9383

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AZ/LSC/2013/0241 LON/00AZ/LSC/2013/0495
Property	:	39 Passfields, Bromley Road, London SE6 2RD
Applicant	:	Phoenix Community Housing Association
Representative	:	Mr Richard Parker (Respondent's Home Ownership Advisor)
Respondent	:	Ms Chioma Uche
Representative	:	Mr Paul Oakley (Counsel)
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Mr Robert Latham Mr Peter Roberts DipArch RIBA Jayam Dalal
Date and venue of Hearing	:	3 and 4 September 2013 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	18 November 2013

DECISION

---

(1) The County Court has transferred to us Claim No. 2QZ248762 in which the Applicant claims £17,828.19 in respect of major works which were due to be executed. This was a demand for payment on account, based on the estimated cost of the works. This claim (LON/00AZ/LSC/2013/0241) has become largely academic as the works have now been completed and on 12 July the Applicant issued

their final demand claiming an additional sum of £3,010.87, her total contribution being £20,839.06.

(2) This Tribunal has no jurisdiction to amend the claim referred to us by the County Court (see *Lennon v Ground Rents (Regisport) Ltd [2011] UKUT 330 (LC)*). On 15 July 2013, with the permission of the Tribunal, the Applicant issued a separate application seeking a determination as to the payability and reasonableness of these service charges (LON/00AZ/LSC/2013/0495). The Tribunal has therefore focused on this application, being the substantive dispute between the parties.

(3) The Tribunal determines that the sums claimed are largely payable. However, the Tribunal is satisfied that the Applicant has computed the Respondent's liability on the wrong basis, attributing the relevant costs to Blocks D and E (Nos. 1-65), rather than those attributed to Block E (Nos. 36-65). The Applicant must now recompute the Respondent's liability on the correct basis. The Applicant must also have regard to the modest adjustments made at paragraphs 67, 69 and 70 of this decision.

(4) We refer this matter back to the County Court. We advise the Applicant to provide the Court with an amended statement as to the Applicant's liability for the works and to amend its claim accordingly. If the Respondent disputes this amended statement, it is open to the Court to refer this matter back to the Tribunal. However, we hope that this will not be necessary.

(5) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985. However, the Applicant has informed the Tribunal that it does not intend to charge any of its costs involved with this application to the service charge account.

(6) Since the Tribunal has no jurisdiction over county court costs and interest, these matters should now be referred back to the Bromley County Court.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by the Respondent of service charges.

2. On 27 November 2012, the Applicant issued proceedings in the Northampton County Court under claim no. 2QZ248762. The Applicant claims £17,828.19 in respect of major works which were due to be executed at Passfields. This is an estate which consists of 101 dwellings. This claim was based on the estimated cost of the works

which the Applicant asserted that they were entitled to demand in advance. The claim is based on a demand dated 16 March 2012 (at p.47-49 of the Bundle). A final demand was sent on 7 November 2012. The Applicant also claims interest and costs which are outside the jurisdiction of this Tribunal.

3. On 25 January 2013, the Respondent filed her Defence. She disputed that the service charge demanded was either payable or reasonable. She lives in the US. She denied that her managing agent had authority to accept service on her behalf. She gave an address at 1 Reculver House, Lovelinch Close, London, SE14 1JW.

4. The proceedings were subsequently transferred to the Bromley County Court. On 27 March, the claim was transferred to this Tribunal, by order of District Judge Brett and has been allocated Case No.: LON/00AZ/LSC/2013/0241.

5. On 7 May, the Tribunal gave Directions (at p.53-9). The Respondent was represented by Ms P Oakley. The Respondent was ordered to give an address for service. On 13 May, she gave that address as 1 Essex Court, London EC4Y 9AR. This is the address of Mr Oakley, Counsel, who has appeared on behalf of the Respondent under the direct access scheme. It is apparent that the relationship between the Respondent and her managing agent, Mr Oni, has broken down.

6. Directions were given for the service of a statement of case and for the preparation of a Scott Schedule based on the estimated costs of the works. The Applicant's Statement of Case (20.5.13) is at p.61, whilst the Respondent's Statement (14.6.13) is at p.65-68. The Applicant has prepared a Scott Schedule (19.6.13) at p.69-72.

7. On 20 June, there was a mediation session. This did not resolve the issues in dispute. However, by this date, the works had been completed and the Respondent was about to issue a final demand based on the actual costs. The parties recognised the good sense in focusing their dispute on the actual costs, rather than the estimated costs of the works. The Tribunal has no jurisdiction to amend the pleadings referred by the County Court. The Tribunal therefore gave the Applicant permission to file a separate application form relating to the actual costs.

8. On 12 July (at p.77-79), the Applicant issued a final demand for an additional sum of £3,010.87. On 12 July, the Applicant completed their application to this Tribunal relating to these final costs (Case No.: LON/00AZ/LSC/2013/0495). The Applicant provided a detailed Statement of Account which is at p.81-2. The total cost of the works on the estate had increased from £1,126,332.28 to £1,322,038.78. The Respondents contribution had increased from £17,828.19 to

£20,839.06, including an administration fee of £500. A revised Scott Schedule appears at p.83-85.

9. Pursuant to the Directions given on 20 June, the Respondent should have provided their detailed response to the Scott Schedule stating which items remain in dispute and her reasons for disputing these. The Respondent failed to do this.

10. Thereafter, the Directions provided for the Applicant to file a response and the filing of witness statements. It was impractical for the Applicant to comply with these directions, not knowing the case that they had to answer.

11. The relevant legal provisions are set out in the Appendix to this decision. The Consultation provisions are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) ("the Regulations"). The relevant provisions are set out in Part 2 of Schedule 4 ("Consultation Requirements for Qualifying Works for which Public Notice is not Required").

The Hearing

12. The case was listed before us with a time estimate of two days. Mr Oakley appeared on behalf of the Respondent. Mr Parker, the Applicant's Home Ownership Advisor, represented the Applicant. We are grateful to both of them for the assistance that they provided the Tribunal through their oral and written representations which has enabled us to determine the issues in dispute despite the unsatisfactory state of the pleadings and evidence.

13. At the commencement of the hearing, Mr Oakley provided us with a brief statement from the Respondent and detailed responses to the Scott Schedule. He also provided a number of photographs. At the Directions hearing, the Respondent's case had been somewhat different: complaint was made that there had been no breakdown of the charges which seemed excessive; the new double glazed units were substandard and the ventilation had been blocked; the external render had been damaged and was leaking; the Applicant was being charged for works from which she derived no benefit such as lifts, the entryphone system and pram sheds; there had been no consultation. At the hearing, some of these issues were not developed and a number of new issues were raised.

14. Having regard to the overriding objectives, the Tribunal were willing to permit the Respondent to rely on this evidence, provided that we were able to proceed with the claim. Neither party sought an adjournment to a new date. We granted Mr Parker a short adjournment to enable him to consider the Respondent's evidence. We also indicated that we

would invite closing submissions in writing so that each party had an adequate opportunity to put their case.

15. We invited Mr Oakley to open the case so that he could amplify the Respondent's items in dispute as set out in the Scott Schedule. The Respondent was not present to be cross-examined. No expert evidence was adduced by the Respondent. Neither did the Respondent adduce any alternative quotes to indicate that the sums charged by the Applicant were excessive. The Applicant was rather put to proof that the sums claimed were reasonable and were payable pursuant to the terms of the Applicant's lease. We inspected the estate at 14.00 on the first day. The parties were present.

16. In the light of the issues raised by the Respondent, Mr Parker produced a detailed "Final Account Analysis". The Tribunal were concerned at the extent to which the final costs had exceeded the original estimate and this Analysis explained this. The Analysis refers to various "Contract Instructions" ("CIs"). Mr Oakley sought disclosure of these and we were provided with a number of these with the written submissions.

17. Mr Parker also provided the Tribunal with two additional reports. The first is from RBS Specialist Services Ltd which is apparently dated 6 May 2011 and was based on an inspection on 3 May 2011. There was some uncertainty about the date of this report as it is illustrated by photographs showing scaffolding erected the Estate. We were told that this was not erected until December 2011. The report addressed the deterioration of the externally exposed concrete and the repairs that were required. The photographs did not record the blocks to which they relate.

18. The second report was on Damp and Condensation. It is prepared by Faithorn Farrell Timms and is dated 7 March 2013. This report discusses a condensation problem that arose after the new Crittal double glazed units had been installed. It is apparent that this had exacerbated an existing problem. The new windows would have reduced the natural ventilation within the flats. Residents are urged to ensure that their flats are properly ventilated and that there is effective use of extract fans in bathrooms and bedrooms.

19. On the Second day, Mr Oakley completed his submissions. Mr Nadar, Reinvestment Manager at Phoenix, then gave evidence, elaborating upon his Final Account Analysis. Mr Oakley subjected his evidence to detailed cross-examination.

20. Closing submissions were made in writing. On 11 September, the Applicant provided a summary of a number of items included in the final account, cross-referenced to the 26 CIs which were also disclosed.

21. On 19 September, both parties provided Closing Submissions. The Respondent's Submissions were based on an updated version of the Scott Schedule which she had produced on the first day of the hearing.

22. On 25 September, the parties provided additional Responses addressing the issues raised by their opponent. Mr Oakley has also provided a number of authorities.

23. The Applicant notes that it has been unable to deal with any additional evidential issues canvassed in the updated Scott Schedule prepared by the Respondent. The Tribunal are satisfied that the Applicant should not be prejudiced by the tardy manner in which the Respondent has prepared her case. The Tribunal will therefore restrict itself to the matters raised in the original Scott Schedule and any additional matters put to Mr Nadar in cross-examination.

24. On 3 October, the Tribunal reconvened to consider our decision. We had anticipated that half a day would suffice. However, in the light of the extent of the material provided, we reconvened for a full day. Our task would have been more straightforward, had the Respondent prepared her case as envisaged in the Directions. Parties must recognise that the purpose of such directions is to enable the Tribunal to determine their cases fairly, justly and in a proportionate manner.

The Background

25. The Passfields Estate was designed by architects Maxwell Fry and Jane Drew and was finished in 1951. It won a Festival of Britain Special Architectural Award for civic and landscape design. The scheme made innovative use of concrete frame construction. The balconies have distinctive blue panels. The Estate was listed in 1998 as part of a re-appraisal of post-war buildings.

26. There are a total of 101 flats on the estate which is illustrated in the plan at p.31. There are five blocks which are referred to as A to E in the contract documentation, albeit that elsewhere they are numbered 1 to 5. Blocks A to C (Nos. 66-77; 78-89; and 90-101) are low rise; whilst Blocks D and E (Nos.1-35; and 36-66) have additional floors. Flat 39 is in Block E. Whilst Blocks D and E are separate, they share a common lobby area. A common entryphone system was installed as part of the major works.

27. The Respondent was a secure tenant of the London Borough of Lewisham. Her lease is dated 28 October 2002 and was acquired under the Right to Buy legislation. It is a standard Lewisham lease which has not been adapted to reflect the particular features of this estate.

28. On 3 December 2007, Lewisham transferred the Estate to the Applicant. The Applicant are the first "community gateway housing association" in London. Residents can become shareholding members and participate in decision-making. The Applicant own and manage some 6,000 properties in South East London.

29. The first step in the Consultation process is the Notice of Intention to Carry Our Works (Paragraph 1 of the relevant Schedule of the Regulations). This was served on 27 May 2011 on Mr Oni, the Respondent's managing agent, and is at p.33-36. We are satisfied that this was the correspondence address which the Respondent had supplied to the Applicant. The works were specified together with the reasons why the landlord considered these to be necessary. The tenants were also invited to nominate a person from whom the landlord should obtain an estimate. The Respondent's managing agent did not participate in the consultation process. The Respondent now makes no criticism of the procedure adopted by the landlord.

30. Thereafter, the Applicant obtained estimates from two contractors, United House (in the sum of £2,626.079.43) and Mulalley (in the sum of £2,851,646.33). It would seem that no tenant nominated a person from whom the landlord should obtain an estimate.

31. On 12 September 2011, the Applicant served their Notice about the Estimates (p.39-46). The Respondent's contribution was assessed at £19,561.01 (see p.43). The Notice included a summary of the observations received during the consultation process (pp.45-6). We note three of these responses. First, the Applicant stated that the works would be completed by the end of the financial year (31 March 2012). Secondly, lessees were reminded of their liability in respect of the roofing works. Thirdly, some lessees had pointed out that they have replaced their windows with UPVC double glazed units and questioned why these needed to be replaced. The Applicant pointed out that Passfields was Grade II listed. Lessees had not obtained planning permission and their replacement windows were not in keeping with the Grade II status of the Building. The planners had approved the installation of double glazed Crittal windows and all the windows needed to be replaced with this approved version.

32. The Applicant subsequently decided to accept the tender from United House. Scaffolding was erected in December 2011 and works commenced in January 2012. The initial intention was initially intended to complete the works by 31 March 2012. It is apparent that this time scale was wholly unrealistic. Works were not completed until September/October 2012. We are satisfied that 6-9 months would have been a more realistic contract period. We are required to consider whether or not the delay has increased the cost of the works unreasonably.

33. Listed building consent has been required for many of the proposed works, including the installation of the entry phone system. It is apparent that the Applicant did not anticipate the practical difficulties that would arise when the works commenced. The cost of the works has been significantly higher because of the listing.

The Inspection

34. The Inspection was extremely useful for the Tribunal. We witnessed the blue balcony panels which are such a feature of the Estate. We also saw the signs which Mr Oakley considered to be illegitimate advertising by the Applicant (see see Respondent's photograph K1-5). Little work had been done to the communal grounds (see Respondent's photograph E1-2 and G1-6). We were told that there was no money available for this.

35. We examined the newly created entrance area between Blocks D and E. This is now controlled by an entry phone system. The lease envisages that this will be the means of access to the Respondent's flat (see the right of way marked green in the Fifth Schedule to the Lease). We were told that additional works were required to the access area to satisfy the Listed Buildings Officer. We saw the lift which had been previously installed and which was not part of the current contract. We also saw the access ramp which the Respondent takes exception to (see Respondent's photograph D6).

36. The layout to the Estate is different from that illustrated on the plan annexed to the Respondent's lease. Part of the communal area around her flat had been incorporated as a private garden for the flat. As a consequence of this, her tenant tends to use the back door into the flat through the, now, private garden, rather than the right of way specified in the lease (see Respondent's photograph A2). There is also a separate footpath to the west and north of Block E which has now been provided with a secure means of access (see Respondent's photographs E1 and E2). This is not expressly granted as a right of way in the lease. This now has an electric security gate fitted (see Respondent's photograph G1-2).

37. We inspected the Respondent's flat. We were satisfied that the windows had been installed to a reasonable standard. There is some condensation staining to the sides of the windows (see Respondent's photographs L1-5). We are satisfied that this is not due to poor workmanship, but rather to the matters discussed in the Damp and Condensation Report.

38. We also noted the external render to the side of the demised flat (Respondent's Photograph F7). This was not in a good condition in the area between the soil and the brickwork. This was not part of the major works contract and is largely a matter of decorative finish.

39. We inspected the pram sheds which has been demolished and rebuilt (see Respondent's photograph H2-3). The cost of this work has been apportioned to Blocks D and E.

The Lease

40. The lease is dated 28 October 2013 and is at p.3-31 of the Bundle. It was granted by the London Borough of Lewisham pursuant to the statutory Right to Buy provisions. The Respondent is granted a demise of her flat, 39 Passfields, for a term expiring on 27 March 2113.

41. We highlight the following provisions in the lease:

(i) The "Estate" is defined in the in the First Schedule. The land shown edged yellow on the plan includes all 101 flats and the common parts. The yellow edged area comprises "land gardens flats maisonettes houses access roads pathways garages parking spaces stores and children play areas (if any)". Communal and/or amenity areas are hatched black on the plan. This includes all the external areas on the Estate. There is a play ground. There are also 28 pram sheds.

(ii) The "Building" is defined in the Second Schedule. This is the area edged blue on the plan "together with the flats/maisonettes erected thereon or on some part thereof but excluding all other parts of the Estate". It is to be noted that this only includes Flats 36 to 66 (Block E).

(iii) "Reserved Property" is defined in the Third Schedule. This extends to all parts of the Estate other than the Building. It expressly includes the pram sheds.

(iv) The "Demised Premises" are defined in the Fourth Schedule. They are coloured red on the plan annexed to the lease.

(v) The "Rights of Way" are defined in the Fifth Schedule. The pathway coloured green on the plan attached to the lease is contemplated as being the right of access to the flat. In practice, the Respondent has made limited use of this right of way, preferring to use a path to the south and west of the block over which he is not granted an express right of way. The pathway coloured green leads to the new entry phone controlled entrance.

(vi) The Fifth Schedule also defines "Benefit of Services". This includes the right of free passage of "water and soil" from and to the Demised Premises "through all cisterns tanks sewers drains"... "in or under any

part of the Building and the Estate" for the services of the Demised Premises". The drains are part of the "Reserved Property". The landlord is required to maintain these in good and substantial repair (Ninth Schedule).

(vii) The "Lessor's Covenants" are defined in the Ninth Schedule. The landlord is obliged to "maintain in good and substantial repair and condition (and whenever reasonably necessary rebuild reinstate renew and replace all worn or damaged parts)" of the structure and exterior both the Building and the Demised Premises. This extends to the window frames. It also extends to all parts of the Reserved Property (para 1.4).

(viii) By clause 5, the tenant covenants to pay her share of the service charge. The Service Charges are defined in the Tenth Schedule. It extends to the "provision, repair and maintenance" of "controlled entry phones" (para 5.4). It also extends to improvements (Part II).

42. The Respondent has drawn our attention to the "contribution formula" to the service charge (para 5 of the Tenth Schedule):

> "The Lessee's contribution shall be the summation of the expenditure incurred on each element of the works or service specified below and shall be assessed in accordance with the following formula: A x 1/B where A is the expenditure incurred and B is the number of Flats/Maisonettes and other dwellings receiving the benefit of the expenditure (B may vary according to the element of the expenditure involved) and by way of example and not limitation the said elements insofar as they are relevant and are not capable of applying to the Demised Premises Building or Estate so apply and build up the expenditure""

43. The Tribunal are satisfied that this gives the landlord a discretion as to how service charges are apportioned, provided that it acts reasonably. Mr Oakley argues that this restricts the tenant's liability to works from which she specifically benefits. Thus, the Respondent is only liable to pay for the works to the doors and windows of her own flat and not those elsewhere in the Block E. Equally, the Respondent has no benefit from the pram sheds and should not therefore be obliged to contribute to the cost of these works.

44. In his "Final Submissions" (25.9.13), Mr Oakley refers to the phrase "common parts". He suggests that neither balconies nor pram sheds are common parts of the Estate. This is not the language used by the lease. The pram sheds are specifically defined as part of the "reserved property". The landlord's repairing covenants specifically extend to any "reserved property". Equally, the balconies are part of the structure and/or exterior of the "Building" which fall within the landlord's covenant to repair. He also supplied a number of authorities on what

constitute "common parts". We rather focus on the terms defined in the lease.

The Issues in Dispute

45. The Respondent's Scott Schedule (19.9.13) raises a number of generic issues which we need to address:

(i) The manner in which the Applicant has apportioned the costs between the five blocks on the Estate.

(ii) Whether the extended period of the Contract unreasonably increased the Costs of the major works.

(iii) How the costs of the pram sheds should be attributed. This embraces items 3, 11, 12 and 13 in the Scott Schedule.

(iv) Whether the Respondent is correct in her contention that she is only obliged to contribute to works which benefit her individual flat. This embraces items 5 (windows and doors), 6 and 7 (internal and external communal decorations and repairs), 9 (intake cupboard), 12 (asbestos removal from balcony infill panels) and 14 (balcony repairs).

46. Having considered these generic issues, we turn to the 19 items raised in the Scott Schedule.

Generic Issues

Issue 1: Blocks D & E

47. The Applicant has apportioned the cost of certain Estate works between the 101 flats on the estate. However, when works are attributable to Buildings, Blocks D and E have been treated as a single building. This does not reflect the terms of the lease. We are satisfied that where works have been executed to the roofs, windows, concrete finishes and balconies of Blocks D and E, these should have been specifically apportioned to each building. Thus the Respondent is only liable for 1/30 of the costs of the works attributable to Block E, rather than 1/65 of the works attributable to Blocks D and E.

48. As a consequence of this finding, we are satisfied that the Applicant has failed to apportion the cost of the works according to the terms of the lease. The Respondent requires the Applicant to reapportion them on the correct basis and the Tribunal has no option but to accede to this request. The Tribunal suspect that this re-apportionment may rather increase the Respondent's liability. However, the Respondent requires

her liability to be computed strictly in accordance wither her lease and she is entitled to insist on this.

Issue 2: Late Completion

49. The works had been tendered on the basis of and scheduled to be completed by 31 March 2012. They were not completed until September/October 2012. As a consequence of this on-site costs and the costs of scaffolding increased by 97% and 58% respectively (Items 1 and 2 in the Scott Schedule).

50. There seem to be two reasons for the delay. First, the three month time period for the contract was not realistic. This was one of three pilot major works programmes undertaken by the Applicant. The Applicant accepts that, in hindsight, the timetable was unduly optimistic. Secondly, the Respondent underestimated the problems of the Estate being listed. The Tribunal are satisfied that the listing has caused particular problems and has resulted in the works being significantly more expensive than would otherwise have been the case. Prior to the consultation process, the Respondent had obtained approval for the double glazed Crittal windows. But for the listing, it is probable that more normal UPVC windows would have been used. However, there were particular problems with the new door entry system. These only became apparent when the contractors were on site. Arguably, these should have been addressed at an earlier stage.

51. We are satisfied that the delay was not due to the default of the contractors. Extensions of time to the contract period were considered by the Contract Administrator and an extension of time of 5 months was awarded.

52. The issue for the Tribunal is rather whether the delays unreasonably added to the cost of the works. There is no evidence that it did. Had the Respondent been more realistic about the potential difficulties arising from this contract, 9 months, rather than 3 months, would have been specified as the contract period. The costs of facilities and scaffolding were significantly higher than originally estimated. However, this was mainly caused by the initial unrealistic estimate of the timescale, rather than any unreasonable delay in the execution of the works.

Issue 3: The Pram Sheds

53. There are 28 pram sheds. However, there are 65 flats in Blocks D and E who are eligible to use them. These pram sheds were in a state of dilapidation. The Applicant demolished and rebuilt them. We understand that the Applicant had no option but to rebuild them because of the Estate's Grade II Listed status. Any of the tenants of Flats 1-65 are entitled to apply for use of a pram shed and these are

allocated on a first come basis. A waiting list is now maintained for them. There is no charge for the use of the pram sheds.

54. The Respondent complains that as she has no use of a pram shed, accordingly she should not have to contribute to the cost of the works. We were initially sympathetic to this argument. However, how is the cost to be apportioned: (i) between those who were using the sheds or (ii) between those who now use them? We suspect that many of the pram sheds were not being used because of their dilapidated condition. Few tenants would have applied to use a pram shed had they been told that they would have to pay a significant capital sum for their use. An alternative would have been for the Applicant to bear the costs of the works and then rent them out to those who wish to use them. The problem is that this is not an option which the lease contemplates. Furthermore, if at some point in the future, the Respondent did want to use a pram shed, she could apply for it and, if available, could have the use of one at no extra cost.

55. We are satisfied that the pram sheds form part of the "Reserved Property" the repair and maintenance of which falls within the landlord's covenant. This covenant extends to rebuilding the pram sheds. This is an item of expenditure which the landlord is entitled to charge through the service charge. The lease contemplates that the landlord will be able to recover all of its expenses in complying with its obligations under the lease. We are satisfied that the only manner in which it is open to the Applicant to apportion these costs is to the 65 flats which are able to have the benefit of their use. All these tenants have the right to apply for use of a pram shed. All could have applied to use one when the pram sheds were rebuilt. There is no evidence that the Applicant has allocated them unfairly. The fact that only 28 could be granted a licence to have sole use of a pram shed at one time cannot affect how the costs should be attributed.

Issue 4: Works from which the Respondent does not Benefit

56. We are satisfied that the Respondent has misconstrued how the contribution formula should be applied. The "Building" at Block E includes its roof, windows, doors, balconies and internal walkways. Some of the windows and doors will form part of "Demised Premises" (individual flats). Others will be part of the common parts enjoyed by all tenants. All fall within the landlord's covenant to repair the Building. All tenants of these flats benefit from these works. The extent of their benefit will differ. The tenants of the upper flats will have a greater interest in the roof being in a good state of repair. Equally, the ground floor tenants will not use the stairs to gain access to their flats.

57. Whilst the contribution formula gives the landlord some discretion as to how the cost of the works are attributed, all 30 dwellings in Block E benefit to some extent from the works executed to the "Building" (Block

E). In applying the formula, "B" is 30, namely the total number of "Flats/Maisonettes".

The Scott Schedule

58. Having considered these generic issues, we turn to the 19 items raised in the Scott Schedule.

59. Item 1 - Facilities, Local Overheads, Services etc: The final cost was £137,981.46, compared with an estimate of £69,889.51 – an increase of 97%. The Contract Administrator certified the extension of time as being justified. A five month extension was granted. We have discussed the reasons for this at paras 49 – 52 above. We accept that the initial timescale was unrealistic. However, there is no evidence that the costs would have been lower had a more realistic timescale been adopted initially.

60. Item 2 - Scaffolding: The final cost was £100,680.12, compared with an estimate of £63,480.16 – an increase of 58%. The increased costs were due to the five month extension of the contract. Again, there is no evidence that the costs would have been lower had a more realistic timescale been adopted initially.

61. The Respondent further contends that we should deduct the cost of any scaffolding for the works to the pram sheds. We disagree – see Issue 3 above.

62. Item 3 - Roof Coverings: The final cost was £130,833.12, compared with an estimate of £173,343.85, – a significant reduction. The Respondent contends that we should deduct the cost of the works to the pram sheds. We disagree – see Issue 3 above.

63. Item 4 - Lead Sheeting etc: The final cost was £3,472.00, compared with an estimate of £16,419.65 – a significant reduction. The Respondent' contribution is £54.41 and now concedes that this sum is de minimis.

64. Item 5 - Windows/Roof lights/Doors: The final cost was £500,302.48, compared with an estimate of £470,333.42 – an increase of 6%. First, the Respondent contends that she should only be liable for the costs of the windows and doors to her flat. We disagree – see Issue 4 above. The Respondent is obliged to contribute to the communal windows to the new entrance area. Secondly, she makes points in relation to CIs 13 and 28. We understand that the criticisms are unfounded. The only additional item for which the Respondent is being required to pay is the laminated glass to the ground floor properties as recommended by the Crime Prevention Officer. The Respondent disputes her liability for two bin store doors even though CI31 specifically refers these as being for

Blocks D and E. We accept this evidence. We are not willing to deal with the new issues raised in the Scott Schedule which were not put to Mr Nadar.

65. Item 6 - Communal Decorations and Repairs: The final cost was £79,197.00, compared with an estimate of £36,009.47 – an increase of 119%. Mr Nadar gave us full particulars of the additional works cross-referenced to the relevant CIs. The initial suggestion seems to have been that these works were not carried out. We reject this. The Respondent suggests that she should not be liable for the costs of works to the walkways common parts which she does not use, or to the internal balconies. We reject this – Issue 4 above. We are not willing to deal with the new issues raised in the Scott Schedule which were not put to Mr Nadar.

66. Item 7 - Communal Repairs (External): The final cost was £33,679.35, compared with an estimate of £12,525.58 – an increase of 169%. Again, Mr Nadar gave us full particulars to the additional works cross-referenced to the relevant CIs. We are satisfied that the Respondent is liable to contribute to the cost of the access ramp to the rear of the communal entrance way. It is irrelevant that the occupant of Flat 39 does not need to use it.

67. We understand that CI27 includes the sum of £1,674.99 for "repair block work to door surrounds" and that the Applicant agrees that this sum should be removed.

68. Item 8 - Rainwater Goods/Drainage: The final cost was £10,249.72, compared with an estimate of £2,488.18 – an increase of 312%. The major works include drainage works, including a CCTV drain survey. Mr Nadar explained that there had been no CCTV survey prior to the works. Certain of the works were considered common to the Estate and the costs were divided by 101 dwellings. The cost of other works was apportioned to the dwellings within a Block. The Applicant will need to review whether there are any costs which have been apportioned to Blocks D and E which should only have been attributed to one of them (Issue 1).

69. We note that the additional sum of £400 to cut out and fit new drain channel to door screen relates to Block D. This item must be removed.

70. We further note to the adjustment in respect of the CCTV survey of the drain runs (CI26). £748.88 had been allowed for a CCTV survey of the drains for Blocks D and E. This was increased to £2,000 to permit a survey of the drains to the five blocks. We are satisfied that only the original £748.88 is attributable to Blocks D and E, rather than the sum of £1,287.14. The Respondent's liability must be adjusted accordingly.

71. Item 9 - Lighting & Power: The final cost was £41,977.80, compared with an estimate of £39,126.30 – an increase of 7%. Mr Nadar described how the tender went out for communal lighting which prescribed a performance specification. The Respondent subsequently required the contractor to use ASD Lighting and Power, a preferred supplier. This involved an additional cost of £2,686.24. The Respondent took this decision to ensure consistency between their estates which would reduce maintenance costs. We are satisfied that this approach was reasonable. The Respondent complains of being required to contribute to the costs of the main intake cupboards none of which are on the ground floor. We reject this contention (Issue 4).

72. Item 10 - Brickwork Repairs: The final cost was £17,624.44, compared with an estimate of £28,559.60 – a significant reduction. The primary contention of the Respondent is that she should only be liable for the cost of the works attributable to her own flat. We reject this contention (Issue 4). The Respondent complains of the additional cost of £1,752.20 due to a re-measuring of the pointing that was required. We are satisfied that this was work that needed to be done and that this was a proper adjustment to the specification.

73. Item 11 - Fencing: The final cost was £40,251.56, compared with an estimate of £38,743.19 – a modest increase. £8,987.90 was attributable to rebuilding the pram sheds. We are satisfied that the Respondent is liable for this expenditure (Issue 3). The Respondent objects to the installation of the door entry fencing and gates to Block E (CI24) on the basis that she has no right of way along this path. However, this is a path which residents do use. We are satisfied that this is a legitimate item of expenditure relating to the maintenance of "Reserved Property".

74. Finally, objection is taken to the privacy screens to the balconies. We are satisfied that this is a legitimate item of expenditure provided that it relates to Block E.

75. Item 12 - Asbestos Removal: The final cost was £48,400.43, compared with an estimate of £47,225.16 – a modest increase. The Respondent accepts her liability for the sealing of the boiler room and the intake cupboard door. She contends that she is not liable for the works to the balcony infill panels and the pram shed. We reject this contention (Issue 4).

76. Item 13 - Signage: The final cost was £3,290.23, compared with an estimate of £2,200.00 – an increase of 50%. The Respondent suggests that this is no more than advertising for the Applicant (see the Respondent's photographs at K1-4). We reject this. Residents expect their visitors to be able to find their way around the Estate. This is a legitimate item of expenditure.

77. Item 14 - Balcony Repairs: The final cost was £48,951.00, compared with an estimate of £20,940.82 – an increase of 133%. Mr Nadar explained how it became apparent that more extensive works were required to the concrete after the scaffolding had been erected and further testing carried out. We accept his evidence. The Respondent complains that no works were executed to her balcony, as she is on the ground floor and has no balcony. She contends that she is not liable for repairs to other balconies in Block E. We reject this contention (Issue 4).

78. Item 15 - Thermal Improvements: No works undertaken.

79. Item 16 - Pest Control: No works undertaken.

80. Item 17 - Door Entry System: The final cost was £48,707.04, compared with an estimate of £13,541.89 – an increase of 260%. We are told that at the time that the Estate was transferred from Lewisham to the Respondent, there was a ballot of residents who voted in favour of a controlled door entry system. This is not surprising given the legitimate desire of residents to improve the security of their homes.

81. The Respondent contends that these works should be excluded as they are outside the curtilege of the lease. We cannot accept this argument. There has always been an entrance way between Blocks D and E. The pathway to that entrance way is coloured green in the plan attached to the Respondent's lease. This is the only pathway over which the Respondent is expressly granted a right of way. There are stairs in this entrance leading to the upper flats in both blocks. There is also a lift. Strictly, this area does not form part of the "Building" for either Block D or E. It is "Reserved Property" in the language of the lease. The landlord is required to maintain this area in good and substantial repair. The lease makes specific reference to the provision of controlled entry phones. Further, the lease permits the landlord to carry out improvements.

82. Mr Nadar explained how the Conservation Officer required additional works, the design of the entrance screen to match the existing design. We accept his evidence. This is one of the unfortunate consequences of owning a flat in a Grade II listed Estate.

83. We are therefore satisfied that the Applicant was entitled to install the controlled entry phone system. The Applicant was also entitled to install a ramp to the rear of the entrance area. All dwellings in Blocks D and E benefit from this expenditure. "B" is therefore "65" for the purpose of the contribution formula.

84. Item 18 - Head Office Overhead and Profit: The final charge was £77,616.30, compared with an estimate of £63,754.66 – an increase of

22%. This is a percentage of the total expenditure (some 6%) and is the contractor's head office costs and profit. We are satisfied that this amount is reasonable.

85. Item 19 - Major Works Administration Fee: £500: This is agreed.

Application under s.20C and Refund of Fees

86. At the hearing, Mr Parker informed the Tribunal that the Applicant does not intend to pass on any of their costs in respect of these proceedings to the lessees through the service charge account as the leases made no provision for this. Had the Tribunal been required to do so, we would not have been minded to make an Order pursuant to Section 20C given our determination which is largely in favour of the Applicant.

87. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham

Tribunal Judge

18 November 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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

(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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper 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;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(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 Upper 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.