11298

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HY/LSC/2015/0006
Property	:	Wyatt Court, Thomas Wyatt Road, Devizes
Applicant	:	Mr and Mrs Richards, Mrs Buckley, Miss Wilson, Mr and Mrs Roland, Mr and Mrs Mitchell
Respondents	:	Aster Communities
Respondents' Representative	:	Ms Thomas (Counsel)
Type of Application	:	Service Charges – Section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Judge J Brownhill (Chair) Mr M Ayres
Date of Inspection	:	2nd September 2015
Date of Hearing	:	2nd September 2015 Devizes Town Hall.
Date of Decision	:	13th October 2015

DECISION

---

1 The Applicants are the lessees and the Respondents are the lessors of 5 properties at Wyatt Court. Wyatt Court, forms part of a larger development called the Drews Park Estate.

2 The Applicants made an application to the Tribunal dated 26/01/2015 [divider 5]. That application betrays the real unhappiness that the Applicants have with their leases: that they are charged what they call a 'double charge' (i.e. a 2/146th proportion of the cost of specific items listed in Part 2 of the Third

Schedule and 2/125th of the items listed in Part 3 of the Third Schedule) under the service charge. That 2/146th or 2/125th proportion is an express and fixed proportion stipulated on the face of the leases. The Tribunal understands that other properties on the estate pay only a single charge (i.e. 1/146th and 1/125th of the respective charges).

3 At the initial directions hearing on 01/04/2015 [divider 7], once the ambit of the Tribunal's jurisdiction was explained to the Applicants, they sought to vary the subject of their application, and submitted by letter dated 14/04/2015 [divider 8], a number of other issues which they asked the Tribunal to determine. Namely contributions to the sinking fund under Part 4 of the Third Schedule of the lease and ground rents. In relation to the 'sinking fund contribution' the Applicants argue that the Respondents should not apply the same proportionate charge as that charged to them in relation to service charge (i.e. a double charge), as they say there is no justification for them having to pay such a double charge, it is unfair and unreasonable.

4 At a second case management hearing on 30/06/2015 [divider 10] it was explained to the Applicants that the Tribunal was unable to deal with the subject matter of their revised application in so far as it related to ground rent. The application was therefore to continue in relation to the following limited matters:

a. Whether the mechanism used by the Respondents to calculate a lessee's sinking fund contribution (under Part Four of Schedule Three to the lease) is reasonable;
b. Whether in relation to each of the service charge years from 2005 up to and including 2015 the figure demanded by the Respondents in respect of the sinking fund is reasonable (or excessive) in amount, given:
    i. the matters covered by the sinking fund;
    ii. the level of surplus held in such fund; and
    iii. any other relevant factor.
c. Whether there is any issue arising as a result of the Limitation Act 1980 restricting the Tribunal in considering service charges/ sinking fund contributions between 2005 and 2015 onwards; and
d. Whether the Tribunal should make an order under section 20C of the Landlord and Tenant Act 1985.

The Inspection

5 The Tribunal had the benefit of an inspection, on the morning of 02/09/2015, of the properties at Wyatt Court, and moreover of the whole of the Drews Park Estate within which Wyatt Court is situated. Present at the inspection were Mr and Mrs Mitchell, and Mr Richards for the Applicants and Ms Thomas (Counsel for the Respondents), and Mr Mercer and Ms Towler of the Respondents.

6 The Drews Park Estate is an old hospital site (dating from approx 1851 at its oldest part), converted, in or around 1997, into what appear from the outside to be impressive flats and houses. Wyatt Court consists 17 properties; the Applicants own 5 of those properties (Numbers 7 to 11). They are houses.

7 The Tribunal inspected the external parts of the site and was able to observe the general state of maintenance of the site, the general state of decorations of the external parts and the state of the external stonework.

8 The site appeared to be very well maintained, and the Tribunal noted in particular that the windows appeared to be in a good painted condition. The site roads were in a good condition and there was some road and pathway lighting. The Tribunal were told that the roads were not adopted. Most of the properties on the estate had 3 bedrooms. The Drews Park estate includes houses, flats and bungalows. There are also two towers on the estate which are much taller than any of the other buildings: part of the towers are occupied by other properties.

The hearing

9 The hearing took place at Devizes Town Hall on the 02/09/2015. Mr and Mrs Mitchell, and Mr Richards attended for the Applicants and Ms Thomas (Counsel), and Mr Mercer and Ms Towler on behalf of the Respondents.

Other matters

10 Before going onto to discuss the substance of the application, two additional matters need to be discussed: the Respondents' default, and the Respondents' application for the Applicants' claim to be struck out as a result of the Tribunal's alleged lack of jurisdiction. Dealing with each in turn:

The Respondents' default.

11 The Respondents, through their employee Mr Mercer, attended at the first case management conference on the 01/04/2015, when specific directions were agreed, including that by the 24/06/2015 the Respondents should set out their responses to the Applicants' revised claim [divider 7 – paragraph 12]. The Respondents failed to comply with this direction. Indeed by the time of the second case management hearing on 30/06/2015, the Respondents had still failed to comply with the directions. Further, no-one from the Respondents attended at the second case management hearing on the 30/06/2015, and no explanation was given at the time for such absence or the default in the previous directions.

12 At the hearing on 30/06/2015 the Tribunal gave further written directions to progress this matter, and warned the Respondents that it should be prepared to explain its defaults. The directions also provided that if the Respondents failed to comply with the new directions by the 15/07/2015 it would be automatically debarred from taking any further part in proceedings.

13 On the 15/07/2015 the Tribunal received a limited application to extend time for the Respondents' compliance with the directions. Further information was requested by the Tribunal, and on the 16/07/2015 further information was received via the Respondents' newly instructed solicitors Capsticks: this referred to pressures on the Respondents' department as a result of staff restructuring, and staff being signed off work on long term sick leave. An extension of time was requested until 4pm on 24/07/2015 [divider 13], and this was granted by the Tribunal.

14 The Respondents subsequently made a further request for an extension of time to comply with the directions to 12.00 noon on the 27/07/2015, as a result of the death of a family member of the solicitor's secretary. The Tribunal considered that application and once more, given the circumstances, including the time left before the final hearing and the impact of having no information from the Respondents when considering the matters at a final hearing, granted the extension.

15 Unfortunately, it was not until 17.23 on the 27/07/2015 that the Respondents' response was emailed to the Tribunal. While that was outside the extension of time given by the Tribunal, albeit only a few hours, no specific issue was raised by the Applicants objecting to the inclusion of the response. The Tribunal, while deploring the catalogue of failures and repeated breaches of its directions by the Respondents, considered that it was in the interests of justice to admit the Respondents' response: without it the Tribunal would not have access to much of the information necessary to properly determine the application.

16 Remarkably the Respondents then sought, at 17.03 on the 01/09/2015, the night before the final hearing, to submit a further statement by email. Ms Thomas of counsel who appeared at the hearing on behalf of the Respondents made an oral application for permission to rely on such document. She referred to the purpose of the statement as one which brought the position up to date. Having read the statement it is very clear it does far more than that, it seeks to address what use the Respondents intend to make in the near future of the reserve fund, and the level of the fund as at 27/08/2015. There was, in the Tribunal's view, no good reason why this information could not have been provided far earlier.

17 The Tribunal invited the Applicants to respond to the application for this late statement to be admitted, canvassing with them their view as to whether they needed an adjournment to consider the information, given that they had only been provided with it at short notice, and if so how long an adjournment they might reasonably require. The Applicants asked for a further five minutes to consider the statement, but otherwise indicated that they consented to the statement's admission by the Tribunal. The Tribunal adjourned from 12.27 to 13.15 for lunch and to allow the Applicants to consider that statement.

18 I will deal with the issue of costs (in the context of a section 20C order) below, but the Tribunal would wish to take this opportunity to make clear that while accepting that the Respondents may indeed be, as was put by Ms Thomas, "..an organisation under pressure..", this in no way excuses the repeated catalogue of failures in their compliance with the Tribunal's directions. The Tribunal's directions are formal orders made to assist both the parties and the Tribunal in dealing with matters swiftly and proportionately. The Respondents will need to consider how they prioritise the Tribunal's orders in any future cases.

Preliminary issue – strike out.

19 The Respondents made an application, first raised in the email from Capsticks solicitors dated 15/07/2015 (20.56hrs) [divider 13], to strike out the

Applicants' application on the basis that the Tribunal did not have jurisdiction. It was ordered that this application was to be determined as a preliminary issue on the morning of the final hearing.

20 The Respondents argued that clause 6 of the Third Schedule of the lease has the effect of ousting the Tribunal's jurisdiction to consider any dispute concerning the service charge or sinking fund contribution. Clause 6 provides:

"Disputes. In the event of any dispute arising concerning the Service Charge, Interim Service Charge, the Sinking Fund Contribution or any other matter arising under this Schedule the matter shall be determined by an independent surveyor nominated in default of agreement by the President of the Royal Institute of Chartered Surveyors to act as expert and whose determination shall be final and binding on the parties."

21 Ms Thomas for the Respondents produced a skeleton argument in which she sought to refer to Premium Nafta Products Ltd v Fiji Shipping Co Ltd [2007] EWCA Civ 20 (which concerns the construction of an arbitration clause, but not in a landlord and tenant relationship) in support of this argument. She stated that the arbitration agreement had not been resiled from by either side, and stated that neither party was objecting now to the use of that mechanism to resolve this dispute. Ms Thomas did acknowledge that she had not in fact spoken to the Applicants about this specifically.

22 Ms Thomas was asked how such clause could be valid given the provisions of section 27A (6) of the Landlord and Tenant Act 1985. This provision states:

"An agreement by the tenant of a dwelling (other than a post dispute arbitration agreement) is void in so far as it purports to provide for a determination (a) in a particular manner; or (b) on particular evidence."

23 The Tribunal referred Ms Thomas to the case of Windermere Marina Village Ltd v Wild [2014] UKUT 163. This was a case with which Ms Thomas said she was familiar and accepted that it was a case where a similar provision in a lease was void as a result of section 27A (6) of the 1985 Act. Ms Thomas accepted that the Respondents could not "escape" such authorities.

24 The Tribunal found that paragraph 6 of the Third Schedule of the lease was not a post dispute arbitration agreement. The Tribunal further found that this was a provision in the lease which had the effect of providing for the manner in which an issue capable of determination under section 27A(1) was determined, it therefore fell squarely within the provisions of section 27A(6) of the 1985 Act, and was consequently void.

25 Therefore the Tribunal found that it did have jurisdiction to determine the matters before it, and refused the Respondents' application to strike out the application.

26 Before moving off this topic, it should be noted that the Tribunal was referred to the Applicants' letter 18/03/2014 [divider 2] to the Respondents. In this letter the Applicants specifically requested that the Respondents invoke this clause of their lease and expressly requested the appointment of a surveyor. The Respondents' responded to that letter on 04/04/2014 stated that

paragraph 6 of the Third Schedule "...is a viable method to challenging your lease agreement ..... under your Rights and Obligations sheet provided at the point of invoice, the First Tier Tribunal looks at all service charge disputes..... you are well within your rights to follow this path if you choose to and the mediator or Tribunal would advise of the allocation position going forward." It is of particular note that the Respondents did not seek to resolve the dispute in 2014 by the means it was now claiming was the only valid method of resolution, despite the Applicants specific request to do so.

The Sinking Fund Contribution

27 The first substantive issue highlighted in the directions for the Tribunal to consider was whether the mechanism used by the Respondents to calculate a lessee's sinking fund contribution (under Part Four of Schedule Three to the lease) is reasonable.

28 The Tribunal had the benefit of seeing a copy of the lease for 7 Wyatt Court, The terms of the lease [Divider 1] provide as follows:

a. Definition: The Service Charge: The Tenant's contribution to the Management Costs calculated and payable as set out in the Third Schedule. The Sinking Fund: The Tenant's contribution to recurrent costs and future renewals calculated and payable in accordance with Part IV of the Third Schedule."

b. Clause 6 concerns the lessor's covenants and provides that they are obliged

   i. 6.2 "to keep in good and substantial repair reinstate replace and renew the Common Parts the Estate Roads the Private Roads the Access Roads the Visitors Parking areas and all Service installations used in common by more than one unit.

   ii. 6.3 as often as reasonably necessary to decorate the exterior and the internal Common Parts previously decorated in a proper and workmanlike manner.....

   iii. 6.4 to keep in good order clean and tidy landscaped cultivated and stocked with plants .....the Amenity Land and all walls fences hedges and any structure on around or supporting the same and the grassed areas cut.....

c. The Third Schedule is headed Service Charge.

   i. Part one defines at (c) the service charge as "...1/146th of the items listed in Part 2 of the Third Schedule and 1/125th of the items listed in Part 3 of the Third Schedule PROVIDED THAT during a period of three years from 18/05/1998 the service charge shall not exceed the sum of £125/£250 per year (or pro rata for any period of less than a year) ....."

   ii. Paragraph 5 reads " As soon as practicable after the end of each Accounting Year the Management Company shall furnish to the Tenant on account of the Management Costs and the Service

Charge payable for that Accounting Year certified..... . Such sum as appears in the accounts in respect of the sinking fund shall be retained by the Management Company in a separate designated account on trust for the tenants and the Management Company shall at the same time as producing the accounts provide the Tenant with details of the amounts held in the sinking fund."

iii. Part Four of the Third Schedule is headed Sinking Fund Contribution, and reads "In addition and together with the Service Charge the Tenant shall pay to the Management Company a reasonable provision (to be determined by the Surveyor acting as an expert and not as an arbitrator) towards the Management Company's the (sic) anticipated expenditure during the Term in respect of

1.1 periodically recurring items whether recurring at regular or irregular intervals and

1.2 such of the Landlord's obligations set out in clause 6 as relate to the renewal or replacement of the items referred to there.

.....

1.6 all sums received by the Management Company pursuant to this Part Four shall be credited to an account separate from the Management Company's own money and shall be held.... upon trust during the period of 80 years from the date of this lease.....and at the expiry of such period any such sums unexpended shall be paid to the persons who shall then be the tenants of the Buildings in shares equal to the percentage which the Service Charge payable by each tenant respectively bears to the total of all the Service Charges paid by the tenants of the Buildings. "

29 The Tribunal also saw a Deed of Variation [Divider 1] concerning 7 Wyatt Court, dated 30/04/2003, between Sarsen Housing Association Limited as the landlord/lessor and a Gordon and Nora Ingleby of 7 Wyatt Court as the tenant/lessee. The relevant variation for the purposes of this application is in relation to the proportions used to calculate service charge contributions. This deed of variation provided that the lessees contributions were to be in the proportion of 2/146ths of the items listed in part 2 of the Third Schedule and 2/125ths of the items listed in part 3 of the Third Schedule: i.e. making this a 'double charge' property.

30 Mr Richards the current lessee of 7 Wyatt Court, was assigned the lessee's interest in the lease subject to and in full knowledge of this deed of variation. The Tribunal understands from the Applicants that the leases for the 4 other properties (numbers 8-11) Wyatt Court all originally had lease terms expressly setting out 2/146ths and 2/125ths as their service charge contributions. The 2003 Deed of Variation therefore brought the lease of 7 Wyatt Court into line with the other four properties.

31 As is stated above the Applicants had, in their original application to the Tribunal, raised complaint about the fact that, to their knowledge, all of the other properties within the Drews Park Estate were only required to contribute 1/146ths, and 1/125th to the service charge – i.e. were single charge properties. The Applicants argued that there was nothing so special about their properties which could justify what they termed 'a double charge'. As had been explained to the Applicants at the case management hearing on the 01/04/2015, the Tribunal did not have power, within a Service Charge application under section 27A of the 1985 Act, to vary the express terms of their leases. The Tribunal directed the Applicants to the provisions of sections 35-37 of the Landlord and Tenant Act 1987 in this regard. The Tribunal notes that the Applicants' properties are houses not flats.

32 In fact the Applicants revised their application, as detailed above, so that they argued that the Respondents use of the same proportions in respect of their sinking fund contributions was not reasonable [Divider 8]. The Applicants argued:

a. The Respondents were not permitted, when calculating the proportions of a lessee's sinking fund contribution to use the same proportions as were specified in respect of the service charges, as it was a 'contribution' and not a 'charge' and therefore should be calculated entirely separately;

b. That there was no good reason why they should have to contribute a 'double charge' in relation to the sinking fund, they got no more benefit from it than other lessees on the estate who only had to pay a single charge. The Rand report (a stock condition survey and a schedule of works anticipated over the next 30 years) [Divider 19], which was relied on by the Respondents, and had been prepared in 2009 did not show that the Applicants' 5 properties required additional work or would incur additional expense compared with any other property on the estate;

c. That the First Tier Tribunal had in 2009 ordered that a £250 contribution per property in relation to the sinking fund was reasonable, yet they were being charged £500. A copy of the Tribunal's decision appears at Divider 18.

d. The Applicants had no objection to paying £250 per property as their Sinking Fund Contribution.

33 The Respondents initially argued that:

a. They had calculated the lessees sinking fund contribution on a reasonable basis. Ms Thomas argued that the Respondents had applied the same proportions as were used in relation to the amounts demanded through the service charges (see paragraph 5 of her skeleton argument dated 02/09/2015) – i.e. a double charge, in relation to the sinking fund.

b. Mr Mercer in his evidence for the Respondents clarified the position in relation to the service charges. He explained that in fact while the

Applicants did pay a double charge, the denominator applied was not as stipulated in the lease as that would lead to over recovery by the Respondents. Mr Mercer explained that there were 127 leasehold houses on the estate who pay a service charge, and 21 social housing properties who pay a service charge. However as 5 of the 127 leasehold houses pay a double charge, the denominator they use is in fact 132 or 153 (i.e. 127 + 5 + 21 = 153 or 127 + 5 = 132)) respectively. The Applicants therefore are charged and pay 2/132th or 2/153th of the relevant service charge costs.

c. Mr Mercer was unable to explain why the Applicants properties incurred a double charge within the express terms of their leases, in relation to service charges, stating that "we bought the development of the shelf, the leases had already been drawn up.... we were just trying to apply the leases."

d. Mr Mercer explained that in accordance with the 2009 decision of the LVT, lessee who pay a 'single charge' under their service charge provisions pay £250p.a. as a sinking fund contribution, where as the Applicants, with their double charge provisions within their lease, pay £500p.a. sinking fund contribution. There had been a period where the incorrect amount had been charged to the Applicant but that had been rectified now.

34 At the hearing on the 02/09/2015 the Tribunal briefly referred the parties to the Upper Tribunal decisions of Gater v Wellington Real Estate Limited [2014] UKUT 0561 and Windermere Marina Village Ltd v Wild [2014] UKUT 163 but this was only in relation to the preliminary issue. The Tribunal had indicated to the parties at the hearing, that it considered that its role was to apply the common law principles to this first question: namely that where one party to a contract is given the power to decide a matter subject to a proviso that the decision must be fair or reasonable, a challenge to the decision will only succeed if no reasonable person in the position of that party could have reached the same decision. None of the parties nor those representing them sought to argue with this as the correct proposition.

35 However, on reflection, it appeared to the Tribunal that the effect of the decisions in Gater (ante) (in particular from paragraph 60 onwards) and Windermere (ante) was that this was not an appropriate way to proceed: did the clause at Part Four of the Third Schedule, also fall within section 27A(6) of the 1985 Act too, and was it too therefore also void? The parties did not have an opportunity, at the hearing, to address the Tribunal on these two cases and the impact of such. Therefore it was only right that both parties had the opportunity of making submissions in light of the comments of the Upper Tribunal in those two reported cases, and their impact on the issues before the Tribunal.

36 The Tribunal therefore issued further directions, dated 10/09/2015 in which the parties were asked to provide further written submissions dealing with the following matters:

a. The effect of the Windermere and Gater decisions (copies attached) on the task which the Tribunal is to undertake in relation to the question of sinking fund contributions.
    i. Is it the case that in fact that the Tribunal must decide what is a reasonable proportion? See in particular paragraph 74 of the Gater decision.
b. If that is the case, how do the parties suggest that the Tribunal undertakes such an assessment on the basis of the evidence currently before it? Or is it suggested that further evidence is required?
    i. the Tribunal have recorded the Applicants as stating that they would consider a 1/132th charge in relation to the sinking fund as reasonable, as that is the amount of the contribution sought from the other lessees by the landlord.
c. If such an assessment is to be proceeded with, the Tribunal must bear in mind the possibility of competing interests amongst different occupiers and the fact that a determination under section 27A(1) of the Landlord and Tenant Act 1985 binds only those who are party to it. In accordance with Martin Roger QC's comments at paragraph 45 of the Windermere decision "The Tribunal may therefore need to consider,... whether it is appropriate for notice of the proceedings to be given to any third party who may wish to make representations."
    i. The parties comments are also therefore invited on whether the other lessees of the Drews Park estate (who contribute to the sinking fund contribution) should be given an opportunity to make representations on this issue.

37 The Tribunal received written responses from both the Applicants (dated 25/09/2015) and the Respondents (dated 01/10/2015). The Tribunal then received a further email from the Applicants on the 05/10/2015 commenting on the Respondents' submissions. The Respondents through their solicitor replied to those comments by email also on 05/10/2015. While strictly speaking the submissions from both sides received on the 05/10/2015 were out of time, the Tribunal considered that it was in the interests of justice to consider them nonetheless.

The Law - Apportionment

38 Where the lease provides that a tenant's proportion to the sinking fund (or service charge) must be calculated by the landlord or his surveyor acting reasonably, Woodfall at paragraph 7.176.1 states "the question is whether the decision is a reasonable one: if it is, it does not matter that other reasonable decisions could have been taken: Westminster CC v Fleury [2010] UKUT 136 and PAS Property Services v Hayes [2014] UKUT 0026."

39 The Tribunal has had regard to the decision of Martin Roger QC in Gater v Wellington Real Estate Limited [2014] UKUT 0561. That was a case where the issue before the First Tier Tribunal concerned service charges. The relevant provision of the lease there defined a tenants share as "...a due and fair proportion of the Service Cost (such proportion to be determined by the

landlord or its surveyor (in each case acting reasonably) and taking into account the relevant floor areas within the Building or other reasonable factors in making the determination."

40 At first instance the First Tier Tribunal in that case decided that its task was to satisfy itself that the apportionment undertaken by the landlord was a reasonable one; it was not to ask itself how it would carry out a reasonable apportionment. The Tribunal saw its job as being to consider whether the apportionment settled on by the Lessor's surveyor was fair. There was a range of different ways in which the apportionment could be undertaken, and so long as the method selected by the person to whom the parties had allocated the task was a fair method, the Tribunal considered that it had no power to substitute a different method. The Upper Tribunal considered whether in fact this was a correct description of the Tribunal's role on the issue of apportionment. It was held that it was not.

41 While the Upper Tribunal noted that on general contractual principles, where one party to a contract is given the power to decide a matter subject to a proviso that the decision must be fair or reasonable, a challenge to the decision will only succeed if no reasonable person in the position of that party could have reached the same decision. However such a proposition was to ignore the effect of section 27A(6) of the 1985 Act and the decision of Windermere Marina Village Ltd v Wild [2014] UKUT 163 (where the Upper Tribunal decided that section 27A(6) of the 1985 Act was relevant to a contractual provision by which a landlord or its surveyor was given responsibility for the apportionment of service charges on a fair basis). In that case the relevant provision of the lease read "a fair proportion (to be determined by the surveyor for the time being of the Lessors whose determination shall be final and binding) of the expense of all communal services..." The Tribunal there decided that section 27A(6) of the 1985 Act rendered the words in brackets in that provision void "In those circumstances section 27A(6) rendered the words in brackets void and deprived the landlord's surveyor of any role in the process.

42 Martin Roger QC stated at paragraph 73 in Gater,(ante) that "The statutory anti-avoidance provision renders void so much of the agreement as has the effect of providing for the determination in a particular manner of any question which could be referred to the appropriate tribunal under section 27A(1). A determination of proportions by the landlord's surveyor is such a provision, whether it is said to be final and binding or not. He referred to para 48 of the Windermere (ante) decision that "paragraph(2) is to be read as if the method of ascertaining a fair apportionment was omitted altogether. Mr Pogson's [the surveyor] conclusions cannot therefore have any contractual effect. That being the case, it was for the LVT to decide what was a fair proportion of the expense of communal services payable by the respondents.."

43 Martin Roger QC continues at paragraph 74 in Gater (ante) that "It is apparent from this passage, where a provision for determining an apportionment is rendered void by operation of s27A(6) of the 1985 Act, and the parties cannot agree what is fair, the consequence is that the fair proportion falls to be determined by the appropriate Tribunal. That is a fundamentally different exercise from the one undertaken by the First Tier Tribunal in this case, when

it asked itself whether the respondent's method of apportionment was fair rather than asking itself what the fair apportionment should be."

What is the impact of this on the current facts?

44 The Applicants, with the greatest of respect to them, are not lawyers, and have not, the Tribunal thinks, fully appreciated the potential impact of the two cases highlighted by the Tribunal. As detailed above, potentially the impact of those two cases goes beyond the Respondents' strike out application, as I had highlighted in the directions of 10/09/2015.

45 The Respondents seek to argue that in fact, the relevant clause in the Applicants lease, Part Four of the Third Schedule, does not fall foul of section 27A(6) of the 1985 Act and therefore the Tribunal does not need to decide what is a reasonable proportion. The Respondents argue that section 27A(6) of the 1985 Act does apply to make the initial paragraph of Part Four of the Third Schedule void as:

a. It refers to reasonable 'provision' and not a reasonable 'proportion'. Therefore what is being considered by the paragraph is what a surveyor would consider as the parts of the building as requiring replacing/repairing over the terms and the potential costs for doing so – i.e. what needs to be provided for;
b. The words of the lease do not set out any mechanism of apportionment between lessees in relation to the sinking fund contribution; and
c. Therefore it is not a term that purports to provide for a determination in a particular manner or on particular evidence.

46 The Tribunal rejects those submissions. The Tribunal reminded itself of the principles of constructions as referred to in Arnold v Britton [2015]UKSC 36: When interpreting a written contract, the court had to identify the parties' intention by reference to what a reasonable person having all the relevant background knowledge would understand the term to mean, Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 A.C. 1101. It had to focus on the meaning of the words in their context and in the light of the natural meaning of the clause; any other relevant provisions; the overall purpose of the clause and the lease; the facts and circumstances known by the parties at the time; and commercial common sense. Subjective evidence of the parties' intentions had to be disregarded, Rainy Sky SA v Kookmin Bank [2011] UKSC 50, [2011] 1 W.L.R. 2900. Commercial common sense was not to undercut the importance of the actual words used. The less clear the words, the more ready the court would be to depart from their natural meaning, but that did not mean that the court should look for drafting infelicities to facilitate a departure from the natural meaning. Moreover, commercial common sense was not to be invoked retrospectively, just because, for example, the contractual arrangement had worked out badly for one of the parties. The court was not to reject the natural meaning of a term simply because it seemed imprudent for the parties to have agreed it, and it could only take into account facts or circumstances known to both parties when the contract was made. Finally, there was no special rule of interpretation which required service charge clauses to be construed restrictively."

47 "The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax".

48 The Tribunal reminded itself that the Particulars of the lease, (at page 2 of the lease) referred to the sinking fund contribution as being, " The Tenant's contribution to recurrent costs... **calculated and payable in accordance with part IV of the Third Schedule.**" (emphasis added). In the Tribunal's view, a reasonable person, considering the lease as a whole, would read Part IV of the Third Schedule as dealing not only with the assessor assessing the cost of items to be covered by the sinking fund but also the amount that a lessee would be expected to pay into the sinking fund towards those amounts.

49 There is an obvious error in the drafting of this clause, with the word 'the' being unnecessarily included. In the Tribunal's view, the proper construction of that clause is that it seeks to allow the landlord's surveyor to decide on what apportionment or amount each tenant should **pay** in relation to the sinking fund as well as the anticipated costs of items to be covered by the sinking fund itself.

50 Ms Thomas's initial skeleton argument (dated 02/09/2015) suggests at paragraph 4 and 5 that the clause is to be interpreted as permitting the same proportions as are used in relation to the service charge to be applied to the sinking fund contributions, and that this is reasonable. More recently however, the Respondent's position has become that the lease doesn't set out any method of apportionment in relation to the sinking fund contribution.

51 In the Tribunal's view, the clause would appear to allow (require even) the surveyor to do both identifying the likely future costs for complying with the lessors' obligations and the amount which should be paid towards those anticipated costs by the lessee through the sinking fund contribution. The clause does not state what express proportion the tenant is to pay, nor does it refer back to the fixed apportionments agreed in relation to service charges.

52 While recognising that the lease has elsewhere used the term 'proportion' rather than 'provision' that is not, in the Tribunal's view conclusive on this matter.

53 The Tribunal notes too that the previous LVT decision from 2009 [Divider 18] at paragraph 53 states "The lease also stipulates that the amount of the contribution to the sinking fund is to be determined by the surveyor. There was no evidence before the Tribunal that there has been any such determination."

54 The Tribunal considers that the clause falls within section 27A(6) of the 1985 Act: it purports to, in the Tribunal's view, permit the lessor's surveyor to fix the apportionment (and amount) payable by a tenant in relation to the sinking fund contribution. The effect of this is to render void so much of the agreement as has the effect of providing for the determination in a particular manner of any question which could be referred to the appropriate tribunal under section 27A(1).

55 If, contrary to the above, the Respondent's argument is correct, and the clause does not purport to allow the Landlord's surveyor to determine the proportion to be paid by a lessee as a sinking fund contribution, then, (as the Respondent alleges at paragraphs 5 and 8 of their recent submissions) there is no mechanism within the lease which defines how such a contribution is to be ascertained. There would then be a void. A void which the Tribunal is able to and should (given the application) fill by determining what is a reasonable proportion payable in relation to the sinking fund contributions.

The Tribunal's task.

56 Where, as here, the Tribunal has found that the provision for determining an apportionment is rendered void by the operation of section 27A(6) of the 1985 Act, and the parties cannot agree what is fair, paragraph 74 of Gater (ante) provides "...the consequence is that the fair proportion falls to be determined by the appropriate Tribunal."

57 The Applicant's position is that they consider a single charge to be appropriate: i.e. they pay the same proportion or amount as everyone else on the estate. There being, the Applicant's say, no reason why they should have to pay a double charge, compared to everyone else. They refer specifically to the fact that there are various other properties on the estate of varying size (between 1-3 bedrooms) yet they all pay a 'single' charge. They also point out that the Rand condition report makes no specific reference to their properties requiring more extensive or expensive maintenance or works than other parts of the estate.

58 The Respondents' position is that the sinking fund contribution should be made in proportions equal to those specified in the lease for the shares of service charges: i.e. in the Applicants case with them paying a 'double charge'. In their written submissions the Respondents have additionally sought to argue that it is reasonable for the Applicants to pay more because their properties are bigger, in terms of square footage, than others on the estate. The Tribunal are not convinced by the very limited evidence produced by the Respondents in that regard (concerning estate agent particulars for two properties). Further the Tribunal is not convinced that calculations based on percentage floor space are necessarily a fair way of fixing each lessee's contributions in any event, especially as this is not the method used elsewhere on the estate.

59 While the Respondents sought time and permission to adduce an additional witness statement (paragraph 20 of the Respondents' submissions dated 01/10/2015), the Tribunal was not minded to permit the same. The parties had had time and ample opportunity to adduce such factual evidence as they wished to rely upon. It seemed to be suggested that the additional witness

statement would deal with the measurements of the different types of dwellings on the estate, and amplify evidence which Mr Mercer had given at the hearing on 02/09/2015 concerning the actual proportions used by the Respondents when claiming both service charges and sinking fund contributions.

60 The Tribunal shared the view of the Applicants that the addition of approximate measurements from estate agents particulars concerning two types of properties on the Drews Estate, was unhelpful. The Tribunal agreed with the Applicants that such measurements were only, given their nature, very approximate. Further the Tribunal noted that there were various different types of size of property on the estate, ranging from 1 bedroom to 3 bedroom with varying configurations. A comparison of two properties only, as the Respondent's had sought to make in their submissions at paragraph 19 was unhelpful.

61 Further and in any event the Tribunal considered that it would not appropriate on the current facts to determine a fair and reasonable provision, or proportion in relation to the sinking fund contribution, on the basis of the square footage of respective properties. That was not a system identified as having been agreed between the parties anywhere in the lease as being suitable way to identify and/or establish apportionments. While the Tribunal noted that there was reference to a '..rateable proportion..' in paragraph 1.3 of Part Four of the Third Schedule, that was referable to the replacement of certain items and the amount which the Management Company was to be required to pay and not of general application.

62 The Tribunal was however particularly mindful of Martin Roger QC's comments in Gater(ante) in which he stated at paragraph 75 "In carrying out an apportionment the appropriate Tribunal will have regard to the parties' agreement, so far as it remains." In Gater (ante) there was express reference in the lease to service charge costs being apportioned taking into account floor areas within the Building or other reasonable factors.

63 What there is on the facts of this case, which in the Tribunal's view is even more compelling, is an agreement concerning a fixed percentage concerning the apportionment of service charge costs – namely the proportions stipulated in paragraph (c) of Part One of the Third Schedule to the lease (and as varied) by the deed of variation in relation 7 Wyatt Court. That was an express agreement between lessee and lessor concerning relative apportionment of service charge costs. Each of the Applicants had obtained their leasehold interest knowing that their proportion of the service charge was fixed at that specific apportionment. The fact that they are now unhappy with that apportionment is of course, and as noted above, really the heart of the issue. But the Tribunal needs to ensure that it is not in effect allowing (by considering the appropriate method of apportionment concerning the sinking fund charge) some type of variation of the valid express terms of the lease and contribution to service charge apportionment by the back door. Further the Tribunal cannot properly, under the guise of a process of interpretation, introduce new and other terms merely to mend a bad bargain: which is, in reality what the Tribunal is being asked to do by the Applicants.

64 The Tribunal is of the view, that in assessing the proportions to be used in ascertaining sinking fund contributions, it is fair, reasonable and appropriate to use the same proportions as those expressly set out concerning the service fund charges: i.e. the system of double and single charges. The sinking fund is, fundamentally, a device to allow leaseholders to save towards future service charge items. It is not, in the Tribunal's view, fundamentally different in nature from the service charge, indeed it is in effect a service charge within the meaning of section 18 of the 1985 Act. The Tribunal is aware that the Applicants fundamentally refuse to accept that this is the case, indeed it is the whole premise of their revised application [divider 8] "..these fractions cannot apply to the sinking fund as it is not a charge but a contribution..... we therefore believe that it is entirely wrong for Aster to list this fund as a charge, and to apply the lease fractions as they now do..... We believe the sinking fund should be a separate account, with the same contribution made by all property owners."

65 The fact remains however that the very nature of a sinking fund is that it is a way of saving towards future anticipated expenditure. Expenditure that the lessees would otherwise need to fund through their service charges alone. While it is distinct, in the sense that a sinking fund needs to be held in a separate account, it is intended to be used to pay for items which would otherwise need to be funded through the service charge. This is made clear by virtue of paragraph 1.1 and 1.2 of Part Four of the Third Schedule, where it is expressly stated when describing what the sinking fund is to be used for, that the lessor's obligations in clause 6 are expressly referred to (i.e. matters covered by the service charge). Indeed, if for example, works were required to the estate under the lessor's covenants, and there was insufficient funds in any sinking fund, the additional costs would in all likelihood be claimed from the lessees through the service charge. The service charges and the sinking fund are an inherently linked means of paying for items/works required under the provisions of the lease. This is further confirmed, if further confirmation is needed, by Part One of the Third Schedule, headed service charge, and paragraph 5 titled 'service charge account' which includes within it specific reference to the sinking fund and how it is dealt with within the service charge account.

66 The Tribunal are further confirmed in their view that using the same fixed proportions as have been expressly agreed within the leases in relation to service charges, when calculating sinking fund contributions, is fair and reasonable, given the provisions of paragraph 1.6 of Part Four (Sinking Fund Contributions) of the Third Schedule. This provides:

"all sums received by the Management Company pursuant to this Part Four shall be credited to an account separate from the Management Company's own money and shall be held by the Management Company upon trust during the period of 80 years from the date of this Lease (...) for the persons who from time to time shall be the tenants of the Buildings to apply the same and any interest accruing for the purposes set out in this Part Four and at the expiry of such period any such sums unexpended shall be paid to the persons who shall then be the tenants of the Buildings in shares equal to the percentage which

the Service Charge payable by each tenant respectively bears to the total of all the Service Charges paid by the tenants of the Buildings."

67 Therefore, any sums remaining in the sinking fund after 80 years are to be redistributed to the then lessees in the proportions in which they contribute to the service charge. Thus, if the Applicant's position were to be adopted, they would pay into the sinking fund a single charge, but at the end of 80 years, receive a double charge share of any surplus. When this was put to them by Miss Thomas the Applicants stated that that clause of the lease should not be followed or should be dis-applied. That however is not how interpretation of the lease works (see paragraph 63 above). In the Tribunal's view, this clause overwhelmingly points to it being fair, reasonable and appropriate for the same proportions as are used in relation to service charges, also to be used in relation to the sinking fund contributions.

68 The Applicants' case is that they do not consider it fair that they have to pay a double charge (whether under the service charge provisions or sinking charge provisions), and that there has been no justification given to them for the imposition of such a double charge, respective to the other properties on the estate which pay only a single charge. While the Respondent has sought to adduce some limited evidence suggesting that the Applicants' properties are significantly bigger than others, the Tribunal considers such evidence to be insufficient to assist with any determination in this regard. Nor does the Tribunal consider it necessary or appropriate to acquire detailed measurements concerning the respective sizing of the properties. The fundamentally important fact is what the parties have expressly agreed elsewhere in their lease – namely the express proportions set out concerning service charges. The Applicants are clearly unhappy with these proportions, but there entered into their leases knowing that these were the proportions that they were signing up to. The Tribunal consider that it would be entirely inappropriate to have one proportion governing the service charge apportionment and an entirely different proportion governing the sinking fund contribution apportionment.

69 Thus, the Tribunal considers that the Applicants are obliged to pay a double charge as a sinking fund contribution.

The other lessees on the estate

70 Both parties were in agreement that they saw no need give an opportunity to the other lessees of the Drews Park Estate (who contribute to the sinking fund contribution) to make representations on this issue.

71 In all the circumstances, the Tribunal did not consider it necessary to approach the other lessees of the Drews Park Estate who contribute to the sinking fund before determining this application.

The Amount actually claimed in relation to the sinking fund.

72 The Applicants are currently paying £500pa as a contribution to the sinking fund, others on the estate current pay £250pa: reflecting the single and double charge proportions specified in the leases.

73 The figure of £250 is used by the Respondents as the single charge proportion in relation to the sinking fund contribution as a result of the Leasehold Valuation Tribunal's (LVT's) 2009 decision [divider 18] in case CHI/46UB/LSC/2008/0128. The LVT there held that proposed increases in the annual contribution to the sinking fund for 2009/2010 were not reasonable. The following things are clear having read the Tribunal's decision:

a. That Tribunal had before it only one lease, that of unit 17. It was said that this lease was representative of the terms of the leases of the other properties on the estate;
b. The lease of unit 17 referred only to a 'single' charge; i.e. It refers to the service charge apportionment as being 1/146th and 1/125th of certain costs. The Tribunal was not made aware by any of the parties that there are other leases with different proportions or apportionments included within their terms.
c. It was therefore not aware of the existence of the regime of single or double charges as provided for in the leases;
d. The Applicants were the landlords in that case, and they proposed to start a cyclical programme of exterior redecoration works. They estimated that the works would cost £110,000 when started the following year (this was based on an informal estimate by a contractor). There was conflicting evidence before the Tribunal in the form of a report from Rand which put the cost of painting at £86,964 (but those costings had not been commercially tested). The Respondents being the lessees of the Drews Park Estate stated that it had received an estimate in the region of £80,000 for the relevant works;
e. The Tribunal accepted a suggestion by the lesees that "..the contribution (*to the sinking fund*) be increased to £250 and...that if the painting works are spread over 2 years, there will be sufficient funds in the sinking fund to meet the painting costs. The contributions can then be continued on an annual basis to meet future costs and build up the fund again. In the absence of justification from Sarsen, the Tribunal accepts that suggestion."

74 The Respondents have continued using the £250pa figure in relation to 'single charge' properties on the estate, and applied a £500pa 'double charge' to the 'double charge' properties on the estate (2 x 250). The Tribunal was told (at paragraph 5 of Mr Mercer's witness statement) that the balance of the sinking fund account was £164,812.90 as a 27/08/2015.

75 The Tribunal asked the Applicants to clarify if they were alleging that the figures of £250pa and £500pa were unreasonable in amount given the level of funds already in the sinking fund, or was their argument only in relation to the 'double / single charge' issue. The Applicants responded saying that they were "...not specialists, we don't know what should be held in the sinking fund. It is a difficult figure to quantify."

76 The Tribunal heard from Mr Mercer of the Respondents that:

a. When assessing the levels of funds in the sinking fund, the Respondents relied on the updated Rand stock condition survey report dated April 2009 [Divider 19]. The figures listed therein are not uplifted to take account of inflation, and so when using those figures to calculate likely future costs, the Respondents had applied a BMI (building materials index) to give future values;
b. Drews Park Estate is on a 6 year cyclical external redecoration works programme;
c. When the cyclical external redecoration works were undertaken in 2009 the final costs incurred by the Respondents were £116,301.28.
    i. The Tribunal noted that this was much closer to the figure the Respondents had given to the LVT in 2009 compared to any of the other figures before the Tribunal at that time.
d. That the six year redecorating cycle comes up again in 2016, meaning that the painting is scheduled to be undertaken again next year. The anticipated cost was £130,000. This figure was apparently an estimated figure arrived at using the £116,000 actual cost from 2009.
    i. The figure given in the Rand report did not, Mr Mercer thought include the costs of scaffolding and wasn't a market rate. Also the Rand report referred to a five year cycle and so those figures were not directly comparable;
    ii. The Applicants had not adduced any evidence in relation to this matter – have not had the opportunity of doing so given the late provision of information from the Respondents. However they did not seek to argue that this figure was excessive or inappropriate.
e. If that work was undertaken and the budgeted cost accurate, then that would leave under £35,000 in the sinking fund. The Respondents argued that this was not disproportionate given that the estate was a Grade II listed building.

77 The Tribunal found that, on the basis of the limited evidence currently before it, that the level of monies held in the sinking fund was not excessive or disproportionate given the type of buildings being considered, the scale of the estate, its listed building status, and the matters contained within the lessor's covenants under the lease.

78 However, the Tribunal raised 2 issues with Mr Mercer which are of particular note: First, was that having inspected the exterior of the properties and much of the estate, the exterior paintwork seemed to be in very good condition, and had the Tribunal not been told it would not have known that the external redecoration cycle was due for completion next year. The Tribunal therefore queried whether in fact the redecoration works did in fact reasonably need to be undertaken in 2016. Mr Mercer accepted that the exterior decorations were in good condition. He explained that when some of the redecoration work was undertaken in 2009/2010 it was carried out in awful weather conditions. The Tribunal were told that the new contractors were called onto the site in 2013 due to blistering of the paint and they had carried out significant works in this regard. The Respondents apparently bore the costs of this work in 2013, and it was not put through the service charge. Mr Mercer told the Tribunal that there

was some question as to whether in fact the works would go ahead next year given the current good condition of the external decorations.

79 Secondly, and worryingly, it appeared from Mr Mercer's evidence that in fact the actual use of the sinking fund had been rather undisciplined and sloppy. Mr Mercer stated at one point that line painting in the car parks had been paid for out of the sinking fund. There was no, and certainly no convincing, explanation given as to why this was funded from the sinking fund as opposed to through the service charge. Mr Mercer was unable to tell the Tribunal what principles were applied by the Respondents in deciding whether to pay for costs from the sinking fund or the service charge more generally. There was apparently no financial cut off. He described the decision making process in this regard to these decisions as a 'general management call", without any further elaboration. Indeed at one point he agreed with the Tribunal's observation that there didn't appear to be much logic as to why certain costs were paid from the sinking fund. The Tribunal noted the comments of the 2009 LVT, particularly at paragraph 51 of its decision that "However, the Tribunal considers that Sarsen has fallen down by confusing the need to build up a sinking fund to meet anticipated expenditure in the future with the need to raise an interim service charge." It was not at all clear to the Tribunal that the Respondents were properly using the sums in the sinking fund and had taken heed of that comment. Whilst this had no bearing on the Tribunal's decision in relation to whether the apportionment to be applied to sums claimed under the sinking fund provisions are fair and reasonable, it was good estate management practice that this was done in the correct manner for the benefit of all leaseholders.

80 The Tribunal discussed with Mr Mercer the need for clarity for the lessees, so that they knew what the sinking fund was to be used towards. The Applicants up until the night before the Tribunal hearing, had not been informed what sums were in the sinking fund nor specifically what those funds were intended to be used for. Mr Mercer accepted these criticisms. He agreed that in future he would ensure lessees were given more detail about the sinking fund, what sums were held and on what it was intended those sums would be spent.

81 Mr Mercer stated that the Respondent planned to assess the sinking fund and contributions to it in detail next year (2016). He explained that a decision would be taken as to whether in fact the Respondents were going to carry out redecoration works next year; whether they were necessary and if so the extent of them, and that this would be done in light of an updating survey: it was anticipated that the Respondent's surveyors would be updating the Rand report next year before any decision was taken on whether and what external redecoration works were required. Once that was done the Respondents would be able to assess what, if anything was required by way of sinking fund contributions going forwards.

82 The Tribunal found that the charges of £250pa. for a single charge and £500pa as a double charge in relation to the sinking fund had not, up to this point, been unreasonable. Nor did the Tribunal consider that the current level of the sinking fund was excessive for the reasons detailed above. However, the

Respondents needed to urgently reassess their attitude and approach to the sinking fund. They would also, if external redecoration works were not to proceed in any significant fashion next year, need to look at what sinking fund contribution was reasonably required from the lessees. A Tribunal may consider that merely blindly continuing to adopt the £250 – 500pa contribution levels to the sinking fund without further justification, thought or reasoning being applied to this was not reasonable, and could be properly challenged.

Limitation arguments

83 It follows from the Tribunal's conclusions above that in fact there are no 'excess' charges or overpayments to be reclaimed in respect of the sinking fund by the Applicants. Therefore it is unnecessary for the Tribunal to consider the impact of the Limitation Act 1980 on the how far back the Applicants could in fact go in seeking repayment of any such sums.

Section 20C

84 The Applicants have asked the Tribunal to make an order under section 20C of the 1985 Act, to prevent the Respondents from recovering their costs of the Tribunal proceedings through the service charge. A Tribunal may make an order under section 20C if it considers it to be just and equitable to do so.

85 The Tribunal do consider it just and equitable to make such an order. In doing so the Tribunal noted the following:

a. The Respondents sought to argue that the application should be struck out as the Tribunal lacked jurisdiction arguing that "neither party had resiled.." from the dispute clause of the lease at paragraph 6 of the Third Schedule.
b. Despite the lack of merit of this argument as a matter of law, this was a remarkable submission, given the contents of the Applicants' letter of 18/03/2014 [divider 2] in which the Applicants asked the Respondents to do precisely that and activate that clause by appointing a surveyor.
c. There has been a catalogue of default by the Respondents in their failure to comply with the Tribunal's directions. Directions which are made to allow for the swift and proportionate resolution of a dispute;
d. There has been a complete failure by the Respondents and Mr Mercer, prior to the appointment of solicitors part way through these proceedings, to meaningfully engage with the Applicants in answering their specific queries. While Mr Mercer has sought to address some of the issues in his witness statement, that was itself very late and really can only be seen to be the result of the Tribunal's involvement.
e. It was only in that very late witness statement that the Respondents for the first time identified the balance of the sinking fund, and deigned to explain what it was intended to cover – external redecoration costs of the estate being mentioned for the first time in that statement; and
f. The Applicants had legitimate queries in relation to the operation of the sinking fund and its current level. Queries which the Respondents did not prior to the Tribunal's involvement seek to address at all.

86 The parties should note that the fact that a section 20C order is made does not involve a consideration or determination of whether the provisions of the

leases allow the Respondents to seek to recover the costs of the Tribunal proceedings through the service charge provisions, nor the reasonableness of any such costs.

Whether an order for reimbursement of any applicant/ hearing fees should be made.

87 Neither party has addressed or requested in its respective submissions, whether the Tribunal should exercise its discretion to order any reimbursement of any application/ hearing fees.

88 The Tribunal's powers in this regard arise as a result of Rule 13(2) of The Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013. Taking into account all of the circumstances of the case, the Tribunal is not prepared to make such an order.

Conclusions

89 In conclusion therefore the Tribunal finds:

a. That the apportionment to be applied to sums claimed under the sinking fund provisions are to mirror the service charge provisions of the leases;
b. The Applicants are therefore to contribute a 'double charge' towards the sinking fund;
c. That the current sinking fund contributions, having in the past been levied at £250 (for those with a single charge) and £500 (for those with a double charge) are reasonable and appropriate.
d. That the current level of funds held by the Respondents as the sinking fund is neither, at present, excessive or disproportionate given the anticipated expenditure and the estate's listed building status;
e. The Respondents need to re-assess urgently its position in relation to the level of contribution required to the sinking fund for the future. This will need to be undertaken in light of decisions as to the extent of any external redecoration works to be undertaken in 2016;
f. The Tribunal will make a section 20C order in the Applicants' favour.

Appeals

90 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

91 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

92 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

93 The application for permission of the to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge J BROWNHILL (Chair)

Dated: 15th October 2015