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**HM Courts
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Service**

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

Case No : CAM/22UD/LSC/2012/0147
Property : 20 Springfield Avenue. Brentwood, Essex CM13 1RE
Applicants : Kevin & Nathalie Critchell
Respondents : The London Borough of Newham
Inspection : 26th February 2013
Hearing : 26th February 2013
Determination : 19th April 2013 (tribunal reconvened)
Written Decision : 23rd May 2013
Tribunal : Mr S Reeder (lawyer chair)
Mr Roland Thomas MRICS (valuer member)
Mr David W Cox (lay member)
Decision : Determination of the reasonableness of service charges and administration charges.

DECISION

The reasonable service & administration charges payable

Adopting the item numbering and narrative descriptions contained in the 'breakdown of major works invoice' dated 13th July 2012 the block/estate costs which are determined by this tribunal as reasonable and payable are as follows

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1. Asbestos - £360
2. Balconies - £1,500

3. Communal areas works/renewal - £2,208.05
4. Communal decoration/private balconies - £2,750
5. Communal decorations outside block – no charge payable
6. Concrete repair/renewal – no charge payable
7. No item listed – no charge payable
8. Landlord's lighting & service electric - £5,620.83
9. Landlord's mechanical services – no charge payable
10. Landlord's gas services - £1,400
11. Landlord's audio TV/antenna - £1,626
12. Paths, paving, drying areas associated with estate plan - £1,197
13. Roof fascia, soffit, rainwater goods & insulation - £15,609.96
14. Scaffold/working platforms - £8,228
15. Walls, fences, gates in estate plan – no charge payable
16. Windows/doors - £11,579.40
17. Works design/supervision/contingency - £14,952.17
18. Total works - £67,031.41
19. Overheads and profit - £4,021.88
20. Management fees @ 3% - £2,010.94
21. Professional fees (JRP @ 4%) – capped at £100 per lessee
22. Professional fees (Savills @ 1.78%) – capped at £100 per lessee

The respondent should issue an amended 'major works invoice' calculating the applicants' contribution due based on the block/estate costs determined above and settle any refund payment due to the applicants within 28 days of receipt of this decision.

The costs of these Tribunal proceedings

The respondent confirmed to the tribunal that it will not seek to recover from the applicants by way of service charge all or any of the costs incurred or to be incurred in connection with these tribunal proceedings.

REASONS

The parties, application & issues

The application & parties

1. This is an application by Kevin & Nathalie Critchell in relation to their former home at 20 Springfield Avenue, Brentwood, Essex CM13 1RE. They challenge a 'major works invoice' dated 13h July 2012 which seeks to recharge as service and administration charges the cost of major works carried out to the block 20-40 Springfield Avenue as part of a rolling 'Decent Homes' programme of repairs and improvements carried out across the whole of the 'East Ham' estate owned by the respondent and situated in Brentwood. The respondent is the London Borough of Newham. The estate is managed for the respondent by its 'arms length

management organisation' or 'ALMO', Newham Homes. That respondent has been represented before the tribunal by the head of leasehold services for Newham Homes, Mr Cathal McDonnell.

References to documents in the hearing bundle

2. We have been provided with an indexed and paginated bundle for use in the hearing and page references in [square brackets] in this decision refer to the paginated documents in that bundle unless otherwise identified.

The relevant works & the service charge demand

3. The works to the block were carried out between late 2009 and Spring 2010. Scaffolding to the block was erected in or around November 2009 and struck in mid-April 2010. The relevant costs were initially notified in the 2009/2010 accounting year including by formal notice dated 29th April 2010 [327]. Thereafter there was some delay in obtaining final costings from the contractor undertaking the works, Messrs Breyer and further delay in obtaining final charges from the cost consultants, Messrs ig9. The final charges not formally demanded until July 2012 [43]. The total sum demanded from the applicant's was £10,675.88.

The charges challenged

4. The application challenges each of the works items identified in the 'breakdown of major works invoice' [45] provided to the applicants with the invoice for payment. Those items comprise –
 1. Asbestos
 2. Balconies
 3. Communal areas works/renewal
 4. Communal decoration/private balconies
 5. Communal decorations outside block
 6. Concrete repair/renewal
 7. No item listed
 8. Landlord's lighting & service electric
 9. Landlord's mechanical services
 10. Landlord's gas services
 11. Landlord's audio TV/antenna
 12. Paths, paving, drying areas associated with estate plan
 13. Roof fascia, soffit, rainwater goods & insulation
 14. Scaffold/working platforms
 15. Walls, fences, gates associated with estate plan
 16. Windows/doors
 17. Works design/supervision/contingency
 18. Total works
 19. Overheads and profit
 20. Management fees @ 3%
 21. Professional fees (JRP @ 4%)
 22. Professional fees (Savills @ 1.78%)

The relevant law

5. 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. *Section 27A(1)* of 1985 Act provides as follows -

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.*

6. *Section 18* sets out the meanings of 'service charge' and 'relevant costs'.
7. *Section 19* sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.
8. *Section 20C* sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.
9. *Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. *Section 5(1) of Part 1 to Schedule 11* provides -

An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.*

10. *Section 1* provides a definition of 'administration charge'. *Sections 2 & 3* provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified

for determining the charge is reasonable, and that amount of the charge is reasonable.

The inspection

11. The tribunal has had the opportunity to inspect the external elevations and structure of the block on all sides, the immediately surrounding grounds pathways and roads, and the communal entrance doors and stairwells to either side of the block. The tribunal took particular care to inspect the rear open 'balconies' which run the length of the block at the rear and which are formed by the flat roofs to the rear extensions to the ground floor commercial premises, and the clear view they provide of the rear elevation of the block. During the inspection we have had the assistance of Mr Critchell and Mr McDonnell, and the presence of Karen Sheehan as an observer. The block is of traditional construction dating from the late 1940s or early 1950s, with brick built walls. Prior to the major works the original pitched roof of concrete tiles remained in place and a number of the original wooden casement windows had been replaced with upvc units by individual lessees.

The hearing

12. Kevin & Nathalie Critchell have appeared in person and explained the bases for their challenge to the relevant works and charges with clarity and vigour. They have been supported by the presence of family members Pauline Critchell and Pamela Welford, and by the presence of Karen Sheehan and Kay Bellwood representing the office of Eric Pickles MP, who is the parliamentary representative for the constituency of Epping & Ongar in which the block and the East Ham estate is situated.
13. By contrast Mr Cahal McDonnell, head of leasehold services for Newham Homes, has cut a solitary figure on behalf of the respondent. Nonetheless, he has very ably represented the respondent's interests and marshalled its arguments cogently, comprehensively and with commendable fairness and realism.
14. The tribunal has been provided with an indexed and paginated bundle for use in the hearing which includes excerpts of the lease, the parties' statements of case, pre-conveyance correspondence, service charge information & demands, correspondence about the major works programme, photos of the block before during and after the works, excerpts from the DCLG Decent Homes guidance (updated dated June 2006), East Ham estate scheme documents, 'Breyer' works & costs schedule (revision F – 21st August), 'ig9' valuation report (version 3 – August 2011), and statutory consultation documentation.
15. That bundle includes a short questionnaire designed by the applicant and completed by neighbouring occupiers Mr Passessente (flat 40), Juile Thornton (flat 28), and Mary Kempster (flat 32). Mr Mc Donnell has

very fairly conceded that these may be treated as statement of fact and, that in the absence of the makers, the tribunal should accord them such weight as it sees fit having regard to the other available evidence on issues.

16. At the request of the tribunal a number of additional documents not found in the bundle have been provided during the hearing. The applicants, assisted by their family members present, produced a complete copy of the lease for 20 Springfield Avenue. Mr McDonnell obtained and produced a computer printout of the repair records for the block between December 2005 and December 2012.
17. The tribunal has carefully analysed these documents with the assistance of the parties during the hearing. The 'core' documents which have been repeatedly considered during the hearing include the full lease provided during the hearing, the 'breakdown of major works invoice' [45], the works & costs schedule produced by Breyer Group plc [251-253], the ig9 valuation report [255-293], the parties' several statements of case, the photos [102-106, 112-116, 124-134, 155-159] and the repairs record for the block.
18. No expert evidence has been relied upon by either party. No evidence has been adduced to confirm how the final works costs arrived at in the Breyer Group schedule, Ig9 schedule and/or major works invoice have been arrived save that Ig9 were briefed to review whether they provided value for money. In the circumstances the parties have agreed that the tribunal would have to do the best it can on the evidence and information before it, including the observations made by all during the inspection.

Determination of preliminary & generic issues

19. The tribunal has considered and determined a number of issues raised as preliminary issues before then proceeding to consider the individual disputed charges.

An adjournment of the hearing for the respondent to obtain additional evidence

20. The respondent's application to postpone or adjourn this hearing was dealt with as a preliminary issue at the outset of the hearing.
21. By letter dated 18th February [9] Mr McDonnell requested that the tribunal adjourn the hearing to allow the respondent to obtain further scheme documents held by Messrs ig9 Limited who were contracted to audit and confirm that the specified works were carried out to a reasonable standard and that the resulting relevant costs provide value for money. Mr McDonnell states that ig9 are presently refusing to provide them with such documents. Understandably he has been unable to specifically identify what documents ig9 hold. It is harder to understand

why the respondent itself has not retained copies of all relevant scheme documentation.

22. In that letter the respondent appears to suggest that the paucity of evidence on actual works and value for money only came to light on 28th January 2012 when the tribunal was hearing an application which related to 'East Ham estate' property subject to this same major works programme (application CAM/22UD/LSC/2012/0119). However, the tribunal is satisfied that the respondent was made aware from a much earlier stage that the major works items and costs have been disputed by some leaseholders including these applicants. This is apparent from correspondence in the hearing bundle typified by the letter from Eric Pickles MP to Mr Critchell dated 19th April 2010 which refers to a meeting with the Mayor of Newham on the issue that same day.. In addition, the respondent has been well aware of the precise issues raised on this application for some time. They are apparent from the application which they received in early November 2012. They are set out in detail in the Directions issued by this tribunal and received by the respondent on 5th December 2012. Despite his effective presentation Mr McDonnell is unable to satisfy the tribunal that the respondent has taken all reasonable efforts to marshal and produce the further evidence now being sought.
23. The applicants concisely argue that the respondent has known of the issues, and so the evidence available to it on the issues, since 2010, that this request is made too late, and that an adjournment of the hearing would cause great inconvenience. There is force in each point made.
24. The tribunal is mindful that the hearing bundle does include the 'Breyer' works & costs schedule (revision F – 21st August) [251-253] and the 'ig9' valuation report (version 3 – August 2011) [255-288] which set out the works items and costs in detail. Mr McDonnell states that the ig9 report is intended to be the final account valuation report produced by them when they satisfied themselves that the works items had been carried out and the resulting cost provided value for money. Absent detailed information on the additional or better evidence which could be obtained and presented the evidence presently available to the tribunal is sufficient and proportionate for the purposes of the application being considered at this hearing.
25. The tribunal carefully considered the circumstances relevant to the application, the arguments received and the case management powers set out in the *Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (SI 2003 No.2099)* with particular regard to *Regulation 15 ('postponement & adjournment')*. It refused the respondents application for an adjournment and indicated it would give reasons later in writing. These are those reasons.

Jurisdiction of the tribunal after the applicants' sale of the premises

26. In late 2012 the applicants secured a purchaser for their property. That purchaser required the service charge demand to be settled before the conveyance could proceed. Accordingly, on 6th November 2012, Messrs Reeve, Fisher & Sands solicitors wrote to the respondent [61] enclosing a cheque for the full sum demanded and stating the following –

“Please be aware that our clients are making this payment under protest and as per section 27a(5) of the Landlord & Tenant Act 1985 do not expect this payment to be seen as an agreement or admittance (sic) to the monies demanded from (sic) yourselves. A Leaseholder’s (sic) Valuation Tribunal form has already been submitted in relation to this invoice as they strongly dispute that it is correct”.

27. The application giving rise to these proceedings was received on 7th November 2012. The sale was completed that same month.

28. Sections 27A (1) & (3) of the Landlord & Tenant Act 1985 provide the jurisdiction of this tribunal to determine the payability and reasonableness of service charges. Section 27A(4)(a) provides that this jurisdiction cannot be exercised where the demand has been agreed or admitted by the tenant. Sections 27A (2) & (5) of that Act operate so that the tribunal has jurisdiction whether the demand has been paid or not and provide that payment alone is not to be taken as an agreement or admission.

29. The tribunal considers that the terms of the payment set out in the letter of 6th November 2012 are clear and unequivocal. Payment was made but expressly without agreement of admission. Accordingly, the tribunal is satisfied that it may properly exercise the jurisdiction provided by sections 27(A) (1) & (3) of the 1985 Act. This accords with the preliminary view of the tribunal which was raised with the parties and explained at the outset the hearing when Mr McDonnell very fairly indicated that he had reached the same conclusion.

Reduction in value of the leasehold interest as a result of the major works costs dispute

30. The applicants contend that the effect of their ongoing dispute over the major works costs had the effect of reducing the sale price realised for their leasehold interest in November 2012. They informed the tribunal that they purchased for £152,500 in February 2006 and sold for £150,000 in November 2012. It is apparent that they purchased at the height and sold near to the bottom of the market and so macro market conditions will inevitably have affected those values. Even if it were assumed, although this tribunal makes no finding on the issue, that loss due to the major works costs dispute could be identified and quantified, the scope of the jurisdiction of this tribunal is defined by the *Landlord & Tenant Act 1985* and does not extend to provide a financial or other remedy for any such loss.

The formula applied to calculate the applicants' individual contribution

31. The invoice [43] and breakdown [45] sent to the applicants were accompanied by an explanation [47] of the formula used to calculate the individual lessees proportion of the block and estate costs. Subject to the issue of the contribution due from commercial units considered below, this formula is not in dispute. The tribunal has considered it against the lease provisions and is satisfied that it is correctly stated in that explanatory document [47] provided to the applicants.

The mixed use nature of the block

32. The block comprises six commercial units on the ground floor owned by the respondent which are let on commercial full repairing leases, together with six residential flats on the upper floor.

The contribution due from the three residential council tenants

33. Three of the upper floor flats are held on long leases, whilst three are occupied by the respondent's 'secure tenants' as defined by *Part 2 of the Housing Act 1985*. As a matter of law the respondent cannot charge such secure tenants service charges for major works. The respondent confirmed that it bears their respective individual proportions itself so there is no adverse effect on the individual proportion borne by the three long residential lessees. The tribunal is satisfied that this arrangement is correct as a matter of law having regard to the lease provisions.

The contribution due from the six ground floor commercial tenants

34. The applicants contend that, as a matter of fairness, the six commercial units on the ground floor should each bear a proportion of the major works costs as they too benefit from many of the block and estate works which enhance the state and appearance of the block as a whole. As a matter of fairness this has force. However, as a matter of law clause 5(e) of the lease is clear and unambiguous in excluding any non-residential premises when calculating the individual service charge proportion payable by the applicants in respect of both block and estate costs [28-9]. The applicants held their leasehold interest subject to that clause. In so far as they appear not to have understood the effect of that clause notwithstanding its clear and unequivocal terms the tribunal must apply the principle of *caveat emptor* ('let the buyer beware'). Accordingly, the tribunal is satisfied that the relevant block and estate costs are to be apportioned between the six residential flats on the first floor without contribution from the six ground floor commercial units.

Liability to pay the charges under the lease

35. Liability to pay the charges under the lease was not in dispute. The tribunal has satisfied itself that the applicants are in fact liable in principle to pay the charges demanded.
36. Clause 5(2) imposes liability to pay as service charge a proportionate part of the expenses and outgoings incurred in the repair maintenance renewal and insurance of the estate, and of the provision of services, and of improvements insofar as the expenses and outgoings incurred in respect of such improvements are reasonable. Clause 5(2)(e) sets out the formula to be applied to calculate the individual lessee contribution. By clause 7 the respondent covenants to maintain, repair, redecorate, renew, amend, clean, re-point, paint, grain, varnish, whiten, colour and make far and reasonable improvements to the structure (including roofs, walls, window frames, chimney stacks, gutters and rainwater and soil pipes, drains and watercourses, electric cables and wires and supply lines, landings and staircases, and boundary walls and fences. The Third Schedule sets out the costs, expenses, outgoings and matters in respect of which the lessee is required to contribute and includes those matters specified in clause 5(2) together with decorating and lighting retained communal parts, and repairing and renewing TV receiving aerials used or capable of being used by the lessee.

Determination of the reasonable charges recoverable

37. The applicants challenge the charges on the basis that the relevant costs were not reasonably incurred because it was not reasonable to carry out the works and/or the works were not carried out to a reasonable standard and/or the resulting relevant costs are not reasonable. Each of the charges is individually concerned below. In determining each charge the tribunal has considered the individual component works items and costs identified by narrative description and numbered in the Breyer' works & costs schedule (revision F – 21st August) [251-253] and the 'ig9' valuation report (version 3 – August 2011) [255-284 & in particular 267-268]. Mr McDonnell confirms that the individual works costs given in the ig9 report are those arrived at after ig9, as costs consultant, has satisfied itself that works appear to have been carried out to a reasonable standard and that the resulting costs provide value for money. For that reason the tribunal has taken the individual component works items costs in the ig9 report as to be the 'final' costs for consideration.

Asbestos

38. The total charge is £1,408 and relates solely to the item 9.4 which is described as "removal of asbestos floor tiles". This does not include preparation for new flooring (charged separately as item 9.2), self levelling for new flooring (charged separately as item 9.6) or laying the new flooring (charged separately as item 9.5). It therefore relates solely to the removal of the existing floor tiles to the small ground floor entrance

lobbies and first floor communal landings in the two communal entrances to either end of the block.

39. The applicants state that the original floor tiles appeared to be in sound condition with no need of replacement. The respondent contends that the documentation shows that they had been found to have an asbestos content, were known to date from construction and so be approximately 60 years old, are likely to be nearing the end of their reasonable lifespan, and so it was reasonable to replace them as part of the wider works scheme to avoid any of the hazards associated with asbestos once it is damaged or delapidated. The applicants question the substantial costs and cannot recall any specific asbestos precautions or procedures being employed during these works. The respondent cannot provide any details of the same but points out some would be in place.
40. Given the date and nature of construction the tribunal accepts that the evidence or perhaps presumption of the existence of asbestos in the tiles is probably correct. The nature and concentration of asbestos in floor tiles of this age does not cause a major hazard risk but needs to be managed to care. If they showed dilapidation it was reasonable to replace them during these works. Even if they showed no material dilapidation it was reasonable to replace them during these works as they were now approximately 60 years old and so there was a real risk of dilapidation in the not too distant future, because the real or presumed risks relating to asbestos support removal and replacement at an appropriate point in time, and because the works were done as part of the wider programme and so might reasonably be expected to generate economies of scale.
41. However, the tribunal is unable to accept that the charge of £1,408 is a reasonable sum for the work which would reasonably be required. The works were carried out at some point between late 2009 and Spring 2010. Beyond the narrative description in the schedules no detail of the actual job was available. Discussions during the hearing indicated that it would likely be undertaken by two workers and likely take approximately 8 hours of work. Having seen the site and read the narrative description of the work the tribunal is satisfied that two men could complete the work in approximately 8 hours utilising appropriate asbestos precautions (suiting, gloves, masks, respirators, secure works area, secure removal and secure disposal etc) and that the market would deliver a charge rate of £45 p/h for such work within such a scheme at that time.
42. Accordingly, a reasonable charge payable for this item is determined to be £360.

Balconies

43. The total charge is £9,000. In the Breyer schedule items 7.0 -7.4 relate to "private balconies" but do not equate with this figure. None of the narrative descriptions for those items equate with the works to the balconies which the respondent contends is a sealant coating to the flat roof which provides the floor of the balconies. In the ig9 schedule these

items have all been reduced to zero. However, in the Breyer schedule item 8.6 under 'roof works' carries the narrative description "overlay liquid plastics coating system to front private balconies." and lists a cost of £14,572. The ig9 schedule contains the same item with an abbreviated narrative description and a reduced sum of £9,000. This appears to be the item being charged and suggests that ig9 confirmed that the works were done but reduced the charge for the same.

44. The applicants cannot recall works of this type taking place. The respondent can add no detail as to what was done and when beyond the narrative at item 8.6. On inspection there was no visually apparent signs of such an overlay treatment but as that inspection took place 3 years after such works this observation is of little assistance.
45. In such circumstances the tribunal cannot be satisfied that, in fact, such works were not carried out. The balconies are of a reasonable size and provide great utility for the applicants and their residential neighbours. The tribunal can see the sense in ensuring that the balcony floors and so flat roof to the ground floor extensions remain water tight by liquid plastic overlay. It follows that it is reasonable to carry out these works. However, both the original Breyer cost of £14,572 and the reduced ig9 cost of £9,000 do not appear to be reasonable to the tribunal and no evidence was presented as to how these figures were arrived at.
46. Having regard to the nature, layout and size of the area to be treated as seen on inspection and doing the best it can on the evidence and information before it the tribunal determines that a reasonable cost for a treatment of this type carried out in 2009/10 is £1,500. This sum allows for materials based on 3 coats to an area of approximately 150 sq m priced in the region of £180 per coat, together with labour costs at approximately £45/ph for in the region of 16 hours split across 3 working days.
47. Accordingly, a reasonable charge payable for this item is determined as £1,500.

Communal areas works/renewal

48. The total charge is £5,168.78 and comprises works items 9.2, 9.5, 9.6, 9.7, 9.9, 15.5 & 8.16. The applicants dispute whether these works were necessary. The respondent states that these are reasonable repairs and renewals which were due or would fall due within a such period as to make it reasonable to carry them out during the 'Decent Homes' works programme. Having regard to the information before us the tribunal finds that it was reasonable to carry out these works.
49. Item 9.2 is pressure washing to stairs and landings as a preliminary to redecorations and is charged at £160. This is a reasonable sum for the work done. Item 9.6 is the application of self levelling latex to the floor areas as a preliminary to laying the new floors and is charged at £450. This is a reasonable sum for the work done. Item 9.5 is the new Poyflor

'mystic; vinyl floor covering and is charged at £1,348.05. This is a reasonable sum for the work done. Item 9.7 relates to the decoration of masonry features and is included as £2,260 by Breyers but reduced to £500 by ig9. These masonry features were viewed as part of the inspection and are on any account minimal. Based on reasonable materials and labour costs to decorate those masonry features the tribunal finds that a charge of £100 is reasonable and payable. Item 9.9 relates to re-casting the concrete gully surrounds and the result was seen on inspection. The cost of £150 for those works is reasonable and payable. Item 14.5 relates to a "provision for structural repairs to brickwork" and the ig9 schedule provides for a charge of £1,000. In fact, neither the scheme documentation or the inspection by the tribunal nor the attendance and assistance of the parties at that inspection could identify any such works. It appears that this provisional item has translated into a charge in error. The tribunal finds that no works were done under this provisional item and that no relevant cost has been incurred. Item 8.16 on the Breyer schedule appears to correlate to item 8.17 on the ig9 schedule and refers to new loft hatches and timber walkways within the loft space (presumably above the communal stairwells). No evidence of such work was seen in inspection. No party could identify any such works. The ig9 schedule does not appear to include any relevant costs for this item. In the circumstances the tribunal finds that there was no such work and is no relevant cost.

50. Accordingly, a reasonable charge payable for this item is determined as £2,208.05.

Communal decoration/private balconies

51. The total charge is £4,484 and comprises works item 9.1 which refers to two coats of eggshell to the walls and ceilings in the two communal entrance hallways and stairwells found to the either end of the block. The applicants contend that the works were not reasonably carried out as they believe that decorations were carried out in 2007 when the existing security doors were installed. The position this is unclear. The respondent contends that it was reasonable to carry out the works during the 'Decent Homes' works as it would not have been done if not reasonably required and would achieve economies of scale as part of that programme. Doing the best it can on this information and evidence the tribunal accepts that it was reasonable to vary out the works but is not satisfied that the resulting charge is reasonable. The size, layout and nature of that area has been seen on inspection. The completed decorations were viewed on that inspection. The tribunal finds that this charge is unreasonably high and that a reasonable relevant cost for this work is £2,750.

Communal decorations outside block

52. This comprises item 9.9 which relates to the recasting of concrete gully surrounds. This has already been charged within communal areas works

and renewals. Mr Mc Donnell fairly acknowledged this and indicated that the charge will be withdrawn.

53. Accordingly, no charge is payable for this item.

Concrete repair/renewal

54. The total charge is £3,495.60 and comprises works items 9.8, 9.1 and 9.11. Item 9.8 refers to concrete repairs to lintels. None could be seen in inspection. No documentation suggests any such works. Item 9.1 has already been recharged under communal areas works & renewal and Mr Mc Donnell fairly acknowledged this and indicated that the charge will be withdrawn. Item 9.11 relates to fitting notice boards to lobby areas. The applicants are adamant that no such works were done. On inspection there was no indication that such works had been carried out. The tribunal prefers the applicants evidence on this issue and concludes that, whilst this may have been a provisional intended item, the work was not actually carried out

55. Accordingly, no charge is payable for this item.

Landlord's lighting & service electric

56. The total charge is £5,620.83 and comprises works items 10.1, 10.2, 10.3, 10.4, 10.5 & 10.6.

57. Item 10.1 refers to upgrading the communal lighting at a cost of £3,500. Item 10.2 refers to emergency lighting to the lofts and intake cupboards at cost of £1,415. Item 10.3 refers to additional electrical sockets in the stairwell at a cost of £140. Item 10.4 refers to new cylinders for the electrical cupboards at a cost of £95.83. Item 10.5 refers to warning and H&S signage to the meter cupboards at cost of £10.50. Item 10.6 refers to channelling for the electrics at a cost of £600. The applicants are unclear as to what works were actually carried out. The respondent points out that the upgrade has delivered an effective back-up and a rationalised uniform system which can now be maintained more economically.

58. The new communal lighting system could be seen on the inspection and delivers an upgrade to ensure that communal lighting continues if the mains electricity fails. The tribunal determines that item 10.1 is a reasonable improvement and that the cost of £3,500 is reasonable. The same conclusion is reached on item 10.2 save that the loft lighting was not seen on inspection but has clearly been installed having regard to the ig9 evidence and the cost of £1,415 is reasonable. The cost of £140 for the additional electrical sockets in the communal hallways/stairwells included as item 10.3 and seen on inspection is reasonable. The same conclusion is reached in relation to item 10.4 costing £95.83, and item 10.05 costing £10.50. The channelling at item 10.6 could not be seen in inspection but was doubtless carried out and the charge of £600 is

unremarkable given the layout and extent of the electrical installation on inspection.

59. Accordingly, the total charge of £5,620.83 under this item is determined to be a reasonable charge and is payable in full.

Landlord's mechanical services

60. The total charge is £510 and comprises works item 4.6 which relates to the provisional item "allow to re-site BT equipment". The applicants question what if any work was actually done. The respondent is unable to identify any work actually carried out. The inspection failed to identify any such work. The tribunal is not satisfied that this provisional item resulted in actual work. Nor is it satisfied that any such works could reasonably be required.

61. Accordingly, no charge is payable for this item.

Landlord's gas services

62. The total charge is £1,500 and comprises works item 14.3 "make good externally to boiler flue outlets" on the ig9 schedule. However, the Breyer schedule shows that this actually comprises a survey (costing £500) and works (costing £1,000). On inspection six new flue vents were seen to the rear elevation, one for each of the flats. The applicants accept that it was reasonable to carry out this work but question whether the cost is reasonable. The survey cost of £500 is reasonable and is allowed in full. The works cost is unreasonable and the tribunal is satisfied that at the relevant time those works could be achieved for a cost of £150 to supply and fit each of the vents, totalling £900.

63. Accordingly, the reasonable charge payable is £1,400.

Landlord's audio TV/antenna

64. The total charge is £1,626 and comprises works item 4.3 "install IRS system". The applicants complain that they and other residential occupiers had installed their own satellite TV systems and did not use the old aerial nor need the new aerial. The respondent states that the old aerial was available for their use and that the new aerial will be needed to receive digital TV after the national switchover. Clause 9 of the Third Schedule imposes liability on lessees to contribute toward the cost of maintaining, repairing and renewing the TV and radio receiving aerials (if any) which are used or capable of being used by the lessee.

65. In the circumstances the tribunal determines that the charge of £1,626 is reasonable and payable in full.

Paths, paving, drying areas associated with estate plan

66. The total charge is £3,314.20 and comprises works items 14.1, 14.4, 14.5, 14.6, 14.12, 14.13 and 14.14.

67. Item 14.1 is a provisional item allowing for bin store repairs but the ig9 schedule includes no cost. Neither party believes any such works were carried out. Nothing is due. Item 14.4 refers to cleaning of external brickwork and again none could be seen in inspection and the ig9 schedule records no charge. Nothing is due. Item 14.5 is a provisional item of £1,000 and refers to 'provision for structural repairs to brickwork. None are documented and none could be seen on inspection. Neither party is able to identify what it does or might refer to. This appears to be another provisional item which has been translated into a charge in error. The charge of £1,000 is not allowed. Item 14.6 charges £405 for 'removing ivy growth and vegetation'. This is a precise figure which appears on the Breyer schedule and is not amended by the ig9 schedule whereas many other figures are. It therefore appears to be an exact actual cost. The respondent believes that this relates to vegetation removed from the rear left hand fence and/or the rear garden area. The applicants recall no such works. On a balance the tribunal is satisfied that such work was reasonably carried out and that the resulting charge appears to be reasonable. It is payable in full. Item 14.12 charges £492 for moving satellite and aerials during the works. The appellant's object to contributing toward the cost of removing other people's aerials and dishes and in particular any belonging to the ground floor commercial units. The respondent states it is an essential integral part of the works to the block. The tribunal takes the view that it was reasonable to remove and then re-instate such aerials and dishes as part of the block works scheme to enable scaffolding to be erected, to enable proper access to the block, and to avoid damaging the aerials and dishes. The resulting charge is reasonable and is payable in full. Item 14.13 charges £300 to remove redundant cables and aerials, is sensibly not in dispute and is payable in full. Item 14.14 is a provision for allow for the repair or replacement of fencing but is reduced to zero in the ig9 schedule and nothing is due.

68. Accordingly, the reasonable charge payable is £1,197.

Roof fascia, soffit, rainwater goods & insulation

69. The total charge for this item is £37,347.36 and comprises works items 8.1, 8.2, 8.3, 8.7, 8.9, 8.10 and 8.18

70. Item 8.1 charges £18,760 for renewal of the existing roof pitch. The applicants complain that the existing roof was in good condition and caused no problems so that it was not reasonable to replace it. The respondent contends that the roof would have been nearing its viable life given that it was constructed approximately 60 years ago and so it was reasonable to replace it during the 5 year window of the 'Decent Homes' programme whereby the government required local authorities to bring housing up to modern standards of repair and condition and made affordable finance available for this purpose.

71. The tribunal is mindful that the 'Decent Homes' programme is intended to ensure that social housing meets a minimum standard but that the

standard does not necessarily apply to leasehold properties unless the lessee's property is occupied by vulnerable persons or other special circumstances prevail. Nonetheless, the tribunal has proceeded on the basis that the respondent was entitled to renew the roof pursuant to clauses 5 and 7 and the third schedule the lease if it was reasonable to do so. The availability of affordable 'Decent Homes' finance is relevant to the issue of reasonableness but the condition and viable life of the existing roof is greater relevance.

72. The tribunal has seen photos and heard evidence which both suggest that the roof was in a good condition. At our request Mr McDonnell kindly obtained and provided a computer print-out of the block repair history recorded in the maintenance system during the period 2005-2012. Only three items relate to the roof. On 06.12.06 water penetration was recorded into flat 20 and the applicants confirm this was caused by the guttering. On 12.06.08 a leak from the tiled roof above the front entrance door which was coming in to or from the first floor landing. No major works nor recurrence of water penetration are recorded and so it does not appear to indicate any serious roof defect. On 07.01.11 an order was raised to replace missing lead flashing above the entrance canopy as the existing flashing had been stolen. The 'neighbour questionnaires' in the hearing bundle record that they reported no problems with the roof. The existing roof was of a traditional construction of concrete tiles over a timber frame with internal linings and dated from the late 1950s/early 1960s. A 'life' of approximately 100 years could reasonably be expected from a roof of this type on this block standing in this location. There is no evidence of serious or numerous defects accruing. In fact all of the available evidence suggests that the roof remained in a good condition.
73. Having regard to all of the information and evidence before it the tribunal takes the view that it was not reasonable to carry out item 8.1 and renew the existing roof. Accordingly, the resulting charge of £18,760 is not payable by the applicants.
74. Item 8.2 charges £8,383 for the application of linings to defective gutters. The concrete gutters can be seen in the photos and were seen on inspection. Gutters of this construction and age do need effective linings if they are to perform their purpose. The tribunal is satisfied that it was reasonable to do this work and is satisfied that the resulting charge is reasonable.
75. Item 8.3 charges £6,700 for the installation of 'contour' vents to the gutters. Gutters of this construction and age do need effective vents if they are to perform their purpose. The tribunal is satisfied that it was reasonable to do this work and is satisfied that the resulting charge is reasonable.
76. Item 8.7 charged £7,616 to supply and lay new promenade tiles. This has been reduced to zero on the ig9 schedule and is not pursued as it appears not to be relevant to this block. Accordingly, nothing is due.

77. Item 8.9 charges £526.96 to construct gable end enclosures. These could be seen on inspection and the tribunal is of the view that it was reasonable to construct the same to ensure that the roof was properly sealed to avoid the ingress of birds etc. The resulting charge is unremarkable and is payable in full.
78. Item 8.10 charges £656 for the installation of loft insulation to the roof void. The applicants do not recall any such works. Very fairly, the respondent has withdrawn the item. Accordingly, nothing is due.
79. Item 8.18 allowed £455 for the provision of timber walkways within the loft. This has been reduced to zero in the ig9 schedule and is not pursued as it appears that the work was not carried out in the event. Accordingly, nothing is due.
80. The total due for item 13 'roof fascia, soffit, rainwater goods & insulation' is therefore £15,609.96.

Scaffold/working platforms

81. The total charge for this item is £12,342 and comprises works items 12.1-12.7. The applicants question whether it was reasonable to erect it if it was not reasonable to replace the roof. They also question whether the cost is reasonable because the scaffolding was only used sporadically and was not struck until a considerable time after the works had been completed. Scaffolding is always expensive. A charge of £12,342 for scaffolding of this type, extent and layout over this sort of period is not remarkable in the experience of the tribunal. However, the question of whether that cost was reasonably incurred is associated with the works items for which it was needed, being the roof works, the guttering works, and the window replacement. The reasonable cost for scaffolding should reflect the determinations made in relation to those works. Doing the best it can to reflect those determinations the tribunal reduces the cost by 1/3 to reflect the determination relating to the roof works.
82. Accordingly, the reasonable cost payable for scaffolding is 2/3 of £12,342 which is £8,228.

Walls, fences, gates associated with estate plan

83. The total charge for this item is £460 and comprises works item 14.14. During the hearing it has become apparent that this item has already been recovered within 'paths, paving, drying areas associated with estate plan' and the respondent has confirmed that this item of £460 has been included in error and so is withdrawn.

Windows/doors

84. The total charge for this item is £11,579.40 which comprises works item 3.1 and refers to window replacement. The applicants' windows were not

replaced and they challenge that they are liable to pay a proportion of the cost of replacing windows to the other residential flats. The 'neighbour questionnaires' in the hearing bundle record that flat 40 had seven double glazed windows prior to replacement, flat 28 had four, and flat 32 had seven. Correspondence in the bundle records that the block windows were surveyed and only those in flat 20 conformed with the prevailing requirements. This is why the applicants' windows were not replaced. On the evidence and information before it the tribunal cannot be satisfied that it was not reasonable for these works to be carried out. The improvement has delivered modern performance and consistency of construction and appearance throughout the block.

85. The relevant parts of the lease are clear and unambiguous. The demise includes glazing but not the structure of the windows which are retained as part of the block and estate. Clause 7(1)(a) and the Third Schedule provide that the respondent may make reasonable improvements to window frames and seek a contribution to the cost of the same. This is estate renewal within the meaning of clause 5(2). Clause 5(2)(e) operates so that the applicant's liability is for their individual proportion of the block and common parts costs. It follows that they are liable to pay a proportion of the costs of window replacement to the other flats, notwithstanding that their own windows were not replaced. .

86. Accordingly, the applicants are liable to pay their due proportion of the total charge for this item of £11,579.40.

Works design/supervision/contingency

87. The total charge for this item is £21,062.64 which comprises the works items 2.1, 13.1 and 13.2.

88. Item 2.1 provides for £20,188.77 to be charged as contract preliminaries. The respondent explains this refers to Breyers costs of establishing and maintaining the site throughout the works programme, and that the charge is calculated by taking the estate site cost for the whole of the 'Brentwood, Hutton & Elm Park' works programme and dividing it between the number of individual sites/blocks. The applicants state that this charge is substantial and to be reasonable should reflect that it was not reasonable to carry out some of the works and that the site supervision and works quality was poor. The tribunal accepts that there will inevitably be substantial costs in establishing and maintaining a works site of this type. However, in order for those costs to be reasonably incurred they must reflect the tribunal's determinations that it was not reasonable to carry out some of the works on that site. Those works can be grouped into seven areas, being roof works, window replacement, guttering works, electrical installation works, balcony overlay treatment, internal communal repairs & redecorations, and site scaffolding management. As the tribunal has determined that it was not reasonable to carry out two of these items (roof works and balcony treatment) then doing the best it can to reflect those determinations the tribunal reduces

the site cost of £20,188.77 by 2/7 so that the reasonable relevant cost payable is £14,420.55.

89. Item 13.1 refers to 'detailed design fees' at £558.87. It appears that this must relate to roof works, lighting installation works and window replacement. Given the determination that it was not reasonable to carry out the roof replacement and doing best it can to reflect the determinations relating to works the tribunal is of the view that a reduction of 1/3 will deliver a reasonable charge for 'detailed design fees' of £372.58.

90. Item 13.2 refers to Breyers attendance at meetings and is charged at £159.04. The applicants are firmly of the view that Breyers performance was poor and point to correspondence in the hearing bundle between the respondent and their contractors which appears to support this view to a degree. However, it is clear Breyers did attend meetings as part of the programme and the cost appears reasonable in principle. In the information before it the tribunal is satisfied that this charge is reasonable and is payable.

91. Accordingly, the total charge payable in respect of 'works design/supervision/contingency' is £14,952.17.

Overheads and profit

92. This charge is fixed at 6% of the programme works cost as agreed during the tender process. The tribunal is satisfied that this percentage is reasonable for a project of this type and size. During the hearing the parties conceded that the actual charge payable as overhead and profit should be 6% of the works costs as determined by the tribunal. Those works costs are £67,031.41. Accordingly, the reasonable charge for overheads and profits payable is £4,021.88

Management fees @ 3%

93. This charge is fixed at 3% of the programme works costs. The tribunal is satisfied that this percentage is reasonable for a project of this type and size. During the hearing the parties conceded that the actual charge payable as management fee should be 3% of the works costs as determined by the tribunal. Those works costs are £67,031.41. Accordingly, the reasonable management fee payable is £2,010.94

Professional fees (JRP @ 4%)

94. As this fee has been capped at £100 per lessee it is not challenged and the tribunal does not consider it further.

Professional fees (Savills @ 1.78%)

95. As this fee has been capped at £100 per lessee it is not challenged and the tribunal does not consider it further.

The costs of the Tribunal proceedings

96. The applicants have applied for an order pursuant to *section 20C of the Landlord & Tenant Act 1985*. However, Mr McDonnell, with characteristic fairness, has confirmed to the tribunal that the respondent will not seek to recover from the applicants by way of service charge all or any of the costs incurred or to be incurred in connection with these tribunal proceedings. In those circumstances no order from the tribunal is required.

Stephen Reeder
Lawyer Chair

23rd May 2013

Caution

The Tribunal inspected the communal parts of the buildings and grounds referred to solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the building and grounds are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.