FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LSC/2018/0320**
Properties	**:**	**55-62 Whiteadder Way, 55-62 Falcon Way & 45-52 Undine Road Clippers Quay, East Ferry Road, London E14 9AA**
Applicant	**:**	**Clippers Quay (Millwall) Management Company Limited**
Representatives	**:**	**Miss Tracy Barkaway (Solicitor), and Mr Nicholas Gibbs Both of London Residential Management Ltd – Managing agents**
Respondents	**:**	**The Long Lessees of the flats within the Properties**
Representative	**:**	**None as such. Respondents present at the hearing were: Mr & Mrs G Baumann 51 Undine Road Dr Bonnie-Kate Dewar 50 Undine Road Miss Jenny Chou 59 Falcon Way**
Type of Application	**:**	**S27A Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	**:**	**Judge John Hewitt Mr Christopher Gowman BSc MCIEH Mr John Francis QPM**
Date and venue of Hearing	**:**	**28 February 2019 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**20 March 2019**

DECISION

The issues before the tribunal and its decisions

1. The issues as set out in the detailed and helpful directions of Judge L Rahman dated 20 September 2018 [54] were:
    - Whether works are required to all 3 lifts, and if so, whether they should be repaired, replaced or decommissioned;
    - Whether the costs are reasonable in amount;
    - Whether the costs are recoverable under the terms of the leases;
    - Whether an order under s20C Landlord and Tenant Act 1985 (the Act) should be made; and
    - Whether an order for reimbursement of application/hearing fees should be made

2. In the event (for reasons which shall be made shortly) the decisions that the tribunal are able to make are:
    - The terms of the leases impose obligations on the Management Company to maintain, repair, decorate and renew the Common Parts (as defined) which includes the lift in each of the subject blocks;
    - The terms of the leases impose obligations on the lessee to contribute to the costs reasonably and properly incurred by the Management Company in complying with its obligation to maintain, repair and renew the lift in their block;
    - The Management Company is entitled to include a reasonable sum in the annual budget for each block to be allocated to a reserve fund to be used to defray the costs of maintenance, repair and renewal of the lift;
    - The terms of the leases do not empower the Management Company to decommission the lifts, save with the express and formal agreement of all lessees in the block concerned;
    - An order shall not be made under s20C in respect of any costs which the applicant might have incurred or incur in connection with these proceedings; and
    - An order shall not be made requiring any party to reimburse any other party the amount of any fee paid by the other party to the tribunal in connection with these proceedings.

3. The tribunal was not able to make a determination on the reasonableness of costs that might be incurred because the amount of those costs have not yet been ascertained. The Management Company has yet to finalise the nature and scope of works required to each of the lifts and the scope of any consequential works necessary to comply with current statutory provisions and established good practice and the Management Company has yet to undertake a full s20 consultation exercise in respect of the proposed works.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

4. The applicant made an application pursuant to s27A Landlord and Tenant Act 1985 (the Act). The application is dated 22 August 2018. The application concerned works proposed to be carried to the lifts in each of the subject blocks.

   The respondents are the long lessees of flats within each of the blocks.

5. A case management conference was held on 20 September 2018. The issues were clarified and identified as set out in paragraph 1 above. Directions were given [57] for the service of statements of case and for the preparation of a bundle of documents for use at the hearing.

   That bundle runs to 368 pages. Some additional representations were served late by Mr Anup Patel, lessee of 58 Whiteadder Way which we have page numbered [192(a) – (b)].

   In broad terms the contents of the bundle comprise:

1.	Application form, directions and iLECS lift reports	[1-103]
2.	Lessee responses (14)	[104-192(b)]
3.	Applicant's submissions	[193-199]
4.	Lessees' replies (2)	[200 - 209]
5.	Applicant's witness statements	[210 - 273]
6.	Lessees' witness statements	[274 – 354]
7.	S20 information	[355 – 368]

6. The hearing took place on 28 February 2019. The applicant was represented by Miss Tracey Barkaway an in-house solicitor with the managing agents, LRM. Miss Barkaway was assisted by Mr Nicholas Gibbs MIRPM AssocRICS, an Estate Manager with LRM.

   The respondents were not formally represented. Those respondents who attended the hearing were:

Mr & Mrs G Baumann	51 Undine Road
Dr Bonnie-Kate Dewar	50 Undine Road
Miss Jenny Choe	59 Falcon Way

   Each of those respondents had a different take on the way forward and each of them made submissions in support of their respective positions.

   In the event it became clear that the first task was to construe the leases in order to be clear on the contractual obligations of the Management Company with regards to the lifts.

The development and the leases

7. The development was carried out in the mid to late 1980s and comprises 254 residential units being a mix of houses and flats in two, three and four storey blocks.

The application concerns the three four storey blocks of flats, which are the only blocks on the Estate which have a lift service.

Each of the three subject blocks are of the same design and comprise 8 flats – 2 on each floor.

8. We were told the flat leases were in common form. Some samples were included in the bundle:

55 Falcon Way	[14-50]
49 Undine Road	[131- 165]
59 Falcon Way (part)	[178-186]

The leases were granted for terms of 999 years from 1 January 1984 at a ground rent of £24 pa.

There are 4 parties to the lease:

The Lessor:	Southern Millwall Housing Limited
The Builder:	Bellwinch Homes Limited
The Management Company:	Clippers Quay (Millwall) Management Company Limited (the applicant)
The Lessee:	Various

The scheme was that each lessee was to become a member of the Management Company and that in time the freehold interest would be transferred to the Management Company. That duly occurred and on 26 January 1990 the Management Company was registered at HM Land Registry as the proprietor of the freehold interest – title number NGL491906.

Thus the applicant wears two hats –

The Lessor; and
The Management Company.

There are no adverse legal implications of that position.

The Management Company is a company limited by guarantee and it does not have a share capital. The objects for which the Management Company was incorporated are set out on [194].

9. As regards the service charge regime the leases provide for payment of:

9.1 An Estate Charge - 1/254th

9.2 A Block Charge – 1/8th

The service charge regime for the Estate Charge is set out in The Fourth Schedule Part 1.

The service charge regime for the Block Charge is set out in The Fourth Schedule Part 2.

Material provisions of the sample lease for 55 Falcon Way are set out in the Appendix to this decision – pp 13-18.

The nub of the issue

10. The nub of the issue at the heart of this application concerns the lift in each of the three subject blocks.

The lift at Whiteadder Way is still working but it is getting increasingly difficult to procure spare parts as required.

The lifts in Undine Road and Falcon Way ceased safe working order some two years ago and are presently inoperative.

11. The Management Company is of the view that it has a duty under the leases to repair, maintain and renew the lifts; that all three lifts have reached the end of their useful life and should now be replaced with new lifts, but utilising as much of the lift shaft, lift machine room, well and pit and other structure as is economic and that the costs incurred on the project are recoverable from the lessees of each block through the service charge.

12. The Management Company says that such replacement of the lifts is supported by a Lift Condition Survey Report dated 6 September 2016 which it procured from iLECS Limited a firm of International Lift and Escalator Consultants. The full report is at [50-70].

We need not go into the detail. Three recommendations with budget costs were put forward:

Option 1	Minimal H&S works and provision of equipment. Budget cost £15,000 + VAT per lift
Option 2	Modernisation Budget cost £50,000 + VAT per lift + associated H&S works
Option 3	Replacement Budget cost £75,000 + VAT + associated building works

13. A lift works specification was prepared and put out to tender by iLECS. The tender report dated 13 April 2018 is at [71-79]. Of the six contractors invited to tender only two submitted tenders:

	Specified Works	Full MRL Replacement
PIP Lift Service	£64,763	£83,858

Kone	£76,141	£75,760

Plus in both cases VAT and associated building works to configure the lobbies to comply with current Building Regulations and associated statutory requirements concerning disabled access.

14. The lessees at Whiteadder Way commissioned a report from Gerald Honey Partnership, a firm of Lift, Escalator and Cradle Access System Consultants . It is dated 16 October 2018 [80-103]. This lift is the one remaining lift still in operation. The conclusions and recommendations are in section 7. It is noted the lift was made and installed in 1985/6 by Kone and the original anticipated economic life expectancy was approximately 20 years. The lift has actually exceeded a 30 year service life. The level of dilapidation evident and some degree of obsolescence with the lift control panel, hydraulic aggregate and/or door operator form the basis of concerns about obtaining suitable spares should those components fail in the near future. It was considered the lift's performance and efficient and operational reliability will only deteriorate in the foreseeable future and an upgrade and/or modernisation would be evident within the next three years or sooner as conditions warrant.

Recommended modernisation works were budgeted at £70,000 and it stated replacement costs might exceed £90,000 to comply with current Code Standards. A range of options were considered and summarised.

At paragraphs 7.4 and 7.5 the report highlighted the current Code Standard – the European Code Standard BSEN81-80: 2003 is being updated by the British Standards Institute (BSI) to incorporate certain improvements introduced in 2017 relative to new lifts. A 2018 draft version is in circulation but has yet to be ratified.

Whenever the works are carried out they will be required to comply with the version of the Code Standard then current and this may have implications on the scope of the works required to be carried out and hence the cost of those works.

15. In October 2017 the Management Company issued a s20 Stage 1 Notice of Intention to Carry Out Works [355]. The proposed works were described as *"Full refurbishment of the lifts at the following addresses:"* The three subject blocks were then identified.

That notice promoted a wide range of observations - from full support on the one hand down to a proposal that the lifts be decommissioned and removed completely. That in turn led to informal consultations on how the Management Company might go forward.

16. In the event the application before us was issued and the matters for determination were identified as set out in paragraph 1 above.

The critical issues

17. The critical issues are the correct interpretation of the material provisions of the leases as regards the lifts and whether the proposed works fall within the expression:

> *" maintain repair decorate and renew … the Common Parts … and other parts of the Block so enjoyed or used by the Lessee in common as aforesaid"*

18. The approach to construction or interpretation of contracts or written instruments is now clear following several recent decisions of the Supreme Court including:

> *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50
> *Arnold v Britton* [2015] UKSC 36;
> *Wood v Capita Insurance Services Ltd* [2017] UKSC 24
>
> It is not appropriate here to distil or set out that learning in detail.
>
> Suffice, that in broad terms the task of the court is to ascertain the objective meaning of the language or words used in context and having regard to the contract as a whole. That involves ascertaining what a reasonable person would have understood the parties to have meant by the words they used. That reasonable person is one assumed to have all the background knowledge which would reasonably have been available to the parties in the situation they were in at the time of the grant of the leases.
>
> The words used in the lease must be given their ordinary or natural meaning in context, the parties' relationship and all relevant facts surrounding the transaction so far as known to the parties. It is to be assumed the parties intended to give the words they chose their natural meaning.
>
> Only in the event of ambiguity in the words used might the court give weight to the rival possible constructions and have some regard to a construction which is more consistent with commercial or business common sense. Where there is no ambiguity the court must give effect to the words used, even if that result is harsh to one of the parties.
>
> It was also clarified in *Arnold v Britton* that residential leases fall to be construed in exactly the same way as any other contract or written instrument and there are no special rules.

19. The Management Company submitted that the lift fell within the definition of Common Parts which, in effect is the whole of the block less the extent of that part of it demised under a Flat Lease, and thus the Management Company was obliged to maintain, repair and renew the lift. That submission was supported by Mr & Mrs Baumann. It was a position also supported by a number of lessees who had made written submissions.

20. Dr Dewar submitted that there was no express mention of a lift in the lease. Dr Dewar suggested that if the lifts were to be repaired or renewed the cost should be an Estate cost and not a Block cost on the basis that the lift was part and parcel of common access to the front door of the flat.

21. Ms Chou also submitted that the lift was not part of the Common Parts as defined and that the Management Company does not have an obligation to maintain, repair or renew the lift, but if it did, it should do so at its own cost and not recover the costs incurred through the service charge. Ms Chou was not able to explain from where the Management Company would find the money to do so given its particular financial circumstances.

Discussion

22. We prefer the submissions made by the Management Company. We find the wording of the lease is quite clear and unambiguous. The Common Parts comprise the whole of the Block except the flats demised within the Block. What is left after the demised flats are taken out falls within the definition of Common Parts. Further the lift may be enjoyed or used by a lessee in common with the owners and lessees of the other flats in the Block

    It is true that there is no express reference to lifts in clause 11.2 and there is express reference in clause 11.2.1.1 to 'roof foundations gutter and rainwater pipes', but equally there is no express reference to the main door, hallways, lobbies, and stairways and all of these features are classically common parts in a block of flats.

    It is equally true that paragraphs 2 and 3 of Part 2 of the Fourth Schedule make express references to television aerials and entry-phone systems and that there is no reference to a lift but we do not consider that such omission removes the lift from being within the definition of Common Parts or a part of the Block enjoyed in common with the owners and lessees of other flats.

23. The Estate comprises a range of residential units being houses and flats in blocks in several different styles and heights. The original lessor appears to have adopted a generic form of lease to be applied across the whole of the Estate which requires minimal input or alteration limited to the name of the lessee on the front coversheet and a few specific details in the Seventh Schedule. This is a common practice designed to keep the conveyancing work on grant of leases across an estate to a minimum.

    As only three of the 16 blocks of flats has a lift we can understand why the draftsman adopted the practice that he did, as regards he definition of Common Parts and enjoyment of parts of the Block enjoyed in common so as to avoid the need to make express mention of a lift.

24. We are reinforced in our conclusion for two reasons. We infer the leases were granted pursuant to agreements for lease which will have included a specification of the flat and the block and provision for the issue of a certificate of practical completion. So, even if a flat was sold off-plan the original lessee would have been aware that the subject block included a lift.

25. At the time of grant of the lease the lift would have been installed and operational. For those flats on or above the first floor level the lift would have been a means of access to the flat within the meaning of the right 'to pass and repass over and along the Common Parts' as granted in paragraph 1 of Part 2 to the Second Schedule of the lease. Further the right to use the lift would have been deemed granted by virtue of s62 Law of Property Act.

26. We have no doubt that if on the day of grant an informed bystander stood in the ground floor lobby by the lift door, holding a copy of the lease proposed to be granted and posed the question:

    26.1 Who is responsible to maintain and repair the lift? The answer given by the parties would have been 'the Management Company'; and

    26.2 Does the lessee have to contribute 1/8th of the costs incurred? The answer given by the parties would have been 'Yes'.

What does 'maintain repair decorate and renew' mean?

27. Ms Chou drew attention to the expression 'full refurbishment of the lifts' adopted by the Management Company in its s20 Notice of Intention dated 10 October 2017, and the use of the expression 'replace or replacement' adopted subsequently and submitted that neither of those were mentioned in clause 11.2.1 of the lease. In her submissions Ms Chou was very clear that 'renew' and 'replace' were quite different concepts.

28. Ms Barkaway cited and relied upon the Court of Appeal decisions in *Quick v Taff Ely Borough Council* [1986] QB 809 and *Waaler v London Borough of Hounslow* [2017] EWCA Civ 45 on the nature and extent of the obligation to repair.

29. In our judgment when an item of plant gets to the end of its useful life and patch repairs are no longer viable for a number of reasons, including the inability to procure spare parts, the item is repaired by replacing it with a modern equivalent. We find the expression 'renew' and 'replace' mean one and the same. We are supported in that conclusion by the comments of Kennedy J in *Postel Properties Ltd v Boots the Chemists* [1996] 2 EGLR 60 when he said: *"Clearly it is a matter for experience and judgement when the time has come to renew a roof. The cost of replacement must be balanced against the likely cost of increasing patch repairs."*

There are numerous other authorities that support the proposition that the obligation to effect a repair can embrace renewal or the replacement of plant when it has come to the end of its useful life and patch repairs are judged to be no longer economic or practical.

The obligation to 'maintain' plant may also embrace the replacement of it. See for example *Greetings Oxford Koala Hotel Pty Ltd v Oxford Square Investments Pty Ltd* [1989] NSMLR 33, a case concerning a hotel in a high rise block where the landlord had the obligation of '… maintenance of lifts…' and where Young J held:

"[T]he word 'maintain' carries with it the connotation that the landlord is obliged not only to attend to cases where there is a malfunction of the lifts, but also to take such preventative measures as should ensure that the lifts should not malfunction and that if it comes about that despite these efforts the lifts malfunction to such an extent, then to replace the lifts with lifts that do function satisfactorily."

In *Langham Estate Management Ltd v Hardy* [2008] 3 EGLR 125 at 62, HHJ Hazel Marshall held:

"… a landlord's covenant to keep in proper working order' or to 'maintain' is wider in scope than a covenant to 'repair' although even this will depend upon the true construction of the covenant in its context. This point is particularly relevant to plant, machinery, equipment and installations. 'Repair' involves remedying a state of disrepair that has arisen, and the obligation does not arise until it has. 'Keep in proper working order', and possibly merely 'maintain', may well require proactive preventative maintenance work, or carrying out adjustments or general servicing before any actual fault develops or a want of repair exists."

30. On the evidence before us two of the lifts are not in working order. Something not in working order is in disrepair. The Management Company is obliged to carry out such reasonable works as are necessary to put the lifts into repair and working order.

The third lift is in working order. But on the evidence of the lift expert procured by some of the lessees, the lift it has passed the end of its anticipated working life and has got to a point where parts or components are obsolete and it is difficult to procure spares or replacements.

Recommendations have been made as to alternative courses of action that might be undertaken by the Management Company. It is a matter for the Management Company to determine which of those courses it wishes to pursue. Where there are several options open to a landlord and each of them are within the range of what is reasonable, it is for the landlord to decide which option it wishes to pursue and the lessees have the obligation to contribute to the reasonable costs incurred.

The way forward

31. We were told that the Management Company has not yet formally decided what scope of works or specification it proposes to adopt for each of the three lifts in question. It is apparently awaiting the decision of this tribunal as to the proper interpretation of the lease.

    Mr Gibbs explained that once it has the decision the directors will make decisions of the extent and scope of works proposed and will start afresh a formal s20 consultation process in respect of those works.

32. In these circumstances this tribunal is not in a position to make formal determinations on what a reasonable scope of works might be or what a reasonable cost of those works might be.

General observations

33. Before concluding there are some general observations that it may be helpful to the parties for us to make.

34. It appears that the notion of decommissioning came about and that some lessees may have thought that was a course they might vote upon. That is not the case. The Management Company has the obligation to maintain repair and renew the lifts. That is an obligation that must be carried out, save in exceptional circumstances. Perhaps that might come about if the landlord, the Management Company, all eight lessees (and their mortgage companies) were to agree enter into a deed to vary the leases to delete the obligation, but not otherwise.

35. Some of the written representations suggested the current lessees did not tend to use the lift and were content to use the stairway. That was a snapshot in time. Those same lessees might have a different view in years to come. The lease are long term contracts – 999 years and a long term view is appropriate.

36. Some lessees, including Mr Patel of 58 Whiteadder Way, suggested that the lift favours the second and third floor lessees which was unfair to the ground floor lessees and there should be a graduated level of contributions to the costs of the lift. That is not what the leases provide. It must have been clear to each original lessee and each subsequent assignee before purchasing their properties what the level of contributions was. Where a person chooses to buy a property in a community of eight units and agrees to contribute 1/8th of certain communal expenditure, that person cannot reasonably argue during the course of the term that their share should go down with the consequence that the share of another person within that community must go up. Economic factors that might have changed since the grant of the leases and the fact that a lift in a small block might be considered a luxury item are not factors that bear on the obligations of the parties as set out in the lease. Further, a person who struggles in using stairs might not agree that a lift is a luxury item.

37. Dr Dewar raised the question whether some of the costs to be incurred might be the subject of a claim on an engineering insurance policy taken out on the lifts. Mr Gibbs said that no claim was possible. Dr Dewar was sceptical. The issue was not formally before us and neither was the policy. Mr Gibbs kindly agreed to provide copies of the material documents to Dr Dewar.

38. Evidently, an unfortunate episode occurred with a previous managing agent concerning funds held in a reserve fund. For this reason the present managing agents have been reluctant to allocate funds to reserves until it has established the confidence of the lessees.

The terms of the lease permit a limited amount to be held in a reserve fund.

It is a matter for the Management Company to decide what the actual scope of works will be and whether it wishes to defer the works while it builds up the reserve fund. Some of the lessees have submitted affordability issues about paying £10,000 or so in one service charge year.

The only observation we would make is that if the works are delayed too long it is inevitable that the ultimate cost will be greater than the present day cost. Also, the indication by the lessees' expert was that the Code Standard might be changed and we infer that it is more likely than not that any such changes will lead to an increase in costs.

39. On a similar vein Dr Dewar said she was very wary of paying any sums on account unless she knew exactly what works were proposed and at what cost. That is an unrealistic position. The Management Company might well have a specification of anticipated works and an indicative costing of those works. It must then demand and receive contributions from the lessees, within the confines of the service charge regime in the lease. Some lessees may be unwilling or unable to pay their contributions straightaway and enforcement steps may be required. All of this will take time, perhaps quite a few months. In the meantime there might necessarily be some tweaking of the specification of works (especially if a new Code Standard is adopted) and inevitably the indicative costings will become outdated so as to require revision, most probably upwards.

Thus as with any major works project such as proposed here the exact cost will not be known until the project has been completed and a final account settled. The Management Company is entitled to take a broad but reasonable view of the likely costs to be incurred and to demand on account sums from lessees on that basis. Lessees' have the obligation to pay those demands.

For obvious reasons the Management Company is not able to place a major contract until it is holding sufficient funds to defray the anticipated costs likely to be incurred.

40. In response to the directions a number of lessees submitted written representations. They covered a range of issues, some material and some not. We have considered all of them even if they are not expressly mentioned in this decision.

Whilst the question of the proper interpretation of the lease does not come down to a vote on what the current lessees might prefer to do about the lift in their block, the majority of the representations was to the effect that the lift must be put and kept in proper working order.

Judge John Hewitt
20 March 2019

The Appendix
Material Provisions of the lease

Definitions

"The Block" means the part of the Estate (if any) edged blue on the Lease Plan including the whole of the walls or fences shown marked with an inward 'T' (if any) of which the Flat forms part and being one of the Flat Blocks

"The Buildings" means the buildings which are in the course of being constructed or have recently been constructed on the Estate and form part of Clippers Quay

"Common Accesses" means the parts of the Estate (other than the Roads and the Walkway) laid out or intended to be to be laid out as a means of access .... Between the publicly maintained accesses... and/or the Roads and/or the Walkway and any parts of the Estate ...

"The Common Parts" means the parts of the Block not intended to be demised by the Flat Leases

"The Estate" means the freehold land within the site boundary as shown on the Site Plan

"The Flat" means (where the Unit demised by this Lease forms one of the Plots comprised in the Flat Blocks) the flat (forming part of the Block) more particularly described in Part 1 of the Sixth Schedule

"The Flat Blocks" means the blocks of flats comprising respectively Plots ... [16 blocks were then identified by reference to plot numbers)

"The Flat Leases" means the Unit Leases of the individual flats in the Block for the Term all containing covenants similar (mutatis mutandis) to the terms of this Lease to the intent that the covenants on the part of the Lessees in clause 6.2 9.1.2 and 9.2 hereof and the stipulations contained in each Flat Lease in the Block shall be enforceable by the other lessees so far as affected thereby

"The Roads" means the Adoptable Road and the Private Road

"The Service Charge" means the cost to the Lessor of the items referred to in the Fourth Schedule

"Service Installations" means the sewers channels drains pipes watercourses mains wires cables pillars turrets amplifiers poles soakaways ad any other apparatus for the supply of water electricity gas or telephone television or radio services or the disposal of foul or surface water

"The Unit" means the flat or house more particularly described in Part 1 of the Sixth Schedule

"The Unit Leases" means the leases of all the units on the Estate for the Term all containing covenants similar … to the terms of this Lease …

Lessee's covenants in respect of service charge/repairs etc

9.1 The Lessee hereby covenants with the Lessor and as a separate covenant with the Management Company and with the owners and lessees of the other units on he Estate and leased … that the Lessee will at all times hereafter:

9.1.1 pay the Management Company by way of further or additional rent the proportion of the Service Charge specified in Part 1 of the Fourth Schedule

9.1.2 if the Unit hereby demised comprises a Flat pay to the Management Company by way of further or additional rent (in addition to the sum payable under clause 9.1.1) the proportion of the Service Charge specified in Part 2 of the Fourth Schedule

(Sub-clauses 9.1.3 to 9.1.5 set out provisions for an annual budget, estimated contributions payable on 1 January and 1 July in each year for a final account of actual expenditure and a balancing debit or credit as the case may be. These were not controversial and so we do not set them out in full.)

Management Company's covenants

11.1 The Management Company hereby covenants with the Lessee as follows:

11.1.2 That the Management Company will … insure … the Communal Areas the Common Accesses and the Private Roads …

11.1.3 That the Management Company will maintain the Communal Areas Common Areas and the Private Roads … and all walls bounding the Estate …

11.1.4 That the Management Company will maintain repair and renew all Service Installations within the Estate so far as the same are not maintained by the Service Authorities and do not form part of or serve solely a Unit or a Flat Block

11.2 The Management Company further covenants with the Lessee if the Unit hereby demised comprises the Flat as follows:

11.2.1 That the Management Company will maintain repair decorate and renew:

> 11.2.1.1 the main structure and in particular (but without prejudice to the generality of the foregoing) the roof foundations gutters and rainwater pipes of the Block
>
> 11.2.1.2 the Service Installations in under and upon the Block and enjoyed or used by the Lessee in common with the owners and lessees of the other flats in the Block
>
> 11.2.1.3 the Common Parts and the Amenity Land and the bin store forming part of the Block and other parts of the Block so enjoyed or used by the Lessee in common as aforesaid
>
> (In case it be of assistance to the parties we emphasise that it is this provision that we find imposes the obligation on the Management Company to maintain repair decorate and renew the lift in the Block)

11.2.4 That the Management Company will at all times …insure and keep insured … the Block against loss or damage by fire storm aircraft property-owners liability and such other risks (if any) as the Management Company shall …think fit …

The First Schedule Part 2

Restrictions and obligations imposed only in respect of flats in the Flat Blocks

2. Not to obstruct in any way any of the Common Parts or the access to any other flat in the Block

The Second Schedule Part 2

Easements rights and privileges included only for the benefit of flats in the Block

1. Full right and liberty for the Lessee and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day and by night and for all purposes to go pass and repass over and along the Common Parts

2.-3. ...

PROVIDED that all the above easements rights and privileges are subject to and conditional upon the Lessee contributing and paying as provided in clause 9.1 of this Lease.

The Fourth Schedule

Part 1

Service Charge in respect of all Units (in respect of which the Lessee's contribution is 1/254th part)

1. The expenses incurred in the running and administration of the Management Company whether or not the Management Company be also the Lessor

2. The expenses incurred by the Management Company in carrying out its obligations under clauses 11.1.2 to 11.1.5 inclusive of this lease

5. All other expenses (if any) incurred by the Management Company in and about the maintenance and proper and convenient management and running of the Estate ...

Part 2

Service Charge in respect of flats in the Flat Block (in resect of which the Lessee's contribution is as specified in paragraph 7 of the Seventh Schedule)

1. The expenses incurred by the Management Company in carrying out its obligations under clause 11.2 of this Lease

2. The cost of maintaining (including any rental) communal television aerials (where there are any) for the use of the Block

3. The cost of maintaining (including any rental) any entry-phone or other similar system (where there is one) for the use of the Block

4. Such sum (to be fixed Annually) as shall be estimated by he Management Company (whose decision shall be final) to provide a reserve fund for items of expenditure referred to in this Part of

this Schedule to be expected to be incurred at any time during the period of three years commencing with the date upon which the estimate is made

8. The said reserve fund shall be kept in a separate account … and shall only be applied in accordance with the terms of this Part of this Schedule

The Sixth Schedule

The premises demised by this Lease are those premises shown edged red on the Lease Plan being the Unit number shown in paragraph 3 of the Seventh Schedule comprising:

Houses with no flats above

…

E Type houses with flats above

…

E Type flats with houses below

…

B Type flats above Common Accesses

…

Flats in Flat Blocks

1.1 All the doors and windows thereof
1.2 The interior faces of the ceilings floors and main structural walls thereof
1.3 One half of any walls (not being structural walls) which divide the Flat from any adjoining flats or any common parts of the Block …
1.4 All cisterns tanks and Service Installations used solely for the purpose of the Flat
1.5 The part of the garden (if any) within the red edging
1.6 The whole of the walls or fences shown marked on the Lease Plan with an inward 'T' (if any)

2. There is excluded from the demise the main structural part of the Block including the roof foundations and external parts thereof

Carports

…

Garages

…

The Seventh Schedule

1. The price is ...

   1.1 The sum payable by the Lessee to the Lessor is £...
   1.2 The sum payable by the Lessee to the Builder is £...

2. ...

3. The Unit is a Flat in a Flat Block on the ... floor with a parking space and is Plot ... Clippers Quay ...

4. The postal address is: ...

5. The Lessee is: ...

6. ...

7. The Lessee's contribution for the purposes of Part 2 of the Fourth Schedule is 1/8th.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.