HM Courts & Tribunals Service

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Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

# DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

**Case Reference:** LON/00AU/LSC/2011/0562

**Premises:** 44 flats on the Andover Estate, London N7

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**Applicants:**

P J Davis
G Manley
M and J V R Carruthers
M Ibeamuchem
C and B Annor
O and C Golebourne
B A McFarlane
Y Stevens
R T Ruderham
R A and E Newson
C A Georgiou and A Andrea
J P O'Reilly
D M J Donoghue
A Marti
M Ryan
M Panayi
J Ayeh
M and P Cuell
L J Shaw
B Carroll
M and S Quartey
S Fanus
R Keightly
R and J Garney
J Barlow and A Barlow
B Yankson
G G and L Green
C Dias
R Verwest
I M Wright
G and J Assiminios
S Delaitre
C Haynes
P Kenny
G and P Baker

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|---|---|
| | G and E Cranstone<br>F D'Souza<br>H Fagbesa<br>M Arrowsmith<br>E M Page<br>D Booth<br>A and P Keenan<br>G W McLeod |
| **Respondent:** | The London Borough of Islington |
| **Date of hearing:** | 21, 22 and 23 February 2012<br>(inspection 20 February 2012) |
| **Appearances for applicant:** | John Whicher and David Booth, leaseholders |
| **Appearance for respondent:** | Nicola Muir, counsel, instructed by the legal department of the London Borough of Islington |
| **Tribunal:** | Margaret Wilson<br>Peter Roberts Dip Arch RIBA<br>Owen Miller BSc |
| **Date of decision:** | 30 April 2012 |

## The application

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the applicant leaseholders ("the tenants") to pay service charges in respect of major works carried out to the blocks of flats on the Andover Estate and for a determination of the method of apportionment to be applied to the buildings service charge payable by the tenants. The applicants are the long leaseholders of 44 flats on the Estate and the respondent ("the landlord") is the London Borough of Islington. The application was issued on 12 August 2011.

## Introduction and background

2. The Andover Estate ("the Estate"), which forms part of the Tollington Estate, is a development of six five-storey blocks, three multi-storey blocks, 33 four-storey blocks and 29 terraces of two-storey houses, together with some 379 garages and commercial or other non-residential units. The five-storey blocks were built in the 1920s; the rest of the Estate was built for the Greater London Council in the late 1970s and early 1980s. The Estate was acquired by the landlord in 1986 and is managed by Homes for Islington. There are some 1034 dwellings on the Estate of which about 850 are flats in the part of the Estate which was built in the 1970s and 1980s, and about 219 of those flats are held on long leases acquired under the Right to Buy scheme. The four-storey blocks are of nine types. Some have garages or other commercial accommodation on the ground floor and some are wholly residential. Some contain 12 flats, some 18 flats and some 24 flats. All the works which are the subject of the present dispute were carried out to the part of the Estate which was built in the 1970s and 1980s.

3. The ground floor of Docura House, one of the multi-storey blocks, is not is residential use. Three of the units on the ground floor (Unit 52, let as a shop, Unit 53, let as a private management office, and Unit 54, let to the Andover Youth and Community Trust) are subject to commercial leases which provide that the

tenant must pay a service charge in respect of the services identified in the leases. Also on the ground floor there are other areas which are not subject to commercial leases. One (Units 49,50 and 51) is used as a pre-school centre, one is used as a community centre and one is used as a crèche.

4. In about 2003 the landlord acquired the funds to refurbish its housing stock in order to bring it up to the government's Decent Homes Standard. In June 2004 it entered into a Framework Agreement ("the Agreement") with a number of contractors, one of them Balfour Beatty Refurbishment Limited ("BBRL"), to carry out the refurbishment works across the Borough. The Agreement was a qualifying long term agreement within the meaning of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). It included a schedule of rates, subject to tendered adjustments by individual contractors.

5. The landlord decided to allot some £48 million to the refurbishment of the Tollington Estate, on which no cyclical repairs had been carried out for about 30 years. It did not carry out a full condition survey before deciding what works should be done to the blocks on the Estate but its surveyor's section inspected the Estate and prepared a work schedule. It was decided to carry out the works which the quantity surveyor had identified as necessary for the Estate in five phases; phases 1 and 3 are the subject of the present application They included window replacements and general repairs.

6. Phase 1 related to the blocks in Lazar Walk, Berkeley Walk, Tomlins Walk, Bolton Walk, Falconer Walk, Selden Walk, Roth Walk and Allerton Walk. BBRL was awarded the contract to carry out the works in phase 1, which was the first to be awarded under the Agreement. The tender acceptance report shows that the agreed maximum price ("AMP") under the contract for the works in phase 1 was £3,976,857 plus fees of £477,223, a total of £4,454,080, a large part of which was allocated to the replacement of the windows. The works in phase 1 were scheduled to last for 52 weeks from 10 January 2005.

7. Notices under Schedule 3 to the Consultation Regulations were given to the leaseholders in respect of the works in phase 1 on about 2 November 2004, and the leaseholders were invited by the notices to view the specification. The notices explained that the sums charged to leaseholders in respect of the works would be discounted to the level which would have applied if the contract had been awarded to the contractor who had tendered the lowest schedule of rates. In the case of phase 1 this resulted in a discount of 7.58%. The works in phase 1 began on 24 January 2005 and were completed in January 2006.

8. Phase 2 comprised works to the bathrooms and kitchens of periodic tenants of the landlord which do not form part of this dispute.

9. Phase 3 related to the four-storey blocks in Andover Road, Todds Walk, Mingard Walk, Hammer Walk, Ray Walk, Besant Walk and Corker Walk, and to the three multi-storey blocks, Dibdin House, Noll House and Docura House. The estimated cost of the phase 3 works was £5,116,398.02 which was discounted by 7.05% to reduce the costs charged to that of the lowest schedule of rates tendered. There was also a reduction in costs applied to reflect the overlap with phase 1 to give a budget estimated maximum price of £4,833,959.53. The works began on 31 October 2005 and were completed on 23 October 2006. Notices were given to the leaseholders under Schedule 3 to the Consultation Regulations on 10 October 2005 describing the proposed works in the same terms as those in the notices given in respect of phase 1.

10. The works in phase 3 began on 31 October 2005 and were completed on 23 October 2006. The certificate of practical completion was signed on 7 December 2006. During the course of the works the landlord decided to replace the marine plywood panels to the walkway balustrading of all the four-storey blocks on the Estate with galvanised steel mesh panels.

11. The final account for phase 1 is dated 16 February 2009 and is in the sum of £3,967,128. The final account for the works in phase 3 is dated 16 February 2009 and is in the sum of £4,683,556.65.

12. By an application to the tribunal under section 27A of the Act dated 11 December 2008 the leaseholders of two flats in Docura House sought a determination of their liability to pay service charges in respect of the major works to that block. The decision on that application (LON/00AU/LSC/2008/0578), dated 14 May 2009, records that, shortly before the hearing, agreement was reached in respect of a number of aspects of the costs of the work and the only outstanding issues were the costs of scaffolding and surveyors' fees and the apportionment of costs to the commercial units in Docura House. The tribunal recorded that it had been given no evidence by the landlord to support the scaffolding costs and disallowed them altogether, but held the surveyors' fees to be reasonable. It made no determination as to the apportionment of costs to the commercial units pending the landlord's decision as to a method of such apportionment, the landlord having agreed that some apportionment should be made.

**The leases**

13. The residential leases are essentially in common form. They contain the usual obligations on the landlord to keep the structure and exterior of the blocks in repair and they permit the landlord to carry out improvements. Clause 5 provides that the amount payable by the leaseholders is based on the rateable value of the flat as a proportion of the rateable values of *all the dwellings and other rateable parts of the building* with the provisos *(A) that the Council shall have the right at any time fairly and reasonably to substitute a different method of calculating the service charge attributable to the dwellings in the building; and (b) that in the event of the abolition or disuse of rateable values for property the reference herein to the rateable value shall be substituted by a reference to the floor areas of all the dwellings in the building and on the estate (excluding any areas and lifts (if any) used in common .... .*

## The relevant statutory provisions

14. These are set out in an appendix to this decision.

## The inspection and hearing

15. On 20 February 2012 we inspected all relevant parts of the Estate in the presence of representatives of the parties. The hearing began on the following day and occupied three days. The tenants were represented by John Whicher, a leaseholder and secretary of the Andover Estate Leaseholders' Association, and by David Booth, a leaseholder who is one of the applicants. They called three of the applicants, Peter Davis, the leaseholder of 5 Tomlins Walk, Beatrice Yankson, the leaseholder of 11 Mingard Walk, and D M J Donoghue, the leaseholder of 60 Bolton Walk, to give evidence. The landlord was represented by Nicola Muir, counsel, instructed by the landlord's legal department. She called David Ronan, Albert Neal, Roy Collett and Richard Powell, all of whom are employed by Homes for Islington, to give evidence. Mr Ronan, Mr Neal and Mr Collett work in the New Build and Regeneration Team. Mr Ronan is the manager of the team. Mr Neal's work includes project management; Mr Collett's work includes cost consultancy for framework contracts. Mr Powell is Special Projects Officer (Major Works) and his work includes dealing with cases before the tribunal.

16. The progress of the hearing was hampered by the fact that relevant, and, indeed, essential, documents relating to the breakdown of the costs in the phase 1 works were not produced by the landlord until the second day of the hearing, although when they emerged they proved to be consistent with documents which had been seen by the tenants' representatives at an earlier stage and on the basis of which they had prepared their case. We accept that part of the difficulty was caused by the fact that the works were completed some years ago, and the landlord's officers who were involved in them have now retired. But given that this dispute has been simmering for many years, and the tenants have made

repeated requests for the production of documents, we would have expected the documents to have been made available in good time. Problems were also caused because the tenants had unfortunately misread the directions and had produced a bundle which did not include the landlord's statements or other documents. We were, furthermore, concerned that the tenants had been given no warning until the late in the day before the hearing that the landlord was to be represented by counsel.

## The issues

17. The issues related to preliminaries; scaffolding; general repairs, painting and decorating; the steel mesh panels to the walkways of the four-storey blocks; and the method of apportionment of the service charges. Mr Whicher made a general point in relation to all the costs that in the absence of evidence of payment we ought to conclude that the landlord had not proved that it had paid for the works, but we are satisfied that, the landlord having provided evidence of the amounts due under the final account which it was liable to pay, that it has in fact paid those sums. The costs referable to the proceedings were not an issue because Ms Muir conceded that an order under section 20C of the Act to prevent the landlord from placing any of the costs it had incurred in connection with the proceedings should be made and that the landlord would reimburse to the tenants under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations the application and hearing fees they had paid. We accordingly make those orders.

## Preliminaries

18. The AMP for preliminaries, excluding scaffolding, in phase 1 was £1,100,672 (bundle 1, page 35). The actual cost was £718,607 (page A of a bundle of spreadsheets relating to phase 1 ("the phase 1 spreadsheets") which the landlord

produced on the second day of the hearing. The costs are broken down on page I of that bundle. The breakdown includes staffing, site set-up and running expenses, and the figures accord with the figures adopted by the tenants in a schedule which they produced for the purpose of the hearing.

19. The AMP for preliminaries, excluding scaffolding, in phase 3 was £605,976 (bundle 2, 179n). The actual cost was £600,848 (tenants' exhibit 13p).

20. The tenants' complaints may be summarised as follows:

i. The costs included two tenant liaison officers in phase 1 but there was only one such officer at any one time: Charles Hall for the first six months and Daniel Obiange thereafter, but charges of £60,528 for each of two such officers were made. Only one tenant liaison officer was employed for phase 3.

ii. There was an overlap of about 11 weeks (from 31 October 2005 to 16 January 2006) between phases 1 and 3 which ought to have, but had not, led to a costs saving.

iii. The costs in phase 1 of both a storeman and a general labourer at a total cost of £58,888 could not be justified, bearing in mind the equivalent cost in phase 3 was for a labourer at £12,480.

iv. the cost of Heras fencing (temporary mesh panels) was excessive at £3276 in phase 1 and £2860 in phase 3.

v. The costs included the installation and use of four computers, which was excessive, at £8,476 for phase 1 and £12,678 for phase 3.

vi. The electric running costs of £20,020 in phase 1 and £25,000 in phase 3 were excessive.

vii. The use of four skips a week at a total cost of £37,440 in phase 1 and £39,000 in phase 3 was excessive, because the repairs carried out to the blocks

were minimal and the replacement of the windows was carried out by a subcontractor.

21. The tenants said that the cost of preliminaries (excluding scaffolding and professional fees) was very high by comparison with the costs of the works. They said that, for example, the costs of preliminaries for 1 - 24 Tomlins Walk (in phase 1) were 27.72% of the cost of the works to the block, and the percentage costs of preliminaries to other blocks were very little lower, whereas the Building Cost Information Service, Housing Repair Cost Guide, allowed 12% for preliminaries. The tenants suggested that the costs of the preliminaries were wholly excessive and should have been a fraction of what they were. In respect of all the blocks which included flats owned by applicants they proposed amounts for preliminaries which ranged from about 12% to 25% of the amounts charged.

22. For the landlord, Mr Neal said that he was based on the site from 2004 to 2009. He said that the electrical running costs included the costs of lighting large underground garage premises used by the contractors and that he believed that the skips were mainly used for the windows which were taken out.

23. Mr Collett said he had never visited the site. He said that partnering was not his preferred method of procurement and he acknowledged that, perhaps because it was the first contract carried out for the landlord under a framework agreement, the prices were high and the landlord had learned as it went along. He said that the preliminaries were calculated according to the tendered framework and were agreed as reasonable by the partnering team in advance and included in the AMP. He said that the ratio of preliminaries to other works was not constant, but varied according to the nature of the works and the nature of the contract. He agreed that he would normally expect preliminaries to account for about 10% of the total cost of the works, and scaffolding and preliminaries combined to account for between 20% and 30%. He said that BBRL's costs of preliminaries tended to be higher than those of other contractors and that it could be assumed that the reduction from the AMP under the present contract would have been taken mostly from the cost of preliminaries. He said that BBRL had an "excellent site set-up". He said that the cost of the Heras

fencing would be fixed in the preliminary pricing model after extensive discussion with the landlord's representatives who would have included its architect and quantity surveyor, and that it would have allowed for the moving around of the fencing and not just its hire. He said that the rate for computers was not the cost of four computers, but the relevant proportion of BBRL's IT support department. He said that the cost for skips would include delivery and emptying.

24. Mr Collett said that the fact that the AMP for preliminaries in phase 1 was £1.1 million whereas in the final account the figure was £718,000 was a result of cost engineering and overlap of phases. He said that there may have been risk items, such as the possibility of delays in site possession, factored in to the preliminaries.

25. Ms Muir submitted that it had to be borne in mind that this was an enormous project, that each block was different and had different requirements, and, importantly, that to determine the proper proportion which preliminaries should bear to the cost of the works was not the correct approach. The proper question was whether the works which formed the preliminaries were carried out at a reasonable cost and to a reasonable standard, and that it had not been shown that they were not. Preliminaries, she submitted, were not a fee but were made up of actual expenses, the costs of many of which were predetermined by the framework agreement.

26. We accept that it is impermissible to ask whether the cost of preliminaries was high by comparison with the cost of the other works, because the cost of preliminaries depends on the nature of the other works. We accept the evidence of Mr Collett that BBRL's costs for preliminaries were likely to have been on the high side by comparison with those of other contractors and that they will therefore have been the major element in the reduction applied to bring BBRL's costs down to those of the lowest tenderer. We also accept that the costs comprised within the preliminaries were to a large extent governed by the framework agreement. We have come to the conclusion that the only aspect of the cost of preliminaries which was unreasonable was the cost of a second tenant liaison officer in phase 1. We note that only one such officer, Mr Obiange,

is named in the breakdown of preliminaries for phase 1, and the landlord was not able to say definitively that there were two at any one time whereas the tenants are sure that there were not. We note that only one tenant liaison officer was considered to be necessary in phase 3. We accept, therefore, that there was only one tenant liaison officer at any one time during the course of phase 1, or that only one was necessary. We therefore deduct £60,528 from the cost of preliminaries in phase 1, which has the effect, which we would expect, of bringing the cost of preliminaries in phase 1 more into line with those in phase 3. In addition, we were told, and it appears from the documents, that a deduction of £282,438 for the overlap between phases 1 and 3 was made entirely from phase 3, but we determine that it should be split equally between the two phases, which has the effect of reducing the cost of preliminaries in phase 1 by £141,219 and increasing the cost of preliminaries in phase 3 by the same amount.

**Scaffolding**

27. The AMP for scaffolding in phase 1 was £632,324 (bundle 1/page 35). The actual cost was £494,209 (spreadsheet page 7A). The identifiable costs within the actual cost are £167,106 to the subcontractor (spreadsheet page 7 and tenants' appendix 13F), £253,357 to BBRL (spreadsheet page 7 and tenant's appendix 13F), and £64,690 for adaptations. The tenants' schedule shows the breakdown between blocks. The AMP for phase 3 was £1,053,628 (bundle 2 page 179N), and the actual cost was £1,029,542 (tenants' appendix 13L), and the breakdown between the blocks is in the tenants' schedule. The subcontractors' cost in respect of the four-storey blocks in phase 3 was £148,000 (tenants' appendix 13q).

28. Mr Donoghue, who is in the building trade, said that in his opinion full scaffolding was not needed. Mr Whicher said initially that the landlord had provided no drawings, receipts or proof of payment and that the fact that the windows could have been fitted from within the flats was shown by the project proposals for phase 3 (tenants' appendix 15A) which included "all windows will

be fitted from within the properties and will be taken through the property via the front door", but in his final submissions he accepted that it had been necessary to scaffold the blocks. He also said that there were unexpected discrepancies between scaffolding costs in phases 1 and 3 and that direct costs were too high by comparison with subcontract costs, and he questioned the need for cherrypickers and towers as well as fixed scaffolding. He said that there were costs of training fees in both phases which ought to have been borne by the contractor in accordance with the Agreement (phase 1 costs included training on cherry pickers at £2580, scaffold towers at £3500, and loss of production on training days at £3200; phase 3 costs included hoist training at £9000). He suggested that the reasonable costs would exclude training and would be based on the subcontractor's costs plus 15% for associated temporary works.

29. Mr Collett agreed that training costs ought were included as a contractor's cost in the Agreement and ought not to be charged again. Mr Ronan said that there was no doubt that scaffolding was necessary for the replacement of the windows and for the works to the balustrade, and Mr Neal explained that towers had been used on the houses due to restricted access. Cherrypickers had been used where possible to restrict the need for full scaffolds, but they were, he said, used only on the multi-storey blocks and not on the four-storey blocks.

30. We are satisfied that it was necessary to erect a fixed scaffold to the four-storey blocks, but we are not satisfied that towers and cherrypickers were needed, or in fact used, on those blocks. It was acknowledged that the costs of training should not have been passed on. We agree that the total scaffolding costs were high by comparison with actual works but we accept Ms Muir's submission that that is not a valid argument because the need for scaffolding depends on the nature of the work. The project proposals for phase 3 on which Mr Whicher relied make it plain that a scaffold would be necessary to provide access for "window installations, asbestos removal, roof repairs, rainwater repairs [sic] and high level decorations" and we accept that that was correct. We therefore disallow £9280 for training in phase 1 and £9000 for training in phase 3. We deduct the costs of the scaffold towers which were used only on the houses

and of the cherrypickers which were used only on the tower blocks. We are in other respects satisfied that the costs of scaffolding were reasonable.

**General repairs painting and decorating**

31. The AMP for general repairs, painting and decorating in phase 1 was £716,680 (see bundle 1 p 35) and the actual cost was £416,292, of which about £194,000 were schedule of rates items and £221,000 were not,. This was a saving on the AMP cost of a little over £300,000, before allowing for a discount of 7.58%. In phase 3 the AMP cost was about £460,000 and the actual cost was £217,500. The savings were applied to the balustrade works in the areas covered by phases 1 and 3.

32. Before the hearing, in the absence of the relevant information from the landlord, the tenants had assumed that the actual costs for general repairs, painting and decorating were the same as the AMP costs and that they related to painting and repairing fascia boards and repointing the brickwork. In fact, the actual costs for painting and repairing the fascia boards were considerably less than the tenants had assumed, and there were no costs for re-pointing brickwork.

33. Mr Davis, Mrs Yankson and Mr Donoghue said that the quality of the painting and repairs to the fascia boards was very poor, and Mr Whicher said that no proper survey was carried out before the start of the works which had increased the costs.

34. We are satisfied that the walk-round which the landlord's officers carried out was sufficient to identify the required works and we were told, and accept, that where faults were found they were rectified, and it appeared from our inspection that, bearing in mind the time since the works were done, the standard of decoration and repairs was reasonable and we are satisfied that the actual costs were reasonable for what was done.

**The steel mesh panels to the balustrades**

35. The balustrades to the four-storey blocks were formerly infilled with marine plywood panels which, it appears to be accepted, had become stained and unsightly, although otherwise mostly serviceable, and were said to pose a security risk because people on the balustrades could not be seen from any distance. The tenants did not agree that the panels had been in disrepair but they agreed that it was not unreasonable to replace them, and they did not challenge the cost or standard of the works to the balustrades, which included re-coating the walkways with a "Tor" waterproof coating. The cost of the balustrade works in the areas covered by phase 1 was £117,815.52; the cost for the works in the areas covered by phase 3 was £437,607.82 (applicant's appendix 13 I ). The landlord could not explain the large difference and agreed to limit the costs of the balustrades in the areas covered by phase 3 to the same figure of £117,815.52. Subject to that adjustment, we are satisfied that the costs of the works were reasonable.

36. The tenants' case was, essentially, that the landlord had not consulted them about the works in accordance with section 20 of the Act and the relevant Consultation Regulations. Ms Muir submitted that it had complied with the Consultation Regulations but that, if it had not, compliance should be dispensed with under section 20ZA of the Act which provides that the tribunal may dispense with compliance with them if it is reasonable to do so. Mr Whicher did not object to the landlord's application under section 20ZA, if it was required, being considered at the present hearing and he confirmed that he had authority from those whom he represented to deal with all matters which were raised. After the hearing Mr Whicher made a short further written submission, copied to the landlord, in relation to the dispensation application, asserting that section 20B of the Act was relevant, although he did not say in what way it was relevant.

37. The relevant notices for the works describe the proposed works "general repairs, concrete and brickwork repairs, painting to exterior and common parts, window renewal and asbestos renewal". The relevant Consultation Regulations require the notice to describe the works "in general terms" and Ms Muir submitted

that the description was an adequate description of works, broad enough to include exterior works of any description and the replacement of the panels. It is common ground that the decision to replace the panels was taken some time after the services of the notices.

38. We are satisfied that the words in the notices are not apt to include the replacement of the panels, and that the landlord did not, therefore, comply with the Consultation Regulations in relation to them. However, we were told, and accept, that much informal consultation with the leaseholders and other tenants took place by means of newsletters and meetings, and we accept Ms Muir's submission that the constraints of the framework agreement meant that the tenants were not prejudiced by the lack of a formal consultation notice because they were not in a position to nominate their own contractor. We are therefore satisfied that it is reasonable to dispense with compliance with the Consultation Regulations in relation to the works to the balustrades. We do not consider that section 20B of the Act is relevant because we have no reason to suppose that a demand for payment of the service charges arising from the works to the balustrades was not made within 18 months of the works being carried out.

**Apportionment**

39. There are two aspects to this issue, which, Ms Muir said, was of great importance to the landlord because of the very wide implications of a determination that its method of apportionment, which it applies throughout the borough, was unreasonable.

40. The first aspect, and that with the wider implications, is apportionment between the residential units on the Estate. The landlord bases this on a "bed-weighting" basis, which it applies to all the dwellings which it lets. Ms Muir said that by this method the total service charge of a block was divided by the number of dwellings and made the following adjustments:

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| bedsitting rooms | - subtract 20% |
| one bedroom | - subtract 10% |
| four or more bedrooms | - add 10%. |

She said that in practice this left a shortfall which was borne by the landlord. She said that this method of apportionment was common among local authorities.

41. Mr Powell gave evidence that it was essential to have a straightforward method of apportionment which was comprehensible to leaseholders and which did not require a team of accountants to apply it. He said that the method which the landlord, and very many other social landlords, had adopted, was straightforward and fair and that it would cause chaos if it was determined to be unreasonable.

42. Mr Whicher said, correctly, that the primary requirement of the leases was that apportionment should be based on rateable values, but, he submitted, the apportionment ought to be based on floor areas, or possibly council tax, rather than bed-weighting if rateable values fell into disuse. We do not agree. Proviso A to clause 5 of the leases (set out in paragraph 13 above) entitles the landlord *at any time fairly and reasonably to substitute a different method of calculating the service charge attributable to the dwellings in the building* and we do not accept that the landlord is tied by proviso B to apportionment based on floor area. In our view proviso A entitles the landlord to choose any method of apportionment which is not manifestly unreasonable, and we accept that the method of apportionment which the landlord has chosen is not manifestly unreasonable. It is obvious that apportionment based on council tax would be unworkable.

43. The second aspect of the apportionment issue is the allocation of service charges between the residential units on the Estate and the commercial or semi-commercial units, which include the units on the ground floor of Docura House and the garages on the ground or basement floors of some of the four storey blocks.

44. In relation to the garages and empty garages, Mr Powell assured us, and we accept, that no charge had been made or would be made of the leaseholders for works to those premises and we therefor do not consider it necessary to make any determination is respect of them.

45. In relation to the non-residential units on the ground floor of Docura House, which are self-contained up to underside second floor slab, the landlord agreed that the three units subject to commercial leases (Units 52, 53 and 54, see paragraph 3 above), the combined floor area of which is about 7.2% of that of the block, should bear 7.2% of the building service charge with 92.8% being then shared on the bed weighting basis.. We accept that and expect it to be applied to the service charges of Docura House, which are not, save as to the method of apportionment, an issue before us.

46. The other units on the ground floor of Docura House do not, as we understand it, pay any service charges at present, but Mr Powell agreed that it would be reasonable if a proportion of the Estate, but not the building, service charges were attributed to those units because the users of those premises make some use of Estate facilities. We accept that those units, a pre-school centre, community centre and crèche, are non profit-making charities and are of benefit to residents on the Estate, although they are also used by others to a limited extent. They are, Mr Powell said and we accept, effectively self-financing and have not benefited from any of the works in the contract considered in this decision and we accept that it us not unreasonable for the landlord to have decided not to apportion any of the building service charges to those units. We are not asked by the tenants to make any determination as to the allocation of the Estate charges, but Mr Powell said that it proposes to apportion some of the estate charges to them and we believe that is the correct decision. When the basis of apportionment is announced it can if necessary be challenged but we accept that the landlord is entitled to use any basis of apportionment provided it is not unreasonable, and an apportionment based on floor area, if that is adopted, would not in our view be unreasonable.

CHAIRMAN.....

DATE.....30 June 2022.....

## Appendix of relevant legislation

## Landlord and Tenant Act 1985

### 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 a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

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

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

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

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

(c) the amount which would be payable,

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

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

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

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

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

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

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

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

**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 leasehold valuation 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking

place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

**Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

**Regulation 9**

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).