FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	**LON/00BK/LSC/2017/0296** **LON/00BK/LDC/2017/0091**
Property	:	**Ivor Court, Gloucester Place, London, NW1 6BJ**
Applicant	:	**Ivor Court Freehold Limited**
Representative	:	**Brethertons LLP**
Respondents	:	**The leaseholders of Ivor Court as identified in the schedule accompanying the applications**
Representatives	:	**Not Applicable**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**(1) Judge Amran Vance** **(2) Mr S Mason BSc FRICS FCIArb** **(3) Mr J Francis**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Dates of Hearing	:	**5 and 6 November 2018**
Date of Inspection and Decision	:	**7 November 2018**

DECISION

REVIEWED AND CORRECTED 15 APRIL 2019

Review and Correction

On 15 April 2019, the tribunal:

(a) reviewed its decision, issued on 10 January 2019, under Rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The decisions made, on review, are highlighted in the decision below and the background behind the review, and the tribunal's reasons for its decisions on review, are set out in an addendum to this decision; and

(b) corrected its decision under Rule 50 of those Rules to: (i) correct an accidental slip concerning the costs of works to the windows on 9th floor of the Building. A reduction of £2662 is required to reflect the actual costs of those works as conceded by the applicant in its response to the Scott Schedule at item CL5.1 **[185]**; and (ii) correct clerical slips identified by Ms Grimshaw in her letter to the tribunal of 18 February 2019, responded to by the tribunal on 13 March 2019.

Decisions of the Tribunal

1. Retrospective dispensation from the whole of the consultation requirements for qualifying works under section 20ZA of the Landlord and Tenant Act 1985 is granted in respect of the internal repair and redecorations works carried out by the applicant between 2015-2017 and identified below as the "Major Works".

2. All the final costs of the Major Works in the sum of £1,795,385.05 plus VAT are payable by the leaseholders of Ivor Court, in full, in the shares apportioned under their respective leases, except for the following heads of expenditure all of which the applicant conceded are not payable by them:

   (a) a new fibrous plaster plinth (£4,567) and plaster pilaster (£4,141);

   (b) maple-veneered MDF planters (£3,537);

   (c) stained glass features in the lobby area (£2,377 and £2,260); ~~and~~

   (d) a new plasterboard ceiling in the basement (£4,000);

   (e) £2,662 in respect of the actual costs of works to windows on 9th floor of the Building.

   We also determine that the following sums are not payable by leaseholders for the reasons stated in the addendum to this decision: (i) £109,834, concerning works to the apartment doors; and (ii) £10,000, for the supply and installation of Perko door closures to the apartment doors.

   The reductions are exclusive of VAT. Where VAT is applicable to those costs, it is not payable by leaseholders.

3. Mr Moorjani's request for withdrawal of his case and/or for him to be removed as an active respondent to the applications is refused.

Background to the Applications

4. This decision concerns two applications made on 9 August 2017 by Ivor Court Freehold Limited ("ICFL"), one for a determination as to liability to pay service charge under s.27A Landlord & Tenant Act 1985, and the other under s.20ZA of the 1985 Act seeking dispensation from statutory consultation requirements imposed by the Act.

5. Numbers in bold and in square brackets below refer to pages in the hearing bundle provided by the applicant.

6. The relevant legal provisions are set out in the second Appendix to this decision.

7. ICFL is the lessee-owned freeholder of Ivor Court, a 9-storey, originally Art Deco, residential mansion block at Gloucester Place, London, NW1 ("the Building"). The Building is located close to Baker Street underground station and comprises 153 residential flats, each let on a long lease, as well as two commercial units on the ground floor. Approximately 101 of the leaseholders are members of the applicant company.

8. ICFL were registered as freehold proprietors of the Building on 25 March 2011 following a transfer of the freehold interest dated 1 March 2011. Its title is registered at HM Land Registry under title LN88456 **[1]**. The previous freehold owner of the Building was Durban Estates Ltd ("Durban Estates"). In *Moorjani v Durban Estates Ltd [2015] EWCA Civ 1252* the leaseholder of flat 67, Mr Mansing Moorjani, successfully sued Durban Estates in disrepair. At paragraph 8 of the Court of Appeal judgment in that case reference is made to findings of fact, made by the first instance Judge, that from 2005 until early 2008, the common parts of the Building were in a state of disrepair due to Durban Estates' failure to perform its repairing obligations and that this state of disrepair continued until Durban Estates sold the freehold reversion to ICFL in 2011. The Judge considered Durban Estates' breach had resulted in the common parts of the Building becoming dilapidated, shabby and dingy.

9. It is the applicant's position that the formation of ICFL and the acquisition of the freehold of the Building was partly in response to the need to address the poor management and maintenance regime of Durban Estates and to progress a programme of major works to remedy the ongoing disrepair.

10. At paragraph 15 of his witness statement dated 13 July 2018, Mr Jacobs, a managing director, at Michael Laurie Magar Limited ("MLM"), the company engaged by the applicant to manage the Building since 2008 explains that a programme of works has been ongoing since 2009/10 and that works have been spread over a number of accounting periods so as to manage the impact on leaseholders as well as to assist in cash flow. He states that the following programmes of works have been carried out (this fact was not contested by any of the respondents):

    (a) boiler and plant replacement from oil to gas (2009-10);

    (b) repair to iron fire escapes and installation of emergency lighting (2010-11);

(c) external elevation and roof repairs (2012-13);

(d) lift replacement and removal of asbestos in lift shafts (2013-14); and

(e) internal repair and redecorations (2015-17).

11. The applications before the tribunal concern the costs of internal repair and redecorations carried out between 2015 and 2017 ("the Major Works").

12. The Major Works were the subject of both an extra-statutory and a statutory consultation process under s.20 and 20ZA of the 1985 Act. An initial notice of intention for proposed qualifying works was sent to leaseholders on or about 20 June 2014 **[377]** in which the work proposed is described as "the refurbishment and renovation of the lift areas including the lift lobby and associated entrances and entrance steps, the lobby balcony, the main staircase and lift lobbies and hallways leading to flats on each floor". Eleven elements of work were separately identified, one of which was "Asbestos containment procedures relating to the existing stippled wall treatment".

13. Mr Barclay states that observations were made in response to the initial notice, one of which was the nomination of Pavehall PLC ("Pavehall") by a leaseholder for the role of principal contractor for the works. Pavehall were subsequently invited by the applicant to tender for the Major Works contract. A post-tender analysis was then carried out for the applicant by Bond Davidson, building and project consultants. In its report dated 26 May 2015 **[385**] Bond Davidson conclude that whilst Pavehall's estimate was a little higher than the estimate received from the only other tenderer, Cape Construction, Pavehall had clearly demonstrated more relevant project experience and were therefore the preferred tenderer.

14. A statement of estimates dated 12 June 2015 was sent to leaseholders providing estimates from Cape Construction in the sum of £1,673,915.08 and Pavehall in the sum of £1,684,746.67 **[381]**. Pavehall were awarded the contract and works began in about March 2016.

15. Mr Jacobs states in his witness statement that at a very early stage of the works it became apparent that there were several significant problems with the project, including the method of removal of textured asbestos containing material located on the walls and the newly-discovered presence of asbestos dust particles under the floors. In a letter dated 1 December 2015 **[394]** MLM informed leaseholders that works had been delayed due to the amount of asbestos identified under the floors and the need to plan for its careful removal. This led to the engagement of additional sub-contractors to carry out the asbestos removal and a letter being sent to leaseholders on 24 August 2016 detailing an additional contribution sought from leaseholders towards the cost of the Major Works **[400]**. The estimated additional costs amounted to £757,556 including VAT, of which £370,512 concerned the costs of asbestos removal with the remainder relating to additional fire safety work that had been identified as well as several other additional items of work, including the installation of an additional porter's desk and privacy screen **[404]**.

16. Mr Jacobs states at paragraphs 90-97 of his witness statement that Pavehall became increasingly difficult to deal with because it took the view that the contract for the works had turned into something very different from the contract it had tendered for. Pavehall issued a notice of termination of contract and threatened to sue the applicant. Mr Jacobs's evidence was that he then stepped in and was able to reach an agreement with Pavehall that allowed work to proceed to conclusion. This included Pavehall agreeing to a percentage reduction in their costs for all items identified in the Major Works specification of works.

17. The final costs of the works, as sought from the leaseholders, is £2,154,462.06 (£1,795,385.05 plus VAT) and a breakdown of each leaseholder's apportioned cost is annexed to ICFL's s.27A application **[77]**. An interim demand for the additional costs was sent to leaseholders on 28 September 2016 **[74]**.

18. The applicant now seeks two determinations from the tribunal: (a) that the costs of the Major Works are payable by the leaseholders; and (b) that dispensation from the statutory consultation requirements should be granted because of two breaches of the consultation requirements. The first of those breaches concerns the need for the additional works that, it says, were not foreseen until after commencement of the Major Works in March 2016 and which, arguably, went beyond what was consulted on, so that a further s.20 consultation was required. The second breach is that the statement of estimates dated 12 June 2015 should have, but did not, summarise the observations received in respect of the initial consultation notice and the ICFL's response to them.

Procedural Background

19. Following a case management hearing, directions in both applications were issued by the tribunal on 19 September 2017 **[87]** in which it was stated that any tenant who wished to reply to the applicant's case should seek permission of the tribunal to do so. The listing window for hearing of the applications was specified in the directions as being between 1 February 2018 to 15 March 2018 and the applications were subsequently listed for a two-day hearing commencing on 14 and 15 May 2018.

20. Several tenants contacted the tribunal stating that they wished to make representations in respect of the applications and these were identified by the tribunal as being 'active' respondents with the result that they received copies of subsequent directions issued by the tribunal as well as its orders and were able to make such representations.

21. By far the most active of the active respondents has been Mr Moorjani who has, on numerous occasions written to the tribunal seeking variations in directions and requesting that the tribunal make case management decisions.

22. There is no need to set out all the many case management decisions made in these applications, but the following are the key decisions:

    a) on 5 April 2018 **[104]**, I gave permission to the applicant to rely upon expert evidence from Mr Byers, a chartered building surveyor and from Mr John Smith of Essex Fire Safety;

b) on 20 April 2018 **[106]**, I postponed the hearing date listed for 14 and 15 May 2018 as I did not consider it would have been procedurally fair for the respondents to exchange witness evidence of fact without first having seen the expert evidence to be relied upon by the applicant and without having the opportunity to adduce their own expert evidence in response. The hearing on 14 May 2018 was instead to be used for the purposes of a further case management hearing. Also, on 20 April 2018, I directed that Mr Moorjani was entitled to disclosure of all fire, health and safety annual audits and reports and documents evidencing consequential action taken by the applicant. I also directed that Mr Moorjani was entitled to rely on two expert reports that were produced for the purposes of previous court proceedings as hearsay evidence in these applications and that he could, if he so wished, apply to the tribunal for witness summonses to be issued requiring the attendance of witnesses at the final hearing. Furthermore, as Mr Moorjani had raised a challenge to the tribunal's jurisdiction, I directed that this challenge would be dealt with as a preliminary issue at the case management hearing on 14 May 2018. As Mr Moorjani had previously indicated that he had hearing difficulties I stated in my directions of 20 April 2018 that hearing loop facilities would be available at that hearing and that Mr Moorjani was able to have a McKenzie friend with him who could make a note of the hearing if he so wished;

c) the case management hearing on 14 May 2018 was attended by: Mr Bates; Mr Moorjani, who was represented by counsel, Mr Aidan O'Brien; and by Ms Grimshaw in person. It was chaired by Judge Angus Andrew. Judge Andrew identified from correspondence received from the leaseholders, there were a total of 12 'active' leaseholder respondents to these applications, none of whom were legally represented. He recorded in his directions **[113]** that of those active respondent's only Mr Moorjani was pursuing a claim of "historic neglect" in respect of the Building and the costs in issue. Permission was given for Mr Moorjani to rely upon expert evidence from a chartered surveyor and a fire safety expert and a timetable was set for the provision of such reports and for his experts to meet with the applicant's experts with a view to narrowing issues in dispute. Directions were also made about exchange of witness evidence by the parties and as to the date by which any application for a witness summons should be made.

d) at the hearing on 14 May 2018, Judge Andrew also heard representations in respect of Mr Moorjani's jurisdictional challenge. His written decision on this issue is dated 17 May 2018 **[1542]**. He rejected Mr Moorjani's challenge which was that the tribunal had no jurisdiction to determine the applicant's s.27A application in circumstances where tenants had paid the claimed service charges in full. Mr Moorjani, and two other active respondents sought but were refused permission from the Upper Tribunal to appeal that decision **[1548]** and on 16 October 2018, a High Court Judge refused permission to judicially review the Upper Tribunal's refusal of permission to appeal **[1549]**;

e) on 13 June 2018 the applications were re-listed for a three-day final hearing commencing on 5 November 2018;

f) On 23 July 2018 **[120]**, at the request of Mr Moorjani, I varied the directions of 14 May 2018 to extend the deadline for exchange of witness statements of fact and any expert report to be relied upon by Mr Moorjani; and

g) on 16 October 2018 **[122]**, following a request from Mr Moorjani, I directed that the applicant should provide inspection of 49 emails referred to in Mr Barclay's witness statement.

23. Although, as identified by Judge Andrews at the case management hearing on 14 May 2018, there were, at that stage, 12 'active' leaseholder respondents, from about mid-July 2018 onwards, several of the 12 active respondents identified by Judge Andrew applied successfully to the tribunal to withdraw from being active respondents in these applications. At the date of the final hearing there were five remaining 'active' respondents to the two applications. These were:

(a) Ms Grimshaw (Flat 133);

(b) Ms Wanda Cooper-Mordaunt (Flat 81);

(c) Ms Catherine Keenan (Flat 91);

(d) Mr M Moorjani (Flat 67); and

(e) Ms Sarah Dexter (Flat 78).

24. Of those five active respondents the only ones who had submitted substantive representations on these applications, in accordance with the tribunal's directions were Mr Moorjani and Ms Grimshaw. Two other leaseholders, Zaahid Bharmal (Flat 106) and Dr Johnson D'Souza (Flat 5) had written to the tribunal stating that they too supported issues of 'historic neglect' of the Building raised by Mr Moorjani and Mr Bharmal also sent the tribunal a witness statement on 24 July 2018. However, by the date of the final hearing both Mr Bharmal and Dr D'Souza had been removed as active respondents. Their previous representations are therefore not addressed in this decision although we have reviewed them and do not consider they would have had any impact on this decision even if they had been expressly taken into account. They do not add anything material to the submissions made by Mr Moorjani and Ms Grimshaw.

25. On 19 October 2018, Mr Moorjani sent the tribunal a copy of his email to the applicant's solicitors that day in which he had stated "I will not be attending at the trial because there is inadequate facility/system to overcome my deafness. He also stated that it was "imprudent" for him to engage counsel for a three-day hearing when the cost of doing so would "exceed the refund due to me on the deductions [the] FTT may make" and which he would be unable to recover given the tribunal's "costs free environment".

26. Following receipt of that email the tribunal wrote to Mr Moorjani, at my request, on 23 October 2018, stating that the tribunal was able to offer a hearing loop for his use during the hearing and that, in addition sign language interpreters could be booked if Mr Moorjani was able to read sign language. He was also invited to

let the tribunal know if there were any other adjustments the tribunal could make that would assist him in attending and preparing for the hearing.

27. In his reply to the tribunal on 29 October 2018, Mr Moorjani stated that he was unable to sign and that the tribunal's hearing loop system was tried on 14 May 2018 and was found to be inadequate. He also stated that he had made it clear to Judge Andrew at the last case management hearing that he would not "be providing any witness statement or testimony for the trial". Mr Moorjani also stated that he had booked counsel to attend the final hearing but then cancelled that booking following the withdrawal of other leaseholders in his 'cohort' as active respondents and their reluctance to contribute towards the cost of instructing counsel.

28. With his letter of 29 October 2018, Mr Moorjani provided a copy of a claim form concerning proceedings in the High Court naming him, and three other leaseholders as claimants, and Durban Estates Limited and ICFL as defendants. Although the claim form provided is unsealed, Mr Moorjani stated that the claim had been issued and served on 29 October 2018. At the hearing of these applications, Mr Bates confirmed that the claim had been issued and sent to his instructing solicitor, albeit that it was not authorised to accept service.

29. In the High Court claim, the claimants claim the sum of £750,000 as damages for disrepair as well as other heads of loss. One of the assertions raised by the claimants is that delay by both defendants in carrying out repairs to the Building until the 2015/16 Major Works programme had led to a huge increase in the cost of the repairs, said to amount to around £1,979,485. Mr Moorjani claims damages for resulting loss equivalent to the entirety the service charge demanded from him in respect of the Major Works, as well as further damages for additional heads of loss.

30. Mr Moorjani ends his letter of 29 October 2018 by stating that as he is now pursuing a claim in the High Court that he was "dropping out of FTT litigation". On 31 October 2018, I directed that in light of this comment Mr Moorjani was to confirm by 4pm on Friday 2 November 2018 whether he wished the tribunal "to have regard to his written representations and observations made to date when determining the application or if he wishes them to be disregarded". That should, of course, have referred to applications in the plural rather than the singular.

31. Mr Moorjani responded on 1 November 2018, again stating that he had "dropped out" [of these applications] but that as far as "disregarding my Scott Schedule etc" was concerned other members of his 'group' Mrs Daasani and Ms Dexter had "accepted and concurred with them". In fact, Mrs Dasani had successfully applied to withdraw as an active respondent on 14 September 2018. He also stated that Ms Grimshaw had agreed with some of the points he had raised in his Scott Schedule and that it was therefore "for the tribunal to decide".

32. Mr Moorjani then emailed the tribunal at 11:15 on 2 November 2018, the last working day before the start of the hearing of the applications, stating that he had emailed his "withdrawal from the FTT proceedings" to Ms Dexter, Mrs Dasani and Ms Grimshaw. At 12.44 that day, the applicant's solicitor objected to the removal of Mr Moorjani as a party to these proceedings stating that Mr Moorjani

had contested almost every single item of expenditure in the Major Works final account, to which the applicant had been compelled to respond, at considerable expense, and that the tribunal's overriding objective entitled the applicant to have the benefit of the tribunal's determination on the challenges raised.

33. Mr Moorjani emailed the tribunal at 23:08 on Sunday 4 November 2018, in response to the applicant's solicitors' email of 2 November 2018 stating that as he had issued High Court proceedings any decision by this tribunal would be 'overruled' by a decision of the High Court. He repeated his intention of withdrawing from the tribunal proceedings. Mr Moorjani followed that up with another email to the tribunal sent at 09:26 on 5 November 2018 in which he made representations on the skeleton argument provided by Mr Bates.

The Hearing

34. At the hearing commencing on 5 November 2018, the applicant was represented by Mr Bates. Ms Grimshaw attended in person and was unrepresented. Also present on the first day of the hearing was Ms Carpenter (who attended as an observer for the morning only); the applicant's solicitor, Mr Hardwicke; Mr Jacobs; Mr Ian Honor (a building surveyor with Bond Davidson); and Mr John Byers (a chartered building surveyor, who had provided an expert report at the applicant's request **[1220]**.

35. On the second day of the hearing, Mr Hardwicke was replaced by a trainee solicitor, Ms Kasu. Mr Jacobs and Mr Honor were present as was Ms Grimshaw and Mr John Smith of Essex Fire Safety Limited who had provided a written expert report at the applicant's request **[1255]**. Also in attendance was Mr Nicholas Barclay, a director of ICFL.

36. The tribunal heard oral evidence from Mr Jacobs, Mr Honor, Mr Barclay and Mr Smith. Ms Grimshaw had the opportunity to cross-examine each of those witnesses on their evidence. Mr Jacobs, Mr Honor and Mr Barclay had each provided witness statements prior to the hearing, copies of which were included in the hearing bundle. As Mr Moorjani did not attend the hearing and as Ms Grimshaw had not raised any challenge regarding historic neglect the tribunal decided that there was no need for Mr Byers to give oral evidence on the contents of his written report. He was released at the end of the first day of the hearing and did not attend the second day of the hearing.

37. We first considered the relevance of Mr Moorjani's recent correspondence with the tribunal. Mr Bates repeated the applicant's objections to Mr Moorjani's withdrawal as a party to the applications and stated that the applicant wanted the tribunal to make a merits decision on all the points Mr Moorjani had raised in the voluminous Scott Schedule he had relied upon. He stated that the applicant had spent a large amount of money responding to these points, had prepared for a fully contested hearing and did not want to relitigate these issues in the High Court given the substantial overlap in the issues involved in both. Mr Bates also suggested that his client suspected that Mr Moorjani had used the tribunal litigation as a means to obtain disclosure that he could then deploy in his High Court claim. In addition, he considered that if Mr Moorjani was allowed to withdraw as a party then he was likely to try and argue that he was not bound by

any findings made by the tribunal, Mr Bates also emphasised that the applicant was seeking an order for costs against Mr Moorjani under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"). Ms Grimshaw had no comment on these submissions.

38. Rule 22 of the 2013 Rules allows a party to give notice of withdrawal of its case, or any part of it, subject to compliance with the procedural requirements specified in subparagraph 22(2). In addition, subparagraph 22(3) states that the notice will only take effect if the tribunal consents to it. Our decision on the withdrawal request was that: (a) it was not appropriate at this very late stage to consent to Mr Moorjani being allowed to withdraw his case or for him to be removed as an active respondent to the applications; and that (b) we should determine every issue raised by him in his Scott Schedule.

39. It was our view that Mr Moorjani had not provided a clear and unambiguous response to the tribunal's letter of 31 October 2018 in which he was asked to confirm by 4pm on Friday 2 November 2018 whether he wished the tribunal to have regard to his written representations and observations made to date. Although he had stated that he was unilaterally "dropping out" of the tribunal proceedings his response of 1 November 2018 also indicated that other members of his 'group' had accepted and concurred with his representations, that Ms Grimshaw had agreed with some of his points and that it was for the tribunal to decide how to treat his representations. This, in our view did not amount to an unequivocal notice of withdrawal of his case.

40. In addition, given that Ms Dexter, apparently agreed with the points raised in his Scott Schedule, and as she remained an active respondent, we considered that we were obliged to determine each of the points raised in that document.

41. In any event, even if we were wrong on those points, we did not consider consent should be given to Mr Moorjani to withdraw his case at such a late stage. These applications were issued in August 2017 and case management hearings took place on 19 September 2017 and 14 May 2018. Up until 19 October 2018, Mr Moorjani had been extremely active in opposing these applications and has challenged almost every item of expenditure incurred in these Major Works. The Scott Schedule before us is 46 pages in length, in landscape format. Although it also contains points raised by Ms Grimshaw the clear majority concern challenges raised by Mr Moorjani. We agree that the applicant has been obliged to respond to every head of challenge in the Scott Schedule and have produced witness evidence and procured expert evidence to do so. We have no doubt that this has come at a considerable cost to the applicant, a lessee-owned company. Given these circumstances we did not consider it would be in accordance with the tribunal's overriding objective in Rule 3 of the 2013 Rules, to deal with a case justly and fairly, to consent to Mr Moorjani's withdrawal of his case, when his request for withdrawal was received on 2 November 2018, the last working day before the start of a three-day hearing for which the applicant would have had to incur substantial costs of preparation and where the request was opposed by the applicant.

42. After we indicated our position regarding Mr Moorjani's expressed intention to drop out of this litigation, Ms Grimshaw's proceeded to cross-examine, in turn,

Mr Honor, Mr Jacobs, Mr Barclay and Mr Smith. We heard her submissions on every item raised by her in the Scott Schedule and heard Mr Bates's submissions in response. Some of the points she raised in the Scott Schedule were seeking points of clarification only and did not proceed as challenges once an explanation had been provided at the hearing by one or more of the applicant's witnesses.

The Tribunal's Inspection

43. The hearing of the applications concluded on the second day of the hearing and we inspected the Building on the morning of the third day. Present during the inspection was Ms Grimshaw and Mr Barclay.

44. The Building is a large, imposing, mansion block built circa 1930 consisting of a basement, ground floor and 9 upper floors. It contains 153 residential flats and one that is currently being built in the basement. Externally, the Building appeared to be in good condition and well maintained.

45. The main entrance door is in Gloucester Place and was replaced as part of the Major Works. It appeared to us to be of high quality and in keeping with a mansion block of this period and in this location. The outer main door leads to original internal lobby doors which were also in good condition.

46. There is a second, smaller, entrance door to the Building leading on to Taunton Place. This is the original 1930's Art Deco door and, again, is accessed via internal lobby doors.

47. The lobby area is a very impressive large open plan space whose visual appearance is, in our view, in keeping with a high-end residential Building. There are two porters' desks, the main one being of a semi-circular design and of solid construction that gives the appearance of solid stone. The counter surface to the desk is made from Corian which enhances the appearance of the desk as high-quality solid structure. The second porter's desk is a smaller, more conventional wooden desk.

48. Situated in the lobby area are two large wooden armoires of veneered finish which, we were informed, are used by the porters to securely store residents' parcels upon delivery. Also present are some plant boxes, containing plants, and two divan-style benches. The carpet in the lobby is bespoke and of a striking design. Approximately six narrow cloth wall hangings decorate the surfaces of the lobby walls, mounted on rods.

49. Two lifts service the Building. On each floor of the Building, as well as the ground floor lobby area, the lift surrounds are formed from Corian, which, as with the porter's desk, conveys a solid visual appearance.

50. We were in no doubt that all the fittings and furnishings in the lobby area, carried out as part of the Major Works, were of a high standard and of impressive visual appearance. Whilst modern in construction they are, in our view, sympathetic to the age and character of the Building.

51. Located on the walls of the lobby area, and in each the floors above, are artwork-prints of a faux-1930's design. We found them attractive, visually interesting and

not out of keeping with the design of the Building but recognise that they might not be to the taste of all residents.

52. The corridor lighting on the ninth floor consists of surface-mounted light fittings operated by motion detectors. All other floors, except the ground floor had pendant lighting.

53. On the eighth-floor corridor and below, external windows had been blocked up and a very effective operable air vent had been installed.

54. The radiators in all the corridors had been removed and those in the lobby area had been replaced.

55. A new flat, Flat 154, was in located in the basement and we were informed by Mr Barclay that it is in the course of construction.

Relevant Lease Provisions

56. Clause 5(1) of the leaseholders' leases **[25]** contains a covenant by the landlord that it will, amongst other matters, paint the external parts of the Building (including the surfaces of the doors, the door frames and the window frames of the Building) and the surfaces (which face upon the Reserved Parts of the Building) of the doors, door frames and window frames of the flats in the Building.

57. In clause 5(2) the landlord covenants to maintain, repair, redecorate, renew and (where necessary) replace: (a) the structure of the Building; (b) the water tanks, gas and water and soil pipes drains and electric cables and wires in under and upon the Building; and (c) the Reserved Parts of the Building.

58. Clause 5(4) contains a landlord's covenant to, so far as practicable, keep carpeted, clean and reasonably lighted and in good repair and condition, the entrance halls, foyers, passages, landings, staircases and other parts of the Building so enjoyed or used by the leaseholders in common.

59. The Reserved Parts of the Building are defined in clause 1(E) as meaning the entrance foyers, passages, staircases and landings, lifts and lift shafts, fire escapes, staff rooms, boiler rooms, refuse and dustbin and other stores of the Building.

60. The Fourth Schedule **[34]** specifies those heads of landlord's expenditure that are payable by the leaseholder by way of service charge and includes the costs and expenses of and incidental to the performance and observance of the landlord's covenants set out at clause 5 of the Lease.

61. Clause 3(2) contains the leaseholder's covenant to pay, as service charge, a proportionate part of the landlord's expenditure as set out or referred to in the Fourth Schedule. The individual leaseholder's percentage contribution is specified at clause 3(2)(e).

62. The Fifth Schedule **[36]** contains restrictions imposed in respect of the demised flat including a restriction not to use the flat nor permit it to be used for any

purpose other than as a self-contained "high class" private residential flat in the occupation of one family or household.

The Challenges pursued by Ms Grimshaw and Mr Moorjani

63. We set out below those challenges pursued by Ms Grimshaw and our decision on each disputed item. Where Mr Moorjani has challenged the same head of expenditure we address his challenge alongside those of Ms Grimshaw.

64. A breakdown of the final costs of the Major Works appears at pages **[123-4]** of the hearing bundle and the original specification of works is at **[125-150]**. The Scott Schedule containing Mr Moorjani's and Ms Grimshaw's challenges and the applicant's reply is at pages **[151-197]**.

65. We found all the applicant's witnesses to be credible and reliable witnesses. Their witness statements are detailed and in oral cross-examination by Ms Grimshaw, and when answering questions from the tribunal, each of them demonstrated considerable knowledge and experience of the Major Works, particularly Mr Honor and Mr Barclay. Exhibited to each of their witness statements are numerous contemporaneous documents that support their evidence. A considerable number of these documents were referred to during their oral evidence and we identified no inconsistencies between their evidence and the contemporaneous documents.

66. Mr Moorjani did not provide a witness statement. His challenges are summarised in his entries on the Scott Schedule before the tribunal in which he seeks to challenge almost every item of work identified in the specification of works. Most of these challenges amount to little more than a bare assertion that costs involved were excessive and that the work could have been carried out at cheaper cost. However, Mr Moorjani has provided no corroborative evidence, by way of alternative quotes or otherwise to support this, and he appears to have a completely unrealistic idea as to the quantum of costs involved in a works project of this nature.

67. Ms Grimshaw's challenges are much more measured and focused than Mr Moorjani's but, as with Mr Moorjani, her challenges have been unsuccessful. This is principally because many of her challenges are predominantly based on her own personal preferences and do not recognise the discretion accorded to a landlord when carrying out works of this nature, subject to its obligations to engage in statutory consultation with leaseholders.

68. Neither Ms Grimshaw or Mr Moorjani have had regard to the fact these Major Works underwent a consultation process with leaseholders as well as a competitive tendering process, carried out at arm's length to a lessee-nominated contractor. Leaseholders were entitled to comment on design issues at the consultation stage but after the contract has been awarded it is not for us to interfere with the landlord's choice of design, unless this has resulted in costs that were unreasonably incurred. Provided the landlord has chosen a course of action which leads to a reasonable outcome, the costs incurred in pursuing that course of action will have been reasonably incurred, even if there was another cheaper outcome which was also reasonable.

Ms Grimshaw's Case

Fittings and Furnishings

69. These items appear in the specification of works under the hearing of Fittings and Furnishings **[130-131]** at a cost of £83,507. There are also additional costs in the sum of £49,546, including installation costs, specified in the final costs breakdown **[124]**.

70. The costs concern the provision of the following items in the main lobby area of the Building: a new reception desk; an etched mirrored pattern on a wooden frame; two armoires; two oak-veneered benches; plant boxes; framed artwork to the lift lobby walls and in each corridor of each floor of the Building; stained-glass features to the parcel store and lift lobby areas; a ramp for wheelchair access; handrail repairs; a dado; and installation costs.

71. Ms Grimshaw's challenges were identified at **[162]** and **[180]** of the Scott Schedule and in her statements of case **[216]** and **240]**. In summary, she contended that:

    (a) the benches were too low, lacked armrests and would not be suitable for the more elderly residents in the Building. She also objected to the removal of a small sofa that used to be by the front door which allowed residents to sit and watch for the arrival of taxis. She said that the location of the new benches made this impossible;

    (b) the plant boxes were unnecessary;

    (c) the artwork was unnecessary and the corridors in the Building were too narrow to allow a person to stand back and appreciate the pictures;

    (d) the stained-glass features were unnecessary and constituted an improvement.

72. In response, Mr Bates stated that the applicant had conceded that the costs of the plant boxes and stained-glass features were not chargeable to the leaseholders and that is why they were highlighted in yellow in the specification included in the bundle.

73. As to the benches, Mr Jacob's evidence was that their location enabled residents to sit in the lobby area whilst waiting and also allowed them to sit and talk to the porter. He also said that the benches replaced an old sofa by the porters' desks, although Ms Grimshaw could not recall the presence of such a sofa.

74. In respect of the artwork, Mr Jacob's evidence was that prior to the installation of the new artwork there were various pieces of artwork present, predominantly located on the ground floor of the Building, but that many items either had damaged frames or were missing. He said that a decision was taken to replace all the artwork because most of the items were damaged beyond repair and also because this was an opportunity to enhance the visual appearance of the common parts in a manner fitting with a high-class residential development. He states in his witness statement **[292]** that the costs involved were tendered in the market

and that it was identified that it was cheaper to source the artwork in the United Arab Emirates and then ship them to the UK which is the option the applicant chose.

Decision

75. Ms Grimshaw did not challenge the quantum of costs incurred by the applicant in respect of the benches and artwork. Rather, she argued that incurring these costs was unnecessary.

76. We are persuaded by Mr Jacob's evidence that the benches replaced an old sofa in the lobby. He was certain of this whereas Ms Grimshaw was uncertain. In our determination this cost was reasonably incurred by the applicant. We sat on the benches and did not find them excessively low. Their design is sympathetic to the new design of the lobby. We appreciate why Ms Grimshaw would prefer a higher seat and one with an arm rest given that she informed us she suffers from arthritis. However, this seemed to us to be essentially a matter of personal preference and one that other residents might disagree with. We do not consider the choice of design to be unreasonable. As to the removal of the old sofa by the Gloucester ~~Road~~ Place front door, the taxi issue could be dealt with by asking the taxi driver to telephone or text residents on a mobile telephone, or to call the porter, when close to arrival.

77. We found the artwork to be an attractive feature and in our determination the costs were reasonably incurred by the applicant. We have considered whether the installation of these framed pictures constituted an improvement that was not recoverable under the service charge. In our determination, it is not. The original leases for the Building were granted from 1976 onwards. Ms Grimshaw has been a lessee since 1977 and she agreed that there has always been some artwork present. Mr Bates argues that these costs were properly incurred by the landlord under clause 5(2) of the lease, as works of maintenance, as what was previously in place had been replaced. We agree that this is, arguably, correct but that the better interpretation of the lease is that they are recoverable under clause 5(2) as costs of redecoration of the common parts. The Major Works involved redecoration of the whole of the ground floor area, and the corridors on each floor, and the installation of these pictures, whilst apparently larger in number than those they replaced, are in keeping with that wider redecoration project. The reference to 'redecoration' in the clause 5(2) is wide enough to encompass this cost and redecoration is not, in our view, confined to just wallpapering and painting. If that is wrong, we accept Mr Bates' contention that installation of the new artwork constituted works of maintenance.

78. The cost of these pictures is included in the costs of additional works that total £49,546. We are unable to identify the amount specifically attributable to the installation of the paintings as that total sum also included several other items, including the armoires. However, in the absence of a specific challenge to the quantum of the costs from either Ms Grimshaw or Mr Moorjani or any of the leaseholders, and no evidence in support of any such challenge, we cannot conclude that the costs are unreasonable in amount.

79. All of Ms Grimshaw's challenges therefore fail and we determine that the costs of fittings and furnishings, including the additional costs and installation costs, were reasonably incurred and are payable by the leaseholders.

Preliminaries: Site Management

80. This concerns the sum of £21,072 for the costs of a foreman to manage the works.

81. Ms Grimshaw's position was that the applicant met with leaseholders at a Design Group meeting on 12 March 2014 at which ICFL agreed to the use of an independent project manager for the Major Works project **[231]**. She also contended that the Design Group had emphasised the importance of using an independent Clerk of Works for the project, in response to an update from the board of ICFL dated 26 September 2014 **[238]**.

82. Mr Moorjani's argument was that the contract manager was not entitled to this payment as it should have been "included in the profit he makes".

83. Mr Honor's evidence was that the foreman was employed by the main contractor, Pavehall and that he was on site every day apart from the usual holidays. He explained that the foreman fulfilled a completely different role to a Clerk of Works whose role is to independently verify if works have been carried out to an appropriate standard and to report the same directly to the client. By contrast, he said, a foreman's role is to liaise on site with the various sub-contractors and their workers. Employing a Clerk of Works would, said Mr Honor, have resulted in increased costs in the region of £60,000 - £80,000, in addition to the costs of a foreman.

84. Mr Jacob's evidence was that when these works were at a design stage there were three surveyors working on the project: himself; Graham Betts (a resident leaseholder); and Ian Honor and that the applicant decided that the three of them could together fulfil the role of a Clerk of Works. Mr Jacob's explained that his role was to co-ordinate the project and monitor its progress; Mr Honor's role was contract administration; Mr Betts worked on the design of the project along with Point of Design Limited who put together the specification of works.

Decision

85. Ms Grimshaw has not specifically challenged the costs incurred in the use of a foreman. She appears to be suggesting that it would have been preferable to employ a Clerk of Works. We have no doubt that doing so would only have increased the costs of the Major Works. We agree with Mr Honor that the two roles are very different, for the reasons he gave, and that there is no evidence to suggest that this project would have been carried out any differently, to a better standard, or with any additional benefit to the leaseholders, if a Clerk of Works had been used. Nor is there anything to suggest that it would have led to a reduction in other professional fees.

86. We agree with the applicant that a project of this size and cost required a full-time foreman and that the costs of doing were payable to Pavehall as part of their preliminaries. Mr Moorjani therefore seems to have misunderstood the role of

such a foreman and we reject his suggestion that the costs incurred should be borne by Pavehall.

87. We therefore determine that the costs have been reasonably incurred and are payable by the leaseholders.

Main Entrance Door – Gloucester Road

88. These costs, in the sum of £11,940, concern the replacement of the main entrance door and glazing, to match the design of the smaller, original Art Deco entrance door on Taunton Place.

89. Mr Moorjani's challenge was that there was nothing wrong with the old door and all it needed was a bit of sanding down and varnish. He suggests that a decent carpenter would have charged £4,000 for the new door.

90. Ms Grimshaw's complaint is that that there were problems with the installation of the door. She says the glazing shattered on three occasions and that on three occasions the lock has needed replacing. She also asserted in her statement of case **[241]** that the door closes with a heavy bang, that it does not sit flush and is gapped, and that the turnbuckles were defective.

91. Mr Honor's evidence was that the former door was old and worn, with gaps that allowed heat to escape and with unstable door frames that were beyond economic repair. Both Mr Honor and Mr Jacobs agreed that there had been some problems with the installation and that the glazing had shattered in the wind because the closing mechanism was not strong enough, However, this had been rectified by installing a strengthened door closer and that this, and the replacement glazing had all been dealt with within the contract's defects period and at no additional cost to the leaseholders. We were informed that the replacement glazing is 4mm thick toughened glass and that a heavy duty door closer, sufficient to cope with the strong winds on that side of the building had been installed. It had also been fitted with a strong magnetic door lock mechanism to ensure it stayed shut.

Decision

92. We accept as credible the evidence from Mr Barclay and Mr Honor, which was not contested by Ms Grimshaw, that the former door needed replacing for the reasons given by Mr Honor and these were clearly not issues that could have been dealt with by a bit of sanding down and varnishing as Mr Moorjani suggests.

93. There were clearly problems with the installation but there is no reason to doubt the applicant's witnesses' evidence these have all been rectified within the defects liability period, at no additional cost to the leaseholders. On our inspection we noted that the replacement door was of very good quality and that the carpenters have done an excellent job of matching the original Taunton Place external door. We tested the issues complained about by Ms Grimshaw in her statement of case and found no problem with the closing or fitting of the door. One turnbuckle to a glazed panel is defective, but this is a very minor defect when set against the remainder of the carried out to this entrance door and does not affect its operation. No significant gapping was present.

94. The sum of £4,000 suggested by Mr Moorjani is unsupported by any evidence or alternative quotes and appears to us to be pure speculation. The cost of this item appears to us to be reasonable in amount, reasonably incurred and payable by the leaseholders in full.

Taunton Place Entrance Door

95. Ms Grimshaw suggested that the new door was of inferior quality, that it did not sit flush with its frame and that most of its turnbuckles were broken. Mr Moorjani 's only comment is that the cost for this item should have been no more than £1,000.

Decision

96. We examined this door on our inspection. It is an attractive Art Deco door that has been refurbished to a high standard. Ms Grimshaw is correct that there is a small gap present. Whilst this could have been addressed with a draught excluder strip to do so would, in our view, risk the door becoming harder to close and would, in any event, have come at an increased cost. We did not notice a significant draught problem and we consider that any such issue is likely be negligible and could be adequately overcome by the presence of the internal lobby doors.

97. Again, Mr Moorjani's challenge to the cost of the work is unsupported by any evidence and a cost of £10 per hour for a carpenter, without any consideration of the cost of materials, is totally unrealistic. We determine the costs to be reasonable in amount, reasonably incurred and payable by the leaseholders in full.

Lift Door Architraves

98. This cost of £23,881 concerns the installation of Corian surrounds around the lifts in the lobby area and around the lift entrances on each floor. Ms Grimshaw considered them to be a "superfluous design conceit" and both she and Mr Moorjani contended that there was nothing wrong with the existing surrounds and that the work was unnecessary.

99. Mr Honor's evidence was that when the lift replacement and removal of asbestos in the lift shafts works were carried out in 2013/14 it was identified that the existing metal surrounds needed to be replaced but this work was deferred until the current Major Works exercise, when the Corian architraves were installed. Mr Jacobs concurred and explained that there was asbestos behind the existing frames and as it had been identified that a second skin was needed between the frame and the lift, for fire resistance purposes, it was decided that it was more practical to wait until this Major Works exercise before replacing the architraves. He explained that replacement was needed to remove the asbestos and because there was a gap between the lift car and floor level.

Decision

100. We accept as credible and see no reason to doubt Mr Jacob's evidence regarding the need to replace the previous surrounds due the presence of asbestos and the

issue of gapping. The presence of asbestos in these areas is referred to in an asbestos survey report carried out by Envirosurv Ltd **[855]**.

101. As to Ms Grimshaw's complaint concerning the design, in our view, the material used is of very good and hard-wearing quality and the design is appropriate for the Building and the design scheme of these Major Works. Whilst Ms Grimshaw and Mr Moorjani appear to have different aesthetic tastes, the question for us to determine is whether these costs were reasonably incurred and we determine that they were.

102. There is no evidence before us that the quantum of costs incurred was unreasonable and we determine that the costs are reasonable in amount, have been reasonably incurred and are payable by the leaseholders in full.

103. Nor do we accept that these were works of improvement that are not recoverable from leaseholders under their leases as Ms Grimshaw suggests. Replacing the previous defective surrounds clearly falls within the landlord's covenant at clause 5(2) of the leases.

Electrical Light Fittings

104. As part of the Major Works, the light fittings in the corridors on each floor were replaced at a cost of £32,721. As the ceilings on the ninth floor are at a lower height than those on the floors below, the light fittings installed on this floor were of a surface mounted non-pendant variety. In the lower floors, pendant lights were installed except to the ground floor where non pendant fittings were also installed. Ms Grimshaw's position was that the use of pendant lighting was inappropriate as there was a risk that a light would be hit when someone was moving large items of furniture or an object like a ladder down a corridor. She also argued that in places the lights were not in alignment.

105. Mr Jacobs' evidence was that in the approximately two years since they were installed there had only been two occasions when pendants had been hit and broken and that given the number of lights present and the high volume of traffic this was not a significant issue. He also stated that use of the globe pendants would not have cost significantly more than the use of ceiling mounted lights.

<u>Decision</u>

106. We consider that these costs have been reasonably incurred and are payable by the leaseholders in full. Given Mr Jacob's evidence as to the very few occasions on which pendants had been damaged, which was not challenged by Ms Grimshaw, we do not accept that use of the pendants was an unreasonable choice by the applicant. As to the alignment issue, when the lights were installed, they were placed in the centre of all sections of the corridor ceiling. As the width of the corridors changes in several places this means that the fittings are not all in a straight line. We do not consider the positioning to be inappropriate. It is a matter of aesthetic preference that has no functional impact. We determine that the costs are reasonable in amount, have been reasonably incurred and are payable by the leaseholders in full.

Lobby Wall-hangings

107. Several decorative lengths of narrow, patterned fabric were installed on the walls of the ground floor lobby area at a cost of £2,702. Ms Grimshaw considered these to have no practical function and that they were simply an unsatisfactory design feature.

108. The applicant's position was that the curtains were included in the Major Works as part of the design scheme.

Decision

109. Ms Grimshaw is correct that the curtains serve no practical purpose. They are decorative and, in our view, an attractive decorative feature, in keeping with the high-quality design of the lobby area. The costs were, in our determination, reasonably incurred by the landlord under clause 5(2) as costs of redecoration of the common parts for the same reason as the artworks referred to above and are payable by the leaseholders.

Door Frames to Individual Flats

110. In her statement of case, Ms Grimshaw suggests that works carried out to architraves above individual flat entrance doors~~, at a cost of £109,834,~~ constituted improvements, the costs of which are not recoverable from leaseholders.

111. Mr Jacob's evidence was that the works involved removing the front entrance doors to each flat, and fitting temporary doors, whilst works were carried out to overhaul the original doors and bring them up to standard to comply with the Regulatory Reform (Fire Safety) Order 2005. This included installing cold seal strips around the doors, new fire-retardant hinges and fire-retardant door furniture and letter boxes. The cost related to 136 doors at about £806 per door.

Decision

112. We do not consider these works to constitute improvements. They were either works of repair, maintenance or renewal and therefore recoverable from the leaseholders through the service charge as landlords' expenditure under clause 5(2) of the lease. In our determination the applicant acted reasonably in seeking to bring the doors up to required current safety standards

113. As to the amount of cost incurred, at about £806 per door, this is at the higher end of the scale of what we would have expected but is not, in our expert opinion, so high as to be unreasonable. Nor is there any evidence before us to satisfy us to the contrary. We therefore determine that the costs have been reasonably incurred and are payable by the leaseholders.

Mr Moorjani's Historic Neglect Challenge

114. It is common ground that the common parts of the Building were in a state of disrepair when the Building was acquired by the applicant in March 2011. This

was established by the Court of Appeal in Mr Moorjani's claim against Durban Estates.

Mr Moorjani's Position

115. Mr Moorjani argues that the applicant bought the Building knowing that expensive major works were required and that rather than buying it, carrying out those works, and seeking recovery of the costs incurred from leaseholders, it should instead have sought to force Durban Estates Ltd to repair the Building as per its repairing obligations under the individual residential leases. In addition, he says, the applicant should have sought compensation or damages from Durban Estates for breach of its repairing obligations. His case appears to be that having purchased the Building without securing an indemnity from Durban Estates covering the costs of the repairs required, that it was unreasonable to expect leaseholders to pay for the costs of the Major Works.

116. He also suggests that Mr Jacobs had previously estimated, in 2008, that the costs of the works required to the Building was in the sum of £571,000 and therefore that the leaseholders' liability for the Major Works should be limited to that sum on the basis that there had been an unreasonable delay in carrying out the required works. Mr Jacobs, it should be noted, states that he does not recall providing any such estimate and Mr Moorjani's has not explained how that estimate is said to have been provided.

117. In addition, Mr Moorjani contends that the applicant has been in breach of its repairing covenants under his lease so that he is entitled to set-off damages against his service charge liability.

The Applicant's Evidence

118. In his witness statement, Mr Barclay states that Durban Estates refused to enter into any form of indemnity concerning its failure to comply with its repairing obligations and that, given that position, the board of ICFL decided that it would be preferable for the applicant to acquire the freehold, and to carry out the required repairs itself, rather than delay acquisition until the outcome of likely prolonged, expensive and uncertain litigation against Durban Estates. This, he says, is the case that was presented to leaseholders, almost all of whom agreed with the proposed course of action.

119. Mr Barclay also explains, at paragraphs 13 - 15 of his witness statement that after acquiring the freehold in 2011, a meeting was held with leaseholders in which they were presented with estimates for the refurbishment of the Building by Mr Jacobs and were given three options, a fast, medium or slow track. He states that at this point the reserve fund was quite low and that most of the leaseholders' present resolved to follow the medium track, which envisaged the works being completed by the end of 2013. However, he explains, due to the enormous planning required; the desire to keep leaseholders involved as much as reasonably possible; and the various unanticipated issues that arose as the works progressed, delay occurred, with the works being substantially completed by the end of 2016.

120. Mr Jacobs explains at paragraphs 17-23 of his witness statement that he recommended that internal repairs and redecoration be deferred until the more pressing repairs that were the subject of the 2012-13 and 2013-14 works were addressed.

121. Given Mr Moorjani's historic neglect argument, the applicant sought and was granted permission to rely upon expert evidence from Mr Byers. He produced a report dated 11 May 2018 **[1220].** The active respondents were also accorded the opportunity to obtain and rely upon expert evidence, but none is before us.

122. In his report, which followed his inspection of the Building on 23 April 2018, Mr Byers addressed two questions:

    (a) could the whole or part of the cost of the [Major] works have been avoided if the work had been carried out at any earlier time? And, if so, by how much has the cost of the work increased as a consequence of the Applicant not carrying the work out at that time?

    (b) have any of the Respondents suffered any inconvenience or discomfort as a consequence of the delay? And if so, what value should be attributed to that inconvenience or discomfort (if any)?

123. To answer the first question, he identified the chronology of works carried out since the applicant's acquisition of the freehold. He states that the works were extensive, involving input from numerous parties including property managers, building surveyors, architects, service engineers, asbestos specialists and construction, design and management consultants and that each stage of works would have required considerable preparation before works could commence. In his opinion, the procurement process would have taken about 70 weeks and, therefore, if started immediately following the applicant's acquisition of the freehold, the applicant would not have been in a position to commence works until, at the earliest, about July 2012.

124. He goes on to say that other factors influencing the date of commencement of works would be the prioritisation of works and the ability to pay for them. He considers that it was proper to prioritise external repairs, roof and lift works ahead of interior refurbishment works of the communal parts, and that doing so avoided potential damage to the communal parts by other works.

125. Mr Byers states that he examined the Reserve Fund Calculation for the Building which indicated that the total estimated cost of the planned works was £3,254,000 and that the available funds in September 2014 were about £1 million less than that sum **[1002]**.

126. He compares the cost of the Major Works, which commenced in September 2015 with what he considered to be the likely cost if commenced in July 2012. He points out that had the works commenced in July 2012 that, in 2017, the Building would be have been the subject of cyclical repairs, which the managing agents have scheduled to take place at 5-yearly intervals. He concludes that even after allowing for an estimated 5% increase in the cost of the Major Works between July 2012 and October 2014, the total cost to leaseholders is probably less than it

would have been if they had been commenced in July 2012. He estimates that saving to amount to around £82,000.

127. As to the second question, his opinion is that there may have been a small degree of inconvenience or discomfort to leaseholders by the delay in commencement of the Major Works. He considers how to quantify general damages for discomfort and inconvenience as identified in in *Moorjani v Durban Estates* and does so by examining the change in both sale prices and rental values for flats in the Building before and after the Major Works. His opinion is that although both have declined a little over recent years that this was likely to be the effect of a generally weak property market. His expectation is that given the attractive location of the Building, the condition of the communal areas was unlikely to have impacted on rental values, but if it did, then the impact would have been nominal in amount.

Decision

128. We find no merit in Mr Moorjani's submissions. We see no reason to doubt, and accept as correct, Mr Barclay's witness statement that the applicant was incorporated in order to purchase the freehold of the Building. We agree with Mr Bates' submission that as the applicant was not a party to the relevant leases it had no way in law to compel Durban Estates Ltd to carry out works, either prior to, or after its acquisition.

129. It is not for us to determine if the applicant's decision to acquire the freehold and carry out the repairs itself was appropriate. Nor is the absence of a condition of sale that Durban Estates carry out works or the lack of an indemnity from Durban Estates in respect of past disrepair, relevant to the question that we must determine. The applicant, having acquired the freehold of the Building, with notice of the extant disrepair, was under an obligation to attend to the disrepair present which it has clearly sought to address. The question for us is whether the resulting costs of these Major Works were reasonably incurred and whether the costs are payable by the leaseholders.

130. Mr Moorjani also appears to have overlooked the fact that if Durban Estates had carried out works prior to sale of the Building it would, in all likelihood, have sought to recover the costs incurred from leaseholders through the service charge.

131. We see no basis on which the costs of these Major Works can, or should be limited to a 2008 estimate, especially since Mr Jacobs had no recollection of giving such an estimate and we have not been referred to any documents evidencing the asserted estimate.

132. Nor does the evidence support Mr Moorjani's historic neglect challenge or give rise to an entitlement to damages that can be set-off against his service charge liability. In *Daejan Properties Ltd v Griffin and another* [2014] UKUT 0206 (LC) the Upper Tribunal considered the circumstances in which a history of neglect of a landlord's repairing obligations might have the effect of limiting the cost of remedial work recoverable through service charge. Paragraph 89 of the decision reads as follows:

> *"The only route by which an allegation of historic neglect may provide a defence to a claim for service charges is if it can be shown that, but for a failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects, would have been avoided".*

133. In our judgment, the applicant's delay in commencing works does not amount to a breach its covenants in clauses 5(2) and 5(4) of the Lease. The applicant only became liable to make good the defects in the Building following its acquisition and, as Mr Bates points out, it was entitled to a reasonable period of time, in all the circumstances, in which to do so. In our judgment the applicant did not unreasonably delay carrying out works to the Building following its acquisition. Works to the external elevation and roof repairs were carried out in 2012-13; lift replacement and removal of asbestos in lift shafts works were carried out in 2013-14; followed, in 2015-17 by the internal repair and redecorations works that are the subject of this application. That chronology does not suggest undue delay.

134. We accept Mr Byer's evidence that a lengthy procurement exercise was required given the extent of the works required, and the number of professionals to engage with, it was clearly appropriate for the applicant to prioritise the more urgent works. In our judgment delaying the non-urgent works was a reasonable decision given the shortfall in the reserve fund and the financial burden that would have been placed on leaseholders if the 'fast track' option referred to by Mr Barclay had been followed.

135. Even if that is wrong, we are persuaded by Mr Byers' evidence that any delay in the applicant complying with its repairing covenants did not result in any additional cost to the leaseholders given that they would also have to have paid for the cost of cyclical repairs. In our opinion, a 5% increase in the cost of the Major Works between July 2012 and October 2014 is realistic and once the planned cyclical repair works in 2017 are factored in, at a cost of £185,000, we accept that the leaseholders have gained financially by the delay in the commencement of Major Works.

136. Mr Byers' evidence concerning the value of any loss suffered by the leaseholders by the delay is, in our view, inconclusive. The seven sales of flats in the Building he has identified between September 2012 and July 2017 (with no sales in 2015 or 2016) is too small a sample to provide reliable evidence. The same is true of the lettings evidence he has identified, although we note that Flat 1 realised a rent of £250 per week on 20 May 2011, £305 per week on 25 November 2015 and £330 per week in 19 August 2017 which would appear to indicate that rental values have held up well throughout this period.

137. In summary, we find that the applicant did not breach its repairing covenants in respect of the Building by reason of delay in the commencement of the various sets of works carried to the Building since its acquisition of the freehold in 2011 and that in any event, if that is wrong, the delay did not result in any additional cost to the leaseholders given that they would also have to have paid for the cost of cyclical repairs in 2017. Finally, the evidence does not suggest that any part of

the cost of the Major Works would have been avoided if the works had commenced prior to 2015.

Mr Moorjani's Challenge to the Individual Heads of Expenditure

138. As stated above, Mr Moorjani has challenged virtually every head of expenditure in what is a very detailed specification of works. In our determination, all his challenges fail, except in respect of those costs that the applicant has conceded are not payable by leaseholders.

139. It would not be proportionate for us to address in detail why his challenge to every single item of expenditure has been unsuccessful and we explain our reasoning in broad terms and utilising the categories of expenditure identified in the Scott Schedule which itself reflects the categories and sub-headings contained in : (a) the summary of final costs of the Major Works **[123-4];** (b) the original specification of works and schedule of omissions **[125-134]**, and alterations to the specification **[134-150].**

Professional Fees

140. The summary of the final costs of the Major Works indicates that the total professional fees incurred were as follows:

(a)	Bond Davidson (contract administrators)	£62,485
(b)	Point of Design (design consultants)	£53,300
(c)	ME7 (technical design)	£49,302
(d)	Quadrant Harmon (structural engineers)	£1,250
(e)	Goddard Consulting (building control)	£2,750
(f)	MLM Building Control (building control inspectors)	£1,600
(g)	Essex Fire (fire safety)	£1,500
(h)	MLM (managing agents' administration fee)	£32,003

141. The fees specified for ME7, Quadrant Harmon and Goddard Consulting at paragraph 271 of Mr Jacob's witness statement are a little different from the figures stated above. However, as Mr Jacobs and Mr Honour both relied upon the summary as indicating the final costs at the hearing before us, we proceeded on the basis that that sums stated in the summary are the correct figures.

142. In his witness statement Mr Jacobs states that the total professional fees amount to about 10.79% of the total cost of the works that for a project of this size and complexity the fees are within normal ranges. We calculate, on the basis of the figures specified in the previous paragraph, that they actually amount to approximately 11.4% of the costs of the works.

143. Mr Moorjani disagrees, and states that the norm is 5%, if at all necessary. He argues that: (a) there was no need to engage Bond Davidson as free estimates and specifications of work can be obtained from contractors; (b) incurring design consultants' fees was unnecessary and the design was, in any event, unsuitable for an Art Deco block; (c) ME7's fees concerned the removal of radiators which he considered to be in breach of his lease and therefore unrecoverable; (d) MLM Building Control fees should have been included as part of the annual management fee for managing the Building; (e) Quadrant Harmon's and Goddard Consulting's fees should only be allowed if Bond Davidson's were disallowed; (f) MLM's administration fee was unnecessarily incurred.

144. We do not accept Mr Moorjani's challenges. In our experience as an expert tribunal a project of this scale and nature will involve a number of professional consultants whose total fees we would expect to be in the region of 10-15% of the total cost of the project. The 5% sum proposed by Mr Moorjani is unsupported by any evidence and was rejected by Mr Jacobs, in evidence, as being totally unrealistic. We agree with that assessment and accept that the actual fees incurred, which are in the region of 11.4%, were reasonably incurred. Mr Honor explains the role that each consultant played in the project at pages **[803-805]** of his witness statement and Mr Jacobs adds to this at pages **[271-273]** of his witness statement. We find nothing unusual or unreasonable in the description of the work carried out by each of them and the incurring of such costs by a landlord is, in our judgment, entirely reasonable.

145. Works of this nature and complexity required a project manager and contract administrator such as Bond Davidson to produce a detailed specification of works before tendering for the works; to administer the tender process; to liaise with the design team and to manage the contract. Contactors for projects of this nature do not, in our experience provide specifications for free and no evidence has been provided to suggest otherwise. Contrary to Mr Moorjani assertion, Mr Jacobs is a general-practice chartered surveyor and, in our view, and as he acknowledged, he would not have been capable of producing a technical specification for these works. We also agree that a £2,000 sign-off fee levied by Bond Davidson was reasonably incurred given the duration of the Major Works exercise.

146. Nor do we consider it unreasonable for the applicant to have incurred Point of Design's fees. We accept that a project of this size and nature, involving works to a large Art Deco building, necessitated a design element and the extent of work carried out is shown in the specification of works which identifies many detailed technical drawings and specifications produced by Point of Design. Whilst Mr Moorjani is apparently unhappy with the design that is a matter of personal preference and it cannot, in our view, be said that these costs were unreasonably incurred, especially given that the design was discussed at various meetings with leaseholders some of whom were involved in specific design group and subject to a statutory consultation exercise and competitive tendering process. Further, if Point of Design had not produced these technical specifications, another professional, perhaps Bond Davidson, would have had to have done so which would have led to a significant cost being incurred in any event. There is no evidence to establish that the actual fees incurred are excessive in amount.

147. Mr Honor states in paragraph 36 of his witness statement that ME7 provided a technical performance specification for the mechanical, electrical and public health services required, as well as a design of the lighting, wiring and heating to ground floor and heating removal works. We accept that these costs were reasonably incurred and that such specifications are required in a project of this nature. We see no merit in Mr Moorjani's suggestion that the applicant has breached the terms of his lease by the removal of radiators in all the corridors and the replacement of those in the lobby areas. The radiators removed were landlord's fixtures located in communal areas and were not, as he suggests, demised to leaseholders.

148. Mr Honor explains that MLM Building Control acted as approved building inspectors, checked the plans, inspected works as they progressed, and issued the final Building Control Certificate. This is not, as Mr Moorjani' argues, a role that the managing agent could have performed. The role requires checks to ensure that statutory requirements are met and must be performed by either a local authority building control officer or an independent Building Control inspector. There is nothing, in our determination, to suggest that these costs have been unreasonably incurred or that they are unreasonable in amount. The same is true in respect of the fees incurred by Quadrant Harmon and Goddard Consulting about which Mr Moorjani made no substantive challenge.

149. As to MLM's administration fee, the works carried out by MLM, as identified by Mr Jacob's in paragraph 139 of his witness statement are substantial. They include such matters as liaising with the Board, leaseholders, the Residents Design Forum, Pavehall and the professional consultants. In addition, Mr Jacobs dealt with the fallout when Pavehall issued a notice of termination of contract and managed to negotiate a settlement of their dispute and a reduction in the costs of the works as identified by the column on each page of the final specification entitled 'discount agreed with contractor'. We accept that explanation and in our determination the cost of this work was necessary for the efficient running of the Major Works exercise and was reasonably incurred and reasonable in amount given the length of time these works took to complete and given the unexpected additional works that arose.

<u>Additional Costs of Armoires, Pictures, Plant Boxes and Porter's Key Cabinet</u>

150. Mr Moorjani objects to these additional costs, and the installation costs incurred on the basis that they were unnecessary and because plants cause hay fever and bring on asthma and are therefore "against health and safety".

151. We have already determined, in response to Ms Grimshaw's challenges, that the costs of the armoires and pictures were reasonably incurred by the applicant. In addition, the applicant has conceded that the cost of the plant boxes is not payable by the leaseholders. As to the porters' key cabinet, the applicant's case is that the existing cabinet was too small and was unable to be locked and secured properly, meaning that controlling access to residents' keys was becoming an issue.

152. We accept that the installation of the new cabinet, which is said to be larger and better labelled, benefits the residents, especially given the growth in online

shopping referred to in the applicant's letter of 24 August 2018, notifying leaseholders of these additional costs **[400]**. We determine that the costs were reasonably incurred and reasonable in amount and are payable by the leaseholders.

Preliminaries

153. These costs, which total £70,599, concern the costs of site management; site distribution and cleaning; welfare and provision of huts for contactors; waste removal; power and water; temporary electricity supplies; a final site clean; and access and scaffolding costs, are all disputed by Mr Moorjani who argues that the costs should have been borne by the contractor, Pavehall, out of its profit. He also says that the site was not cleaned regularly, if at all.

154. In our determination all the sums in question have been reasonably incurred, are reasonable in amount and are payable by the leaseholders in full.

155. Mr Honor addresses these costs at paragraphs 41 to 46 of his witness statement and we accept his explanation as to why it was necessary to incur these costs. In a works project of this size, costs are always going to be incurred in respect of preliminaries and it is entirely appropriate that they are priced separately from the works themselves, so that they can be analysed separately when reviewing tenders received. We have already determined that it was reasonable to incur the costs of a foreman to manage the works on site; there is no evidence to corroborate Mr Moorjani's unsubstantiated allegation that cleaning did not take place regularly. We find credible Mr Jacob's verbal confirmation to us that dust and disturbance caused by the works was cleaned on the same day, with a full clean at the end of each week. If that was not the case, we would expect to be referred to documents evidencing contemporaneous complaints from leaseholders, but none have been referred to us.

156. It is a statutory requirement under the General Duties (Construction (Design and Management) Regulations 2007 to provide welfare facilities to workers on site; costs of waste removal and scaffolding are inevitable as are the costs of temporary electricity supplies to provide temporary lighting whilst circuits are being replaced. A final site clean is reasonable.

157. In our determination, all these costs have been reasonably incurred and are properly recoverable from leaseholders. Mr Moorjani objects to the lack of disclosure of invoices for scaffolding work but as the applicant indicates these costs formed part of the contractors' risk items that were priced and included as preliminaries in the contract specification. The amount priced in the specification for this item is the amount payable to Pavehall, the main contractor, and not the sub-contractor. As such, it is to be expected that the applicant is not in possession of invoices from sub-contractors.

Demolitions and Alterations

158. These costs, which total £15,007, include the removal of: carpets to communal areas; vinyl flooring to staircases; tiled flooring to ground floor areas; radiator shelves; window cills; the double doors and glazing to entrances; a fireplace and

chimney; double doors, frames and architraves to corridors and adjacent to the lifts at ground floor level; and smoke control doors.

159. Mr Moorjani objects to the quantum of costs incurred for these items and suggests that a reasonable cost for each head of expenditure is the cost of one contractor, working at a rate of £10 per hour, (except for carpet removal which he suggests could be done by two casual labourers, each paid at this rate of £10 per hour).

160. This suggestion is completely unrealistic in the context of a competitively tendered major works exercise. Mr Moorjani has produced no evidence by way of alternative quotes or otherwise to support these assertions and we do not consider them credible. Our examination of the costs incurred, as specified in the specification, does not give us any concern that the costs have been unreasonably incurred or that they are unreasonable in amount.

Superstructure

161. These costs, which total £308,711 include the costs of: removal and replacement of the asphalt flat roof above the main lobby; replacement of the carpet on stairs and corridors; renovating the glass doors behind the reception desk; renovating the windows in communal areas; replacing the Gloucester Place main entrance door; renovating the lobby doors; installation of hardwood smoke control double glazed doors in the corridors of each floor; renovating the doors to the flats; renovating the fire exit doors and store room doors in the basement; replacing the fire exit door by the reception desk; renovating the fire exit steel doors; re-making the smoke control doors to basement level; installation of new stone/ceramic cills to windows in the corridors on each floor; and blocking up superfluous window glazing in the communal corridors of the first seven floors of the Building.

162. For most of these items, Mr Moorjani either made no substantive challenge, instead asking in the Scott Schedule for clarification (which the applicant provided in its response) or he argued that the costs incurred were excessive, again indicating that someone could be found to carry out the work in question at a cost of around £10 per hour. For several of the items he states in the Scott Schedule that he will "comment later on", or that the cost is "to be argued in the trial".

163. These were all tendered items and, once again, Mr Moorjani has produced no supporting evidence to support his assertions that the costs incurred are unreasonable in amount. As stated above, it is, in our view, completely unrealistic to suggest that a labourer working on a project of this nature could be engaged for £10 per hour and, again, Mr Moorjani makes no allowance for the cost of materials. In our determination, all the costs were reasonably incurred and are payable by the leaseholders.

164. As stated above, Mr Moorjani contends that there was nothing wrong with the former Gloucester Place main door and all it needed was a bit of sanding down and a coat of varnish. We see no reason to doubt, and we accept as true, Mr Honor's evidence at paragraph 49 of his witness statement and Mr Jacob's oral evidence to us, that the Gloucester Place main door was old and worn and a

source of draught, with an unstable door frame that was beyond economic repair and we note that Ms Grimshaw did not suggest that replacing the door was unnecessary. The costs incurred, £11,940, appears to us to be reasonable for the manufacture and installation of what is an impressive main entrance door to the Building.

165. Mr Moorjani also suggests that there was no need to install temporary doors whilst the flat doors were renovated, and that door furniture could have been replaced in situ. We disagree and accept the applicant's explanation that it was under a statutory obligation under the Regulatory Reform (Fire Safety) Order 2005 to upgrade the doors and that doing so required the removal of 136 doors to a basement workshop so that the required works could be carried out. This, it is said, included installing cold smoke strips around the doors, new fire-retardant hinges, door closers, and fire-retardant door furniture and letter boxes. As stated above, at £806 per door, the cost is at the higher end of the scale of what we would have expected but it is not so high as to be unreasonable.

166. Mr Moorjani has also suggested that renovating and existing fire doors in the basement should not have cost more than £100 per door. We agree with the applicant that this figure is completely unrealistic given that each door needed to be removed to a workshop, worked on and then re-installed.

167. We do not accept his argument that the costs of renovating store rooms in the basement should be borne by the freeholder. These fall within the landlord's covenant to maintain, repair, redecorate and renew the reserved parts of the Building at clause 5(2)(iii), the definition of which includes the 'stores' in the Building.

168. Mr Moorjani suggests that the reason why the applicant blocked off windows on the first seven floors of the Building was because newly-installed boilers had inadequate capacity. He has not provided any corroborative evidence to support that assertion and we reject it, finding it credible that, as the applicant contends, that blocking out these windows was a practical design consideration as very little light entered through the light wells and that it also had the benefit of eliminating future maintenance costs. We agree with Mr Jacob's explanation that the enhanced lighting in the corridors compensates for any lack of light from the windows.

169. Mr Moorjani argues that the costs incurred in the remaining items under the heading of superstructure were excessive in amount but has produced no alternative quotes or other evidence to support these assertions. In the absence of such evidence, we find all the costs to be reasonably incurred and they are therefore payable by the leaseholders.

<u>Wall Finishes</u>

170. The total cost incurred under this heading amounted to £94,538. Of that sum, the applicant conceded that costs in respect of a plaster plinth extension (£4,567) and plaster pilaster to existing columns (£4,141) were not recoverable from the leaseholders.

171. For the remaining items Mr Moorjani again either raises no substantive challenge or argues that work could have been carried out at a cheaper cost. Again, he suggests unskilled work could be carried out at the rate of £10 per hour. For the same reasons as stated above we reject these challenges and determine that all the costs were reasonably incurred. Mr Moorjani has produced no evidence to support his contentions which we consider to be wholly unrealistic and which make no allowance for the cost of materials.

172. As with Ms Grimshaw, Mr Moorjani also argued that the work carried out to replace the architraves to the lift doors was unnecessary. That challenge is rejected for the reasons as stated above in respect of Ms Grimshaw's challenge.

Floor and Ceiling Finishes

173. The total cost incurred under this heading amounted to £87,811 for floor finishes and 62,429 for ceiling finishes.

174. Mr Moorjani argues that costs of £10,000 in respect of making good and replacing damaged floor boards had already been accounted for. That is incorrect. This cost was a provisional sum subsequently reduced to £9,005 following Mr Jacob's negotiation with Pavehall. Sums of £27,000 and £13,500 were subsequently expended for works to the floors by way of contract instructions CI 4.2 and 4.3 and form part of the final account along with the original provisional sum.

175. He also contends that the installation of a dropped ceiling on the ground floor was unnecessary and that it had ruined the original high Art Deco ceiling. Mr Jacob's evidence was that the ceiling had been dropped by an inch to avoid chasing cabling for the new light fittings into concrete. We consider this to be a reasonable decision by the applicant and that it has probably made negligible difference to the visual impact of the ceiling. We determine the costs to have been reasonably incurred as were the costs of a fitting a new dropped beam which the applicant states was repaired because it was damaged, and which was also lowered from its original height to provide a better aesthetic appearance.

176. For the other items under this heading, Mr Moorjani again either raises no substantive challenge or argues that work could have been carried out at a cheaper cost. For the same reasons as stated above we reject these challenges and determine that all the costs were reasonably incurred. He has produced no evidence to support his contentions which we consider to be wholly unrealistic and which make no allowance for the cost of materials.

Fittings and Furnishings

177. The total cost incurred under this heading amounted to £83,507. Of that sum, the applicant conceded that costs in respect of the planters (£3,537) and the stained-glass features in the lobby (£2,377 and £2,260) were not recoverable from the leaseholders.

178. Mr Moorjani objected to the cost of £14,726 incurred for the installation of a new reception desk which he considered was unnecessary as the old desk was in excellent condition and gave the reception area a 'classy' appearance. Mr Jacob's

evidence was that the former desks were old, damaged and in need of significant repair. We accept Mr Jacob's evidence. The impression given by the photograph of the former desk at **[994]** is of an old, shabby desk. In our view, the new desk is impressive and in keeping with the new visual aesthetic of the lobby area.

179. Mr Moorjani's challenges to the costs incurred in respect of the benches and artwork are rejected for the same reasons as Ms Grimshaw's.

Mechanical Installation and Pricing.

180. The total cost incurred under this heading amounted to £58,411 and concerned the removal of the three central heating radiators previously located in each corridor of the Building and the replacement of the radiators in the ground floor lobby area. Mr Moorjani argued that this was done because the heating boilers installed in 2008/9 were inadequate and that removal constituted a breach of his lease. He also suggests that extra electricity costs have arisen from the use of the new radiators on the ground floor.

181. Mr Jacobs explained that it was decided to remove the radiators in the corridors as part of the Major Works as they were unnecessary and that doing so would result in a cost saving of about 6,000 - £8,000 in heating costs. He said that, previously, many leaseholders had left windows in the corridors open when the radiators were on and that nobody except Mr Moorjani had complained about draught. In addition, he said, removal of the radiators put less pressure on the central boiler which would prolong its life.

182. We accept Mr Jacob's explanation. There is no evidence to support Mr Moorjani's allegation as to why the radiators were removed or that increased electrical costs have resulted following the installation of the new radiators on the ground floor. The reference to the installation breaching the terms of Mr Moorjani's lease is unsubstantiated and has no merit. The costs were, in our determination, reasonably incurred and are payable by the leaseholders.

Electrical Installation Pricing Schedule

183. The total cost incurred under this heading amounted to £168,866 and concerned the installation of new lighting throughout the communal areas of the Building. Mr Moorjani has simply said that these costs "will be argued at trial" but makes no substantive challenge other than to say that he preferred the former lighting and that there was no need to replace it.

184. In the absence of any substantive challenge, we determine that the costs were reasonably incurred and are payable by leaseholders. We accept the applicant's assertion that the work fell within its maintenance and repairing obligations in clause 5(2) of the Lease.

External Works

185. The total cost incurred under this heading amounted to £7,717. Mr Moorjani objected to the cost of £225 for tidying up and cleaning the entrance areas, suggesting that the cost involved should be borne by the contractor. We disagree. There is no reason not to include these costs within the specification of works and

within the tendered contract. He also asserts the remaining costs incurred under this heading could have been done cheaper but has again produced no evidence to support this bare assertion and, as such, we consider it has no substance. We therefore determine that the costs have been reasonably incurred and are payable by the leaseholders.

Provisional Sums

186. The sum of £192,639 was included in respect of provisional sums. Mr Moorjani repeats his challenge in respect of the central heating radiators in relation to any additional works required, and we reject this challenge for the same reasons as stated above. Namely that there is no evidence to support Mr Moorjani's allegations as to why the radiators were removed; that increased electrical costs have resulted or that there has been a breach of the terms of his lease.

187. As to a £45,025 allowance made in respect of asbestos removal, Mr Moorjani's position is that as the applicant bought the Building knowing that asbestos was present any cost of removal should have fall upon Durban Estates and as its successor in title the applicant is "bound to discharge Durban's obligation". Whilst we agree with Mr Moorjani that the applicant is now responsible for complying with the landlord's repairing and maintenance covenants in his lease, the cost of this item of expenditure is properly recoverable from leaseholders via the service charge. Mr Jacobs sets out the reasons why this work was required and why a provisional sum was set aside at paragraphs 111 to 129 **[268-270]** of his witness statement and Mr Honor provides further details at paragraphs 12 to 32 of his statement **[268-270]**.

188. Their evidence, in summary, was that shortly after the Major Works commenced Pavehall lifted a section of floorboards to review pipework and, for the first time, identified suspected asbestos debris. A specialist survey subsequently revealed the presence of asbestos dust in floor voids in the Building that appeared to have been left behind when lagging had been removed at some time in the past. Mr Honor explains that Bond Davidson arranged for three separate contractors to review the situation, all of whom identified that the asbestos could not be encapsulated and had to be removed. Mr Honor states that Asbestos Environmental Solutions Limited subsequently carried out the removal works, floor by floor, between 1 December 2015 and 3 March 2016. He also explains that further asbestos removal works were required to remove textured coatings on walls and to remove asbestos in the floor voids in the basement.

189. Mr Moorjani makes no direct challenge to either the evidence of Mr Honor or Mr Jacobs regarding these asbestos works and we accept their evidence as to why these works were required. There is no challenge as to the need for the works in question or the cost involved. We consider it entirely reasonable for the applicant to carry out the asbestos-related works and in our determination the entire cost of doing so is recoverable from the leaseholders via the service charge.

190. Mr Moorjani also challenges provisional sums allocated to handrail repairs, door closure installation, general roof repairs to the 8th and 9th floors of the Building, replacing roofs to lift shafts on the basis that these were provisional sums and the contractor has not identified that the work was actually carried out. However,

these costs have all been included as final figures in the contract schedule, indicating that the works were carried out. Mr Jacobs and Mr Honor, who compiled the applicant's responses in the Scott Schedule confirmed that these works were, in fact, carried out and we see no reason to doubt that evidence.

191. Mr Moorjani also asserts that the sum of £9,680 for lagging heating system pipework beneath the floorboards was unnecessary as pipework was removed. We do not understand why Mr Moorjani thought removal was occurring and we accept the applicant's explanation that pipes were lagged to allow for a more efficient heating and hot water supply.

192. Although Mr Moorjani challenges provisional sums allocated in respect of electrical works, he has made no substantive challenge, stating that these will be argued "at trial". In the absence of a substantive challenge, we determine the costs to be reasonably incurred and payable in full.

193. As these costs are allowances in respect of provisional sums, we accept that additional sums for Pavehall's overheads and profit are also payable by leaseholders Where Pavehall undertook work either directly or via sub-contractors it would be usually be entitled, under its contract, to collect overheads and profit where such work was either provisionally included in the tender were works fully described and included in the contract specification on which Pavehall's tender was based.

Omissions, Additions and Alterations

194. A schedule of omissions, additions and alterations from the tendered contract specification appears at **[134]-[150]**. Omissions total £247,302 and additions, £620,489.

195. Although in his Scott Schedule Mr Moorjani challenges almost all the extensive list of additions, he raises no substantive challenge to many of them. Once again, for many the items, he simply states that the cost will "be argued at trial".

196. We are satisfied that the cost of these additions and alterations to the contract were reasonably incurred and determine that the costs incurred are payable by the leaseholders in full. It would be disproportionate for us to address in detail every item in the schedule but, the following points summarise our conclusions in respect Mr Moorjani's challenges:

    (a) all costs incurred in respect of asbestos testing, removal and associated works were reasonably incurred are payable for the reasons set out above;

    (b) costs of additional removal of rubbish were properly included and are not a cost to be borne by Pavehall;

    (c) there is no reason to consider the costs of door closers to have been unreasonably incurred;

    (d) whilst the provisional sum of £9,005 was allowed for making good and replacing damaged floor boards we accept, as Mr Jacobs and Mr Honor state in their response in the Scott Schedule, that the cost increased to £27,000

because of the additional work required once floor boards had to be lifted to remove asbestos underneath and that these costs were reasonably incurred and reasonable in amount. We also accept the additional cost of £13,500 for making safe and re-fixing floorboards was reasonably incurred which is said to have been incurred in respect of temporary works to allow residents immediate access back to their flats whilst flooring work was completed rather than incurring the cost of providing alternative accommodation;

(e) there is no reason to doubt that the cost of £615 for stripping and repairing the windows on the 9th floor was reasonably incurred. The applicant accepts that the sum stated in the specification of £3,277 is an error.

(f) for the reasons stated above, we accept that the isolation and removal of central heating radiators in the common parts, apart from the ground floor lobby, was reasonable and the associated costs are in our determination reasonably incurred and, in the absence of a challenge to quantum, reasonable in amount;

(g) the costs of fitting the porters' desks were reasonably incurred for the reasons stated above;

(h) the costs of Point of Design drawings were reasonably incurred for the reasons stated above and there is no reason to conclude that the same is not also true for the revised drawings prepared by ME7;

(i) we have already determined that the costs incurred in installing the dropped ceiling were reasonably incurred and we consider the same is also true for the additional costs incurred in installing lighting to the ceiling;

(j) we accept that the installation of a privacy screen at the porter's desk was reasonable to allow both the porter and residents some privacy;

(k) we agree that the cost of £13,397 for installation of a key cabinet was reasonably incurred. We accept what Mr Honor and Mr Jacob say in the Scott Schedule, namely that the old key cabinet was not fit for purpose, being too small for the number of residents and that quotes were obtained from contractors and the cheapest quote selected, resulting in a saving of about £7,000 from the sum originally tendered under the Pavehall contract.

(l) it was reasonable to incur costs of £15,864 in installing electrical spur switches in case a decision was taken at a later date to reinstall central heating, so as to avoid disturbing wall finishes;

(m) we have determined above that the applicant acted reasonably in deciding to block off windows. There is no evidence to suggest that the costs of installing foil-backed plasterboard where windows were stopped up was unreasonably incurred, the applicant stating that this was done to avoid condensation issues;

(n) there is no evidence to suggest that the cost of £2,250 for remedial works to the fire place in the ground floor lobby was unreasonably incurred. This cost is said by the applicant to including rebuilding the opening, reinstalling,

redecorating and tiling. Mr Moorjani has not produced any corroborative evidence to support his suggestion that the cost was excessive, and we reject that assertion;

(o) we see no reason to doubt the decision to install chrome safety strips between tiles and carpet to provide a level and safe environment and there is no evidence to support Mr Moorjani's assertion that they constituted a safety or tripping hazard. The cost was reasonably incurred;

(p) we accept that the cost of installing a sample fire door in the sum of £1,810 was reasonably incurred given Mr Honor and Mr Jacobs' statement in the Scott Schedule was that this was needed to secure building control approval prior to commencement of the works;

(q) additional works to the basement store room doors in the sum of £7,126 to meet fire risk assessment recommendations were reasonably incurred. Mr Moorjani's assertion that these are costs that should be borne by the applicant as they fall outside of common parts is rejected for the reasons stated above. They fall within the landlord's covenant to maintain, repair, redecorate and renew the reserved parts of the Building at clause 5(2)(iii);

(r) Mr Moorjani suggests that the cost of installing hold open devices to the basement doors in the sum of £2,825 should have cost no more than £2,000. There is no evidence to support that bare assertion and we reject it for that reason; and

(s) the costs of installing new skirting in the basement was reasonably incurred in light of the applicant's explanation, which we accept, that this avoided disturbing the asbestos textured coating present.

S20ZA Dispensation Application

197. Mr Bates' states in his skeleton argument that the two breaches of the consultation requirements were only identified by the applicant during preparation of its s.27A application. The applicant's primary case concerning the first potential breach, namely whether there was a need for further statutory consultation once additional works were identified in March 2016, was not, in fact a breach having regard to the recent Court of Appeal decision in *Reedbase Ltd v Fattal* [2018] EWCA Civ 840.

198. At paragraph 36 of her judgment in Fattal, Arden LJ identified that the test as to whether it is necessary for a landlord to repeat stage 2 of the consultation process and obtain a fresh set of estimates was whether, in all the circumstances, the leaseholders had been given sufficient information by the first set of estimates. This involves objectively comparing the information provided about the old and the new proposals and identifying whether there had been a material change in the information provided.

199. Mr Bates argued that the fact that the consultation initial notice only referred to asbestos containment to the walls and made no reference to the subsequent works required to remove asbestos dust from beneath the floors did not matter. In his primary submission, the initial notice achieved its ultimate purpose.

However, if that was wrong, his secondary submission was that there no arguable prejudice to leaseholders would occur if dispensation was granted.

200. We cannot accept Mr Bates' primary submission. *Fattal* concerned costs incurred in removing tiles on a terrace located on top of an asphalt roof that needed repair. Although there was a change in proposals relating to the tiles after the statutory consultation had taken place, a significant factor was that the leaseholders knew of the change in the works and approved them without contending at that point that there should be a fresh tendering exercise.

201. That is not the situation in this case. Although MLM informed leaseholders, in its letter of 1 December 2015 that works had been delayed due to the amount of asbestos identified under the floors and the need to plan for its careful removal it is not suggested that they approved the additional works. Nor, in our judgment, can it be said, as was the case in *Fattal*, that the new asbestos works were not a fundamentally different set of works to those originally presented to the leaseholders or that the change in cost was relatively small. Here, the additional costs of asbestos removal were initially identified as being £370,512 and required the instruction of new subcontractors to carry out significant additional works that caused substantial delay to the Major Works programme.

202. In all the circumstances, it is clear that the additional asbestos works constituted a material change to the works initially communicated to leaseholders required a repeat of the second stage of the consultation process and the obtaining of fresh estimates.

203. However, we accept Mr Bates' secondary submission that it is appropriate to grant dispensation from the consultation requirements on the basis that no prejudice to leaseholders has been identified. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 in which a majority of the Supreme Court set out guidance as to the purpose of the Regulations. The majority opinion was that the purpose is to ensure that leaseholders are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. The Court considered that when considering dispensation requests, the tribunal should focus on whether the leaseholders were prejudiced in either respect by the failure of the landlord to comply with the Regulations. The factual burden of identifying some relevant prejudice is on the leaseholders. If a credible case of prejudice is established, then the burden is on the landlord to rebut that case.

204. In this application, no leaseholder has identified any relevant prejudice, and, in fact, no leaseholder, apart from Mr Moorjani, has made any specific objection to the applicant's dispensation application. Ms Grimshaw informed us that she did not object to the application. Mr Moorjani's only substantive reference to the application is in his Reply to the Respondent's Statement of Case dated 13 September 2017, a copy of which is on the tribunal's file but which was not included in the applicant's hearing bundle. In that Reply, he contends that he has experienced prejudice in respect of the additional costs of removal of asbestos in the sum of £370,512 because he was not given the opportunity to ascertain whether the asbestos was really present in the walls and flooring as alleged. He suggests that the applicant should have asked an independent chartered surveyor

to confirm the presence of asbestos in these areas and that the absence of two estimates for removal works has also caused him prejudice. He also suggests that the applicant should have contracted with the asbestos removal contractor directly to carry out all the asbestos removal work rather than allowing Pavehall to engage them.

205. We do not consider Mr Moorjani has demonstrated relevant prejudice. There is ample evidence that asbestos was present in the areas in question and it is fanciful to suggest otherwise. Both Mr Honor and Mr Jacobs confirm this to be the case in their witness statements and there is no evidence at all to the contrary. Leaseholders were informed of the discovery of the asbestos under the floorboards and the plans for its removal in the letter from the MLM dated 1 December 2015 **[394]**. They were also informed of the estimated additional costs of removal in the letter from the applicant to leaseholders dated 24 August 2016 **[402]**. As stated above, Mr Honor's evidence was that a specialist surveyor was engaged who confirmed the presence of asbestos dust in the floor voids of the Building and that three separate contractors reviewed the situation, all of whom identified that that the asbestos could not be encapsulated and had to be removed. Each of those companies quoted for the removal and copies of their quotes are at pages **[924-930]**. The quotes were in the sums of £180,000, £73,319 and £67,000, all plus VAT. The cheapest quote, from Asbestos Environmental Solutions Ltd, was accepted.

206. There is, in our view, no evidence to show that the leaseholders have been prejudiced by the lack of consultation in respect of the additional works. The asbestos was present and we accept, as Mr Honor states in his witness statement, that removal was appropriate as: (a) the Control of Asbestos Regulations 2013 imposed a duty on the applicant to manage risk from asbestos in the Building including, under Regulation 7, to ensure, as far as reasonably practicable, that loose friable asbestos was removed prior to works commencing; and (b) removal of the asbestos would remove the threat posed by asbestos when future maintenance work was undertaken, such as the removal of underlay. The cheapest of three quotes was accepted and no alternative quotes or other evidence are before us to suggest that leaseholders have been asked to pay more than is appropriate for these works. There is also nothing to suggest that instructing the contractor directly would have resulted in reduced cost and, in our view, it was appropriate for the works to have been included within the ongoing Major Works programme so that Bond Davidson, MLM and the other professionals engaged by the applicant could monitor and co-ordinate the removal alongside the other works included in the specification of works.

207. Given that the factual burden of identifying some relevant prejudice is on the lessees, and in the absence of any such evidence, we consider it appropriate to grant retrospective dispensation from the need to consult to the applicant.

208. That decision also applies in respect of the second breach identified by Mr Bates, namely that the statement of estimates dated 12 June 2015 should have, but did not, summarise the observations received in respect of the initial consultation notice and the applicant's response to them. Mr Bates accepts that this was a breach of the consultation requirements, but we agree with him that no arguable prejudice has been identified by the leaseholders.

209. We therefore grant dispensation as requested by the applicant. We see no reason to impose conditions on that dispensation given that no prejudice to any leaseholder has been identified and given that no leaseholder has tested the application for dispensation or incurred legal costs in doing so. However, Ms Grimshaw has made an application for an order under s.20C of the 1985 Act seeking an order limiting the applicant's ability to recover legal costs through the service charge in respect of both of the applicant's applications this will be addressed in separate directions to be issued by the tribunal.

Amran Vance

8 January 2019

Reviewed 15 April 2019

Addendum to Decision

210. On 11 March 2019, following a request from Mr Moorjani for permission to appeal this decision, issued to the parties on 10 January 2019, we determined that we would review our decision in respect of one issue only, namely, if the costs of works to apartment doors are payable by leaseholders. Mr Moorjani was refused permission to appeal in respect of all other grounds of appeal pursued by him.

211. We indicated that the costs we intended to review were:

    (a) the sum of £109,834 specified at **[171]** concerning works to the apartment doors; and

    (b) the sum of £10,000 specified at Cl.4.1 of the Scott Schedule **[185]** for the supply and installation of Perko door closures to the apartment doors.

212. We directed that if any party considered there are further costs concerning the apartment doors that should be reviewed then it should notify the tribunal by no later than 22 March 2019, identifying where in the Scott Schedule those costs appear. The parties were also directed to provide written representations in respect of this review.

213. We subsequently received written submissions from Mr Moorjani dated 18 March 2019, and a response from Brethertons dated 22 March 2019. Although our directions did not provide for Mr Moorjani to reply, he nonetheless did so on 26 March 2019. Brethertons then responded to that document on 27 March 2019. We have had regard to all of these documents when reviewing our decision.

214. As stated in our decision of 11 March 2019, Mr Moorjani did not assert that the works to the apartment doors referred to in section 3 G) of the Scott Schedule **[171]** were outside the scope of the applicant's repairing and maintenance covenants under his Lease. He only challenged the need for the works and their cost.

215. However, we decided to review our decision because we considered that we may have erred in concluding that the works were works of repair, maintenance or renewal that were therefore recoverable from the leaseholders through the service charge as landlords' expenditure under clause 5(2) of the lease. This is because, as Mr Moorjani now points out:

    (a) the demise of the Flat includes "the doors and door frames" fitted in walls that are common to the Reserved Parts of the Building (paragraph (a) to Part 1 of the First Schedule) **[30]**;

    (b) clause 3(7) of the lease **[19]** imposes an obligation on the leaseholder to keep the Flat in repair; and

    (c) although clause 5(1) obliges the landlord to paint and decorate the surfaces of the doors and door frames of the Flat, the obligation to maintain, repair, redecorate, renew and (where necessary) replace in

Clause 5(2) does not include those arears included in the demise of the Flat.

216. The applicant accepts that the doors to the flats are demised to leaseholders, but argues that it was required to undertake the work it did, and that the costs are properly service charge costs. Its position is that:

(a) Clause 5(1) of the Lease requires it to paint the surfaces of doors that face upon the Reserved Parts of the Building, including the doors of the residential flats. It points out that the doors were not replaced with new doors but were removed, repainted and then reinstated; and

(b) The works were part of a wider fire-safety project intended to comply with the Regulatory Reform (Fire Safety) Order 2005 ("the 2005 Order") and are recoverable under Paragraph 11 of the Fourth Schedule as a cost of complying with legislation, orders or statutory requirements.

217. We do not accept those arguments. Firstly, whilst the landlord has an obligation to paint the surfaces of the flat doors that face on to the communal areas, there is no evidence to suggest that this could not take place with the doors in situ. Secondly, we now consider that our conclusion in paragraph 165 above, that the applicant was required to remove and upgrade the doors because it was under a statutory obligation to do so under the 2005 Order, was incorrect.

218. We accept that the 2005 Order imposes fire safety requirements and duties on the applicant, because it is a 'responsible person' as defined in Article 3, as it is the person having control of the Building. As the applicant correctly points out, Article 8(b) requires it to take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe. The meaning of "general fire precautions" is defined in 4(1)(a)-(c) and includes taking measures to reduce the risk of the spread of fire on premises and measures in relation to means of escape. We also agree that these duties apply to the common parts of the Building, including the communal corridors and we consider that the condition of the flat entrance doors are critical to the safety of the common parts in the event of a fire within a flat.

219. It therefore appears eminently sensible for the applicant to have wanted to upgrade the flat doors to meet the requirements imposed by the 2005 Order, at part of the wider fire safety project included within the Major Works programme. However, its difficulty is that the flat entrance doors are demised to the leaseholders, and are therefore outside the applicant's control. In addition, responsibility for maintenance of those doors rests with the leaseholders, and not with the applicant. It is therefore the leaseholders who, by reason of Article 5(4), are regarded as being the persons with control of the flat doors, to the extent of the obligations contained in their respective leases.

220. The applicant was therefore not entitled to take upon itself to upgrade the flat doors, and the costs of doing so cannot be recovered from leaseholders under Paragraph 11 of the Fourth Schedule of the Lease.

221. Instead, the obligation to upgrade the flat doors to meet current standards rested with the leaseholders. The applicant could have required leaseholders to carry out the required works, and if that request was not acted upon, could have referred the matter to the relevant enforcing authority who could take enforcement action against the leaseholders.

222. The applicant could, of course, have sought agreement from the leaseholders that it would carry out this work on their behalf, and at their cost, but that is not what has occurred in this case.

223. We recognise that this decision may appear unfair to the applicant who, we accept, acted responsibly in seeking to bring the flat doors up to a standard that would meet the requirements of the 2005 Order. We also recognise the vital importance of fire safety given the recent catastrophic fire at Grenfell Tower. However, the decision reflects the parties' respective obligations under the Lease.

224. We accept, as suggested by Mr Jacobs, that if the leaseholders had carried out these works themselves the cost was likely to have been considerably more expensive. It may be that the applicant will be able to reach agreement with leaseholders in respect of the costs it has incurred in carrying out these works. If not, it may have legal remedies available to it, given that leaseholders have clearly derived a benefit from these works, at the applicant's expense, and that these were works that they may otherwise have had to carry out themselves. However, for the purposes of this decision, we determine that the following costs are not payable by leaseholders through the service charge:

    (a) the sum of £109,834 plus VAT, concerning works to the apartment doors; and

    (b) the sum of £10,000 plus VAT, for the supply and installation of Perko door closures to the apartment doors.

225. Mr Moorjani suggests that the actual costs incurred in respect of the door closures was the sum of £33,881 specified in section 7 of the breakdown of costs for the works **[134]**. However, that appears to be incorrect. The sum of £33,881 was a provisional sum for the works. The revised costs appear to be the sum of £10,000 specified at Cl.4.1 **[134].** In the applicant's response in the Scott Schedule, it states that the sum of £10,000 replaced the provisional sum of £33,881, as it found a much cheaper supplier for the closures. For the avoidance of any doubt, we determine that whether the cost incurred was £33,881 or £10,000, no costs are payable by leaseholders for these works through the service charge, and the applicant should make the appropriate adjustments.

226. We do not accept Mr Moorjani's argument that these adjustments have a concertina effect on other costs. We accepted that the expert and professional fees were reasonably incurred. We do not agree that the amounts payable should be revised downwards because we have determined that certain items of expenditure are not payable by leaseholders. Those fees were incurred as part of a single contract and the reasonableness of their fees must be seen in the context of the project as a whole.

227. Mr Moorjani suggestion that additional costs have been incurred in respect of ironmongery, but this is speculation on his part. There is no evidence to support that assertion and it is not an issue that was before the tribunal at the hearing.

APPENDIX 1- 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.

APPENDIX 2

RELEVANT LEGISLATION

Landlord and Tenant Act 1985 (as amended)

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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.

20ZA. Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.