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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CHI/29UL/LSC/2013/0121**
Property	**: 29 Clifton Crescent** **Folkestone** **Kent** **CT20 2EN**
Applicants (1)	**: The Personal Representatives of the late Mr. J. Godden**
Representative	**: Fell Reynolds**
Applicant (2)	**: Mrs. A. Esson**
Respondents	**: Mr. N.G. Pitt** **Mr. T.J. Pitt** **Mrs. S. Fairbairn** **Mr. and Mrs. Y. Ono**
Representatives	**: Mr. N.G. Pitt and** **Mr. A. Fairbairn**
Type of Application	**: Liability to pay service charges.** **Section 27A Landlord and Tenant Act 1985** **Limitation of costs Section 20C**
Tribunal Members	**: Judge R. Norman (Chairman)** **Mr. C.C Harbridge FRICS** **Mr. P.A. Gammon MBE BA**
Date and venue of Hearing	**: 29th January 2014** **Folkestone**
Date of Decision	**: 4th March 2014**

DECISION

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Decision

1. The following decisions are made by the Tribunal:

(a) The cost of the proposed work to deal with water ingress into three rooms of the Garden Flat at 29 Clifton Crescent, Folkestone, Kent CT20 2EN, which are below the entrance to that property from Clifton Crescent, is not chargeable to the service charges.

(b) An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Applicants in connection with these 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 Lessees.

Background

2. 29 Clifton Crescent, Folkestone, Kent CT20 2EN ("the subject property") comprises five self contained flats let on long leases. The freehold is owned by the Personal Representatives of the late Mr. J. Godden ("the First Applicants"). The lessees of the flats are:
Flat 1, The Garden Flat – Mrs. A Esson ("the Second Applicant"). She had asked to be joined as a Respondent in these proceedings but that was a mistake and in fact she wished to be joined as an Applicant. This was agreed by the Tribunal.
Flat 2 – Mrs. S. Fairbairn, Flats 3 and 4 – Mr. and Mrs. Y. Ono and Flat 5 Mr. N.G. Pitt and Mr. T.J. Pitt, collectively referred to as "the Respondents".

3. There had been water ingress into three rooms of the Garden Flat which are below the entrance to the subject property from Clifton Crescent. Fell Reynolds on behalf of the First Applicants had obtained estimates for work to deal with the problem ("the work"), had carried out a consultation procedure under Section 20 of the Act and were intending to charge the cost of the work to the service charges. The Respondents had objected to that and the application was made to the Tribunal to obtain a decision as to whether or not the cost could be charged to the service charges.

Inspection

4. The subject property was inspected by the Tribunal on 29th January 2014 in the presence of Mr. Baker and Mr. Donovan of Fell Reynolds and the Second Applicant. There was no attendance by the Respondents or by anybody on their behalf.

5. The subject property is a semi-detached property built over 6 floors and comprising 5 self-contained flats. It has uninterrupted sea views and is in an exposed position being set back and separated from the cliffs, by the Lees promenade. The property is close to the centre of the town. The property was built in the mid-19th Century, is Listed, and is of traditional construction with rendered and colour washed elevations beneath a pitched, hipped mansard design roof, clad in slates. The Garden Flat has its own entrance and

comprises a living room, kitchen, two bedrooms, and ancillary accommodation.

6. On inspecting the interior of the Garden Flat, it could be seen that the three rooms under the entrance to the subject property from Clifton Crescent were suffering from water ingress and their condition was as shown in the photographs included in the documents produced on behalf of the First Applicants. We could see that there were power points in some of the rooms, lighting in all three rooms and central heating in two and that there was a partition wall in place which was not shown on the lease plan.

7. The exterior of the subject property was inspected and compared with properties on either side of the subject property when viewed from Clifton Crescent. The subject property and those properties appeared to have been of similar construction.

The Hearing

8. The hearing was attended by Mr. Baker (who confirmed he was representing the First Applicants), Mr. Donovan, the Second Applicant, Mr. N. G. Pitt (who confirmed he was representing himself, his brother Mr. T.J. Pitt and Mr. and Mrs. Y. Ono) Mr. A. Fairbairn (who confirmed he was representing his wife Mrs. S. Fairbairn), Mr. M. Barnes surveyor instructed by the Respondents and Mr. Bassant a Director of a Building Company.

9. Mr. Pitt explained that he would have liked to have been present at the inspection but had not appreciated that the Respondents were invited to attend. The Chairman gave a summary of what had been seen at the inspection.

10. The Second Applicant was not able to be present for the whole of the hearing and when she left at the beginning of the lunchtime adjournment, stated that she was leaving Mr. Baker to represent her.

11. The R page numbers refer to pages in the Respondents' bundle of papers and the A page numbers refer to the First Applicants' bundle of papers.

The Applicants' Case

12. The First Applicants' case was presented by Mr. Baker who stated that:

(a) The First Applicants want to ensure that the work to the building is reasonable and referred to Clause 5 (5)(i) of the lease (p A18) and the Fourth Schedule to the lease (p A29).

(b) The work specified is reasonably required and the estimates obtained (specifically the most competitive) are a reasonable cost for the work.

(c) The consultation process required by Section 20 of the Act has been carried out.

(d) Of the sum requested for the work, the Second Applicant has paid the full sum of £2,400 and Mrs. Fairbairn has paid £1,200. There had been a specific demand but Mr. Baker did not have it at the hearing. The demand is not an issue. The First Applicants and Fell Reynolds want a determination as to the work. It is expected that any money due will be forthcoming as it has been before.

(e) Referring to the lease, the demise is at p A6 and refers to the flat shown edged red on the plan at p A5. The copy provided is not in colour but the thick black line is the red edging referred to in the lease. The landlord's covenant to repair includes what is within that thick black line. The Building is defined (p A4) as including any additions or extensions. (There is also a larger copy of part of the lease plan at p R19 with the stores concerned outlined in pink).

(f) The Building was probably constructed at the turn of the last century. The benchmark is 19th February 1988, the date of this lease. The other leases have similar dates and the Building must have been converted to flats by that time. The covenants in the leases refer to how the Building was at the time these flats were converted.

(g) Referring to the lease of the Garden Flat, the late Mr. Godden leased the flat to Mr. Keith and Mrs. Susan Davies and within the plan are 3 front rooms which are storerooms. Mr. Baker's view is that they need to be maintained as dry storerooms and that the Second Applicant can expect the First Applicants to maintain them as such. Mr. Baker submitted that at the inspection it was clear that they are used as storerooms. They cannot be used for any other purpose as two have no natural light and one has a fixed window and cannot be altered as the Building is Listed. They are damp. They were a little dryer at the inspection but earlier in the week there was water on the floor and Mr. Donovan had seen pools of water on the floor. As a consequence of water penetration, the Second Applicant had asked Fell Reynolds to do something about it. Mr. Baker submitted that it would be the same if there were water penetration to the roof. There would be a need to ensure dry accommodation and in the same way there is an obligation to keep the basement dry. The Second Applicant had suffered damage and had made insurance claims for damage to stored materials in the property. If the First Applicants were not to do anything about it, Mr. Baker expected that the Second Applicant would be looking for recompense. There is a problem so Fell Reynolds on behalf of the First Applicants are looking for a solution.

(h) The problem is water penetration through the structure. There is dry lining on the perimeter. There are holes in the plasterboard. It is as likely as not that the bitumen tanking or floor membrane has failed. It is not possible to be 100% sure until all the cladding has been taken off the walls. Mr. Baker does not know whether or not there is a floor membrane. It will be necessary to treat what is there. Blackjack bitumen had been put in to stop water ingress from outside. He did not know whether that had been done by the occupants of the Garden Flat. Probably it had not been done in the 1850's but may have been done in the 1980's.

(i) In the Section 20 notices it had been stated that unless the work was done it would adversely affect the whole fabric of the building. This was because water ingress is potentially a danger to the whole Building. The main problem is the rooms all around the store area with timber in them. It is necessary to prevent wet rot, dry rot and fungal attacks. Over a long period of time water ingress is not a good thing. It is not a problem for the foundations but the amount of water is incompatible with a dry storage area.

(j) Fell Reynolds took on the management of the subject property in about 2001 or 2002 and at that time it was almost certain that neither Mr. Baker nor any of his staff would have inspected the subject property. Mr. Donovan had first seen the storerooms about 18 months ago and a colleague had seen them before that. The finishes were the same at the inspection as they were when Mr. Donovan first saw them.

(k) The lease of the Garden Flat requires the lessees to seek consent to alterations and the finishes seen at the inspection would not have been there in 1850 but it was reasonable for them to be there in the 1980's

(l) In response to a question from the Tribunal about things which were seen at the inspection but were not shown on the lease plan, Mr. Baker did not accept that those differences were necessarily alterations. If the property was converted to flats before the leases were granted the plans used on the leases could have been plans showing the property before conversion. Mr. Baker contended that the fact was that the areas are as shown in 1988. He did not think that the vendor could put any other description on the rooms. They were stores, not bedrooms. He had no knowledge whether the lease plan had been drawn on the date of the granting of the lease or before.

(m) Asked if the standard of maintenance for each area was different, Mr. Baker said that each part attracts its own remedies. Walls underground facing the pavement at the front of the subject property and facing No. 31 required maintenance to prevent water ingress. Other walls may require other methods.

(n) Referred to the statement of Mr. Barnes (p R37), Mr. Baker accepted that No. 31 Clifton Crescent was probably built at the same time as the subject property and years ago might have had the same finish, but not now.

(o) The Tribunal referred to the quotes for the work. In particular, R.J. Engineering quoted £13,724 but in correspondence about the work there seemed to be some open-endedness in the quote. It appeared there were further problems which would have to be dealt with and the Tribunal questioned why a proper survey had not been carried out so that it would be possible to say what was necessary. Mr. Baker explained that there were people living in the Garden Flat and to carry out a survey would be disruptive to them. All three contractors had caveats because until the walls and floor were opened up it was not possible to be precise. It is a common way of specifying. All three contractors had the same solution they were just different in their prices. It was only possible to estimate for areas that needed work. It was put to Mr. Baker that there was very limited use of the rooms in

question and that already large sections of the finishes had been removed to see what was needed and the Tribunal asked whether it was reasonable to go further. Mr. Baker's view was that that could not be expected. Something had to be done to the property to stop water ingress and the solution had been identified correctly. There was the question of what to do when the walls were opened up and he expected an increase in the cost of the work. There had already been an increase in the cost because an application had had to be made because the subject property is Listed and some different work had been required. There would be a need for another Section 20 consultation process but without a determination by the Tribunal he was not asking the contractors to do more.

(p) Referred to the suggestion by the Respondents that the purpose of the storerooms was that they were designed as a damp barrier, Mr. Baker's view was that maybe that was how that was done when the subject property was built but not in the 1980's. He did not know what the subject property was like at the time the leases were granted.

13. The Second Applicant had nothing to add.

The Respondents' Case

14. Mr. Pitt presented the case on behalf of the Respondents and stated that:

(a) As to the floor membrane in the store areas, at p A169 R.J, Engineering say there is no floor membrane. That confirms the view of the Respondents that those rooms were storerooms naturally ventilated for storing items such as coal and as a moisture buffer and had existed for 160 years before the conversion in 2000 or 2002. The Second Applicant stated that when she bought the Garden Flat in 2002 it was as it is now and that the previous owner who had lived there for 26 years said it was the same but there was no statement from the previous owner. The statement of the Respondents (p R31) as to the history of occupation of the Garden Flat did not show anyone occupying for that length of time.

(b) At p R31 the Respondents had set out in detail their reasons for considering that the conversion of the storerooms in the Garden Flat ("the storeroom conversion") had taken place between 1999 and 2002. Those reasons included that:
(i) From May 1988 – Sept 1999 (11 years) the Garden Flat leaseholders were Keith Davies and Susan Davies and Messrs. Pitt had visited the Garden Flat and been shown the subterranean naturally ventilated storage/store compartments marked as 'stores' on Messrs. Pitt's lease plan layout (p R19) that surround the 'inner habitable area'.
(ii) Messrs. Pitt had kept records of all maintenance matters and had no record of any damp issues with regard to the Garden Flat between 1989 and 1999 or any maintenance involving the subterranean outer storage/ store compartments. Therefore they were certain that the naturally ventilated compartments built below ground level around the main structure of the building (formerly used for storing non-perishable items such as coal etc.)

were serving their purpose as an effective 'buffer' to any dampness problems as they had done, prior to the storeroom conversion, for 150 years.
(iii) From December 2000 to June 2002 the leaseholders of the Garden Flat were Mr. and Mrs. Broad. Mrs. Broad wrote an undated note to Messrs. Pitt saying they were having the paths asphalted at their own expense (p R32) which makes it most likely that they did the storeroom conversion. Fell Reynolds replaced Smith-Wooley & Perry as the managing agents on 29th September 2001. The Respondents believed it would have been useful for Fell Reynolds to check their records and the records of Smith-Wooley & Perry handed over to them to see if there was a record of conversion. Apparently there was no such record.
(iv) In a memorandum dated 11th January 2012 (p A155) Dick Copland, a surveyor for Fell Reynolds, wrote to Fell Reynolds "I gather that the conversion work of this part of the building was carried out at least ten years ago. Mrs. Essen informs me that for the first few years of her occupation there were no problems but then damp started to be a problem and has steadily worsened ever since".

(c) It is stated in the letter dated 13th December 2012 enclosing a Section 20 notice (p A165) and in the notice (p A167) that the original tanking had failed but how could that be known? At p A170 it is stated by R.J. Engineering that it could not be confirmed that the tanking had failed. The walls put up in the storeroom conversion make inspection impossible. It is not known if the tanking has failed. There could be other reasons for the dampness and it will not be known until the walls are taken down. If they were not there and the stores were in their original condition it would have been a simple matter. Mr. Baker commented that if the building was as built then at the inspection piles of coal would have been seen in there. R.J. Engineering were talking about the 1980's. He confirmed that it was not possible to be sure of the work required until the covering had been removed. Then it would be possible to be more finite in terms of solution.

(d) Mr. Pitt suggested that the blackjacking had been done at the time of the storeroom conversion but was never adequate. Mr. Baker stated that it was virtually impossible to coat walls to stop water. It was necessary to let them drain and then install a small pump. Mr. Pitt's Response was that the stores could be left as before with natural ventilation as was the situation with 31 Clifton Crescent and as Mr. Pitt had seen when Mr. and Mrs. Davies were the lessees between 1988 and 1999. The natural ventilation had been blocked up. At p A155 Mr. Copland summed up the problem when he wrote:
"I fear that this is an example of habitable occupation being formed in an underground coal cellar which was never meant for this purpose. Almost any attempts to keep the area dry should only be considered as a temporary measure and I believe it should be acknowledged that the work really needs to be carried out again every 8 to 10 years or so."

Mr. Baker agreed that as built that was probably right. But the landlord's obligation started in 1988. The use could be changed but it is what was there at the time of the contract that matters. Habitable is the wrong word. A store is not habitable in the sense that anybody could live in it. If there were to be a change of use it would be necessary to look at it from the landlord's point of

view and planning. The rooms needed to be maintained as stores. As to an external head of water, the tanking helps but will not withstand a head of water on the other side. The only way is to put the tanking on the outside then water pressure would push the membrane onto the wall. There would be a warranty of 10 years with the contractor and Mr. Baker would expect a life of 10 years if not more. He accepted that every 10 years or so the lessees could expect to fund a similar exercise, like any other paint product on outside walls.

(e) Mr. Pitt asked if the First Applicants had been notified of the Respondents' objections to the work and what had been their response. Mr. Baker said that the only direction received was to represent the First Applicants in these proceedings. It is the First Applicants' obligation to maintain.

(f) Mr. Pitt asked if it were eventually agreed that the storeroom conversion had taken place in 1999-2002 did Mr. Baker have the landlord's agreement to it? Mr. Baker replied with a question, asking what the rooms had been converted to. They are still stores but if there were to be a change the landlord would need to be consulted. He accepted that two rooms have central heating and that there is lighting in all. The Second Applicant confirmed that that was the situation when she moved in. The description given in the schedule of works (p A156) of 'the den' 'the ironing room' and a store room are just her descriptions for them.

(g) When the second Section 20 notice was received the Respondents instructed Mr. Barnes and when the application was made to the Tribunal the Respondents sensed a great reluctance from Fell Reynolds to discuss conversion. There was a meeting on 2nd August 2013 (p R39) and Messrs. Pitt and Barnes were astonished by some of the statements made by Mr. Sunderland of Fell Reynolds, including, that the lease floor plans are "rubbish", that no consent or permissions were required for internal alterations, that the leaseholders were free to make what changes they wished and that there was no dampness in habitable areas. Mr. Baker stated that he did not think there had been the storeroom conversion but that if the lessee wanted to change then there would need to be a deed of variation and a charge would be made.

(h) Mr. Pitt referred to the report from R.J. Engineering (p A169) at the third paragraph under the heading Rising Damp where it was stated that water was coming through in and around the steel beams. He also referred to p R34 where Mr. Barnes showed differences between the current rooms and the originals as shown at p R19. Mr. Pitt asked whether the water coming in had something to do with a wall taken down in the larger of the rooms and if the problem had been caused or exacerbated by the storeroom conversion. Mr. Baker said it was difficult to say without opening up the structure because it was under the asphalt. It was not the main point of water ingress and whatever was there before might have been damp as well.

Mr. Baker's answers to further questions

15. Mr. Baker provided the following answers to questions:

(a) Fell Reynolds had looked after the property since 29th September 2001 and their records go back that far. They had no records from the previous managing agents. There was no evidence to suggest when the tanking or the painting of the walls had been done. The stores had always been stores; they were not habitable, as confirmed by Mr. Barnes in respect of two of the rooms at p R41. They are not habitable so no conversion. He did not know why anyone would go to the expense of plastering, putting in skirtings or radiators, or would knock down a wall to make a storeroom. He did not know when it had been done but two of the rooms had no windows. He had no knowledge that the rooms were other than stores even though Mr. Copland (p A155) referred to habitable accommodation. The structure remains the same. It is not a conversion as such. The rooms are still stores but may be a different sort of store. The First Applicants say it is their duty to repair and a decision is wanted on whether the work can be charged to the service charges.

(b) Questions of insurance and breach of covenant raised by Mr. Pitt were not relevant to these proceedings.

(c) R.J. Engineering refer to a sump; a drained solution. Asked by Mr. Pitt if the previous methodology using bitumen, emulsion and battens to the walls of the stores and tanking and no floor membrane, which is a world away from a fully drained solution with a sump, was a 'bodge', Mr. Baker said the drained solution was a better way of dealing with it. He did not want to keep on coming back to address the problems. A good solution was needed.

(d) Asked if the storeroom conversion had caused problems and had altered the position, Mr. Baker said the cause was a failure of an economical attempt to keep back water.

Mr. Pitt's answers to questions

16. Mr. Pitt provided the following answers to questions:

(a) Asked if the purpose of these stores was to keep the structure dry, what about other stores? Mr. Pitt stated that at the south side there is no earth retaining wall and that on the north side by bedroom 1 there is no vertical earth retaining wall. The stores in question have vertical earth retaining walls and for that reason they were kept naturally ventilated to act as a moisture buffer.

(b) Mr. Baker asked why Mr. Pitt had any reasons to go into the storerooms at the subject property when Mr. and Mrs. Davies were lessees and suggested that his recollection of what he saw may be influenced by what had been seen at 31 Clifton Crescent. Mr. Pitt explained that Mr. and Mrs. Davies had showed him because it was to them all interesting that the flat was surrounded by storerooms. They all had a strong interest in the building. The coal cellars served a very important purpose and he believed they should be reinstated as stripped out to naturally ventilated storerooms. He believed that in 1988 Mr. Godden had kept the stores as a damp buffer. Mr. Pitt could not recall exactly where the ventilation holes were. He had not recorded where they were but he had been aware of natural ventilation and some light coming in as the rooms

were not lit. At the inspection Mr. Baker could not see where light got in except through a small window. Mr. Pitt explained that since he bought his flat the area had been asphalted over. The note (p R32) is undated but is from Mrs. Broad when she was the lessee. He questioned why she paid for the work rather than have the landlord do it and charge the cost to the service charges. Mr. Baker said it was not uncommon for lessees to do things themselves but Fell Reynolds were not the managing agents at the time.

The First Applicants' Submissions

17. Mr. Baker denied that there had been any conversion other than the one in 1988. The storage compartments are lawful under the terms of the lease and they are being used for storage. Papers have been submitted to the Council and approved subject to some amendments. The Council's view is at p R68 where there is acknowledgment of the problem and that the use of the building has nothing to do with the problem that tanking has failed. He is seeking the Tribunal's decision on whether the repair is under the landlord's covenant to repair and to ensure there is a project to protect the structure of the building and the tenants to pay for it. There will be revised demands and a new Section 20 procedure if needed. There is no provision in the leases for improvements. A sump pump would be an improvement but is part of the system of the solution. Most of the work is taking off what is there. The floor membrane is in fact two coats of waterproof paint. It is difficult to keep ground water out.

The Respondents' Submissions

18. Mr. Pitt considers that the present state of the Garden Flat is unlawful. There was no consent by the landlord or the authorities to the storeroom conversation. Future maintenance is a concern. All builders comment on problems of subterranean conversions. He would like to know from the Conservation Officer if there was Listed Building consent and from the Planning Officer a record of planning permission and compliance with Building Regulations. At clause 3(1)(e)(i) of the lease (p A9) is a covenant by the tenant "Not to make any alterations or additions to the Flat or any part thereof... without the previous consent in writing of the Lessors such consent not to be unreasonably withheld". There is no record of any such consent. When the storeroom conversion was done in about 2000 it was done on the cheap and now it is suggested it should be done properly. The original conversion or refurbishment in the 1980's was good and all through the 1990's there were no damp issues. For 26 years there has been a very good relationship with the managing agents. Messrs. Pitt have paid on time and even paid for other leaseholders. There has never been a dispute until now. But the Respondents are now being asked to fund an unauthorised conversion. When 31 Clifton Crescent was for sale and could be inspected (p R37) it was seen to be similar to the basement of the subject property before the storeroom conversion. It was generally free of dampness except for several isolated low meter readings of 6 – 8% obtained on the inner face of the external walls. The outer store areas were permanently naturally ventilated. This is no longer the case at the subject property. The area is no longer ventilated. It is no longer a moisture buffer. Also the internal walls have dry

linings which prevent inspection and an internal wall has been removed. As part of the First Applicants' case (p A155) Mr. Copland refers to a subterranean conversation. The First Applicants say that the work is maintenance. The Respondents suggested an agreement that an unlawful conversion had been carried out and that the rooms should be reinstated. Mr. and Mrs. Davies moved in in 1988 so were the first ones to move in after the 1988 conversion. Messrs. Pitt moved in in 1989. While Mr. and Mrs. Davies were the lessees, Mr. Pitt saw the cellars (probably between 1990 and 1993). They were black, dark and unfriendly in the early 1990's. They were not even a den or an ironing room. There was no heating, they were cold with no wiring as he remembered and slightly lit by natural light. He would not want to touch the walls. The floor was not nice. He remembered no smartness about them at all.

Section 20C of the Act

19. Section 20C of the Act was explained and representations were invited.

20. Mr. Baker said that the First Applicants found themselves between a rock and a hard place. The Second Applicant expects the property to be maintained so she can use stores as stores. An application under Section 27A of the Act was the only remedy. Any costs are recoverable through the service charges and the lease provides for this in paragraphs 6 and 12 of the Fourth Schedule to the lease (pp A30 and A31).

21. Mr. Pitt said that the Respondents had abided by the leases for a long time. Employing Mr. Barnes at their expense had benefitted all. It was unfair to charge the Respondents. They were involved in these proceedings because the storeroom conversion had been carried out and those who did that conversion should be paying. Maybe the present owner occupiers of the Garden Flat should pay.

Reasons

22. The Tribunal considered all the documents and photographs produced, what had been seen at the inspection and the evidence heard and submissions made at the hearing and made findings of fact on a balance of probabilities.

23. The Tribunal found Mr. Pitt to be a credible witness. The Tribunal accepted his evidence as to his visit to the stores in the Garden Flat at a time when Mr. and Mrs. Davies were lessees of that flat between May 1988 and September 1999. His evidence was convincing, there was no reason to disbelieve him and no direct evidence to contradict his account. His description of the stores as naturally ventilated, unlit, unheated bare wall rooms was very different from that seen at the inspection where the walls were dry lined, there were power points in some of the rooms, lighting in all three rooms and central heating in two. Also the internal walls were not as shown on the lease plan.

24. Mr. Pitt's evidence is supported by the lease plan, his unchallenged evidence that there had been no record of damp issues until recent years, the

inspection of No. 31 Clifton Crescent and the carrying out by Mr. and Mrs. Broad, at their own expense, of asphalting work. Also, no evidence was produced on behalf of the Applicants as to the condition of the stores in the Garden Flat at the start of the lease or when Fell Reynolds became the managing agents or at any other time before the Second Applicant became the lessee of the Garden Flat.

25. It follows that:

(a) The Tribunal is satisfied that the storeroom conversion was carried out at some time after the 1988 conversion or refurbishment and before the Second Applicant purchased the Garden Flat in 2002.

(b) Even if all three rooms could still be described as stores there have been significant alterations carried out since 1988 and there is no evidence that the consent of the landlord was obtained for the storeroom conversion.

(c) The work cannot be charged to the service charges.

26. The Tribunal considered the representations made in respect of the application for an order under Section 20C of the Act and came to the conclusion that it is just and equitable in the circumstances to make such an order because the Respondents were justified in contesting these proceedings to clarify the position. We therefore make an order that all or any of the costs incurred or to be incurred by the Applicants in connection with these 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 Respondents.

Appeals

27. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

29. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

30. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)