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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00CW/LSC/2014/0010**
Property	:	**Merriedale Court, Merriedale Road, Wolverhampton WV3 9LD**
Applicant	:	**Wolverhampton City Council**
Representative	:	**Mr C Heather of Counsel**
Respondent	:	**The respondents whose names are set out in the appendix**
Representatives	:	**Mr K A Hall (for Mrs B Hall)** **Mr W Cullis (for Miss L Cullis)** **Mr Jonathan Wright (Counsel) for Mr T Lewis (28 November 2014 only)**
Type of Application	:	**Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge C Goodall LLB** **Mr S Berg FRICS**
Date and venue of Hearing	:	**28 November 2014, 4 & 5 February and 14 & 15 May 2015**
Date of Decision	:	**10 August 2015**

DECISION

Background

1. Merriedale Court is a 1955 local authority development of around 157 flats in eight mainly three storey separate buildings adjoining Merriedale Road in Wolverhampton. It is locally listed and within a conservation area. The flats still house public sector tenants. Management of the site has been taken over by Wolverhampton Homes Limited, a wholly-owned subsidiary of Wolverhampton City Council ("the Council"). During the case, no real distinction was drawn between the separate roles of Wolverhampton Homes Ltd and the Council, and in this decision the Tribunal will refer to them both as the Council.

2. Forty six flats have been sold to their tenant's under the right to buy legislation contained in the Housing Acts 1980 and 1985. The current lessees of these flats are the Respondents in this application.

3. This application has been brought by the Council because they plan to carry out extensive and costly repair works ("the Works") to Merriedale Court. The application is precautionary, to establish the Tribunal's determination of three key issues that in the Council's view require definitive resolution. These are:

    1. Whether the Council can recover the cost of the Works under the leases under which the Respondents hold their tenancies

    2. Whether it would be reasonable for the Council to carry out the Works, and

    3. Whether the proposed cost of the Works is reasonable

4. The application indicated that the Respondents would be expected to pay between £8,448.73 and £11,577.44 per flat (though the figures have changed during the currency of this case). A number of Respondents are elderly and not well off and unsurprisingly this proposed large bill caused considerable concern. Fourteen Respondents made written submissions to the Tribunal to oppose the application.

5. Without wishing to diminish the individuality of the Respondents' submissions, they focussed on the following main arguments:

    a. Whether the leases (and in particular lease type 2) allow recovery of the cost of the Works

    b. Whether the Works are necessary or necessary now or should be done differently. This issue related to a number of aspects of the Works which are dealt with in more detail below. In particular, the roofs, asphalting, and replacement of crittal windows featured extensively in the Respondent's arguments.

c. The proposed use of a high cost contractor (cost of works)

d. The failure by the Council to keep Merriedale Court in good repair over a number of years, meaning the cost now was excessive (the historic neglect argument)

e. Inability of some Respondents to afford the considerable sums expected to be demanded (affordability)

f. Whether the Works could be phased to make the financial impact upon Respondents more manageable (phasing)

g. Whether allegedly incorrect information given by the Council to a proposed purchaser of one of the Flats gave rise to a defence to the claim for a contribution towards the cost of the Works

h. Whether the cost of the Works should be capped as a result of the Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014 ("the 2014 Directions")

i. Whether the costs were being shared correctly between all Respondents (the apportionment argument)

j. Whether the Works are for improvements, which are not claimable from the Respondents under the leases

Description of Merriedale Court

6. Merriedale Court was inspected by the Tribunal on 28 November 2014, and again (albeit briefly, and unattended) on 15 May 2015. The residential accommodation is constructed in eight separate buildings, one of which is treated as being two blocks (Blocks 7 & 9). The Blocks are not identical, and they have been sympathetically designed to form a pleasant residential estate with grass areas and planting. As one of the Council's witnesses explains, "Merriedale Court is ... a well designed example of early post-war social housing with many attractive features which are valued for social history and architectural interest". The Tribunal agrees.

7. The construction of the Blocks is in brick with tiled pitched roof above. Each Block consists of three floors, except Block 9 which has a communal area at lower ground level, such that it is part four floors.

8. Ground floor flats each have their own separate front door accessed from an estate pathway. Access to the flats at first floor and second floor level is gained through a secured access door to a communal entrance lobby accessing stairs to the two upper floors. The stairs provide access to open walkways with balustrading to the individual front doors of each flat.

9. Generally, it was apparent on inspection that there was considerable disrepair to Merriedale Court and in particular to the soffits, fascias, downpipes, gutters, and the concrete open walkways. Disrepair to the roof could be observed, in the form of some delaminated tiles and slipped and broken tiles and ridge tiles, and disrepair to some chimney stacks. The whole estate clearly need redecoration.

10. One significant point to note from the inspection is that virtually all of the windows to individual flats had been replaced with uPVC double-glazed units, leaving only the windows and doors to the common parts as originally constructed. These are metal Crittal windows, which clearly need some attention.

The hearing

11. In preparation for the hearing, bundles of documents had been provided by the Council which included written statements from fourteen Respondents. In addition, a statement was received from a group named the Merriedale Court Focus Group to which another five Respondents lent their names.

12. The case was heard at Wolverhampton Magistrates Court over 5 days, these being 28 November 2014, 4 & 5 February and 14 & 15 May 2015. Mr Heather represented the Council. On the first hearing day, Mr Jonathan Wright, of counsel, represented Mr Lewis. On subsequent days, Mr Lewis appeared on his own behalf. Mr K Hall represented his mother, and Mr W Cullis represented his daughter. They, together with Mr Bolshaw, Mr & Mrs Steer, and Miss McCulloch took an active part in proceedings, including cross examination of the Council's witnesses. The Respondents had opportunity to call witnesses but none did so. Some other Respondents made shorter comments to the Tribunal, including Mrs Bamford, Miss Kilcoyne, and Mr Pietragallo. Five Respondents (Mr Hall, Mr Lewis, Mr Bolshaw, Mr & Mrs Steer, and Mr Cullis) provided written closing submissions.

13. At the beginning of the case, the Tribunal considered it appropriate to make a general comment to all parties regarding the issue of historic neglect, upon which a number of the Respondents were basing their cases. The Tribunal explained that it could consider the issue only in the context of whether the Council's alleged failure to carry out historic repair had caused the cost of repair now to be greater than it would have been if carried out earlier. The Tribunal explained that it was not an investigative body, and could not present the Respondents' cases for them. It was therefore for the Respondents to present evidence to the Tribunal of their losses as a result of historic neglect, preferably in the form of surveyors or valuers evidence.

14. It was also clear to the Tribunal after the first hearing day that a crucial issue in this case was the question of whether the roofs to all Blocks at

Merriedale Court needed to be replaced, or whether they could more cheaply be repaired and maintained. The Tribunal is an expert Tribunal, and using its expertise, brought to the attention of all parties the existence of some research carried out by BRE (formerly the Building Research Establishment) on the longevity of roof tiles. This research, and whether it could assist with the important question at issue, is referred to from time to time in this decision.

Structure of this decision

15. This decision will consider the Council's three issues in turn. The third issue, asking whether the proposed cost of the Works is reasonable, requires the Tribunal to consider whether any of the arguments raised by the Respondents may affect the payability of the proposed costs to the Respondents, so these arguments will be considered at that point.

Issue 1 - Whether the Council can recover the cost of the Works under the leases under which the Respondents hold their tenancies

16. It is not in dispute that under the lease arrangements each Block is responsible for its own maintenance, which at the present time is divided between the flat owners in each Block equally. The number of flats in each Block, and the number of those flats that have been let under Right to Buy is as follows:

Block number	Flats in Block	Number which are RTB flats
Block 1	18	5
Block 2	18	4
Block 3	18	0
Block 4	16	2
Block 5	21	4
Block 6	18	6
Block 7	17	9
Block 8	12	7
Block 9	18[1]	9

17. There are three forms of lease that have been used for right to buy sales on the Estate.

Lease type 1

18. In clause 1 of lease type 1, the flat is demised subject to the Tenant "YIELDING AND PAYING ... such sums of service charge as are payable in accordance with the provisions of the Fourth Schedule".

[1] On the final day of the hearing, the Council conceded that Block 9 should be treated as comprising 18 residences plus the equivalent of three more flats in communal areas (21 units)

19. Paragraph 1(i) of the Fourth Schedule defines expenditure on services as the expenditure of the Council in complying with their obligations as set out in the Sixth Schedule.

20. Paragraph (1) of the Sixth Schedule obliges the Council to "keep in repair the Estate and any other property over which the Tenant has any rights by virtue of Schedule 2 of the Housing Act 1980 (except such parts thereof as the Tenant covenants in this lease to repair) in accordance with Part III of Schedule 2 of the Housing Act 1980"

21. In the sample lease type 1 provided to the Tribunal, the "Estate" is defined by reference to flat numbers (in the sample lease, numbers 92 to 109, which is Block 1). The Tribunal assumes, and has worked on the basis that each lease type 1 defines the "Estate" as the Block in which the flat is situate.

22. The remaining provisions of the Fourth Schedule set up a scheme under which the Tenant has to pay a monthly interim service charge for services in a service charge year which is 1 April to 31 March in each year. The Council are to produce a service charge statement in each year setting out the expenditure on services in that year and the amount due from the Tenant for the year less any interim payments made for the year.

Lease type 2

23. Lease type 2 contains these relevant definitions:

> 1.05 the "Act" shall mean the Housing Act 1985 as amended by the Housing and Planning Act 1986
>
> 1.06 The "Order" shall mean the Housing (Right to Buy Service Charges) Order 1986
>
> 1.16 The "Landlord's Offer Notice" shall mean the Landlord's Notice relating to a flat as defined in Section 125 of the Act
>
> 1.17 The "Landlord's Supplementary Notice" shall mean a Notice in the form prescribed by the Order
>
> 1.18 The "Repair Service Charges" shall mean the sums payable by way of charges in respect of the cost of repairs detailed in the Landlord's Offer Notice and in pursuance of the performance by the Council of their obligations for repair as set out in Clause 2 of Schedule IV hereof such further charges to be calculated in accordance with Clause 7.00 hereof

1.19 The "Improvement Charges" shall mean the charges for improvements detailed in the Landlord's Offer Notice and the charges calculated in accordance with Clause 7.00 hereof

1.20 The "Relevant Charge" shall mean the charge or contribution for repairs or improvements as detailed in the Landlord's Offer Notice and in a Landlord's Supplementary Notice and shall have the same meaning as that given to it in the Order and for the purpose of the Lease shall be deemed to include a charge or contribution towards the cost of repairs or improvements undertaken by the Council calculated in accordance with Clause 7.00 hereof

1.21 The "Reference Period" shall mean the reference period defined in the Landlord's Offer Notice

24. Clause 7.00 of the Lease deals with payment of service charges for repairs. It has a descriptive margin note which says "REPAIR SERVICE CHARGES AND IMPROVEMENT CHARGES". The clause itself provides:

7.01 The Tenant covenants with the Council to pay Repair Service Charges and Improvement Charges in accordance with Sub-Clauses 02-04 hereof such payment to be made at the time and in the manner provided by the said Sub-Clauses

7.02 Subject as provided in Sub-Clauses (i) (ii) and (iii) hereof during the Reference Period the Tenant shall pay to the Council on demand the amounts of any Relevant Charge which the Director of Finance may from time to time certify as being payable in respect of the Property and as specified in a Landlord's Supplementary Notice to be served on the Tenant on each occasion as the Council anticipate that costs for repairs and/or improvements are to be incurred

(i) For the purpose of Clause 7.02 hereof Relevant Charge shall be deemed to include a reasonable part of the costs incurred by the Council in performing their obligations under Paragraph 14(2) and 14(3) of Part III of Schedule 6 to the Act PROVIDED THAT

(ii) In the Initial Period of the Term the Tenants obligations in respect of repairs and improvements shall be restricted as specified in Paragraph 16A-C of Part III of Schedule 6 to the Act PROVIDED FURTHER THAT

(iii) During the Initial Period the Relevant Charges shall not exceed the estimated annual average Repair Service Charges and the total contributions payable by the Tenant for Repair

Service Charges and Improvements set out in the Landlord's Offer Notice

7.03 During the remainder of the Term the Tenant shall pay to the Council such further Relevant Charges that the Director of Finance may from time to time certify as being payable in respect of anticipated costs for repairs and / or improvement works to be undertaken to the Property by the Council on each and every occasion that the Council serve upon the Tenant a Landlord's Supplementary Notice giving details thereof PROVIDED THAT

(i) The Director of Finance shall within a period of three months before expiry of the Reference Period and within three months of each anniversary of such expiry serve upon the Tenant a written Statement certifying the estimated cost of repairs and improvements to be carried out to the Building for the next succeeding year of the Term (hereinafter called "the Review Periods") and the aggregate Relevant Charges payable by the Tenants in respect of the Property all such sums to be calculated upon a reasonable and proper estimate by the Director of Finance acting as expert and not as arbitrator of what the said costs and Relevant Charges are likely to be for a Review Period

(ii) If the actual cost of repair or improvement works undertaken pursuant to the provisions contained in Sub-Clause (i) hereof exceed the amount of the Relevant Charge estimated by the Director of Finance in respect of that item or if the aggregate actual costs of repair or improvement works undertaken for any Review Period exceeds the estimated aggregate Relevant Charge therefor the Director of Finance shall certify the amount by which the actual cost exceeds the Relevant Charge or the aggregate Relevant Charge as the case may be and the excess shall be due to the Council within Twenty-eight days of service of such certificate (which shall be [sic] copy of that signed by the Director of Finance)

(iii) If the actual cost of repair or improvement works undertaken pursuant to the provisions contained in Sub-Clause (i) hereof shall be less than the amount of any Relevant Charge estimated in respect of that item or if the aggregate actual cost of repair or improvement works undertaken for any Review Period is less than the estimated aggregate Relevant Charge therefor the Director of Finance shall certify the amount by which the Relevant Charge or the aggregate Relevant Charge exceeds the said actual costs or the aggregate costs as the case may be and the overpayment shall be credited to the Tenant against the next Relevant

Charge which shall become payable in accordance with the provisions hereof

19. In Clause 4.02 of lease type 2 the Council covenant to comply with the provisions of Schedule IV. Paragraph 2 of that Schedule provides:

> To provide the following services:-
>
> (a) to keep in repair the Building and Estate and any other Property over which the Tenant has any right by virtue of Schedule 6 of the Act (except such parts thereof as the Tenant covenants in this Lease to repair) in accordance with Part III of Schedule 6 of the Act
>
> (b) to paint as often as the Council considers necessary but at least once in every fourteen years with two coats at least of good quality paint all parts of the exterior of the Building hitherto painted
>
> (c) to paint as often as the Council considers necessary but at least once in every fourteen years with two coats at least of good quality paint or otherwise suitably treat the other parts of the Building used in common with other Tenants thereof

20. In the Housing (Right to Buy) (Service Charges) Order 1986, there is no definition of a "Landlord's Supplementary Notice". There is a definition of "relevant charge" which is:

> "relevant charge" means a service charge or an improvement contribution to which the provisions of paragraph 16B or 16C of Part III of Schedule 6 to the Housing Act 1985 are or may be relevant"

21. Both paragraphs 16B and 16C of the Housing Act 1985 relate only to "the initial period of the lease", which is the period which begins with the grant of the lease and ends five years after the grant.

Lease type 3

22. In this lease type, by paragraph 2.00 of Schedule III of the lease, the tenant covenants to pay the Service Charge on demand. The Service Charge is defined in clause 1.15 as a reasonable part of all the costs directly or indirectly incurred or to be incurred by the [Council] in providing the Services. Services themselves are defined in clause 1.14 as "those works of repair maintenance and improvement which the Council shall from time to time carry out or procure to be carried out to the Property the Building the Estate..."

23. Under clause 4.02, the Council covenants to observe and perform the covenants contained in Schedule IV of the lease. Paragraph 2.01 of Schedule IV contains a covenant to keep in repair the Building and Estate and to paint the exterior and suitably treat the other parts of the

Building used in common with the Council and other tenants. The Building is the Block in which the particular flat is situated.

The Council's case

24. The Council's case is that the costs of the Works are recoverable under all three lease types. It argues that lease types 1 & 3 are not contentious. It acceptes that lease type 2 causes some difficulties. Its argument regarding lease type 2 is that something has gone wrong with the language used to set out the tenant's obligations to pay service charges. Therefore the lease should be interpreted in such a way as to give commercial sense to the clause, and the Tribunal should determine that Respondents' under lease type 2 are obliged to pay their contribution towards the cost of the Works. The Tribunal, Mr Heather says, is entitled to seek to interpret the clause in this way, as it is ambiguous. There is a clear contractual intention which is not realised by the words used. The clear overarching intention of the clause conflicts with the literal meaning.

25. In support of the Council's position, Mr Heather referred the Tribunal to the case of *Chartbrook Ltd v Persimmon Homes Ltd [2009] 1AC*. The following extract is from the leading judgement of Lord Hoffman. The extract is edited so as to concentrate on the main principles rather than the facts of *Chartbrook* itself, and removes a number of supporting references, to aid the flow of the extract, both changes for which the Tribunal takes sole responsibility:

> "14 There is no dispute that the principles on which a contract (or any other instrument or utterance) should be interpreted are those summarised by the House of Lords in *Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896 , 912–913* [a leading case on interpretation of contracts]. They are well known and need not be repeated. It is agreed that the question is what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. The House emphasised that "we do not easily accept that people have made linguistic mistakes, particularly in formal documents" ... but said that in some cases the context and background drove a court to the conclusion that "something must have gone wrong with the language". In such a case, the law did not require a court to attribute to the parties an intention which a reasonable person would not have understood them to have had.
>
> 15 It clearly requires a strong case to persuade the court that something must have gone wrong with the language. ... It is, I am afraid, not unusual that an interpretation which does not strike one person as sufficiently irrational to justify a conclusion that there has been a linguistic mistake will seem commercially absurd to another. ... The subtleties of language are such that no judicial guidelines or statements

of principle can prevent it from sometimes happening. It is fortunately rare because most draftsmen of formal documents think about what they are saying and use language with care. But this appears to be an exceptional case in which the drafting was careless and no one noticed.

...

21. ... When the language used in an instrument gives rise to difficulties of construction, the process of interpretation does not require one to formulate some alternative form of words which approximates as closely as possible to that of the parties. It is to decide what a reasonable person would have understood the parties to have meant by using the language which they did. The fact that the court might have to express that meaning in language quite different from that used by the parties ("12 January" instead of "13 January" in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] AC 749* ; "any claim sounding in rescission (whether for undue influence or otherwise)" instead of "any claim (whether sounding in rescission for undue influence or otherwise)" in *Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896*) is no reason for not giving effect to what they appear to have meant.

22 In *East v Pantiles (Plant Hire) Ltd (1981) 263 EG 61* Brightman LJ stated the conditions for what he called "correction of mistakes by construction":

> "Two conditions must be satisfied: first, there must be a clear mistake on the face of the instrument; secondly, it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, then the correction is made as a matter of construction."

23 Subject to two qualifications, both of which are explained by Carnwath LJ in his admirable judgment in *KPMG LLP v Network Rail Infrastructure Ltd [2007] Bus LR 1336* , I would accept this statement, which is in my opinion no more than an expression of the common sense view that we do not readily accept that people have made mistakes in formal documents. The first qualification is that "correction of mistakes by construction" is not a separate branch of the law, a summary version of an action for rectification. As Carnwath LJ said, at p 1351, para 50:

"Both in the judgment, and in the arguments before us, there was a tendency to deal separately with correction of mistakes and construing the paragraph 'as it stands', as though they were distinct exercises. In my view, they are simply aspects of the single task of interpreting the agreement in its context, in order to get as close as possible to the meaning which the parties intended."

> 24 The second qualification concerns the words "on the face of the instrument". I agree with Carnwath LJ, paras 44–50, that in deciding whether there is a clear mistake, the court is not confined to reading the document without regard to its background or context. As the exercise is part of the single task of interpretation, the background and context must always be taken into consideration.
>
> 25 What is clear from these cases is that there is not, so to speak, a limit to the amount of red ink or verbal rearrangement or correction which the court is allowed. All that is required is that it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant. ..."

The Respondents' case

26. Mr Lewis articulated well the Respondents argument concerning the leases. He pointed out that clause 7.03 of lease 2 obliges a lessee to pay "Relevant Charges" for repairs after the initial period of the lease (called the Reference Period). A Relevant Charge is defined as "the charge or contribution for repairs or improvements as detailed in the Landlord's Offer Notice and in a Landlord's Supplementary Notice and shall have the same meaning as that given to it in the Order". The definition in the Order of "relevant charge" refers to the provisions of paragraphs 16B and 16C of the sixth Schedule of the Housing Act 1985. As those paragraphs relate only to the initial period of the lease, which is five years from the grant of the lease, this means that "relevant charges" are not recoverable after the expiry of that five year period. Therefore, under lease type 2, lessees are not liable for payment of sums claimed as Repair Service Charges or Improvement Charges.

Discussion and determination on Issue 1

27. A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities [2002] 1EGLR41*).

28. Looking at the leases themselves, it seems to the Tribunal that leases 1 and 3 are unproblematic. Lease 1 requires the tenant to pay the Service Charge, which is the cost incurred by the Council in keeping the Block in repair. Lease 3 likewise requires the tenant to pay a reasonable part of the costs incurred by the Council in keeping the Block in repair. The Tribunal is satisfied that provided the cost of the Works are for repair, lease types 1 & 3 require the relevant Respondents to pay their share of those costs.

29. Lease type 2 is not straightforward. The obligation to pay a service charge is set out in clause 7.01 in which the tenant covenants to pay

"Repair Service charges ... in accordance with Sub-Clauses 02-04". Sub-clause 7.02 relates to the Reference Period, which it is accepted by all parties has now past for all Respondents except possibly one. The difficult sub-clause is 7.03. This sub-clause clearly applies to the remainder of the 125 year term of the lease, but it requires the payment of "further Relevant Charges". It is the definition of "Relevant Charges" that causes the difficulty as it envisages four possible meanings:

a. "the charge...for repairs detailed in the Landlord's Offer Notice". The problem here is that the Landlord's Offer Notice has to set out proposed repairs or improvements to be carried out broadly in the first five years of the lease term. It is therefore extremely unlikely to set out proposed charges beyond that period, and it was not suggested by anyone that any offer notice which had been given to any Respondent covered the proposed costs of the Works in this case. This meaning cannot therefore apply to the Works.

b. "the charge...for repairs as detailed in a Landlord's Supplementary Notice". That notice, according to the lease definitions, is a notice in the form prescribed by the Order (i.e the Housing (Right to Buy Service Charges) Order 1986). It is accepted that there is no form prescribed by that Order. That meaning is therefore incomplete and unfathomable.

c. "the charge...[which] shall have the same meaning as that given to it in the Order". The Order does have a definition of "relevant charge", but it refers to a charge to which the provisions of sections 16B and 16C of the Housing Act 1985 are relevant. Those sections relate only to the initial period of the lease, which ends five years after its grant. Again, this therefore cannot relate to the Works.

d. ""a charge ... towards the cost of repairs or improvements undertaken by the Council calculated in accordance with Clause 7.00 hereof". Although these words do make it clear that a "Relevant Charge" is a charge for Council repairs, it is the very calculation of those charges which is the problem here. In essence, Clause 7.00 does not make it clear how the charges are to be calculated, so this meaning is essentially circular and does not clarify what is payable.

30. The Tribunal has no difficulty with the proposition that there is a mistake or ambiguity in lease type 2. The identification of what service charge a tenant has to pay under clause 7.03 is not clear. It is clear that the tenant has to pay "further Relevant Charges" for approximately the last 120 years of the lease, but it is entirely unclear what that means. The principles identified in *Chartbrook* require the Tribunal to decide what a reasonable person would have understood the parties to have meant by using the language which they did. The Tribunal is very clear about one

interpretation that it is sure the parties did not intend; namely that the tenant was no longer liable for any service charge after the end of the reference period. The margin note at the commencement of clause 7.00, the covenant in 7.01 to pay the Repair Service Charge, the phrase at the commencement of 7.03 stating "for the remainder of the term", and the very existence of the wording of the rest of 7.03 all suggest that it was clearly intended that some payment for service charges was to made after the reference period.

31. The most obvious interpretation to the Tribunal is that the parties intended that the main covenant in clause 7.01 to pay Repair Service Charges and Improvement Charges should prevail, so that any impediment to that obligation, certainly after the reference period, should not apply. Repair Service Charges include the sums payable in respect of the cost of repairs carried out by the Council under clause 2 of Schedule IV, which in the view of the Tribunal encompass the proposed cost of the Works. The obligation to make a payment within the meaning of Repair Service Charges is clear. It is the calculation of that sum that has gone wrong.

32. It is also tolerably clear to the Tribunal that the parties did intend there to be some mechanism for the identification by the Council of likely costs for each year as is envisaged in clause 7.03 (i), (ii), and (iii).

33. The Tribunal's determination in relation to lease type 2 is that it should be interpreted in such a way as to provide that after the Reference Period as defined in the lease, the tenant should continue to have an obligation to pay a service charge being a reasonable and proper proportion of the Repair Service Charges and Improvement Charges as defined. This interpretation should not render the proviso in clause 7.03 redundant; the Council should continue to be required to provide notices of proposed expenditure and reconciliations, and payments should continue to be balanced off with appropriate further payment or credits as envisaged in the proviso.

34. One way in which, in the view of the Tribunal, this interpretation can be achieved, is to treat the first reference to "Relevant Charge" in clause 7.03 as being instead "charges payable by virtue of clause 7.01", and then changing every other reference in 7.03 to "Relevant Charge" to "charge". In addition, the reference to "Landlord's Supplementary Notice" could be changed to "landlord's supplementary notice", so as to remove the need to seek the meaning of that phrase from the definitions in the lease. That is one way of recording the interpretation which the Tribunal determines. The Tribunal should stress that it has not been asked to redraft the lease, this is not an application for a lease variation, and that there are no doubt other ways in which the clause could be phrased so as to accord with the interpretation adopted by the Tribunal.

35. All parties should note that the Tribunal was not asked to, and does not make any determination concerning the mechanism for collecting the Respondents' contributions in lease type 1 and 3, and in particular whether those contributions can be recovered in advance.

36. The Tribunal determines that all three lease types allow the Council to recover the cost of repairs to the Blocks from the owners of the individual flats sold. How the cost is to be apportioned between the liable contributors is dealt with later in this decision.

Issue 2 - Whether it would be reasonable for the Council to carry out the Works

37. The Works proposed by the Council are set out under the headings below, taken from the schedule provided to the Tribunal, but partially edited The descriptions are headings only and do not describe all the detail – for instance all the electrical, cabling and aerial works in the roof spaces. Not all of the Works were being recharged to the Respondents (see discussion under Issue 3 below):

- Brickwork repairs

  Repoint cracking using a sulphate resisting mortar and brickwork repairs

- Main roof

  Strip off and remove off-site; retile using a Modular Double Roman clay tile including replacing with treated softwood battens; renew lead flashings – code 4, stepped 325mm girth turned into brick joint and repointed, including to chimney; strip out old insulation and install 300mm thick insulation

- Gas compliance works

- Roofline works

  Remove old fascias and soffits and replace with new uPVC 200mm thick jumbo fascia board and 300mm thick v-jointed and grooved soffit; remove old cast iron rainwater goods and replace with new Ogee 125 polyester powder coated aluminium gutters and replace rain water pipes with new 75mm polyester powder coated aluminium pipes

- Balconies (asphalt)

  Break up and remove existing asphalt and prepare to received new. Break up concrete and an cast new around pipe and gulley including installation of steel dowel bars

- Balcony (balustrades)

  Break out concrete and cast new around base of new post including installation of steel dowel bars. Remove corroded sections of post and intall new balustrade

- Concrete repairs

  Investigation and repair of concrete elements including protective coatings and expansion joints

- Communal areas

  Replace metal French doors and windows on front elevation landing. Replace large communal metal window on rear elevation landings. Bin room doors to match existing including decorations. Rewire legs of top floor lighting to existing bulkhead light fittings. Clean diffusers. Communal decorations.

- Communal area fire doors

  Remove exiting firedoors and frames and replace including decorations

- Environmental

- Temporary works

38. The Council called three witnesses to explain why it was considered necessary to carry out the Works. They were:

    - Mr Kevin Manning - Head of Asset Management for Wolverhampton Homes
    - Mr Paul Cresswell - Architectural Technologist employed by the Council's Property Services department
    - Mr Frank Dalton - Principal Contract Supervisor for Wolverhampton Homes

39. Mr Manning told the Tribunal that the Council's investment programme on its social housing stock had been focussed since 2007/08 on achieving the aims and outcomes of the Homes and Communities Agency Decent Homes Programme. The predominant prioritisation had been on internal decency works, with particular emphasis on kitchens and bathrooms, electrical rewires and upgrades, heating systems and doors, and this work had been carried out at Merriedale Court in 2009/10 and 2010/11. Focus was now being concentrated on external works. As part of this process, a detailed condition survey had been commissioned, which was the Cresswell Report, described below. As a

result of receiving this report, and the subsequent negotiations and discussion, the Council now wished to carry out the Works and sought the Tribunal's determination on the three questions posed in paragraph 3 above.

40. Mr Dalton gave evidence as the person with the closest knowledge of the condition of Merriedale Court. He said he has worked for many years on the repair of properties owned by the Applicant, having previously been a trades operative, and in particular he had responsibility for Merriedale Court. He produced evidence of the repair profile for Merriedale Court over recent years. It is clear that the repairing procedure had been to repair when a specific item required repair (i.e. on an ad hoc basis). In the past 6 years to 2014, there had been 18 patch repairs to roofs, 27 to balconies, 5 to sheds and outhouses, and many more to lighting, slabs and other minor works.

41. Mr Dalton commissioned a structural report in October 2011 on the concrete walkways and individual balconies at Block 3, as a representative sample Block. The report disclosed that the concrete was in a deteriorating condition, with cracking, delamination and spalling of the concrete occurring. Taking into account Mr Dalton's knowledge of Merriedale generally, and his awareness of the condition of rainwater goods, railings, roof coverings, and the communal windows, a decision was taken to commission a much fuller survey of the estate in November 2012.

42. Whether the commissioning of the Cresswell Report came about because of Mr Dalton's concern about the condition of Merriedale Court, or as a result of the progression of the Decent Homes initiative as described by Mr Manning, is not clear to the Tribunal, and is probably of little relevance, but one way or the other, the report was commissioned.

43. Mr Cresswell confirmed that in November 2012, he carried out a measured condition survey of Merriedale Court ("the Cresswell Report"). It is dated February 2013. The purpose was to ascertain the condition of the envelope of the buildings within the estate at Merriedale Court. A written and photographic record of the buildings was prepared. A small number of roof voids were inspected. Because repairs were being carried out to the roof of Block 7 at the time, access to this roof was possible. Severe degrading of the roof tiles to a section of this roof was noted. Mr Creswell's view in his oral evidence was that due to the age of the roof tiles and weathering membranes coming to the end of their natural lifespan of 60 years, it was considered necessary to replace the roof tiles, though the structural timbers were considered to be in good condition, not requiring replacement.

44. The Cresswell Report itself is a 270 page document, plus drawings and the results of a concrete survey. There is a five page general summary. The report itself does not reach definitive conclusions on the need for all

the Works to be carried out on all Blocks. In particular, on the need for re-roofing, although the conclusion for the roof of Block 7 was clear, the scope of the report was changed in early 2013 to a visual survey only of all other roofs, and it was recommended that a full invasive inspection of all the other roofs on the estate be carried out.

45. Mr Cresswell's conclusion (given in his written statement, not in the Cresswell Report) was that the following works were required to provide a further 30 years life to the building envelope, with minimal follow-on maintenance costs:

- Re-roof all blocks
- Replace all soffits and fascia boards
- Replace all balustrades
- Replace all cast iron guttering and downpipes
- Repair deck access walkways and balconies. Repair concrete failures around walkway gulleys. Repair broken down drainage run within the walkway asphalt apron. General concrete repairs and finishes to concrete soffits.
- Repair all brickwork facades.

46. It is clear that following the production of the Cresswell Report, a decision was taken in principle by the Council to work towards the placement of a contract to proceed with the Works at Merriedale Court, but it is unclear from the papers and evidence presented to the Tribunal how that decision was taken. In any event, the next stage was to develop a proposed schedule of works and detailed costings.

47. For the delivery of capital funded refurbishment and improvement schemes, the Council have in place what they describe as a Strategic Consultation Partnership. This is known as a "qualifying long term agreement". Placement of a contract with a contractor who wishes to be considered for future contracts requires the Council to advertise their intention to enter into a qualifying long term agreement in a European-wide journal. This process commenced in April 2012 and resulted in two Strategic Construction Partners, namely Bullock Construction Ltd, and Wates Construction Ltd, being appointed. Discussions with both of these contractors therefore commenced on the practicalities and pricing of the contract for the Works. Wates were eventually chosen as the preferred contractor based on cost. Consultation with the Respondents was also required.

48. The proposed contract with Wates had involved the Council Conservation Officer, as Merriedale Court is listed. Mr Dalton was involved in these discussions. In his oral evidence he said the Conservation Officer wanted the roof tiles, store doors, windows, and balustrades to be as close as possible to the original specification. Enquiries were made of the manufacturers of the roof tile, which is a Sandtoft Bridgwater Roman tile, and it was still available. However it

was expensive. Wates then proposed an alternative cheaper tile, called a Sandtoft Modular tile, and the Conservation Officer agreed to accept this alternative tile. But there is a curved roof on Block 4 on which it was not possible to fit the alternative tile. The Bridgwater Roman tile would therefore still be required on that roof, but the Tribunal was told Wates agreed to absorb the additional cost purely for the roof of Block 4.

49. Negotiations with the Conservation Officer were also conducted concerning the choice of material for replacement guttering. Cast iron guttering was requested but Mr Dalton said the cost would be unacceptably high. The Conservation Officer was opposed to use of uPVC material and a compromise solution of extruded aluminium guttering was therefore proposed and accepted. Agreement was also reached with the Conservation Officer on the replacement of the soffits and fascias with a long-life PVCu solution.

50. By certainly no later than the summer of 2014, the Council had gone through the process of assessing the condition of Merriedale Court, making a decision in principle to prepare to carry out significant repair and refurbishment work, reached agreement in principle with the Conservation Officer on the specification of the Works, put in place a long term agreement with selected contractors for the carrying out of major works programmes for the Council or their arms length subsidiaries, negotiated with the two strategic partners on proposed costs of the Works, and selected Wates as the proposed provider for the Works. They therefore commenced these proceedings for approval of the proposed expenditure and resolution of the other matters the subject of this application.

51. The reason that the Council think it is reasonable to carry out the Works is most clearly expressed by Mr Dalton. In his opinion, Merriedale Court is now in need of a full repair programme as proposed by the Council, based upon his own knowledge of the properties and the Cresswell Report. It is also his view that because of the height and design of the buildings at Merriedale Court, full scaffolding will be required to all Blocks. The cost of scaffolding is substantial, and therefore the most economical way of carrying out repairs is to do them at one time. This makes best use of the scaffolding, and also avoids the contractors infrastructure cost and preliminary costs being incurred more than once. Carrying out repairs in phases would also increase the risk of damage to the previous repairs by each subsequent repair.

52. During the passage of time this case has taken, the Council have become concerned in particular about the condition of the roof of Block 8. This was explained by Mr Dalton in his oral evidence. He said that in October 2014 a tile became loose. He therefore took a more detailed look at that roof and found a number of delaminated tiles. Some of the tiles were in such poor condition that they crumbled away when handled. On using what he described as a "pull-test", which is a test to establish strength, he

said that tiles cracked easily and would not bear weight. He also said that on inspection of the roof overall, the ridges and hip tiles have started to break away. Although the mortar is solid, the bonding of the tiles onto the mortar has now started to fail. His view of the condition of the roof to Block 8 is that it is in a dangerous state and needs to be replaced.

53. A closer look was also taken of the roof of Block 1. Mr Dalton said that a few weeks before the second set of hearing days (so at some point in January 2015), a tile had fallen from the roof of Block 1. Further photographs of the state of the roof of that Block and Block 2 had been taken and were provided to the Tribunal, which showed missing ridge tiles, crumbling mortar, and some delaminated and broken tiles.

54. As a result of the recent incidents and investigations in October 2014 and January 2015, Mr Dalton's view was that a reasonably thorough investigation of the condition of the roofs of Blocks 1, 2 7 (in the Cresswell Report) and 8, had been undertaken each of which showed that it was appropriate to replace them now. It was his view that the other roofs were very likely to be in the same condition, as they were the same age and used the same materials. The roofs were the most contentious items included in the Works, but Mr Dalton believed that all of the Works were required to bring Merriedale Court up to a good standard of repair.

55. The Tribunal gave the Council permission to provide a further report on the condition of the roofs. Prior to the hearing days in May 2015, a report was provided which had been prepared by Mr Matthew Baker, a Chartered Surveyor from a firm called Allcott Associates ("the Baker Report"). He inspected each roof and concluded that all of them individually required a certain amount of repair work, including replacement of areas of delaminated or broken tiles. In the summary of his detailed investigation of the roof of each Block, Mr Baker identified the need for extensive repointing of chimneystacks, extensive repointing and large scale re-bedding of ridge and hip tiles, and large scale deterioration of the roof felts at the junctions with gutters. He does not expressly recommend replacing the tiles. The significant paragraph of his summary says:

> "Ranging over the roof tiles as a whole there are significant variants. It is my opinion that roof areas appeared to get progressively worse as you work from Block 4 up to Block 9. Block 8 appears to have been comparatively sheltered but still requires repairs and replacement roof tiles particularly to the rear elevation. When considering the condition of the roofs on the day of inspection they are certainly recoverable and it is my opinion that the roof is performing its primary function of preventing water ingress both within the roof void and within the property beneath. My inspection within the roof voids although limited did not identify any significant deterioration of the felt or the roof timbers

to suggest the roof coverings were at the end of their effective life and no longer performing their original function. I have however identified that over the roof area as a whole several thousand roof tiles will likely require replacement. This will in itself attract a significant cost not only for the replacement of the tiles which I understand are handmade and extremely difficult to obtain. But again the access works in order to carry out the works safely will in itself be substantial. It may be prudent to obtain costs for the replacement of roof tiles recommended within the report and compare them with the costs for renewal of roof coverings in their entirety. Even though the report does recommend the replacement of several thousand tiles I would anticipate that the replacement of the roof coverings as a whole will far exceed the recommended repair costs. It is my conclusion that the roof coverings will likely require complete replacement of the roof tiles in the medium term (4-6 years). Maintenance and repair costs will likely be annual up to this point."

56. Mr Baker did not give evidence to the Tribunal personally. On the final hearing day, the Tribunal asked the Respondents to indicate whether they accepted the Baker Report or whether they wished to challenge its contents. Had its contents been challenged, it would have been necessary to arrange for Mr Baker to attend the Tribunal. None of the Respondents wished to challenge the report.

57. The Council's witnesses were questioned by some of the Respondents. Their answers are summarised below.

Mr Dalton

58. Mr Dalton was pressed on the need to replace the roof. It was pointed out to him that investigation and inspection of all the roofs and roof spaces had not been carried out. Much of what Mr Dalton said about the condition of the roofs has already been summarised above. He added the information that a roofer had inspected the roof of Block 6 and that roofer's view had been that that roof had only a lifespan of a few more years, and he held firmly to his view that the sustainable solution for the roofs was to replace them now.

59. Mr Steer challenged whether the Council had evidence that the roofs needed to be replaced, as the Cresswell Report had only considered the roof of Block 7 in detail. Surely, before carrying out such extensive and costly work, evidence that each and every roof required re-tiling, rather than patching, should be obtained? Out of 39,000 tiles (Mr Steer's estimate), only a few had been identified as broken or delaminated to the extent of requiring replacement. Mr Dalton responded by saying that he believed there were a large number of roof tiles that required replacement, but in any event, replacement of patches of tiles was only a short term solution. The colours would not match if patch repairs were

carried out, and the replacement tiles would need to be the expensive Bridgwater tile, rather than the cheaper Modular tile. He felt that a prudent landlord had to consider long-term sustainability. This whole issue had been considered by the design team in 2012. The conclusion was that patching was not a sustainable option.

60. On the question of replacement of roof insulation, Mr Bolshaw suggested to Mr Dalton that existing insulation could be set aside and reused. Mr Dalton accepted that this was a valid point and one of the areas that could be looked at again.

61. The proposal to replace the crittal windows with uPVC frames rather than aluminium was raised with Mr Dalton; in particular a quotation Mr Lewis had obtained for replacement of the windows with uPVC frames, details of which are set out in paragraph 71e below. Mr Dalton said it was difficult to comment on the suitability of the alternative windows proposed by Mr Lewis as no design details for them had been provided. The window frames in the communal areas were to fit in large apertures and an ordinary domestic uPVC window would not suffice. Some load calculations would be required. Mr Dalton said he did not have any costings to show the different costs of repairing rather than replacing the windows.

62. It was suggested that the crittal windows were capable of repair and in any event it was unnecessary to replace with double-glazed units because the communal areas were unheated stairwells. Mr Dalton said it was standard practice to replace any single-glazed unit with a double-glazed unit nowadays, and in any event the cost differential was now small. On condition, he said the existing windows do have clear deterioration, with a particular concern about the sub-frames, some of which show evidence of wet rot. Across the estate these windows have broken catches, and deteriorated putty and they have only 4mm glass which in his view needs to be upgraded. He confirmed though that he was not aware of an obligation upon the Council to upgrade the glass at this point.

63. It was put to Mr Dalton that the windows could be replaced without the additional cost of scaffolding them. Mr Dalton did not accept that suggestion as current practice required either a tower or a full scaffold to ensure safety of the workmen carrying out this work.

64. On the need for gas compliance works, Mr Dalton said that the contractor had a duty to comply with the Health and Safety at Work Act and under that Act to reduce risk to the health and safety of its employees. Compliance meant that whilst working on chimneys, any gas appliances connected by flue would need to be identified, inspected and isolated. Many flats in fact had a horizontal flue via a fluming kit located under the soffit. Because the scaffolding would have an external mesh material, each flue might require to be extended beyond the scaffold. Mr Dalton accepted that a number of Respondents did not have gas supplied

to their flats and the full extent of the gas compliance works, and whether their scope had taken account of this fact, would need to be investigated.

65. Another area of concern to the Respondents was the cost of re-asphalting the walkways. Except on the edge of the walkways where the balustrades are set into the concrete, and there is a formed gutter to discharge water, the asphalt was said by the Respondents to be in reasonable condition. Mr Dalton accepted that. He said that approximately 14 years ago a Reflex rubberised coating was applied to the walkways to give extended protection to them. But what has happened is that the guttering area has shrunk and cracked causing, in certain places, the upstand to come away from the wall. The Council considered a saw cut to enable the bad areas to be patch repaired, but this means the introduction of new asphalt to old. Whenever there is the introduction of a new material to an old, there is a risk of differential rates of expansion and so the risk of further cracking and an insecure joint between the two materials. He said the Council's mind was not completely closed to the possibility of a mesh and fleece being laid and then liquid coated, but his view was that the best solution, and one which would secure a 40 year warranty on the work, was to replace the asphalt. The mesh and fleece option would only provide a warranty of around 10 to 15 years. Full re-asphalting also had the advantage that the concrete underneath the walkways could be fully opened up and repaired as necessary.

Mr Cresswell

66. Mr Cresswell explained the Council's choice of tile for the new roofs. On original consideration of replacement of tiles, it had been thought that the Sandtoft Bridgwater Roman tile had been discontinued. Then it was discovered that Sandtoft were making that tile again, though the tiles were hand made and very expensive. Sandtoft had therefore been asked to recommend a different tile and they had put forward the Modular tile. However, Mr Cresswell did not believe the Modular tile would work on a curved roof, and therefore could not be used for Block 4.

67. Mr Cresswell was asked why the Council were unwilling to request independent advice on the condition of the roof tiles from BRE. He said that in his view the roof was coming to the end of its useful life. The BRE test was not an "in service" test and could not provide a guarantee on a whole roof, as only a proportion of tiles could be tested.

68. On the proposal to replace the crittal windows, Mr Cresswell said that his understanding was that if the windows were removed and replaced, the glass would have to be compliant with building regulations, which would require safety glass. However, a repair is different. He agreed that the Council had not researched the impact upon the contract cost were the crittal windows to be repaired rather than replaced, and he confirmed that there had been no detailed survey of the condition of the windows.

Mr Manning

69. Mr Cullis asked about the proposal to re-asphalt walkways entirely rather than do patch repairs. Mr Manning said there was cracking to the front edge of the asphalt. Patch repairs require compliance with health and safety regulation as it is work with hot materials, and also cause potential difficulties with the join with existing materials. The re-asphalting question should be seen in the context of the whole job, which required concreting repair and repair of replacement of the balustrades (which were not being recharged to the Respondents). Bearing in mind that work would be required anyway, he felt the re-asphalting of the entire walkways was the proper, long term, solution.

70. Mr Manning was asked whether the crittal windows could be repaired rather than replaced. He accepted that the Council had not carried out a cost comparison for repair rather than replacement. He preferred the option of replacement to avoid ongoing maintenance costs in repainting, repairing and re-puttying.

Respondents' arguments

71. Though no witnesses were called by any of the Respondents, their arguments were set out in written submissions both before and during the course of the hearing. Those arguments on Issue 2 are summarised below.

72. Specific elements of the Works have been challenged by Respondents as not needed, or not needed now. Those elements specifically raised are:

    a. Roofs. There are two issues concerning the roofs:

        i. Whether there is a need to replace the roofs at all, and in particular, the roof of Block 8. Respondents have argued that the evidence before the Tribunal does not establish that the roofs of the Blocks need to be replaced. It is argued that in the Cresswell report there are many places where the report concludes that elements of the roofs are satisfactory. There is also some generic evidence that clay tiles can have a longer life span than originally anticipated. It is also argued that even if the roof of some Blocks needs to be replaced, this may not be the case for all Blocks due to differing microclimates within the estate.

        ii. If the Tribunal were to determine that the roofs do need to be replaced, the proposed replacement tile, and its cost. This is of particular concern to Mr Lewis, who believes the Wates costings might have specified a more expensive tile than is necessary.

b. A number of items are described in the Cresswell report as being in good condition. Objection is therefore taken to the replacement of these items. They include such items as external timber doors to service cupboards, some soffits, existing cast iron rain water goods and a number of other items.

c. If the crittal doors and windows in the communal areas have to be replaced, they should be replaced with uPVC rather than aluminium as the latter is an unreasonably more costly alternative. Mr Lewis had obtained a quotation from a local firm for replacement of existing crittal windows at Merriedale Court with double-glazed uPVC windows at £53,963 plus VAT, and for the same work, but replacing with double-glazed aluminium frames, at £98,249 plus VAT.

d. Re-asphalting of the whole of the walkways is excessive. A satisfactory solution to the need for asphalting repairs would be to save the existing sound asphalt up to a point where it would have to be removed to effect repairs to the balustrades and the concrete edges of the walkways

e. There is a concern that Respondents who either have no gas or who's gas appliances do not have external flues are being asked to pay for gas upgrade works

Legal submissions

73. Mr Heather asked the Tribunal to consider as a proposition that the Council is entitled to carry out works of repair even though the works include preventative measures aimed at preventing future disrepair. This proposition is in support of the Council's intention that the Works provide a comprehensive solution to repair of Merriedale Court, even though some of the Works envisage the replacement of some materials that are not yet in disrepair. A short passage from *Day v Harland & Wolff Ltd [1953] 2All E R 387* illustrates the point:

> "Very broadly speaking, I think that to repair is to remedy defects, but it can also properly include an element of the "stitch in time which saves nine". Work does not cease to be repair work because it is done to a large extent in anticipation of forthcoming defects or in rectification of incipient defects, rather than the rectification of defects which have already become serious. Some element of anticipation is included."

Discussion and determination on Issue 2

74. At the outset, it is important to identify what question the Tribunal has to ask itself. The Tribunal is a statutory body, and may only operate within the parameters of the authority it is given by statute. The relevant

statutory provisions are contained in sections 18 to 30 of the Landlord and Tenant Act 1985 ("the Act"), and sections 19 and 27A need specifically to be considered.

75. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

    a. The person by whom it is or would be payable
    b. The person to whom it is or would be payable
    c. The amount, which is or would be payable
    d. The date at or by which it is or would be payable; and
    e. The manner in which it is or would be payable

76. In effect, this gives an opportunity for both a proposed budget for service charges to be raised with the Tribunal and a further opportunity for the sums then actually spent, when they are known, to be challenged if they depart substantially from the budget.

77. Section 19(1) of the Act provides that:

> "Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –
>
> (a) Only to the extent that they are reasonably incurred, and
>
> (b) Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:
>
> and the amount payable shall be limited accordingly."

78. In relation to the test of establishing whether a cost was reasonably incurred, in *Forcelux v Sweetman* [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

> "39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.
>
> 40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence..."

79. In *Veena v Cheong* [2003] 1 EGLR 175, the Lands Tribunal (Mr P H Clarke FRICS) said:

> "103. ...The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

80. Further clarification of the meaning of "reasonably incurred" has been provided by the Upper Tribunal in *London Borough of Lewisham v Luis Rey-Ordieres and others([2013] UKUT 014)* which said (at para 43):

> "...there are two criteria that must be satisfied before the relevant costs can be said to have been reasonably incurred:
>
> (i) the works to which the costs relate must have been reasonably necessary; and
>
> (ii) the costs incurred in carrying out the works must have been reasonable in amount."

81. These extracts show that the Tribunal is not in the position of deciding what it would do were it the decision maker in the circumstances of this case. Our role is to review the Council's case and decide whether a reasonable landlord in the Council's position would be acting reasonably in doing what it proposes to do.

82. No-one has suggested that no repair work at Merriedale Court is required. But questions have been raised about the necessity for all the Works and the Tribunal will consider each contested component of the Works.

Roofs

83. The case for complete re-roofing of all Blocks comes from a combination of the Cresswell report, the evidence of Mr Dalton and Mr Cresswell, and the Baker Report.

84. The Cresswell Report does not support the need for complete re-roofing of all Blocks. Delamination and breakdown of tiles is only reported to affect Block 7, which also suffers from some roof timber decay, as does Block 9. Generally in relation to the other Blocks, the report identifies that though there are signs of discolouration, there are no signs of individual tiles breaking down, and ridge and hip tiles, and lead flashings are reported to be in good condition. The mortar beds of Blocks 2, 3, 6, 7, and 9 gave some cause for concern. However, only the roof of Block 7 was subject to a close invasive survey and all other conclusions carry the caveat that a further inspection should be undertaken. The report makes no recommendation about replacing the roofs. It recommends that "a full invasive inspection be carried out of all roofs before further recommendations can be offered and to provide detailed information of whether roofs require local repair or total replacement".

85. Mr Dalton justified the need to replace the roofs on two main grounds. Firstly, that the condition of the roofs was such that they needed to be replaced now. Despite his best endeavours, the Tribunal was not convinced by this argument. It does accept his evidence about the condition of the roof of Blocks 1 and 2 as evidenced by photographs taken in January 2015. It is clear that some tiles had broken and the condition of the mortar bedding was poor. But this evidence does not support a conclusion that the tiles themselves had come to the end of their useful lives, and this conclusion is not supported by the Baker report in which Mr Baker says expressly that the roofs are recoverable. There is certainly a need for repair and maintenance, but, apart from Block 7, where there is clear evidence of failed tiles, the evidence does not exist to substantiate a case that all the tiles of all the Blocks need to be replaced now.

86. The second ground put forward by Mr Dalton is that bearing in mind the age of the tiles and the need to carry out repair and maintenance to the roof (which the Tribunal accepts), it would be more cost effective to replace the tiles now, rather than doing so in the relatively near future.

87. The Baker Report also does not conclude that the tiles need to be replaced now. Each individual Block is reported on. The condition of each roof varies. For example, the tiles on the roof of Block 1 are described as in fair condition with only limited numbers of tiles being described as decaying or delaminating. The tiles on Block 7, conversely, are in some areas in a particularly deteriorated state.

88. There is no question that the decision as to whether the tiles need to be wholly replaced is a finely balanced one. The overall conclusion of the Baker Report was that whilst replacement is not required now, it will be necessary in the medium term (4-6 years). What is needed now, the report says, is a fairly substantial amount of maintenance with the replacement of several thousand tiles now in any event.

89. However after very careful consideration of this difficult issue, the Tribunal has concluded that the Council is acting reasonably in making a decision to replace the roof tiles now on all Blocks. There are three particular factors that have tipped the balance in persuading the Tribunal to that view.

90. The first is the necessity to re-scaffold the whole of Merriedale Court if the roofs are replaced at a later date, potentially only some 4-6 years away. The cost of scaffolding would indeed be less than the scaffolding cost for the Works (which is c£282,000 – or about £1,770 per flat plus contribution to prelims), as the cost of scaffolding for the Works includes scaffolding to intermediate heights as well as to roof height, but it would still be likely to be substantial. The scaffolding for the Works will still be required to carry out the repair and maintenance to the roofs and the

roofline works now. The scaffolding cost would therefore make the repair now, replace later (in 4-6 years) option significantly more costly in the long run.

91. The second factor is that, quite apart from the cost of scaffolding, the cost of repairing now and replacing in 4-6 years will itself be more costly than replacing now, as the repair cost will be an additional expense, which according to the evidence of the Baker Report will only be likely to last for some 4-6 years. Coupled with that, the more expensive Bridgwater tile would be needed for the repair and maintenance works now, meaning the whole of the proposed cost of replacing tiles would not be saved.

92. The third factor is that the "stitch in time" argument put forward by the Council is a valid argument both practically and legally. The Council aim to put Merriedale Court into a condition such that it will have a lifespan of at least 30 years before any major works are required again. That is a reasonable aspiration and if there is a cost that is precautionary rather than absolutely necessary now, it can be, and in the view of the Tribunal is, reasonable to incur that cost now.

93. Putting all these factors together, the Tribunal's view is that the Council's decision to replace the roof tiles now in compliance with its repairing obligations under the leases is a reasonable decision.

94. A comment is appropriate about the decision of the Council not to engage BRE to provide some further expert evidence on the condition of the roof tiles. The suggestion was put forward by the Tribunal to bring a resource to the attention of the parties for consideration. In doing so, the Tribunal made it clear that the Tribunal would not regard the uptake or otherwise of that suggestion as a factor that would affect the Tribunal's decision. That remains the case.

Items described in the Cresswell report as being in good condition

95. The Tribunal fully understands that if a part of the building is described as being in good condition, it is difficult to comprehend why it needs to be replaced, or equally pertinently, why a Respondent has to pay for that replacement. However, the Tribunal accepts the correctness of the general proposition that replacement of some items can legally constitute repairs because their replacement is part of a scheme to do works that will save costs in the future. This question applies mainly to the soffits, fascias, gutters, and other rainwater goods. Having inspected Merridale Court, read the Cresswell report, and heard the evidence of the Council's witnesses, the Tribunal determines that it is reasonable to carry out a replacement scheme for those items as there is substantial disrepair of some of these items across the estate, and it is prudent, and will save future costs, for all of those items to be replaced now as part of the Council's repair programme.

96. It is also the case, in the experience of the Tribunal, that the cost of partial repair can be greater than the cost of total repair. If sections of pipe are partially replaced, there is a greater labour cost sometimes than complete replacement.

The crittal doors and windows in the communal areas

97. There are two questions. Firstly, should the crittal doors and windows be replaced or repaired? Secondly, if so, with what type of replacement; aluminium or uPVC?

98. The Cresswell report makes very few references to the crittal doors and windows. Those in Block 4 are described as being in a "decaying state", and decay and rust has started to set in and paint has started flaking away to a door in Block 8. The Tribunal noted on its inspection that the condition of the crittal doors and windows generally is such that at the least they require some remedial work, for example repainting..

99. Mr Dalton's evidence was that the doors and windows should be replaced because of the condition of the frames and sub-frames, broken catches, and lack of safety glass.

100. There was evidence though that no detailed survey of the windows and doors had been carried out, and that no attempt to calculate the effect on the contract price of repairing rather than replacing had been undertaken.

101. The Tribunal notes that whilst the paint and putty on metail framed windows can deteriorate, the metal windows themselves are constructed of a robust material that can potentially last for many more years. The cost per Block for replacement varies, but as an example, the cost for Block 6 is £15,866 plus prelims, which could equate to around £1,000 per Respondent in that Block. Across the whole estate, it is proposed to spend over £108,000 on these items, plus on-costs. The Conservation Officer is keen to retain original features, and the communal areas in which the crittal windows exist are unheated and do not require upgrading to double-glazing.

102. In the view of the Tribunal, a decision on whether the cost of replacement of the crittal doors and windows would be reasonably incurred cannot be finalised without knowing the viability of a repair and maintenance option, in the form of replacing any decayed or damaged subframes, reputtying, reglazing broken panes, replacing broken catches, and decorating. If that option is viable, and gives the repaired doors and windows a reasonably long term future, it may be a much better solution than replacement.

103. The Tribunal is mindful that the Applicant does not have to select the cheapest option in order to incur a cost reasonably, and has taken into account the Applicant's desire to carry out repairs to provide a sustainable, long-term solution for Merriedale. Despite those factors, the Tribunal considers that exercise of its jurisdiction to determine whether Works are reasonable involves, amongst other things, considering the obvious alternatives. The Tribunal does not have before it sufficient information to resolve the first question of whether to replace or repair. It would be appropriate for the alternative option to be scoped and costed before finalising this aspect.

104. The Tribunal therefore determines that the case for replacement of the crittal windows and doors is not yet made out, and in exercise of its jurisdiction under section 19 of the Act therefore determines that it cannot yet be said that their replacement would be reasonable. This determination does not mean that replacement may not in eventually be shown to be the best option, or at the least an option which it would be reasonable for the Council to take. Respondents cannot therefore treat this element of this decision as a determination that the Council have got to repair rather than replace.

105. The second question relates to whether, if the eventual outcome is that the doors and windows are to be replaced, the replacement should be of aluminium or uPVC. The question remains relevant as the replacement option is still a possibility. The Council specify aluminium because this is required by the Conservation Officer. The Tribunal has to confess that it is puzzled by the Conservation Officer's position. Some years ago, and before Merriedale Court was listed, the Council itself replaced the vast majority of all windows in the flats with uPVC windows. That is now the predominant material across the whole estate. To try and preserve a metal frame in just a few remaining windows seems to the Tribunal to be shutting the stable door after the horse has bolted.

106. The Tribunal has no power or jurisdiction over the Conservation Officer, who was not called to give evidence. If the Council has done all that it can to seek to persuade the Conservation Officer or his supervising body to allow uPVC, but has failed, the Tribunal has to determine that replacement with aluminium is reasonable. The evidence at the hearing was not strong enough to persuade the Tribunal that further negotiations with the Conservation Officer were not viable.

Re-asphalting of walkways

107. It is quite clear to the Tribunal that as a result of substantial decay to the walkway edges and balustrades, re-asphalting of significant areas of the walkways will be required. The Tribunal agrees with the Council that partial asphalting is unsatisfactory, as it will not result in a long term warranty, and it will create the potential for further problems to arise from the need to manage the join between the old and new asphalt. The

Tribunal determines that the cost of re-asphalting the walkways would be reasonably incurred.

Gas compliance

108. The Council explained that gas compliance work relates to the need to ensure the health and safety of the workforce carrying out the Works. In particular, where the scaffold is netted, so that there is something akin to an enclosed space within the scaffolded area, any gas flues need to be extended beyond the netting so that the discharges are not contained within the netted area.

109. Some Respondents do not have gas flues, but all are, in the view of the Tribunal, responsible for the cost of extending the flues that do exist, as this is necessary work for which all Respondents are liable to contribute. The Tribunal determines that the cost of the gas compliance work would be reasonably incurred even if a Respondent has no gas, but it would be prudent for the Council to satisfy itself that the gas compliance works have been costed on the basis that not all flats at Merriedale Court have a gas flue.

Issue 2 summary

110. The Tribunal has not been persuaded that the crittal windows and doors require replacement now, but they certainly require repair and maintenance. Subject to this point, the Tribunal is satisfied that it would be reasonable for the Council to carry out the Works listed in paragraph 37 above.

Issue 3 – Are the proposed costs reasonable?

The Council's evidence

111. The Council's witnesses primarily concerned with this issue were:

- Mr David Brown - Managing Surveyor employed by an external consultancy firm but seconded to Wolverhampton Homes
- Mrs Helen Bellingham - Head of Homes Sales and Leases for Wolverhampton Homes

112. The scheduling and costing of the Works was the responsibility of Mr Brown, who manages the commercial delivery of the Applicant's planned repair programme across their area. Using a number of reports and drawings available to him (not all of which have been seen by the Tribunal), including the Cresswell Report, a schedule of works was produced.

113. Mr Brown then explained that Bullock and Wates were given the opportunity to submit prices for the Works. Mr Brown's role was to work

with the contractors to ensure an efficient, cost effective delivery of the Works, in which Wolverhampton Homes could have confidence. The role included ensuring that the Works would be delivered safely, with minimum impact upon residents and the local traffic. The proposed contract was eventually awarded to Wates on the basis of price, their price being some 7% lower than the competing bid.

114. The pricing details produced to the Tribunal by Mr Brown broke the proposed costs down into the components listed in paragraph 37 above.

115. The initial pricing schedules included replacement of communal fire doors, which the Council had already decided not to recharge to the Respondents. They accepted during the hearing that this was an error and amended prices were provided to the Tribunal.

116. For each component in the pricing schedule, a cost for the works themselves, a cost to scaffold to enable the works to be carried out, a preliminary cost, and an allowance for provisional sums was given on a block basis. The amount for environmental works and for temporary works was then added (these items attracted their own preliminary costs and provisional sums). The main component costs, the total costs per block, the number of flats in the block, the individual cost per flat, and the individual charge per flat after adjustment for the non-chargeable items referred to above, were given as follows[2]:

Table 1 – proposed cost of the Works

	Works	Scaffold	Prelims & set up	Provisional sums	Total	Cost per flat	Recharge per flat	No of flats
Block 1	150,956.95	20,138.80	74,094.02	25,464.97	270,654.74	15,036.37	8,295.03	18
Block 2	127,469.15	21,183.46	92,621.24	25,464.97	266,738.82	14,818.82	8,163.19	18
Block 3	157,841.02	20,089.95	69,172.44	25,464.97	272,568.38	15,142.69	8,011.95	18
Block 4	148,658.63	18,826.97	67,407.19	21,691.08	256,583.87	16,036.49	8,282.18	16
Block 5	191,618.17	28,083.26	86,496.93	27,375.80	333,574.16	15,884.48	9,183.12	21
Block 6	159,045.56	25,147.47	74,191.36	25,464.97	283,849.36	15,769.41	9,251.01	18
Block 7	184,538.68	51,948.55	69,334.95	25,828.03	331,650.21	19,508.84	11,571.44	17
Block 8	115,985.58	35,700.95	46,653.05	22,643.31	220,982.89	18,415.24	10,403.25	12
Block 9	211,351.08	61,134.78	72,454.14	27,101.92	372,041.92	17,716.28	10,317.29	21
Total	1,447,464.82	282,254.19	652,425.32	226,500.02	2,608,644.35			

117. Preliminary costs, based on a 67 week contract, were:

Table 2 – preliminary costs

Precontract	12,688
Staff	279,582
Hutting and storage	10,770

[2] These figures went through a number of incarnations during the course of the hearing. These figures are from the schedules produced for the hearing in May (and so exclude the cost of fire doors), adjusted in relation to Block 9 as a result of apportionment of the cost between 21 rather than 19 units

Telecommunications / IT	9,065
Craneage and generators	24,122
Hoists and lifts	46,111
Plant, skips, driver and PPE	58,118
Scaffolding / Towers	15,061
Temporary services	124,049
Hoarding, protection and temporary works	15,209
Cleaning and attendance	40,827
Off site costs	16,843
Total	£652,424

118. As is clear from the evidence of Mr Manning, at some point consideration of the impact of the Works upon the Respondents was considered by the Council. A decision was taken in principle not to charge Respondents for some elements of the Works, these being:

- Metal balustrades
- Miscellaneous concrete repairs
- Garages
- Communal Fire Doors
- Communal Telecom Equipment
- Meter Cupboard Doors
- External Boundary Wall
- External light fittings
- Wide soffits (above balconies)
- Outbuildings
- Signage

119. This explains why in Table 1 above, the proposed recharge for each flat is less than the cost of works for each flat.

120. The explanation for the exclusion of these elements from the Works was given by Mr Manning as "based upon the fact that in the event that the repairs had been undertaken previously and phased over a period of time, the extent and cost of these repairs today may not be as extensive and costly...". Mr Manning describes this approach as a "reasonable, pragmatic and fair" approach.

121. Mrs Helen Bellingham gave evidence to the Tribunal in her capacity as Head of Homes Sales and Leases for Wolverhampton Homes. Mrs Bellingham dealt first with the issue of apportionment of the costs of repair between the Respondents. She confirmed that Wolverhampton Homes apportioned by dividing the cost by the number of residential units in each block. This was the historical precedent, which she said had been in place when she joined the Council in 1989.

122. So far as selection of contractor for the Works was concerned, Mrs Bellingham said that the Council had decided to enter into a long term qualifying agreement (to replace a previous agreement which expired on

31 March 2013) with suitable firms capable of undertaking the repair work likely to be required by the Council over a 15 year time period. This process required the Council to consult with the Respondents. This process had commenced on 8 March 2012 with a letter to Respondents informing them of the Council's intention to advertise the proposed agreement under EU procurement regulations. This was followed, on 23 April 2013, with a letter notifying Respondents that two contractors had been appointed as the Council's partners, namely Bullocks Construction Ltd and Wates Construction Ltd. Mrs Bellingham said that the final stage of the consultation process required the Council to notify Respondents of the extent of the planned works, why they are being carried out, and details of payment requirements. This final stage has not yet been carried out.

123. Mrs Bellingham said that a payment plan allowing payment over an extended period of time and interest free would be offered, in due course, to all resident Respondents, but no plan would be offered to non-resident Respondents. Details of the length of the extended period were not provided.

124. Finally, Mrs Bellingham provided details of average annual repair costs charged to Respondents over the previous five year period. The lowest was for Block 1, at £10.06, and the highest was Block 4 at £41.43.

125. As with Issue 2, some Respondents asked questions on the evidence on Issue 3 as follows:

Mr Brown

126. Mr Brown was asked about splitting the Works into separate contracts. He said this was disadvantageous to the overall cost because there would be a need to spend the preliminary costs twice. In his view, the most efficient way of delivering the Works was within one overall contract. He said there had been a number of meetings at the start of the whole project at which the delivery model had been carefully considered. He felt there would be no advantage to be gained by splitting the Works into separate contracts.

127. On preliminary costs, it was suggested to Mr Brown that the percentage charge, at 25% of the cost of the contract overall (£652,424 out of a contract price of £2,608,643) was excessive. The method of allocation of the preliminary costs to each block was also queried, as for some works, the preliminary costs allocated are at around 50% of the cost of those works. Mr Brown acknowledged that the allocation had been on a broad brush approach. It was not his view that the proportion for preliminary costs was excessive. The main cost was site staffing, with five staff being allowed for comprising a project manager, a site manager, a section manager, a resident liaison officer, and a site quantity surveyor (total £279,582). An additional sum of £124,049 had been allowed for

temporary services. Cleaning and attendance costs of £40,827 were also included.

128. So far as provisional sums were concerned, Mr Brown was challenged on the proportion of provisional sums, which at 8% of contract costs were said to be higher than they should be at this stage of the contract pricing process. Mr Brown said the Works contract is a complicated contract and the provisional allowances were the best that could be achieved at this stage.

129. It was pointed out to Mr Brown that his pricing schedule had included a reference at an earlier stage to replacing roof tiles with a Bridgwater Double Roman Clay tile, to which prices had been allocated. It was put to Mr Brown, and accepted by him, that this tile was an expensive tile at approximately £5.50 per tile. Mr Brown said that the reference in his pricing schedule was in fact an error and the tile actually priced by the proposed contractors had been a Modular Clay tile, which was a cheaper tile at approximately £1.50 per tile. Mr Brown gave a strong assurance that the prices allocated for tiles were in fact for the cheaper tile. In relation to Block 4, it would not be possible to use the cheaper tile, but he had agreed with Wates that nevertheless they would only charge for the cheaper tile, so there would be no detrimental effect upon Respondents as a result of the initial error in the pricing schedule.

130. Mr Manning was asked why the Council were not willing to obtain independent evidence, through BRE, that the roof tiles were at the end of their useful life. He explained that in his view the value of the BRE test was limited. They did not offer an in service test. He preferred to rely upon Mr Cresswell, who is a qualified architectural technician, and Mr Dalton who had many years of building experience. He also pointed out that if a patching solution was in fact adopted, as a number of delaminated and broken tiles did require replacement, they would have to be replaced with the expensive Bridgwater tile.

131. On the timing of the Works over 67 weeks, Mr Manning said this was the optimum time based on the discussions and negotiations that had taken place between the Council and Wates. The key issue on timing is access to site and traffic management, but also health and safety considerations had to be taken into account and the management of multiple trades on site.

Mrs Bellingham

132. Mrs Bellingham was specifically asked about the Council's method of apportionment of the service charges. She said that she had inherited as policy a system whereby the costs were always allocated on a Block basis, and divided by the number of flats in the block equally. In connection with apportionment, Mrs Bellingham was asked to provide information to the Respondents to show the relative sizes of each flat so that the

question of how the costs should be apportioned could be considered on an informed basis. She was unable to provide this data whilst giving evidence and the Tribunal therefore requested that the Council provide the best details available to it of the floor areas, general layout and number of bedrooms for each unit on the estate.

133. Mrs Bellingham was also asked about the Council's policy of offering payment terms to resident Respondents, but not to non-residents. She said this had been a long-standing Council policy, taken originally in about 1990. However, she said she was not aware that this decision had been recorded anywhere.

Additional documents

134. In response to the Tribunal's request for details of floor area, bedroom numbers, and layout of the flats, the Council produced a spreadsheet containing the only recorded data it possessed relating to floor areas and numbers of bedrooms held by the Council. In its accompanying submissions, the Council said that the data relating to floor areas and numbers of bedrooms was "manifestly wrong", and the Council placed no reliance upon that data.

135. In relation to the proposition that the cost of Works should be capped as a result of the 2014 Directions, the Council produced a letter dated 5 February 2015 from Mr Christopher Hale, who is Head of Housing for the Council. The relevant section says:

> "In relation to the works, which are the subject of the Tribunal case at Merriedale Court, I can confirm that the works are to be funded solely by monies from the Housing Revenue Account. There are no plans to seek assistance from a programme to fund the works. I therefore confirm that in these circumstances the Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014 do not apply to the planned works at Merriedale Court.
>
> I also confirm that the scheme is not a continuation of the Decent Homes Programme."

Respondents' arguments

Proposed contractor will cost more than need be

136. The decision to contract for the Works with one of the contractors appointed under a qualifying long term agreement is criticised. The point is made that those contractors have high overheads which results in higher costs and the Respondents were being asked to pay more than would have to be paid if smaller scale local contractors were engaged.

Preliminary costs are higher than they need be

137. Specific criticism is made of the preliminary costs included in the proposed Wates costings. Preliminary costs are given as £652,424, or 25% of the contract costs, against what Mr Lewis (who has some experience of construction contracts) said should be about 10%. Specific criticism of this cost is made on the basis that:

    a. The Works should be carried out over a shorter contract length (this reducing preliminaries cost)

    b. An allowance for scaffolding is included in the preliminary costs at a cost of £15,061 even though it is also included in the main cost

    c. £40,827 is proposed for cleaning and attendance, despite there being no work intended inside flats

    d. Temporary services (lighting, power fuel etc) are costed at £124,049, which appears excessive, particularly as there is also an allowance for generators and craneage of £24,122

    e. There was also criticism of the amount allowed for staffing. Costs of a project manager, a site manager, a section manager, a site quantity surveyor and a resident liaison officer had been allowed at a total cost of £279,582. "Off-site costs" (£16.843) were also challenged.

138. Mr Lewis also considered that the Works should not be tendered as a single job, but should be split into separate contracts. In his view, the overall cost would be likely to be lower as a result.

Phasing

139. The main argument on this issue is that the roof replacement should be carried out in 4-6 years time (as per the Baker Report), with only routine roof maintenance being carried out with the main refurbishment programme. This would, it was suggested, reduce the immediately foreseeable bill for each Respondent, and allow time for saving for the roof repair at a later date.

Affordability

140. This issue was also raised by a number of Respondents. The Tribunal was told that a number were pensioners, or on minimum wage, and would not be able to afford the sums proposed for the Works. The Tribunal was given a little more detail for some Respondents. The Tribunal was told one Respondent is 87 and living in her flat on a pension. A second Respondent is also a pensioner in her 80's and said

the volume of paperwork in this case was overwhelming and the charge has led to severe distress and consequent poor health. A third 86 year old Respondent said she did not know from where she would be able to find the requested sum of £11,500.

141. An additional aspect relating to affordability is the Council's position on payment plans. In her written evidence, Mrs Bellingham said that payment terms would be offered to resident Respondents, but not to Respondents who were letting their flats to sub-tenants. This had long been Council policy and there were no plans to change it. In her witness statement, she said prudent commercial landlords would have factored repair and renovation costs in their long term business plans, and public money could not be used to subsidise private enterprise.

142. This approach received criticism from non-resident Respondents, who pointed out that access to funds of the level required by the Council could be difficult for them too, particularly bearing in mind that some said the values of the flats now were below what had been paid for them in the past, so with the repair liability added in, a number of them would be in negative equity. Furthermore, they had indeed factored in the historic level of maintenance costs, but the proposed cost of the Works had come out of the blue, and the level of the costs had not even been foreseen by the Council (as evidenced by the content of the Information Packs provided to Mr & Mrs Steer in 2010 and 2012).

Historic neglect

143. A number of Respondents raised this issue. The point made was that had Merriedale Court been properly maintained during previous years, the deterioration would have been less and thus the cost of repairs now would have been lower.

Reliance upon allegedly incorrect information from the Council

144. Mr & Mrs Steer purchased 98 Merriedale Court in June 2010, and 119 Merriedale Court in August 2012. Before each purchase, the Council provided them with a Homes Information Pack which stated that major works and improvements would be required at Merriedale Court. The Tribunal has been provided with a copy of the Packs, which confirmed that there were proposed works comprising chimney repairs, roof repairs, replacement of fascia's, soffits and rainwater goods, external insulation and cladding, rendering, brickwork repairs, external decoration, and miscellaneous repairs at an estimated cost of £800 to £1,500 per flat for flat 98 and £1,200 to £2,000 per flat for flat 119. Mr & Mrs Steer feel they have been misled by these statements and that their contribution towards the costs of the Works should be adjusted accordingly.

Mandatory reduction under the 2014 Directions

145. This issue was raised by Mr Hall and Mr Lewis. It was their view that paragraph 3(b) of the 2014 Directions limits the Council to recovery of a maximum sum of £10,000 over a five year period.

Apportionment

146. Mr and Mrs Steer were the lead Respondents on this issue. Their argument is straightforward. They say that the flats in each Block are different sizes, and the division of costs per Block equally between all flats is not fair. A lessee of a small flat should not have to pay as great a proportion of the costs as the lessee of a larger flat. They suggested that the costs should be apportioned between the lessees in each Block according to the square meterage of each flat.

Improvements

147. Mrs Andrews and Mr Hall raised this issue in their written submissions to the Tribunal prior to the hearing. They said that under some of the leases, the cost of improvements were not recoverable. However the point was not developed during the hearing or in any oral or final written submissions.

Legal submissions

148. Mr Heather made a number of submissions to the Tribunal relevant to Issue 3 which are outlined in this section.

Costs being higher than they need be

149. Mr Heather argued that a landlord is not obliged to do the minimum amount of work required to effect a repair. Authority could be found in *Plough Investments Ltd v Manchester City Council [1989] 1 EGLR.* The case concerned the extent of a landlord's covenant to maintain and repair the exterior of a building. In his judgement, Scott J said:

> "If reasonable remedial works are proposed by the landlord in order to remedy a state of disrepair [...] the tenants are not, in my judgement, entitled to insist that cheaper remedial works be undertaken. ... Provided proposed works of repair are such as an owner who had to bear the cost himself might reasonably decide upon and provided the works constitute "repairs" within the meaning of that word in the fifth schedule covenant, the tenant is not, in my judgement, entitled to insist upon more limited works or cheaper works being preferred. I agree with Miss Williamson that the landlord cannot be limited to a minimum standard of repair only."

Affordability

150. Mr Heather referred the Tribunal to the case of *Garside & Anson v RFYC Ltd and B R Maunder Taylor [2011] UKUT 367*. In that case, the Upper Tribunal confirmed that the basic approach to a challenge to a service charge on the ground of affordability was:

> "20. It is important to make clear that liability to pay service charges cannot be avoided simply on the grounds of hardship, even if extreme. If repair work is reasonably required at a particular time, carried out at a reasonable cost and to a reasonable standard and the cost of it is recoverable pursuant to the relevant lease then the lessee cannot escape liability to pay by pleading poverty. As the Lands Tribunal made clear in *Southend-on-Sea Borough Council v Skiggs LRX/110/2005* (a decision on section 27A of the 1985 Act), the LVT cannot alter a tenant's contractual liability to pay. That is a different matter from deciding whether a decision to carry out works and charge for them in a particular service charge year rather than to spread the cost over several years is a reasonable decision and thus the costs reasonably incurred for the purpose of section 19(1)(a) of the 1985 Act."

151. In paragraph 14 of *Garside*, however, the Upper Tribunal had accepted that in making a reasonable decision to incur service charge costs:

> "14...there is nothing in the 1985 Act to limit the ambit of what is reasonable in this context so as to exclude considerations of financial impact. In my judgment, giving the expression "reasonable" a broad, common sense meaning, ... the financial impact of major works on lessees through service charges and whether as a consequence works should be phased is capable of being a material consideration when considering whether the costs are reasonably incurred for the purpose of section 19(1)(a)."

Historic neglect

152. The relevant case on this topic drawn to the Tribunal's attention is *Daejan Properties Ltd v Griffin and Mathew [2014] UKUT 0206 (LC)*. Paragraph 89 says:

> 89. The only route by which an allegation of historic neglect may provide a defence to a claim for service charges is if it can be shown that, but for a failure by the landlord to make good a defect at the time required by its covenant, part of the cost eventually incurred in remedying that defect, or the whole of the cost of remedying consequential defects, would have been avoided. In those circumstances the tenant to whom the repairing obligation was owed has a claim in damages for breach of covenant, and that claim may be set off against the same tenant's liability to contribute through the service charge to the cost of the remedial work. The damages which the tenant could claim, and the corresponding set off available in such a

case, is comprised of two elements: first, the amount by which the cost of remedial work has increased as a result of the landlord's failure to carry out the work at the earliest time it was obliged to do so; and, secondly, any sum which the tenant is entitled to receive in general damages for inconvenience or discomfort if the demised premises themselves were affected by the landlord's breach of covenant.

Apportionment

153. During the course of the hearing, Mr Heather had submitted that this issue should not be considered by the Tribunal for lack of jurisdiction, as it had not been raised in the Council's application. The Tribunal had rejected that submission on the basis that the issues that need to be considered by a Tribunal are those raised by any of the parties that go to the essence of the issue it is asked to consider (see *Birmingham City Council v Keddie & Hill [2012] UKUT 323 (LC)).* The Council requested that the Tribunal determine whether the costs of the Works are reasonable. If a Respondent suggests that the way in which the costs are divided up is incorrect, so that the amount that Respondent pays as a proportion of the whole is incorrect, that Respondent is raising an issue about the reasonableness of the costs payable by that Respondent, which must be something the Tribunal needs to consider.

154. Mr Heather also suggested that the Respondents were estopped from raising the issue as a result of estoppel by convention. He cited the case of *Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd [1982] 1QB 84).* The principle he derived from the case was that when parties in their course of dealings in a transaction have acted upon an agreed assumption that a particular state of facts between them is accepted as true, each is to be regarded as estopped [i.e. prevented] as against the other from arguing the truth of that agreed assumption. Here, the basis for dividing costs between lessees had been accepted for many years and could not now be challenged.

Discussion on Issue 3

155. The Tribunal's view is that all of the issues raised by the Respondents' could potentially affect the payability of any service charge demanded by the Council for the Works. Each one therefore needs to be considered as an integral part of determining whether the cost of the Works would be payable by the Respondents.

Proposed contractor will cost more than need be

156. The Works have been competitively costed by the two contractors who were themselves selected by competitive tender as the long-term partners for delivery of the Council's repairing contracts. Mr Heather suggested that as a result, and because of the principle contained in the

Plough Investments case, that the Tribunal were not able to pick apart the prices for the Works. Broadly, the Tribunal agrees. It's oversight as to whether costs would be "reasonably incurred" do not realistically allow it to challenge the level of expense if that expense arises because of a properly negotiated process designed to obtain the best prices available for the work (see also *Auger v London Borough of Camden LRX/81/2007).* As to the criticism that the two selected contractors are large and therefore expensive firms, and that a better price could have been obtained from smaller contractors, the Tribunal does accept that there is a possibility this may be the case. But the procurement methodology used by the Council is a lawful and accepted methodology. The Council is entitled to use it and there are advantages for the Council and ultimately its Council tax funders in it doing so. The Tribunal cannot determine that to do so is unreasonable.

Preliminary costs

157. The way Mr Lewis has put his issues concerning the preliminary costs though raises a slightly different point to the preceding paragraph. His criticisms relate to the inclusion of some site specific items. These are not aspects that would have been part of the partnering agreement; they are specific to the contract for Merriedale Court repairs. His arguments were summarised at paragraph 137 above.

158. Detailed evidence on Mr Lewis's criticisms had not been given at the hearing, and the Tribunal therefore requested further written representations from the parties. The Council, in a letter dated 17 July 2015, pointed out that this contract needed to be managed around residents continuing occupation and that affected the preliminary costs. They said the scaffolding allowance was for scaffolding in addition to that included in the individual block costs, but gave no detail. Cleaning cost would be needed because of the amount of dust that would be produced and to ensure the safety and well-being of the residents. The letter hints that the cleaning cost would not in fact be a contractors cost and this implies it might be borne by the Council (subject to recharge). The letter said the temporary services cost (light power etc) could not be taken from a mains feed within a communal area or a communal flat as this would not comply with safety legislation (though no further details to justify this assertion were given). Overall the Council's case is that the preliminary costs were subject to the tendering exercise and are reasonable and should be allowed.

159. The Respondents were given the opportunity to comment on the Council's letter. Only Mr Lewis did so. He is critical of the lack of detail given in the Council's letter on scaffolding cost. He says that proper dust control measures are an expected and well known aspect of site management in construction contracts, and an HSE briefing sheet was provided to illustrate this. He does not accept that power and water cannot be taken from an existing communal flat.

160. The Tribunal's approach to resolving the preliminary costs issue is affected by the following factors:

a. Mr Brown told the Tribunal that there was a measure of flexibility in the allocation of costs to preliminary costs in any event. The preliminary costs are in large part site overheads, being recurring costs throughout the life of the contract. That being the case, the Tribunal does not regard the percentage of preliminary cost as a proportion of the whole of the contract cost to be a particularly significant factor;

b. No objection was raised by any Respondent to the preliminary costs intended to be incurred for pre-contract cost, hutting and storage, telecommunications and IT, hoists and lifts, plant and skips, hoarding protection and temporary works (all totalling £176,063);

c. The items in dispute are items which it would be reasonable, and indeed necessary, for some cost to be allocated. They are costs that are incurred throughout the life of the contract and cost to provide site management and power and services to the site are, in particular, essential;

d. The costs are anticipated costs at this stage. The exact amounts will only be known at the end of the contract;

e. The Tribunal has already determined that if the preliminary costs are charged to the Council under the terms of the partnering agreement and that agreement entitles Wates to claim the specific sums proposed to be charged for preliminary costs, the Tribunal would not be able to interfere, but the Tribunal has not been told the extent to which these costs are fixed in the partnering contract or are alternatively subject to negotiation now. However it has been told that the proposed costs are the product of a negotiation with Wates, and by implication they have to be regarded as the best that can be achieved at this point;

f. However, the further representations requested have not provided sufficient information to enable the Tribunal to determine that Mr Lewis's concern about the cost of temporary services (power light fuel etc) are allayed. At first sight, this sum appears very high, particularly as there is a further cost for generators allowed in a separate item;

g. The Tribunal has to deal with this case in a way that is proportionate, and in its view it would now be disproportionate to seek any further evidence or representations on the preliminary costs.

161. The Tribunal's determination on preliminary costs, bearing in mind the factors identified above, is that it would be reasonable for the Council to incur them, save only that the Tribunal is not satisfied that the Council has yet established that the cost of temporary services at an estimated sum of £124,049 would be reasonably incurred. Mr Lewis has raised a legitimate concern about the need for expensive generators or the high cost of laying a temporary service against use of an existing supply, and the Council has not provided a sufficiently detailed response to allay that concern.

162. For the avoidance of doubt, the Tribunal takes the view that it should not interfere with the Council's decision to engage the staff it proposes to engage, nor with the relatively small further allocation of scaffolding cost to preliminaries, nor with the cleaning cost. In the Tribunal's view these are not items of which it can be said the Council would be acting unreasonably if it incurred them.

Historic Neglect

163. This decision is about whether the proposed cost of the Works is reasonable and whether that cost is payable by the Respondents. If a Respondent can show that the Works are more expensive than they should have been as a result of the failure of the Council to carry out its repairing obligations in the past, the difference may be recoverable as damages from the Council to be set off against the cost of the Works now. None of the Respondents have quantified their alleged losses as a result of the Council's alleged historic neglect, nor has any evidence been put to the Tribunal to substantiate that claim or any losses arising. In these circumstances, whilst the Tribunal can well understand where the Respondents are coming from, it has no option but to determine that no reduction in the cost of the Works can be allowed as a result of any allegation of historic neglect.

164. It should be noted that the Council's decision not to charge Respondents for the eleven excluded elements in the costs of the Works has given the Respondents a real benefit that might be thought of as a recognition by the Council that the Respondents' strength of feeling on this question required some acknowledgement.

Affordability and phasing

165. The extracts from the case of *Garside* referred to above explain the limits of the Tribunal's right to change an amount due from a Respondent under a lease if a Respondent is not able to afford the amount due. As can be seen from those extracts, the Tribunal is extremely limited in what it can do. In particular, and very importantly, the Tribunal has no power (in its view) to reduce any charge that is properly due under a lease by way of service charge on the grounds that the charge would

cause financial difficulty or hardship or is unaffordable. The service charge is payable by the Respondents because they have signed up to a legal contract (the lease) to pay it.

166. What the Tribunal does have power to do is determine whether the Council took the financial impact sufficiently into account when determining the phasing of the Works and the timing of the demands for payment.

167. Suggestions were made by Respondents regarding phasing and timing. Mr Lewis proposed that the contract could be shorter, thus reducing preliminary costs. He also proposed that the roof replacement work could be carried out in 4-6 years time rather than now, though this suggestion has been considered already in this decision at paragraphs 88 and 92 above. It was also suggested at one point that the crittal doors and windows work could be carried out separately at a later date.

168. The Tribunal accepts Mr Brown's evidence about the proposed contract length. The Tribunal accept that he and his team had concluded that 67 weeks is the optimum contract length. The Tribunal has no real basis for determining that this is unreasonable. Likewise, there is no real basis for determining that the doors and windows should be extracted from the Works to be carried out under a separate contract some time in the future. Firstly, some of them are clearly in a poor condition and require work now, and secondly, the set-up and preliminary costs for undertaking these works in the future would add to the overall cost.

169. The Tribunal is reinforced in this view by the fact that some of the Respondents will be offered payment terms in any event (though the precise terms are unclear), so that affordability as an issue is much reduced for them. The Tribunal cannot make any ruling on the Council's decision not to offer payment terms to non-resident Respondents. That is a political decision over which the Tribunal has no jurisdiction.

Reliance upon allegedly incorrect information from the Council - Mr & Mrs Steer's issue on the Council's Leaseholder Information Pack

170. The Tribunal indicated to Mr & Mrs Steer at the hearing that it would not determine this issue. This leaves them free to pursue any remedy they are advised exists against the Council through the Courts.

171. The jurisdiction of the Tribunal under section 27A of the Act is wide, in that it may determine the "payability" of a service charge. If a Respondent has a legal basis for claiming that he or she is owed money by the Council, in some circumstances that Respondent might be entitled to set-off the amount he or she owes to the Council against the sum owed to that person by the Council. But the Tribunal has to hold the view that the Tribunal is an appropriate forum for determining the validity of the

legal claim against the Council (see *Continental Property Ventures Inc. v White [2006] 1 EGLR 85*). Mr & Mrs Steer's issue is best tried in a court, in the view of the Tribunal. It raises issues that are not within the normal jurisdiction of this Tribunal, and to have tried that issue within this case would have not been practicable. Mr & Mrs Steer should take specialist advice if they wish to pursue this claim.

Apportionment

172. The first issue for the Tribunal is whether to accept Mr Heather's submission that the Respondents were estopped from raising the issue as a result of estoppel by convention. The Tribunal has considered whether the *Amalgamated Investment & Property Co Ltd* case should prevent the Respondents from doing so. This complicated case concerned the extent to which a guarantee executed by a parent company in favour of a bank covered the indebtedness of a wholly owned subsidiary of the parent company to a wholly owned subsidiary of the bank. The Court of Appeal held that it did, on the basis that when parties in their course of dealings in a transaction have acted upon an agreed assumption that a particular state of facts between them is accepted as true, each is to be regarded as estopped as against the other from arguing the truth of that agreed assumption. Here, Mr Heather argues, the division of costs between lessees of each Block has always been equal (that being the agreed assumption), and the Respondents cannot now challenge that basis, as they have accepted it in the past.

173. The Tribunal is uncomfortable with the application of estoppel by convention to this case. Estoppel is an equitable remedy based upon fairness. It should not be applied when it is unjust or unfair to do so. The historic demands by way of service charges at Merriedale Court have never been large. The evidence is that repair costs over the last 5 years have averaged between approximately £10 and £40 per annum. The Tribunal is not attracted by the argument that because a Respondent did not challenge the apportionment of previous service charge bills, that person, presented now with a demand many multiples of the normal amount of service charge which could have a devastating impact upon that person personally, is no longer entitled to raise the issue. Sometimes things have been wrong for many years, but a challenge would have been disproportionate, or the cost prohibitive. When the issue suddenly turns out to have a very significant impact, it is only at that point that a challenge becomes realistic or practical or necessary. The Respondents should not be prevented from having this issue aired, in the view of the Tribunal, as to do so would be unfair or unjust.

174. The basis upon which the service charge is to be divided between individual flats in each Block is slightly differently expressed in each lease type. Lease type 1 requires that the lessee pay "the proportion of expenditure on services attributable to the demised premises", without clarifying how that proportion is to be calculated. As it is the Council who

levy the service charge, it is therefore for the Council to calculate the proportion attributable to the demised premises. Lease type 2 requires payment of a "reasonable and proper estimate" of the costs of repairs and improvements. Lease type 3 requires payment of "a reasonable part" of the costs payable. Under the leases therefore, it is for the Council to decide how to apportion the service charge between the lessees. Under sections 19 and 27A of the Act, it is for the Tribunal to determine whether that apportionment would cause an amount requested of a lessee to be unreasonably incurred, and therefore not payable as apportioned.

175. At the hearing, a number of further submissions (in addition to the point made by Mr & Mrs Steer) were made by Respondents concerning apportionment. Mr Dhokia supported Mr & Mrs Steer's approach. Mr Cullis, Miss McCulloch, and Miss Kilcoyne considered that the existing approach was correct. Miss Kilcoyne made the point that she had specifically asked about this question when she purchased her flat and had purchased in the express knowledge that apportionment was on an equal basis. Mr Lewis and Mr Hall recognised the complexity of the issue and that there was no obvious right answer. Mr Bolshaw took the view that the fairest solution was some form of compromise between equal division and division based upon floor area. Ground floor flat owners said that they received no benefit from the stairways or walkways. It was pointed out that a couple could live in a studio flat and a single person in a one bed flat, so dividing on the basis of number of bedrooms was not necessarily fair either.

176. In his closing submissions, Mr Heather urged that the current system of equal apportionment should continue. He said that it was incumbent upon anyone proposing a change to come up with a coherent suggestion. Use of floor area was problematic as there was no reliable data on which to base it. It also raised the problem of what to do about historic payments. In his submission, the existing system worked, and it had no greater inconsistencies than other systems.

177. The Tribunal has considered the submissions of all parties on apportionment carefully. Despite the Tribunal being unwilling to accept the argument based upon estoppel, the previous history of apportionment has to have some influence upon what a reasonable approach now is, as some Respondents have purchased flats on the basis that this was the system used. No system is perfect; each throws up some inconsistencies. The cost and inconvenience of changing the system now would also be considerable. The Tribunal's determination is that apportionment of service charge costs equally between the lessees in a Block is not such an unreasonable system that it should now be changed.

178. Block 9 requires specific mention. There are 18 flats on 3 floors, but at lower ground level there are communal rooms that occupy exactly the same amount of space as three flats do on the floors above. The Council

conceded at the hearing (correctly in the view of the Tribunal) that the costs for Block 9 should be apportioned as if there were 21 flats in that Block.

Possible restriction of the charges by the 2014 Directions

179. The effect of paragraph 3(1) of the 2014 Directions is that "if the Council make a service charge in respect of the cost of repair, maintenance or improvement which is undertaken with relevant assistance", the proposed service charge cannot exceed £10,000 over a period of five years. The benefit of this provision can only apply to a Respondent who occupies the dwelling as his or her only or principal home.

180. "Relevant assistance" is defined as assistance from a specified programme which is used for the costs of repair, maintenance or improvement.

181. The specified programmes are the Decent Homes Backlog Funding provided through the 2013 spending round, or any other assistance for the specific purpose of carrying out works of repair, maintenance or improvement provided by any Secretary of State or the Homes and Communities Agency.

182. The Council's evidence, in the form of the letter from Mr Christopher Gale is quite clear in confirming that the funding for the Works was to come from the Council's Housing Revenue Grant, and not from any specific programme covered by the 2014 Directions.

183. In these circumstances, the Tribunal determines that there is no basis for determining that the cost of the Works for any Respondent is capped as a result of the 2014 Directions.

Improvements

184. Lease type 1 does not appear to allow recovery of improvements from the Respondents. Arguably, the other two types of lease might allow this. Although raised in initial submissions, no respondent developed the argument that the Works constituted improvements rather than repairs during the hearing. In the view of the Tribunal, the Works can properly be regarded as repairs, not improvements.

Issue 3 determination summary

185. The Council asked whether the costs it proposed were reasonable. After certain adjustment that took place during the course of the hearing, those costs are set out in Table 1 above.

186. The Tribunal's determination is that the costs proposed to be incurred by the Council are reasonable save for two caveats, being the crittal

windows and doors, and the cost of temporary services, in respect of which the Tribunal has determined that the Council's case has not yet been made out.

187. However, the Council have agreed not to include the costs of some of the Works in its proposed recharge to Respondents. The benefit to Respondents is significant and is shown in the final two columns of Table 1. Despite the issues the Tribunal has mentioned above regarding the Works and the costs, any reduction in cost as a result of revisiting these issues is going to be minor in comparison with this benefit. Having carefully considered the Respondents arguments set out above, the Tribunal determines that the proposed cost of the Works to be recharged to the Respondents in this case as set out in Table 1 would be reasonably incurred.

188. To be clear, the Tribunal regards this determination on the reasonableness of costs as a determination under section 27A(3) of the Act. When payment is eventually demanded, any departure from the costs approved by the Tribunal in this decision, and any further resolution of the costs of works to the crittal windows and doors, and the cost of temporary services, can be resolved under section 27A(1) at that point, if they are not agreed.

Other issues

189. Although referred to in some Respondents written submissions, the issue of consultation hardly featured in the hearings and has not been discussed in this decision. The Council accepts that the statutory consultation process under the Service Charges (Consultation Requirements) (England) Regulations 2003 has not yet finished. If any Respondent considers their consultation rights under these regulations have not been complied with, they are open to make their own applications to the Tribunal.

Appeal

190. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

10 August 2015

Appendix

List of Respondents

Number	Flat	Name
1	94	Mr & Mrs K Rooker
2	98	Mr & Mrs T Steer
3	104	Miss A McCullagh
4	107	Mr R Southall & Mrs S Skorka
5	109	Mr D Sztiler
6	80	Ms S Williams
7	82	Ms P Wylde
8	86	Mrs S Dance
9	89	Miss L Cullis
10	6	Mr O McKenna
11	8	Ms K Hemming
12	22	Mr & Mrs G Dhokia
13	28	Miss H Western
14	29	Mr L M Evans
15	34	Miss D Meacham
16	38	Ms S Kilcoyne
17	[redacted]	Ms P Mackay & Mr J Hodson
18		Mrs M Dickson
19	[redacted]	Miss S A Potts
20	51	Mr S Breweton
21	52	Mr C Bolshaw
22	123	Mr & Mrs D Furey
23	124	Ms J Smith
24	126	Mr K L Mason
25	134	Mrs E Gallagher
26	136	Mr T Lewis
27	138	Mrs E Bamford
28	147	Mrs E Brown
29	148	Mr M Breerton
30	149	Mr & Mrs B Williams
31	127	Mr L Smith
32	128	Mrs M Williams
33	130	Ms E Bethall
34	131	Mr L Tough
35	141	Mr P Hands
36	142	Mr D J Hughes
37	144	Mr & Mrs J Wills
38	154	Mrs B Hall
39	155	Mrs M Andrews
40	108	Ms C Windsor
41	112	Mr & Mrs Pietragello
42	114	Mr & Mrs Pietragello

43	117	Mr T Lewis
44	119	Mrs & Mrs T Steer
45	120	Mr D Trubbianelli
46	121	Ms M Hughes