1243

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AL/LSC/2016/0390**
Property	:	**Flat D, 1 Shooters Hill Road, London SE3 7AR**
Applicant	:	**1. Michael Parrott 2. Margaret Archer 3. Emma Archer**
Representative	:	**Timothy Becker, counsel (direct public access)**
Respondent	:	**Heath House Management Company Limited**
Representative	:	**Ryan S. Kohli instructed by Wellers Law Group**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Hargreaves** **Michael Taylor FRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **15th August 2017**
Date of decision	:	**26th September 2017**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that save as to any financial impact of its finding in relation to the responsibility for the parapet as set out in paragraph 40 below all the charges claimed by the Respondent in respect of the Major Works defined and referred to in the decision below, are recoverable and reasonably charged and payable by the Applicants.

(2) If the Respondent wishes to make an application for costs pursuant to Tribunal Rule 13 then it should file and serve an application (with brief additional reasons if any given the contents of the Respondent's closing submissions) together with a schedule of costs claimed (and supporting documentation eg in relation to counsel's fees) by 5pm 10th October 2017.

(3) The Applicants will have until 5pm 24th October 2017 to file and serve a response. If they do not do so then the question of costs will be decided without further reference to them.

REASONS

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by themselves in relation to 2015 and 2016. The relevant applications are dated 15th October 2016. The litigation has been protracted due, in essence, to the failure of the First Applicant to recognise his litigation responsibilities. There is no point rehearsing the procedural background: it is well rehearsed in a series of directions and will no doubt be relevant if any application is made by the Respondent for Rule 13 costs in accordance with the directions set out above (that being flagged up by Mr Kohli, unsurprisingly, at the end of the hearing which was finally accomplished on 15th August 2017). This is really an application driven by the First Applicant, but the Second and Third Applicants are joint registered proprietors of the relevant property and were therefore joined on that basis. We will however refer to "the Applicant" in this decision. This is a sorry tale of much time being expended on dealing with a case and issues raised by an Applicant without the evidence to support most of the issues raised. Although the relevant leases have contributed in some small part to encouraging the Applicant to litigate, the remedy is not necessarily to challenge the allocation of service charges on reasonableness where the lease provisions are clear as a matter of construction.

2. The relevant legal provisions are set out in the Appendix to this decision.

3. Page numbers refer to those in the trial bundle. Additional colour photographs were supplied at the hearing, which are numbered 1/8-8/8. We relied on these photographs and no site visit was required.

4. We had the benefit of skeleton arguments prior to the hearing and closing submissions filed after the hearing, due to the time spent in court on 15th August. Counsel's respective submissions are of course taken into account in this decision.

The leases

5. It is necessary to put the disputes in the context of the leasehold interests in 1 Shooters Hill Road as a whole. This is a listed building, originally a substantial residential property, in a prominent position in Blackheath, set in a garden. There is a basement/garden flat (Flat A) and three others. Flat B is the raised ground floor flat which has the benefit of a large conservatory. Flat C is above that and Flat D, the Applicant's, is the top or second floor. There is a simmering background dispute about the Applicant's desire to develop the roof space, and relations between the Applicant and the other leaseholders are far from happy. It is clear to us that the Applicant is not inclined to participate in or support many of the Respondent's management decisions, though we should make it clear that save as to a sum of roughly short of £8000, he has paid most of the sums demanded which he seeks to challenge.

6. In order to understand the nature of much of the Applicant's case, it is necessary to consider the history of the leasehold titles. The relevant documents have been provided in a separate bundle.

7. Flat A (TGL371866), is the "garden flat". The "old" lease is dated 29th November 1957 for a 99 years term from 29th November 1957. Clause 3 of the recitals defines the *"retained parts"* as *"the said parts of the property used in common by the Tenants of all the flats [including] such (if any) parts of the property which shall not be demised as aforesaid"*. Clause 4(3)(i) requires the tenant to keep the flat in repair including the windows.

8. Clause 4(3)(iii) obliges the tenant to pay the landlord *"a proper proportion (calculated on the proportion of the rateable value of the flat hereby demised with the total rateable value of the whole property) of the cost incurred by the landlord in repairing the main structure the roofs and all external parts of the building of which the demised premises form part and all sewers pipes conduits and boundary walls and fences* ***except such parts as may be***

specifically the liability of the landlord and the tenant respectively" (our emphasis: see below).

9. Clause 4(3)(ii) requires the tenant at certain times *"to paint all the outside of the said flat"* and by clause 4(3)(iv) jointly to maintain the garden. Clause 4(10)[1] requires the tenant *"to pay to the landlord a fair and just proportion according to user of the cost of repairs renewals and decorating of and to the retained parts of the said property of which the demised premises form part such proportion in case of dispute to be ascertained by the Landlord's surveyor whose decision shall be binding on both parties .... PROVIDED ALWAYS ... that [the tenant is not liable] to contribute towards the cost of repairs renewals and decorating of and to the main common entrance the main entrance hall and staircase"*, the latter provision excluding Flat A's liability for these areas because Flat A has a separate lower ground floor entrance. The old lease was surrendered by a deed of surrender and re-grant dated 14th August 2012 for a new term of 999 years from 29th September 1957, to which we refer below.

10. The lease of Flat B is registered with title TGL371867. There are three notes in the Property Register and to make sense of them they should be read with a colour title plan to hand (we were supplied with one in the course of the hearing). It is quite clear from the office copy entries of Flat B that the conservatory is included in the title and also *"the supporting structure of the conservatory and airspace below ground floor flat level are excluded from the title."*[2] It follows that that part of the conservatory and structure must be a *"retained part"*. Further, by a Deed of Rectification dated 5th October 2008 made between the Respondent and Mr Hulls (the original and still the tenant of Flat B) it was recorded that as the single storey conservatory had been omitted from the registered title but it had always been intended to form part of Flat B's title, clause 1 *"AGREED AND DECLARED THAT the lease shall be rectified so as to incorporate within [Flat B] all the single-storey ground floor conservatory ...."*. The allocation of the cost of repairs to the conservatory of Flat B is a source of contention for the Applicant and we have to deal in detail with this below. We are bound by the office copy entries and the relevant leases, however aggrieved the Applicant might be about their effect, particularly in relation to the cost of repairs to the conservatory.

11. The old lease of Flat B is dated 21st March 1958. The terms are similar to those for Flat A with the exception of the provision about the main entrance hall. Again, there was a deed of surrender and re-grant. The old leases for Flats C and D reflect a similar pattern, with similar deeds of surrender and re-grant. The title of Flat C is now TGL371868. In

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[1] Clause 4(10)(ii) in the old leases of Flat D minus the proviso excluding liability for the main hall, staircase etc

[2] Notes 2 and 3

particular the old leases of Flats B, C and D contain clause 4(10) or 4(10)(ii)[3] in similar terms to Flat A's clause 4(10).

12. Documents relating to Flats A, B, C are at p651-732. The specific documents relating to Flat D are at p733-766. It is now registered under title TGL368578 and includes garage number 2. It is described as the second floor flat and now includes the loft (where tinted blue on the file plan, a copy of which was not supplied but is not required). The old lease is dated 11th September 1957 with the same basic clause 4 provisions referred to above. The previous freeholder entered into a deed of rectification (p772) (with the Second Applicant) on 31st July 1989 whereby the loft was added to the demise for the sum of £3250. The deed of surrender and re-grant is at p746.

13. The deeds of surrender varied the old leases. In general terms the effect is as follows. First, clause 4(3)(iv) (garden maintenance) was deleted and replaced with a provision enabling the landlord to employ a gardener and split the cost four ways (25%). Similarly, clause 4(10)(i) (where it existed) was deleted and replaced by a provision enabling the landlord to employ a cleaner for the common parts (main hall etc) and split that three ways *"unless the landlord should reasonably determine otherwise"*.

14. A new clause 4(14)(i)(ii)(iii) was inserted to deal with costs and charges incurred by solicitors etc (the usual forfeiture related provisions). A new clause 4(15) was inserted to add a liability to pay interest at 4% per annum above Barclays base rate on arrears of service charge. A new clause 4(16) was inserted to allow the landlord to employ a firm of managing agents, the cost to be split four ways (25%) *"unless the landlord should reasonably determine otherwise"*. Finally, a new clause 4(17) provides for the setting aside of *"such sums of money as the landlord shall reasonably require to meet such future costs as the landlord shall reasonably expect to incur to repair renew and decorate and keep in repair the retained parts including the main structure roofs sewers pipes conduits and boundary walls so far as the liability therefore is not imposed upon the tenant and the other tenants of the said property"* (in effect, a reserve or sinking fund).

15. Save as otherwise altered, the provisions of the old leases continue to apply. In particular that left the somewhat unusual and vexed issue as to the liability of each tenant to paint the exterior of their flat which in hindsight, it is tempting to suggest, was inviting trouble. In addition it might have been thought appropriate to clarify the repairing obligations in respect of the conservatory. These matters were not dealt with and it is our function to construe the contractual provisions as they are.

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[3] Their clause 4(10)(i) - not in the old Flat A lease - imposes an obligation to keep common parts clean and tidy

The dispute

16. Each tenant is a director of and shareholder in the Respondent company. The split in this case is between the Applicants and the other tenants. The tenant of Flat B is elderly and played no part in the proceedings. The real work for the Respondent was in the hands of Emer McNally who owns the lease of Flat C and who provided a detailed witness statement (p619) and who gave oral evidence. We accept both her written and oral evidence. She has clearly been exasperated by the Applicant for a long time. Her account, which covers the period since her acquisition in 2004, provides a succinct background to the dispute and repays re-reading. Her evidence is clear and compelling and credible. The Respondent has taken care to include all relevant documents in a well prepared, comprehensive and paginated bundle.

17. The new leases were intended to provide for payment to be made on account so that "Major Works" could be carried out (an expression we adopt in this decision). The Applicant suggested that despite the new leases, certain provisions were ambiguous as to the extent of respective obligations and the relevant charging regime.

18. The Respondent implemented two management decisions in 2014. First, the board of directors (including the Applicant) agreed to appoint Malcolm Martin FRICS to inspect the property and report on the terms of the lease. He was appointed in June 2014. Secondly the Respondent instructed its then managing agents, Residential Block Management Services Limited ("RBMS") to prepare a report on condition. RBMS appointed Neil Ward of S&R Surveyors Limited to carry out the survey in July 2014.

19. Malcolm Martin's report dated 13th March 2015 is at p325. Although Miss McNally states (correctly) that the Respondent was not bound by it, it concluded that it was reasonable to do so. It is a carefully worded report. He identified (with some minor differences) the main tenants' obligations to keep their flats in repair at clause 4(3)(i) and the landlord's obligation at clause 5(2) *"to repair and keep in repair the retained parts* [defined in recital 3: see above] *including the main roof structure roofs sewers pipes conduits and boundary walls so far as the liability is not imposed on the tenant/s hereunder"*. He then identified the two clauses which govern the tenants' liability to pay for works carried out by the landlord. First, there is clause 4(3)(iii) (see paragraph 8 above) which applies a rateable value proportionate charge to works to *"The main structure the roofs and all the external parts of the buildings of which the demised premises form part ... except such parts as may be specifically the liability of the landlord and the tenant respectively"*. Secondly, he identified the obligation in clause 4(10)/clause 4(10)(ii) (see paragraph 9) which requires the tenant to pay the landlord *"a fair and just proportion"* of costs incurred *"of and*

to the retained parts of the said property of which the demised premises form part".

20. Pausing there, there are, broadly speaking, two payment regimes. The first deals with costs to the main structure including roofs (neither demised nor retained common parts) which is based on a rateable value approach. The second regime applies a *"just and reasonable"* approach to works carried out to the retained/common parts. Mr Martin reaches the same conclusion at paragraph 10 of his report (p327).

21. Mr Martin had separately considered the words at the end of clause 4(3)(iii) which we have emphasised in bold in paragraph 8 above. On the one hand clause 4(3)(iii) states that the tenant must *"pay the landlord a [rateable value] proportion of the cost incurred by the landlord in repairing the main structure [etc] except such parts as may be specifically the liability of the landlord and the tenant respectively"*; on the other hand, so far as the landlord is concerned, that includes – on the face of it – his obligations under clause 5(2). If so, for example, does the landlord have to replace the roof at his own expense? Martin's answer in paragraph 9 is as follows: the old leases were granted between September 1957 and March 1958 and the tenants could not be made liable for more than the costs of works carried out as applicable or referable to their own demises. Now that all flats are demised, this part of clause 4(3)(iii) is redundant. That is arguably reflected in clause 5(2) which emphasises that works are the landlord's responsibility unless specifically attributable to a tenant. The recovery of costs for Major Works was an important factor in the drafting of the new leases (which appears to have occurred after some difficulty recovering arrears of claimed service charges from the Applicant in previous LVT proceedings).

22. We therefore approach the apportionment of liability on the broad base set out in paragraph 20 above. We return to Mr Martin's report when dealing with the individual items in dispute. His findings were applied to apportion the service charges raised. The Applicant's statement of case (p40) alleges that the Respondent has applied the wrong rates in respect of (i) the conservatory (ii) the boiler house (iii) small cupboard to the left of the boiler house (iv) external painting (v) the garages (vi) decoration of main staircase and entrance hall etc (vii) installations to entrance hall and various other items. The issues between the parties are more conveniently summarised in a Scott Schedule at p29 and in accordance with the overriding objective we propose to deal with any dispute we can, in the hopes that the opportunity for future disputes will be negated, whether or not they have been properly pleaded in the Applicant's statement of case.

23. By contrast to Emer McNally's comprehensive witness statement, the Applicant's witness evidence, finally put together in two statements dated 29th June (but stitched together from various emails sent to the

Tribunal so not initially user friendly as acknowledged by the Applicant) and 14th July, was less than particular or helpful. So far as it concerns the construction and terms of the lease, that is really a matter for submission. There is a general complaint that the Applicant has been deprived of detailed information. According to the answers he gave in cross examination when asked about documents served on or sent to him, the Applicant's position was to the effect that he did not pay much attention to such documents, and as they were lengthy (and by implication tedious) it was unreasonable to expect him to pay attention in any detail: he was "drowned in rubbish". His alternative response to similar questions about various documents was that he could not remember, or was away at the relevant time. Whilst asserting that the property required work for around 30 years before 2014, he admitted he would have been co-operative about the Major Works if the Respondent had agreed he could develop the loft space and make alterations to it. He saw no reason why he should be expected to make a case or provide surveyor's reports to answer the Respondent's case. He was evasive and vague: he complained in cross examination that he has no liability to pay if he received no proper explanation in respect of the charges, or if things were done "wrong". Pushed as to what might have been done "wrong" he answered "I don't know". He received the trial bundles but did not bother to read them. He has been evidently concerned to run points of company law about the Respondent's articles of association and meetings, which have not furthered the dispute we have to deal with, and have been costly and time consuming for the Respondent.

24. A good example of the Applicant's misconceived complaints is his insistence that a scaffolding tower could have been used rather than scaffolding. As we pointed out, in view of the photographic evidence taken together with the specification of substantial works to be carried out at a high level, this was an utterly hopeless argument. To aggravate his position and his complaints about the scaffolding costs, it transpired in evidence that the reason why additional hire charges were incurred over a longer period was because he was responsible for contacting the planning department at LB Greenwich and reporting that works were being carried out to a listed building without the required consents. Whilst that was a major oversight on behalf of the Respondent's advisers, it resulted in a six week cessation to the works and was not a matter which the Applicant himself drew to the attention of the Tribunal in alleging that the scaffolding costs were excessive. Whilst we do not condone a failure to obtain listed building consent, the Applicant's intervention was characteristic of his arguably unhelpful approach to the Major Works which in another part of his evidence, he accepted as required.

25. Throughout this application the Applicant's case has been presented in a vague, ad hoc manner. As the Respondent's closing submissions (18th August 2017) detail, much time has been spent trying to analyse what it is. In broad terms it has finally resolved into three issues (i) whether

the s20 procedure was followed (ii) whether the works were reasonably carried out and/or reasonably priced (iii) whether the Respondent's allocation of charges is correct.

26. As for matter (ii), there is not a shred of evidence to support any case that the works were unreasonably incurred or that the charges were unreasonable. At one point in cross examination, for example, the Applicant suggested that he could have had the roof works carried out at a cheaper price using Canadian rather than Welsh slate, or by another company, but he provided no evidential details (not to mention the listed building requirements). Part of the reason for our conclusion on issue (ii) lies in the analysis required to deal with the suggestion that the s20 process was flawed. That indicates a sufficient level of care and attention to detail so as to persuade us that solid evidence would be required from the Applicant to make out any case in this respect. Such evidence is totally lacking. There is no surveyor's report to suggest that the works are not of the required standard or have been overcharged. There has been a consistent failure to make any credible case on this at all.

27. To an extent therefore an analysis of issues (i) and (ii) are interdependent.

28. The s20 analysis demonstrates the following. It starts with the detailed report prepared by S&R Surveyors Limited dated October 2014 at p350 (after the Respondent had to issue proceedings against the Applicant to enable access to the roof for inspection). We proceed on the basis that this speaks for itself, there being no evidence that any of its observations or conclusions are incorrect. Its main conclusion (paragraph 11 at p386) was that the building *"would shortly fall into a state of repair where the backlog of repairs and maintenance necessary will become inordinately expensive and unmanageable."* The Respondent decided to proceed on the basis of both the Martin and S&R reports in March 2015 despite the Applicant's opposition. On about 31st March 2015 RBMS served an invoice on the Applicants for the sum of a little over £7000 in respect of an amount in respect of ordinary service charges and on account of Major Works (for £5000 per flat): see the invoice at p48-49.

29. The first s20 notice dated 1st May 2015 is at p121. The Applicant's objection and comments are at p125-127: it contains a list of complaints (relating to the reaction to his loft conversion proposals) rather than relevant specific objections. For example: *"I want this s20 notice to be postponed yet again. I am keen to get these works done but I find the company's behaviour to me unacceptable whether in my role as director or that of leaseholder. In neither role have I been properly consulted."* He was being consulted in accordance with the s20 regime. The notice referred to works costing between £180,000-£250,000 (p122). The consultation period ended on 5th June.

30. The next stage of the s20 process took place in July: see the notice dated 21st July 2015 at p128 (last page missing in the bundle). The consultation period ended on 25th August 2015 (see McNally p623-625). The third stage, notification of the award of the contract to Cannon Construction (15th September 2015), is at p132. Both these communications are comprehensive in their explanations. Cannon's was the lowest quotation. Mr Becker's final submissions (19th August 2017) on the s20 procedure at paragraphs 30-34 (rehearsed in solicitors' correspondence p584, response at p587, see also p590-594) focus on the time which the Applicant had to comment on the proposals. For all his commentary and complaints it is clear that (i) Cannon Construction was invited to tender because the Applicant wanted to include Cannon in the tender process (ii) Cannon was chosen. As the statutory time limits were applied and Mr Becker cannot particularise any breaches, the process was compliant, not to mention extensive in explanation. We accept Mr Kohli's analysis that the time limits were complied with and the Applicant had the appropriate period of time to respond and did so: see the Respondent's final submissions (18th August) paragraphs 43-45. Cannon quoted £208,474. The Major Works would start 4 weeks later than planned due to the Applicant's objections and the requirement to deal with them: see paragraph 5 of the 15th September communication at p134.

31. A full specification of the works and tender documentation is at p142-322, and of particular reference to Cannon, p142-216 (particularly the summary at p213). For a summary of the Cannon final account, see p479-480, dealing with the omissions (£128,165) and additions (£95,393.59). The source of the dispute lies in this summary. Cannon's final contract value after adjustments was £203,864.84. To this Cannon added individual sums re-charged to the leaseholders of flats A and B, and more crucially, £34,182.45 in respect of additional works to the conservatory. The Applicant has refused to pay his share of this amount.

32. Having concluded that the s20 process was compliant on the basis of the submissions and evidence before us, we turn to issue (iii), the apportionment of costs, triggered by the Applicant's response to the extra £7000 or so charge which is due to the additional conservatory works. In brief our conclusion is broadly in line with Mr Martin's analysis save in certain respects. This will require the Respondent to recalculate the amount owed by the Applicant as indicated below. We approach our analysis taking the Scott Schedule from p29 as the starting point.

33. Before turning to that, the Respondent issued a demand to the Applicants on account of the Major Works on 8th October 2015 in respect of Stage 1 works (around £21,000) and Stage 2 works (around £38,000): see p135-141. The Applicants paid the Stage 1 invoice. A reminder as to the liability to pay the Stage 2 invoice was issued on 10th March 2016: see p392. That was also paid. An explanation of the

calculation of the Stage 2 invoice is at p397-8, based on Mr Martin's approach (see paragraph 20 above). As noted above, the sticking point in terms of actual payments is the balance of £7975.59 in respect of the additional conservatory works. Budgeted at just over £5000, the additional works cost over £26,000. See McNally p629 for the explanation. The Applicants received the detailed explanation at p604-7 (correspondence dated 10th January 2017, dealt with as part of the application as appropriate in accordance with the overriding objective).

34. Works to the conservatory roof were included in the s20 process (see eg p121-122, as well as the comment *"any other repairs, replacements and redecoration that are identified by the landlord's surveyor as required to the exterior once the works commence"*). Howard Ruse Engineers were instructed to report to the Respondent in July 2016 on the condition of the conservatory: see p503. Their report, dated 25th July 2016 is at p509, and the conclusion (urgent works required to prevent at least partial collapse) is at p510. Accordingly the Respondent instructed Cannon to carry out the additional works, which it did. Again, the Applicant has not challenged the detail or necessity for the works. For the avoidance of doubt, the Applicant did not challenge the s20 process on any ground relating to the additional conservatory works; the risk of further works being required to the property was flagged up at the outset of the process. The detailed specification for the conservatory evidencing the costs incurred is at p399-402.

The conservatory

35. The starting point is Mr Martin's analysis (p328) and our own conclusion that the man in the street would agree with general effect of the office copy entries: the conservatory is obviously part of Flat B. But under the relevant leases that is not the end of the story, and we cannot carry that factual impression to the conclusion urged upon us by Mr Becker ie that the tenant of Flat B is liable for all the conservatory associated costs. It is not our function to construe a lease "fairly" but properly. The tenant of Flat B is therefore liable for the conservatory in accordance with clause 4(3)(i) and the Respondent so far as clause 5(2) applies. The conservatory has a glazed roof – not windows to the sky as submitted by Mr Becker – but it is a roof and therefore part of the main structure. Whilst this may be less than "fair" so far as the Applicant is concerned, it is the result of applying the terms of the lease/s. It could be argued, for example, that the Applicants benefited disproportionately from the roof repairs. We agree with Mr Martin's analysis of responsibility for the various structural components of the conservatory as itemised at paragraph 12.4 of his report. In particular 12.4.4 reflects the effect of the office copy entries dealing with the supporting structure. It follows that we reject Mr Becker's closing submissions and prefer Mr Kohli's analysis.

36. In consequence, Flat D's rateable value proportion (22.8%) is applied to the recoverable conservatory works (£42,915 inclusive) and the Applicants are liable for £9,784.62 as claimed by the Respondent (see Scott Schedule item 1).

The Boiler House

37. No charge to the Applicants, not in issue.

Small cupboard to left of Boiler House

38. The Applicants withdraw their contention that they are not liable to pay £27.36 and no decision is required save to endorse the Respondent's analysis.

External painting

39. This raises the vexed issue of clause 4(3)(ii) requiring the tenants to *"paint all of the outside of the said flat usually or properly painted."* In a house in multi-occupation where one inhabitant is obstructive, like the Applicant, the disadvantages of this requirement are obvious. The Applicant has not complied with his obligations since 1987 but that failure renders him liable to the prospect of forfeiture proceedings and further Tribunal applications. He is plainly wrong in his assertion that the other leaseholders have not complied with their painting obligation and we accept the respondent's case on this. As Mr Martin concludes at 18.3, there is no mechanism whereby the Respondent can recover costs incurred in painting any areas which are the responsibility of the tenant. In this case, the lines of responsibility became (probably opportunely) blurred because the relevant external areas needed more than repainting – they required substantial stonework repairs which then necessitated paintwork to make good and those costs (broadly speaking) can be recovered on the rateable value approach.

40. In one respect we disagree with Mr Martin's conclusions (paragraph 19.3). Having considered the photographs of the building we have concluded that the parapet is part of the roof or main structure of the building. Without a parapet the design of the roof would be incomplete. Therefore the Respondent can recover the relevant costs in relation to the parapet on a rateable value 22.8% apportionment. Taking photographs 6/8 - 8/8 we conclude that the Applicants are responsible for painting (1) the band under the windows of Flat D (2) the dentil band/frieze under the parapet but that (3) the parapet is a matter for the Respondent. Given the Applicant's refusal to undertake responsibility for the painting of the parapet this difference of opinion with Mr Martin is arguably beneficial to the Respondent.

41. Reverting to the Scott Schedule (p32) the Applicant denies (personal) liability for painting the parapet, which accords with our conclusion. In this respect we agree with Mr Becker's submissions as to the parapet though not as to the dentil band/frieze below it. Taking the Respondent's sub-paragraphs (excluding the reference to the conservatory, see above):- (a) we agree the 22.8% apportionment applied to the cost of painting the external parts of the structure used by all four flats (b) we agree the 33.3% split relating to the external retained parts used by Flats B, C, D only.

42. As Mr Becker has produced no evidence in support of the assertion that *"there is no basis to charge £5,105 for the painting"* and all the evidence is to the contrary, we reject his submission.

Garages

43. Not, ultimately disputed: for the avoidance of doubt, the Respondent's analysis is correct.

Main staircase, entrance hall, entrance and patio steps

44. The Applicant first asserted in the Scott Schedule that the correct split is four ways. In closing submissions Mr Becker correctly accepted that Flat A has no liability under the clause 4(10) regime (see also paragraph 20) and argued for a three way split throughout. These costs are apportioned *"according to user"*. The approach (referred to in Mr Kohli's closing paragraph 41) is entirely reasonable. The Applicant's contentions to the contrary are unsustainable. We accept the Respondent's approach as detailed in item 6 in the Scott Schedule which is broadly based on Mr Martin's analysis in paragraph 25.3 at p342 and is within the *"fair and just"* limits which have to be applied. We have concluded that the manner of apportionment is reasonable and there is no evidence to dispute the relevant charges. It is quite clear that clause 4(10)(i) of the lease of Flat D puts the onus of responsibility for the top floor landing etc on the Applicant.

General rateable proportion

45. Since the Applicant failed to produce an alternative mathematical figure, the correct figure is 22.8%.

Fire protection works, post box etc

46. In item 8 of the Scott Schedule the Applicant merely states *"No need to replace."* The level of debate was not improved by Mr Becker's closing submissions (paragraph 24) with a vague reference to the Tribunal deciding what is an improvement or repair and the casual reference to the Applicant *"not appreciating that to fail to implement the*

recommendations in the Fire and Health and Safety Assessment report could open up the Respondent to criminal prosecution." See McNally p636-638. The comprehensive report is at p551. Put briefly since the Respondent is liable to insure then responsibility for fire regulation is a given. There is no evidence to contradict Ms McNally's evidence (p638) and the Scott Schedule that the works were agreed by the Applicant. That agreement may well meet any deficiencies in the express provisions of the relevant leases should there be any serious challenge to the Respondent undertaking to meet its statutory liabilities (see Mr Kohli's closing submissions paragraphs 50 -52). There is no challenge to the respective charges. We confirm the Respondent's calculations based on the proportion of user as reasonable.

Scaffolding

47. As Mr Becker anticipates in his closing submissions, we give short shrift to his unsubstantiated assertions that scaffolding was unnecessary and expensive. Whether or not the Applicant was advised about his views is irrelevant. It is up to him to produce an arguable case and he did not. In the light of the overall evidence the Respondent's approach is correct. There is no evidence of overcharging. The costs were entirely reasonable given the scale of the building and the duration of the works. Although we are prepared to consider the point (contrary to the Respondent's submissions, see paragraph 46 of Mr Kohli's submissions) we see nothing in it. On the contrary the detailed evidence of Ms McNally at p641 and the submissions of Mr Kohli at paragraph 46-48 provide a comprehensive answer to this vague allegation.

Roof and guttering

48. Again, it is almost incomprehensible that the Scott Schedule merely states "overcharge". The Applicant's closing submissions at paragraphs 28-29 merely query why the Applicant should be required (in effect) to make a case and attempt to justify the weakness of the Applicant's challenge. We are entirely satisfied with the Respondent's case and evidence as per Ms McNally at p641-2 and Mr Kohli at paragraph 49.

Conclusion

49. This decision speaks for itself. After two wasted attempts to try the case and one long day in court, the Applicant has achieved one minor outcome with, we suspect, little or no financial impact of any consequence. The Respondent has met the Applicant's challenge (such

as it was) head on, convincingly. In the circumstances it is appropriate to invite the Respondent to apply for Rule 13 costs.

Judge Hargreaves

Michael Taylor FRICS

26th September 2017