



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/22UJ/LSC/2020/0055**

HMCTS : **CVP**

Property (the Flat) : **42, Hornbeams, Harlow, Essex CM20 1PG**

Applicant : **Mr Sunil George Nainan (Tenant)**

Respondent : **Harlow District Council (Landlord)**

Type of Application : **to determine the reasonableness and
payability of the Service Charges (section
27A Landlord and tenant Act 1985)**

**to determine whether the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(section 20C of the Landlord and Tenant
Act 1985)**

**to reduce or extinguish the Tenant's
liability to pay an administration charge in
respect of litigation costs (paragraph 5A of
Schedule 11 of the Commonhold and
Leasehold reform Act 2002)**

Tribunal : **Judge J R Morris
Mr S Moll, FRICS**

Date of Application : **15th December 2020**

Date of Directions : **18th January 2021**

Date of Hearing : **19th April 2021**

Date of Decision : **19th May 2021**

DECISION

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Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines the Service Charge of £6,136.13 for the Major Works is reasonable and payable by the Applicant to the Respondent.
2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable.
3. The Tribunal makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. The Tribunal makes no order for the reimbursement of the Application Fee.

Reasons

Introduction

5. On 15th December 2020 the Applicant applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the Service Charges to be incurred of £6,600.08 as his contribution towards Major Works are reasonable and payable.
6. The Applicant also seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and for an order under rule 13 (2) for the reimbursement of tribunal fees.

7. Directions were issued on 18th January 2021.
8. The Directions required the Applicant to provide details of and reasons for disputing items and amounts of the Service Charge relating to the Major Works, together with supporting evidence such as alternative quotations and other documents including photographs. A Schedule Form was included with the Directions to facilitate the Applicant in identifying the items and amounts in dispute.
9. The Directions also required the Respondent to complete the column of the Form responding to the items and amounts the Applicant identified as being in dispute. In addition, copies of relevant invoices and other documents including photographs should be provided upon which the Respondent intends to rely. The Respondent was also required to:
 - draft a Statement of Case setting out a response to the issues raised in the application, in particular clarifying the works recently carried out to the estate;
 - the relevant service charge provisions in the Lease; and
 - any legal submission in support.
10. The Tribunal identified the following issues to be determined from the Application Form:
 - 1) The reasonableness and payability of the Service Charges to be incurred for Major Works, in particular:
 - a) Preliminaries
 - b) Working at Height
 - c) Replacement of Fire Resisting Flush Door
 - d) Clean PU Elements
 - e) Site Clearance
 - 2) The Applicant also questioned the necessity of the general programme of works;
 - 3) How his contribution had been calculated; and
 - 4) The Landlord's supervision costs.
11. In addition, at the Hearing the Applicant applied to the Tribunal to determine:
 1. Whether an order under section 20C of the 1985 Act and /or paragraph 5A of Schedule 11 to the 2002 Act should be made;
 2. Whether an order for the reimbursement of application fees should be made.
12. The Respondent provided a Bundle which included the submissions of both parties, details of which are set out below under the respective parties' cases.

The Lease

13. A copy of the Lease was provided. The Lease is dated 11th October 1993 between Harlow District Council (Landlord, referred to in the Lease as “the Council”) (1) and Edith Anna Westlake (Tenant, referred to in the Lease as the “Purchaser”) (2). The Lease is for a term of 125 years from 2nd April 1990 at rent of £10.00 per annum. The Lease was assigned to the Applicant on 31st January 2007. It appears from the Lease that it was granted under the ‘Right to Buy’ provisions of the Housing Act 1985.
14. The Provisions of the Lease relevant to these proceedings are as follows:
15. Under Clause 4 (b)
 - (i) *to pay the Service Charge assessed in accordance with Schedule G and the Improvement Contribution (if any) shown in Schedule H to this Lease by monthly instalments in advance and on account thereof in such amounts as the treasurer to the Council may from time to time determine;*
 - (ii) *such instalments shall be paid on the first day of each month by variable direct debit to the Purchasers’ bank or such other method as the Council may agree;*
16. Under Clause 7 of the Lease the Council covenants:
To repair
 - (a) *to maintain and keep in repair the structure and exterior of the Flat and the Property (including the drains, gutters and external pipes) to make good any defects affecting the structure;*
To repair other premises
 - (b) *to maintain and keep in repair any other premises over or in respect of which the Purchaser has rights as specified in Schedule B*
17. Schedule B of the Lease specifies in paragraph (3) *A right in common with the Council and all others entitled to pass: -*
 - (i) *on foot along the external paths (if any) shown coloured blue on Plan 1 and along the internal passageways stairs and lobbies of the Property (if any) shown coloured yellow on Plans 1 and 2 (copies of the coloured plans were provided)*
18. Schedule G of the Lease sets out the Service Charge
 - (1) *The Service Charge is payable for: -*
 - (ii) *repairs (not amounting to the making good of structural defects) carried out to the Property (including the Flat) by the Council in pursuance of its obligations under this Lease;*
 - (iii) *the making good of structural defects specified in Schedule E of this Lease or which the Council does not become aware within five years from the date of this Lease;*
 - (iv) *maintenance (not amounting to repair) by the Council pursuant to its obligations under this Lease of:*
 - (1) *those parts of the Property which the Purchaser may use (in common with others by virtue of Schedule B;*

- (2) *the structure and exterior of the Property (including the Flat);*
- (v) *the repair and maintenance of installations connected with the provision of the services and facilities specified in Schedule B to this Lease;*
- (iv) *the Council's costs of management*
- (x) *the repair and maintenance of by the Council of the Council's fixtures and fittings within the Flat;*
- (3)
 - (i) *The Service Charge shall be calculated in three parts namely the basic part, the specific part and the advance payments part*
 - (ii)(1) *The basic part shall consist of those costs of the Council which relate not only to the Property but also to other properties held by the council under Part II of the Act*
 - (iii) *The specific part shall consist of those costs that relate to the Property...*
 - (iv)(1) *The advance payment shall consist of such items as the Councils' Treasurer shall determine to be reasonable in order to meet future expenditure of a capital nature recoverable from the purchaser*
- (1) *As soon as practicable after the end of each year the Council shall calculate the Service Charge for that year and any necessary adjustments shall be made to reflect the difference between the Service Charge and the total paid by the Purchaser under clause 4 (b) in respect of that year*

19. Schedule A described the Flat as follows:

- (1) *The Flat consists of: -*
 - (a) *(in the horizontal plane) the space (including the plaster covering) between the inner faces of the walls which divide the Flat from the exterior and from the other parts of the Property Together with the glass in the windows of the Flat;*
 - (b) *(in the vertical plane) the space between the ceiling and the upper surfaces of the Floor (including the plaster covering and any lathes or battens connected therewith of the ceilings and any floor screed and any tiles, parquet or other fixed finish laid on the floor);*
 - (c) *the internal non-structural partition walls of the Flat;*
 - (d) *any garden area reserved of the exclusive use of the occupier of the Flat which is shown coloured green or green hatched red on Plan 1 and any other external area which is shown coloured pink on that Plan all being within the Property*
 - (e) *the loft space as shown on Plan 3*
- (2) *the right to use any fixtures or fittings of the Council in the Flat is granted to the Purchaser for the Term*
- (3) *There are not included in the demise of the Flat*
 - (a) *the roof foundations and structural walls of the Property nor the window frames of the Flat*
 - (b) *any wall which separates the Flat from*
 - (i) *any corridor which is used I common with others or*

(ii) *which separates the Flat from other parts of the Property;*

Description of the Property

20. No inspection was made due to Government restrictions imposed under the Coronavirus Regulations but from the Lease, the Respondent's Statements of Case and the photographs provided, the Tribunal found the Flat to be as follows (the Lease refers to the Flat as "the Flat" and the block in which it is situated as "the Property". The Tribunal retains this terminology in this Decision and these Reasons):
21. The Flat is a two bedroomed first floor flat within a two storey Property numbered 40 to 43 The Hornbeams. The Property is one of nine similar blocks in a development of blocks of flats and terraced houses probably built circa 1960. The Property consists of 4 two-bedroom flats, 2 on the ground floor and 2 on the first floor. The Property is flanked by a terrace of houses. The Property has a gable end of brick and the side elevations are rendered. The Property has a pitched tile roof. The first-floor flats are accessed by a concrete staircase with metal balustrades. The external walls of the staircases are clad in upvc, otherwise the walls are brick. The flats all appear to have upvc window frames, presumably with double glazed units. The Property has upvc rainwater goods, fascia and soffits.

The Law

22. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

The Major Works and Issues

23. Where works are undertaken on leasehold properties which are held under long leases and the costs are charged to the service charge, if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250 then the landlord must carry out a consultation procedure under section 20 of the Landlord and Tenant Act 1985 ("the Consultation Procedure"). If the procedure is not complied with and no dispensation from the Procedure has been granted, the tenant will only be liable for £250.00. These works are referred to in the Act and related subordinate legislation as qualifying works but referred to in this Decision and Reasons as "the Major Works".
24. The following is an abbreviated table of works and costs setting out the Total Cost for the Property and the Individual Cost for the Flat. The Tribunal calculated the total cost (individual x 4) to determine the reasonableness of the costs for the whole Property because:
 - it is understood that each block on the development has its own set of costs and the individual cost for the Flat is a quarter of the total amount for the Property;

- the works undertaken are in respect of the whole Property;
 - the 'Before' and 'After' photographs show the whole Property, focusing on works undertaken.
25. The Tribunal notes that the estimated Property contract cost is based on the cost of the Major Works for the development of nine blocks.
26. The Lease requires the Service Charge to relate only to the specific block (in this case the Property) and the Individual cost is one quarter of the Property cost. If the total costs for the Property are reasonable then the Applicant's portion will be reasonable.

	External Refurbishment Works to Property 40 – 43 (4 Units)	Estimated Account for Property	Original Individual Cost 1/4	Individual Omissions & Additions	Final Cost 1/4
		£	£	£	£
	Tender	35,400.71	8,850.18		
	Preliminaries	6,849.04	1,712.26	-333.33	1,378.93
1	General				
	Scaffolding	4,744.33	1,186.08		1,186.08
2	Site Preparation				
	Site Clearance	737.00	184.25		184.25
	Asbestos Survey	500.00	125.00	-125.00	0
3	External Walls				
3.1	<i>External Render</i>				
	Repair Render Cracks	588.00	147.00		147.00
	Repair Render	133.00	33.25		33.25
3.2	<i>Brickwork</i>				
	Repoint west facing gable and 27 course crack	42.30	10.58		10.58
3.3	<i>Cavity Wall Insulation</i>				
	Inject insulation if necessary	2,420.00	605	-605	0
4	External Communal Entrance & Stairwell				
	Stair nosings	474.48	118.62	-118.62	0
	Remove, gate trellis and door under stairs	45.00	11.25	-11.25	0
5	External Communal Grounds, Paving				

	& Outbuildings				
5.1	<i>Store & Electrical Cupboards</i>				
	Replace Doors x 3	2,164.64	541.16		541.16
	Replace cupboard	567.75	141.94		141.94
5.2	<i>Communal Drainage</i>				
	Clear gulleys etc	186.20	46.30		46.30
5.3	<i>Communal Signage</i>				
	Block addresses etc	44.50	11.13		11.13
5.4	<i>Communal Clothes Lines</i>				
	Refurbish	184.00	46.00	-46.00	0
5.5	<i>Concrete Paving</i>				
	Replace path	843.75	210.94	-210.94	0
	Replace crazy paving	658.00	164.50	-164.50	0
	Replace cast iron inspection chambers covers	297.80	74.45		74.45
6	External Decoration & Finishes				
6.1	<i>Decoration</i>				
	All existing painted surfaces	2,976.00	744.00		744.00
6.2	<i>Cleaning</i>				
	PVC-U Elements	588.00	147.00		147.00
7	Fire Risk Assessment Works				
7.1	<i>Upgrade Communal Fire Doors</i>				
	Replace Communal stairwell Cupboard Doors x 2	1,726.00	863.00		863.00
7.2	<i>Upgrade External Entrance Fire Doors</i>				
	Replace composite Doors	6,240.00	1,560.00	-1,560.00	0
	Provisional Sum	500.00	125.00	-125.00	0
7.3	<i>Communal Signs & Miscellaneous</i>				
	Stairwell Health & Safety Signs	39.50	9.88		9.88
	Roof Space Compartmentation	250.00	62.50	-62.50	0

	Wall				
8	Provisional Items				
	General	500.00	125.00	-125.00	0
	Additions				
	Upgrade of paint			40.00	40.00
	Solid wall infill & render around flue			94.00	94.00
	Replace roof tiles			64.45	64.45
	Clear vegetation from roof			27.92	27.92
	Replace valley mortar			29.92	29.92
	Replace verge mortar			31.67	31.67
	Re-bed ridge tiles			91.59	91.59
	Repoint gable & refixing tiles			24.68	24.68
	Render repair			8.31	8.31
	Replace sarking felt			69.41	69.41
	Fire stopping works			102.03	102.03
	Decorate gable			7.25	7.25
	Replace render			8.31	8.31
	Fabric repairs			21.00	21.00
	Contingency	1,102.42	275.61	-275.61	0
	Initial Totals	35,401.71	9,281.68		
	Total Additions			619.54	
	Subtotal adjusted for additions		9,901.22		
	Total Omissions			-3,762.75	
	Subtotal adjusted for omissions		6,138.47		
	Individual Cost				6,138.47
11	Administration Fee 7.52%				461.61
	Total				6,600.08

Applicant's Case

27. The Applicant only set out his submission on the Application Form and did not provide a Statement of Case and supporting documents as required by the various Directions. Nevertheless, the Respondent's Case included correspondence, which set out the Applicant's comments and objections to the Major Works and their cost which the Tribunal took into account as well as the Respondent's replies.

28. On the Application Form, the Applicant stated that he objected to the following items of the Major Works. He considered they were either unnecessary or too expensive and therefore their cost was unreasonable and so not payable (the itemised costs are as apportioned to the Flat):
- | | | |
|----|---|-----------|
| a) | Preliminaries | £1,378.93 |
| b) | Working at Height | £1,186.08 |
| c) | Replacement of Fire-Resistant Flush Doors | £863.00 |
| d) | Clean PU Elements | £147.00 |
| e) | Site Clearance | £184.25 |
29. He said that only a few years back the Landlord carried out work to the roof, replaced cladding and installed LED lights. He said that every few years the Landlord carries out works and then repeats the same job a few years later. The Leaseholders are left to pay for these major works the cost of which includes 7% of the total figure as an administration charge.
30. Also, Leaseholders in the Property were charged a different amount, for example his neighbour was charged £1,000 less than him. Builders share the scaffolding, the storage sheds, and the toilet facilities between the blocks and yet each flat is charged £1,378.00 per flat. The scaffolding is left up for longer than is necessary incurring additional cost.

Respondent's Case

31. The Bundle included:
- a) A Statement of Case from the Respondent prepared by Tracy Marchant, Major Works and Dispute Resolution Officer of the Respondent's Home Ownership Section, together with supporting documents including exhibits as follows:
1. The Lease;
 2. Notice of Intention to carry out Major Works dated 30th April 2018;
 3. Notice of Estimate outlining the estimated costs of the Major Works sent on 19th September 2018;
 4. Observations on Notice of Estimate
 5. Reply to Observations dated 31st October 2018;
 6. Award of Tender Letter dated 20th November 2018 to Leaseholders;
 7. Letter dated 14th January 2019 following Consultation Meeting held on 8th January 2019 identifying works removed from breakdown or non-rechargeable as not included in Intention Notice.
 8. Signing off of Works by Project Manager;
 9. Walk around Meeting on 19th September 2019;
 10. Invoice for £6,600.08
 11. Email dated 12th March 2020 from Applicants requesting information on the cost of the works with response dated 14th April 2020;
 12. Photographs before the Major Works
 13. Photographs after the Major Works

14. Copies of Complaints and Responses

- b) A Witness Statement by David Prescott, Project Manager and Contract Administrator for the Respondent in respect of the Major Works together with supporting documents.

Statement of Case

32. The Statement of Case referred to the Applicant's obligation under clause 4 and Schedule G of the Lease to pay Service Charges. (Exhibit 1) It was said that the annual Service Charge covers the smaller items of repair and the general maintenance of the Property. However, an additional Service Charge has to be raised, as in this case, when Major Works are carried out on a programmed basis. The costs are then demanded when the works are completed.
33. A Notice of Intention to carry out Major Works dated 30th April 2018 (Exhibits 2) listed the following works:
- Repairs to chimney. Replace timber fascia, soffit and rainwater installation
 - Replacement Window (where necessary)
 - External & internal decoration including render, communal ceilings, replacement store doors
 - Replace fire doors to electric meter cupboards
 - Add nosings to stairs
 - Replacement/repair and clearance of drainage gullies
 - Front entrance doors and attached side cupboard doors to individual flats
 - Block Signage
34. The reasons given for the Major Works were that a cyclical planned works programme is required for the upkeep of the Property. It is necessary to preserve the value, presentation and integrity of the Property and other blocks through a planned maintenance programme which includes repairing making good or replacement of deteriorated or failing elements which are in poor condition or at the end of their lifecycle. This will reduce future maintenance and repair costs, ensure the Flat is wind and water tight and safeguard the health and safety of residents and visitors to the Property.
35. It was stated that a Contract Administration Management Charge of 7.52% would be added to the final account.
36. Written observations were invited within 30 days ending on 4th June 2018. A form was included for nomination of a contractor.
37. No responses were received.
38. A Notice of Estimate dated 19th September 2018 (Exhibit 3) outlining the estimated cost of the proposed works for the Estate with a breakdown for

individual properties. The estimated contribution was £8,850.18. Payments options were provided. The Estimates were as follows:

- 1) Courtenay Building Contractors Ltd
£435,294.26 - Block cost £37,408.81
- 2) HTS (Property & Environment Ltd
£466,316.81 - Block Cost £46,345.67
- 3) Lengard Ltd
£403,806.90 - Block Cost £33,103.12
- 4) Niblock (builders) Ltd
£355,809.85 - Block Cost £35,400.71

39. Two observations were received from the Applicant dated 19th and 22nd October 2018 (Exhibit 4).
40. The Applicant stated on 19th October 2018 that he bought the Flat in 2008 and that every 3 to 4 years the respondent had carried out Major Qualifying Works which last time cost £4,000 to 5,000 per Leaseholder of the Property, the works included upvc cladding. Some of the works were only partially done and complaints were made and investigations carried out. Service Charges are paid every month which included a charge for drainage work. It was subsequently found that this work was not done. When Leaseholders questioned this, they were refunded the amount and the Service Charge statement was adjusted.
41. This year again an estimated charge of £8,000 is being demanded. The Applicant and he said other Leaseholders believed that there was not much work to be done and that Contractors and the Council through the Administration Charge were making money from this. He said that he felt the work was going to 3 or 4 builders who the Council used regularly rather than obtaining quotations from a wider range of contractors and the work to be done should be discussed with Leaseholders.
42. He said that Leaseholders were getting into debt because of the cost of these Major Works about which they do not have a choice. In addition to these works Leaseholders were also responsible for carrying out all the internal maintenance.
43. The Applicant stated on 22nd October 2018 that:
The Building requires painting and cleaning
One glass window need changing
Shed door replacement
No crack on main wall found
Most of the Major Works have all been done and completed. I have had a discussion with [another Leaseholder] and we would like a Council Representative to visit the Property and investigate what works are required and the estimated cost.
44. The Respondent replied on 31st October 2018 (Exhibit 5). The Respondent answered that the consultation document of 30th April 2018 invited Leaseholders to nominate contractors and to make observations although none were received. It was said that a specification had been available and a

copy was included with the letter. It was added that it was only when the specification has been drawn up and tenders requested that estimates are available. Reference was made to a visit made on 23rd October 2018 when it was noted that works were required to the following:

- External rendering – areas need replacing
- Cavity wall insulation – will not be re-charged as it is an improvement
- Stair nosing – for safety
- Removal of low-level gate, trellis and door beneath stairs – not part of the original structure
- Rear integrated store door and frame – three out of four need replacing
- Replace electrical cupboard door
- Communal clothes line – removed from specification
- Rear concrete paving/crazy paving – requires removal and replacement
- Replacement of front doors

45. The Award Tender Letter dated 20th November 2018 was sent to Leaseholders confirming the award of the tender to Niblock Builders Ltd (Exhibit 6).
46. The invoice was for Major Works which were the refurbishment of the Property. An evening consultation meeting was held on 8th January 2019 for residents of the nine blocks within The Hornbeams attended by Tracy Marchant, Lynn Potter (Home ownership Manager), Lee Bruce (Senior Building Surveyor), Janice Derry (Customer Care Officer) and two representatives from the contractor. A revised breakdown dated 14th January 2019 was sent in which certain works had been removed (Exhibit 7).
47. The following works were deemed essential:
 - Cavity wall insulation,
 - Asbestos investigation and removal (where necessary),
 - Repairs to chimney (communal roof repairs),
 - Repair timber soffit, fascia, and rainwater installation, Replacement windows (where necessary),
 - External & internal decoration including render, communal ceilings, Replacement store doors,
 - Replace fire doors to electric meter cupboards,
 - Add nosings to stairs,
 - Replacement/repair and clearance of drainage gullies,
 - Replace concrete path in communal garden,
 - Front entrance door and attached side cupboard doors to individual flats,
 - Health & Safety and Block Signs.
48. The works were virtually completed on 4th February 2019 and signed off on 9th August 2019 (Exhibit 8).
49. Invitations to a 'walk around' meeting were sent on 2nd September 2019 (exhibit 9) and the meeting was held on 19th September 2019 at which Lee Bruce went through all the works carried out to the blocks and answered any enquiries. The Applicant did not attend this meeting.

50. On 19th February 2020 an invoice was sent to the Applicants in the sum of £6,600.08 being a ¼ share of the cost of the Major Works together with an itemised breakdown of the individual works charge to each flat (Exhibit 10).
51. On 12th March 2020 the Applicants emailed requesting information on the cost of the works to which the Council responded on 14th April 2020 (Exhibit 11).
52. The Applicant's e mail of 12th March 2020 is summarised as follows:

Having discussed the matter with other Leaseholders in the Property the Applicant stated that they had a bill only a couple of years ago for changing the hall windows and door frames to upvc and for upvc cladding and now here is another bill for £6,600.00. In particular the Applicant complained about the scaffolding being in place when no work was being carried out and the cost of administration. Costs objected to were:

Preliminaries at a cost of £1,700.00 per flat;
Scaffolding at a cost of £1,800.00 per flat;
Painting two rails at £300.00 per flat;
Shed door costing £800.00 per flat
Administration Fees of £1,844.00 per flat.

53. The Respondent's email of 14th April 2020 in reply is summarised as follows:
1. Scaffolding – Scaffolding is a fixed price and remains the same for however long it was required.
 2. Preliminaries are included within a specification of works and are items that can be charged by Contractors in undertaking the works and include:
Site Management Staff,
Support Staff,
Waste Management
Security to Compound (Perimeter Fence),
Storage of materials on site,
Toilets for operatives,
Small Office on site
Health & Safety & Legislation compliance,
Third party auditing on Contractors Performance
Insurance
 3. Painting is as per the contract
 4. Administration Fee of 7.52% covers:
 - Initial survey of the project
 - Validations
 - Drafting the specification
 - Resident queries and complaints whilst contractors on site
 - Contract administration including clerk of works, site meetings, inspections, letters Valuation Orders, etc.
 - Valuation and agreeing the final account
 - 12 month defects check

- Release of retention

54. Before and After photographs of the works were provided (Exhibits 12 and 13 respectively).

55. The complaints made by the Applicant have been dealt with through the Respondent's Complaint system at Stages 1 and 2, but have not been upheld (Exhibit 14).

56. *Stage 1 – Applicant complained as follows:*

The complaint is as stated in the Applicants email of 12th March 2020.

57. *Stage 1 - Respondent answered complaint as follows:*

Scaffolding – Records indicated that the scaffolding was in place longer than anticipated due to the Contractors requiring detailed inspection of the roof which found more repairs were needed than anticipated. The work was completed when the weather allowed but was delayed due to rain and high winds. The Leaseholders did not incur further costs due to this delay.

Site Compound – A compound site with office, storage and toilets was provided for the workforce.

Preliminaries – these are costs incurred by the Contractor when carrying out the works

Administration Fee – This charge has been broken down in detail with your invoice.

58. *Stage 2 – Applicant complained as follows:*

The Applicant submitted that generally nothing major was required to be done except changing the shed doors and fire safety doors for waste bin rooms and painting. Other works unnecessary. Specifically:

1. The scaffolding was left up longer than necessary which was a waste of money. Even when the weather was fine work was not being carried out on the roof as claimed.
2. Preliminary charges for Site management staff, support staff, security to compound, waste management, storage of materials, toilet for staff, facilities, health and safety and legislative requirements for staff, small office on site, third party auditing and insurance is the responsibility of the company that carried out the work and they can add on that expense to their accounts at the end of the year and put them off against tax. It is not fair that the flat owners should be charged for them. There was no site office, no toilets, storage sheds or security and only one or two men were on site for a few hours every day.

3. Painting costs were excessive. It should not cost that amount to get a ladder and paint the outside of 4 flats and paint the railings on a single set of stairs.

59. *The Respondent answered the Stage 2 Complaint as follows:*

Scaffolding – Response for stage 1 repeated; the Leaseholders did not incur further costs due to this delay.

Site Compound – Response for stage 1 repeated.

Preliminaries – Response for stage 1 repeated

Administration Fee – Response for stage 1 repeated

Noted that opportunity to discuss these matters was given at a meeting on 19th August 2019.

60. The Statement of Case continued saying that in respect of the Applicants claim that they were charged more than other Leaseholders there was a charge of £863.00 for a fire resisting flush door which was specific to their flats.

61. The Respondent submitted that:

- None of the Major Works had been duplicated on the blocks;
- The Applicants had been consulted during and after the works were undertaken;
- The Respondent has limited budgets and an Asset Management Plan to assist in determining priorities for ongoing major works which is reviewed annually;
- The Major Works were carried out in an efficient and cost-effective manner;
- The Major Works were supervised by a Project Management Team comprising a Project Manager/Contract Administrator, Senior Building Surveyor, Clerk of the Works.

Witness Statement by David Prescott

62. In his Witness Statement (summarised here), David Prescott, Project Manager and Contract Administrator, stated that a tendering process was carried out.

Tender Process

63. A competitive tender exercise was conducted in compliance with relevant procurement rules and a one-off refurbishment contract was awarded to Niblock Building Contractors under JCT Minor Works Building Contract 2016 Edition including Special Conditions of Contract. The contract was below the official journal of the European Union thresholds for procurement.
64. Tenders were sought from 5 contactors. The works were for the refurbishment of nine identical flat blocks which included 40-43 The Hornbeams, Harlow.

65. The tender documents were dispatched on 22nd June 2018 and returned by 23rd July 2018. Bids were evaluated against a predetermined evaluation model with a 30% quality 70% price split. The quality evaluation was carried out separately by three persons without knowledge of the price. Niblock Building Contractor awarded the highest score on quality. The priced tenders were examined arithmetically and technically by quantity surveyors and Niblock Building Contractor was found to be the lowest price at £355,809.85 for the total works. £47,997.05 lower than the next lowest bid and £110,506.96 lower than the highest bid. Niblock Building Contractor was therefore awarded the contract. Mr Prescott set out in detail the process undertaken to select the contractor.

Scope of the Works

66. The works were to achieve the following key objectives:
- Keep properties wind, water, weather proof and ‘Decent’;
 - Preserve the value, presentation and integrity of the blocks and properties therein through a planned maintenance programme, by repairing, making good or replacement of deteriorated or failing elements which are in poor repair or at the end of their lifecycle;
 - Reduce future maintenance and repair costs;
 - Ensure health and safety of residents and visitors to the block.
67. In defining the scope of the works a review was made of completed works and repair records, Electrical and Installation Condition Reports and Fire Risk Assessment recommendations. A validation survey was undertaken detailing the work for each block together with budget pricing and was approved by Harlow Council as part of the affordability and scoping process. In addition, a presentation was made to tenants and leaseholders at a meeting prior to starting the work to explain what was to be done and why on 8th January 2019 (referred to in the Statement of Case).
68. The works required, the necessity of which was questioned by the Applicant, were commented on as follows:
1. Replacement of Fire Resisting Flush Doors – these are situated under the external staircase which is a fire escape route.
 2. Clean PU Elements – this included the cleaning and testing of all rainwater goods as well as cladding. This was considered necessary as a preventative measure as well as maintaining the appearance of the Property.
 3. Site Clearance – this includes preparatory work such as securing cables, removing redundant cables signage etc.
 4. Roof Work – these were necessary to ensure the Property was water tight.

5. Replacement Cladding – these were correctly referred to by the Applicant as having been carried out previously. There was no repeat of this work.
 6. LED Lights - these were correctly referred to by the Applicant as having been carried out previously. There was no repeat of this work.
69. Mr Prescott said that the building components replaced were approaching or beyond what would be considered their life expectancy.

Execution of the Works

70. Mr Prescott said that the works were subject to on-going inspections throughout their completion by representatives of the Respondent the Clerk of the Works, the Senior Surveyor (RICS), the project Quantity Surveyor and the Project Manager/Contract Administrator. Where applicable elements of work which are subject to industry certification and quality control schemes were undertaken, inspected and/or registered and approved as appropriate including roof replacement (Langley Quality and Guarantee Scheme), window replacement (FENSA), fire safety (FIRAS Certificate of Conformity). Each block was subject to inspection prior to handover on completion of works.
71. Mr Prescott referred to the ‘walkover’ meeting with Leaseholders on 17th September 2019 to answer queries etc. A summary of the report generated from that meeting was provided. Residents were generally satisfied with the works and queries raised were answered including from the Applicant (mentioned in the Statement of Case).

Pricing & Charges

72. In addition to the tendering process referred to above, a Consultation Process was carried out as set out in the Statement of Case. In the course of which an opportunity was given to Leaseholders to submit the names of contractors they wished to be approached to tender.
73. Mr Prescott referred to the key stages as follows:
- | | |
|----------------------------------|---------------------------------|
| Notice of Intention | 30 th April 2018 |
| Notice of Estimates | 19 th September 2018 |
| Applicant’s Observation received | 23 rd October 2018 |
| Respondent replied | 31 st October 2018 |
| Estimated Breakdown of Cost | 20 th November 2018 |
| Evening consultation meeting | 8 th January 2019 |
| Revised estimate | 14 th January 2019 |
| Major Works near completion | 4 th February 2019 |
| Major Works signed off | 9 th August 2019 |
| ‘walk around/over’ meeting | 19 th September 2019 |

74. The works carried out the cost of which was questioned by the Applicant were commented on as follows:

1. Preliminaries	£1,378.93
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Preliminaries are to cover the cost of the site set up including the site office, welfare facilities, utilities and removal of waste.

2. Working at Height £1,186.08
This relates to scaffolding which was erected on a fixed charge basis.
 3. Replacement of Fire-Resistant Flush Doors £863.00
Cost includes frames and doors of the stores under the stairs which are a fire escape route in the communal area. The doors are to prevent fire spreading from inside the stores or flammable materials being set alight from a fire outside the stores making the stairs impassable.
 4. Clean PU Elements £147.00
Cost includes rainwater goods as well as cladding
 5. Site Clearance £184.25
Cost includes removing cables to enable decoration etc and refixing after works as well as removal of redundant cables.
75. All contract instructions and variations were reviewed by Sachindra Sharma, Quantity Surveyor with Pick Everard LLP, the Respondent's Third-Party QS Consultants. Tender rates were compared or benchmarked independently or against the National Schedule of Rates of Building Works. The quantity Surveyor also made regular visits to the site to ensure that the costs and quantities agreed were appropriate.
76. Mr Prescott stated that in his opinion the work had been carried out to a reasonable standard and at a reasonable cost.

Hearing

77. A hearing was held by CVP on 19th April 2021 which was attended by Mr Sunil Nainan, the Applicant, Ms Tracy Marchant, Major Works and Dispute Resolution Officer, for Home Ownership, Ms Denise Westwood, Observer, and Mr David Prescott, Project Manager and Contract Administrator for the Respondent.
78. At the Hearing the parties re-affirmed the cases that they made in their written representations which are set out above. The following is therefore a summary of the discussion that took place at the hearing.
79. Firstly, the Applicant submitted that it was unreasonable that the Respondent should carry out major works every few years. He re-stated the points he had made in his e mail of 19th October 2018 namely that having bought the Flat in 2008, every 3 to 4 years the Respondent had carried out Major Qualifying Works, which last time cost £4,000 to 5,000 per Leaseholder. This year again an estimated charge of £8,000 is being demanded. The Applicant said he and other Leaseholders believed that there was not much work to be done and that the Contractors and the Council through the Administration Charge were making money from them. He added that Leaseholders were getting into debt because of the cost of these Major Works about which they do not have a

choice. These costs were on top of any works Leaseholders were also responsible for in respect of internal maintenance.

80. The Tribunal said that it was only able to consider the reasonableness of the costs which were the subject of the present case. If the works referred to in the present case had been carried out previously and were now unnecessary or had not been carried out to a reasonable standard then this would amount to the cost being unreasonable. Such points would need to be referred to when the Tribunal went through the specific items put in issue.
81. Secondly, he made the following general points.
82. He said he had no say in the extent of the works. He said he could carry out many of the works himself at a fraction of the cost but was prevented from doing so because the Lease made all the external repairs the sole preserve of the Respondent as Landlord. For example, he said that he could have cleaned the guttering and the cladding, repaired or replaced the outside store doors, repainted the render.
83. He said that he had no say in when the works were carried out. The Landlord had a schedule of cyclical maintenance which he felt was undertaken regardless of whether works were really needed. There were no cracks in the render he could see. He accepted that the Property could do with cleaning and painting but that it was not urgent and did not have to be part of a Major Works project.
84. He said that he had no say in how the works were carried out. The Property is only two floors and could have been painted from a ladder and much of the painting and cleaning was not at height. He said that because the Property was included in a Major Works Project additional costs were incurred for welfare facilities, a compound for storage, a site office etc. If the Property was not part of the Major Works Project involving the whole Estate but in isolation all these costs would not be incurred. A single decorator could be employed working from a van.
85. He said that he had no say in how much the works cost. The Respondent precluded all small companies which might be able to offer a cheaper rate by requiring contractors to tender for the whole Estate of nine blocks. The sort of contractor who he would want to nominate to carry out the work on the Property would want to quote just for the Property not the Estate.
86. He saw this a problem of leasehold properties generally.
87. The Tribunal noted the Applicant's views and said that it appreciated that a freeholder of a house with only his or her self to consider could decide whether or not to carry out certain works. However, this was not the case with landlords and tenants in respect of a block of flats. The Tribunal referred to the general points which it had in mind when making its determination. The Landlord is obliged under the lease to carry out the maintenance of the structure and exterior of the Property. It is entitled to rely upon the advice of its surveyors as to what work needs to be carried out and when. Sometimes a

Lease specifies how and when particular work is to be carried out e.g., decorating. In addition, the Landlord has to ensure that the Property as a whole is maintained to a reasonable standard for all the Leaseholders for a range of reasons. For example, to allow the Property to deteriorate and then carry out major works may lead the Landlord open to the accusation of historic neglect, with works costing more because they were not done sooner. Some Leaseholders may wish to sell their leasehold interest but if the Property is in a poor condition the tenant may have to settle for a lower price.

88. How the work is to be carried out is now, to some extent, set down in legislation such as the general requirements of the Health and Safety at Work et Act 1974 together with specific regulations such as those relating to working at height and the welfare of the contractor's employees. The Landlord would be failing in its duty of care to the Leaseholders and the general public not to follow the legislative requirements and industry guidelines.
89. With regard to the cost, it could not be assumed that a large company would charge more for the works. The Landlord, as a local authority with responsibility for public funds has to comply with stringent tendering, costing and oversight requirements as referred to in Mr Prescott's evidence.
90. Also, the Applicant as a Leaseholder has a right to make observations with regard to the works. Because of the tendering requirements for local authorities the specifications are particularly detailed. Therefore, for example, if it was felt that an item identified to be replaced did not require replacing this could be addressed through the observations. In this regard the Tribunal noted that the Respondent had arranged an evening consultation meeting on 8th January 2019 at which the representations of Leaseholders had led to a number of items being omitted from the work.
91. Thirdly, the Applicant referred to the specific items he had identified in his correspondence with the Respondent which he said were unnecessary and/or the costs of which he submitted were unreasonable.
 - a) *Preliminaries £1,378.93*
92. The Applicant re-iterated the points he had made in correspondence. He said that these costs were in addition to the work that had been done and a small builder would not have these costs.
93. Mr Prescott for the Respondent said that the charges for the work were 'at cost' i.e., they were just for doing the work in the specification they did not take account of the overheads. The Preliminaries are the overheads. A proportion of the Preliminaries was attributable to each task. It is the way major works which cover a wide range of repairs and maintenance are specified and costed.
94. It was explained that if a contractor was employed just to carry out the specific job such as decorating then in the quotation that contractor would factor in firstly the costs for doing the work, including materials, and secondly the

overheads he incurs such as insurance, office costs, travelling etc. These latter costs are the Preliminaries.

95. Mr Prescott said that some contractors charge a relatively low price for Preliminaries but more for the individual items of work. In those cases, it is likely that the individual items of work include some element of the preliminaries. He said that in making the decision as to which contractor to select all these points are taken into account.

96. The Applicant said that he still felt that at least some of the items listed under the Preliminaries were unnecessary such as a site office, management staff and compound security and that this share was unreasonably high.

b) Working at Height £1,186.08

97. The Applicant again made the point that the scaffolding was up longer than it needed to be. The weather was fine and all the work could and should have been carried out more quickly reducing the scaffolding costs.

98. Mr Prescott for the respondent said that scaffolding can be hired on a periodic basis (daily or monthly) or a fixed cost basis in which case it did not matter how long it remained up. He said that for these works the scaffolding was hired on a fixed costs basis and therefore the fact the scaffolding remained in place while the roof was being assessed for further work to be carried out and was subsequently delayed to due weather conditions did not affect the price. The decision to hire the scaffolding on a fixed cost basis was, amongst other things, because the extent of repairs to the roof were not known and roof work cannot be carried out in inclement weather.

c) Replacement of Fire-Resistant Flush Doors £863.00

99. The Applicant said that he did not know why he had been charged for a fire-resistant door. He said he would be quite happy if the understairs store to the Flat had been bricked up. He said that he did not have a key to the door. He said the door had been missing for some time and whenever he had seen it there was rubbish in there.

100. Ms Marchant said that originally the understairs stores were the bin stores for the first-floor flats but became obsolete when wheely bins were introduced because they would not fit in there. She said that some tenants used them as a pram store. Mr Prescott added that because the stairs were a fire escape route it was necessary to fit a fire door in case an unsuitable flammable item was stored there fuelling a fire and making the stairs impassable.

101. The Applicant said that he was under the impression that the understairs store was part of the communal parts of the Property and so the cost of the doors should be split 4 ways and not just two.

102. Ms Marchant referred to the Lease where it was apparent From Plan 1 that the understairs store was demised to the Flat. Ms Marchant said that therefore it was reasonable to charge the cost of renewing the doors just to the two first floor flats.

103. The Tribunal noted that if the understairs store is demised then the doors would presumably also be demised in which case their repair would be the sole responsibility of the Applicant as the Leaseholder and not the Respondent as the Landlord. Therefore, the Respondent Landlord was not able to carry out the work at all. The result would be that whereas the charge could not be made, the responsibility to ensure that the understairs stores met with the fire safety provisions would be that of the Applicant Leaseholder. The Tribunal was aware that this would place the parties in a difficult situation because of the statutory obligations with regard to fire safety as the stairs formed an escape route for the Flat and the other first floor flat in the Property.
104. The Tribunal added that if on an examination of the Lease it was found that although the understairs store was demised the doors were not then the cost of renewing them should be divided with each flat paying a quarter as with all communal items.
- c) *Clean PU Elements £147.00*
105. The Applicant confirmed the points he made in correspondence and the respondent confirmed the points made in correspondence and the Statement of case. No further comments were made.
- d) *Site Clearance £184.25*
106. The Applicant confirmed the points he made in correspondence and the respondent confirmed the points made in correspondence and the Statement of case. No further comments were made.

Contribution to Cost of Shed Doors

107. The Applicant said that there were four outside stores attached to the Property, one for each flat. The outside stores are demised to each flat. The doors to three of these outside stores had been replaced in the course of the works. He said that he and two of his neighbours had each been charged for the replacement doors but that his other neighbour who had previously replaced his door himself had not been charged. He said that if the doors could be changed by the Respondent, then they must be communal in which case the cost should be split four ways irrespective of whether his neighbour's door was in good condition or not. He said that if he had known that he could have changed his door he would have done so himself. His neighbour had changed his door at a cost far less than that charged by the Respondent and the Applicant said he would have done the same.
108. Ms Marchant said that the Respondent tried to be fair about these matters. When the windows were changed each Leaseholder was charged individually for the windows of their flat as she understood the windows to be demised. The same approach was taken with regard to the understairs doors and the outside store doors.

Section 20C & Paragraph 5A of Schedule 11

109. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicant also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
110. The Applicant made no representations and Ms Marchant said that at the present time it was not the Council's policy to claim costs in these types of case. However, she said that these cases did generate a good deal of extra work.

Decision

111. The Tribunal considered all the submissions. The Applicant did not challenge the Consultation Procedure and the Tribunal found from the evidence adduced that this had been carried out according to the legislation. The Applicant had been given opportunity to nominate a contractor and to make observations. He had made observations and these had been replied to by the Respondent. The Applicant also did not challenge the standard of work.
112. The Tribunal examined the specification and contractor's estimate that was accepted. Although the selected contractor's estimate was based on the works to be carried out to all nine blocks, nevertheless, the contractor customised the estimate for the Property in which the Flat is situated. It was clear from the evidence of the meetings that had taken place and the subsequent revised estimates that the contractor had made a number of adjustments to the works, and hence the costs, specific to the Property in which the Flat was situated. On looking at the adjustments in some detail, the Tribunal was satisfied that sufficient account had been taken of the specific repairs required for the Property in which the Flat was situated and that this was reflected in the cost.
113. The Applicant's case is based upon the submission that some of the work was unnecessary and the cost of specific items was excessive and therefore unreasonable.
114. The Tribunal considered the cost of the works generally as challenged by the Applicant. It found that apart from the section 20 procedure with which the Respondent had complied, the Tribunal found that from Mr Prescott's witness statement, the Respondent had followed an appropriate tendering and costing regime. The Tribunal had noted the general points raised by the Applicant in the course of the hearing and has set out what it said in essence in more detail in that part of these reasons.
115. The Tribunal considered the specific items challenged by the Applicant of:
- | | |
|----------------------|-----------|
| a) Preliminaries | £1,378.00 |
| b) Working at Height | £1,186.06 |

c)	Replacement of Fire -Resistant Flush Doors	£863.00
d)	Clean PU Elements	£147.00
e)	Site Clearance	£184.00

The Tribunal considered the total cost of these items for the Property in that if the costs was reasonable or unreasonable for the whole work then the individual charge would be reasonable or unreasonable.

116. The Tribunal having found the tendering and costing process to be satisfactory it further found that the Respondent had selected the lowest tender. From the Tribunal's knowledge and experience the way that the specification for tenders of this kind is set out, as stated by Mr Prescott, the individual items of work are 'at cost' i.e., labour and materials only, and the Preliminaries represent the overheads. The Tribunal found from its knowledge and experience that the charges were reasonable if the proportionate cost of the preliminaries was added to represent the overheads. The Tribunal calculated the Preliminaries, to be in the region of 38p per pound. For example, applying this to the decoration of the Property, as the largest single item of works, including overheads but excluding the cost of scaffolding, the cost would be £4,106.00. From the photographs provided, in the absence of evidence to the contrary and taking into account the other tenders and tendering process, the Tribunal found this to be a reasonable charge. The Tribunal considered this to be illustrative of the other items of works and determined the Preliminaries to be at a reasonable cost.
117. The total sum for scaffolding was £4,744.33. The Tribunal considered whether it might have been more cost effective to hire the scaffolding on a periodic basis. The Tribunal found that good weather is required for roof repairs. The extent of the roof repairs in this instance was unknown and therefore the weather forecast would be similarly uncertain. Therefore, in the absence of evidence to the contrary the Tribunal found the Respondent's decision to hire the scaffolding on a fixed term basis appropriate. In the knowledge and experience of the Tribunal, taking into account the height required for the scaffolding the fixed term charge was determined to be reasonable.
118. The total cost of cleaning the pvc-U of the Property was £588.00. In the knowledge and experience of the Tribunal regular cleaning of pvc-U elements reduces the risk of staining and deterioration due to weathering. The Tribunal therefore found the cleaning appropriate. In the absence of evidence to the contrary, such as alternative quotations, the Tribunal determined the cost to be reasonable.
119. The total cost of site clearance for the Property was £737.00. The removal and reinstatement of wiring is a necessary task prior to decoration, roof work etc to ensure that cables are not damaged. This had the added advantage of removing obsolete cabling. In the absence of evidence to the contrary, such as alternative quotations, the Tribunal determined the cost to be reasonable.
120. The Tribunal then considered whether the Respondent as Landlord was authorised by the Lease to replace the doors to the understairs store with fire-resistant flush doors and, as the issue was linked, what the liability was with regard to the outside store. The Tribunal determined this in two stages.

Firstly, whether the understairs stores and the outside stores were demised. Secondly, whether their repair and related cost was the individual responsibility of the Leaseholders or the collective responsibility of the Leaseholders where repairs were to be carried out by the Respondent Landlord and the cost part of the Service Charge.

121. The Tribunal examined the Lease. The Tribunal found that Schedule A described the Flat which was demised. Paragraphs 1 and 2 stated what was included in the Flat and paragraph 3 stated:
 - (3) There are not included in the demise of the Flat
 - (a) the roof foundations and structural walls of the property nor the window frames of the Flat;
 - (b) any wall which separates the Flat from
 - (i) any corridor which is used in common with others or
 - (ii) which separates the Flat from other parts of the Property;
 - (4) The Flat (excluding any garden or other external area) is shown for illustrative purposes coloured pink on Plans 1A & 2 which also indicates the structural features excluded from the demise of the Flat
122. Therefore, the Tribunal referred to the coloured areas on the three plans, 1, 1A and 2. Plan 1A was a location plan and did not provide sufficient detail for these purposes. Plan 1 included a key applicable to all the Plans and identified mainly the outside parts of the Property. Plan 2 identified the internal parts of the Property. On Plan 1 the key identified the demised Flat as coloured pink, the gardens as coloured brown, the paths as coloured blue, the communal ancillaries as cross hatched and the Common Parts as coloured yellow. The structural parts are shown by a thick dark line and the non-structural by a thinner dark line.
123. Plan 2 sub plan named “First Floor Plan” showed the Flat as coloured pink as the demise, with a thick dark line around it and a transverse thick dark line showing the structural parts which were not demised. All other internal lines were thin dark lines indicating non-structural walls and so were demised.
124. Both Sub Plans on Plan 2 of “First Floor Plan” and “Ground Floor Entrance” depicted the *internal* common hall, stairs and common landing as coloured yellow showing the them to be Common Parts and edged with a thick dark line showing a structural wall. The sub plan of “Ground Floor Entrance” showed *external* paths coloured blue, a common garden area coloured brown and a cross hatched area which appeared to mark the communal drying area. These internal and external areas were also depicted and coloured in the same way on Plan 1.
125. The Tribunal then considered the liability under the Lease for the parts identified in the Plans. It found with reference to Sub Plan First Floor Plan on Plan 2 that under Clauses 2, 3 and 4 of the Lease the internal repair and maintenance of the demised Flat coloured pink is the responsibility of the Leaseholder together with the related cost. It found that with reference to Plan 1 and both Sub Plans on Plan 2 that under clause 7 and Schedule A, paragraphs 3 and 4 and Schedules B and G of the Lease the maintenance and repair of the gardens coloured brown, the paths coloured blue, the communal

ancillaries cross hatched and the common parts coloured yellow are the responsibility of the Respondent as Landlord and the costs of repair and maintenance are chargeable to the Service Charge.

126. However, there were two areas on Plans 1 and 2 which are coloured orange. These are the understairs stores and the outside stores. The key on Plan 1 refers to areas coloured in this way as “Council Right of Access”. There is no specific reference to either an area coloured orange or “Council Right of Access” in the Lease other than on the Plans. However, taking into account Ms Marchant’s statement that the understairs stores were originally for bins the Tribunal noted paragraph 4(iii) the which states that the Leaseholder has “the benefit of the following services and facilities” including “communal dustbins (if any) identified on Plan 1 and serving the Property”. In addition, the Tribunal noted with regard to the outside stores that the walls were marked with a tilde which the key on Plan 1 indicated as a structural wall.
127. The Tribunal therefore determined that the understairs stores and the outside stores were areas that were either retained by the Respondent over which the Applicant as Leaseholder had a right or held by the Applicant over which the Respondent had a right. Either way the Tribunal was of the opinion that schedule B and G applied under which the Respondent was responsible for repairing and maintaining the understairs and outside stores and the cost of doing so was recoverable through the Service Charge hence schedule G.
128. In the present case the Tribunal found that the cost of the replacement of the understairs store doors by fire -resistant flush doors was a Service Charge cost which under the Lease the Applicant was only liable to pay $\frac{1}{4}$ i.e., £431.50 the total cost for the Property being £1,762.00.
129. Applying the same principle to the outside store doors it was noted that the total cost to the Property was £2,164.64 for which the Applicant’s liability is $\frac{1}{4}$, being £541.26. This was in fact the amount that the Applicant was charged.

Summary

130. The Tribunal therefore determines all the costs of the Major Works are reasonable. The Tribunal also determines the apportionment is reasonable except for the cost of the replacement of the understairs store doors by fire -resistant flush doors which is reduced to £431.50. Therefore, the total demanded of £6,600.08 is reduced by £431.50 plus a corresponding reduction of £32.45 of the 7.52% contract administration fee, making a charge of £6,136.13.
131. The Tribunal determines the Service Charge of £6,136.13 for the Major Works is reasonable and payable by the Applicant to the Respondent.

Section 20C & Paragraph 5A of Schedule 11

132. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent’s costs in connection with these

proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicant also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

133. Leases may contain one or both provisions enabling a landlord to obtain their costs of proceedings. The difference between these two types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258. The provision enabling the landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other lessees as part of the service charge. The provision enabling the landlord to claim its costs directly from the tenant might be seen as an individual liability, whereby the tenant alone bears the landlord's costs of the proceedings. Where the lease contains these provisions, the costs of the proceedings could be claimed by the Respondent under either Lease provision but not both.
134. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicant.
135. The Tribunal examined the Lease and found the only provision which might relate to these costs being claimed through the Service Charge is paragraph (1) (vi) of Schedule G which states that the Service Charge may include "the Council's costs of management of the Property. The Tribunal is of the opinion that costs relating to "management of the property" do not include the costs incurred in taking or defending proceedings.
136. With regard to claiming these costs directly from the Applicant the Tribunal found that the only provision was contained in Clause 4 (d) which states "to pay all costs charges and expenses (including Solicitor's costs and Surveyor's fees) incurred by the Council for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court". The Tribunal is of the opinion that these proceedings are not "for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925" and therefore they cannot be claimed directly from the Applicant.
137. The Tribunal therefore finds that the Respondent cannot claim its costs under either the service charge or directly from the Applicant. Nevertheless, Tribunals are encouraged to make orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 if it is thought appropriate, as the judicial body hearing the matter at first instance.
138. Therefore, the second issue is whether an Order should be made under the respective legislative provisions. In deciding whether or not it is just and equitable in the circumstances to grant an order under either legislative

provision the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.

139. With regard to the conduct of the parties, the Tribunal considered that both parties acted reasonably. It would have assisted the Tribunal considerably if the Applicant had set out the submissions in a Statement of Case. As it was the details of the challenges had to be extracted from the correspondence provided by the Respondent in the Bundle. The Respondent's case was clearly presented. The Tribunal also found that the Respondent had made considerable efforts to answer the Applicant's complaints and challenges without the matter coming before the Tribunal.
140. With regard to the outcome the Tribunal has found in favour of the Respondent.
141. The Tribunal then considered the nature of the proceedings. They were for a determination of the reasonableness of the cost of Major Works. The Respondent's Statement of Case and Mr Prescott's Witness Statement is at least in part what might be prepared when reporting to the Council on the completion of the Major Works and the Tribunal is of the opinion that some of the cost incurred in this case is included in the Administration costs and Project Management Fees for the Major Works.
142. Therefore, the Tribunal is satisfied it is just and equitable to make:
 - (1) an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable.
 - (2) an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
143. The Applicant is entitled to test the reasonableness of the cost of the Major Works by applying to the Tribunal but as the Tribunal finds these costs to be reasonable the Tribunal makes no order for reimbursement of the Application Fees.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period
3. Section 19 Landlord and Tenant Act 1985
 - (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 provision 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.
4. Section 20B Limitation of Service Charges: time limit on making demands
 - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
 - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21B Notice to accompany demands for service charges
 - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
 - (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
 - (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
 - (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
 - (5) Regulations under subsection (2) may make different provision for different purposes.
 - (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Landlord and Tenant Act 1985
 - (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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

 - (6) 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,
- of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

7. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250. The provision limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a First-tier Tribunal.

The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants in which an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

Section 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable, as follows –

Where an application is made to a First-tier Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

8. Schedule 11 Commonhold and Leasehold Reform Act 2002
 1. Meaning of “administration charge”
 - (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) ...
 - (b) ...
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (d) ...
9. Schedule 11 Commonhold and Leasehold Reform Act 2002
 - 5 A Limitation of administration charges: costs of proceedings
 - (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
 - (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
 - (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.
10. 20C Landlord and Tenant Act 1985
 - Limitation of service charges: costs of proceedings.
 - (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier 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 the county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.