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

Case Reference : CHI/ 29UQ/LSC/2012/0182
CHI/ 29UQ/LSC/2013/0004

Property : Flat 1, 31 Stone Street, Cranbrook, Kent, TN17 3HF

Applicant : Mr Alan Robertson

Respondent : (1) Mr Roland Comet
(2) Mrs Julie Comet

Type of Application : Section 27a and Section 20Za of the Landlord and Tenant Act 1985

Tribunal Members : Judge S. Lal (Chairman)
Mr N Robinson FRICS
Mrs J Playfair

Date and venue of Hearing : Ashford Tribunals Service
: 16th and 17th September 2013
18th September 2013 (Deliberation Only)

Date of Inspection : 29th April 2013

Date of Decision : 20th October 2013

DECISION

Background

1. This matter was listed for Hearing on 29th April 2013 following an application under Section 27A and 20C of the Landlord and Tenant Act 1985. The Tribunal also notes the application for dispensation made by the Respondent to be heard at the same time. The matter was listed over 2 days (16th and 17th September 2013).

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2. The Tribunal inspected the subject premises on the morning of the hearing. 31 Stone Street was noted to comprise a ground floor shop unit, currently used as a dental practice, with two storey maisonette (Flat 1) in the main front building over the front section of the practice and single storey flat (Flat 2) over the rear section of the practice. To the rear was a further single storey building not currently being used but adjoining the practice and known as "The Hayloft" although there is no actual evidence that it was ever used as an agricultural building. The front section of the dental practice and Flat 1 above were probably the original parts of the building with Flat 1 apparently being of timber frame construction and the rear sections of later origin although probably all would have been constructed in excess of 150 years ago.

3. It was understood that the shop had recently been converted from a hairdressers to the dental practice and as part of that conversion a considerable amount of work had been undertaken to attend to wants of repair as well as to make the premises more suitable for a dental practice. The small basement under the front section of the shop and Flat 1 had been converted into a plant room for the practice and the whole of the ground floor had been cleared out and stripped back, with structural repairs and alterations undertaken, prior to the refurbishment as a modern dental practice. The exterior of the ground floor was generally in good order but it could be seen that works were still required to the remainder of the building.

4. The matter had originally been set down for hearing on the day of inspection. However due to the late service of documents and other ancillary issues, the Tribunal was not in a position to hear the matter and the matter was adjourned in the interests of justice, to be listed for hearing on the 16th and 17th September 2013. Directions were made on this occasion as to the future progression of the matter.

The Hearing

5. Mr M De Grigorio, Counsel, attended on behalf of the Applicant and Miss R Cattermole, Counsel, attended on behalf of the Respondent along with their respective instructing solicitors. In addition the following persons also attended the hearing, namely Mr Robertson and Mr Anderson, the expert witness for the Applicant, as well as Mr Comet and Mr Gill, expert witness for the Respondent. Mr Nicholas Chubb (Flat 2) was also present although he did not address the Tribunal directly in the substantive issues before it, other than to note that he was without representation but that he wished to attend the hearing as an interested party.

The Evidence

6. The Tribunal is pleased to note that both parties have complied with Directions made at the previous aborted hearing. The Tribunal was supplied with 3 lever arch volumes agreed between the parties as the trial bundle. The Tribunal also considered a smaller additional Bundle that the Applicant's solicitors had wanted to include but had not been able to. The Tribunal is grateful to those instructing Miss Cattermole for the physical preparation of the Trial Bundle.

7. In addition the Tribunal was supplied with detailed Skeleton Arguments prepared by both Counsel as well as a bundle of authorities supplied by Miss Cattermole. The Tribunal wishes to note that the presentation and conduct of both Counsel was exemplary and that they were both able to assist the Tribunal to a very great degree with both a physical navigation through the documents, which were detailed and substantial, as well as being able to distil, in both oral and written submission, the issues for the Tribunal's consideration.

8. The Tribunal also heard live oral evidence from Mr Robertson and Mr Anderson as well as Mr Comet and Mr Gill. The witnesses adopted their witness statements as their evidence in chief and were the subject of cross-examination. The Tribunal is grateful to the "behind the scenes" meetings of the two experts and the production of the joint Scott Schedule as well as the joint commentary to it. Both these documents have been of great assistance to the Tribunal in reaching its decisions.

9. Rather than reciting the evidence, the approach the Tribunal has adopted is to indicate that it has taken into account all the documentary and oral evidence before it as well as noting the respective legal submissions, both oral and in written form. The Tribunal proposes to deal with the recitation of the evidence only in so far as it is relevant to its conclusions below.

The History

10. It is not disputed that the Applicant is the leaseholder of a flat on the first and second floor of the Property pursuant to a 99 year lease commencing on 17th April 1985, as varied by a deed of variation on 20th April 1990. To the rear of the Property is Flat 2, the leaseholder of which is Mr Nicholas Chubb.

11. Mr and Mrs Comet purchased the freehold of the Property on the 5th December 2008 and they are using the ground floor commercial premises from which to run their dental business. Furthermore it is not disputed that both Mr Robertson and Mr Chubb had assisted Mr and Mrs Comet to buy the freehold when it had come up for sale by buying and then selling the Freehold back to Mr and Mrs Comet in a "back to back" sale. Having purchased the Property and having obtained planning permission for conversion into a dental practice, Mr and Mrs Comet commenced work in November 2010 and completed in 2011. Following completion Mr Robertson was served a demand for payment on 13th March 2012. Further demands were sent in September and October 2012. These were the trigger for the present application to the Tribunal.

The Law

12. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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 relevant costs.”*

“Relevant costs” are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression “costs” includes overheads.

1. Section 19 provides that:

“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 reasonable standard*

and the amount payable shall be limited accordingly.”

2. Subsections (1) and (2) of section 27A of the Act provide that:

“(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 to whom it is payable*
- b. the person by 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.*

13. The Tribunal has at all times applied the civil standard of proof, namely whether it would be more likely than not that something alleged happened.

The Tribunal’s Decision

14. The starting point for the Tribunal’s analysis is the lease itself. By Clause 1(b) of the lease the leaseholder is required to pay

“by way of further or additional rent such sum or sums to be assessed in manner referred to in this clause which the landlord may from time to time expend as may reasonably be required in account of anticipated expenditure:-

- (i) in performing the landlord’s obligations as to repair maintenance and insuring hereinafter contained*

(ii) *in payment of the proper fees of the surveyor or agent appointed by the landlord in connection with the carrying out of or prospective carrying out of any of the repairs and maintenance herein after referred to and apportionment of the cost of such repairs maintenance and collection between the several parties liable to reimburse the landlord for the same and the such fees for collection for the rents hereby reserved and the other payments to be paid by the tenant under this clause.*

(iii) *In complying with any of the covenants entered into by the landlord or with any obligations imposed by operation of law which are not covered by the preceding sub-clauses*

PROVIDED THAT all such sums shall from time to time be assessed by the surveyor or agent for the time being of the landlord and such sums shall be paid by the tenant within twenty –eight days of being demanded.”

15. It is accepted by all parties that the actual repairing covenant on the Respondent is contained in the varied clause 4, which notes that subject to contributions by the Tenant, the Respondent will:

“Clause 4 (1)(a) at all times during the same term to keep in good and substantial repair and in clean and proper order and condition those parts and appurtenances of the Building which are not included in this demise or in a demise of the any part of the Building.

(b) as often as reasonably necessary to decorate the external parts of the Building previously decorated in a proper and workmanlike manner

(c) to keep in good order the grounds of the Building not included in the demise or in a demised of part of the Building.”

16. The extent of the Building was identified in Plan 1 as outlined in blue and Flat 1 as outlined in red on Plan 2, both of which were before the Tribunal.

17. The first issue for the Tribunal was the suggestion advanced by the Applicant whether the Respondent’s could claim at all for any costs solely connected with their use of the commercial premises and that in any event such work, upon a closer analysis, will amount to alteration and improvements which would be outside of the lease obligations. Mr De Grigorio advanced the argument that the Hayloft was only to be kept in “good order” only. In the alternative if the Hayloft were to be included, then the actual work carried out to the Hayloft went beyond keeping the structure in good and substantial repair and/or in clean and proper order and condition.

18. Miss Cattermole submitted that the lease terms went beyond good and substantial repair and the reference to “clean and proper order” would suggest something more. She relied on the authority of **Credit Suisse v Beegas Nominees Ltd [1994] 4 All E.R. 803**, where the term “in good and tenantable condition” was found to go beyond mere repair.

19. The Tribunal is satisfied that the use of the expression “good and substantial repair” and “clean and proper” order go beyond mere repair, the latter only indicating something needing to be done when something is in need of being repaired. The Tribunal does not go as far as to say “tenantable condition” because this would be importing a phrase that is not in the lease, nevertheless the Tribunal does find that this particular lease has a wider appreciation of what the Respondent may do and is allowed to do as part of his obligations under Clause 4 above. The Tribunal has adopted this approach when assessing the matters in respect of the Schedule attached to this Decision.

The Hayloft

20. In respect of the Hayloft, the Tribunal is satisfied that this structure is an integral part of the Building with reference to Plan 1. The Tribunal notes the oral evidence of Mr Comet that originally part of the Hayloft had been used as a staff rest room for the hairdressers salon that had once occupied the commercial premises and that there had been a chimney breast present. The Tribunal is satisfied that the Hayloft is integral to the Building and indeed confusion may have arisen because of the reference to a hayloft when there is no actual evidence that the Hayloft was ever used for agricultural purposes. The Tribunal finds that the Hayloft comes within the meaning of Clause 4(1)(a) above.

Apportionment

21. The Tribunal next considered the issue of apportionment. All parties agree that the lease is silent on this. Mr Gill adopted the relative floor space as a way to calculate the share of service charge. During oral evidence he conceded that he had not taken into account the basement floor space of the commercial premises and that he should have done. The Tribunal asked him to carry out this exercise again and the Tribunal was subsequently supplied with the following apportionments; the commercial premises at 53.44% (Mr and Mrs Comet), Flat 1 at 30.404% (Mr Robertson) and Flat 2, the First Floor Rear at 16.156% (Mr Chubb). Mr Anderson, expert for the Applicant did not seek to persuade the Tribunal that a different method of apportionment should be used and in the circumstances the Tribunal confirms and adopts the floor space method utilising the above-recalculated figures.

Historical Neglect

22. The Tribunal was then faced with the argument raised by the Applicant of historical neglect, namely why should the Applicant be punished for the neglect of previous landlords who had allowed the Property to deteriorate over the years. Mr De Grigorio raised the argument that a diminution value maybe equated to the additional cost properly payable by his client by way of service charges due to neglect. He relied on the decision of **Smith v Muscat [2003] EWCA Civ 92.**

23. Miss Cattermole resisted this; she suggested that a successor in title to the original landlord was not liable in respect of breaches committed by the original landlord. She submitted that the Muscat decision had been subject to some criticism by the Court of Appeal and referred to the decision of **Edlington Properties V JH Fenner & Co Ltd [2006] 1 WLR, 1583** and in particular Neuberger LJ observations on the matter.

24. The Tribunal is satisfied, as a matter of general principle, that the successor in title to the original landlord cannot be liable in respect of breaches committed by the original landlord. Moreover in this particular case the Tribunal is satisfied that there was credible evidence that Mr Robertson and Mr Chubb had been quite content not to pay any monies at all to previous landlords even when it was asked for because they did not have the means to pay. In oral evidence Mr Robertson admitted that he had never paid ground rent or service charge and when something had gone wrong with the roof on one occasion, a claim was made on the insurance. The Tribunal is satisfied that the issue of past neglect has little bearing on the facts of this case or indeed how the Tribunal is to assess reasonableness.

Failure to Comply

25. The Tribunal turns next to any alleged failure to comply with consultation requirements. The Tribunal finds that the consultation process was begun under Section 20 of the Act on the basis of a Statement of Estimates in the sum of £55,935.00 on 16th September 2010. The Tribunal finds as a fact that Mr Robertson did not respond to the Section 20 Notice and that the only response was from Mr Chubb requesting a further breakdown of the estimates. The only formal response was two identical responses received from Mr Robertson's previous solicitors and a different firm instructed by Mr Chubb, both dated 10th October 2010 raising the issue of historical neglect. There was no further communication. The Tribunal is satisfied that Mr Robertson and those advising him at that time did not respond in any meaningful way or engage with the S20 process and the Tribunal does not accede to the suggestion that Mr and Mrs Comet are in breach of the consultation requirements under s20.

26. The Tribunal accepts, and this is by no means an unknown occurrence with a building of this age and condition, that once work has started, additional works became apparent. The Tribunal deals with these in the Application to Dispense below but finds that the Section 20 process itself was conducted properly.

Estoppel

27. The Tribunal turns next to the question of estoppel raised by Mr De Gregorio. In summary this concerns itself with an evidential consideration of two meetings between Mr Robertson and Mr Comet, the first at the Property in about July 2010 and the second in a local coffee shop in September 2010. No notes were taken of the second meeting but there is a hand written note of the first. Mr De Gregorio submitted that an analysis of the note demonstrates that Mr Robertson agreed to help Mr Comet purchase the freehold in exchange for a lease extension and that if the maintenance works were under £10,000, then Mr Robertson would be given 3 years in which to pay, if over £10,000, 4 years to pay and that over £20,000 “will need discussion.” He stated that the Tribunal should go on to consider the defence of equitable estoppel to the service charge as a result of this “agreement.” In the alternative Mr and Mrs Comet should be limited to any recovery in the terms set out.

28. The Tribunal heard live oral evidence from both Mr Robertson and Mr Comet. Mr Robertson initially denied that the meeting in the coffee shop happened but Mr Comet was cross-examined as to the contents of the coffee shop discussion. Mr Comet said that his note by recording “if over £20,000 will need discussion” was not an offer to extend the interest free period of repayment but was exactly that what it said, namely that the matter would have to be discussed. Mr Comet said that at the time of the first meeting he had no idea what the potential cost would be. The Tribunal has considered the evidence with some care and on balance it prefers the recollection of Mr Comet. The Tribunal is fortified in its conclusion by his evidence that the works were to be funded by a bank loan. The Tribunal is satisfied that he would not have offered or contemplated making an interest free repayment schedule for an amount over £20,000 in the circumstances where he would be paying that money back to his bank at commercial rates. The Tribunal found Mr Comet’s evidence to be clear and his recollection credible. In the circumstances the Tribunal is satisfied that no issue of equitable estoppel arises in the present case on the facts as found.

Reasonableness

29. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in **Plough Investments Ltd. v Manchester City Council [1989] 1 EGLR 244** that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

30. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to decide on the basis of the evidence before it and exercising its own expertise. In that regard the Tribunal is an expert body and is able to bring its own expertise and experience in assessing the evidence before it. In the present case the Tribunal had the additional benefit of hearing expert evidence and the joint Scott Schedule and Commentary pursuant to that, prepared by Mr Anderson and Mr Gill. ***Adopting this approach, the Tribunal decides the matters, by reference to the Schedule attached to this Decision.*** The Schedule and Reasons must be read in conjunction with the reasons in so far as they apply to the application for Dispensation discussed below.

Dispensation

31. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

- (i) Where an application is made to a leasehold valuation 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.*

32. The Supreme Court in the case of **Daejan Investments Ltd v Benson [2013] UKSC 14** examined the matter in some detail. In summary the Supreme Court noted the following:

- The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA(1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- The financial consequences to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA(1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.

- The court considered that “relevant” prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

33. Miss Cattermole accepted that that the final costs were greater than the original estimates and that this was to do with subsidence to the rear of the property, the soil pipe to Flat 2, external rear cladding and asbestos and that Mr. Robertson was not able to identify any prejudice he may have suffered by the failure to consult. Mr. De Grigorio resisted the application and referred again to the “agreement” as he described it between Mr. Comet and Mr. Robertson. The Tribunal has adopted the approach of examining what is to be dispensed with regard to the joint experts meeting and statement as this seems to have been the jointly accepted basis of matters to be put before the Tribunal. It is consistent with the way the Tribunal has approached this dispute and is consistent with the principle of it being in the public interest and the interest of the parties, that there be an end to litigation.

34. The Tribunal is satisfied that *evidentially*, Mr. Robertson has not been able to identify any prejudice that has been caused to him by the additional works. The Tribunal notes its previous conclusion that at no time, other than the one letter raising the issue of historical neglect, did he engage with the consultation process in any meaningful way such as nominating alternative contractors. In the circumstances the Tribunal grants the application to dispense in respect of those items that were not on the Schedule of Estimates but were discovered and dealt with. The Tribunal notes that the Respondent would have had an interest in keeping the costs of the work down in any event as he was responsible for the majority of any bill. This consistent with the Tribunal's earlier findings on the wider interpretation of the lease as describing the landlords obligation to be beyond “repair” but not so wide as to encompass all the work that was in fact done solely for the benefit of the commercial premises.

Costs.

35. The Tribunal has considered the written submissions of Mr De Grigorio in respect of his application under Section 20c. The Tribunal has had regard to the history of the matter and indeed to the substantive decision above. Furthermore having regard to the guidance given by the Land Tribunal in the **Tenants of Langford Court v Doren LRX/37/2000**, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985 but for it to be limited to 50% of the Respondent's relevant costs. The Respondents have succeeded in respect of the majority of their submissions but not all and therefore it would not be appropriate to make an order for the full amount. The 50% amount reflects the Schedule attached to this Decision and those items that have had to be recalculated such as VAT and/or have been found as unreasonable because they relate solely to the commercial premises.

36. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

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

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

Judge S.Lal.....

<u>New Item No</u>	<u>Spec No.</u>	<u>Brief Description</u>	<u>Breakdown dated 21 June 2010 / S20 notice</u>		<u>Schedule of agreement items in S20 notice</u>		<u>Additional (non S20) works in Schedule of agreement</u>	<u>Tribunal Assessment</u>	<u>Tribunal's comments</u>
1.0		<u>Preliminaries</u>							
	A50	Preliminaries & General Conditions	£	500.00	£	500.00		£ 709.00	1.03% of works cost agreed between experts
		<u>Provisional work/Prime Cost items</u>							
	110	PC sum for (air conditioning repairs) & reinstatement above ground drainage	£	3,000.00			£	-	VO 49, deleted from contract
	115	PS for repairs to stud wall	£	500.00			£	-	VO 47, deleted from contract
	120	PS for projecting beam	£	500.00			£	-	VO 48, deleted from contract
	130	PS for paving	£	500.00			£	-	VO 72, deleted from contract
	135	PS for paving	£	500.00			£	-	VO 73, deleted from contract
	240	PS for works to exposed party wall	£	500.00			£	-	VO 45, deleted from contract
	245	PS for works to trough valley	£	1,000.00			£	-	VO 127, deleted from contract
	250	PS for works to roof	£	500.00			£	-	VO 129, deleted from contract
	255	PS for works to flats	£	2,000.00			£	-	VO 131, deleted from contract
	260	PS for works to flat roof deck	£	550.00			£	-	VO 2, deleted from contract
	270	PC sum for injected dpc	£	3,000.00			£	-	VO 39, deleted from contract
	590	PS for contingencies	£	5,000.00			£	-	VO 1, deleted from contract
		<u>Schedule of Work</u>							
		Verify position of services	£	150.00	£	150.00	£	-	Included in A50 above
		Temporary Protection	£	500.00	£	500.00	£	-	Included in A50 above
1.1		Scaffolding	£	1,800.00			£	980.00	Not all scaffold was erected and Mr Anderson's calculation is accepted
2.0		<u>Shop Floor Replacement</u>							
	13	Support Work	£	750.00	£	750.00	£	750.00	Landlords' choice, reasonable
	18	Support Work	£	400.00	£	400.00	£	400.00	Landlords' choice, reasonable
	64	Construct new floor	£	2,450.00	£	2,450.00	£	2,450.00	Landlords' choice, reasonable
3.0		<u>Wall, Flat 2 to courtyard (Mr Chubb's)</u>							
	22	Remove Mansard	£	175.00	£	175.00	£	-	Outside service charge provisions
	23	Remove Projection	£	350.00	£	350.00	£	-	Outside service charge provisions
	25	Remove tiles	£	150.00	£	150.00	£	-	Outside service charge provisions
	26	Protection (part of £400)	£	400.00	£	250.00	£	-	Outside service charge provisions
	52	Mansard roof tiling	£	750.00	£	750.00	£	-	Outside service charge provisions
4.0		<u>Rear Wall, Flat 1 (Mr Robertson's)</u>							
	24	Remove tiles	£	150.00	£	150.00	£	-	Outside service charge provisions
	26	Protection (Part of £400)	inc above		£	150.00	£	-	Outside service charge provisions
	51	Tile doorway & insulate	£	1,845.00	£	1,845.00	£	-	Outside service charge provisions
4.1	VO 21	Strip & retille remainder of rear elevation, including insulation Scaffold					£ 2,110.00 £ 900.00	£ 2,110.00 £ 900.00	Determined that Mr Robertson asked for these works to be undertaken Flows from above
5.0	28	Break up concrete floor	£	150.00	£	150.00		£ 150.00	Considered reasonable
6.0		<u>Agreed Items</u>							
	220	Inspect Flat 1 floor	£	100.00	£	100.00	£	100.00	Agreed by experts
	34	Rebuild corner	£	390.00	£	390.00	£	390.00	Agreed by experts
	37	Corner ties to rear	£	400.00	£	400.00	£	400.00	Agreed by experts
	41	New gutter & fascia, Flat 1	£	240.00	£	240.00	£	240.00	Agreed by experts
	42	New gutter & fascia, Flat 2	£	350.00	£	350.00	£	350.00	Agreed by experts
	44	Replace stone eills, 2 No	£	240.00	£	240.00	£	240.00	Agreed by experts
	45	Render reveals, 5m	£	65.00	£	65.00	£	65.00	Agreed by experts
	59	Repair defective brickwork to shop	£	380.00	£	380.00	£	380.00	Agreed by experts
	60	Repair defective brickwork to shop	£	840.00	£	840.00	£	840.00	Agreed by experts
	VO 19	Repair broken drain which caused subsidence					£ 269.00	£ 269.00	Agreed by experts

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7.0	30	Strengthen floor, Flat 1	£ 530.00	£ 530.00		£ 530.00	Agreed by experts
8.0	31	Repair floor, Flat 2	£ 370.00	£ 370.00		£ -	Not Mr Robertson's responsibility
9.0	20	Remove plaster ceilings	£ 300.00	£ 300.00		£ 300.00	Considered necessary to inspect timber etc. above
10.0	32	Timber infill to walls	£ 750.00	£ 750.00		£ -	Part of shop and not out of repair
11.0		<u>Link roof between flats, where link walkway removed</u>					
	21	Demolish existing	£ 940.00	£ 940.00		£ 940.00	Roof out of repair; was tendered & consulted upon. No observations received
	97	Roof structure	£ 2,250.00	£ 2,250.00		£ 2,250.00	As above
	98	Flashings	£ 200.00	£ 200.00		£ 200.00	As above
	102	Covering	£ 3,000.00	£ 3,000.00		£ 3,000.00	As above
		Scaffold, part £1,800	£ 900.00	£ 900.00		£ 900.00	As above
	91	Mansard roof, part of original price of £1,850 reduced when mezz. Omitted	£ 1,000.00	£ 1,000.00		£ 1,000.00	As above
12.0		<u>Items of work not done</u>					
	35	Repair brickwork	£ 680.00	£ 680.00		£ -	Not done, agreed by experts
	47	Replace broken bricks	£ 75.00	£ 75.00		£ -	Not done, agreed by experts
	40	Roof repairs	£ 500.00	£ 500.00		£ -	Not done, agreed by experts
	48	Renew gutter angle	£ 105.00	£ 105.00		£ -	Not done, agreed by experts
13.0	36	Renew timber lintels to 5 windows	£ 1,245.00	£ 1,245.00		£ 1,245.00	Part of structure, consulted upon & considered reasonable
14.0	46	Render walls	£ 315.00	£ 315.00		£ -	Experts agree, no new render undertaken, other than to shop window reveals
15.0		<u>Structural beam to rear wall, Flat 1 (Mr Robertson)</u>					
	65	Temporary support	£ 350.00	£ 350.00		£ 350.00	Part of structure, consulted upon & considered reasonable
	67	Pad stones	£ 340.00	£ 340.00		£ 340.00	Part of structure, consulted upon & considered reasonable
	68	Steelwork	£ 2,200.00	£ 2,200.00		£ 2,200.00	Part of structure, consulted upon & considered reasonable
	VO 29	Sway frame installation, make good studs etc.			£ 500.00	£ 500.00	Accepted as necessary
16.0		<u>Structural walls under Flat 2 (Mr Chubb)</u>					
	69	Temporary support, wall to Flat1	£ 300.00	£ 300.00		£ 300.00	Part of structure, consulted upon & considered reasonable
	71	Renew in studwall	£ 890.00	£ 890.00		£ 890.00	Part of structure, consulted upon & considered reasonable
17.0	104	Gutter to mansard roof	£ 350.00	£ 350.00		£ 175.00	Conflict between experts' joint report & schedule. Schedule figure adopted
18.0	105	Gutter to rear infill	£ 250.00	£ 250.00		£ -	Gutter (and roof it serves) did not exist at time lease granted
19.0	115	Fireproof existing column to shop	£ 110.00	£ 110.00		£ 110.00	Reasonable requirement
20.0	173/BWIC	Drainage, builders work on above ground drainage	£ 750.00	£ 750.00		£ 750.00	Agreed by experts
21.0		<u>Floor, Flat 2 (Mr Chubb)</u>					
	VO 6	Take down acoustic boards under Flat 2 and repair floors			£ 1,500.00	£ 1,500.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 16	Ditto			£ 380.00	£ 380.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 20	Strengthen floor, Flat 2 as Eng.'s details			£ 1,021.00	£ 1,021.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 31	Splice joist repair			£ 304.26	£ 304.26	Works reasonable but consultation not undertaken. Dispensation granted
22.0		<u>Cellar blockwork walls</u>					
	VO 12	Footings to cellar walls, add back spec item 55			£ 475.00	£ 475.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 13	Construct new walls off new footings, add back spec item 56			£ 3,850.00	£ 3,850.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 14	Block walls, add back spec item 57			£ 1,380.00	£ 1,380.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 15	Infill old opening in basement in 1b wall, add back spec item 58			£ 225.00	£ 225.00	Works reasonable but consultation not undertaken. Dispensation granted

<u>New Item No.</u>	<u>Spec No.</u>	<u>Brief Description</u>	<u>Breakdown dated 21 June 2010 / S20 notice</u>	<u>Schedule of agreement items in S20 notice</u>	<u>Additional (non S20) works in Schedule of agreement</u>	<u>Tribunal Assessment</u>	<u>Tribunal's comments</u>
23.0		<u>Underpinning</u>					
	VO 17	Reduce decontamination room floor levels an additional 180mm			£ 975.00	£ 975.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 26	Underpinning to rear walls			£ 9,500.00	£ 9,500.00	Works reasonable but consultation not undertaken. Dispensation granted
24.0		<u>Hayloft</u>					
	193	Strip out fittings, furnishings and all items stored & remove from site		£ 500.00		£ 500.00	
	194	Remove asbestos roof & dispose of, in accordance with regulations	£ 2,500.00	£ 2,500.00		£ 2,500.00	Part of structure, consulted upon & considered reasonable
	199	Reconstruct pitched roof	£ 500.00	£ 500.00		£ 500.00	Part of structure, consulted upon & considered reasonable
	200	Recover with tiles (actually renewed in slates)	£ 1,200.00	£ 1,200.00		£ 1,200.00	Part of structure, consulted upon & considered reasonable
	201	Renew lead cover flashing abutting weathboard clad walls	£ 450.00	£ 450.00		£ 450.00	Part of structure, consulted upon & considered reasonable
	202	Reform timber to chimney back gutter	£ 550.00	£ 550.00		£ 550.00	Part of structure, consulted upon & considered reasonable
	203	Temporary roof	£ 270.00	£ 270.00		£ 270.00	Part of structure, consulted upon & considered reasonable
	204	New fascia	£ 240.00	£ 240.00		£ 240.00	Part of structure, consulted upon & considered reasonable
	205	Temporary gutter & downpipe	£ 100.00	£ 100.00		£ 100.00	Part of structure, consulted upon & considered reasonable
	206	New floor & frame to existing opening	£ 250.00	£ 250.00		£ 250.00	Part of structure, consulted upon & considered reasonable
	VO 3	Additional asbestos removal to rear Hayloft roof			£ 1,782.00	£ 1,782.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 4	Chimney stack, take down & partial rebuild, including pointing			£ 438.57	£ -	Improvement, agreed by experts
	VO 5	Take down and rebuild rear gable, flank wall & foundations			£ 3,092.14	£ 3,092.14	Works reasonable but consultation not undertaken. Dispensation granted
	VO 7	Add back spec item 195. Take up timber floor & take down ceiling, remove			£ 900.00	£ 900.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 8	Add back spec item 196. Remove windows & external door, board up			£ 500.00	£ 500.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 9	Add back spec item 197. Remove one door and frame & cart away			£ 50.00	£ 50.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 10	Add back spec item 198. Take up brick floor, excavate & form new floor			£ 1,250.00	£ 1,250.00	Works reasonable but consultation not undertaken. Dispensation granted
25.0	VO 18	Foundations for new walls			£ 381.00	£ 381.00	Works reasonable but consultation not undertaken. Dispensation granted
26.0	VO 27	Cantilever steel to support parapet walls as Eng.'s detail			£ 1,158.75	£ 1,158.75	Works reasonable but consultation not undertaken. Dispensation granted
27.0	VO 28	Renew 4 more cills (stone), pro rata cost			£ 480.00	£ 360.00	3 cills reasonable but consultation not undertaken. Dispensation granted
28.0	VO 30	Steel to plantroom to support structure. Addition to already spec. work			£ 1,608.00	£ 1,608.00	Works reasonable but consultation not undertaken. Dispensation granted
	VO 38	Rebuilding pier and works to remove rear chimney			£ 3,890.99	£ 3,890.99	Works reasonable but consultation not undertaken. Dispensation granted
29.0		<u>New concrete floors</u>					
	VO 40	Damp proofing new concrete floor			£ 3,047.50	£ 3,047.50	Works reasonable but consultation not undertaken. Dispensation granted
	VO 42	Screed to new concrete floor, necessary following underpinning			£ 1,235.00	£ 1,235.00	Works reasonable but consultation not undertaken. Dispensation granted
30.0	VO 128	Valley Gutter, was Spec No. 245, £1,000.00. VO 127 deleted it.			£ 750.00	£ 750.00	Part of original specification & consultation. Cost reduced.
	VO 130	Prov. cost of works to roof, was Spec No. 250, £500.00. VO 129 deleted it.			£ 500.00	£ 500.00	Part of original specification & consultation.
31.0	VO 132	Infill rear courtyard, new roof. Replaces Spec No 255. VO 131 deleted.			£ 2,000.00	£ -	Improvement, did not exist when lease created
32.0	VO 136	Extra cost of support, Flat 2, when block wall built instead of stud as spec.			£ 1,049.00	£ 1,049.00	Works reasonable but consultation not undertaken. Dispensation granted
33.0	VO 137	Sound proofing to ceilings between surgery & flats			£ 1,590.00	£ -	Improvement
	179	<u>Not noted elsewhere</u> PC sum to maintain water services to both flats whilst cutting back supply	£ 500.00				
		Amount excluding preliminaries (preliminaries to be %age of this)				£ 74,718.64	
		Preliminaries amount brought forward				£ 769.60	
			<u>£ 55,935.00</u>	<u>£ 36,985.00</u>	<u>£ 49,092.21</u>	<u>£ 75,488.24</u>	
		Carry Schedule of agreement items over			<u>£ 36,985.00</u>		
					<u>£ 86,077.21</u>		

Calculation of total cost of work to which Mr Robertson contributes through service charge and his share

Tribunal's assessment of works cost that Mr Robertson is to pay share (excluding VAT)	£	75,488.24	Brought forward
VAT on building works, chargeable at 17.50%	£	3,355.97	See note below
VAT on building works, chargeable at 20.00%	£	9,854.48	See note below
Add Architect's professional fees at 9% (excluding VAT)	£	0,793.94	9% as suggested by Mr Gill is considered reasonable
VAT on Architect's fees, 30% chargeable at 15.00% VAT, see invoice 555.0815	£	305.73	Use actual invoices for percentage of works/VAT rate
VAT on Architect's fees, 44% chargeable at 17.50% VAT, see invoice 603.0815	£	523.13	Use actual invoices for percentage of works/VAT rate
VAT on Architect's fees, 26% chargeable at 20.00% VAT, see invoice 604.0815 on.	£	353.28	Use actual invoices for percentage of works/VAT rate
Add Engineer's fees (shown with VAT included due to rate changes)			
Invoice 6979, initial survey (£675.00 net, 17.5% VAT)	£	793.13	£ - Experts agree, not chargeable
Invoice 7722, item 2, repair costs (£1,435.00 net, 15% VAT)	£	1,650.25	£ 1,650.25 Experts agree, chargeable
Invoice 7722, item 3, replace roof/mezzanine (£1,450.00 net, 15% VAT)	£	1,667.50	£ - Follows New Item No 3, not chargeable to Mr Robertson
Invoice 8587 (£817.50 net, 17.5% VAT)	£	960.56	£ 960.56 Experts agree, chargeable
Invoice 8761 (£422.50 net, 20% VAT)	£	507.00	£ 507.00 Experts agree, chargeable
Invoice 8913 (£1,082.50 net, 20% VAT)	£	1,299.00	£ 1,299.00 Experts agree, chargeable
Building Control Fees	£	380.00	£ 380.00 Already apportioned, considered reasonable
Additional Items subsequent to original schedule that Mr Gill proposed adding:			
Sanitaryware & related works to Mr Chubb's flat	£	1,000.00	£ - Not demanded so not considered but not a service charge item
Roof completion to Hayloft	£	3,500.00	£ - Not demanded so not part of this consideration
Fire Alarm	£	1,000.00	£ - Not demanded so not part of this consideration
Concrete slabs to Ground Floor	£	2,575.00	£ - Not demanded so not part of this consideration
Additional fire alarm & lights	£	1,020.00	£ - Not demanded so not part of this consideration
Additional cost, pavings to front flat steps	£	727.00	£ - Not demanded so not part of this consideration
Total			<u>£ 101,471.58</u>
Proportion payable by Mr Robertson, 30.404%			£ 30,851.42

Calculation of VAT on Builder's works costs:

Invoices totalling £205,734.40 plus VAT have been seen (Bundle 4, green tab). This ties in with "Full Valuation" in Folder 2, Tab D where the total value is given as £211,009.64 subject to retention. Using the Bundle 4, green tab invoices, £53,604.66 was billed at 17.5%. Therefore determined that £53,604.66/£211,009.64 is the proportion of amount chargeable to Mr Robertson to be at 17.5% with the remainder at 20%. The reason for this is that it is not possible to identify exactly when works were undertaken and what proportions were chargeable at what VAT rate. The formula utilised is considered to provide a fair compromise.