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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AC/LSC/2012/0342

Premises: 240A AND 240B STATION ROAD, EDGWARE,
MIDDLESEX HA8 7AU

Applicant(s): RICHARD ARCHER PROPERTY TRADING LTD

Representative: ALDERMARTIN BAINES & CUTHBERT – MR R
DAVIDOFF

Respondent(s): [1] MS H PANDYA (240A)
[2] MR J LOGAN (240B)

Representative: IN PERSON

Date of hearing: 11 OCTOBER 2012

**Appearance for
Applicant(s):** MR DAVIDOFF

**Appearance for
Respondent(s):** [1] MS H PANDYA (with MS K PANDYA) (240A)
[2] MR J LOGAN (240B)

**Leasehold Valuation
Tribunal:** (1) MS L SMITH (LEGAL CHAIR)
(2) MR D JAGGER
(3) MRS G BARRETT

Date of decision: 17 January 2013

Decisions of the Tribunal

- (1) The Tribunal determines that service charges in relation to 240A and 240B are to be apportioned as to one quarter each of those charges which relate to the Mansion and as to one third each of those charges which relate to the Building except where otherwise stated below
- (2) The Tribunal determines that service charges for the years ending 25 March 2011, 2012 and 2013 may be withheld until such time as the Applicant serves a service charge demand which complies with s47 Landlord and Tenant Act 1985
- (3) Thereafter, the Tribunal determines that the sums payable by the Respondents in respect of the service charges for the years ending 25 March 2011, 2012 and 2013 are:-
 - (a) £1461.16 in relation to the year ending 25 March 2011
 - (b) £935.43 in relation to the year ending 25 March 2012
 - (c) £5188.08 in relation to the year ending 25 March 2013
- (4) The Tribunal makes no determination in relation to the reasonableness of the works to install a damp proof course to the Building due to the lack of evidence produced by the Applicant in relation to the reasonableness of the works and charges claimed
- (5) The Tribunal makes the determinations as set out under the various headings in this Decision
- (6) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that only one third of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge
- (7) The Tribunal determines that the Respondents shall reimburse the Applicant within 28 days of this Decision, one third of the Tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), as to the amount of service charges, and (where applicable) administration charges, payable by the Respondents in respect of the service charge years ending 25 March 2011, 2012 and 2013.
2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. The Applicant was represented by Mr Davidoff at the hearing and the Respondents appeared in person.

The background

4. The properties which are the subject of this application are a first and second floor flat above an office (hereafter jointly referred to as "the Property"). The Property was initially part of a development of 4 flats above 240 and 242 Station Road which are together referred to in the lease as "the Mansion". The freehold of 242 Station Road has since been sold off to separate freeholders. The flats at 242 Station Road are situated over a public house, which also stands underneath part of 240 Station Road.

5. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute, particularly since the major works which formed the largest part of the dispute related in large part either to matters on which a view could be formed from the photographs, would have been beyond the feasibility of an inspection (eg in relation to the roof works) or had not yet been carried out.

6. The Respondents are the Tenants of the Property pursuant to leases dated 27 November 1984 for a term of 99 years from 25 March 1984 ("the Lease"). Reference in this decision to the Lease is to the lease of 240A Station Road. The lease of 240B Station Road was not produced to the Tribunal but the parties confirmed that it was in the same terms. There was however a dispute as to whether the copy of the Lease in the bundle was the correct lease. That is dealt with under "Subsequent Directions" below. The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are referred to below, where relevant, and the relevant clauses are set out in Appendix 2.

7. The Tribunal has determined 2 previous applications in relation to 240A Station Road. In the first, (LON/00AC/LSC/2010/0011) the Tribunal found that none of the service charges at issue there were payable (for years ending 2005, 2006, 2007, 2008, 2009 and 2010) since Mr Davidoff had failed to make demand within 18 months of the relevant costs being incurred. In the second, (LON/00AC/LSC/2011/0086) the Tribunal determined that the sum of £522.03 was payable by Ms Pandya for the year 2009/10. The Tribunal, whilst not bound by those decisions, has read and had regard to them as necessary in reaching its decision in this application.

Preliminary Application

8. At the start of the hearing, the Respondents repeated an application which they had also made in writing prior to the hearing for the Tribunal to recuse itself on the basis that it would not be capable of reaching a fair and impartial decision because it was biased. The basis of this application was that Mr Davidoff, the Applicant's representative, had informed the Respondents that he was being advised in relation to his case by a Valuer Member of the Tribunal. This therefore amounted to an application for the Tribunal as an entity to recuse itself. It was explained to the Respondents that many Valuer Members also continue to practise as professional valuers, surveyors etc and in that context will advise clients who may well bring their cases to the Tribunal. This would generally prevent the Valuer Member in question being able to sit as part of a Tribunal dealing with that client and certainly with a case in which he/she has advised but it does not mean that no other Tribunal could determine the case. It was ascertained that the Valuer Member in question sits in the West Midlands region and that none of the members of this Tribunal had any prior involvement either with this case or with Mr Davidoff. Accordingly, the application was rejected and the hearing proceeded.

Subsequent Directions

9. There was much debate during the hearing about the insurance procured by the Applicant. It appeared from this and indeed the previous decisions of the Tribunal that the Respondents have never had sight of the schedule relating to this insurance. The Tribunal took the view that this was an unsatisfactory state of affairs and therefore directed that the Applicant should send to the Tribunal and serve on the Respondents the schedule of insurance for the service charge year 2011/12, it having been indicated by the Applicant that he had no such schedule in his possession for the service charge year 2010/11. He was directed to do this by 22 October 2012 and the Respondents were given liberty to make submissions on that aspect of the claim by 26 October 2012. In fact, the Applicant sent the schedule to the Tribunal on 12 October 2012. The Respondents then insisted that he should be directed to serve also the schedule for the year 2010/11. Whilst noting that the Applicant had indicated that he did not have such a schedule, and since it would assist the Tribunal in reaching its decision, the Tribunal agreed to make that direction, on the basis that the Applicant should send to the Tribunal and serve on the Respondents that schedule if he had it by 30 October with liberty to the Respondents to make submissions on that by 3 November. The Applicant's representative confirmed by letter dated 22 October 2012 that he did not have a schedule for the year 2010/11. It in fact transpires though that the premium claimed for the insurance year 2011/12 falls within the service charge year 2010/11 since the insurance was procured on 8 March 2011. The Respondents wrote to the Tribunal on 1 November 2012 in response to the Applicant's letter making the point that the document received related only to the insurance for 2011/12 but fell within the service charge year 2010/11 as the Tribunal notes above. The Tribunal deals with the claim in that regard below.

10. It is noted that the schedule produced by the Applicant's representative runs to some 8 pages. Whilst it is not a matter on which the Tribunal is able to issue a direction, it would note for the future that it understands the Respondents' insistence on seeing the schedule in order to confirm that their flats are properly insured. Now that the Applicant's representative is aware of what document will confirm that and that this is not voluminous (in comparison with the actual policy of insurance) the Tribunal hopes that a document in this form can be produced by the Applicant to the Respondent in future years.

11. Ms Pandya also insisted during the hearing that the lease contained in the bundle was not a true copy of her lease. This was in spite of the fact that it clearly related to her flat and had Land Registry fee stamps applied to it. Since, however, there was an issue about the apportionment of the service charge relating to the original lease and in case the lease had in fact been varied since, the Tribunal directed that the Respondents send to the Tribunal and serve on the Applicant a copy of the actual lease relating to 240A Station Road by 22 October with liberty to the Applicant to make any submissions it wished to make by 26 October. Following an application by the Respondents for more time, the Tribunal agreed to extend those deadlines to 30 November and 3 December respectively.

12. Ms Pandiya sent in a copy of her lease on 29 October 2012. That is in identical form to the one produced in the bundle. Ms Pandiya also sought to supplement her submissions in writing (which she was not asked to produce) and sent in some documents and photographs which she was also asked not to do. The

Tribunal has read the submissions and documents but since the submissions add nothing to what was said at the hearing and the documents did not alter the Tribunal's view in relation to what was or was not agreed in relation to an alteration of the proportion of the service charge as set out below, the Tribunal has not sought the Applicant's views on what is said by the Respondents in that regard.

13. The Tribunal does however note that it was not assisted by, in particular, the Respondents' attitude towards production of documents and evidence. Ms Pandiya insisted that she did not understand that she was able to produce evidence to controvert what the Applicant had produced nor that she could add material to the bundle for the hearing. It seems to the Tribunal that the directions given on 13 June 2012 are completely clear about the need for the Respondents to provide a statement of case indicating what matters were admitted and those which were in dispute together with alternative quotations for any work if they considered the charges unreasonable (paragraph 7). The parties were also directed that if they wanted to rely on expert evidence, then they required the permission of the Tribunal to adduce such evidence (paragraph 9). The Applicant was directed to produce a bundle of relevant documents which included (per paragraph 12) any documents on which either party wished to rely and any authorities on which the parties wished to rely. It was therefore incumbent on both the Applicant and Respondents to serve on each other prior to the hearing such documents as they sought to adduce and to give notice of the arguments and legal authorities on which they intended to rely. The Tribunal did give considerable latitude to both parties in the course of the hearing to introduce documents and reference to legal authorities to which no reference was made in the papers but the parties should not expect that this will be the position if any further application is made by these parties again in the future. It is noted in this regard that Mr Davidoff also sought to supplement his submissions and evidence by sending a letter dated 13 November 2012 making submissions about the legal fees which formed part of the claim for the service charge year ending March 2011. The Tribunal does not deal with those submissions or the documents sent with that letter firstly because the Tribunal does not consider it appropriate that evidence and submissions should be drip-fed in this manner and secondly because, in any event, it is clear that the proceedings in relation to which the fees are being incurred (against the lessee of 240B Station Road) are still ongoing and any claim for legal costs can and should be made in those proceedings.

The issues

14. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Validity of Service Charge Demands

Tribunal's Decision

15. The Tribunal determines that the service charge demands for the years in question did not comply with s47 Landlord and Tenant Act 1985 and that accordingly the Respondents are entitled to withhold service charges for those years until valid demands are served. The Tribunal does however accept that the demands served previously do comply with s20(B)(2) of the Landlord and Tenant Act 1985 as being a valid notice in writing as to the sums incurred and that accordingly those amounts

which the Tribunal has determined as reasonable and payable for the years in question will be payable once those compliant demands are validly served.

Reasons for Tribunal's Decision

16. The Tribunal noted that the service charge demands issued by the Applicant in relation to the service charge years in question did not bear the name and address of the Landlord in compliance with s47 Landlord and Tenant Act 1985. This issue was also raised by Ms Pandya albeit not in her written statement of case. Whilst this might be seen as a technicality in some cases, there did appear to be a degree of confusion on the part of the Respondents as to the identity of their landlord and his whereabouts as well as a suspicion about the true relationship between Mr Davidoff and the landlord (and Mr Davidoff did not assist the situation by showing a marked reluctance to answer questions at the hearing about the true nature and extent of that relationship and whether he was in fact, in effect, the landlord). The issue was therefore, for the Respondents at least, more than a minor technicality and the Tribunal therefore determined that the Respondents were able to withhold payment until compliant demands were served. The demands made were however quite clearly notice in writing to the Respondents of the amounts due and as such satisfy s20B by virtue of s20B(2) Landlord and Tenant Act 1985 notwithstanding that the compliant notices will, in some cases, be served more than 18 months after the sums were incurred.

Apportionment of Service Charge Tribunal's Decision

17. The Tribunal determines that service charges in relation to 240A and 240B are to be apportioned as to one quarter each of those charges which relate to the Mansion and as to one third each of those charges which relate to the Building except where otherwise stated below.

Reasons for the Tribunal's Decision

18. As noted at paragraphs 4 and 6 above, the Lease relates to the position as it was when the Lease was granted. Since then the freehold of 240 and 242 Station Road has been severed. However, and very unfortunately for all concerned, no thought appears to have been given as to how the service charges should thereafter be apportioned nor was any formal agreement reached in that regard. There has been no application for variation of the Respondents' leases.

19. Apportionment is dealt with in paragraph 1.3 of the Seventh Schedule to the Lease. This is set out in full in Appendix 2. In essence, it provides for the "Service Charge" to be the "fair proportion" of the Total Service Cost and specifies that the "fair proportion" should be one quarter insofar as it relates to the Mansion but not to other parts of the Building. It goes on to determine that the Property should pay a "the fair proportion" of the Total Service Cost attributable to the Mansion insofar as that relates also to other parts of the Building.

20. The Applicant pointed to the fact that this paragraph goes on to permit the Landlord to recalculate the bases on which those fair proportions are calculated (whether for the whole or part of the expenditure) if in his "reasonable opinion" it is necessary or equitable to do so.

21. It appears also that the previous Tribunal determined that the charges insofar as they related to the Mansion alone were one-half each. However, it does not appear that the Respondents took issue as they did here with this apportionment and furthermore the charges in question did not include as here payment for major works which clearly benefitted the lessees of that part of the Mansion within 242 Station Road as well as the Respondents so that what is a fair apportionment in relation to those major works may well be different to what was fair in relation to the running expenses with which the previous Tribunal was concerned.

22. It seems to the Tribunal neither fair nor equitable for the Applicant to unilaterally impose a different apportionment on charges which relate to the Mansion alone or at least not in relation to those works which impact also on the flats at 242 Station Road which form part of the Mansion. The inequity of the Respondents being obliged to pay between them the total cost of works which benefit the whole of the Mansion is clear from the "flat roof" works already carried out (see below). In the absence of clear evidence as to what of the charges relating to the Mansion relate only to the Property and what also relate to works which will benefit 242 Station Road, the Tribunal has therefore determined that it would be wrong to vary the one-quarter apportionment specifically laid down in the Lease.

23. As to the charges which relate to the Building however, the Tribunal was prepared to accept that, since the Lease did not specify an apportionment, it was reasonable for the Landlord to impose a different apportionment post the severance of the freeholds and since the lessee of the office space below also bears a share of that burden (and Mr Davidoff's company appears to be that lessee), the Tribunal accepts that it is open to the Applicant to seek one third each of those costs from the Respondent (as opposed to the one-sixth apportionment which had applied prior to severance).

Service charge year ending 25 March 2011

The Tribunal's decision

24. The Tribunal determines that the amount payable in respect of the service charge year ending 25 March 2011 is £1461.16

Reasons for the Tribunal's decision

25. In relation to the service charge year ending 25 March 2011, the Applicant sought a total of £8489.42 from each of the Respondents. This was broken down as follows (as to each of the flats with apportionment applied as shown):-

Electric	£49.92 (half each of a total of £99.84)
Electrician	£44.06 (half each of a total of £88.12)
Letter boxes	£90.83 (1/3 with lessee of office space of a total of £272.49)
Insurance	£443.35 (1/3 with lessee of office space of a total of £1330.07)
Audit	£60 (half each of a total of £120)
Management	£293.75 (1/3 with lessee of office space of a total of £881.25)
Cleaning	£218.88 (half each of a total of £437.75)

Surveyors	£640 (1/3 with lessee of office space of a total of £1920)
Legal fees	£1770.63 (half each of a total of £3541.25)
Reserve fund	£4878 (£1896 from lessee of office space; thereafter half each giving a total of £11,652)

26. Charges for electricity were the subject of much debate in the previous decision. Notwithstanding that, the Tribunal was still not provided with documents by the Applicant in relation to the meter readings, charges applied for electricity or standing charge. All that the Tribunal had for this and subsequent years was the bills raised which still did not state the property to which the electricity was supplied and showed what appeared to be large sums demanded for a very low level of electricity consumed (the readings suggested roughly 12 units per year were being consumed). In the absence of proper evidence as to how the charges were calculated the Tribunal disallows this item. As did the previous Tribunal, the Tribunal considered whether it would be appropriate for the Tribunal itself to seek to calculate what amount would be reasonable but declines to do so as the Applicant was well aware of the sort of evidence the Tribunal expected in relation to this item. Nothing is therefore allowed under this head

27. The charge for "electrician" relates to a callout charge following the previous Tribunal decision when Ms Pandya informed the Tribunal that the Property did not currently benefit from electricity to the common parts and where it was unclear whether the electricity meter for the Property also served that part of the Mansion above 242. Having heard Mr Davidoff's reason for calling out the electrician, and having received evidence that this sum had been paid, the Tribunal determines that the charge is reasonable and payable but that it should be apportioned as to one-quarter each (since the electricity serves only the common parts of the Mansion). The Tribunal therefore finds that £22.03 per Respondent is reasonable (total £44.06)

28. The charge for "letter boxes" relates to 3 letter boxes which the Applicant installed at first floor level outside the main entrance to that part of the Mansion above 240. These were for each of 240A, 240B and the office space at 240. Mr Davidoff gave reasons for this installation as being to prevent the mail for the office being wrongly delivered to the Property and to ensure that Ms Pandya received correspondence from the Applicant since she often claimed that she did not. Neither of the Respondents had requested these letter boxes and had an adequate letter box in their front door. In fact, Ms Pandya had sealed her box up and Mr Logan also complained that these were insecure in comparison with his own letter box. Accordingly, even if this charge were for works which fall within the service charge (which the Tribunal does not need to determine but doubts), the work was not necessary or reasonably incurred and the Tribunal therefore disallows this item in full. Nothing is therefore allowed under this head.

29. As indicated at paragraph 9 above, insurance was a subject of some debate at the hearing. The Respondents indicated that they had never seen a copy of the insurance policy or even schedule and were sceptical about whether it had even been taken out. Mr Davidoff referred to the invoices from insurance brokers as evidence that insurance had been procured but said that in relation to the year 2010/11 he did not have a schedule as he did not appreciate until the previous Tribunal decision that he should have asked for one. This seems to the Tribunal to be

an astounding admission for a managing agent to make. Mr Davidoff has since confirmed in writing that he has no schedule in relation to 2010/11. He has however produced, although somewhat belatedly, a schedule for the insurance for the year ending 25 March 2012. This is dated 18 March 2011. This shows the insurance covering the Building, registers the Respondents' interests and shows a premium paid of £1071.07. This is in fact the insurance schedule which relates to the premium charged for the service charge year ending 2011 (as this is when the insurance was in fact billed). Accordingly, the Tribunal allows this item (and notes that the Applicant has not unreasonably apportioned the insurance between the Respondents and the lessee of the office space since the insurance covers the whole Building). The Tribunal therefore finds that £443.35 per Respondent is reasonable (total £886.70).

30. In relation to "audit fees", the Respondents argued that these were not reasonably incurred. They did not require audited accounts and given the low level of management provided, this was not necessary. Paragraph 4 of the Schedule 6 to the Lease does permit the Landlord to provide (and therefore charge for) the engagement of an accountant to prepare or audit accounts in respect of the Service Charge and given the level of disputes that there have been about the service charges for the Property it is perhaps unsurprising that the Applicant required this independent assurance. However, in the view of the Tribunal the apportionment of this figure should be between the Property and the lessee of the office space (ie an item of expenditure relating to the Building) and accordingly determines that it is reasonable for each of the Respondents to pay £40 rather than £60 each (total £80).

31. In relation to management, Mr Davidoff claimed a sum of £250 per annum per unit. He submitted that this was at the low end of what was reasonable for management of a property. The Respondents argued that Mr Davidoff did not manage but rather "mismanaged" the Property. There was though no evidence of mismanagement and, whilst there did not appear to be much to do by way of management of the Property, Mr Davidoff had clearly been doing some work to engage services where appropriate, to liaise with the Respondents and to consider doing major works to the Property, some of which appeared to be well overdue. Whilst the Respondents argued that they were well able to manage their part of the Building without the landlord's involvement, the Lease provides for management to be provided and, if the Landlord chose not to engage a managing agent, for the Landlord to be entitled to 12 ½ % of the Total Service Cost. That would likely exceed the amount which Mr Davidoff seeks to charge. The Tribunal therefore allows this item as well as the apportionment claimed. The Tribunal therefore determines that the sum of £293.75 per Respondent is reasonable (total £587.50).

32. In relation to "cleaning", the Respondents objected to this charge on the basis that the work was entirely unnecessary. The only common parts were the entrance to the Property and staircase between the first and second floors. Those common parts required minimal upkeep. That had previously been done by the Respondents themselves and they were content to continue with that arrangement. Whilst recognising that the Landlord under the Lease is obliged to keep the common parts "suitably cleaned", the suggestion that a cleaner is required for one visit per week at a cost of £10 per visit does appear excessive and the Tribunal therefore disallows that item. Obviously, if it were to transpire that the Respondents were not carrying out this cleaning themselves so that the Landlord would be in breach of its obligation

under the Lease if it failed to reinstate this service, the position would be different. Nothing is therefore allowed under this head.

33. In relation to the surveyor's charge, Mr Davidoff gave evidence that this related to the inspection required for the surveyor to draw up the specification for the major works which form part of the service charges for the year ending 2012. Whilst there did appear to be some discrepancy over the date of this invoice, it does appear that the surveyor did inspect the Property and drew up a specification of works and the amount claimed does not seem to the Tribunal to be unreasonable. Accordingly, the Tribunal allows this item and the apportionment claimed. The Tribunal therefore determines that £640 is reasonable in relation to each Respondent (total £1320).

34. In relation to "legal fees", Mr Davidoff gave evidence that these did not relate to the previous Tribunal applications where, in both cases, a s20C order had been made but rather related to proceedings against Mr Logan. Mr Logan gave evidence in relation to the basis of that dispute and also that it was ongoing. The Tribunal did have some concerns about whether these fees did in fact relate to the Tribunal proceedings given the terms of the letter from the solicitor of 3 March 2011 which referred to the LVT decision. However, leaving that aside, given that the dispute between Mr Logan and the Applicant is still ongoing, the Tribunal takes the view that it would not at this juncture be reasonable for the Applicant to claim those charges. If the Applicant succeeds in that dispute, it may well be able to reclaim its costs from Mr Logan and if it does not, it will, at that stage be clearer whether those are costs which it is reasonable to claim via the service charge. The Tribunal expresses no concluded view as to whether the Lease would permit recovery in any event. Nothing is therefore allowed under this head.

35. Mr Davidoff confirmed that the claim in relation to "reserve fund" was not pursued given that this related to the major works which were claimed in the following service charge year.

36. Accordingly, the sums which the Tribunal finds reasonable and payable (subject to the validity of demand issue) are as follows (for each Respondent):-

Electrician	£44.06
Insurance	£443.35
Audit	£40.00
Management	£293.75
<u>Surveyors</u>	<u>£640.00</u>
Total	£1461.16

Service charge year ending 25 March 2012

The Tribunal's decision

37. The Tribunal determines that the amount payable in respect of the service charge year ending 25 March 2012 is £935.43

Reasons for the Tribunal's decision

38. In relation to the service charge year ending 25 March 2012, the Applicant sought a total of £1440 from each of the Respondents. This was broken down as follows (as to each of the flats with apportionment applied as shown):-

Electricity	£79.35 (half each of a total of £158.69)
General repairs	£249 (half each of a total of £498)
Insurance	£435.68 (1/3 with lessee of office space of a total of £1307.06)
Audit	£60 (half each of a total of £120)
Management	£300.00 (1/3 with lessee of office space of a total of £900)
Cleaning	£312.00 (half each of a total of £624)
Postage	£3.97 (half each of a total of £7.94)

39. In relation to electricity, the Tribunal refers to paragraph 26 above. The evidence was again limited to a bill which did not show how the figure had been calculated and it appeared that about 21 units had been used in the entire year so that the figure appeared completely unjustified and unreasonable. For the reasons stated at paragraph 26 above, this item is disallowed.

40. The general repairs relate to the replacement of a section of cast iron pipe with a plastic pipe on the flat roof. It appears that this was directly outside Ms Pandiya's flat and Ms Pandiya complained both about the quality of the works and the inconvenience she had suffered as a result. The Tribunal was shown a photograph which demonstrated that the work had been done however and the amount paid is evidenced by an invoice dated 21 March 2012. In the absence of any independent evidence about the quality of the works or any alternative quotation the Tribunal is unable to determine that the work was unreasonable (as to necessity or amount) or that the work was not properly carried out. In terms of the apportionment, the pipes serving the Mansion do not fall within the definition of "common parts" in the Lease. Such pipes as serve only one individual flat fall within the demise of that flat. However, the pipe which was replaced was a soil pipe which presumably served both flats and possibly other parts of the Building. Further, the Applicant has an obligation to keep in good repair all conducting media laid in or upon the Building. Accordingly, this repair falls within the service charge attributable to the Building and should have been apportioned between the Respondents and the lessee of the office premises. The amount is therefore reduced to £166 for each respondent (total £332).

41. In relation to insurance, the Tribunal refers to paragraph 29 above. Although the Applicant has not provided a copy of the schedule for the insurance for this year, it is clear from the invoice dated 2 March 2012 that the Applicant has procured insurance from the same broker and the premium is roughly the same and is therefore prepared to accept that this invoice relates to the insurance for the Building. The Tribunal though directs the Applicant's attention to what is said at paragraph 9 above and urges the Applicant to provide the schedule for the insurance for the current and future years to the Respondent both for their reassurance and to support the service charges claimed in this regard. The Tribunal therefore determines that the charge of £435.68 (per Respondent) is reasonable in relation to this item (total £871.36).

42. In relation to the audit fees, the Tribunal repeats what it determined at paragraph 30 above and determines that it is reasonable for each Respondent to pay £40 each.

43. In relation to management, the Tribunal repeats what it determined at paragraph 31 above but limits the management charge to the same as for the year ending 2011 namely £250 + VAT. This would then amount to £293.75 for each Respondent (total £587.50).

44. In relation to cleaning, the Tribunal repeats what it determined at paragraph 32 above and disallows this item.

45. In relation to postage, the Tribunal does not accept that it is reasonable for the Applicant to charge for this separately since such items should be included in the management fee and accordingly disallows this item.

46. Accordingly, the sums which the Tribunal finds reasonable and payable (subject to the validity of demand issue) are as follows (for each Respondent):-

General repairs	£166.00
Insurance	£435.68
Audit	£40.00
Management	£293.75
Total	£935.43

Service charge year ending 25 March 2013

The Tribunal's decision

47. The Tribunal determines that the amount payable in respect of the service charge year ending 25 March 2013 is £5188.08

Reasons for the Tribunal's decision

48. In relation to the service charge year ending 25 March 2013, the Applicant seeks a total of £12,859.21 from Ms Pandiya and £11,791.21 from Mr Logan. This was broken down as follows (as to each of the flats with apportionment applied as shown):-

Electricity	£79.35 (half each of a total of £158.69)
General repairs	£10905.20/£9837.20 (apportioned between the flats and office premises but not as to 1/3 each: total £25149.60)
Insurance	£435.68 (1/3 with lessee of office space of a total of £1307.06)
Audit	£60 (half each of a total of £120)
Management	£300 (1/3 with lessee of office space of a total of £900)
Cleaning	£312 (half each of a total of £624)
Postage	£12.50 (half each of a total of £25)
Professional fees	£754.48 (1/3 each with lessee of office space of a total of £2263.47)

49. The Tribunal deals with the major works (general repairs and professional fees as above) separately.

50. In relation to electricity, insurance, audit, management, cleaning and postage, the Tribunal repeats what is said above and accordingly disallows the charges for

electricity, cleaning and postage, and reduces the management charge to £250 + VAT (£293.75) and the audit fee to £40. The insurance figure is based on the premium for the previous year (since the insurance is not renewable until March 2013) but the Tribunal does not consider it unreasonable for the same figure to be demanded as an estimate. Accordingly, the overall figure for those items apart from the major works is £769.43 for each Respondent.

Major works

51. The section 20C consultation process for the major works (hereafter "the Works") was begun by letter dated 4 October 2011 to the Respondents. In the Notices served thereunder, the Works were described simply as "External repairs and redecoration" and "Internal common parts repair and redecoration". The reasons that the Works were stated to be required were that "[the building] is in weathered and poor/deteriorated condition throughout and must be brought up to standard as per the terms of the Lease, so as to protect everyone's investment". A closing date for observations and nominations for contractors was specified as 7 November 2011.

52. Ms Pandiya said that she did not receive that letter. Accordingly, the Applicant began the process again under cover of another letter dated 14 November 2011 with a closing date of 16 December 2011.

53. On 12 December 2011, Ms Pandiya responded to the letter. One of her complaints was that the Works had not been specified in detail. She objected to any works being carried out to the internal common parts as these were unnecessary because the Respondents had carried out redecoration themselves and had maintained these parts for over 20 years by agreement with the "previous landlords". Ms Pandiya also asserted that the exterior of the Building was also in "perfectly good condition" apart from 2 wooden window ledges of the windows at the rear of her flat. She indicated that if the Works were required, she and Mr Logan (the lessee of 240B) would carry these out themselves using their own contractor. She also indicated that once she knew the extent of the Works, she would nominate her own contractors.

54. Mr Davidoff responded on 15 December. He said that there was no requirement for him to provide a full specification and that this would be provided at the next stage. He raised various points about the issues raised in Ms Pandiya's letter and again invited her to nominate contractors if she wished to do so.

55. Ms Pandiya, by an e mail of 16 December 2011, again took issue with various points but went on to nominate 2 contractors. She also nominated 2 alternative contractors but did not at that stage provide contact details as she was in hospital.

56. Mr Davidoff contacted the first two of Ms Pandiya's nominated contractors. One did not respond at all. The other indicated that he was not interested in tendering for the Works.

57. Accordingly, on 1 February 2012, Mr Davidoff gave notice of the Applicant's intention to carry out the Works. By this stage, the nature of the Works was specified in much greater detail. The Notice gave the estimates provided for the Works submitted by the contractors nominated by the Applicant and noted that the

contractors nominated by Ms Pandiya had either refused to submit an estimate or had not responded. Accordingly, the Notice indicated that the Applicant intended to instruct the lowest tenderer to proceed with the Works. The Notice went on to provide that the quotations could be inspected by the Respondents at the Applicant's agent's premises which are the office premises of 240 Station Road. The Notice also summarised Ms Pandiya's objections to the Works and the Applicant's agent's response.

58. Ms Pandiya responded to this by e mail on 5 March 2012. It is noted in this e mail that Ms Pandiya acknowledges that by this date she had seen the Surveyor's report. Much of Ms Pandiya's argument concerning the consultation process focussed on the fact that she had not personally had sight of the detail of the proposals so that she could comment in detail. However, this misunderstands the purpose of a consultation process which is to be able to object in principle to the works (which Ms Pandiya was able to do) and to engage contractors to provide an alternative quotation on the detail of the works (which Ms Pandiya was able to do albeit her contractors were not willing to provide that quotation).

59. The Tribunal is therefore satisfied that the consultation process was properly followed in this case. Furthermore, the Applicant's agent (Mr Davidoff) continued to correspond with Ms Pandiya after the consultation process was complete, responding to the various issues which she raised about the necessity and reasonableness of the Works. Ms Pandiya also sought legal advice about the service charges for the years ending 2012 and 2013 as evidenced by a letter from solicitors of 25 May 2012. This followed the launching of the application herein.

60. In terms of the Works, the Respondents' objections were that either the Works were not required, that the amounts sought were too high or that the Works should be staggered and that the Applicant should take account of their ability to pay. The Respondents did not though provide evidence of their financial circumstances which might have enabled the Tribunal to determine whether it would be so unreasonable for the Applicant to do all the Works at once.

61. Turning then to the items contained in the Works, the Tribunal summarises those under each head below with note of any specific objections raised and its view on each. The Tribunal also deals with apportionment of the sums quoted.

62. Repair of external staircase: the Tribunal was shown photographs of the condition of this staircase and the Respondents did accept that some work was required to this but said that the amount quoted was unreasonable. The Tribunal accepts that this work is reasonably necessary. However, the amount quoted of £1200 is about 50% higher than the amount quoted for this work by the other contractor. The Tribunal therefore finds the amount to be unreasonable. The amount quoted by the other contractor was £815 and the Tribunal finds this to be a more reasonable amount. This is part of the Mansion and also serves the part of the Mansion over 242 Station Road. Accordingly, the Respondents should only pay one quarter of this cost (£203.75 each).

63. Roof: this relates to what the Applicant calls the roof but is in fact a flat roof over the ground floor premises (which belong to 242 Station Road) but serves as a

walkway to the flats in the Mansion. This is the only part of the Works which has actually been carried out. The Respondents complained that this work was not necessary as work had been carried out 2 years ago. Mr Davidoff indicated that these were just patch repairs. The Respondents indicated that the "roof" was resurfaced about 10 years ago and in the view of the Tribunal this is likely to mean that, as it is in effect a flat roof to the downstairs premises, it was likely to need resurfacing again. The reason that these works were needed urgently, said Mr Davidoff, was because the pub downstairs had been complaining of water ingress. The Tribunal was shown photographs of the condition of the roof/walkway prior to the Works and afterwards. Although the Respondents (particularly Ms Pandiya) complained about the workmanship there was no evidence of poor workmanship, and the photographs appeared to show a reasonable job had been carried out (although Ms Pandiya did complain of trip hazard caused by the edging of the steps being incomplete which the Applicant may do well to note and inspect). The amount quoted for this work of £6550 is not unreasonable. However, as noted at paragraph 22 above, this work also benefits the part of the Mansion over 242 Station Road. Accordingly, the Respondents should only pay one quarter of this cost (£2216.66 each).

64. Gutters: the Respondents argued that this work was unnecessary as the gutters had been cleared "a few years ago". In the view of the Tribunal this is likely to mean that they do need clearing again. The figure claimed is £100 which is not unreasonable. Although the roof is specifically provided by the Lease to be part of the Mansion, the repairing clause in relation to the roof in Part 2 of schedule 5 lists gutters as separate to the roof itself. Accordingly, the apportionment of this item is as part of the Building charges so that the Respondents should pay only one third each (£33.33).

65. Repair of upper roof: the Respondents argued that this work was unnecessary as it was done about 10 years ago. In the view of the Tribunal this is likely to mean that, as a flat roof, it is likely to need repair and the specification is only for patch repair. The figure quoted is £4800 but the Tribunal does note that the quotation from the other firm who quoted for the work was £1875 and considers that the amount sought is therefore excessive and this figure should be limited to £1875. The roof is part of the Mansion and accordingly this charge relates only to the Mansion but it is not clear that the works to the roof will be limited to that part over 240 Station Road only. Accordingly, the Tribunal determines that the Respondents should pay one quarter each of this figure (£468.75).

66. Chimney stacks: the amount claimed for repairing and repointing is £988. The Respondents argued that this work was not urgently required. However, a reputable surveyor has indicated that the Works are required to maintain the condition of the Building and the Respondents produced no evidence to controvert that. Accordingly, the Tribunal determines that the work and the amount thereof is reasonable. As to apportionment, the chimney stacks appear to be between the flats at 240 and 242 Station Road and although they form part of the roof and are part of the Mansion charges, this work is also likely to benefit the flats over 242 Station Road. Accordingly, the Respondents should pay one quarter of this cost (£247 each).

67. Gutters: a further sum is claimed for the high level roofing gutters of £100. The Tribunal repeats its comments at paragraph 64 above and determines that the Respondents should each pay £33.33 in this regard.
68. Repair of cast iron soil and waste pipes: a sum of £1200 is claimed in this regard. The other contractor who quoted for this work claimed only £437.50 and the Tribunal does not therefore accept that £1200 is reasonable. The Tribunal determines that £437.50 is reasonable. As noted at paragraph 40 above, works to pipes should be apportioned as part of the charges relating to the Building and therefore the Respondents should pay one third each (£145.83).
69. Timber fascias: the Respondents argued that this work was not necessary as it was done probably about 10 years ago. In the view of the Tribunal, this is likely to mean that the repair and redecoration is necessary and reasonable and the amount quoted is also not unreasonable (particularly since the other contractor quoted about 3 times more). This forms part of the roof and accordingly is part of the Mansion charges but it is not clear that the Works are limited to that part of the roof over 240 Station Road and the Respondents should therefore only pay one quarter of this charge (£170 each).
70. Roof slopes: the Respondents did not address this work. The repair is limited to replacing broken or worn tiles and repointing. The work does not appear unreasonable. The amount quoted is not unreasonable at £1600 (again about half of the quotation from the other contractor). Since this concerns the roof it is part of the Mansion charges but it is not clear that the Works are limited to that part of the roof over 240 Station Road and the Respondents should therefore only pay one quarter of this charge (£400 each).
71. Asbestos in rear wall: the Respondents argued that this did not need to be removed and might cause more problems if it were removed. There was however no evidence as to this. The surveyor's opinion was that it did need to be removed and the amount quoted of £300 is not unreasonable. This relate to a disused flue in the external wall which is part of the Building. Accordingly, each of the Respondents should bear one third of the cost (£100).
72. Renders: the proposed work is simply to fill in part of the pebbledashing which has not been replaced when rendering has been replaced. The Respondents argued that this was unnecessary but the photographs did show that some of the rendering was in poor condition and the amount claimed of £300 is not unreasonable. As this is a Building charge, the Respondents should pay one third each (£100). There is however a further provision for removing loose pebbles and painting or sealing the pebbledash. The quotation for this work is £950. Although the photographs do show that pebbledash is missing in places, in the Tribunal's view, the additional work to paint or seal the pebbledash is unnecessary. Accordingly, the Tribunal disallows this item.
73. Lighting: it is proposed to remove a redundant light fixed on a defective bracket over the external staircase and replace it with a new sensor light. The Respondents argued that the light was not redundant and was fit for purpose. However, the photographs of this do suggest that the light is in need of replacement

as its fitting does appear rather precarious. The amount quoted of £800 does though appear exorbitant particularly when compared with the other quotation of £225. However, the selected contractor has included the cost of rewiring in the next item as part of the £800 whereas the other contractor has quoted for a combined sum of £855 for those items and the Tribunal therefore accepts that £800 is reasonable for both items. As noted above in relation to the staircase itself, this is part of the common parts which are part of the Mansion and the lighting serves also those flats above 242 Station Road. Accordingly, the Respondents should pay one quarter each of this charge (£200).

74. Rear window: this item is to open up a window which is part of Ms Pandiya's flat as this was blocked up without permission. In the view of the Tribunal, this window forms part of Ms Pandiya's demise and is not an item with which the Applicant should be interfering. Furthermore, Mr Davidoff admitted in evidence that this work was only cosmetic in nature and the Tribunal therefore does not accept that this work is reasonably necessary. This item is therefore disallowed.

75. Main entrance door and side screen: the photographs do suggest that repair and redecoration is warranted and the amount claimed is not unreasonable in the sum of £400. This is part of the Mansion and relates only to the flats at 240 Station Road. Accordingly, the Tribunal accepts that the Respondents should pay one half each of this charge (£200).

76. Internal common parts: Mr Davidoff confirmed that he no longer planned to redecorate the internal parts and there is no quotation for this part of the specification.

77. In accordance with paragraphs 62 to 76, the Tribunal therefore determines that each Respondent should (when properly demanded) pay the sum of £4418.65. The total sum which the Tribunal therefore finds reasonable (although not yet payable) for the service charge year 2013 is £5188.08 (£4418.65 + £769.43 – paragraph 50 above).

Service charge item and amount claimed

78. By a letter dated 15 August 2012, the Applicant also asked the Tribunal to consider additional works which were proposed in relation to the installation of a damp proof course in the office premises. These works were the subject of a separate s20 consultation procedure begun by letters dated 3 August 2012. No separate application was made in this regard and the application was not formally amended to ask the Tribunal to determine the reasonableness of this work or the sum which will be claimed in that regard (which has not yet been demanded). However, the Tribunal did give additional directions on 30 August to enable the Tribunal to deal with the matter.

79. It was pointed out to Mr Davidoff however, that, unlike the documentation which he provided for the Works, there was no evidence submitted to show that the insertion of a damp proof course was necessary. He had not provided any photographs to show the damp problem in the office premises nor any survey showing that this was attributable to a failure of the damp proof course. Mr Davidoff

had produced the quotations obtained for the s20 process but these were merely quotations which evidenced nothing more than that contractors were prepared to quote for the work if that work were necessary.

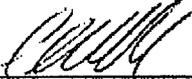
80. At that stage, Mr Davidoff asked the Tribunal to withdraw this item from their consideration. Ms Pandiya objected vociferously to this suggestion and the Tribunal did not consider it appropriate not to deal with the item particularly in light of Mr Davidoff's initial request that it should do so and the directions providing for determination of this issue. However, in light of the lack of evidence in this regard, the Tribunal has decided that it cannot determine the reasonableness of this item due to that lack of evidence. Since this item never was formally part of the application before this Tribunal, in the view of this Tribunal, this would not preclude Mr Davidoff from bringing a further application in relation to this item in the future. However, the Tribunal would note that the Applicant should produce whatever evidence it has now of the need for these works to be done so that, if possible, the parties can agree that the works are reasonably necessary and a further application can be avoided.

Application under s.20C and refund of fees

81. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that it had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund one third of any fees paid by the Applicant within 28 days of the date of this decision. This reflects (roughly) the extent to which the Applicant has succeeded in relation to its application.

82. In the statement of case and at the hearing, the Respondents applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act in relation to two-thirds of the Applicant's costs, so that the Applicant may not pass any more than one third of its costs incurred in connection with the proceedings before the Tribunal through the service charge. Mr Davidoff estimated in his letter of 12 October to the Tribunal that his costs would be £3000 + VAT therefore the most that the Applicant could pass on to the Respondents via the service charge is £1000 + VAT (assuming that the Applicant is entitled to pass on such charges by virtue of the provisions in the Lease or at law and subject to any later arguments as to reasonableness of the charge).

Chairman:



Ms L Smith

Date:

17 January 2013

APPENDIX 1: RELEVANT LEGISLATION

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
- (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,

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

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

Section 20B

(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 a demand for payment of the service charge is 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.

Section 20C

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

(2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
- (c) 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;
- (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (e) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

LANDLORD AND TENANT ACT 1987

PART VI

INFORMATION TO BE FURNISHED TO TENANTS

Section 46

(1) This Part applies to premises which consist of or include a dwelling and are not held under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(2) In this Part "service charge" has the meaning given by section 18(1) of the 1985 Act

(3)....

Section 47

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely –

(a) The name and address of the landlord

(b)

(2) Where –

(a) A tenant of any such premises is given such a demand, but

(b) It does not contain any information required to be contained in it by virtue of subsection (1),

Then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (or an administration charge) ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or as the case may be administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

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

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

APPENDIX 2: RELEVANT CLAUSES OF THE LEASE

Clause 2 DEFINITIONS

2.1 "the Building" means the property at and known as 240 and 242 Station Road Edgware Middlesex and the building erected on part thereof all of which property is shown on the plan annexed hereto and edged red

2.2 "The Mansion" means the part of the Building comprising the four flats known as 240A 240B 242A and 242B Station Road Edgware Middlesex together with the common parts including the entrance and stairs leading thereto and the roof

2.5 "the common parts means the staircases, landings, paths, steps, yards, railings and entranceways in and about the Building the use of which is or may be common to the Tenant or occupier of the flat and to the tenant or occupier of any of the other flats or parts of the Building and the individual staircases leading from the first floor to the second floor of the Building and the landings at second floor level."

Clause 3 OPERATIVE PROVISIONS

3.3 The Landlord hereby COVENANTS with the Tenant (but not so as to impose any obligation on the party named as the Landlord in this Lease after it shall have parted with the reversion to this Lease) to observe and perform the covenants conditions and obligations set out in Schedule 5

3.4 The Landlord may in its absolute discretion provide all or any of the services or items set out in Schedule 6 but shall be under no obligation to do so

PARTICULARS

The Flat All that first floor flat known as Flat 240A Station Road Edgware Middlesex situate at and forming part of the Building which flat is shown for the purposes of identification only edged red on the plan annexed hereto INCLUDING (for the purposes of obligations as well as granted):-

1. the floor and the joists and timbers upon which the floor is laid
 2. the doors, windows and the frames and glass of each of them
 3. the ceiling up to the level of the joists above
 4. the internal plaster surfaces of any structural walls
 5. one half in depth of non structural walls common to the Flat and to other parts of the Building up t the said level, which walls shall be deemed to be party walls
 6. the other non-structural walls in the Flat up to the said level
 7. all conduits, pipes, cables, drains and the like which are laid in any part of the Building and which exclusively serve the Flat
- BUT EXCLUDING any part of the structure of the Building other than the surfaces thereof

Schedule 4 TENANT'S COVENANTS

11. To pay on demand all expenses including solicitor's costs and surveyor's fees incurred by the Landlord of and incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided other than by relief granted by the Court.

30. To pay to the Landlord the Interim Charge and the Service Charge at the times and in the manner provided in Schedule 7 both such charges to be recoverable in default as rent in arrear

Schedule 5 LANDLORD'S COVENANTS

4. To insure and keep insured (subject to normal exclusions) the Mansion in the full value thereof against loss or damage by fire explosion aircraft storm and tempest and such other usual risks as the Landlord may from time to time in its absolute discretion deem desirable.....

5. To maintain and keep in good and substantial repair and condition the main structure of the Building including the foundations and the roof thereof with its gutters and rain water pipes

7. To keep the common parts and all conducting media now laid or hereafter to be held in or upon the Building or any part thereof (other than those exclusively serving individual flats therein) in good repair and condition and as often as may be necessary in the opinion of the Landlord in a suitable and workmanlike manner to redecorate all the interior of the said common parts and all additions thereto usually decorated

8. To keep the common parts suitably lighted and cleaned

9. The redecoration repainting and maintenance of the exterior of the Building (insofar as such maintenance is not within the ambit of the Landlord's obligations under paragraph 5 of this Part of this Schedule or the obligations of the Tenant or any of the other tenants in the Building)

Schedule 6 Services which the Landlord has a discretion to provide for which a service charge is payable

1. The engagement of the services of surveyors to manage the Building and its curtilage and to collect the rents and to carry out such other duties as may from time to time be assigned to them by the Landlord

3. The payment of all legal charges incurred by the Landlord:-

3.1 in the running and management of the Building and in the enforcement of the covenants conditions and regulations contained in the leases granted of the flats and Building....

4. The engagement of the services of accountants for preparing or auditing the accounts relating to and supplying certificates of expenditure in respect of the Service Charge

7. The maintenance and keeping in good order of the yards open spaces forecourts footpaths and driveways within the curtilage of the Building and the resurfacing and reconstruction of the same to a reasonable standard

8. The provision and supply for such other services for the benefit of the Tenant or the other tenants of the Building and the carrying out of such other repairs and improvement works and additions and the defraying of such other costs (including the modernisation or replacement of plant and machinery) as the Landlord shall think appropriate or otherwise desirable in the general interests of the tenants or any of them

9. The installation maintenance repair renewal and servicing of a communal television aerial, an aerial or relay service for wireless broadcasts an internal telephone system, a door porter system or any other similar apparatus.

Schedule 7

- 1.1 "accounting period" means a year commencing on the twenty fifth day of March
- 1.2 "The Total Service Cost" means the aggregate amount in each Accounting Period reasonably and properly:-
- 1.2.1 incurred by the Landlord in carrying out its obligations under clause 3.3 and part 2 of Schedule 5
- 1.2.2 incurred by the Landlord in connection with any of the matters referred to in Schedule 6
- 1.2.3 considered appropriate by the Landlord as a reserve towards future expenses of a periodical or non-annually recurring nature in connection with any of the said obligations or matters
- 1.2.4 charged by accountants, surveyors, solicitors, managing agents, other professional persons and by the Landlords in connection with the administration and management of the Building including without limitation:-
- 1.2.4.1 the cost of supplying an audited statement of the Total Service Cost; and
- 1.2.4.2 a management charge by the Landlord of 12 ½% of the Total Service Cost if it does not engage managing agents to manage the Building
- 1.3 "The Service Charge" means the fair proportion of the Total Service Cost attributable to the Flat which fair proportion shall be one quarter of:-
- 1.3.1 The Total Service Cost insofar as it relates to the Mansion but not to other parts of the Building; and
- 1.3.2 The fair proportion of the Total Service Cost attributable to the Mansion insofar as it relates to the Mansion and also to other parts of the Building
- PROVIDED THAT if in the reasonable opinion of the Landlord it should at any time or times for any reason become necessary or equitable to do so the Landlord may recalculate the bases on which such fair proportions (or any of them) are calculated and whether in respect of the whole of the expenditure concerned or only part thereof and in such event the Landlord shall notify the Tenant accordingly and in such case

as from the date of such event the new fair proportion or proportions shall be substituted for that or those previously in effect

1.4 "The Interim Charge" means such sum to be paid on account of the service charge in respect of each accounting period as the Landlord or their Managing Agents or Auditors shall specify at their discretion to be a fair and reasonable interim payment and until otherwise specified such sum shall be One Hundred Pounds provided always and it is hereby agreed that in the event of it being necessary for the Landlords to undertake urgent work to the Building involving major expenditure not covered by the Interim Charge the Landlords shall have the right forthwith to demand from the Tenant his proper proportion of such expenditure and in the event of the Service Charge the Interim Charge or the cost of any major expenditure aforesaid not being paid by the Tenant within fourteen days of being demanded the sum or sums so demanded shall carry interest

3. If the Interim Charge paid by the Tenant in respect of any accounting period exceeds the Service Charge for that period then the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Landlord and credited to the account of the Tenant in computing the Service Charge in succeeding accounting periods as hereinafter provided

4. If the Service Charge in respect of any accounting period exceeds the Interim Charge paid by the Tenant in respect of that accounting period together with any surplus from previous years carried forward as aforesaid then the Tenant shall pay the excess to the Landlord within twenty-eight days after service upon the Tenant of the certificate referred to in the following paragraph and in case of default the same shall be recoverable from the Tenant as rent in arrear

5. As soon as reasonably practicable after the end of each accounting period there shall be served upon the Tenant by the Landlord or by their Managing Agents a certificate signed by the Auditors of the Landlord containing the following information:

5.1 The amount of the Total Service Cost for that accounting period

5.2 the amount of the Interim Charge paid by the Tenant in respect of that accounting period together with any surplus carried forward from the previous accounting period

5.3 The amount of the Service Charge in respect of that accounting period and of any excess or deficiency of the Service Charge over the Interim Charge

6. Together with such certificate as aforesaid there shall be delivered to the Tenant a schedule in support thereof as shall show the amount and aggregate amount of any reserves created pursuant to the powers in that behalf also described in paragraph 1.2.3 of this Schedule

7. The said certificate and schedules shall be conclusive and binding on the parties hereto by the Tenant shall be entitled at his own expense at any time within one month after service of such certificate and schedules to inspect the receipts and vouchers relating to the payment of the Total Service Cost for the Accounting Period