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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the

LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref :LON/00AC/LSC/2009/0303 & 0787

Property:	16 & 13 Durisdeer House, Lyndale, London NW2 2PA
Applicants:	Mr Meyer David Lanyado (1)
	Ms Joanna Kaczmarczyk (2)
Represented by:	In person
Respondent:	London Borough of Barnet
Represented by:	Mr Lane of Counsel
Date of hearing:	25/26 January 2010
Date of Tribunal's: reconvene	4 March 2010

Leasehold Valuation

Tribunal: **Mrs S O'Sullivan**

Ms E Flint FRICS

Procedural Background

1. Proceedings in this matter were commenced as against the First Respondent in the Willesden County Court on 18 November 2008 in relation to estimated service charges for the years 2005/6 and 2006/7 and an interim invoice in relation to a digital aerial installation. These were subsequently transferred to the Leasehold Valuation Tribunal and directions made on 24 June 2009. The First Respondent had previously made an application to the Tribunal in October 2007 on which he sought to challenge the payability, recoverability and reasonableness of various items of service charges in the years 2002/03 to 2006/07. At a preliminary hearing held on 28 August 2010 the Tribunal held that the First Respondent was entitled to raise issues relating to service charges in particular the reasonableness of the same for the periods set out in his application, which was a period which had previously been considered by the Tribunal in the first application. Both sets of proceedings were consolidated by order dated 28 August 2010.

2. The issues therefore before the Tribunal in relation to the First Respondent are the reasonableness of various service charges, the impact of Section 20B in respect of insurance costs and the ability of the Applicant to make a one-off charge in respect of the digital aerial system and the window replacement and associated works.

13. Section 27A (1) of the Act provides that 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

14. Section 27A (3) of the Act provides that an application may be made to a leasehold valuation tribunal for a decision 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.

The Hearing

15. The hearing of this matter took place on 25 and 26 January 2010. The Applicant was represented by Mr Lane of Counsel. Also in attendance for the Applicant were Mr Huffam of instructing solicitors, Ms James, a leasehold housing officer, Mr Hann, a package manager for major works and Mr Gardener, all in the employ of the Applicant. For the Respondents were Mr and Mrs Lanyado and Ms Kaczmarczyk.

16. The First Respondent commenced by renewing his application for the Tribunal to dismiss the application under Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 the parts of the application which had not been determined by the Tribunal in the first proceedings and all further heads of claim as set out in his application dated 24 August 2009. The grounds for the application are set out in that application and included alleged want of a cause of action, oppressive behaviour and failure to comply with directions. The application was refused. The Tribunal were not satisfied that the First Respondent had demonstrated that there was a want of a cause of action and had seen no evidence of oppressive behaviour. As far as the failure to comply timely with directions was concerned the Tribunal noted that the First Respondent had refused an adjournment and had wished to proceed. Accordingly the application was dismissed.

Major works invoicing

17. Both the First and Second Respondent challenge the major works invoices in respect of works to the integrated aerial system dated 1 August 2006 (£622.67) and the window and associated works dated 1 October 2008 and 17 October 2008 respectively (£4,251.37).

18. The Respondents submitted that their respective leases do not provide for the cost of major works to be recovered as a one off charge but rather that the leases provide only for an annual charge. The reasonableness of the charges is also challenged.

19. The Respondents do not dispute that the cost of the works are in principle recoverable and accept that they may be recovered in future service charge years as a "past" cost.

20. Counsel for the Applicant referred the Tribunal to the leases. The Respondents covenant to pay the service charges "subject to the terms

and provisions set out in the Fourth Schedule". The terms and provisions of the Fourth Schedule provide that:

- The appropriate percentage of charges for which the Respondents are liable in respect of block, estate and actual costs
- That this expenditure shall include actual expenditure and anticipated expenditure of recurring items
- Reconciliation takes place once actual costs are known
- That a written estimated service charge account shall be sent prior to the 1st April in any service charge year

21. Counsel for the Applicant concluded that there was nothing in either lease which prevented invoices being sent to a tenant in respect of service charges (in practice for one-off major works items) in addition to the annual estimated accounts.

22. The Respondents submitted that the payment scheme set out in the leases provides for the service of a certified estimate of the coming year's charges and then for the payment of a balancing charge when the actual costs of the relevant service charge have been calculated. The Respondents submit therefore that neither lease contains any provision other then the mechanism of the annual estimate followed by a balancing charge for the payment of any service charges. It is their submission therefore that the Applicant may not recover service charges on a "one off basis" in respect of major works. The Respondents accept that the Applicant may recover the cost of major works as a past charge.

23. The Tribunal considered the provisions in the leases relating to the mechanism of the payment of service charge carefully. It concluded that there was no mechanism for service charges to be recovered on an "ad hoc" basis throughout any given service charge year. There is only one method by which service charge may be recovered and that is by the service of an annual estimate, which is then followed by a balancing charge when the actual costs are known. The Tribunal agreed however that the Applicant might recover the cost of the major works by including it in the next annual estimate.

24. The reasonableness of the major works costs was also challenged. Although the Tribunal has concluded that the major works are not recoverable as a one off charge they may in future be included in the annual estimate so the Tribunal has in any event gone on to consider the reasonableness of those costs.

Reasonableness of the Major works costs

25. The total cost of the integrated digital aerial reception system was as follows;

Cost of works £6,720 plus VAT

Contractor's preliminaries £2013.54

Professional fees £485.58

Admin fees £485.58

26. The Tribunal heard that the overall cost of the system was £14,590 excluding the professional fees. This had then been split into 2 block costs and applied as per the percentages in the leases. Mr Hann's evidence was that it could have been applied as an estate cost but either method of charging was reasonable in view of the nature of the works. Mr Hann confirmed that fees made up almost 57% of the total cost. He submitted that these were reasonable as certain items were fixed costs which could not be varied even on a smaller project, on smaller projects he submitted that fees would always make up a greater percentage.

27. The costs of the aerial system were challenged on the basis they were simply too high and the level of fees unacceptable.

28. The Tribunal considered that charging the costs via a block cost was reasonable. The costs of the works themselves also appeared to be reasonable. The Tribunal considered that the fees in relation to this type of project were unacceptable. As the work had been subcontracted to a

specialist firm there was no reason to incur professional fees and these were disallowed. Likewise the administrative fees were also disallowed.

29. The Respondents also challenged the cost of the major works to windows and associated works. The Tribunal was referred to a breakdown of the costs at page 806 of the bundle. The Respondents did not challenge the cost of the windows themselves but rather the associated costs.

30. The Applicant agreed that the percentage contribution set out in her invoice was incorrect and the correct percentage would be applied, the Applicant was unable to say at the hearing what that figure would be.

31. The Tribunal went through each category on the breakdown at page 806 as follows;

- Items 1-6 were not disputed
- Item 7 which was the provision of emergency lighting was challenged as an improvement and not recoverable under the lease. The Tribunal accepted that this was desirable and would form part of any contract of works of this type and allowed it in full
- Item 9 was not disputed
- Items 10 –12 were conceded
- Items 13-14 concerned the cost of scaffolding. The Respondents considered this was high but left it to the Tribunal to decide. Having regard to its expertise and experience the Tribunal allowed the sum as reasonable
- 15-17 related to netting and fencing on site. The Respondents submitted that the Applicant should bear the cost of these items as they related to Health & Safety requirements. The Tribunal disagreed finding them to be reasonable items to be contained within a major works contract and allowed them in full
- Items 18, 19, 25 & 26 were challenged on the basis that as a proportion of the major works they were too high. These costs would all

have formed part of the tender process and thus are competitively priced. The Tribunal allowed them in full

- Item 20 was challenged as being too high as it contained a reference to balconies, walls and ceilings when there are no walls or ceilings to be painted. Having seen the extent of the balconies on inspection the Tribunal allowed the cost in full
- Items 21-24 were not challenged

Section 21

32. The Respondents both made requests for a certified written summary of costs pursuant to section 21 of the Landlord and Tenant Act 1985 by letters dated 5 October 2009 and 17 December 2009 respectively. The Applicant sent documents by letter dated 23 December 2009 as listed in the tenants' joint submissions.

33. Under section 21(1) the Respondents say that the Applicant must provide the Respondents with a written summary of the costs incurred in the relevant twelve month period (i.e. 2008/09) which they say must be *"relevant costs in relation to the service charges payable or demanded as payable in that or any other period"*. All of the costs included in the documentation provided relate to the estimated service charge 2008/09 and the final account for the year. None of the charges shown relate to any items contained in the major works. On this basis the Respondents argue that they are not liable to reimburse the Applicant for any of the costs which are the subject of the major works invoice.

34. Counsel for the Applicant submitted that pursuant to section 21 of Act the penalties for not providing any information requested are concerned with the tenant withholding payment. A failure to comply with section 21 does not have the effect that the sums are not payable. He submitted that the suggestion that the Applicant has waived its entitlement to the major works charges by not including them in the section 21 certificate was unsustainable. In any event he pointed to the fact that there had been

consultation in relation to the major works and a different regime for the provision of information in relation to those works.

35. The Tribunal considered the provisions of section 21 as currently in force and the new provisions of section 21 which have not yet been brought into force. The Tribunal agreed that the failure to provide the information in relation to major works in response to the request under section 21 did not have the effect that the sums were not payable. Section 21 provides a regime for allowing a tenant to withhold certain monies if adequate detail has not been provided and will not act to bar the Applicant from recovering service charges in respect of major works.

Section 20B

36. Both Respondents challenged the cost of the insurance and taxes on the basis that they were not recoverable under section 20B.

37. The Applicant says that the Tribunal has already considered the issue of insurance for the years 2002/03 and 2003/04 in a previous decision reference LON/OOAC/LSC/2007/0380 and the Tribunal agreed. The period in issue before this Tribunal was therefore the service charge years 2004/05 and 2005/06.

38. The Tribunal was referred to a table at pages 95 and 112 of the bundle. The insurance was challenged on the basis that the Applicant had fallen foul of section 20B, as it had demanded payment of the insurance more than 18 months after it had incurred the cost. It was accepted that the estimate was sufficient notice but argued that the estimate was sent too early, that is before the cost was in fact incurred.

39. Ms James deals with the issue of insurance in her witness statement at page 600 of the bundle. The Applicant enters into a three-year agreement and no invoices are issued, a price is agreed for the 3-year period and no further variation of that price takes place.

40. It is not disputed that the insurance costs element of the service charge is a *"relevant cost"* for the purpose of section 18 and section 20B.

41. It is the Applicant's case that the estimated demand sent out prior to 1 April in each year contains the actual insurance costs (i.e. the costs have already been incurred) and they argue the relevant time period is between the incurring of the insurance liability and the estimated demands (i.e. not any later reconciling demands). The Respondents accept that the estimate was sufficient notice but that it was given too early, that is before the sum was incurred.

42. Both leases provide for the quarterly payments of service charge in advance which therefore requires an estimated assessment to be sent out prior to 1 April.

43. Counsel for the Applicant referred the Tribunal to *Gilje and others v Charlegrove Securities Ltd and another [2003] EWHC 1284 (Ch); [2004] 1All ER 91 @ 95 (20-22)*. It was he said significant to note that where payments in advance are made for any particular service charges then where the eventual confirmed expenditure is covered by these sums section 20B has no application. Further he said that this section confirmed that the mischief that section 20B was intending to avoid was where tenants were presented with belated additional bills long after the landlord knows what the actual sums are.

44. The Applicant also relies on Mr Justice Etherton's remarks in *Gilje* that the policy behind section 20B of the Act is that the tenant should not be faced with a bill for expenditure of which he or she was not sufficiently warned to set aside provision.

45. The Tribunal was also referred to various case law, in particular in relation to the meaning of "incurred".

46. The Tribunal was also referred to further remarks made in *Gilje* in which the Judge accepted that *"section 20B of the Act has no application where (a) payments on account are made to the lessor in respect of service charges and 9b) the actual expenditure of the lessor does not exceed the*

payments on account and (c) no request by the lessor for any further payment by the tenant needs to be or is in fact made."

47. The Tribunal considered the submissions made in relation to the insurance and section 20B carefully.

48. Section 20B provides that

20B(1) *If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for the payment of a service charge is served on the tenant, then subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred*

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

49. The Respondents do not say that they did not receive an estimate of the cost of insurance in respect of each year but rather that it was received too early. The Tribunal considered the provisions of section 20B. It noted the decision in Capital & Countries Freehold Equity Trust Ltd –v- BL plc that the word incurred added nothing to the phrases "expended" of "become payable" and it was held that in the context of the lease "incurred" was synonymous with both expended and payable, i.e. not necessarily paid. The Tribunal is of the view that "incurred" should be given its common sense meaning and can include matters which have become payable. Thus as at the date of the estimates the insurance had become payable although had not yet in fact been paid the Tribunal concluded that the Respondents had been given proper notice of the costs incurred in relation to insurance and had not fallen foul of section 20B. In reaching this conclusion the Tribunal was persuaded by the Applicant's submissions. In this case the amounts contained in the estimate are the actual amounts,

which have been agreed with the insurers for a 3-year period. The Respondents cannot be said to have not received notice of the amounts due, they were well aware of the sums which were to be paid in respect of insurance for each year. The Tribunal also had regard to the clear policy of the Act, which is to protect the tenant from being faced with a bill of expenditure belatedly of which he was not sufficiently warned to set aside provision. There could be no suggestion in this case that a lessee could not be said to have had notice of the sums to be paid. The Tribunal therefore concluded that in its view the Applicant had not fallen foul of section 20B.

Reasonableness of general service charges 2002 – 2009

2002/03

50. The Tribunal went through the heads of service charge challenged by the First Respondent and set out in his statement of case at pages 99-104 of the bundle. The First Respondent challenged the charges from 2002 to 2009 and the Second Respondent only those for the service charge year 2008/09. The Applicant's statement of case was at pages 78-90 and evidence was given in relation to the cost of the service charges by Mr Hann of the Applicant.

51. The categories of estate maintenance, grounds and block maintenance were not challenged for the year 2002/2003.

52. The sum of £421.60 was charged to the First Respondent in respect of caretaking in respect of which the First Respondent requested an explanation of how the sum was calculated. The Third Schedule of the First Respondent's Lease at page 24 set out the service charge as including "the cost (if applicable) of providing a caretaker service".

53. The Tribunal was referred to a short summary of how the cost of caretaking was calculated which was to produce a standard hourly rate for the service which was them multiplied by the number of caretaker hours at

the block to produce the cost. This was considered equitable as it reflected hours worked at each block whilst allowing for overheads attributable as a whole to be apportioned.

54. The cost of caretaking was challenged as being too high with too many hours spent on the estate and the First Respondent pointed to a comparison (pg 313 of the bundle) with the costs at Longberrys, a nearby estate. Also complaints were made about the standard of the caretaking although it was accepted that this point could not be easily pursued the First Respondent having no evidence of the condition of the block in 2002/03. Mr Lanyado also complained that some of the items related to grounds maintenance and should not be included in a block cost (see page 669).

55. In response Mr Hann submitted that the costs of caretaking at Longberrys could not be directly compared as Longberrys had more units and there was therefore some economy of scale. In addition he explained that the caretakers kept timesheets which were used to generate the spreadsheet contained in the bundle at page 313. There was therefore an attempt by the Applicant to apportion the cost to a particular block. There had also been some consultation with the leaseholders about the standard of caretaking they wished to see. As far as the items which the caretaking covered Mr Hann's evidence was that 85% of the cost related to lessee rather than estate items although he accepted that there was a slight overlap this had been made in response to leaseholder comments.

56. The Tribunal noted that the First Respondent's Lease provided for the cost of providing a caretaker service. The Tribunal considered the method adopted by the Applicant in arriving at a block cost, in particular the manner in which the hourly cost is multiplied by the actual number of hours worked at a particular block. The Tribunal's view was that the method used was reasonable. It did not consider that the charge included any significant items of estate costs to justify a reduction. Having no evidence of any poor standard of caretaking before the Tribunal allowed the charge in full.

57. The management costs of £217.52 were challenged with the First Respondent suggesting an alternative figure of £130. The Tribunal was referred to the methodology used to reach the charge at page 332 of the bundle. The Applicant takes a core charge for each year to which it adds a percentage of 23.7% of the total service charge above £50. This was considered to result in a fair charge based on the size and extent of the particular block in question. It was also referred to page 334 of the bundle which showed that the Applicant's management charges were the second highest compared with other local authority charges.

58. The First Respondent submitted that the costs were too high. He drew a comparison with Longberrys where the charge for this year had been £139.22. He also submitted that it was preferable to have a flat rate.

59. The Tribunal accepted that the methodology used had been reasonable. Although the charges were criticised as being high the Tribunal accepted that the charge was reasonable taking into account the services provided and the good maintenance of the estate seen on inspection.

60. Insurance and taxes in the sum of £203.70 were challenged. The First Respondent contended that the 25% policy fee for "agreed administrative expenses" was too high. The Tribunal agreed that there should be no profit element and reduced the policy fee to 15%.

2003/04

61. The charges for 2003/04 are set out at page 100 of the bundle. The First Respondent challenged all heads.

62. Grounds maintenance was charged at £87.77 which the First Respondent said should be reduced to £40 in his statement but increased to £50 at the hearing.

63. The First Respondent challenged the grounds maintenance as being too high. He accepted that the standard was adequate and said that on his own observations the maintenance team came only 12/13 times a year. He had not he said been able to obtain any independent estimates as he did not have the specifications necessary to do so.

64. Mr Hann explained by reference to page 294 that the grounds maintenance was carried out by the London Borough of Barnet's Grounds Maintenance Service. The cost per hour was £22. The actual cost of grounds maintenance to the estate was £5,165.74 but a subsidy was allowed of 40% to reflect the benefit of these areas to the general public, the subsidised figure was £3,099.44.

65. The Tribunal accepted that the rate of £22 was within the range of reasonable hourly rates. The Tribunal had inspected the gardens and found them to be fairly extensive with many beds with mature shrubs. The Tribunal also noted that the nature of the sloping site would make maintenance more difficult and increase the time taken. On balance the Tribunal considered the time taken and cost to be reasonable.

66. A charge for block maintenance was in the sum of £133.94. Of this amount the First Respondent challenged only Job Voucher X729077F02 on the basis that the works represented an improvement which was not recoverable under his lease. The Tribunal was referred to page 524 of the bundle which stated the works to relate to a lighting improvement, the supply and installation of 5 fittings in total, 2 of which were understood to be porch lights and the wiring and removal of redundant fittings. The First Respondent confirmed that he did not dispute the porch lights but only the floodlights on the side of the building which he said were an improvement. In evidence Mr Hann submitted that he believed it likely that the floodlights were not an improvement and had replaced fittings on the side of the building.

67. The Tribunal noted on inspection that it appeared that there had been a previous fitting on the side of the building. Although there appeared to have been only one prior fitting the Tribunal considered that there may well be a good explanation as to why two replacement fittings were installed. Accordingly the Tribunal allowed the charge for two of the fittings and on the side of the building and all of the replacement porch lights.

68. The First Respondent also challenged the categories of caretaking and management on the grounds set out above. The Tribunal allowed each of

those items in full on the basis of the same reasoning as above. The challenge to the cost of insurance was allowed to the extent that the policy fee should be 15% of the basis of the reasoning set out above.

2004/05

69. The various charges were set out at page 101 of the bundle.

70. As far as the estate maintenance was concerned the First Respondent challenged the cost of installing bollards, as an improvement which he said was not allowed by his lease. If the Tribunal allowed the cost of the bollards he submitted the cost was too high and suggested the figure of £10 for his contribution.

71. The Tribunal was referred to page 524 of the bundle which confirmed that bollards were introduced "to protect the corner of grassed areas of the lower numbers of Durrisdeer House".

72. Part 2 of the Third Schedule of the First Respondent's Lease defines estate costs as "all costs charges and expenses incurred or expended..in or about the provision or any service or the carrying out of any maintenance..". The Tribunal had noted the bollards on inspection and noted that the area in question did suffer damage from traffic passing over. It considered that the provision of the bollards could be properly seen as falling within the maintenance of the grassed area and therefore considered it recoverable in principle. It considered the cost as falling within reasonable parameters and allowed it in full.

73. The First Respondent also challenged the categories of grounds maintenance, caretaking, management costs and insurance and taxes on the same grounds as set above. The Tribunal allowed these charges on the same basis as above.

2005/06

74. The charges for 2005/06 were set out at page 102 of the bundle.

75. In his statement of case the First Respondent had challenged Job Voucher X949209W05 under estate maintenance but confirmed that this was no longer disputed at the hearing.

76. The categories of grounds maintenance, caretaking, management costs and insurance and taxes were challenged on the same grounds and were likewise allowed as in previous years.

2006/07

77. The charges for 2006/07 were set out at page 103 of the bundle.

78. Under estate maintenance a Job Voucher X975960J05 was challenged on the basis that this was a block cost to Ballantrae House and should not form part of the estate costs.

79. In response Mr Hann submitted that this job order formed part of works to lights to the common area and could properly form part of estate costs. The Tribunal disagreed. The works involved clearly were works to the rear entrance of Ballantrae and should not form part of the estate costs but rather should be charged to block costs in respect of Ballantrae House.

80. In relation to the block costs for this year a number of items were challenged as set out on page 104, items numbered 1, 11, 13 & 14 upon which the Tribunal would comment as follows;

- Item 1 was a charge of £7.11 to the First Respondent in relation to the eradication of rats from the front garden. This was challenged on the basis that the First Respondent did not consider that pest control fell within the Third Schedule of his lease. The Tribunal found that pest control properly fell within the definition of block charges, in particular as defined "all costs charges and expenses incurred or expended ..in or about the provision of any service..." and allowed the charge in full
- Item 11 concerned an extension to the refuse chute at a cost of £28.72 to the First Respondent. This was challenged on the basis of it being an improvement. The Tribunal considered this was a valid Health & Safety requirement and was not an improvement and allowed it in full
- Item 13 concerned the repair of a defective sensor light on the pram shed and was challenged on the basis it was not a block or estate cost. The Tribunal considered it was an estate cost and should as such form part of the estate costs.

- Item 14 concerned the renewal of swan neck clips at a total cost of £673.31 and a cost to the First Respondent of £37.47. It was accepted that this cost was recoverable in principle but the First Respondent was concerned at the level of charges. He was unsure as to whether the charge was reasonable and was content for the Tribunal to make a decision. The Tribunal heard that the charge was mostly comprised of labour charges. It had been necessary to hire a cherry picker to carry out the repair and as the works had been to secure the gutter they had been necessary. The Tribunal accepted Mr Hann's evidence that the works were necessary and that the nature of the repair had necessitated the hire of a cherry picker and increased labour costs and the sum was allowed in full.

81. The categories of caretaking, management costs and insurance taxes were also challenged on the same grounds as referred to above and were likewise allowed.

2007/08

82. The charges for 2007/08 were set out at page 117 of the bundle.

83. Several of the items contained in the estate maintenance charge were challenged as set out on page 118 as follows:

- Item 2 concerned a repair to a kerb area on the entrance road. The First Respondent alleged that the repair had been defective and was unfinished. The Tribunal saw evidence that this area remained defective on inspection. However there was no evidence from 2007 to show the state of repair after the works had been undertaken, it was a busy road and may well have been damaged further and on this basis the charge was allowed in full.
- Items 3, 5, 6, 7, 9 & 10 all concern the removal of bulk refuse. The First Respondent accepted that this was a recoverable cost but queried why these charges appeared for the first time in this service charge this year. The Tribunal heard that these charges had previously been recovered under a different heading, agreed that they were recoverable

under the respective leases and no challenge being made to the level of the costs allowed them in full.

- Item 4 concerned tree works in the total sum of £3120. The Tribunal were referred to a schedule on works at pages 796-797. Although he had indicated that he wished to challenge these costs in his statement of case at the hearing the First Respondent decided to accept them. The Tribunal would in any event note that on inspection it saw many mature trees at the property, it was not clear to which trees works had taken place but it was inevitable that trees of this age and size would need continued maintenance and the charge appeared reasonable for the extent of works detailed on page 797.
- Item 11 concerned costs incurred to install a handrail. This item was conceded by the Applicant as it appeared to have been installed for a resident with special needs and should not properly form part of the costs

84. Several items included in the block maintenance were also challenged as set out on page 119 as follows;

- Item 8 was conceded by the Applicant as not properly being a block cost
- Item 11 concerned signage in relation to CCTV signage and was disputed on the basis that it was not recoverable. The Tribunal considered this did properly fall within the definition of a block cost and allowed it in full
- Items 12 & 14 concerned a repair to a gully and the clearing of blocked drains which were disputed as being estate rather than block costs. The Tribunal considered these were block costs and allowed them in full
- Item 14 concerned a renewal of a window restrictor in the total cost of £52.40. The First Respondent queried whether there was some duplication between this and an item in the same year of £393.22 in respect of the supply and fitting of window restrictors to landing

windows. The Tribunal's view was that item 14 appeared to relate to only one or two windows and may well have been repairs whereas item 3 appeared to be the fitting of restrictors to a larger quantity of windows. On the basis that this may well have been a repair therefore the Tribunal allowed this sum in full

85. The categories of grounds maintenance, caretaking, management costs and insurance and taxes were challenged on the same basis as previously and were likewise allowed.

2008/09

86. The various costs are set out on page 120 of the bundle and in the case of this year are challenged by both Respondents.

87. Various heads under estate maintenance were challenged as set out on page 121 of the bundle as follows

- Item 2 which concerned a defective security light to Ballantrae House was disputed on the basis it should properly form part of block costs to Ballantrae House. The Tribunal agreed and disallowed this item
- Item 3 concerned works to the door to a shed which were disputed on the basis it was not an estate cost. The Tribunal considered that the sheds were part of the estate as defined and these costs were recoverable under part 2 of the Third Schedule
- Items 3, 4 & 5 were queried relating to the removal of bulk refuse and left to the Tribunal's discretion. The Tribunal considered that they were recoverable and allowed them in full
- Items 6 & 11 concerned works to the boundary wall which were disputed on the basis that the boundary wall did not form part of the estate. The Tribunal disagreed. The definition of the estate contained in the leases make reference to the plan which clearly includes the boundary wall

88. Grounds maintenance, caretaking, management costs and insurance and taxes were all challenged on the same basis as previously and the Tribunal allowed them on the same basis as in previous years.

89. Various items of block maintenance were challenged as set out on page 122 of the bundle as follows

- Item 1 in the total sum of £2,127.62 concerned the renewal of a section of guttering. This was disputed on the basis that this was a duplication with the replacement of the guttering carried out as part of the major works. Mr Hann's evidence was that shortly before the major works it became necessary to replace a section of the guttering and scaffolding had been required. The Tribunal accepted that this had been a necessary repair and allowed it in full
- Item 3 concerned works to jet drains at the block and was disputed as an estate rather than block cost. The Applicant explained that works to drains would be charged to a specific block if they affected that block only. The Tribunal accepted the explanation and allowed the charge
- Item 4 concerned the fitting of locks to the loft in respect of which it was argued there was no liability under the lease. The Tribunal disagreed. The provisions of both leases were widely drawn and the Tribunal found that such matters properly fell within the block costs
- Item 5 which concerned works to the gutter above Flat 5 was conceded by the Applicant
- Item 6 concerned the overhaul of a wooden loft hatch and was disputed on the basis it was not recoverable under the lease. The Tribunal disagreed and allowed it in full
- Item 7 concerned works to unblock gullies to the block. The tribunal considered this should form part of the estate costs
- Items 8 to 14 were all confirmed to be no longer challenged
- Item 15 concerned works to renew a handle to a window and was queried as being an item which should be covered by guarantee. The Applicant's evidence was that if the issue was damage rather than wear and tear it would not be covered by a warranty. The Tribunal accepted this evidence and allowed it in full

- Item 16, the cost of a rising damp survey, was disputed on the basis there was no liability under the lease. Mr Hann's evidence was that rising damp affected the fabric of the building and so formed a block cost. The Tribunal accepted the evidence and allowed the item in full.

90. TV Aerial. The maintenance of the TV Aerial was disputed on the basis that it should be an estate rather than block cost. The Tribunal concluded that it was reasonable for this cost to be apportioned as a block cost and allowed it in full.

Section 20C

91. The Respondents confirmed that they did not wish to make any application under section 20C.

Chairman...

Dated..........11 June 2010..........