FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/LSC/2018/0461**
Property	**:**	**Oakwood Court, 153 Addison Way, London NW11 6QT**
Applicant	**:**	**Goodwyn Realty Limited**
Representative	**:**	**Engel Jacobs LLP**
Respondents	**:**	**(1)Flat 1-Anthony S & Barry M Goddard (2)Flat 2- Mr Muhammad Musaddaq-Ahmad (3)Flat 3- Mrs Parvindar Jethwa (4)Flat 4- Mr Tan & Ms Korena**
Representative	**:**	**Mr Dirk van Hech on behalf of the 2nd and 3rd respondents**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge L Rahman Mr Lewicki FRICS**
Date and venue of Hearing	**:**	**28/5/19 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**8/7/19**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

(3) The tribunal determines that the respondents shall, within 28 days of this decision, reimburse any tribunal fees paid by the applicant.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondents in respect of the proposed major works.

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

The hearing

3. The applicant was represented by Mr Kent, Property Manager at Engel Jacobs LLP. The second and third respondents appeared with their representative Mr Dirk van Hech of counsel. The first and fourth respondents did not attend and were not represented at the hearing.

4. The tribunal had a bundle of documents submitted on behalf of the applicant and the second respondent. At the hearing, the tribunal was provided with a bundle of documents that the third respondent intended to rely upon. Although the tribunal had received this bundle late, the applicant confirmed that it had previously been provided with a copy of this bundle and was therefore not prejudiced.

5. The respondents sought to rely upon 2 additional quotes. The second respondent had obtained a quote on 22/5/19 and had provided a copy of this by email to Mr Kent on Friday 24/5/19 at approximately 2 PM. Mr Kent objected to the late submission of this evidence as it was not in compliance with the tribunal's directions, he was not able to make any enquiries regarding the quote provided, he was unable to discuss this with his surveyor and in particular to have his surveyor's comments regarding the price quoted (he had tried to discuss the quote with his surveyor but was unable to do so as his surveyor was away over the bank holiday weekend), therefore in the circumstances the applicant had not been given a reasonable opportunity to consider the evidence. When asked why the second respondent had not requested for more time from the tribunal to provide such evidence, given that the tribunal had specifically directed that any alternative quotes were to be

provided by 26/3/19, the second respondent stated that he was not aware that it was necessary that he needed to submit alternative quotes.

6. The third respondent obtained a quote from JC Builders on 8/5/19. This was sent to Mr Kent on 14/5/19. Mr Kent objected to the late production of this evidence as the tribunal had directed that the tenant shall send to the tribunal copies of any alternative quotes or other documents by 26/3/19. When asked why the third respondent had not requested for more time from the tribunal to provide such evidence, the third respondent stated that she was not aware that she could ask for more time.

7. On the day of the hearing, both the respondents also sought to rely upon evidence obtained from Companies House, in support of their argument that two of the quotes obtained by the applicant for the proposed works were from companies which according to Companies House did not carry out the work they had provided quotes for.

8. Counsel on behalf of the respondents stated that the alternative quotes were relevant but not essential and he conceded that one of the quotes was submitted late and was prejudicial. However, he submitted that the main issues were whether all the proposed works were required and whether the costs were reasonable. He stated that with respect to the works specification, the respondents would argue that the costs concerning items A, L, and Q were not recoverable under the terms of the lease, the works concerning items B, E, H, I, L, M, and N were not reasonably required, items P and R were unreasonable in amount, and the overall costs were unreasonable in amount. He agreed that the respondents had not previously challenged whether any of the works were reasonably required, except for items B and E (painting the walls and ceilings and removal of the carpet), which the third respondent had referred to in her witness statement. However, upon reading paragraph 11 of the third respondents witness statement, which was clarified by the third respondent at the hearing, he agreed that the third respondent had in fact stated that the communal area required a coat of paint and a new carpet.

9. When asked why the respondents had not stated by 26/3/19, as directed by the tribunal, that some of the proposed works were not reasonably required, the respondents stated that they did not know what the major works comprised of and only became aware of this on 9/4/19. However, the second respondent then conceded that when he received the letter dated 11/10/18 from Mr Kent, this did in fact include a breakdown of the proposed works. When asked why he therefore did not raise his objections by 26/3/19, he stated that he was unaware of the costs and therefore he did not know how significant the proposed works were. However, although he denied receiving the works specifications and costs as set out on pages H68 to H69 of the applicants bundle, he agreed that he had received the letter dated 27/7/18 from Mr Kent setting out the overall costs including fees and VAT in the estimated sum of “close to £55,000”.

10. Mr Kent stated that if issues concerning whether any of the proposed works were reasonably required had been raised prior to the hearing date, he would have obtained a witness statement from the building surveyor to explain why the works were necessary or he would have considered getting an alternative surveyor's report to explain why the works were necessary. He did not anticipate dealing with such issues at the hearing and was not able to do so at such a late stage.

11. Having considered the overriding objective and the respondents' failure to comply with the tribunal's directions, the tribunal found as follows. With respect to the two additional quotes provided by the respondents, the evidence from Companies House, and the specific legal argument advanced at the hearing (that the proposed works were not reasonably required), the respondents were required to provide this prior to 26/3/19, they had a reasonable opportunity to provide this prior to 26/3/19, they had the opportunity to seek further time from the tribunal if necessary but had failed to do so, no good reason has been provided for their failure to provide all of this by 26/3/19, the admittance of such evidence at such a late stage would unfairly prejudice the applicant, it would not be reasonable or proportionate to admit the evidence at such a late stage and then inevitably adjourn the case to another hearing date to give the applicant an opportunity to respond to the new evidence / arguments raised, and neither party requested an adjournment or suggested that an adjournment would be reasonable or proportionate.

The background

12. The property which is the subject of this application is a two storey block of 4 self-contained purpose built flats with external grounds. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

13. The respondents hold long leases of their respective flats which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

14. Having dealt with the preliminary matters raised at the hearing, the tribunal identified the relevant issues for determination as follows:

    (i) Whether the costs for items A, L, and Q are recoverable under the terms of the lease?

    (ii) Whether the overall cost of the proposed major works, in particular items P and R, are reasonable in amount?

The applicant's case

15. The material parts of Mr Kent's witness statement dated 30/4/19 can be summarised as follows:

16. Engel Jacobs LLP was appointed as the professional managing agents in July 2015. Upon inspection of the property during the summer of 2015 the physical condition of the property internally was considered a little worn but reasonable and not due for refurbishment for at least 2 to 3 years. Externally, the building itself gave mixed messages. There were dissimilarity in the condition of the state of decoration of the windows, the main entrance door showing its age, and the entry phone system was antiquated. The masonry showed evidence of DIY level work associated with replacement of pipework, ventilators and flues. The pitched roof appeared serviceable although original. There were a few slipped or cracked tiles and evidence of gutters being contaminated due to the preponderance of adjacent trees. There was a large and rampant vine growing at the front of the building onto the roof and chimney stack. With the exception of the windows of flat 2, there were no structural elements that required urgent repair and no reports of leaks to any part of the roof. The front gardens were generally tidy but to the side and rear the position was quite the contrary. Effectively a wilderness of overgrown trees, shrubs and rot infestation had been permitted to form a dense barrier between the building and the adjacent major road. The external storage areas to the rear of the building were derelict and contaminated. The side and rear gardens had been left generally untended for many years and the cost of clearing these areas and returning the grounds to a usable state whilst providing reasonable protection from the adjacent major road were clearly going to prove substantial. Internally, there was evidence of a leaking water pipe in the upstairs cupboard and externally there was evidence of drains being poorly maintained and periodically overflowing.

17. It was decided to carry out the garden work on a gradual basis over at least three years and carry out everyday maintenance and repair in the meantime. During 2016 and 2017 the property was looked after to a better standard whilst a means was devised to carry out cyclical major works during 2018. Towards the end of November 2017, the landlord appointed a surveyor, James Hicks of Cubic Building Surveyors Ltd, who attended and subsequently presented a detailed specification of works required. He was further retained to obtain tendered price quotations and supervise the programme of works agreed upon.

18. Mr Kent's own experience of Mr James Hicks is that of a surveyor whose work is consistent with the high standard demanded of an RICS accredited surveyor, a person who demands a high quality of work from the contractors, and a relentless pursuit of full performance and completion of the specification both during the contract period and during the defects period.

19. In accordance with this plan, the respondents were written to on 27/7/18 setting out the recommendations and advising the respondents of the need to

budget for such future but imminent expenditure. No written responses were received from any of the lessees.

20. As the applicant was required to initially fund the works, the applicant was advised that it would be sensible to obtain a determination from the tribunal prior to any works commencing in order to ensure that the costs were recoverable as a service charge.

21. Although the surveyor had specified that the five windows of flat 2 required replacing, and were therefore included in his works specification (item Q of the specification of works), the applicant accepts that the cost of such works are not recoverable from the remaining flats under the terms of the lease. The cost of the works to the windows to flat 2 are payable entirely by flat 2. The respondents were informed of this proposal in a letter dated 30/11/18.

22. In anticipation of carrying out the necessary works the landlord had agreed to offer extended payment terms with respect to the service charge to be subsequently raised after the end of the service charge year, probably not before June 2020.

23. With respect to the tenders received, each of the three contractors have been known to Mr James Hicks for some years, having tendered (successfully and unsuccessfully) previously for works under his supervision, and when awarded contracts having provided highly satisfactory results.

24. The three original tenders were obtained "blind" and yet were within a few percent of each other. NS builders had every opportunity to have been informed of the tenders received, in general if not in particular terms, and consequently may have tendered from an unfairly advantageous position. Under the section 20 consultation procedure, the respondents could have nominated any particular contractors. However, no such recommendations were received during the consultation period.

25. With respect to the allegation that the consultation process was defective, the Section 20 Notice of Intention to Carry out Works, together with a covering letter (clearly referring to sections A-F, S, and G-R of the specification), and a copy of the specification (as referred to in the penultimate paragraph of the letter), were issued to the respondents on 27/7/18. The applicant did not receive any subsequent request from the second respondent to provide a copy of the allegedly missing specification. With respect to the third respondent, the applicant was not made aware until later that the applicant had details of an inaccurately transcribed email address, and in any event, all documents were served on the third respondent by post to her own residential address as legally required. The lack of any response within the 30 day expiry date of the notice of intention from the second respondent is in stark contrast to the responses offered by the first and fourth respondents.

26. The applicant issued the Notice of Estimates on 10/10/18. The second respondent wrote to the applicant on 18/10/18 and again on 27/11/18 stating that "we" strongly object to the proposed major works proceeding and that no work should be undertaken without the leaseholders is agreement. However, the applicant is entitled to rely upon the professional opinion of a qualified and experienced building surveyor in determining the scope and timing of works necessary to fulfil the landlords covenant under the terms of the lease and the tacit approval of the respondents is not a precondition of works proceeding. However, given the position taken by the second respondent, the applicant took the view that the tribunal was best equipped to determine the matter. Mr Kent informed the respondents of this in a letter dated 30/11/18.

27. The first and fourth respondents have made no substantive response with respect to this application other than with respect to their liability to contribute towards the cost of replacement windows for flat 2.

28. The material parts of Mr Kent's oral evidence can be summarised as follows:

29. With respect to the first issue, he agreed that the cost of the works to the "four flat doors" under item A are not recoverable under the lease as they are not the landlord's responsibility. However, the remainder of the works to the skirtings, architraves, handrail, and the new under stair door and frame are recoverable. The total cost of item A is quoted as £1,200. He proposed a deduction of £75.00 plus vat per door. When asked how he had calculated what the deduction should be, he stated that he did not know.

30. He argued that the cost of the works under item L (the external parts of the wood windows to each flat) were recoverable. Clause 4(1)(e) of the lease states "*…the Lessors will…at all times hereafter…Paint varnish oil or distemper all wood…of the exterior of the building and all other parts thereof which are usually painted…as often as shall be reasonably required but at least once in every fifth year…*"

31. He agreed that the works under item Q (replacement windows) is not the landlord's responsibility and therefore the cost of any proposed works are not recoverable under the terms of the lease.

32. With respect to the second issue, the applicant had followed the correct statutory procedure to arrive at the costs for the proposed works. The applicant used the services of an independent building surveyor, who used a tendering process and received three quotes (£37,805, £34,490, and £37,000 (excluding VAT). The applicant chose the lowest of the three quotes therefore the cost of the proposed works is reasonable and represents the market price. Mr Kent, Mr Hicks, and the applicant, had no links with RM Art Deco. With respect to the quote provided by NS Builders, he relied upon the observations made by Cubic Building Surveying in their letter dated 3/4/19 on page H83 of the bundle. Furthermore, Mr Hicks would not supervise any work by NS Builders as he would not be confident that the works would be carried out to a reasonable standard at the price quoted. In Mr Hicks's opinion, the price

quoted by NS Builders does not suggest that their works would be of good quality. The applicant had paid for an independent building surveyor's expertise and advice and would therefore not ignore Mr Hicks' views.

33. He agreed that, as compared to the service charge years ending 2016, 2017, and 2018, the service charge would go up as a result of the proposed works.

34. He considered the works to the main access door and the entry phone system as urgent, as there had been issues with vandalism and the audio entry system. However, he agreed that the main access door at present was secure and the entry phone system was currently working.

35. When asked why he did not consider staggering the major works over a three-year period, he stated there were two reasons. Firstly, there was savings to be made by not staggering the works over 3 years. In fact, as can be seen from the works specification, which refers to phase I and phase II, he had considered completing the works in two phases over perhaps two years. The external works could be done during phase 1 and the internal works could be deferred. RM Art Deco stated there would be no price difference in phasing the works. He was happy for the works to be completed in two phases in two consecutive years. If the phase I works were completed in 2019, the relevant costs would be payable in the 2020 service charge year. Each service charge year ends on 5 April each year therefore the service charge would be paid after that date.

36. Although the applicant's initial intention was for 50% of the cost of the works to be paid when the invoices were issued, and the balance was to be spread over five months, the applicant would now consider the payments being spread over up to 2 years interest free. Therefore, if for example the phase I works were completed now, the applicant would expect 50% of the costs for phase 1 to be paid when the service charge demand is issued and the balance would be spread over 6 to 24 months depending on each lessee's circumstances. This was not a concrete offer but the lessees would get at least six months and they may get up to a total of 24 months depending on their circumstances which the applicant would consider. If the works under phase II were to start in the next service charge year, similarly the payments would be spread over the next service charge years.

37. Given that RM Art Deco had stated that there would be no price difference in phasing the works, when asked why the works could not be spread over three phases, he stated that inflation, wages, and the cost of materials generally tend to go up and therefore it was in the interests of the respondents that the works were completed at an agreed price. If the works were spread over three phases and potentially three years, the contractors could not guarantee that the price/ quote would stay the same. Based upon his own experience in property management and applying common sense, he cannot rely on contractors holding prices over three years. If he asked for the works to be phased over three years, the contractors may say that they cannot guarantee the price or may include an escalated option or they may demand that they be entitled to increase prices. If the tribunal were to determine that the works be phased

over three years, he would have to get new prices. He had already discussed phasing the works with Mr Hicks and was advised to have the works completed over two phases. Mr Hicks did not consider there to be any benefit in phasing the works over three years.

38. Although the cost of the major works would result in a significant increase in the service charge year as compared to previous service charge years, he did not think it reasonable to phase the works over more than two years. He had anticipated the financial effects on the respondents therefore they were put on notice in his letter dated July 2018. At that stage, the intention was for all the works to be completed by about May 2019. Therefore, the final account would have been prepared about a month after April 2020, when 50% of the cost of the works would have been demanded, and the balance was to be paid over the next five months.

39. In his view, it was necessary to do all the works this year. Under the terms of the lease, the applicant is required to carry out cyclical repairs every five years or so. To his knowledge, since the middle of 2015, there have been no cyclical works/repairs.

40. The second and third respondents were investors and not occupiers of their respective flats. They should have a sufficient rental income from their respective properties to pay for the proposed major works. If they have any legitimate financial difficulties, the applicant would consider those.

41. With respect to items P and R in the works specification, RM Art Deco (including the two other contractors) had visited the property and had provided provisional sums for brickwork repairs and / or repointing as required (£1,500) and possible drain pipe and gully repairs as directed (£2,000). These were only provisional sums and RM Art Deco had stated that in the worst case scenario the costs would not exceed those provisional sums.

The respondents' case

42. The material parts of the second respondents witness statement dated 30/4/19 can be summarised as follows:

43. He received a letter dated 27/7/18 from Mr Kent stating the purpose was to share the result of a survey by a building surveyor. The letter stated that the estimated costs for the repairs was £55,000 and although the letter referred to an enclosed section 20 consultation notice and a copy of the works specification, the works specification document was not in fact enclosed. At a later stage, he received from Mr Kent a document entitled "specification of works" with an attached compliment slip which stated "I believe I did not enclose this specification in my recent letter".

44. He was not informed of the decision to appoint a surveyor and therefore he had no input on the matter. He is not privy to the terms of engagement of the

surveyor and therefore he cannot be certain as to the validity of the surveyor's appointment and his independence. Therefore, the basis/purpose and the scope of the works proposed by the surveyor cannot be confirmed or relied upon.

45. He received a letter dated 11/10/18 enclosing a document entitled "Statement of Estimates". This showed a comparison of prices from ASM, RM Art Deco, and NVC. However, no information was provided about these contractors and why and on what basis they were chosen for the tendering process. Furthermore, no copy of the estimates/tenders/any documentation from these contractors were enclosed.

46. On 18/10/18, he wrote to Engel Jacobs pointing out that the letter of 27/7/18 did not include the specification of works or the surveyor's report and that he should be provided with the same. He also requested details/breakdown of costs and copies of tenders. He also raised the issue with the items which related to a specific flat but included in the overall service charge and sought clarification. He also pointed out that the estimated costs were grossly overpriced.

47. He received a letter dated 19/11/18 from Engel Jacobs advising that the applicant was in discussion with one of the leaseholders about the issues raised and that in the meantime RM Art Deco had been appointed.

48. On 27/11/18, he again wrote to Engel Jacobs requesting the information he had requested in his letter dated 18/10/18 and that in the meantime the applicant does not proceed with the major works.

49. He received a letter dated 30/11/18 from Engel Jacobs informing him that having received further objections from the leaseholders an application had been made to the first-tier Tribunal.

50. He wrote to Engel Jacobs on 5/12/18 pointing out that as the letter of 27/7/18 did not include any details/specifications of the works or the surveyor's report, the Section 20 Notice dated 27/7/18 was invalid.

51. The respondents have obtained an estimate for the works from NS Builders who are a reputable member of the Federation of Master Builders. They are highly experienced and are well able to carry out the works in question and are able to provide good references backed up by professional insurance. They have visited the site and have provided an estimate amounting to only £10,725 to carry out the works which is far less than the estimate provided by Engel Jacobs (the lowest being RM Art Deco at £41,388). It is clearly evident that the costs proposed by Engel Jacobs are grossly overpriced, unreasonable, unfair, and excessive.

52. The material parts of the witness statement of the third respondent dated 30/4/19 can be summarised as follows:

53. Mr Kent has had her email address dating back to 2015. How could it therefore be possible that they had her incorrect email address? She had never claimed that the email address on record was "inaccurately transcribed". All she had requested was that the same correspondences be forwarded to her by email so that she could respond to them in a timely manner, as she is regularly away from her residence.

54. Only now has Mr Kent found it reasonable to not force the other lessees to pay for flat 2's windows. Prior to this, he seemed content to lay this bill at the other lessees' feet.

55. The front door was certainly not just "showing its age" but had been completely dilapidated for many years, as can be seen in the photographs in the bundle. The door frame had been stuffed with newspaper and even a wasp hive was present. Thus the building clearly had a security issue. The entry phone system was not just simply antiquated but completely non-functioning, and remains so almost 4 years since Engel Jacobs were appointed to manage the property. It seems that Mr Kent felt that some gardening and tree maintenance were more important.

56. For many years she had requested the removal of the ivy that was growing on the walls and covering a set of windows. This impeded her ability to open the windows. It took many years for this to be finally addressed. She had on many occasions requested that the trees at the back of her flat be trimmed. As seen by Mr Kent, "a wilderness of overgrown trees, shrubs, and rotted vegetation had been permitted to form a dense barrier between the building and the adjacent main road". These for years had blocked the sunlight to enter her flat which resulted in dampness in the flat.

57. The interior of the building was painted and new carpets were laid only a few years ago. From what she can tell, "*all the communal area requires are a coat of paint and new carpet*". The only true urgent matter was the front door and its frame which Mr Kent did not seem to think was pressing.

58. Contrary to what is stated by Mr Kent, Mr Tan of flat 4 is not only concerned about the replacement of flat 2's windows, but in his email dated 16/4/19 clearly states that he hopes the tribunal and the managing agent "review the major works placed in order to reducing the costs by disposing of some works". Therefore, with at least three of the four lessees stating the same, it is best to only pursue with the most urgent works presently.

59. For the proposed works, it seems the applicant has contracted Mr Hicks (Mr Kent's acquaintance), to list the proposed works and to manage the works. Thus why are Engel Jacobs being paid to manage the property if someone else has to be paid to manage the proposed works?

60. Given the large amount of works that are supposedly required, and the large amount of money to be spent, the lessees should be allowed to meet with Mr

Kent as a group and discuss the works and decide together what in particular is of the greatest urgency that requires immediate action. In this way, the respondents would not be forced to struggle with paying a very large sum of money in a short period of time. She and her family would certainly suffer the financial consequences.

61. The material parts of the second and third respondents' oral evidence can be summarised as follows:

62. The second respondent stated that most of the costs under item A related to the four flat doors. Given that the applicant accepts that the doors are demised to the individual flats, there should be a deduction of £800-£1,000 plus vat. The painting to the skirting, which was downstairs and on the stairway and upstairs, was not substantial and there was no other wood that needed to be painted. However, when Mr Kent referred to the architraves around the four doors, the cupboard under the stairs which had a full-sized door and frame, and at least two other cupboards set into the wall with full-size doors, the second respondent agreed that the cupboard under the stairs needed to be painted but stated that it only had a small door, there was only one other cupboard door that needed to be painted and not 2, and the architraves were part of the door and therefore not the landlords responsibility.

63. The second respondent further stated that he had received the notice of intention to carry out works shortly after 27/7/18. Although he claims to have asked for the work specifications, he did not propose the name of any person or company from whom the applicant should obtain an estimate for carrying out the proposed works. He claims to have received the works specification on 18/10/18. Again, having received this, he did not propose any contractors or builders to the applicant. He received the letter from Cubic Building Surveying commenting on the suitability of NS Builders to carry out the proposed works. However, he did not ask NS Builders to comment on the contents of the letter criticising their quote, as he thought that he could deal with it himself.

64. The third respondent first saw the notice of intention to carry out works on November 15th or 16th 2018 as she had been abroad. She did not propose any contractors nor did she ask for more time to propose any contractors.

Tribunal's findings and conclusions

Are the costs for items A, L, and Q recoverable under the terms of the lease?

65. The respondents agree that the cost of the wood works under item A are recoverable save for the four flat doors (and the architraves which are part of the doors) which are demised to the individual flats. The applicant agrees with the respondents save for the exclusion of the architraves which it argues are not demised to the flats.

66. The tribunal has carefully considered clause 2(3) of the lease, the material parts of which states "*The lessee hereby covenants…to repair cleanse maintain and keep well and substantially repaired cleansed and maintained the interior of the demised premises including…the plastering flooring and ceilings windows and window frames thereof… and all windows doors including the entrance door to the demised premises cisterns and sanitary fittings…*" The tribunal notes that this clause is very detailed and includes the "*entrance door*" to the flats but does not specifically refer to the architraves. Whilst this clause clearly states that the doors to the individual flats are not the landlords' responsibility, it does not state the same about the architraves. The tribunal further notes that the architraves are in fact outside of the demised premises. On balance, the tribunal is satisfied that the architraves are not demised to the individual flats and together with the skirting boards are the landlords' responsibility.

67. The parties disagreed over the amount to be deducted under item A. The applicant suggested there should be a deduction of £75 plus vat per door (£300 in total plus vat) whilst the respondents suggested a deduction of £800-£1,000 in total plus vat. The tribunal notes that the figures put forward by both the parties were essentially based upon nothing more than guesswork. The tribunal found the second respondents suggestion, that the majority of the costs related to the doors and the remainder of the works were not substantial, to be inconsistent and to lack credibility. Having initially stated that once the doors were excluded, the only remaining works were to the skirting and no other wood required to be painted, the second respondent then agreed that the door to the cupboard under the stairs and an additional door to a cupboard also required to be painted. The tribunal further notes that the quote specifically refers to the painting of the handrails also. Given the lack of any cogent evidence from either party, using the tribunal's accumulated knowledge and experience of dealing with such matters, the tribunal determines it reasonable to deduct the sum of £700 (exclusive of vat) from item A as the doors to the individual flats are not the landlords responsibility.

68. The applicant argued that the costs for item L are recoverable as the landlord is required under clause 4(1)(e) to paint the external parts of the wooden windows to each of the flats. The tribunal notes that Mr van Hech stated that clause 2(3) of the lease dealt with the interior of each of the flats and clause 4(1)(e) dealt with the external decorations and therefore he agreed with the applicant. However, he stated that his instructions were to not concede the point. Having considered the relevant clauses referred to, the tribunal agrees that the costs for item L are recoverable as the landlord is required under clause 4(1)(e) to paint the external parts of the wooden windows to each of the flats.

69. Both parties agreed that the costs for item Q are not recoverable under the terms of the lease.

<u>Is the overall cost of the proposed major works, in particular items P and R, reasonable in amount?</u>

70. The tribunal notes that the applicant had used Mr Hicks, a professional and independent surveyor, to prepare the specifications and arrange the tenders. Having considered the three tenders, Mr Hicks recommended the lowest of the three quotes in his tender analysis document. Other than Mr Hicks having previously used the three companies that provided the quotes, which does not in itself suggest any impropriety, there is no evidence before the tribunal to suggest that the applicant had not used a genuine tendering process.

71. The tribunal notes the alternative quote from NS Builders. However, the tribunal agrees with the applicant that NS Builders had the opportunity to be informed of the tenders received and consequently may have tendered from an unfairly advantageous position. The tribunal notes that the quote provided by NS Builders is not on a "like for like" basis. For example, no allowance has been made for insurance, temporary facilities, rubbish disposal, or scaffolding. The applicant is reasonably entitled to take into account independent expert advice given by a suitably qualified building surveyor. Therefore, the applicant is entitled to take into account the concerns raised by Mr Hicks regarding the very low figures provided by NS Builders for a number of items of works, his concerns that NS Builders would not prove to be a sufficiently professional outfit and would not provide the quality of work that he would be able to put his name to and sign off on, and his opinion that the contract be placed with RM Art Deco who are a known company and with which he has several years of experience working with and who can be shown to provide the correct quality of work. The tribunal further notes that NS Builders have not provided any response to Cubic Building Surveying's criticism of their quote. The observations made by the second respondent are unpersuasive as the second respondent has not provided any evidence to show that he is suitably qualified to deal with all the technical and professional points raised by Cubic Building Surveying.

72. The tribunal notes the decision in **Marie Garside & Michael Anson -v- RFYC Limited & B R Maunder Taylor [2011] UKUT 367 (LC)**, namely, that the financial impact of the major works on the lessees, and whether as a consequence works should be phased, is capable of being a material consideration when considering whether the costs are reasonably incurred. In particular, the Upper Tribunal noted the following: that any financial impact could be considered in broad terms by reference to the amount of service charge being demanded as compared with the amount demanded in previous years, reasonable people can be expected to make provision for some fluctuations in service charges but at the same time would not ordinarily be expected to plan for substantial increases at short notice, if a lessee wishes to put forward a case of particular hardship by reference to their personal circumstances they may do so although the weight to be attached to such an argument would depend on the cogency of the evidence to support it, other considerations such as whether all the lessees wish for the works to be carried out in phases need to be weighed in the balance, the degree of disrepair and the urgency of the work or the extent to which it can wait are likely to be relevant, another relevant consideration may be the extent of any increase in the total cost of the works if carried out in phases as opposed to in one contract, these are only examples of factors that may or may not be relevant

and there may be others to take into account, all are factual issues and matters of judgement for the tribunal to weigh up against the hardship of substantial increased costs, but it is important to make clear that liability to pay service charges cannot be avoided simply on the grounds of hardship even if extreme, and if repair work is reasonably required at a particular time then a lessee cannot escape liability to pay by pleading poverty.

73. The tribunal notes that the total service charge, for all four flats, for the service charge years ending 5 April 2015, 2016, 2017, and 2018, were £2416.96, £3731.76, £6690.24, and £5248.72 respectively (page 33 of the third respondents bundle). The proposed major works would result in each lessees' total service charge increasing to approximately £6,000 in the first year and approximately £11,000 in the following year (page H53 of the applicants bundle). This represents a significant increase in the overall service charge.

74. However, the tribunal notes that the respondents were given advance notice in July 2018 of the likely increase in their service charge payments due in April 2019 and April 2020 (in each year 50% was payable upon demand and the balance was to be spread over the following 5 months). Therefore, the tribunal did not find the planned increases to be at short notice and found that the respondents were given a reasonable opportunity to plan for the increase in their respective service charges.

75. Whilst the overall proposed works may not be of an urgent nature, the tribunal notes that no cyclical repairs had taken place since at least the middle of 2015 and the third respondent stated in her witness statement that the front door was not just showing its age but had been completely dilapidated for many years, the door frame had been stuffed with newspaper and even a wasp hive was present, the building clearly had a security issue, and the entry phone system was not just simply antiquated but completely non-functioning. Therefore, the tribunal found that it was reasonable to not delay carrying out the proposed works any longer.

76. The tribunal notes the evidence from Mr Kent, that based upon his experience in property management, phasing works over 3 years as proposed by the third respondent would result in increased costs due to inflation, wage increases, and the cost of materials going up. The tribunal notes that the respondents have failed to provide any persuasive evidence to the contrary.

77. Mr van Hech stated in closing submissions that the second respondent was not seeking to rely upon any arguments concerning hardship. However, the third respondent wished to raise issues concerning hardship on the basis of her financial circumstances as set out in the first paragraph on page G5 of the applicants bundle, the material parts of which can be summarised as follows: "*…I am a single parent with a child in full-time education, thus this rental income is vital to keep my family afloat. I certainly have great difficulty dealing with my financial burden, but no one has been sympathetic to that matter… I have been looking after my 92-year-old mother, who has been very ill for many years, and I had to help my son in Houston, Texas recover*

and repair his home after he tragically lost everything due to hurricane Harvey in August 2017… I was shocked to see the letter with the very large estimates to pay over the next two years". The tribunal finds the information provided by the third respondent is not sufficiently detailed to support her claimed financial hardship. For example, the third respondent has not provided evidence of her overall income, her overall outgoings, whether she has any savings, other debts, or whether she is able or unable to borrow funds? There is no supporting documentary evidence concerning the state of her finances. The third respondent is a buy to let investor but has not provided evidence concerning her rental income from the property and any relevant outgoings.

78. The tribunal found the applicants plan to phase the works over 2 years to be reasonable and fair. The tribunal found the applicants original payment offer as set out in its letter dated 27/7/18 to be reasonable and fair. The tribunal found the payment offer made at the hearing even more generous.

79. For the reasons given, the tribunal finds the overall cost of the proposed works to be reasonable in amount.

Application under s.20C and refund of fees

80. The applicant acted reasonably in connection with the proceedings and was successful on the main disputed issues. Therefore, it would not be just or equitable in the circumstances to make an order under section 20C of the of the Landlord and Tenant Act 1985 and section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to prevent the applicant passing any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge. For the same reasons, the tribunal determines that the respondents shall reimburse any application fee(s) paid by the applicant to the tribunal in connection with these proceedings within 28 days of this decision.

Name: Mr L Rahman **Date:** 8/7/19

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to 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.

Section 20C

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

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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