacement. In addition a new storm water ring was proposed to prevent flooding in heavy rain. It is accepted that part of this project constituted an improvement and calculated at 50% of the cost.
 - The **roofs to the common entrance halls** had reached the end of their serviceable lives and it was proposed to re-roof. Further it was proposed to **enclose the front and back entrance sections** to prevent water ingress through the currently open parts. It was accepted that part of these works were an improvement and this was calculated at 59% of the cost.
 - The existing **TV receiving equipment** required renewal as a result of the impending switch to digital. It was proposed to carry this work out at the same time. The first stage of the work has already been completed.
 - The metal **balustrading to balconies** was in disrepair and it was proposed to replace with new.
18. The work to the wall ties and first stage digital wiring has already been completed and, although it was maintained that the consultation process was implemented, dispensation from the requirements of section 20 was sought.
19. The Applicant has entered into Long Term Qualifying Agreements in about 2006 with 3 contractors. Subsequently, and in compliance with consultation regulations, the following notices were served:
- 6th February 2008- Schedule 1 Notice of Intention to undertake qualifying works was served on Winvale Residents.

- 12th June 2008 – Revised Schedule 1 Notice of Intention (to include wall ties) sent to Lessees.
 - 14th August 2008 – Notice and Statement of Estimates in relation to the proposed works sent to Lessees.
 - 14th January 2009 - Schedule 2 Notice of Proposal to enter into 'call off' contracts with up to three contractors was given to Winvale Lessees.
 - 8th June 2009 – Schedule 3 Notice including a statement of costs for each individual Lessee.
20. During the period of the service of these various formal notices consultation was held with Lessees at open meetings. Including a meeting to explain the necessity of urgently carrying out the wall ties pending the commencement of sheet piling works on the M4. The Highways Agency had identified two of the buildings as being within the sphere of influence.
21. As regards the elements of improvement (except the TV aerial wiring) identified above the Applicant was not seeking to recover this element in respect of the Lessees of lease types A, B and D but would do so in respect of type C.
22. All the leases permit recovery in respect of the TV receiving equipment.
23. A final breakdown of the revised total cost was presented to the Tribunal and the Respondent on day 3 of the Hearing.
24. The Applicant's Counsel called witnesses:
25. James Craig Senior Project Manager People 1st.
26. Mr Craig explained that following the Curtins report (above) the Applicants had employed Adams Consulting Engineers and Robinson Kenning Knight to review and advise on the structural elements of the project, Osma Wavin UK in respect of the drainage.
27. These reports identified:
- That the **roofs** had been recovered in 1998 and the coverings may last up to another 5 years but that the drainage which ran internally within the properties was of inadequate size and could not easily be renewed. It was further identified that should the existing flat roof be retained it would be necessary to extend the roof to overhang the walls further to accommodate new drainage and the proposed cladding.
 - That the **windows** installed in 1998 had no cavity trays and were inadequately fixed relying largely on external mastic and an internal bead to secure them. Further a significant number of the glazing units had failed leading to condensation in between the double glazing. These windows were therefore deemed obsolete as the manufacturers had gone out of business and in any event it was not cost effective to remove and reinstall them properly with the new cladding.

- The need for the installation of **wall ties** was identified in the Curtins Report and would be needed to strengthen the integrity of the building to accommodate the pitched roof. It became urgent for the work to proceed as the result of the Highways Agency proposal to carry out work on the nearby M4. Two of the blocks fell within the sphere of influence and it was practical to complete the work to all blocks at the same time before work started on the M4. The failure, having been identified, any damage resulting from the M4 work would not result in compensation if the work was not undertaken.
- The decision to **over-clad** the building instead of undertaking an exercise to remove the old insulation and re-insulate was taken as result of consultation with The Mark Group which concluded there were too many obstructions in the cavity to make removal a viable solution. This course of action would resolve a number of issues: heat loss, condensation, external render renewal, self maintaining facade with a 20 year warranty, aesthetically pleasing fenestration and a value for money solution.
- The conclusion from the feasibility study was that to enclose the **common entrances** would solve the problem of water ingress, provide a continuous roof embracing both blocks, and provide a further barrier to heat loss.
- The analogue **TV receiving equipment** has to be replaced for digital switchover in 2012. Further to ensure residents have a choice of media both Virgin and BT media cables are to be installed.
- The conclusion with regard to the **balustrading** was that there was evidence of minor cracking to the concrete and replacement now would avoid further deteriorating over the next 10-20 years and avoid the need to repaint every 5 years.

28. As regards professional fees these relate to

- Architect
- Structural engineer
- Curtin's Consulting
- Building control
- Planning

The fees identified are the total required, save for fees for the administration of the contract and project management.

29. They had carried out a series of consultation exercises with residents.

30. In cross examination Mr Craig was asked about:

- Funding available to Lessees through the Decent Homes project. Mr Craig explained that this funding was only available for the improvement of tenanted property
- Why no compensation had been received in respect of the wall ties from the Highways Agency. He responded that the reason for this was that the original construction required wall ties, which had been omitted. On this basis, unless the work was carried out, any damage resulting would not be subject to compensation because the building had not been finished in accordance with the design specification when originally constructed.

- When questioned about the windows he considered that 50% had already failed, there were no cavity closers and the windows had been installed without proper fixing. If left the new cladding would cause a 'cold bridge' causing further condensation problems.
31. In re-examination he responded:
- The initial impetus for the wall ties had come from the Curtins Report and the decision to install the pitched roof not the later action of the Highways Agency.
 - The decision with regard to the over-cladding was made after considering other options namely internal insulation which would result in considerable disruption to every occupant.
 - When asked about the cost gap between the actual cost of fitting the wall ties and the final cost he explained that this related to site set up, electrical supply to compound, fencing, temporary water supply, signage, site staff, plant and equipment and health and safety.
32. Mr. Robinson of Robinson Kenning Gallagher.
33. He was principally involved with the design of the **pitched roof**, which would require the installation of wall ties.
34. He stated the intention of the pitched roof project was not only a good long-term solution, but also would *'enhance the amenity of the block and introduce colour'*.
35. He acknowledged he was not aware of the lack of wall ties until this was identified by the structural engineer.
36. Mr. Wright of Curtins.
37. He had undertaken the 2007 stock condition survey and identified as his main concern the lack of **wall ties** and **poor insulation**. He said there was no evidence to suggest that wall ties had ever been installed. He considered the work urgent especially in view of the proposed sheet piling works although he acknowledged there was no discernable evidence that there was any stress to the building a result of the lack of wall ties. He agreed it made good economic sense to complete all blocks at the same time although only two blocks were within the sphere of influence.
38. As regards the **windows** he was satisfied from his inspection that the windows were beyond economical repair.
39. As regards the **insulation** he confirmed he had seen the core samples and that the insulation had failed. Although the cladding itself was not in particularly poor condition with no significant stability issues there was poor detailing allowing water to run down the interior of the cavity. He agreed with Mr Craig that internal insulation was not a practical option.

40. Investigations of the **roof** had identified a problem where the joist was in direct contact with the walls beneath the covering leading to condensation and subsequent rot. Whilst it could be left for now it will get worse if not addressed and it would be economic to do it now.
41. In cross examination he was asked about:
42. The fact the windows were only installed 12 years ago. In his experience upvc windows had generally not lived up to expectations. His inspection had been limited but he saw evidence of lack of maintenance in terms of proper cleaning leading to seal failure and degradation. He agreed that the method of fixing was not what he would have expected.
43. With regard to the roof he was asked if lack of maintenance (in terms of not clearing leaves and rubbish regularly) would lead to deterioration. He agreed but noted that some of the gulleys were under capacity.
44. With regard to the wall ties he was asked why it was an emergency to which he responded that the Building Research Establishment recommended wall ties.
45. Mr. Steel of Adams Consulting.
46. With regard to the wall ties he said they were important if the roofing and cladding projects were to proceed on account of the increased load. They would be a requirement of Building Control. In any event it was a recommendation of the Building Research Establishment. In view of the imminent sheet piling work he regarded the work as extremely important. Whilst he did not have the original drawings for this building he was aware that wall ties were part of the original Laing Easiform design.
47. With regard to the insulation wall ties of themselves would not stop new insulation being inserted however he was aware how difficult it was to remove old debris from cavities.
48. Mr. Bruce of Tuffin Ferraby Taylor.
49. Mr Bruce appears as an independent expert after the event in so far as he was called specifically for the purpose of this hearing and not in a capacity as an adviser to the works.
50. He agreed that the **wall ties** were needed and that the 'risk profile' would increase with the imminent sheet piling works. He considered any compensation from the Highways Agency would be unlikely as the Applicant would have to disclose the fact the wall ties were missing in the first place.
51. He agreed that although the **insulation** had failed the external render was in reasonable condition. The problem was that the existing cavity undulated and varied in width, this together with the accumulated clinker and debris made it very difficult to guarantee 100% clearance and this would leave the potential

for cold bridging. The only alternative was to over-clad. Internal insulation was not practical, would reduce the size of rooms, cause massive upheaval and there would be no guarantee that cold bridging would be eliminated.

52. As regards the **windows** that he had inspected (he did not do a systematic check of all windows) he estimated that 50% were defective and it was more economic to do them all together. He acknowledged the possibility of repair but considered the economics including the lack of fixing would not make this viable.
53. He had considered the amended proposal for the **roof** (effectively to strip back the existing roof to allow the joists to be repaired, as necessary, and extended to accommodate the additional overhang required to install the new cladding). He agreed that there was still some life (5-8 years) in the existing covering and this could be extended with the use of a proprietary sealant which would have a 10 year guarantee.
54. As regards the pitched roof this would have a much longer life but the flat roof option is perfectly viable provided regular maintenance is carried out.
55. As regards the overall costs he considered without going into detail that these were reasonable and in line with the procurement method.
56. In re-examination he was asked if the existing windows were in disrepair he concurred they were and if it would be necessary to strip of the existing roof covering before applying proprietary sealant he thought possibly not.
57. Miss Hedges of People 1st.
58. Miss Hedges explained that she was responsible for the preparing and posting of notices and confirmed that all the notices had been sent to the last known addresses of the lessees. Normally printing and posting was done 'in house' but there were occasions when an outside company had been employed to merge and post. This company produced evidence that the posting had taken place. She received calls about the notices so she was aware that notices had been received.

Section 20C costs of proceedings in the LVT

59. The Applicant's Counsel gave a formal undertaking that they would not seek recovery of the costs of these proceedings (including the fee of Mr Bruce as expert before the Tribunal) through the service charge.
60. In closing submissions Mr Strutt said:
 - The revision proposed (as opposed to the pitched roof proposal) to extend the roof to accommodate the cladding was an improvement but was inextricably linked to the repairs to the roof joists and the cladding work required to replace the insulation.
 - The new downpipes were arguably an improvement it was however what a 'sensible landlord would do and should therefore be charged to all lessees'.

- The final spreadsheet did result in some increase in cost and this was on account of the increased professional fees resulting from the changes made to roof design.
- The costs in the final spreadsheet were the 'guaranteed maximum price' (subject only to the provisional sums) that would be charged to the leaseholders.
- As to the individual heads of cost in terms of reasonableness the Applicant relied on the expert evidence of Mr Bruce. It was in the Applicant's interests to have the lowest cost possible as they had to pay in respect of the tenanted flats. If the individual elements of the total cost are reasonable it is not up to the LVT to say that because the total is so significant that it is not reasonable.
- The Applicant seeks as much finality as possible whilst acknowledging the unwitting confusion resulting from the various spreadsheets; it was inevitable that a project of this size would be subject to revision.
- As to the historic neglect argument this does not really run because it would have to be demonstrated that the costs were higher than they would otherwise have been- *Graighead and others v Homes for Islington – LON/00AU/LSC/2006/0269*.
- The question of estoppel in respect of flats 44 and 50 was a matter for the County Court not the LVT.
- The allegation that notices were not served had largely been abandoned by the Respondent. The Applicant had met their duty to consult. The process did not require the Applicant to comply with any particular observation but merely to consider. The Applicant acknowledged that full consultation may not have taken place in respect of the wall ties but in the light of the necessity to do the work due to the impending sheet piling works they sought dispensation. He maintained that even if there had been a technical failure that in view of the exhaustive proceedings in the LVT it was hard to see that any prejudice to Leaseholders had resulted.
- As to capping (submitted in writing after the hearing with the agreement of the Tribunal). The concern raised by Leaseholders is that the case of the capped properties the final figure has risen. The reason for this is the increased external fees resulting from the redesign of the roof works. The Applicant is prepared to rely on the figures in respect of the capped properties set out in the spreadsheet at pages 523 -526 of the bundle.

Respondents' Case

61. Mr Dawson and Mrs Khan presented the Respondents case.
62. The Respondent's are not challenging the principle of recovery of these costs or the elemental analysis of the contribution in respect of each lease type.
63. Their case is built on three areas:
 - Lack of proper consultation
 - Historic neglect leading to a higher cost for the work

- The cost is exorbitant in relation to the value of the properties and the ability of lessees to pay.
64. Mr Dawson' mother had been one of the original tenants, purchasing under right to buy in 1995. Mr Dawson inherited from his mother in 1995. During the period 1966 to the present there have only been three major works:
- Roofs- sometime in 1995
 - Installation of new windows
 - Communal entrance enclosure of access with security doors
65. At the time of purchase in 1995 three major works were listed as proposed within 5 years:
- Renew windows
 - Renew gutters and downpipes
 - Check structure and repair flats
66. The original roof had lasted from construction in 1966 to 1998 (30+years) so why was it necessary to renew the roof again after only 12 years? With proper ventilation the life expectancy would increase. The roof would last longer if the Applicant had a proper maintenance schedule to deal with the surrounding trees, gullies and downpipes.
67. The windows were replaced in about 1998. After 10 years these windows had started to deteriorate. No guarantees were available and there is no insurance in place to reflect the fact that the company who made these windows has gone out of business. This demonstrates incompetent management by the Applicant. The installation of the new windows is not entirely down to their failure but as part of a bigger project to over-clad the entire building and should therefore be considered improvement not repair.
68. An average of £36,000.00 per year has been spent on repair on what has this been spent if the buildings now require so much spent on them? Had an adequate schedule of maintenance and repair been in place over the last 10 years then the essential parts would have rectified as and when they occurred. By their own admission buildings have been allowed to deteriorate due to lack of funds.
69. As regards consultation, Mr. Dawson disputes that the notices have been served properly and even if they have then there had been no proper consultation. The meetings held were not consultation - but the Applicant dictating to the Respondents what was going to happen and being unwilling to discuss alternatives.
70. Mrs Khan's concerns were not only the costs, but the difficulty experienced in actually getting a response to questions asked (consultation). She had compiled evidence from the lessees as to who had received what documentation, and considered that they had strong evidence that not

everybody had received every piece of correspondence. She therefore challenged the lawfulness of the consultation procedure.

71. Further she believed that the Decent Homes Project included owner occupied property, and that some funding should be diverted to Winvale.
72. The project was commenced by the Applicant at a time when house prices had dropped by 15% and this together with the contribution requested (then some £50,000.00) had been a real shock causing stress to all leaseholders.
73. In cross examination Mr Dawson was asked about:
- Historic neglect. He acknowledged that there was no positive evidence that the alleged lack of repair had caused the cost of the proposed work to increase.
 - He accepted that the cost of the individual items did not seem unrealistic but that the total cost was unreasonably high
 - With regard to consultation he agreed that letters had probably been sent but several different spreadsheets of cost had been produced without any real breakdown. He could not say that he had been prejudiced as a result of the lack of consultation.
 - The Residents accept that work is needed and that they will have to pay something, the insulation for example was needed.
 - When asked if the revised project (abort the pitched and extend the overhang to the existing roof) was a reasonable compromise position he agreed it was.
74. In closing submissions Mr. Dawson said their case rested on the failure to consult, historic neglect and the difficulty in understanding the true cost with the resultant difficulty in actually paying the amount requested.

Tribunals Findings of Fact

75. The Tribunal considered all the evidence, written and verbal, submitted by the parties.
76. The Tribunal considered carefully the question as to whether any 'historic neglect' of the building had resulted in a higher overall costs to residents now than if greater maintenance works had been carried out 'along the way'. The Tribunal concluded that, whilst there may be valid criticism of the level of past maintenance, taking into account the actual cash saving to the residents by not carrying out maintenance works 'along the way' they were in effect in no worse position than they would have been had greater maintenance been carried out. It was the nature of the inherent design defects in the building which had led to the works being so extensive (and therefore costly) and not historic neglect over past years.

Dispensation in respect of wall ties and BT cables

77. The Tribunal finds with regard to the **wall ties** that they should have been installed at the time of construction and the need to do so now arose in anticipation of the sheet piling works which were due to start in the on the M4, and a failure to do so would prejudice any claim for compensation for any damage resulting. The Tribunal finds that some notice was given - although it makes no determination as to the validity of that notice.
78. The Tribunal noted that the Applicant acknowledged that the wall ties were part of the original design requirement and ideally should have been fitted during the original construction. Although Mr. Strutt sought to argue that the absence of wall ties gave rise to some horizontal cracking, the expert evidence did not support a finding that any damage had resulted from the absence of wall ties. Given (a) the length of time since construction (approximately 40 years) and (b) the absence of any real evidence that the lack of wall ties had resulted in any damage to the Blocks, the Tribunal concluded that such installation now must be regarded as an improvement - and so recoverable only from those residents with type B leases.
79. The Tribunal accepts that the wall-tie work was both necessary and urgent because of the impending sheet piling works, and so grants dispensation from meeting consultation requirements. It is for this reason that the Tribunal need not make specific findings of fact as to whether or not each individual lessee received all of the relevant documents. As to the cost of the wall ties the Tribunal finds that the methodology in establishing the costs was reasonable and determines that the following is recoverable:

Poultons	£69,900.00
Temporary water	805.10
Building Control	<u>770.27</u>
	£71,745.37
Overheads 6%	<u>4,288.52</u>
	£76,033.89
Profit 6%	<u>4,562.03</u>
Total Recoverable	<u>£80,565.92</u>

80. The Tribunal finds that the initial position with regard to the **BT cables** is that the lease requires the provision of telephone and television services to every flat at construction. No evidence was presented to say that the existing cables were faulty. Argument was presented to say that cables were required for the upgrade to digital in 2012. On the evidence presented the Tribunal was not satisfied that the cabling did require upgrading for the conversion to digital transmission (in the Tribunal's experience the upgrade can be achieved by the provision of a 'digibox'). The Tribunal concluded that dispensation should not be granted and accordingly recovery from lessees is the minimum sum provided by section 20 of the Act. The Tribunal notes that the Applicant has deleted from the proposed works the additional cabling to provide an alternative supplier.

81. The Tribunal find as a matter of fact that this work was not part of any Qualifying Long Term Agreement.
82. The Tribunal find on a balance of probabilities that, as no evidence as to faulty cabling was presented, that the upgrade to digital (in 2012 or later) does not require the renewal of existing cables and therefore determine that this amount is not recoverable from lessees either as a repair or an improvement.

External Cladding

83. The Tribunal finds on the evidence presented that the existing insulation has failed and that for practical reasons (the varying width of the cavity and the related problem of clearing out the existing cavity) it is not possible to renew the insulation by simply removing the old insulation and injecting new insulation.
84. The Tribunal finds that the Applicant's proposal to re-clad the exterior is the most effective solution available.
85. The Tribunal determines therefore that the re-cladding, being a replacement for the existing insulation, of the entire building should be treated as a repair.
86. The Tribunal records the Applicant's undertaking that the works will include the removal and re-fixing of lessees gas flues within the price quoted by the Applicant.

Roof (including roof to common entrance halls)

87. The Applicant acknowledged during the hearing that the pitched roof option was overambitious, and so abandoned it.
88. Although patch repairs had been carried out there was no evidence of a general failure of the existing roof covering and the Tribunal accepts the independent evidence of Mr Bruce that the existing roof covering has a life expectancy (which could be extended relatively cheaply) of 5 to 8 years.
89. Any interim patch repairs and drain clearing required would fall under repairs.
90. The Tribunal finds and determines that in order to carry out the cladding works the extension of the roof (which might initially appear to be an improvement) was necessary and should therefore be classed as a repair for this purpose.

Windows

91. The Tribunal note that no lessee paid for the cost of the window installation in 1998.
92. The Tribunal finds that the windows installed in 1998 were of poor design, quality and installation. Their expected economic life is reduced accordingly.

93. On the evidence presented the Tribunal concludes that approximately 50% of the windows have failed for the above reason although evidence was heard and accepted that lack of maintenance in terms of cleaning (responsibility of the lessees) off condensation internally could lead to a deterioration of the windows seals.
94. The Tribunal concluded that if a window required replacement as a result of failure it is reasonable for a landlord to replace it; however the Tribunal also concluded that due to current installation methods it was not the case that to replace all of the windows at the same time automatically leads to significant economies of scale, and there was no evidence adduced by the Applicant to this effect.
95. The Tribunal determines on the evidence presented that the replacement of the windows, in this particular case, although influenced by the problems identified above, is in fact a direct consequence of the cladding works. Accordingly the Tribunal determines that the window replacements should be treated as a repair.
96. The Tribunal records the undertaking of the Applicant that the price for the windows includes for all necessary 'making good' both internally and externally.

Drains and Downpipes

97. On the evidence presented the Tribunal cannot conclude that the existing drains and downpipes are in dis-repair. However the problem of the internal pipes being undersized and having a tendency to block is noted.
98. The Tribunal determines that the relocation of the downpipes is a necessary part of the cladding works and should therefore be treated as a repair.

Enclosure of front and back entrance sections

99. The Tribunal finds that the existing curtain walling is in satisfactory condition, and that the doors and door entry system appeared to be in working order on the day of inspection (and confirmed by the Respondents).
100. The Tribunal noted that there was some water penetration which had caused some spalling to concrete floors and whilst acknowledging the desirability of the project to enclose the entire communal hallways, determines that this project was over ambitious, unnecessary in relation to the buildings, and therefore unreasonable. Those works fall under the headings:
- Curtain walling and front entrance doors
 - Mechanical and electrical works

Professional Fees

101. The Tribunal noted that the total professional fees amounted to somewhere in the region of 29.5% of the cost of the project and this included abortive fees in

respect of the re-design of the roof, drainage and balconies. The Tribunal conclude that, having determined that the works originally proposed were overambitious (as conceded by the Applicant) it was not appropriate to try and recover those fees from the Respondents. These fees include the cost of:

- Architect
- Structural engineer
- Curtin's Consulting
- Building control
- Planning
- People 1st Administration
- External fees

102. The Tribunal's experience is that fees of 15–20% of the cost are the total the market would expect to charge for a project of this type. The Tribunal after giving careful consideration to the evidence and to the fact that this project was largely to be carried under a Qualifying Long Term Agreement determined that the total of all such fees should not exceed 20% of the overall cost.

Costs under other headings

103. The Tribunal noted costs under other headings as follows:

- Extended Project Management
- Scaffolding
- Hoist
- Enabling works to roofs
- Re-painting balustrades
- Decorations
- General Builders work
- Asbestos Preliminaries
- Contingencies
- Considerate Contractor and Building regulation fees

104. These costs were not individually challenged by the Respondents. The Tribunal finds and determines that these associated costs are all consequential to the cladding works and therefore properly recoverable as repairs under the leases.

The Consultation Process and Cost of the project

105. The Tribunal did not hear evidence about the validity of the consultation process setting up the Qualifying Long Term Agreements under which all of the proposed works are intended to be undertaken. This in itself was not disputed by the parties.

106. The Tribunal noted the Respondents concerns in relation to the alleged lack of consultation and the fact they considered they had been dictated to by the Applicant with little chance of affecting the outcome. It is perhaps unfortunate that the legislation uses the word "consultation" when, particularly in cases

such as this, where a local authority landlord has entered into long term partnership agreements - the result of which is actually to reduce the amount of consultation to a matter of serving notices (and considering comments thereon) at the correct times.

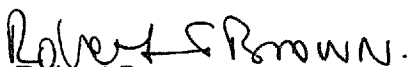
107. Having entered into long term partnership agreements under a Qualifying Long Term Agreement, principles are established which determine the future cost of works. As such the tendering process having been effectively tested the Tribunal is unable to determine that the proposed cost of works is on the face of it unreasonable. This does not however preclude an application under section 27A of the Act by either party after the works are completed to determine whether the cost and standard of the work completed is in fact reasonable.

Capping

108. The Tribunal notes (it is not disputed) that capping under section 125 of the Housing Act 1985 applies to Flat numbers 8, 14 and 26.

Proprietary Estoppel and Negligent Misstatement (Flats 44 and 50)

109. This issue arises because the lessees of the Flats 44 and 50 had only recently purchased their flats and were (they claimed) not informed during the purchasing process that any works of the magnitude proposed were being considered by the Applicants. They both filed some of the conveyancing documents, including Slough's response to pre-contract enquiries, which did not set out the works which at that stage were being contemplated.
110. The Tribunal accepts the Applicant's submission that proprietary estoppel and negligent misstatement are better suited to determination in the County Court. Although the Tribunal has seen some correspondence in connection with this matter not all of the relevant documents were filed.
111. The Tribunal notes the undertaking given by the Applicant that they would not proceed to enforce recovery of any service charge debt where either of those lessees (44 or 50) had commenced an action in the County Court in respect of this alleged failure by the Applicant.


Robert Brown
Chairman

Dated 27/07/10.....

Appendix 1 – The Law

Section 18 Meaning of “service charge” and “relevant costs”

- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement 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 period

Section 19 Limitation of service charges: reasonableness

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

Section 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and if it would, as to-

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable

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 or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (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;
 - (c) in the case of proceedings before the Lands Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.

Appendix 2 – The Leases

Type A – (Flat No's: 3,4,7,12,18,24,28,36,44,56)

Clause 4: The lessee hereby covenants with the Council as follows:

- (2) *To pay to the Council.....by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Council in the repair and maintenance renewal.... of the building...and other heads of expenditure as the same are set out in the Third Schedule hereto*

THIRD SCHEDULE

COUNCIL'S EXPENSES AND OUTGOINGS AND OTHER HEADS OF EXPENDITURE IN RESPECT OF WHICH THE LESSEE IS TO PAY A REASONABLE PART BY WAY OF FURTHER AND ADDITIONAL RENT SO FAR AS AUTHORISED BY THE HOUSING ACT 1985

- 1. *The expense of maintaining repairing and redecorating renewing and amending repointing and painting the Building and all appurtenances apparatus and other things belonging thereto...*

7. The cost of maintaining repairing and renewing the television.....receiving equipment.....installed in or on the building and used or capable of being used by the Lessee.

Type B – (Flat No's: 8,13,14,15, 20, 26, 42, 54, and 64)

1. Definitions

- 1.25 'Category A Services' includes all matters concerning the management and maintenance of the estate for which the Landlord is responsible or for which expenditure has been properly incurred by the Landlord under the terms of this lease....
- 1.26 'Category B Repairs' includes all matters concerning the management and maintenance of the Estate...being in the nature of general repairs (including the making good of structural defects)....
- 1.27 'Category C Improvements' includes all works carried out to the Estate in the nature of improvements....
- 1.30 'the service charge' means all those costs and expenses incurred or to be incurred by the Landlord in connection with the management and maintenance of the Estate and the carrying out of the Landlord's obligations and duties and providing all such services as are required to be provided by the Landlord under the terms of this lease including where relevant:
- 1.30.1 Category A Services
- 1.30.2 Category B Repairs
- 1.30.3 Category C Improvements

And without prejudice to the generality of the above all such matters set out in the fifth schedule

Clause 4. Tenants Covenants

4.2 Service Charge

To pay to the Landlord....such annual sum...as representing the Specified Proportion of the Service Charge

FIFTH SCHEDULE

Items of Expenditure

1. The expenses of maintaining repairing redecorating and renewing amending....repointing...the Estate and all parts of it.....
10. The cost of installing maintaining repairing and renewing any television.....receiving aerials used by or capable of being used by the Tenant in common with others
13. The Landlord's management charges for the Estate in an amount to be determined at the sole discretion of the Landlord
14. All costs charges and expense together with all VAT and other taxes (if any) incurred or to be incurred by the Landlord in the observance or performance of all the Landlord's obligations and duties under the terms of this lease

Type C – (Flat No's: 9, 30, and 60)

Clause 6. The lessee hereby further covenants with the Council as follows:

- (2) To pay to the Council...by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Council in the repair and maintenance renewal.....of the buildings and provision of services therein and other heads of expenditure as the same are set out in the Fourth Schedule hereto

FOURTH SCHEDULE

THE COUNCIL'S EXPENSES AND OUTGOINGS AND OTHER HEADS OF EXPEDITURE IN RESPECT OF WHICH THE LESSEE IS TO PAY A REASONABLE PART BY WAY OF FURTHER AND ADDITIONLA RENT SO FAR AS AUTHORISED BY THE HOUSING ACT 1980

1. The expenses of maintaining repairing redecorating renewing amending repointing and painting the Building and all parts thereof which the Council shall first become aware of after the period of ten years from the date hereof

7. *The cost of maintaining repairing renewing the television.....receiving equipment...installed in or on the Building and used or capable of being used by the Lessee*

Type D – (Flat No's: 50)

Clause 4. The Lessee further covenants with the Council as follows:

- 4(2) *To pay....to the Council without any deduction by way of further and additional rent a one half share in respect of the Building and one thirty second share in respect of the area edged blue on the said plan of the expenses and outgoings incurred by the Council in the repair and maintenance and renewal of the Building and the provision of services therein and other heads of expenditure as the same are set out in the Third Schedule*

THIRD SCHEDULE

THE COUNCIL'S EXPENSES AND OUTGOINGS AND OTHER HEADS OF EXPEDITURE IN RESPECT OF WHICH THE LESSEE IS TO PAY A REASONABLE PART BY WAY OF FURTHER AND ADDITIONLA RENT SO FAR AS AUTHORISED BY THE HOUSING ACT 1980

1. *The expenses of maintaining repairing redecorating renewing amending repointing and painting the Building and all parts thereof which the Council shall first become aware of after the period of ten years from the date hereof*
7. *The cost of maintaining repairing renewing the television.....receiving equipment (if any)...installed in or on the Building and used or capable of being used by the Lessee*