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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UK/LSC/2015/0035 CHI/43UK/LDC/2015/0023
Property	:	The Manor House, High Street, Limpsfield, Surrey RH8 0DR
Applicant	:	Rowland James Morgan Paul Tharle Anthony Morgan Caroline Lucinda House
Representative	:	Mr N. Issac, counsel.
Respondent	:	Mrs. A Fitch-Hutton (Flat 1) Ms. M. Bunn (Flat 2) Messrs. SJC and RJC Hill (Flat 3) Mrs S. Bancroft-Hunt (Flat 4) Mr. D. G. Reading (Flat 5) Mr. P. White (Flat 6) Mr. P. A. Gay (Flat 7)
Representative	:	See attached
Type of Application	:	Dispensation from Consultation for major works and determination under Section 27A of the Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge D. R. Whitney Mr. A. Mackay FRICS Ms. J. Playfair
Date and venue of hearing	:	Redhill Magistrates Court, 22nd and 23rd October 2015

DECISION

Background

1. The Applicant has made two applications. Firstly a determination under Section 27A of the Landlord and Tenant Act 1987 in respect of certain major works it intends in due course to undertake. Secondly an application for dispensation from the consultation requirements in respect of works undertaken to a front wall in early 2015.

2. Directions were issued on 26th May 2015 for an oral Case Management Hearing. This took place and directions dated 17th June 2015 were issued. At this hearing all parties, save Mr Reading, were represented and a timetable for preparing the matter for hearing including direction as to expert evidence was given.

3. Prior to the hearing various further applications to extend dates and for parties to provide additional disclosure were made by the parties. The directions were varied as provided for in these decisions.

4. At the hearing the tribunal was provided with a hearing bundle made up of five lever arch files and also a skeleton argument on behalf of Mr White, Respondent 6. Four of the files related to the Section 27A application and one file related to the dispensation application.

INSPECTION

5. Immediately before the first day of the hearing the tribunal inspected the Manor House, High Street, Limpsfield, Surrey ("the Property").

6. The Property is a large Georgian style house. It is located next to St Peters Church, Limpsfield occupying a corner position fronting on to the High Street with Stanhopes to the Southern side of the property. The house itself is nearest to the Southern boundary with a large grassed area to the Northern side of the house.

7. The Property to the front elevation is rendered in white terminating in a parapet style wall behind which is a mansard design roof covered in slates. To the rear are two perpendicular wings to the Property with two clay tiled pitched roof. The Northern elevation is also rendered in white and on inspection there were signs of repairs having been undertaken to the same. Externally the Property appeared in reasonable repair although in need of decoration.

8. The tribunal were shown externally the location of Flat 6 which is in the mansard roof of the property alongside the Northern elevation and also Flat 4 which is on the first floor, also running along the Northern elevation.

9. The tribunal viewed internally Flats 6,7 and 4 in that order.

10. In Flat 6 the Tribunal was directed to the bathroom and the corridor exiting off it running towards the rear of the Property. At the end of this corridor was a bedroom which appeared to have a bed built into the space. The corridor was lined with cupboard doors and on either side was what was referred to as a "cat flap" through which the valuer member was able to carry out a limited inspection of the roof timbers. None of this structure appeared to be recent. Also via a window in the hallway corridor of Flat 6 the tribunal was able to view the box gutter which ran between the two rear pitched roofs.

11. The tribunal also viewed the box gutter between the pitched roofs from a window in the bedroom of Flat 7.

12. Flat 4 was plainly in a somewhat dilapidated state internally. It required redecoration and there was obvious signs of historic water ingress and cracking to the walls. We were particularly directed to partitions which had been erected to partition off the bathroom from the room which was along the Northern elevation of the Property. There was obvious cracking along the top and along all joins of the partition. The tribunal noted that in various areas the floor to the flat was far from even and there was a noticeable historic slope.

THE LAW

13. The law involved in the applications relates to Sections 19 and 27A of the Landlord and Tenant Act 1985 in respect of service charges and Section 20 of the Landlord and Tenant Act 1985. Copies of the sections are set out in Annex A to this decision.

HEARING

14. The hearing was slightly late starting due to traffic congestion affecting various people travelling from the inspection to the hearing. The hearing commenced at about 12 noon.

15. The tribunal indicated it would deal with the dispensation application after all evidence and submissions in support of the Section 27A application.

16. A revised agreed minutes of the experts meeting signed by all experts save Mr Howard was tendered and supported by all parties.

17. Counsel for the Sixth Respondent raised that he wished to submit a formal expert's declaration in respect of his expert. Counsel for the Applicant did not object and highlighted that it appeared no expert report within the bundle had a formal declaration.

18. Mr Issac also made an application for a Scott Schedule to be completed. Mr Rollestone (who had prepared the specification of works but who

was not giving evidence) had prepared a Scott Schedule relating to the specification. Mr Issac invited all the experts to be released for the first day so that they could add their comments overnight and this could then be submitted at the start of the second day before the experts gave evidence.

19. Mr Bowker objected to the application. He submitted that it was against the overriding objective to admit further documents particularly after the hearing had commenced. This was a new document prepared by Mr Rollestone (who was not giving evidence). He submitted it was for the Applicant to have prepared their case properly.

20. Mrs Fitch Hutton for the other leaseholder Respondents adopted Mr Bowker's arguments and raised the fact she felt the report had little detail.

21. The tribunal adjourned to consider these matters.

22. The tribunal indicated it was content for each expert called to offer a declaration at the start of their evidence.

23. In respect of the Scott Schedule the tribunal would not allow this to be admitted. If the experts collectively wished to consider the document then they were free to do so and if any agreement was reached or consensus over the same the tribunal would reconsider and the tribunal was happy to release all experts until the following morning.

24. Set out below is a record of the hearing intended to record the main and significant points of evidence. It is not intended to be a verbatim record of all the evidence heard. The tribunal records that the hearing itself was over two days and evidence was heard from a number of lay witnesses and three expert witnesses.

25. Mr Isaac opened the case for the Applicant.

26. Mr Isaac confirmed that the Applicants accepted that the service charge was payable by equal instalments of 1/7th due from each leaseholder. This included Mr White and the Applicant was not seeking any greater share by way of service charge from him.

27. He referred to the leases at Bundle B, Vol 1, tab A pg 1. He submitted that in simple terms for the purpose of this application the relevant terms of the lease were the same. Each flat owner was required to pay 1/7th of the service charge expenses. Rent is payable half yearly on 24th June and 25th December of each year and payments on account of service charges are allowed. Clause 3(6) sets out the Landlords covenants to repair and the Sixth Schedule what is included.

28. Mr Isaac then took the tribunal through various documents within the bundle. In particular the various surveyors reports including in

particular those of Mr Anthony Clare dating from 1995. The purpose of this review of the documents was to show that the Applicants had acted reasonably in respect of dealing with the alleged disrepair. The documents referred to included:

- Report of Anthony Clare from 1995
- Various correspondence from Norman Bancroft-Hunt
- Letter Maurice Management Civil Engineering to Mr Bance dated 21 October 2004.Bundle B Vol 1 tab B pg 144
- Reports of Bellamy Wallace Partnership from May 2006 and March 2007

29. Mr Isaac then looked to call Mr Morgan who had given a statement which was found at Bundle A tab 8. Mr Morgan confirmed that this was his statement and that the same was true.

30. Mrs Bancroft-Hunt then cross examined Mr Morgan.

31. Mrs Bancroft-Hunt suggested that works undertaken in Summer 2010 stopped following a meeting with representatives of Tandridge Council. Mr Morgan did not recall such a meeting. His recollection was that the works stopped due to issues between Mr Clare, Mr Rollestone, Mr White and Mrs Bancroft-Hunt.

32. Mr Bowker then cross examined Mr Morgan.

33. Mr Morgan confirmed that the freehold belonged to himself his brother and his sister. He and his sister were in partnership and were the managing agents. He stated this was not a casual arrangement but that he and Mrs House would discuss and agree the way forward on matters. Ultimately the freeholder would make the decisions and the managing agent will act upon them.

34. Mr Morgan stated he considered himself an experienced property manager who had a substantial portfolio of properties. He has managed Victorian/Georgian style properties since the 1970's. His view was that it was a question of being reasonable and fair in life and looking after the residents.

35. Mr Morgan confirmed he had not read all of the Applicants statement of case at Vol A tab 2 but was familiar with this. He was referred to paragraph 7 of the statement of case which referred to the removal of various beams in the roof over Mr White's flat. He was asked whether it was a fact that such beams had been removed. Mr Morgan said on the basis of the professional advice he had received he believed so.

36. Mr Morgan was referred to Vol A tab 10 being a specification prepared by Hockey & Dawson Consulting Engineers. Mr Morgan confirmed that included details as to the scope of the intended major works being

the subject of this application. He agreed it included repairs to Flat 4 but this was work that was required.

37. He was then referred to Vol A tab 11 being a Schedule of Works prepared by MacConvilles Surveying. This was a more detailed specification. Mr Morgan was asked why it took so long to produce but he was unable to remember why it had taken so long.

38. Mr Morgan was referred to Bundle B Vol 3 tab F pg 30. He confirmed this was a letter of joint instruction by solicitors for Mr Morgan and Mrs House and those acting for Mrs Bancroft-Hunt appointing Mr Howard of Hockey & Dawson to prepare a single joint expert report.

39. Mr Morgan was taken to Bundle B Volume 3 tab F pg 17 being a defence and counterclaim filed on behalf of Mrs Bancroft-Hunt. Mr Morgan was referred to page 20 and the "particulars of disrepair". He confirmed that this was the disrepair as alleged by Mrs Bancroft-Hunt. Mr Morgan was referred to the reply filed on his behalf at Bundle B Volume 3 tabF pg 26 para 14. This was an admission that works had been undertaken to Flat 6.

40. Mr Morgan confirmed that the previous litigation with Mrs Bancroft-Hunt had been settled and the settlement was confidential. He did not believe it was relevant to this dispute.

41. Mr Morgan was referred again to the MacConvilles specification at Bundle A tab 11 pg 223. He believed there still may be ways of doing the work in a less expensive way. The specification had adopted the Hockley and Dawson report into the specification.

42. Mr Morgan was not entirely sure how long the works would take. On the current specification if the roof had to be removed there would be very many factors. He thought three months was a reasonable estimate. He confirmed he still intended to use Toby Rollestone as the contract administrator.

43. Mr Morgan confirmed he relied on the professional advice he received. In particular he confirmed he relied on the information provided by Mr Howard of Hockley & Dawson and also Toby Rollestone.

44. He confirmed that he calculated the interim charge by taking the total estimated figure and applying the appropriate percentage.

45. Mr Morgan was unable to confirm without his records whether the building had been decorated every five years as required by the lease.

46. He recalled that in respect of the last major works consultation began in 2007 and the works were undertaken in 2010. He stated that various leaseholders felt that these works were not completed properly. The delays in the works were not the freeholders fault. Issues arose

between Mr White and Mrs Bancroft-Hunt. Mr Clare was involved in this.

47. Mr Morgan explained what works were undertaken in 2010. He explained that the original contractor went into liquidation and so further contractors had to be involved.

48. Mr Morgan stated he relied on the various reports from experts he had seen. He invested a lot of time in the matter. He calculated the percentage he charged to Mr White on the basis he felt 70% of the costs of the works was a fair percentage given the advice from the various experts that works were required due to alterations to Mr White's flat.

49. Mr Morgan was asked as to why Morgan Rowland & Co did not respond to the letter from Mr White's solicitors dated 10 April 2015 (B1tabB pg239) before applying to the tribunal. He explained that he could not answer this. He explained it was his sister, Mrs House, would deal with this type of matter as she had experience of the tribunal. He is not experienced in litigation and leaves that side of things to Mrs House. He does not know why she did not respond to the letter.

50. Mr Morgan was asked about the guttering and how often he checked the same. He confirmed that generally, weather permitting, he would check every three months or so. This has been his policy for the past 3 or 4 years. The list of works undertaken by the managing agents in the reply found at A tab 6 pg 76 is not exhaustive but an indication of the type of things they do. It did not include what he would consider insignificant matters and he regularly attends the property personally.

51. At this point it being 16.45pm the tribunal adjourned until the following morning.

52. At the start of the following day various matters were discussed:

- Mr Isaac conceded that no valid demands had been issued.
- In respect of Section 20 consultation for the major works relating to the roof Mr Bowker, whilst not satisfied it was properly undertaken was not seeking to challenge this. Mrs Fitch Hutton took the view it had not been properly undertaken and this was not acceptable. Mrs Bancroft-Hunt was not accepting that a proper consultation exercise had been undertaken.
- In respect of what amounts were reasonable Mr Bowker contends nothing is due but if anything is due it ought to be 1/7th only of £13,554. Mrs Fitch Hutton and Mrs Bancroft-Hunt both contend nothing should be paid by them

53. It was agreed that each party would have not more than 30 minutes for cross examining each expert.

54. Mrs Fitch Hutton then cross examined Mr Morgan.

55. He was asked why he did not enter Flat 6 to inspect when question of alterations first raised? Mr Morgan did not accept it was realistic for them to inspect. If you see something you investigate.

56. He again reiterated he had inspected the roof and gutters regularly over the past 4 or 5 years. He accepted prior to this the roof was not inspected as regularly. Mr Morgan forcefully stated that despite what anyone may think he did care about the building.

57. Mr Morgan reminded Mrs Fitch Hutton that prior to her purchase of her flat he spent over two hours with her explaining some of the background and issues. He did not consider the building was neglected and he had explained to her what major works were intended. Given the age and construction of the building there are inherently substantial maintenance issues.

58. Mrs Bancroft-Hunt cross examined Mr Morgan.

59. Mr Morgan was asked why all the works in the specification, including the works to Mrs Bancroft-Hunt's flat, were to be done at the same time. He explained it made sense to do all the works at the same time. The Flat 4 works will not be charged to the leaseholders unless they relate to the structure above.

60. Mr Issac raised whether the tribunal wanted wished to "hot tub" the experts being a process whereby all experts give their evidence concurrently. The tribunal determined that it would deal with each expert in turn.

61. Mr Issac then looked to call Mr Geoff Shoebridge as his expert. No report had been filed by Mr Shoebridge.

62. The tribunal raised concerns over Mr Shoebridge attending to give expert evidence given there was no report within the bundles prepared by him. This was contrary to the directions. Supposedly he was going to speak to the Bellamy White Partnership reports prepared by others and included in the bundles of evidence.

63. Mr Bowker suggest this was more evidence that the Applicants case was a shambles which he suggested summed up the case. He invited the tribunal not to accept evidence from Mr Shoebridge.

64. Mrs Fitch Hutton saw he had signed the minutes of the experts meeting at which he had attended. Mrs Bancroft-Hunt wanted to question him.

65. The tribunal adjourned to consider whether to allow Mr Shoebridge to give evidence given he had not filed an experts report in accordance with the directions.

66. The valuer member of the tribunal questioned Mr Shoebridge as to whether he understood his duty to the tribunal as an expert. He answered that he did. Mr Shoebridge confirmed he was happy to give a declaration that the Bellamy Wallace Partnership dated March 2007 and found at Bundle A tab 9 was honest and true in his expert opinion and he had read the same. He confirmed Mr Wallace had attended the experts meeting but was not present at court as supposedly it was intended moving forward he would deal with this matter hence he was attending to give expert evidence. As a result the tribunal with some reluctance agreed to hear his evidence.

67. Mr Bowker then cross examined Mr Shoebridge.

68. Mr Paice is no longer employed by Bellamy Wallace Partnership and he does not know him. He has been employed by the firm for about the past two years.

69. He was referred to Bundle B Volume 1 tab B pg 145 being a Bellamy Wallace Partnership report dated 15 May 2006. He confirmed he was happy to adopt this report also as his own.

70. Mr Shoebridge stated that whilst it was difficult to tell exactly it appears that some structure had been removed. He was referred to pg 155 and paragraph 2 of the report and confirmed that set out what he was happy to adopt as his opinion.

71. He confirmed he had not met or discussed matters with Mr Paice.

72. With regards to Mr Howards report he confirmed he had met him at the expert meeting. He indicated he believed he had been asked to represent those views and whilst he would be able to answer questions they were not necessarily his opinions. Mr Shoebridge was asked if he wanted to adopt Mr Howards report (being the Hockey & Dawson report prepared following previous separate litigation) but indicated he was not as familiar with this but happy to answer questions. He confirmed he had seen it before but had no involvement or input in the same.

73. He explained that Mr Howard is retiring and it is intended that BWP would take over and in particular Mr Shoebridge. He explained he was not asked to prepare a report.

74. He was directed to the minutes of the experts meeting found at Vol A tab 14. He confirmed that he believed he had signed the same on the Friday before the hearing. He confirmed that paragraph 4.03 reflected what he believed. This was an older building and you tend to get more movement. Timber is prone to movement.

75. Mr Shoebridge was referred to 4.03.3(v) of the minutes which set out the position of Mr Pole (the expert for Mr White). He agreed to a certain extent with Mr Pole's opinion. There was no cracking but he

believed there was a change of use of the area in the roof space of Flat 6. He believed the roof had reached an equilibrium and believed the floor has greater movement. In his opinion the roof required strengthening works to be undertaken within Flat 6.

76. Mrs Fitch Hutton then cross examined.

77. She referred Mr Shoebridge to paragraph 4.03.3 (xi) of the minutes and a reference to "poor detailing". Mr Shoebridge explained in saying this no one was thinking about poor management simply applying a term as to the design and construction of this area.

78. Next she referred to Bundle B Volume 3 tab D pg 17 being a letter from Rentokil dated 15 July 1981. He confirmed he had not seen this before. He confirmed he had not seen all the woodwork to which this referred as he assumed this was covered which he inspected. He had seen some evidence of repairs. There was only one diagonal beam.

79. Mr Shoebridge confirmed that he had seen a collar cut. He was not aware of any photos showing the timbers.

80. Mr Isaac then asked a number of brief questions in reply.

81. Mr Shoebridge stated that in his opinion the floor in flat 6 needs strengthening to prevent movement due to alterations. He believes the works can be undertaken within Flat 6.

82. Mr Shoebridge confirmed he had no input in the costing of the works.

83. Mr Bowker then called Mr Pole.

84. Mr Pole confirmed that he had been in practice as a structural engineer for about 30 years working mainly in connection with listed buildings and refurbished period buildings predominantly residential.

85. Mr Pole confirmed that his letter dated 11th August 2015 and in Bundle A tab 12 was his report and he gave an expert declaration in respect of the letter confirming that this represented his expert opinion and that he understood his duty to the tribunal. He further confirmed he had signed the minute of the joint meeting fund at Bundle A tab 14.

86. Mr Isaac then looked to cross examine.

87. Mr Pole confirmed that when making his inspection and initial report he did not have the BWP reports. He explained his preference is not to have other reports but to prepare his on his own view. He did accept he was asked to comment upon certain documents which included the Hockley and Dawson drawing. That was all he could really recall save that he met with Mr White prior to the inspection.

88. He had read some of the papers by background but did not comment on other expert reports.

89. He confirmed that prior to the joint meeting he had read the BWP report at B1 tab B pg 151. He was referred to page 161 being a drawing forming part of that report. He described the "cat flaps" which had been cut in to the cupboards on either side to allow the experts to view the timbers.

90. He had no knowledge as to whether there had been posts which had been removed as suggested by BWP at pg 153 of the report. His view was it would depend upon what other beams existed under the floor although he accepted that possible purlins and posts had been removed. On the balance of probabilities collars had been removed.

91. His opinion was if props had been removed they would not weaken the roof as this does not cause a new load but simply redistributes the existing load. Old buildings are not engineered as such and so you have to form an "engineering judgement". The building was old and he found no evidence of recent "distress". His view was that there was no need for structural works unless and until "distress" was shown. As an engineer you need to make a pragmatic judgement. In theoretical terms you may do works but in the real world would not be reasonable to say it should be done.

92. The reference to "poor detailing" in the minutes was not really an engineers comment but a point Mr Rollestone made.

93. In respect of his not supporting comments in the joint minute with regards to snow load this was his exercising his engineering judgement. The alteration had been around for a long time without any problems so works were not required.

94. In respect of paragraph 5.03 of the minutes he explained that a suggestion had been made that the ceilings of flat 4 may have a fireline board added. His view was that this would double the weight and was not a common thing to do.

95. Mrs Fitch Hutton then questioned Mr Pole after the luncheon adjournment.

96. Mr Pole confirmed that it would always be better to have everything opened up if you can. He confirmed he was able to see the timbers via the cat flaps. In his opinion the beams are more than three times stronger than the Hockey & Dawson report seems to indicate having undertaken rough calculation from what he saw.

97. He clarified that in his opinion the structure which people think had been removed in fact did not support the building per se but kept the two elevations of the pitched roof apart and braced. Whilst this will

have reduced the roofs capability in his opinion there is sufficient reserve within the structure to not cause undue stress.

98. He stands by his advice. In his opinion the structural aspects are not required.

99. Mrs Bancroft-Hunt then cross examined Mr Pole.

100. Mr Pole confirmed he measured the dimensions of certain timbers in the roof space. He confirmed he had not previously seen the Maurice Management letter. He confirmed that the letter included things he would expect. His view was given the shape of the roof space being so narrow you would not use normal loadings as the space was so confined.

101. He confirmed he did not agree with the need for structural works to deal with "snow load". He accepted further exploratory work may be useful but in his opinion the timbers were of the buildings time. He suspected there were many different structures making up the building.

102. Mrs Fitch Hutton for the Respondents, other than Mr White and Mrs Bancroft-Hunt then called Mr Wardle.

103. He confirmed that his report at Volume A tab 13 and the minutes of the experts meeting were true and accurate.

104. He explained initially the letter was prepared to express his fears. He confirmed he agreed with replacing the parapet. He had gone up a ladder to view this. He was satisfied the gutter was in good condition.

105. He confirmed that with regards to the missing timbers he expected this to act as a truss and not a beam. He did not believe it acted as a truss and he was therefore less worried that the collar was cut. He confirmed he agreed with Mr Pole. His view had changed at the experts meeting given what he had seen.

106. It was clear from the timbers that there was a history of changes to the roof space. The purlins were smoothed and painted and this seems very old. Looking into the roof space you can see floorboards towards the main house in the cupboard area. As a result of all he saw he does not believe roof strengthening is necessary.

107. When cross examined by Mrs Bancroft-Hunt he confirmed that in his opinion the roof structure is fit for purpose. Also the ceiling of Flat 4 is independent of Flat 6's floor. The floor of Flat 6 has its own independent timbers and the floor and ceiling are on separate levels.

108. As to the defects in Mrs Bancroft-Hunts flat these appear to be where partition walls connect to the ceiling and may be down to defects when fitted.

109. Mr Bowker then called Mr White.

110. Mr White confirmed his name, address and occupation and confirmed that the contents of his statement at Bundle A tab 7 was true.

111. Mr Issac cross examined Mr White.

112. Mr White said he had always accepted he should pay 1/7th of the cost of service charge works. Mr White stated he thought he had entered into a binding agreement over the works some time ago although he did not think any works were now required.

113. Mr White stated he had made no alterations to the flat during his ownership.

114. Mrs Fitch Hutton did not ask any questions.

115. Mrs Bancroft-Hunt then cross examined Mr White.

116. Mr White felt that we should rely on the experts as to what may be required. It was not for him to determine.

117. Mrs Fitch Hutton then gave evidence. She confirmed that the statement at Bundle A tab 4 in so far as it related to her was true.

118. She confirmed she had lived in her flat for nearly two years and information was from what she had been told or documents she had read. She accepted she had been told at a meeting about the consultation notices.

119. Neither Mr Bowker nor Mrs Bancroft-Hunt asked her any questions.

120. Mrs Bunn then also confirmed that the Respondents statement at Bundle A tab 4 was true in so far as it related to her.

121. She confirmed she had recently stepped down as an officer of the residents association. She commented that in respect of the garden wall she was happy with the standard just not the way the freeholder went about this.

122. Again neither Mr Bowker nor Mrs Bancroft-Hunt asked any questions.

123. Mrs Hill then confirmed the statement at Bundle A tab 4 was true in so far as related to her. She confirmed that her two sons are the

registered proprietors but she lives in the flat and they have authorised her to give the statement.

124. Mrs Hill on cross examination by Mr Issac accepted that the freeholders had taken professional advice and were acting upon it but she remained concerned that they still had not properly finished the previous works from 2010.

125. Mr Gay also confirmed the statement was true in so far as it related to him.

126. Mrs Bancroft-Hunt then gave evidence and confirmed her statement at Bundle A tab 5 was true.

127. She was cross examined by Mr Bowker.

128. Mrs Bancroft-Hunt confirmed she had to pay 1/7th under her lease. She confirmed she signed a confidentiality clause and neither she nor the Applicants (as they confirmed) would waive this requirement.

129. Mrs Fitch Hutton cross examined Mrs Bancroft Hunt.

130. She stated there had been ongoing problems for over a decade. No one seemed prepared to deal with it properly. She feels works are required.

131. This was the end of the evidence given by the parties.

132. Mr Isaac on behalf of the Applicants indicated that the Applicants are content for the tribunal to determine the mater. They simply want a determination so that they can move forward.

133. The tribunal then adjourned briefly for the unrepresented respondents to consider what they wished to say to the tribunal and to discuss between themselves.

134. Mr Bowker for Mr White stated that it was now conceded his client should only pay 1/7th of any cost found to be payable.

135. He agrees that interim payments on account may be made. He invited the tribunal to draw its own inferences in respect of the litigation between the Applicants and Mrs Bancroft-Hunt.

136. Mr Bowker referred to Bundle A tab 7 pg 98. He states that the terms of this letter show there was a concluded agreement for the interim amount to be charged. He relies upon the terms of the letter.

137. Mr Bowker referred the tribunal to various authorities including Dilapidations The Modern Law and Practice by Dowding and Reynolds Fifth Edition, Service Charges and Management Tanfield Chambers 3rd

Edition and Johnson v. Gore Wood & Co (a firm) [2002] 2AC. He provided the tribunal with a skeleton argument and bundle of authorities.

138. Mr Bowker invites the tribunal to focus on Mr Poles evidence. In particular the fact he would not report the need for structural works to a mortgage lender. Mr Wardle also supported Mr Pole's evidence that the roof was fit for purpose. These two experts were in agreement that there was no structural movement. There is no evidence of ongoing damp into Mrs Bancroft-Hunts flat and Mr Morgan was not challenged on his now routine of checking the gutters.

139. He submitted it was not good enough for the Applicant to come unprepared. Mr Wallace was not available to be challenged as to his findings. The same was true of Mr Howard. Mr Rollestone who attended the expert meeting and seemed to have prepared the specification was not tendered to give evidence. It was not clear why Mr Rollestone (who had originally acted for Mr White) had apparently changed his mind. He referred to various letters included in the bundles (see B3 tab D pgs 135 and 180 for example) from Mr Paice which appeared to show his view was contaminated and appeared contradictory.

140. Mr Bowker expressed that he felt sorry for Morgan Rowland who rely on experts but the evidence does not hold water. What they say is accepted as fact despite Mr Pole and Mr Wardle disagreeing.

141. Mr Bowker suggests the works should have been done in 2010 and the costs of the works should be reduced. He contends that his clients should pay:

- Nothing or
- 1/7th of £13,554 being the amount attributable to the leaseholders as set out in schedule at B1 tab B pgs 221 to 226 inclusive

142. Mr Bowker invited the tribunal to make an order under Section 20C relying on the various points he had made already.

143. Mrs Fitch Hutton submitted that the building being owned and managed effectively by the same people creates problems and she would invite them to give up managing the building. She looked to support and rely upon the arguments of Mr Bowker. The choice of experts by the Applicant was poor.

144. She agreed 1/7th was the correct percentage. This should not however relate to works to individual flats including where alterations are made. She believes that a discount should be made for historical neglect. She says the Applicant should have known how to manage this process.

145. Mrs Bancroft-Hunt submitted the process was not properly undertaken.

146. Mr Isaac indicated his clients would not look to erect scaffold simply for the parapet works. Further he suggested that no evidence of the effect of historical neglect had been put forward.

147. His client took professional advice and relied upon it. The Applicant was stuck between the demands of the various leaseholders. It is for these reasons the application was made so that his client can understand what works are required.

148. In respect of Section 20C his client does not intend to seek to recover the costs as a service charge.

149. In respect of the second application for dispensation from the consultation requirements in respect of works to the garden wall Mr Bowker indicated his client positively supports the application. Mrs Fitch Hutton in so far as those other Respondents present (being all of those listed save Mr and Mrs Reading who had not attended and Mrs Hill who had left) having had the effect of the Supreme Court authority in Daejan v. Benson [2013] UKSC 14 explained indicated they did not object to dispensation.

150. The tribunal therefore directed:

a. The application for dispensation would be dealt with on the papers before the tribunal.
b. Mr and Mrs Reading and Mrs Hill do be at liberty to file any submissions by 4pm on 30th October 2015.
c. The Applicant be at liberty to file a reply by 4pm on 6th November 2015
d. The tribunal will then determine the matter on the papers.

DETERMINATION

151. The tribunal notes and records the following concessions made by the Applicant:

- Each leaseholder is responsible for 1/7th of all service charge expenditure.
- The demands issued for Interim payment in respect of the major roof works and being the subject of this application are invalid.

152. The tribunal heard much evidence and has read many hundreds of pages of documents including in excess of six expert's opinions! Three experts gave oral evidence.

153. The tribunal has considered all the evidence. The tribunal was particularly concerned over that evidence given by Mr Shoebridge. He attended as an expert yet the tribunal's impression was he had little understanding of his duties to the tribunal. He had not prepared a report and his preparation in considering reports, inspecting the subject premises and the like seemed extremely poor. He readily adopted a report, without any caveat being given, which was more than 7 years old. The tribunal finds this approach to be particularly cavalier and a demonstration of his failure to understand his duties and obligations to the tribunal.

154. For the above reasons the tribunal found his evidence of little weight.

155. Mr Pole for Mr White appeared to have properly considered matters. At certain points under cross examination by Mr Issac he appeared to be very fixed in his view but overall his evidence the tribunal found helpful and reliable.

156. Mr Wardle offered what the tribunal felt was the most independent assessment. He readily accepted that his initial view which was one of concern was not supported after he had conducted the view at the joint meeting. He very helpfully explained what he saw and most helpfully described the way the floor of flat 6 was not linked to the ceiling at flat 4.

157. For the above the tribunal prefers the evidence of Mr Wardle and Mr Pole that no structural works are required to the roof at this time. It was plain that works may have been undertaken to the roof of flat 6 to allow the corridor and narrow bedroom to be constructed in the eaves. What is clear is that any and all works were undertaken prior to Mr White's ownership of the flat and as to when no one can give a clear answer. Suffice to say that the current lay out has been in existence for over a decade.

158. It is worth highlighting none of the experts gave any real evidence in connection with arguments over historical neglect.

159. Mr Morgan gave his evidence in a calm manner although at times he was clearly upset by some of the allegations made against him and his fellow freeholders. What was apparent is Mr Morgan believes he is an experienced man of property. He wants to do his best for everyone but in a situation such as this when there was disharmony between the leaseholders the situation was clearly beyond his expertise. As he himself stated he wanted to do the best for everyone and the tribunal does not doubt that he cares. He did rely upon experts and their advice which has perhaps been less than helpful. A more decisive approach should have been adopted by the Applicant.

160. At this point we comment that given the directions issued it seems most unfortunate that neither Messrs Wallace or Howard attended to give any evidence given the reports submitted by them. No credible explanation was given and this failure, and the involvement of others such as Mr Shoebriedge clearly did not assist. We also comment that Mr Rollestone seems to have prepared a specification relied upon. He seems to have acted for Mr White in the past and then "jumped" ship and now acts for the freeholders. Again there was no statement from him and he did not attend to give evidence. Having heard of his involvement throughout he seems frankly to have helped no one.

161. Mr White was very particular in his evidence and sure of himself. He was clear throughout that he would pay his share but felt the mistakes of others were foisted upon him.

162. Mrs Bancroft-Hunt was a less satisfactory witness. She seems to remain dissatisfied with matters following on from her litigation with the Applicants. Neither she nor the Applicants would disclose the substance of the settlement. All the tribunal know is that Mrs Bancroft-Hunt ran a counterclaim for disrepair to her flat which was subject to a full and final settlement. She cannot therefore use these proceedings to re-open and litigate issues in connection with her flat again which seemed to be what she was seeking.

163. The other Respondents gave limited evidence but were truthful and clear although of little real assistance.

164. Having concluded that no structural works are required it follows that the amount originally sought by the Applicants cannot be a reasonable sum to have claimed, particularly given their concession that the demands were invalid. The tribunal reminds the parties that it is not its function to say what works should be undertaken. Our decision in this matter is based on the evidence we heard and the weight we attach to the particular witnesses.

165. Having regard to the schedule at Bundle B vol 1 tab B pages 121 to 126 inclusive it seems that a sum of approximately £20,000 exclusive of VAT and professional fees would be a reasonable sum. When taking into account VAT on the cost of works, professional fees and managing agents costs this tribunal determines that a reasonable interim charge would be a total for the block of £30,000 for such works as are required divided equally between each leaseholder. If therefore a valid demand for £4285 was issued to each leaseholder this would represent a reasonable amount payable by interim charges for the major works as proposed in the current specification as amended to take account of this tribunals finding that no structural works to the roof above Flat 6 are required on the evidence currently available.

166. In respect of the argument advanced by Mr White that he had in some way reached a binding agreement with the Applicants the tribunal does not accept this. The letter referred to does not amount to

any form of settlement simply an acknowledgement that Mr White had paid a sum of money for the interim works and of course it is incumbent upon the Applicants to give credit for this sum.

167. In respect of the major works consultation sadly the tribunal finds that this was not strictly conducted in accordance with the rules. The notices do not appear to have given the appropriate lengths of time for responses to be received and it would appear that the Applicant had prejudged certain matters and went off to obtain quotes before the time for observations had elapsed. It is with regret we make this determination since in so doing there is nothing to stop the Applicants making demands for interim sums and given our findings on the works they may wish to look again at the scope and extent and as to how and when any works may be undertaken.

168. Submissions were made that deductions should be made from the amounts payable or set off due to historical neglect. The tribunal declines to do so. We accept we are entitled to but the evidence as we have found is that no structural works are required. The work required are relatively minor and plainly of what may be said to be cyclical repair and so no deduction would be proportionate. Whilst it has taken a long time to perhaps reach this point no genuine evidence of loss or the like was put forward.

169. In respect of the application for dispensation of the works undertaken by the Applicant to the front wall in early 2015 the tribunal considered the bundle of documents filed in advance of the hearing. The tribunal subsequently received letters from Mr and Mrs Reading and Mrs Hill and also Mrs Bunn.

170. The resident's major objection seems to be that the freeholder may have undertaken works some time ago and if they had the cost may have been less. Everyone seems to accept that works to the section of wall were required and in the main that they have been carried out to a good standard. The tribunal reminds itself (as it advised the parties) that it is bound by the Supreme Court decision in Daejan v. Benson. No party has suggested there is any real prejudice to them and it is clear works were required. The tribunal is satisfied that it should grant dispensation from the requirements to have consulted on the basis that given the communications from the local authority works were urgently required.

171. In determining the above the tribunal reminds everyone that it has not made any determination as to the reasonableness of the costs and payability of the costs of the repairs to the wall. That was not a matters for this tribunal to adjudicate upon.

172. The tribunal notes that Mr Issac for the Applicant states the Applicant did not intend to recover the costs of these applications as a service charge. Given the Respondents have sought a Section 20C order it is this tribunals practice to make such an order in these

circumstance to avoid any issues arising and so we make an Order that the costs of these proceedings may not be recovered as a service charge expense from any of the Respondents.

The tribunal makes the following orders:

1. **The Applicant is at liberty to issue interim demands but as yet no valid demands have been issued.**
2. **The tribunal determines that £30,000 in total would amount to a reasonable interim demand to be paid equally (i.e. 1/7th) by each Respondent.**
3. **The tribunal determines that the consultation currently undertaken in respect of the proposed major works to the roof was not properly undertaken.**
4. **The tribunal grants dispensation from the consultation requirements in respect of works to the perimeter garden wall of the Property.**
5. **The tribunal makes an order pursuant to Section 20C in respect of both applications.**

Judge D. R. Whitney

Appeals

1. 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.

2. 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.

3. 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.

4. 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.

PERSONS IN ATTENDANCE AT HEARING

Nicholas Isaac – counsel for freeholders
Robert Bowker – counsel for R6
Caroline House – freeholder
Paul Morgan – freeholder
Toby Rollestone – Building surveyor for freeholder
Geoff Shoebridge – expert for freeholder

John Wardle – Structural engineer F1-5 & 7
Sylvia Bancroft-Hunt – Flat 4
Paul Gay – Flat 7
Maureen Bunn – Flat 2
Annabella Fitch-Hutton – Flat 1
Mrs Hill – Flat 3

Piers White – Flat 6
Robert Bowker – counsel for R6
Amy Rogers – Solicitor for F6
Alice Paye – trainee solicitor
Simon Pole – expert F6

ANNEX A

Sections 27A, 19 and 20 of the Landlord and Tenant Act 1985

Section 27A Liability to pay service charges: jurisdiction

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

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount which is payable,

(d)the date at or by which it is payable, and

(e)the manner in which it is payable.

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

(3)An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a)the person by whom it would be payable,

(b)the person to whom it would be payable,

(c)the amount which would be payable,

(d)the date at or by which it would be payable, and

(e)the manner in which it would be payable.

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination— .

(a)in a particular manner, or .

(b)on particular evidence, .

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

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

19 Limitation of service charges: reasonableness. .

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

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

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

and the amount payable shall be limited accordingly.

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

20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

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(a)complied with in relation to the works or agreement, or

(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

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

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

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

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

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

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

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

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

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

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