



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

Case Reference : CHI/OOMS/LSC/2016/0075

Property : Elmfield North & West, 24 Millbrook Road East,
Southampton SO15 1JA

Applicant : St Sampsons Finance Limited (the landlord)

Representative : Ms Gail Drysdale of Napier Management Services

Respondents : Various lessees

Representative : Mr James Dennis

Type of Applications: Application for determination as to reasonableness
of service charges pursuant to Section 27A
Landlord and Tenant Act 1985

Tribunal Members : Judge P.J. Barber
Mr D Lintott FRICS Surveyor Member

Date of Hearing 13th April 2017 Court 4, Havant Justice Centre,
The Law Courts, Elmleigh Road,
Havant, Hampshire PO9 2AL

Date of Decision: 7th June 2017

DECISION

Decision

(1) The Tribunal determines in accordance with the provisions of Section 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that:

(a) in respect of the services charges for the service charge year ended 25th March 2016, only the sums claimed for Chair Hire (£65.00), Asbestos Training (£300.00), Cleaning Water Tanks (£1,076), HSE costs (£161.00) and the Asbestos Management & Survey (£3,267.00) are payable; in addition, the liability of each lessee in regard to the asbestos removal costs of £135,234.00, shall be limited to £250.00; and

(b) the budget for services charges for the year ended 25th March 2017 is reasonable.

(2) The Tribunal determines in accordance with the provisions of Section 20C of the 1985 Act that none of the Applicant landlord`s costs in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of future service charges payable by any of the lessees.

Reasons

INTRODUCTION

1. The application in this matter was made pursuant to Section 27A of the 1985 Act for determination of the reasonable service charges payable by the Respondents to the Applicant in the service charge years 2016 and 2017. Directions were issued in the matter on 25th August 2016 and again, following a case management hearing, on 10th November 2016. Whilst the Applicant had indicated that a paper determination of the matter would be acceptable, certain of the Respondent tenants requested an oral hearing.
2. It was agreed at the case management hearing held on 10th November 2016 that the only matters to be determined in respect of the two service charge years to which the dispute relates, are as follows:-

Year Ended 25th March 2016

Whether the expenditure as follows has been reasonably incurred and is of a reasonable amount:

Repairs & Maintenance

Chair hire £65.00

Asbestos training for contractors £300

Project management fee re shower unit/radiators £1,404

Temporary shower units £20,705

Temporary heaters / radiators £10,520

Clean water tanks £1,076

Major Works

Asbestos removal £135,234

Project management fees £8,880

HSE costs re asbestos £161

Legal & Professional Fees

Legal fees re lease dispute £7,632

Asbestos management & survey plan £3,267

Year Ended 25th March 2017

Whether the budgeted items as follows are likely to be reasonably incurred and the estimates of cost are reasonable:

Accountancy £800

Fire precautions £20,400

Planned major works £71,400

Parapet Roof £18,500

Repairs drains, downpipes £7,800

Repairs roof £10,000

Roof works contribution £10,000

3. The application indicated that the Property comprises a converted mansion originally built in the 1930s, consisting of 57 flats arranged over two wings, north and west, the basements of each wing forming car parks, and including a boiler room within the basement of the Link Block.
4. In broad terms the Applicant submitted in its statement of case dated 15th December 2016, that the work relating to removal of asbestos had been necessitated by an Improvement Notice served by the Health & Safety Executive (HSE), and that Section 20 consultation had taken place. In regard to the fire stopping work, the Applicant submitted that such work had been prompted by an Enforcement Notice, served by the Hampshire Fire & Rescue Service and that Section 20 consultation had again taken place.
5. The Respondents broadly submitted in their statement of case dated 5th February 2017, that maintenance charges had been at a high level in the preceding 15 years, that the Applicant had failed to comply with ongoing maintenance obligations and that as a result of historic neglect, the charges were higher than they should have been and were of an unreasonable amount. The Respondents provided itemised responses to the charges in dispute as referred to at paragraph 2 above, adding that the Applicant had declined to mediate, and also that the Respondents should be compensated for the Applicant's failure to meet its obligations.
6. In its reply to the Respondents' statement of case dated 24th February 2017, the Applicant broadly submitted that the Respondents had failed to understand their obligations under the leases and that in consequence, mediation was not suitable

and denying a failure to comply with obligations, referring to the work which had been carried out over the last 15 years. The Applicant added that consideration had been given to affordability of works, pointing to deferral of certain works not immediately required.

7. The Tribunal received a separate application from the Respondents dated 24th November 2016 seeking an order under Section 20C of the Landlord and Tenant Act 1985, that all or some of the landlord's costs in relation to these proceedings are not to be regarded as relevant costs to be taken into account in determining future service charges payable.

INSPECTION

8. The Tribunal carried out an inspection of the Property prior to the hearing in the presence of Mrs Drysdale, Ms Gates and Mr Hillsdon, all of Napier Management Services on behalf of the Applicant, and Mr Dennis of Flat 23 (West) for the Respondents, and also Mr Mercer of Flat 9 (West). The Property comprises two substantial 4 storey blocks, arranged in a V-shape, each block having a corridor connecting with a three storey "link house", not currently occupied, save for use of the basement as the boiler room from which all supplies of hot water and heating for the flats in the main blocks, are provided. The two main blocks are known respectively as Elmfield North and Elmfield West; each features brick elevations, with mock Tudor upper sections and ornamental stone cladding at lower levels, beneath partly pitched and tiled roofs, although the central areas of each main roof structure are flat; the peripheral pitched roof sections adjoin vertical sections of parapet walling. The buildings feature "Crittall" type metal windows; the cast iron downpipes were in a poor and rusting condition. The Property is set in grounds with tarmac driveways in poor condition leading to general parking areas, and reasonably well kept gardens around the blocks. There is a separate gravel parking area adjacent to the link house, which had been occupied at upper levels by commercial tenants until about 2012. Garage doors at basement level, at either end of each block, lead to basement parking not currently in use owing to the Fire Authority Enforcement Notices served in 2015. The Property was thought to have been constructed in the 1930s by Cunard, as serviced apartments for their officers and first class ship passengers, prior to sailing. The Tribunal inspected the boiler room in the basement of the link house; there are three orange coloured De Dietrich CF400 boilers and two silver hot water cylinders and also a number of apparently redundant tanks. The Tribunal also inspected one of the basement garage areas, currently unused save for two apparently abandoned cars; a number of vertical shafts lead from the ceiling of the garage areas up to the roof of each block; services including cables and pipes were located in these shafts.
9. The Tribunal inspected inside the entrance hall and stairwells of Elmfield North; these common areas were reasonably well decorated, with emulsion painted walls and woodstrip flooring, and linoleum laid to stair treads. Access was obtained to the roof of Elmfield North, via the staircase; the flat roofed sections are laid to lawn with a reasonably thick layer of turf. Sections of turf had recently been removed around the outer peripheral areas adjoining the vertical parapet walls and where some sealant works were visible at the junction of the vertical and horizontal surfaces. There are 8 timber shed type structures on each roof, constructed above the vertical shafts leading from the garage areas in the basements. The Tribunal noted the existence of wooden hatch doors located by

the front doors of many of the flats, which were originally intended for storage of linen and other items when the flats were originally built as serviced apartments, but which may now constitute a fire hazard. Some small amount of apparently dried out water staining was visible at the end of one of the top floor corridors.

THE LAW

10. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

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

- (a) the person 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 cost, 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.*

“Service Charges” are defined in Section 18 of the 1985 Act as follows

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, 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*

18(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.

18(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.*

REPRESENTATIONS

11. Mrs Drysdale of Napier Management Services, attended the hearing to represent the Applicant, accompanied by Ms Gates and Mr Hillsdon. Mr Dennis attended to represent the Respondent leaseholders, assisted by Mr Mercer. A number of leaseholders were also in attendance, being Jim Simpson (14 West), Philip & Julie Dargavell (22 West), Linda White (23 North), Jessica Brock (7 North), Claudia Grey (19 North), Charlotte & Thomas Scott (7 West), Mark Lovell (16 West) and Chloe Saunders (18).
12. At the outset, the Tribunal requested confirmation from the parties that the leases of the flats in the block are all in substantially similar form; Mrs Drysdale and Mr Dennis so confirmed.
13. The Tribunal invited the parties at the outset, to make their respective submissions, one by one, on each of the matters determined as being relevant at the case management hearing held on 10th November 2016, adding that each party should also conclude its submissions by addressing the Tribunal in regard to the Respondents' application under Section 20C of the 1985 Act.
14. For the Year Ended 25th March 2016

Chair Hire £65.00

Mrs Drysdale said that 40 chairs had been hired for a meeting of tenants with the managing agents in April 2015 held in one of the empty floors of the link house. Mr Dennis submitted that this had been an unnecessary cost, and that if the landlord had spoken about it with the lessees, the meeting could have been held in one of the flats as only about 20 people had attended, adding that the meeting had only lasted about two hours.

Asbestos training for contractors £300.00

Mrs Drysdale confirmed that this training had been provided for some of the contractors but she did not know exactly which contractors. Mr Dennis submitted that the landlord had been aware of the asbestos risk back in 2006 and that had the work been done sooner, there would have been no need in any event, for this training in 2015.

Project Management Fee re Shower Unit / Radiators £1,404.00

Mrs Drysdale said that this invoice related to Osmer Building (Hampshire) Limited and a copy was at Page 174 of the bundle; it related she said, to time spent in administering on-site installation of the shower units which were erected in the car parking areas and residents had had to be notified in advance. Mr Dennis said that this was in reality a part of the asbestos removal set of works, and that under the decision in *Philips v Francis*, it should have been consulted upon under Section 20, along with the other asbestos related works; he added that the delivery of the shower blocks had had to be rearranged. Mrs Drysdale said that such rearrangement had been due to lessees continuing to park on-site, despite being notified of the arrival of the shower blocks.

Temporary Shower Units £20,705.00

Mrs Drysdale referred to the invoices at Pages 175-178 and 181-186 in the bundle; she added that the landlord had an obligation under the leases to provide a supply of hot and cold water and heating. Mr Dennis submitted that the supplies of hot

and cold water to temporary shower blocks located in the car parks was not authorised as a service charge item under the leases, since the supply was not to "the Building" as defined in those leases. Mrs Drysdale admitted that the landlord was uncertain whether such cost was recoverable and did not dispute that this had not been a supply to "the Building", adding that Paris Smith LLP solicitors, had given further advice on the subject but she did not know what it was. Mr Dennis submitted that lessees having to go out into the cold outside the building to wash and take showers was a breach of the landlord's covenant for quiet enjoyment in clause 5(A) of the leases at Page 49 of the bundle; he added that the Respondents regarded this work as being again, part of the set of works for which the Applicant should have consulted.

Temporary Heaters / Radiators £10,520.00

Mrs Drysdale referred to the invoices at Pages 188-196 of the bundle. Mr Dennis said that the cost being £10,520.00 exceeded the level above which Section 20 consultation should have occurred. Mr Dennis added that had the work been done in the summer, this cost could have been avoided and the reason for the timing, was due to past neglect by the landlord in failing to deal with the asbestos, such that the work ended up having to be done in a rush. Mrs Drysdale said the work had had to be done quickly as a result of intervention by the HSE. Mr Dennis asked if any attempt had been made to discuss timing with the HSE and make representations as to partial deferral, allowing the work to be carried out in a more orderly fashion; Mrs Drysdale accepted there had been no such discussion. Mr Dennis said the cost could have been less had the lessees been given the option to provide their own heaters, and also that the hired heaters had ended up being on site for much longer than they were actually needed; Mrs Drysdale had no comment in reply.

Clean Water Tanks £1,076.00

Mr Dennis confirmed that this item is now agreed.

Asbestos Removal £135,234.00

Mrs Drysdale referred to the invoices at Pages 198-199 of the bundle and to the consultation notices at Pages 114-127, but accepted that details of the lessees' written observations in response to the consultation had not been included in the bundle. Mr Dennis said that the first instalment of £60,000 had been paid on 2nd December 2015 which he said, was clearly before the landlord had provided the statement of estimates on 4th March 2016 and that the consultation was therefore flawed. Mrs Drysdale accepted that the landlord had been aware that the consultation process had not been finished before the payment of £60,000 had been made. Mrs Drysdale further accepted that whilst the estimates were £30,000 and £93,293.95 (as at Pages 118 and 125 of the bundle), the actual cost exceeded the sum of those two amounts by more than £11,000 as a result she said, of additional facilities and larger generators being needed, and she accepted that the difference had not been consulted upon. Mr Dennis said that not only had work been done prior to completion of consultation, but also the cost exceeded the estimates and in addition the work to the Link House was he said, not part of "the Building" as defined in the leases and to which he said service charges were not applicable. Mrs Drysdale admitted that the boiler room is in a separate title, but referred to clause 5 of the leases on Page 62 of the bundle to justify the boiler room works. Mr Dennis repeated that the work had only been

necessary at all, due to earlier failures and he questioned whether the works to the garage basement areas were properly recoverable under the service charges. Mrs Drysdale said "the Retained Property" as defined in the leases, was that which was not let to any other person and that whilst lessees may have no access to the boiler room or garages, like the roof area, they were still obliged to contribute to costs.

Project Management fees £8,880.00

Mrs Drysdale referred to Pages 200-202 in the bundle, adding that these items related to contract administration of asbestos works, respectively in the boiler room, the garages and the vertical shafts. Mr Dennis said that such costs should have been within the Section 20 consultation as part of the set of works relating to asbestos and that the only reason that project management was needed was the magnitude of works needed, as a result of earlier neglect.

HSE Costs re Asbestos £161.00

Mrs Drysdale referred to the invoice at Page 203 of the bundle being the correspondence relating to the HSE intervention, and which costs she said were correctly included in the service charges as a result of clauses 7(6) and 8 of the lease at Page 63 of the bundle. Mr Dennis repeated that this cost had only arisen as a result of the landlord's previous failures to deal with the asbestos.

Legal fees re Lease Dispute £7,632.00

Mrs Drysdale referred to Pages 206-218 of the bundle, being invoices issued by Paris Smith LLP solicitors for professional charges; however she was unable to say what the charges actually related to in detail. Mr Dennis said that if these invoices do relate at all, they should not properly be re-charged to leaseholders, given he said that they had tried to reach a compromise with the landlord, unsuccessfully throughout.

Asbestos Management & Survey Plan £3,267.00

Mrs Drysdale referred to the invoices at Pages 204-205 of the bundle, saying that the later invoice had been for updating work on the plan. Mr Dennis submitted that there should have been a plan back in 2006 and the cost had simply ended up being inflated owing to the landlord's delays. Mrs Drysdale referred to the Asbestos Report at Page 646 of the bundle, but accepted nevertheless that no copy of the report actually being referred to under this heading, was included in the bundle.

15. For the Year Ended 25th March 2017 (Budget)

Accountancy £800.00

Mr Dennis confirmed that this item is now agreed.

Fire Precautions £20,400.00

Mrs Drysdale said that the main fire alarm is now installed, but it is not linked to individual flats; she added that the £20,400 cost related to provision of smoke detectors and sounders, the invoice being at Page 142 of the bundle, and she also referred to Section 20 consultation documents at Pages 146 and 149. Mr Dennis said the estimates refer to a sum of £12,500 plus VAT, and it was unclear how the balance of the £20,400 is made up; he added that if a proportion relates to the

basement garage and boiler room areas, then that is not rechargeable to lessees under the leases.

Planned Major Works £71,400.00

Mrs Drysdale said that this item is for the intended fire stopping works, as required by the Fire Officer and she referred to the estimates at Pages 768-771 of the bundle and the Section 20 Notice of Intention at Page 169. Mrs Drysdale added that the estimate at Page 770, being £324,295.12 is in fact considerably higher than the budget amount. Mr Dennis said there was no detail provided as to the budget figure of £71,400, and added that such a huge item could have been negotiated upon with the Fire Officer, with a view to spreading the cost over more than one year.

Parapet / Flat Roof £18,500.00

Mrs Drysdale said this item is for a roof inspection and required maintenance works to the roof mounted water tanks; however no documents were in the bundle for this. Mr Dennis submitted that the costs were higher as a result of the building being allowed to fall into disrepair.

Repairs Drains / Downpipes £7,800.00

Mrs Drysdale said that there is a quarterly contract with ACE Plumbers to jet wash downpipes and carry out other drainage clearance work as needed, but that no earlier records had been included in the bundle to demonstrate this arrangement. Mr Dennis questioned the amount and said there had been reference to a cost of only £1,000 per quarter for such work.

Repairs Roof £10,000.00

Mrs Drysdale said that this is a provision only, on a contingency basis for a one year period. Mr Dennis said that the scope of work was unclear.

Roof Works contribution £10,000

Mrs Drysdale said this proposed cost relates to the consultation procedure to be followed for replacing the roof of one of the blocks, although it was envisaged that both roofs will in due course need replacing; she accepted however that the budget period is now ended and the work has not been carried out.

16. Section 20C Application

Mrs Drysdale specifically advised the Tribunal that the Applicant landlord will not seek to recover any of the costs of these proceedings from any of the leaseholders by way of service charges. Mr Dennis accepted that position.

17. In his closing, Mr Dennis submitted that huge increases in service charges had occurred or were being proposed for the two disputed years; he said that Elmfield already has high service charges and that little effort had been made to contain costs, nor any factoring in of the ability of lessees to pay, with work not always being undertaken by the lowest bidder. Mr Dennis said that costs are out of control and some items of expenditure cannot be properly reconciled; he added that in the lessees' view the Link House is separate, and costs relating to it are not properly rechargeable under the leases. Mr Dennis said the landlord had been aware of defects over a 10 year period but had allowed deterioration to continue, such that the costs now arising were far more than they should have been, and with works scheduled at a poor time of year, with lessees suffering the

inconvenience of having to shower in temporary outside blocks. Mr Dennis further submitted that the landlord had ignored fire & gas safety issues, as well as water hygiene requirements and asbestos risks.

18. Mrs Drysdale made no comment on the history but said that the Applicant had considered affordability and had not pursued service charge arrears over the last 2 years and will not pursue them until a determination is made. Mrs Drysdale added that the landlord is not sure that all the items are service charge recoverable.
19. As a result of the submissions, the Tribunal indicated concern regarding the lack of clarity as to how the asbestos costs are broken down as between the Link House, the basement garages and vertical shafts, and the main blocks. Accordingly it directed the parties that it requires the Applicant to provide a breakdown of such details, and also to make it clear as to which provisions in the leases entitle each of such amounts to be re-charged; the Tribunal required that the Applicant should provide such information in writing with a copy to the Respondents by 28th April 2017. The Tribunal further directed that the Respondent is to submit any written representations it may wish to make in response, to the Tribunal with a copy to the applicant, by 12th May 2017.

20. Further Written Representations

By a statement dated 28th April 2017, Mrs Drysdale submitted in broad terms that the Applicant relies, for the costs associated with the asbestos and fire stopping works, primarily upon Clause 7(a) to the 4th Schedule of the Lease, but also clauses 6 and 8 to the 4th Schedule. Mrs Drysdale also appended a copy of a document dated 27th April 2017 from Merryhill Envirotec Limited, providing a breakdown as to the percentages of works carried out within various different locations at the property.

21. By a statement dated 9th May 2017, Mr Dennis submitted in broad terms that the Respondents do not accept that the additional information provided by Mrs Drysdale supported the Applicant's contention that it is entitled to recover the costs of the asbestos and fire stopping works from the Respondents. Mr Dennis submitted that clause 7 to the 4th Schedule of the leases, refers to recovery of legal and other costs in general running and management, not substantive costs relating to asbestos removal and fire stopping. In regard to clause 8 of the 4th Schedule, Mr Dennis submitted that such clause refers to general administration and management, not maintenance costs. Similarly Mr Dennis submitted that clause 6 of the 4th Schedule relates only to repair and improvement of "the Building" and must exclude the Link House. Mr Dennis further submitted that the Section 20 consultation procedure in regard to the asbestos works had not been properly completed.

CONSIDERATION

22. The Tribunal have taken into account all the submissions as well as the case papers provided by the parties and contained in the bundle.

23. Year Ended 25th March 2016 (Asbestos Works)

Asbestos Removal

Mrs Drysdale indicated in her additional statement dated 28th April 2017, that the Applicant wishes to rely upon one or more of clauses 7(a); 8 and 6 to the 4th Schedule in the leases, in connection with the Applicant's submission that it is entitled to re-charge via service charges, the costs associated with the asbestos and fire stopping works:-

Clause 7(a) - 4th Schedule

7. all legal and other costs incurred by the Lessor other than those relating to the recovery of ground rent (as distinct from Maintenance Contribution) (a) in the running and management of the Building and in the enforcement of the covenants conditions and regulations relating thereto contained in the leases granted of the flats in the Building including the auditing of the accounts of the Maintenance Year and (b).....

The Tribunal accepts that the reference in the above clause to "other costs" is broad; however the clause provides that such "other costs" are those incurred by the Lessor in the running and management of "the Building". The term "the Building" is defined in the leases at clause 1(F) to mean "the main and ancillary buildings standing on the Lessor's Property but excluding the land and buildings edged green on Plan Number 2". The green edging on Plan Number 2 clearly excludes the Link House and an area of driveway and parking, adjacent to it. Accordingly the Tribunal considers that the reference in clause 7(a) to Schedule 4 of the leases, to "other costs ... in the running and management of the Building" cannot include other costs, such as asbestos removal, relating to the Link House; the Tribunal considers that this clause relates to costs of a legal and/or enforcement nature, not substantive works relating to asbestos removal.

Clause 8 - 4th Schedule

"8. all costs incurred by the Lessor (not hereinbefore specifically referred to) relating or incidental to the general administration and management of the Lessor's Property including any interest paid on any money borrowed by the Lessor to defray any expenses incurred by it."

The Tribunal accepts that the reference to "all costs incurred by the Lessor" in the above clause is a broad one; however it does not consider that the carrying out of works relating to removal of asbestos, may be considered as "relating or incidental to the general administration and management of the Lessor's Property"; by definition, such term envisages general and management expenses, being ancillary in nature, rather than the costs of works such as asbestos removal. The clause also refers to such administration and management being of "the Lessor's Property"; the term "the Lessors Property" is defined in clause 1(F) as meaning "...the said property described in recital (1) hereof...". Recital (1) is as follows:

(1) The Lessor is seised in fee simple in possession of the land and building comprising the blocks of flats known as Elmfield Millbrook Road East Southampton which for the purposes of identification is shown edged red on plan number 2 ("Plan Number 2") annexed hereto."

Plan Number 2 to the leases, shows the red edging as encompassing and apparently including the green edged area, which identifies the Link House.

Clause 6 - 4th Schedule

6. employment of full time or part time staff (whether resident or not) and paying all outgoing taxes and other expenses incurred in relation thereto and providing and supplying such other services for the benefit of the Lessee and the other tenants of flats in the Building and carrying out such other repairs and such improvement works and additions and defraying such other costs (including the modernisation or replacement of plant and machinery) as the Lessor shall in its discretion consider necessary to maintain the Building as a block of residential flats or otherwise desirable in the general interests of the tenants."

The Tribunal notes the reference to "*carrying out such other repairs and such improvement works and additions and defraying such other costs (including the modernisation or replacement of plant and machinery) as the Lessor shall in its discretion consider necessary to maintain the Building as a block of residential flats or otherwise desirable in the general interests of the tenants.*" The question arises as to whether the lessor using its discretion, may be said to be entitled within the leases to recharge the asbestos removal works as being either "*necessary to maintain the Building as a block of residential flats or otherwise desirable in the general interests of the tenants.*" The Tribunal considers that the foregoing phrase is applicable only to works to the Building, either to maintain it as a block of residential flats or otherwise desirable in the general interests of the tenants, but that this does not include works to the Link House.

The letter from Merryhill Envirotec Ltd dated 27 April 2017 provided by Mrs Drysdale refers to costs in a total of £112,695. Whilst it is not expressly stated, that figure is presumably net of VAT which, if added, would result in a total of £135,234 being the amount as claimed for the asbestos works. However the letter includes reference to sub-headings of £1750 for "Welfare" and £10,045 for "Generator", as well as "Boiler Room costs" of £40,150; if the unclear items of £1750 and £10,045 are excluded, as well as the £40,150 relating to the Link House / boiler room costs, then the remaining items would appear to be those relating only to the North and West Blocks, and are in a total of £60,750. The Respondents had also raised concerns about whether the asbestos removal costs in relation to the basement garages and vertical shafts forming part of the North and West Blocks, to which they have no access, should be included; however the Tribunal considers that such areas do nevertheless form part of "the Building" as it is defined, in clause 1(F) of the Lease. Whilst this may be perceived by the lessees as being somewhat inequitable, the Lease does not draw a distinction to pay by way of service charges, as between part or parts of "the Building", only "the Building" as a whole. The Respondents also raised considerable concerns about the asbestos removal costs being greater than they should have been owing to historic neglect. However no technical reports or professional opinion, or other clear evidence has been provided either to corroborate such concerns or such as to enable the Tribunal accurately to apportion and/or attribute part or parts of the asbestos removal costs, as being due to historic neglect.

However, the Tribunal considers the Section 20 consultation process in relation to the asbestos works, to be significantly flawed as a result of a payment of

£60,000 having been made and, evidently, a contract let for the works, some considerable time before a statement of estimates had been provided to the tenants by way of consultation, and notes and takes into account the fact that the Applicant has raised no application for dispensation at any stage, from any part of the Section 20 consultation process. Accordingly, in circumstances where the landlord admitted that the consultation process had been flawed, but has nevertheless not at any time made application for dispensation from any of the statutory consultation requirements, the Tribunal determines that the relevant contribution of each lessee, pursuant to Section 20 of the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987, shall be limited to £250.00 in respect of the asbestos removal costs.

Project Management Fees

These fees related to project administration in relation to the asbestos removal works and, for the reasons as stated above in regard to the asbestos removal works costs, these fees are disallowed.

HSE Costs

The Tribunal accepts that this fee has been raised by the HSE; whilst the Respondents suggest that this could have been avoided had the asbestos been removed sooner, it is nevertheless possible that the HSE might previously have served such a notice and accordingly this item is allowed.

Asbestos Management & Survey Plan

The Respondents complain as to a lack of action by the Applicant in regard to addressing the asbestos issue; the Tribunal nevertheless accepts that it was reasonable for this cost to be incurred to re-assess the position and accordingly it will be allowed.

24. Year Ended 25th March 2016 (Other Items)

Chair Hire

This item was agreed and accordingly no longer in dispute.

Asbestos Training for Contractors

Whilst it was unclear as to who exactly the training was provided for, the Tribunal nevertheless takes the view some training would have been prudent and the amount is not excessive. Accordingly this sum is allowed.

Temporary Shower Units

Mrs Drysdale accepted that the supplies of hot and cold water for the showers had not been made to "the Building" in accordance with the Lease and accordingly this cost is disallowed on the basis that it is not provided for in the leases.

Temporary Heaters

The Tribunal takes the view that the Applicant could have entered into discussion with the HSE regarding timing of the work rather than proceeding immediately to do it in the winter time, in circumstances where it had been aware of issues with asbestos for approximately 10 years. Accordingly this cost is disallowed.

Project Management for Showers / Radiators

Given that the decision of the Tribunal as above, is to disallow the costs in relation to the Temporary Shower Units and the Temporary Heaters, it follows that this item, relating to project management costs for such works, is also disallowed.

Clean Water Tanks

This item was agreed and accordingly no longer in dispute.

Legal & Professional Fees

Mrs Drysdale was unable to provide details as to the substantive subject matter in regard to the legal fees and accordingly this item is disallowed.

25. Year Ended 25th March 2017 (Budget Only)

Accountancy

This item was agreed and accordingly no longer in dispute.

Fire Precautions

Whilst there was some discrepancy as between the estimate and the amount provided for, the Tribunal considers that a sum of £20,400 is not unreasonable for budget purposes.

Planned Major Works

Whilst the concern of the leaseholders regarding the amount was duly noted, this is only a budget or provision figure and the Tribunal notes that the actual costs appear to be substantially higher in any event, than the budget provision figure. Accordingly as a budget item, this is agreed as reasonable.

Parapet Roof

The Tribunal takes the view given the age of the building, that significant roof works will be needed at some point in the approaching future and accordingly the budget entry for this is allowed.

Repairs to Drains & Downpipes

There appeared to be some discrepancy as to costs but given the number of drains and downpipes which exist in and around the building, this would not appear to be an overly excessive amount for budget provision purposes.

Repairs to Roof

The Tribunal considers it not unreasonable to make some form of contingent or budget provision towards what are likely to be substantial future roof replacement costs.

Roof Works Contribution

This item relates to the projected costs of Section 20 consultation in regard to future roof works and as a budget item is not unreasonable although it is noted that the service charge year to which the budget relates has in any event ended and no such consultation as may originally have been envisaged, has taken place.

26. In regard to the Section 20C application the Tribunal notes the undertaking provided by Mrs Drysdale and accordingly determines that none of the landlord's costs in these proceedings should be recharged to leaseholders.
27. The determination in regard to the budget provisions for the year ended 25th March 2017 is without prejudice to the ability and right of the leaseholders to challenge the actual service charges for that year in due course.
28. We made our decisions accordingly.

Judge P J Barber

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.