1255

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/LSC/2016/0243 and LON/00BA/LDC/2016/0063**
Property	:	**96 London Road, Mitcham, Surrey, CR4 3LA**
Applicants	:	**Mr Foad and Silvana Sayar (flat 96)** **Ms Eve Proudfoot (96B)** **Mr James Crowe (96C)**
Representative **Also in attendance**	:	**In person**
Respondent	:	**Titan Property Management Limited**
Representative **Also in attendance**	:	**Ashley Wilson Solicitors LLP- represented by Mr Carpenter-Leitch**
Type of Application	:	**For the determination of the reasonableness and the liability to pay service charges and an Application for dispensation under Section 20ZA**
Tribunal Members	:	**Judge Daley** **Mr I Thompson FRICS** **Mr A Ring**
Date and venue of Hearing	:	**3 October and 4 October 2016 at 10 am 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**07 December 2016**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out from paragraph 78 onwards in this Decision.

(2) The tribunal notes the circumstances in which this case was brought, and the Applicant's assertion that legal costs would not be sought as a service charge. Nevertheless, the Tribunal considers that in all the circumstances it is reasonable to make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable. This was followed by an application by the Respondent for an order dispensing with some or all of the consultation requirements under Section 20ZA of the Landlord and Tenant Act 1985. The Applicants also sought an order for the limitation of the Landlord and Tenant Act 1985.

- Directions were given on 30 June 2016 whereby it was determined that the Application pursuant to section 27(A) and the Application for a determination should be heard together, and a time estimate of two days was given for the hearing.

- The Tribunal also identified the following issues-: *"Whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act.*

- *Whether the works have been carried out to a reasonable standard.*

- *Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee given the manner in which the work has been carried out.*

- *Whether some of the work undertaken was necessary*

- *Whether an order under section 20C of the 1985 Act should be made*

- *Whether an order for reimbursement of application/hearing fees should be made.*

The background

2. The Applicants are the leaseholders of side flat 96 and flat B of the premises known as 96 London Road. The premises comprise a Victorian House converted into four flats. Flat A is occupied by the freeholder of the premises, and the leaseholder of flat C chose not to take part in these proceedings. In respect of the Application for dispensation under 20ZA of the Landlord and Tenant Act 1985, all four leaseholders are parties to the proceedings.

3. The application for a determination under section 27A was brought by Mr Foad and Mrs Silvan Sayar (flat 96) and Ms Proudfoot flat B for a determination of whether service charges for major works in the sum of £42,967.18 are reasonable and payable. Two further applications were issued; one by the leaseholders being an application for an order under Section 20C, and an application by the respondents for a dispensation under section 20ZA.

The Hearing

4. At the hearing the Applicants represented themselves. The Respondents were represented by Mr Carpenter-Leitch of counsel. Also in attendance on the landlord's behalf was the managing agent, Mr Avery.

5. Mr Carpenter-Leitch stated that as a preliminary issue the Respondents wished to introduce additional documents, he stated that after a case conference it was identified fairly late in the day that there were gaps in the evidence. As there were documents in existence which could explain the reason for the contractor selected to carry out the work by the Respondent, it was considered necessary for the Tribunal to have sight of the documents. The Tribunal were referred to documents, which were introduced from pages 311 onward in the bundle.

6. The Tribunal heard from the Applicants who objected to the introduction of the documents on the grounds that the documents were being admitted at a late stage, and that as a result this did not give them an adequate opportunity to consider the documents. The Tribunal decided to admit the documents under rule 8(2) of the Tribunal Procedure (Property Tribunal) Rules 2013.

7. The Tribunal determined that without the documents it would be difficult to consider the reasonableness of the costs of the major works without considering the tender documents. The additional documents would allow some element of comparison. Should the Applicants

consider further, during the course of the hearing, that there was actual prejudice to them as a result of the late service of the documents, they were at liberty to renew their application objecting to the late service of the documents.

8. The Tribunal directed that the Applications made by the parties should be determined in the following manner. The Tribunal would consider the application for dispensation under section 20ZA and then consider the issue of the reasonableness of the costs of the major works under section 27A of the Landlord and Tenant Act 1985 and the tenant's application under section 20C of the Landlord and Tenant Act 1985 for an order concerning the costs of the proceedings.

9. Mr Carpenter- Leitch stated that the works for which dispensation were sought under section 20ZA concerned the electrical work that had been undertaken at the flat. He explained that there were three flats vertically; that is flats A, B, and C, and flat 96 was located to the side of the premises. The first three flats shared a hallway as common parts whereas the side flat was self-contained with a separate door. Mr Carpenter-Leitch informed the Tribunal that some of the leases had been extended – Flat A and Flat 96 to 125 years and Flat C to 999 years. Flat B's term has not been extended. The wording of Flat B's lease was not identical to that of the other flats.

10. The landlord acquired the premises on 2 December 2015. Mr Carpenter–Leitch stated that it was clear that the premises required major work, such as refurbishment and updating. There was also an issue of no lights in the common parts, although a temporary solution existed by the connecting the common parts lighting to the electricity in flat A.

11. The Tribunal was informed that the Respondent landlord had arranged for a risk assessment to be carried out on 10 January 2016 and the report revealed that there was an issue with fire safety. In his written submissions the respondent stated-: *"The Works can be split into two main parts:*

Provision of lighting, electricity, emergency lighting and fire detection/alarm system in the interior communal areas;

Repairs and redecoration etc. to the interior communal areas, the exterior, the roofs and balconies..."

12. In order to carry out the work to the electrical installations, a new supply was fitted and it was necessary to bring flat C and side flat 96 up to standard in order to connect them to the new system. The Tribunal was informed that flat B had not been connected to the new system. The costs of upgrading flat A had been born by the landlord who was also the leaseholder of flat A.

13. The initial consultation took the form of a notice of intention which was sent by letter dated 23 December 2015. In the letter the proposed works were described as internal and external redecoration repairs and upgrades. Paragraph 2 provided a further description of the proposed works which stated -: *"...(a) to install new lighting, with emergency lighting a communal smoke alarm system and redecorate throughout the communal interior areas. (b)To repair & redecorate the exterior to the front & side elevation (c) To repair & redecorate the exterior to the rear elevation (d) to repair roofs and balconies..."*

14. Observations were invited in writing or email, by Wednesday 10 February 2016. The leaseholders were also informed that they could put forward the names of individuals or contractors from whom the landlord could obtain estimates.

15. Mr Carpenter-Leitch stated that amongst the work undertaken were works relating to the provision of lighting and fire detection and that these works were carried out without further consultation.

16. Counsel referred to the Fire Risk Assessment report dated 11/1/2016 at pages 100 of the Application for dispensation bundle. Page 5 of the report posed a number of questions such as *".... Are occupants reasonably safe from a fire or the effects of a fire...Are visitors safe from a fire or the effects of a fire... Are Contractors safe from a fire or the effects of a fire..."* The answer to this question was "no". The recommendations included *"... 1.Carry out fixed electrical installations inspection and testing at completion of the common areas refurbishment or sooner if the scheduled start for works is delayed. 2. Ensure that building contractors have suitable procedures and controls for hot working."*

17. The Building was classified as at 'Medium risk' which could result in 'Moderate Harm'. Counsel stated that a dispensation was sought in respect of this work, on the grounds that the lack of lighting and adequate fire alarms within the flats presented an unacceptable hazard.

18. Mr Carpenter-Leitch accepted that the Respondent had failed to follow the full Section 20 Consultation Procedure. However, he stated that a key point for the Tribunal to consider was whether compliance with Section 20 would have produced a different outcome. He stated that two estimates had been sought and the lower of the two had been accepted. He posed the rhetorical question of what would have been different if full consultation had taken place.

19. In paragraph 13 of the Respondent's Statement of Case the Respondent stated-: *"...The Applicants were served with the following consultation notices in accordance with section 20 of the Landlord and Tenant Act 1985 (a) Notice of Intention-23 December 2015 (b) Statement of Estimates-30 March 2016 The Respondent obtained two tenders,*

details of which are attached... The section 20 consultation notices are attached...together with the specification of works, the two detailed quotations and demands for the further Interim Charge. No third stage notification with details and reasons for award of contract was served as the contract was awarded to the lowest tender..."

20. Counsel called Mr Avery the property manager, to speak on the Respondent's behalf. In his evidence, Mr Avery stated that the work had been undertaken for the safety of the leaseholders and that the arrangements for the work being undertaken had been made by the landlord. He accepted that Mr Urquhart had "taken it upon himself, to get on with the work". However he stated that this was in view of the concerns raised by the fire risk assessment report. Mr Avery stated that the report had recommended that new lighting had to be installed, given that the failure to provide lighting had safety implications.

21. Mr Avery was asked whether the Report had provided a guideline for the urgency of the work. He stated that although no time had been laid down, his understanding was that it was in the interest of the tenants for the work to be undertaken as soon as possible. Failure to attend to the work could have affected the insurance cover as the work had been identified as necessary for the protection of the fabric of the building and the leaseholders.

22. He was asked about whether the leaseholders had been advised about the change in the consultation deadline, or that it had been brought forward as a result of the Fire Risk Assessment. He accepted that this had not occurred. Mr Avery stated that although the landlord had not consulted, the leaseholders were aware that the work was needed as there was no electricity in the communal area. The landlord had work being undertaken in his flat and as this work related in part to the electricity the timing was ideal for the major work items to be carried out at the premises. If the work had been undertaken separately as a stand alone item, separate from Mr Urquhart's work at a later stage, it would have cost the leaseholders more.

23. Mr Avery stated that the report led to a heightened sense of exposure, once the report had set out in black and white that there was a problem if one of the leaseholders had fallen down the stairs, questions would be asked, as to why the work had not been undertaken at an earlier stage.

24. In answer to questions concerning flat B (Ms Proudfoot's flat), Mr Avery stated that there had been no supply of electricity to flat B at the time the work was undertaken and he could not say when the supply had been cut off. He further stated that the landlord had not interfered with the electrics and that the current supply to the flat may not be up to appropriate standards.

25. The electrician's safety certificate had been issued on 30 March 2016. Mr Carpenter-Leitch was asked about whether the costs of supplying the electricity (i.e. the cabling and wiring) came within the provisions of the lease. Mr Carpenter-Leitch stated that this work was necessary and incidental to the service charge works.

26. Mr Avery was asked about the replacement of the entry phone system, and whether this was covered by the section 20 Notice of Intention dated 10 January 2016. It was accepted on behalf of the respondent that this work had not been set out in the notice. However the front door was in a poor state of repair, with leaseholders having to walk downstairs to let people in. It was sensible to carry out the work at the same time in order to improve the security and safety of the building and to bring the communal areas up to modern standards.

27. Mr Avery also stated that in order to renew the electrical installations, it was necessary to lay new mains cabling installed by UKPN, necessitating the digging of a trench from the road to the building.

28. This assertion was challenged by the leaseholders, who stated that they had not been advised of the need for the work by the landlord, and there had been no mention of urgency. The leaseholders stated that the hallway lighting was separate to major works, and that the leaseholders had not been told about the door entry system. The landlord did not advise them about the fact that it was being installed until they were asked to provide access to their flats in early March.

29. The bill for the door entry system was sent to the leaseholders on 30 March 2016, this followed on from communication on 23 February 2016, asking for access to be provided to enable the works to be undertaken. Ms Proudfoot was also concerned that access had been gained to her flat without permission, in that she had attended her flat and found the landlord's workmen in the premises. She stated in her statement that the lock for her flat door had been broken. It was denied on behalf of the respondent that the lock had been broken by the landlord's workmen.

30. The Leaseholders were concerned that the works had caused disruption and disturbance, and they had been unable to plan for it in the usual way. This was especially of concern to Mr and Mrs Sayar, who had young children. Mr Sayar stated that the works had been undertaken in such a way that there had been hugely disruptive to their family life.

31. The Tribunal were provided with copies of the two quotations, which had been obtained in relation to the electrical works. The first quotation was from Down to Earth Electrical Contractors in the sum of £19,135.20.

32. Mr Carpenter- Leitch referred the Tribunal to the quotation from SEC Norbury dated 12 January 2016 (the successful quote). This was in the sum of £4740.09 and included the rewiring of the communal lighting, power, smoke detectors and the landlord's sub main supply and distribution. The other costs involved in the work were the costs in relation to the new supply to the premises in the sum of £2,986 for the work undertaken by UKPN.

33. Mr Carpenter-Leitch stated that this cost had been incurred as there was no alternative, and the costs were included in the provision of a new electricity supply. Likewise the costs of the work undertaken by Essex Ground Works for the trench for cabling had been part of the works. The total costs incurred were £9257.20.

34. Mr Carpenter-Leitch submitted that the Tribunal ought to grant the Respondent's section 20ZA Application for dispensation. He submitted that the works to the communal lighting were necessary and it was only a question of timing: no prejudice had been caused to the leaseholders as nothing would have been done differently, had they been consulted. The work needed to be done in any event and the leaseholders should pay for the costs of the works.

35. He stated that the landlord was prepared to agree to the following terms for the grant of dispensation-: that the total costs be reduced by 10% and that the landlord would defer payment of the service charges until January 2017.

36. The leaseholders indicated that they did not accept the freeholder's terms for the grant of dispensation put forward by Mr Carpenter-Leitch and resisted the application for a dispensation under 20ZA of the 1985 Act.

37. In their submissions they took issue with the notice that was served on 23 December 2015, as it was not received by either of the leaseholders for flat 96 and 96B. Ms Proudfoot stated that she did recall receiving something from Mr Avery about the lighting. Although it was accepted that there was a need for some refurbishment, Mr Avery had not provided a specification until 30 March 2016.

38. The leaseholders had been informed by Mr Urquhart that the landlord's supply for the common parts including the meter was located within his flat, and that as Mr Urquhart was undertaking work that it was convenient for him for the works to the premises to be carried out at the same time.

39. However it had been their understanding that the work to the leaseholders' flats should have been completed over the course of 2-3

days, but instead it had taken over 6 weeks. There was also an issue with the standard of work, in that within the Sayars' flat two smoke detectors had been installed in close proximity, to each other. Kitchen tiles had not been replaced and there were holes in the ceiling of their flat. They submitted that the overall standard of workmanship had been poor. Mr Sayar stated that the work and the disruption had caused huge pressure and strain on family life.

40. Mrs Proudfoot did not live in her property and left it unoccupied. However prior to the major work she had inspected the flat on a regular basis. She stated that on the last occasion she inspected the property the ceiling in the dining/ living room had come down. She also stated that she had attended her property and found that Mr Urquhart's contractors were using it as a base. She stated that when the door entry system was fitted she had not been provided with a key.

41. The leaseholders raised the following concerns with the work: firstly whether the work had been necessary; secondly whether it was in accordance with the lease and thirdly they questioned the standard of workmanship as set out in their statement to the tribunal.

42. The leaseholders also raised issues with the refurbishment/ redecoration work, which had been undertaken at the premises.

43. In their application to the Tribunal, the leaseholders set out that they had concerns with the major works that had been undertaken at the premises, as they considered that the priorities had been wrong. They considered that the painting specification did not deal with underlying repair issues such as the balcony. The balcony was defective and was potentially the cause of water penetration, which was affecting Mr and Mrs Sayar's flat. They had also, at the time of issuing the proceedings, been concerned that the Victorian pathway to the premises, which was considered a feature of the property, was being removed and an inferior pathway which although featuring black and white tiles had been installed.

44. This work had not been undertaken with regard to their suggestions/preferences set out in the consultation. The Tribunal was referred to a letter dated 28 April 2016 from Johnson Crilly Solicitors sent on behalf of Mr and Mrs Sayar which dealt with the costs of the proposed work and the lack of consultation on the electrical work and the poor standard of workmanship. In addition the letter stated that urgent works were required to the balcony. At page three of the letter within the fourth paragraph, the letter stated-: " *In the circumstances, our client requests that all further planned building works cease until there can be proper consultation and discussions with all of the leaseholders about agreeing a programme of necessary building and repair works arrange for proper budgeting and tender before any work is carried out...*"

45. In her response to the Tribunal Ms Proudfoot stated that-: "... *Many of the things they have done are, without doubt, totally unnecessary... 1. Digging up the front garden and removing tons of topsoil when all it needed was levelling. 2. Removing the impressive Victorian pathway (17ft to the gate)...Relocating the bin store at a total cost of £650... Painting the front of the house white because the house next door has been painted white. Have they repointed it first... Irvine's quote is the only one ever obtained. Ones we have put forward have been ignored...*"

46. Mrs Proudfoot's consultation responses dated 9 May 2016 were included in the bundle. Mrs Proudfoot stated that she had obtained quotations for the work including one from a specialist in re-laying Victorian paths.

47. The leaseholders stated that the contract for the works had been awarded to Clive Irwin. Ms Proudfoot had checked with the other contractor who stated that they had not tendered for the work. Ms Proudfoot had obtained four quotations herself from a website called Trusted Trader. One of the contractors, KCT London Limited, had looked at the balcony and had stated to her that painting the balcony was not sufficient and that the balcony should be re-asphalted.

48. The Tribunal were referred to the specification and the final account. This detailed the costs of each of the items, the first items dealt with the hire of a toilet and a scaffold tower. However it was agreed that the toilet hire had not occurred and that this item was conceded by the respondent. The front garden had been gravelled over at a cost of £240.00, and levelled off and walls had been painted. The sum budgeted for the Victorian path was £4500.00 however the actual cost was £2505.00. It was accepted by Mr Avery that there was a reduction owned to the leaseholders in respect of this sum.

49. In respect of the work to gravel over the path, the leaseholders did not accept that the cost of gravelling was necessary.

50. Mr Avery also explained that the bin store had been moved so that it was further away and not directly under the Sayar's window (the side flat). The leaseholders considered that this work had been an improvement, and as such they did not consider the work to be necessary and covered by the lease. There was also an issue with the front gate which had been replaced. The Applicant did not consider the replacement to be necessary as the old gate was in reasonable condition. They also considered the new gate to be inferior. Mr Avery stated that this work had also involved 'making good' the pillars supporting the gate. The Tribunal were referred to the before and after photographs.

51. Mr Avery stated that the sum of £280.00 was conceded on the basis that the gate was inferior to the original. In respect of the PVC window redecoration, it was accepted by the landlord that the work was not up to the specification accordingly the sum of £380.00 was conceded as the work to the sills was not up to the required standard.

52. The Tribunal were referred to metal columns at the front of the house which had been painted at a cost of £110.00 and the removal of ivy in the sum of £60.00. The brickwork to the front of the house had been painted in breathable paint, and a gap in the window had been filled in PVC at a cost of £30.00. Mr Sayar stated that he was unaware of the gap above the brickwork. There was also a query as to whether the paint was as specified and whether weather shield paint had been used.

53. In respect of the work undertaken to the first floor, this involved rubbing down the balcony with a wire brush. Mr Avery stated that he had asked the contractors to repaint the iron railings again, and provided this was done he considered the cost of the work to the first floor to be reasonable. Mr Avery accepted that the window frames were included in the leaseholder's demise and as such the work undertaken to the frames was conceded. The total cost to the first floor front was £1800.00, rather than the budgeted sum of £2000.00. The work also included the removal of a steel ladder in the sum of £50.00.

54. Mr Sayar stated that the work to the first floor front had not resolved the damp which had affected his property. He stated that the work that was needed was to seal the surface of the balcony to prevent water penetrating through the cracks. The Respondent referred to a photograph of the side elevation, stating that the wall had not been painted using a tower. Mr Avery stated that it had been done using a wooden platform above the roof. Mr Avery stated that the original skylight was rusted out and this had been removed and replaced.

55. Mr Sayar stated that he was unable to comment on the rest of the work. It was noted that the work included window cleaning in the sum of £20.00. However this work was not part of the recoverable service charges as the windows were demised to the tenants. In respect of the items of work which involved "making good" the leaseholders did not consider that this had been carried out, they considered that the work had involved only painting.

56. In respect of the work to the downpipe at item B, this had been carried out, however the sanding down of the windows was conceded on behalf of the landlord as the windows were demised to the leaseholders. In respect of the removal of the satellite dish, this had not been removed and was alleged to still be in place.

57. The Tribunal noted that the actual expenditure in respect of the contingencies was in the sum of £5800. The Respondent went through

the items/ work undertaken under the heading of contingency. This had involved various items, including the levelling of the front garden, the removal of a tree stump, the provision of the front door and the furnishings and side panel and the replacement of the dormer at the second floor level, the replacement of the ground floor guttering and making good the cornice as well as internal work such as the replacing the front door at Flat C, and making it fire resistant and works to the stair well and entry rewiring amongst other items including internal and external work.

58. The Applicant's asked about Mr Avery's fees which were 10%. Mr Avery stated that this had involved drawing up the specification and the site meetings and serving the section 20 notices, and all communication with Clive Irwin. He stated that he had not included the electrical works (although he was entitled to) as this had been undertaken by Mr Urquhart.

59. Ms Proudfoot stated that Mr Avery had not been on site when needed. He had only attended on three occasions. This was not accepted by Mr Avery, who stated that he had been on site on more than three occasions and in any event had been on site as necessary. One of his visits had been when he had gone through the snagging list.

Closing submissions

60. Counsel noted that the premises had leases with differing provisions and obligations. Flat C had been extended for a period of 999 years, flat A and Flat 96 for 125 years, and flat B had not been extended and had the original lease provisions and terms which was for a period of 99 years. It was accepted that this gave rise to differing obligations.

61. The lease for Number 96 set out at 1(b) *"The right for the Lessor at any time hereafter to alter rebuild or make additions to any of the other parts of the said building in such manner as the Lessor in his absolute discretion thinks fit and notwithstanding that any diminution of or interference with the access of light or air may be occasioned hereby to the Demised Premises."* Clause 2(d) provided that-: *"... The Lessee will pay and contribute one quarter of the expenses reasonably incurred by the Lessor in performing his covenants contained in clause 4('the Lessee's Share') payable at the times and in the manner provided ..."* The door frames were dealt with in the lease at pages 146 and 148, whilst page 150 clause (m) dealt with the insurance and page 152 set out that in default the landlord could carry out the work. This was mirrored in the leases of flat A. Counsel submitted that this enabled the landlord to make improvements.

62. Counsel referred to the service charge provision in the schedule of the lease and he submitted that the clause included the common parts including the interior lighting and carpets.

63. Counsel accepted that in respect of the lease for flat B, that there was no provision for improvements. Ms Proudfoot's lease differed in particular at clause 1(e), which provided for the right to keep a dustbin in the area designated on the plan. This was the only lease which was prescriptive in describing where the bin stall should be kept. Ms Proudfoot, in her submission, stated that this meant that the landlord was not entitled to move the bin store at will.

64. The provisions of her lease further differed from the other leaseholders in that it was a requirement of the terms of her lease that she contribute one half in relation to the expenses of repairing and maintaining and keeping in good order and condition the passageway on the ground floor.

65. Her lease provided that the costs of the work was payable on satisfactory completion and included Clause 4(c) which obligated the landlord to (Subject to contribution and payment as hereinbefore provided) maintain and keep in good and substantial repair and condition (i) the main structure of the Building including the principal internal timbers. Mr Carpenter-Leitch submitted that the lease fell to be construed in accordance with common sense, principles; that is to ascribe the meaning intended by the parties. It was noteworthy that electrical works had not been undertaken in her flat.

66. Ms Proudfoot's lease did not include a schedule in respect of the service charges.

67. Mr Carpenter-Leitch submitted that the starting point for the Tribunal when considering the application under section 20ZA was that-: *"... 20. The initial evidential burden is on [the tenants] to demonstrate any prejudice which they claim they would not have suffered had the full consultation process been complied with and which they would suffer if unconditional dispensation is granted Daejan vBenson [2013] UKSC 14. The key issue is " what might have been different if there had been full consultation..."21. It is difficult to see that [Tenants] have even attempted to address this hurdle-their complaints appear to relate purely to i) the reasonableness of the works/cost and ii) the quality of the work. There would have been no difference if there had been full consultation up to the point of tender..."*

68. Counsel submitted that the issue in relation to the electrical works appeared to be whether it was reasonable for the landlord to carry out all the works at the same time. Further issues arose to be considered: whether it was reasonable to carry out certain works at all such as digging up and levelling the front garden; removing the Victorian pathway, relocating the bin store, painting the brick work white (whereas it was previously unpainted) and installing a new gate.

69. In respect of other items of work the quality of the work was in issue; that is, the quality of the exterior redecorating, the electrical works, the tree works, and the supervision of the work, and whether the quality of the carpet was too high given the nature of the premises.

70. Counsel in his outline written submissions stated that under section 19(1) of the Landlord and Tenant Act 1985, there was an issue with (i) whether the landlord's actions in incurring the costs were reasonable and (ii) whether the costs themselves were reasonable.

71. Mr Carpenter-Leitch accepted that it was right in principle to take into account the financial effects on the tenant in carry out the work *Garside-v- RFYC Limited [2011].*

72. Counsel submitted that in this case there was no evidence of any particular hardship, and that although the tenants wished for the work to be phased, this was only one of the factors to be taken into consideration.

73. He stated that there was urgency in the electrical and fire safety works, and that this was a contributory factor to the works to the path and the interior common parts), and as such it made sense to do the work at the same time as phasing may have added to the costs.

74. Mr Carpenter-Leitch accepted that the work had involved the upgrading of wiring which was part of the tenant's demise, however this was necessary and incidental to the need to replace the communal supplies and accordingly it was necessary for the landlord to undertake works and make alterations in flat A and flat C and the side flat, flat 96.

75. In relation to Section 20C counsel conceded that no costs would be sought in respect of the Application made for dispensation. In relation to the costs of the tribunal proceedings, Counsel submitted that the wording in clause 1.(a) of The Schedule " *The Service Charge"* The wording was sufficiently wide to provide for recovery of legal costs. The wording provided that-: " ...*"Total Expenditure" means the total expenditure incurred by the Lessor in any Accounting Period in carrying out their obligations under Clause 4 of this Lease and any other costs and expenses reasonably and properly incurred in the foregoing (a) the cost of employing managing agents(b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Lessee hereunder..."*

76. Mr Carpenter-Leitch submitted that it was just and equitable for the Tribunal to grant dispensation. In respect of the Section 27A proceedings, Mr Carpenter-Leitch stated that dealing with this matter had been made more difficult as the Applicant had not provided a Scott Schedule which would have assisted the landlord in dealing with the

matter. Counsel submitted that the landlord had acted reasonably in making concessions and accordingly the costs should be recoverable by the landlord.

77. The Applicants stated that they wished to make an application under section 20C of the Landlord and Tenant Act 1985. They submitted that the landlord had failed to consult them concerning the electrical works and they were not satisfied with the terms put forward for dispensation. The Applicants also stated that they repeated the matters relied upon in respect of their application which they wished the Tribunal to consider in respect of the reasonableness and payability of the service charges.

The tribunal's decision and Reasons for the tribunal's decision

The Section 20ZA Application

78. Tribunal having considered the oral evidence and written submission of the parties have determined that it is appropriate to grant the order for dispensation in accordance with guidance provided by the Supreme court in *Daejan Investment Ltd –v- Benson and others* [2013] 1 WLR 854 At paragraph 44 of *Daejan* Lord Neuberger gave the following guidance for the exercise of discretion by the Tribunal on applications for dispensation-: " *Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(I) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted(at least in the absence of some good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be –i.e. as if the requirements had been complied with...*"

79. At paragraph 53-54 the Supreme Court gave further guidance as to how an application for dispensation could be applied, Lord Neuberger considered the contention put forward by the respondent. " *...[O]n an application under section 20ZA(i), the LVT has to choose between two simply alternatives: it must either dispense with the requirements unconditionally or refuse to dispense with the requirements... 54. In my view, the LVT is not so constrained when exercising its jurisdiction under section 20ZA(i): it has power to grant a dispensation on such*

terms as it thinks fit-provided, of course, that any such terms are appropriate in their nature and their effect..."

80. In Daejan, Lord Neuberger suggested that three questions were helpful to the Tribunal in considering an application for dispensation: (i) The proper approach to be adopted on an application under section 20ZA(i) to dispense with compliance with the requirements; (ii) Whether the decision on such an application must be binary, or whether the LVT can grant a section 20 (I)(b) dispensation on terms; (iii) The approach to be adopted when prejudice is alleged by tenants owing to the landlord's failure to comply with the requirements. In considering the issue of prejudice to the tenants, he stated that it would be for the tenants to provide such evidence, however that "once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it..."

81. The Tribunal considers that the notice of intention served by the landlord fell far short of what was required under section 20 in that it did not describe all of the works that the landlord planned to undertake and that Mr Urquhart started the works in advance of the close of consultation. The Tribunal finds that notwithstanding Mr Carpenter-Leitch's submissions nothing about the work appeared to be urgent. The work was undertaken entirely at and for the convenience of Mr Urquhart, although the Tribunal accepts that this may have resulted in some saving of costs to the leaseholders, however the short notice meant that the work started at a time which was disruptive and inconvenient to the leaseholders.

82. The Tribunal accepts the evidence of the Respondent that the landlord commissioned the work from the contractor with the cheapest estimate. Given this the Tribunal finds that there was no actual financial prejudice to the leaseholders. In practical terms there was an issue as to the extent to which the works were covered under the terms of the lease, given that the works were in part undertaken to the leaseholders' flats and to the cabling and wiring which was part of their demise.

83. The Tribunal finds that where dispensation has been granted, that this did not include the costs of any electrical works to the leaseholders' flats. The Tribunal finds that there was no entitlement to carry out work to the consumer unit in the flats. Accordingly the Tribunal finds that the sums included within the estimate that relate to work within the leaseholders premises is not recoverable under the terms of the lease.

84. Accordingly the Tribunal finds that dispensation ought to be granted on the following terms-:

85. (i) That the cost is limited to the work to the landlord's supply as defined in the lease. (ii) That the costs shall be interest free up until 31 January 2017. (iii) That the overall costs of the

work relating to the electricals are reduced by 10% ,including the costs of making good. (iv)That the landlord carries out any snagging work to Mr Sayer's flat.

The Section 27A Application

86. The Tribunal makes the following findings in relation to the work:

87. The Tribunal finds in the absence of any alternative costs submitted by the leaseholder that the costs of the preliminaries are reasonable and payable.

88. That the costs of work to the front garden are reasonable in the sum of £1,600.00 and the sum of £250.00 conceded by the landlord is not payable. The Tribunal finds that it was not reasonable to change the gate, in order to deal with the broken lock and therefore allows the sum of £100.00 as a sum reasonable for the repair of the lock on the gate.

89. The costs of the work to the ground floor front as set out on page 220 of the first bundle are reasonable and payable and the total sum claimed by the landlord is allowed.

90. The Tribunal finds that the costs of work to the first floor and second floor elevation, save all costs associated with the windows, including the cleaning are reasonable and payable. The Tribunal finds that the windows were demised to the flats and any work undertake by the landlord to the windows is not payable under the terms of the lease.

91. The Tribunal finds that the costs of removing the satellite dish on the second floor is not covered by the provisions in the lease and accordingly, this sum is not recoverable. In respect of the side elevation the Tribunal having considered the evidence finds that the costs of the work at £1600.00 is reasonable, save in respect of the costs associated with sanding down, (where the Tribunal preferred the evidence of the leaseholders).

92. In respect of the first floor the recoverable costs in relation to connecting the down pipe are reasonable and payable.

93. The Tribunal finds in respect of the costs of a front door to flat C that this sum is not recoverable under the provisions of the lease and the cost of this work is payable by the leaseholder of flat C. The Tribunal has also noted that in relation to the front door, it was replaced after work was carried out to the door, given this, the costs associated with the door, should be limited as it was unreasonable to carry out work and then subsequently replace the door. Accordingly the costs shall be limited to £1000.00.

94. The Tribunal finds that the costs of the work to the interior were reasonable and payable, as the costs of the carpet was not so excessive to be out of keeping with the nature of the building.

95. The Tribunal finds that in respect of flats A, C and the side flat that the lease enables improvements, accordingly the costs of the intercom system and the fire alarm is recoverable against these leaseholders and the costs associated with the removal of the bin store. However Ms Proudfoot's lease does not enable the costs of improvement to be recovered. The Tribunal has not been asked to determine the proportions recoverable against each leaseholder, however the Tribunal notes the different proportions provided for under the terms of Ms Proudfoot's lease.

96. The Tribunal noted that the issue with the balcony was whether the work was as extensive and far reaching as necessary. The Tribunal considers that it was reasonable to coat the balcony with bitumen as the surface was uneven. Prior to trying extensive work it was reasonable for the landlord to consider trying a conservative costing option which may have been successful, before embarking on more wide ranging solutions. Accordingly the Tribunal finds that the cost of this work was reasonable.

97. The Tribunal also noted that there was work associated with pollarding trees, as no issue was raised that this work was not necessary the Tribunal finds the costs of this work is reasonable and payable.

98. The Tribunal accepts that it is reasonable in principle for Mr Avery to charge a fee, noting that they do not apply in relation to the electrical works. The Tribunal noted that the works undertaken at times exceeded the ambit of the lease and as manging agent Mr Avery should have been mindful of this. Accordingly his reasonable fees are capped at 7.5%.

Application under s.20C and refund of fees

99. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines [although the landlord indicated that no costs of the Section 20ZA would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines] that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

100. The Tribunal considers that the manner in which the work was carried out, including the failure to consult may have contributed to these

proceedings being brought by the Applicants; accordingly it is appropriate that an order be made under Section 20C.

101. The Tribunal orders that the Leaseholder applicants' fees are refunded by the landlord.

102. The Respondent shall within 28 days produce a schedule setting out the costs payable for the major works, deducting the sums conceded and reflecting the finds of the Tribunal.

Name: Judge Daley **Date:** 07 December 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement, to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).

ANNEX - RIGHTS OF APPEAL

1. **If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.**

2. **The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.**

3. **If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.**

4. **The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date,**

the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.