10847

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CF/LSC/2014/0041**
Property	:	**Various properties at Rockingham, Winterhill and Kimberworth Park Rotherham South Yorkshire**
Applicant	:	**Various (see annex 1)**
Representative	:	**Anita Heaton Chair, Rotherham Leaseholders Association**
Respondent	:	**Rotherham Metropolitan Borough Council**
Representative	:	**Mr T. Tyson (Counsel)**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge J Oliver** **Mrs J. Brown- Valuer** **Mrs M Oates – Lay Member**
Date and Venue of Hearing	:	**10th and 11th December 2014, 17th February and 20th March 2015**
Date of Decision	:	**16th April 2015**

DECISION

Decision

1. The Service charges for the years 2008-2015 are reasonable, except those charges relating to the repainting of the balconies, and are payable by the Applicants. No determination is made for 2016 given the charges for that year are not yet known.

2. The requirements of the s.20 consultation in respect of the major works, both for the new roofs and communal doors, have been complied with.

3. The costs of the major works, both in respect of the new roofs and communal doors are reasonable and payable by the Applicants, except for the cost for the repainting of the balconies in Phase II of the new roofs.

4. The Applicants, who owned their properties when the original UVPC doors were fitted, are to be credited with £250 against the cost of the replacement communal doors in both Phase I and II.

5. The cost of repainting and re-fixing the balconies in Phase II are unreasonable and are not payable by the Applicants.

6. The charges made within Phase II for the removal and temporary re-fixing of Sky dishes should be removed from the Service charge and re-charged to the owners of the Sky dishes.

7. An order pursuant to s.20C of the Landlord and Tenant Act 1985 is made.

Reasons

Introduction

8. This is an application by 25 leaseholders of various properties (the Properties) in Rockingham, Winterhill and Kimberworth Park, Rotherham, all of whom are members of the Rotherham Leaseholders Association (the Applicants.) The lead Applicant is Anita Heaton of 89 Town Lane Rockingham Rotherham and the Applicants' representative.

9. The application is made pursuant to section 27A of the Landlord and Tenant Act 1985 (the Act) for the determination, payability and reasonableness of service charges relating to the various properties. The years that are the subject of the application are 2008-2016 inclusive.

10. The Respondent to the application is Rotherham Metropolitan Borough Council (the Respondent) represented by Mr Tyson, Counsel. Mr Pedley a Leasehold Officer, Mr Brayshaw, the Head of Housing Repair and Maintenance Service and Miss Foster attended the hearing.

11. Directions were given on 24th June and 13th October 2014 providing for the filing of statements and bundles. A hearing was fixed and took place on 10th and 11th December 2014.

12. At the hearing directions were given for the filing of further evidence and the matter was relisted for determination, without the parties, on 17th February. On that date, following the filing of the further evidence, other details were requested and the matter was thereafter listed for final determination, without the parties, on 20th March 2015.

Background

13. On 3rd April 2013 the First-tier Tribunal (then the Leasehold Valuation Tribunal) made a determination in respect of the properties (and others in the Rotherham area). This was an application by the Respondent for a variation of the various leases under which all the properties were held to change the accounting period for the service charges.

14. The decision of the Tribunal, as agreed by the parties, was to change the charging period from five to one year. The leases had, until that decision, allowed the Respondent to assess the service charge for a five year period, commencing on the date of the lease. The service charge was charged on an estimated basis and at the end of the five year period, reconciled. The leaseholder would then be either in debit or credit. The variation provided for the service charge to be charged annually on an actual basis.

Inspection

15. The Tribunal inspected the various properties in the presence of either the leaseholder or Miss Heaton and representatives of the Respondent.

16. The properties are each flats in a development built in the 1950's and early 60's. The blocks of flats are brick built and have a tiled roof. All have UVPC windows. The communal doors on some properties have recently been replaced with composite doors, whilst others have the UVPC doors originally installed approximately 8 years ago. The roofs to the individual blocks have been replaced within the last 1-2 years.

17. When inspecting the properties the Tribunal undertook both an internal inspection where possible and also of the common parts.

18. In the block comprising 35, 45, and 47 Monks Close and 32 Bray Walk new communal doors have been installed which operate under a fob system. The Tribunal were shown that the new doors no longer had letter- boxes fitted into them. The flats having tenants had had replacement front doors in which letterboxes had been fitted but the specifications given to the leaseholders had not allowed for this. Six letterboxes had been put in the foyer after the installation of the new doors.

19. In the blocks where there were no new communal doors, the Tribunal saw evidence of poorly fitting doors. Some did not close easily and others had gaps around the doors such that they were not weather-proof.

20. When undertaking an internal inspection of the flats the Tribunal was shown the repairs undertaken to the balconies. This work had been done as part of the roofing work and involved the balconies being modified and repainted. The modifications involved the removal of wood from the balconies. The Tribunal was shown evidence on all the balconies of rusting and, on some, where the new paint had broken away. There was also evidence at 80 Winterhill Road of the balcony coming away from the window frame where it was secured.

21. The Tribunal was advised that on some blocks a new canopy had been put over the front door. This was said to be ineffective and allowed standing water.

22. The leaseholders also advised that when the roofing work had been done the workmen had caused damage to the glass fronting the balcony. This had happened when using angle grinders to repair the balconies and had caused pitting to the windows.

The Leases

23. All the leases to the properties were varied following the decision of the Tribunal in 2013. There are three different leases relating to the various properties. Each of the amendments provide for the Respondent to maintain, repair or renew the buildings.

24. The first lease type has the following clause:

3.1 The Services are-

3.1.1. operating, maintaining, repairing and, whenever the Landlord, acting reasonably, considers it appropriate, renewing, replacing or modifying the Plant;

3.1.5 supplying, maintaining, servicing and keeping in good condition and, wherever the Landlord considers it appropriate, renewing and replacing all fixtures, fittings, furnishings, equipment and any other things the Landlord may consider desirable for performing the Services;

25. The second type has the following provision:

To pay to the Landlord without any deduction by way of further and additional rent a reasonable part of the cost of repairs (including the making good of any structural defects) maintenance insurance and provision of services (if any) by the Landlord and the costs of management of the said Building of which the Property forms part and improvements (including alterations and additions) carried out by the Landlord to the Property of the said Building or land forming

part of the cartilage thereof (if any) such further and additional rent (hereinafter called the service charge) in accordance with the provisions of schedule (x).

26. The third type has the following provision:

To pay to the Landlord without any deduction by way of further and additional rent the service charge being a reasonable part of the cost of the services as shall be determined in accordance with the provisions of schedule (x)

The Issues

27. The application was for the review of the service charges for 2008-2016 including major works.

28. At the directions appointments the Tribunal determined that some elements of the charges were not in dispute, namely those charged for insurance, cleaning and management.

29. The matters in dispute are:

- The cost of major works relating to the replacement doors and roofs.
- Whether the consultation requirements for the major works have been complied with.
- Whether the Respondent has complied with s 21B of the Act.
- S 20C application.

The Law

30. (1) Section 27A(1) of the 1985 Act provides:

An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

31. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

32. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means:

... an amount payable by a tenant of a dwelling as part of or in addition to the rent–
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or

insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

33. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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

34. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable*

35. When considering the reasonableness and payability of any service charge the Tribunal must also consider whether all statutory requirements have been fulfilled. This is in respect of any "qualifying works".

36. Section 20 of the Act provides:

> (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7)(or both) unless the consultation requirements have been either-*
> *(a) complied with in relation to the works or agreement, or*
> *(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal*
> *(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement*
> *(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*

37. The Service Charge (Consultation Requirements) (England) Regulations 2003 specify the amount applying to section 20 qualifying works as follows:

6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

38. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented then an application can be made to a tribunal pursuant to section 20ZA of the Act.

39. Section 20ZA of the Act provides

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

40. When issuing a demand for the payment of service charges, the terms of section 21B of the Act must be complied with. This requires the demand to be accompanied by a summary of rights and obligations and, until such time as those are supplied, any tenant is entitled to withhold payment of the service charges.

41. Section 21B of the Act provides

> *(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges*
> *(2) The Secretary of State may make such regulations prescribing requirements as to the form and content of such summaries of rights and obligations*
> *(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand*
> *(4) Where a tenant withholds a service charge under this section, any provision of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it*

The Hearing

Apportionment

42. The Applicants referred to the decision of the Tribunal in 2012 when the various leases were amended. It was stated the Respondent has never sent any notification to the parties to confirm the appropriate amendments have been registered at HM Land Registry. Miss Heaton also stated the Respondent had not secured the necessary 75% to effect the amendments as required.

43. Mr Tyson submitted the amendments were effective from the date of the Tribunal's decision and the Respondent was dealing with the necessary registration requirements.

44. The Tribunal noted that on an apportionment schedule prepared by the Respondent for the purposes of the service charge there appeared to be a difference between the provisions of the Lease for the property and that charged by the Respondent. This applied, in particular, to the leases for 81 and 89 Town Lane and 86 Winterhill Road. For example the Schedule shows the lease for 86 Winterhill Road states the service charge is to be apportioned between 8 flats whilst the Respondent has apportioned the charges by 2. Similarly the lease for 81 Town Lane refers to an apportionment of 18 whilst the Respondent charges one sixth to the Property

45. Mr Pedley advised that their system of charging does not necessarily follow the terms of the Lease. For example, if there are 8 flats in a block, their system would treat it as 4 blocks of 2 but the net charge to each flat would be the same. Further where there are 18 flats per block, their system would treat those as 3 blocks of 6 flats.

46. The Tribunal further noted that the leases for 32 Bray Walk, 35 and 45 Monks Close, 89 Town Lane and 86 Winterhill Road stated the service charge should be multiplied rather than divided between the appropriate number of flats. Mr Tyson agreed this appeared to be the case and must be an error in drafting given the result would be incorrect.

47. The Respondent, in further submissions to the Tribunal, noted the lease for 45 Monks Close incorrectly stated the service charge should be divided by four. There are six properties in the block and consequently the Respondent has charged one sixth of the relevant charges to the property.

48. Miss Heaton expressed concern the majors works were now charged in one year rather than being payable over a five year period, thus causing hardship.

Service Charges

49. Miss Heaton stated the methods of charging by the Respondent caused confusion, especially following the change to the accounting period from 5 years to 1 year. The Respondent changed their system before the Tribunal's decision in 2012. For example, in respect of 32 Bray Walk the last year for charging under the old method was 2012/11. The annual charge was then applied for 2011/12. Major works were then charged in 2013/14. It was unclear how the charges arose.

50. Mr Brayshaw advised that prior to 2010/11 the service charge was based on a forward estimate for 5 years. This was then divided for each annual charge and at the end of the five year period there was a reconciliation and the leaseholder had a balancing charge or payment. Interest was charged in each year at 3%.

51. In 2010 the Respondent outsourced the maintenance work to outside contractors. Prior to that the Respondent had costs available but when the reconciliation statement was sent to the leaseholder there was no breakdown of the works.

52. The Respondent can no longer provide a breakdown for individual items because a charge is made per property for its maintenance following an agreed scheme of work. Anything over and above that scheme is then charged to the individual leaseholder.

53. The scheme of work allows for responsive repairs on a day to day basis. The charge is divided by twelve and paid monthly. This system enables the Respondent to negotiate better rates and is both easier and cheaper to monitor.

54. Prior to 2010 the system for repairs was that each individual job was charged for. There was a scheme of rates for each type of work and that would then be time recorded. The works would then be apportioned, where appropriate between the leaseholders and any tenanted properties. Mr Brayshaw had no knowledge as to how any charges for the communal areas were apportioned.

55. Miss Heaton stated that some of the works referred to on the work schedules had not been done but accepted she had nothing to prove this. It was confirmed that the items for cleaning, insurance and management were not in dispute.

56. Mr Pedley conceded the information provided to the leaseholders in the past was not adequate but the Respondent had been constrained by its IT system. A new system was now in place and he was hopeful more detailed information could now be provided.

S 21B of the Act

57. Miss Heaton advised the Respondent had not complied with the requirements of the Act in that the Respondent had failed to supply the necessary summary of rights and obligations when issuing the service charge demands. She acknowledged the leaseholders had received one for 2013/14 but not for the earlier years.

58. Mr Pedley stated he was aware the Respondent had issued the necessary notices in 2012, the year of his appointment. He had spoken to his predecessor who confirmed they had also been issued prior to that year. However, no copies of the notices issued in those years were available because no paper copies were held on file.

Communal doors

59. Mr Tyson confirmed that of the properties that were the subject of the application, not all the blocks had new communal doors. The new doors were to be installed in two phases. Those blocks where all the flats were tenanted did not require consultation.

60. Miss Heaton stated that there was general opposition to the new doors upon the basis the existing doors were adequate and their replacement was increasing the costs for the leaseholders. The doors had only been installed some eight years previously. One of the reasons given by the Respondent for the replacement of the doors was anti-social behaviour. The doors would provide greater protection for the occupants of the flats. This was disputed, Miss Heaton maintaining that some of the tenants of the flats caused the difficulties. This would not be remedied by new doors.

61. Miss Heaton also raised the fact that the cost of the replacement doors was significantly higher on Phase II (those still to be done) than on Phase I (those already done).

62. Mr Tyson stated the doors were being replaced, not only to minimize the anti-social behaviour, but also because they had reached the end of their life. The existing doors could be forced whilst the new doors were considerably more robust.

63. Mr Bamforth confirmed the cost of the doors were reasonable. There were economies of scale due to the number of replacement doors required.

64. Miss Heaton advised that the Notice to carry out works dated 27th August 2012 did not specify the new doors would be operated on a fob system, nor that there would be no letterboxes.

65. Mr Pedley advised the cost on the two phases was different, although the replacement doors are identical. This is because the consultation notices sent out for Phase I did not specify the new system would operate on a fob. The Respondent had therefore taken the decision not to recharge this element of the cost to the leaseholders. This cost had, however, been included in the notices for Phase II, hence the higher cost.

66. Miss Heaton submitted the Applicants were not properly consulted regarding the doors. The Applicants had been asked to propose contractors but they were unable to do because the Respondent was having to follow EU Regulations. A request had been made for the Respondent to provide examples of the anti-social behavior upon which they relied but none had been forthcoming. The argument the blocks would be more secure was untrue. Miss Heaton's understanding was that the key fobs were being handed out to a range of people and this wouldn't make the properties more secure.

67. Mr Tyson submitted that the consultations required by s.20 of the Act had been carried out and reliance was placed upon the statement of Mr Pedley who had detailed the procedure.

68. Mr Brayshaw explained that compliance with EU regulations was only necessary if the level of work exceeded a certain amount that was currently £4.5 million. The contract for the doors amounted to a total

of £800,000 and could therefore be dealt with under local authority standing orders. The tendering process was in line with standing orders rather than EU regulations.

69. A proposal was made on behalf of the Respondent. When the original doors were installed a charge was made to each of the leaseholders then owning their properties of £250. This was the maximum because there had not been the consultation required by s.20 of the Act. It was proposed that each of the leaseholders who had paid that charge would be given credit for that amount against their liability for the cost of the new door. It was accepted that the Respondent's records did not accurately show who had paid those charges. It was therefore agreed that any leaseholder owning their property when the original doors were installed would be given the credit of £250. The Applicants accepted this proposal.

70. Miss Heaton stated that only two weeks prior to the hearing had the Applicants had the opportunity to have a meeting with Bamfords, the contractors appointed to deal with the replacement doors in Phase II. In the consultation process it had never been made clear who would be given the fobs to operate the doors.

71. Mr Tyson submitted there was a difference to be drawn between consultation and information. He conceded the information may not have been sufficient but that did not equate to the consultation not being carried out properly.

72. Mr Brayshaw advised the fob system had been intended to reduce costs and also improve security. When a tenant vacated a flat, if they failed to return their key, the Respondent would have to replace three keys per property. The fob system allows for the fob to be cancelled via the internet. The Applicants had expressed concern the system allowed the Respondent to monitor their movements. This was not the intention; the fob allowed the Respondent to monitor the properties i.e. to determine if a tenant had left the property. The terms of a tenanted flat were that it could not be left vacant for more than 4 weeks. The system also allowed the police access to the blocks where necessary.

73. In further submissions the Respondent provided a spread-sheet showing the cost breakdown per property for the new doors, both for Phase I and Phase II, the latter to be charged in 2015/16.

74. The Respondent confirmed the properties on Monks Close and Bray Walk were part of Phase I whilst the remainder are in Phase II, the latter to be completed in 2014/15. The cost to the leaseholders in Phase I was £800.67 except those on Bray Walk where the cost per leaseholder was £737.33. The Respondent advised it had omitted to charge for the locks on Bray Walk and thus the cost was cheaper. The consultation process for Phase I did not include the fob system and consequently the leaseholders had not been charged for the electronic lock, but only the standard lock. This was remedied for the consultation on Phase II.

75. In Phase II the cost to the individual leaseholder varies, dependent upon the size of door. The cost to the leaseholder varies between £1079.07 and £1105.40. Those costs include the new doors (both front and rear), the lock, fob and letterbox. The cost of the fob is £3.95, each leaseholder having two fobs. The letterboxes each cost £79.

76. The Respondent confirmed that no charge would be made for a letterbox where none had been fitted.

New roofs

77. The work to the roofs on the properties was undertaken in two phases. Those in Phase I were 135 Church Street, 11 and 71 Grayson Road, 516 Roughwood Road, 5, 7, 9,Town Lane and 30, 34 and 47 Wilcox Green The remaining properties were in Phase II.

78. Miss Heaton stated under the Decent Homes Guidance the life of a roof was 30 years. Previously the Respondent had maintained the roof had a lifespan of 50 years and thus did not require replacing. However, in 2005/06 the Respondent served notices commencing the consultation process for new roofs and doors. Nothing further happened, the leaseholders receiving no explanation why the work did not proceed. There were continuing issues with the roofs that, in some cases caused problems in individual flats. It was argued that had the remedial work been undertaken at an earlier date, the cost would have been lower. Further, had the work been undertaken at the time of the Decent Homes Programme financial assistance could have been available and that may have reduced the cost to the individual leaseholders.

79. Miss Heaton submitted the requirements of s.20 had not been complied with. A s.20 notice was served on 24th August 2012. This related to Phase I of the roofing work. There was no interim notification to advise who had provided the estimates. The notices indicated a cost to those leaseholders of £2529.30. Work on this Phase commenced in November 2012 and carried on through the winter. In addition the leaseholders of 31, 34 and 47 Wilcox Green did not receive any notices.

80. Miss Foster confirmed the notices were sent by ordinary post via the Post Office. Mr Tyson confirmed the Respondent believed all the notices to have been sent, there being copies of the relevant notices within the Respondent's bundle and confirmed by Mr Pedley within his statement.

81. In his written statement Mr Pedley set out the consultation for Phase I stating the process had commenced with a notice dated 20th August advising the leaseholders of the Respondent's intention to commence work to the roof. This notice was amended and re-issued on 3rd September. The observation period closed on 18th September 2012 and the notice providing details of the appointed contractor was issued on 28th November 2012.

82. The costs on Phase II, for the same work, were higher than those in

Phase I and, at no time, did the leaseholders received an explanation regarding the cost difference.

83. Mr Tyson advised that the difference on cost was due to the Respondent failing to specify all the necessary work when dealing with Phase I. This was remedied on Phase II but resulted in a higher cost to those leaseholders.

84. The estimated cost on Phase I was £2529.30 for some of the properties and £2394.11 for the remainder. The costs on Phase II were variable between approximately £4700 and £5800.

85. Mr Tyson advised that on Phase I the Respondent had kept to the estimate and charged an additional 10%. The Respondent absorbed the balance.

86. The difference between the various properties was caused by some variables to the necessary works; some roofs required more work than others. The costs were apportioned equally between the flats in each block.

87. Miss Heaton maintained the works were not adequately supervised. Asbestos was removed and left on balconies. Tiles were removed and wrapped on pallets suggesting they were not being disposed of. The same was true of the cast iron downpipes.

88. Mr Brayshaw confirmed he had no knowledge of whether the tiles or pipes were recycled. There was no salvage element in the tender. However, wrapping the tiles for disposal was not unusual and there was an assumption this was the contractor's method of disposal.

89. There was also concern that charges had been made for the removal of asbestos when a report stated that only the properties on Roman Crescent had asbestos.

90. Mr Brayshaw confirmed White Young and Green were instructed to carry out a survey on the properties to include a report on the presence of asbestos. The report disclosed in the proceedings did not include the reports for asbestos and others were available that gave more detail.

91. Miss Heaton advised the Applicants were not happy with the quality of the work done. The balconies had been repainted when it was snowing. The Applicants had tried to obtain an independent report upon the quality of the work but had failed to do so. The contractors were afraid such a report would jeopardise their prospects of future work with the Respondent. The work had not been quality checked.

92. Mr Brayshaw confirmed there was a retention against defects for 1 year of 2.5 %. The quality of the work had been checked but the costs did not allow for a site manager.

93. In respect of Phase II Miss Heaton confirmed the consultation process was again defective. Some leaseholders had not received the initial

notice and consequently the process was halted. Mr Pedley confirmed this to be the case and the consultation process was recommenced in February 2013. The tendering process began in March 2013. The second notice was issued in December 2013 and the period for observations ended on 4th January 2013. The third notice, advising of the award of the contract was issued on 17th January 2014.

94. Miss Heaton advised the leaseholders responded to the second notice on 17th and 19th December. A request was also made for the leaseholders to view the estimates but this was denied upon the basis they were commercially sensitive. On 6th January 2014 a meeting was held with the Leasehold Officer who advised the Cabinet were meeting on the same day to award the contract. Miss Heaton submitted that for the necessary paperwork to be prepared for that meeting, it would have to have been prepared prior to the closing date for the leaseholders' observations. The leaseholders were notified on 17th January 2014 the contract had been awarded.

95. Mr Tyson submitted the s.20 consultation had been carried out correctly. Whilst some aspects of the process could have been done better this did not invalidate what had been done. In the event the Tribunal did not agree then the Tribunal was invited to dispense with the consultation per s20ZA.

Balconies

96. Phase II of the roof works included repairs/repainting to the balconies of the individual flats. The Applicants were unhappy with the quality of the work. The work had been done during bad weather with the result the paint was now flaking and there were signs of rust. Mr Brayshaw advised the balconies were not in a good condition. The work was really of a cosmetic nature although some wood on a number of the balconies balconies were removed.

S 20c application

97. The Applicants made an application for an order pursuant to s20C of the Act. Miss Heaton submitted that had the Respondent dealt with the service charge correctly in the first instance the proceedings and resultant costs would have been unnecessary.

Determination

Apportionment

98. The Tribunal noted the concerns expressed by the Applicants in respect of the decision made in 2013 regarding the variation of the leases and the impact that was now having. However, this Tribunal did not have the jurisdiction to reconsider the matter. The Tribunal considered it regrettable the Respondent had not dealt with the registration process given the time lapse since that determination. The Applicants appear to have been left in limbo having heard nothing from the Respondent to confirm the effect of their application to the Tribunal.

99. The Tribunal noted the confusion in the various leases regarding the apportionment of the service charges between the flats in some of the blocks. It noted where the lease was defective the Respondent had interpreted them to the benefit of the leaseholder.

100. The Tribunal had no alternative other than to deal with the service charge on an annual basis as determined by the leases.

101. At the hearing the Respondent advised that it did offer payment options to leaseholders for the cost of major works, one of which is an interest free loan over a period of 24 months

Service Charge

102. The Tribunal noted that although the application related to the service charges for 2008-2013 the Applicants made no specific submissions relating to the reasonableness of the service charges in the earlier years. It had been agreed at a preliminary hearing that cleaning management and insurance were not in dispute. The only remaining item in the years 2008-2013, other than ground rent, was the charge for repairs and maintenance. There was no evidence presented by either party regarding this item (except for major works), save the Respondent confirming a breakdown of how the charges for routine maintenance and repairs were calculated was not available.

103. The Tribunal noted the Applicants' concern was that they had never been supplied with a breakdown of this item and therefore had no idea how it was calculated. Their ability to challenge it was therefore very difficult. The Tribunal could not make any further investigations due to the lack of information but noted the assurances given at the hearing that the Respondent would provide more information in the future. A new IT system should make this possible.

104. The Tribunal considered the charges made for repairs and maintenance for the relevant period. There were obviously differences between the various properties but noted they approximated between £100-£200 per annum. In view of those amounts the Tribunal determined them to be reasonable and payable.

S 21B of the Act.

105. The Respondent stated the necessary notices to comply with s21B had been sent in each year although Mr Pedley only had personal knowledge of this from 2012. In this matter, the Tribunal preferred the evidence of the Applicants. The Respondent had been unable to produce any copies of the notices for the earlier years.

106. The Applicants did acknowledge they had each received the necessary notices in 2013/2014.

107. The provisions of s21B of the Act provide for any tenant to withhold payment of their service charge in the event the section is not complied

with. However, any failure to comply is rectified once the necessary notices are served. Therefore, here, the rectification occurred by the serving of the notices in 2013/2014 and consequently the Applicants are liable to pay their service charges.

Communal doors

108. The Tribunal considered whether the consultation procedure required by s.20 of the Act had been complied with. Miss Heaton had given a detailed account of the events surrounding the consultation and that the consultation relating to Phase I had been inadequate.

109. The Tribunal considered the provisions of s.20 of the Act that stipulates any notice must describe the work "in general terms". It considered whether the Respondent's failure to include within its description of the work the fob system and determined that it was not. The Notice confirmed the doors were to be replaced. The cost of the fob is not a significant part of the cost replacement and in Phase I, that element has not been charged to the leaseholders.

110. Miss Heaton, in written submissions, s20 of the Act had not been complied with, both for Phases I and II. The Tribunal noted the written statement of Mr Pedley setting out the procedure that had been followed. The Tribunal considered the requirements of Service Charges (Consultation etc) (England) Regs 2003 (the Regulations). The Applicants confirmed they received the Notice of Intended Works dated 27th August 2012. The Notice invited them to make any observations by 25th September 2012. A Statement of Estimates was subsequently issued dated 16th November 2012, a fact again agreed by the Applicants. The Notice advised the contract was to be awarded either to Bamfords (£383826.20) or SSG (£446824.00). Written observations were invited. The Applicants thereafter state they were not notified to whom the contract had been awarded and consequently the s.20 process was flawed.

111. The Tribunal noted the contract under Phase I was awarded to Bamfords. This was not a contract requiring public notice and is therefore governed by Schedule 4 Part 2 of the Regulations. Paragraph 13 states that where the contract is awarded to the lowest bidder the landlord is not required to notify the tenant of the award of the contract. Consequently the Tribunal finds the Respondent did comply with the requirements of s.20 in Phase I.

112. In Phase II, it was noted the Notice of Intended Work was issued on 19th March 2014 and a period of 30 days given for any observations. This Notice gave more details of the work to be done, including the fob system and the installation of letterboxes. A Statement of Estimates was issued on 15th August 2014. This did not name the contractors who were identified as either A, B or C. The lowest quote was from Contractor C. This Notice further confirmed observations had been received during the earlier consultation period, namely that the replacement of the doors "was untimely and unnecessary". A further letter was sent dated the 2nd September 2014 providing the names of

the contractors but not identifying their quotes. In his statement dated 7th November 2013 Mr Pedley stated the contract has not then been awarded. However, Miss Heaton advised the leaseholders were invited to an information meeting with Bamfords on 4th December 2014 and they must therefore have been awarded the contract.

113. At the hearing the Applicants did not raise this as an issue and the Tribunal did not have before it any evidence to determine whether Bamfords had provided the lowest quote. If it had, then the requirements of the Regulations have been met for the same reasons as given for Phase I.

114. The Tribunal considered the position should Bamfords not have provided the lowest quote. In those circumstances there would not have been compliance with s.20. Whilst there was no application for dispensation pursuant to s.20ZA of the Act upon this particular point, the Tribunal considered what their decision would have been, had the Respondent's done so. In *Daejan Investments Ltd v Benson [2013] UKSC 14* the Supreme Court held that, when granting dispensation, the focus should be the extent to which the leaseholders are prejudiced by non-compliance with s.20. Even if there has been a serious non-compliance, the leaseholders may not have been prejudiced. In this case the Tribunal does not consider the Applicants have been prejudiced in the event there has been non-compliance. The omission would only have been failure to send out the Notice for the award of the contract. The Applicants have had the details of the quotes and have had the opportunity to make representations. The difference between the quotes obtained, whilst anonymous, was not significantly different. The breach, if there has been one, has not prejudiced the Applicants. It is therefore likely that were an application for dispensation under s.20ZA be necessary, it would be granted.

115. The Tribunal did consider the Respondent had not been consistent when dealing with the issues of the letter-boxes. It was noted from comments made at the inspection that when the leaseholders wanted to replace the front doors to their properties they had been told that, for Health and Safety reasons, they could not have letter boxes installed. Despite this, tenants in the same blocks had replacement doors fitted with letter-boxes. The Tribunal understands this policy has now changed but it has left leaseholders having to either fund the cost of a letter-box being fitted in their existing door or relying upon those installed in the foyer of their block.

116. The Tribunal noted that upon the compliance by the Respondent with further directions, additional information was available for the cost of the replacement doors. This was copied to the Applicants who made further submissions for consideration. The costs confirmed that in Phase I none of the leaseholders had been charged for the fobs. The Respondent also confirmed that no leaseholder would be charged for a letterbox where none had been provided.

117. The Tribunal considered the arguments that the doors did not require replacement, having only been fitted eight years earlier. The doors

should have had a much longer life span.

118. The Tribunal noted that at the inspection some of the doors did not close properly and were not weatherproof. It was also apparent to the surveyor member of the Tribunal that the doors yet to be replaced and the same as those already replaced, were of a domestic quality and not sufficiently robust to be fit for purpose. Whilst there had been arguments surrounding the source of any anti-social behaviour the Tribunal did not deem it necessary to determine upon this point. The majority of the doors seen at the inspection required replacing. Whilst some may have been in a better condition than others it would not be economical for the Respondent to replace the doors on a piecemeal basis. If it had done so, then the costs to the Applicants could potentially be higher. The Respondent had confirmed in their evidence they achieved economies of scale. The doors installed on Phase I were more robust and of an acceptable standard.

119. The Applicants had argued that the doors should not have required replacement having only been installed in 2007. The Tribunal noted that in 2007 each leaseholder had been charged £250 for the cost of the door. The Respondent had no record of who had paid that charge. The Tribunal noted it was offered and agreed at the hearing that each leaseholder, owning their property in 2007, would be credited with £250 against the cost of the new door.

120. The Tribunal finds the replacement of the communal doors to be necessary. The costs of works in Phase I and to be charged in Phase II are reasonable and are payable by the Applicants.

New roofs

121. The Tribunal again considered whether the Respondent had complied with the consultations required by s.20 of the Act. The Applicants had submitted that the process was flawed for both phases of the work.

122. The Tribunal again had the benefit of the statement of Mr Pedley dated 7th November 2014 setting out the steps taken.

123. In Phase I a Notice to carry out works had been issued on 20th August 2012. This stipulated a consultation period of 30 days ending on 18th September 2012. The notice was defective in that it had been issued under Schedule 4 Part 2 of the Regulations but should have been issued under Schedule 4 Part 1.The value of the works was such that it required public notice. The Notice was corrected by a letter sent to the leaseholders on 3rd September 2012.

124. On 28th November 2012 a Notice of Contract Statement was issued advising of the appointment of Lovells to carry out the necessary work. This identified the observations made by the leaseholders within the consultation period.

125. Miss Heaton, in written submissions, stated that no Notice of Reason for awarding the contract had been issued.

126. The Tribunal noted the steps taken by the Respondent complied with Schedule 4 Part 1 of the Regulations and therefore finds the Respondent did comply with the consultation process required in Phase I. The Respondent did not need to issue a Notice of Reason in this particular case.

127. The Tribunal considered the steps taken in Phase II. In his statement Mr Pedley confirmed that some properties to be included within Phase I had not received the Notice to carry out works although they had received the Notice of Contract statement. As a result those properties that had not been properly consulted in Phase I were removed from this phase and included within Phase II.

128. In Phase II the Notice to carry out works was sent out on two different dates, either the 25th January 2013 or 5th February 2013. The leaseholders were invited to provide their observations by 25th February or 5th March 2013 respectively. The Tender process commenced after 7th March. The Respondent issued a Statement of Estimates on 4th December 2013 allowing until 4th January 2014 for any observations. Thereafter a Notice of Reason for awarding the contract was issued on 17th January 2014.

129. Miss Heaton submitted that the process was flawed by reason of the errors made by the Respondent and that it had not sufficiently taken the concerns of the leaseholders into account. Further, a request to view the estimates had been refused without good reason, the Respondent stating that they were commercially sensitive.

130. The Tribunal noted that there had been difficulties with the consultation process given that some leaseholders did not receive the necessary paperwork. However, the Tribunal considers that whilst the Respondent's administration was not ideal it did take all reasonable steps to remedy the defects when they came to light. They withdrew those properties that had not been properly consulted. The Tribunal fails to see what other steps could have been taken. In respect of the criticism that the Respondent did not take sufficient notice of the observations made by the Applicants, the Tribunal did not find the steps taken by the Respondent to be unreasonable. Further, the Tribunal did not consider the Respondent to be unreasonable in its refusal to allow the Applicants to view the estimates provided. They were commercially sensitive. The Tribunal therefore finds that in respect of Phase II the Respondent complied with the requirements of s.20 of the Act.

131. The Tribunal noted the Applicants argued both that the work should have been done at an earlier date and had it been so the cost may have been lower. Further, had the works been done at an earlier stage grants may have been available to assist in the cost of the work. The Applicants also argued that the works were not necessary. The works that were done were not of a good standard.

132. The Tribunal considered the arguments that had the works been done at an earlier stage, the cost would have been less. There was no

evidence produced to the Tribunal to show that the current costs are significantly higher than they would have been had the work been undertaken at an earlier date.

133. The Tribunal noted the details provided by the Applicants for available grants. Reference was made to the Decent Homes Programme and the Pathfinder Regeneration Scheme. The Respondent, in their written replies indicated grants were more widely available to leaseholders in the past. Despite this, the Tribunal could not determine to what extent any funding may have been available to individual leaseholders in the past and whether they would have qualified for any particular schemes. The information to establish the necessary criteria to qualify for assistance was not presented. In this respect, the Tribunal agreed with the Respondent that this argument was speculative.

134. The Tribunal noted the argument that the work was not necessary.

135. The Tribunal observed the Respondent had commissioned a report by WYG that confirmed the roofs to be nearing the end of their lifespan. In view of the age of the properties the Tribunal did not find this to be unreasonable. The alternative would have been for the Respondent to embark upon a series of repairs. The Applicants provided no evidence to show that repairs would have been more cost effective. The Tribunal did not find the Respondent to have acted unreasonably in replacing the roofs to the properties rather than repairing them.

136. The Tribunal considered the quality of the work. On inspection the Tribunal noted the new roofs appeared to be of a good standard.

137. The Tribunal has been provided with the costs for both Phase I and II. These were produced after the hearing and were copied to the Applicants. The Tribunal received further written representations from the Applicants regarding this, but nothing specifically in respect of the costs incurred. It was noted the charges on Phase I were lower than Phase II as advised.

138. The Tribunal noted that at the inspection some of the Applicants had complained that they had paid for loft insulation when this had already been done to their individual properties. The Tribunal considered that this was not a relevant factor when determining whether the charges for the roof insulation were reasonable. The entire roof would have been insulated when it was replaced and it would not have been possible for the contractors to isolate those already having insulation; this would not have been cost effective. The Applicants are liable under the terms of their lease to pay a proportion of the cost.

139. When looking at the costs under Phase I the Tribunal did not find any of those charged to be unreasonable, save for the cost in respect of the balconies, to which reference is made below.

140. When looking at the costs in Phase II the Tribunal noted a charge had been made for removing and temporarily re-fixing Sky dishes. The Tribunal did not consider it reasonable for this to be charged to the

leaseholders unless they all had the benefit of this. Rather, any charges for this item should be re-charged to the individual leaseholders for their Sky dishes.

141. The Tribunal determined the charges relating to Phase II, save in respect of the balconies, are reasonable.

Balconies

142. When inspecting the properties, a common theme throughout was the poor state of the re-painting and repairs to the balconies at each property. It was said in evidence the balconies had been painted when it was snowing. In evidence the Applicants said they had challenged the contractors and had been told they had to do the work on that day to get paid.

143. The Tribunal saw significant evidence of balconies rusting or paint flaking away that endorsed the complaints made by the Applicants. Given the balconies had only been painted in April 2014 it was not expected they would have deteriorated to this extent in such a short space of time. The Tribunal considered that if the contractors felt obliged to paint the balconies in unsuitable conditions then the contract specification regarding this element of the works was badly drafted and managed by the Respondent. The Tribunal therefore determines that the costs relating to this element of the work in Phase II is unreasonable and is therefore not payable by the Applicants. No charges were made to the leaseholders for this work in Phase I and therefore no determination is required for this phase.

S 20C application

144. The Tribunal considered this application by the Applicants and determined it should be granted. Whilst, in this case, the Applicants have only partially succeeded, nevertheless the Tribunal has taken into account the history surrounding the application. It is clear form the weight of evidence submitted to the Tribunal that the Applicants have had great difficulty in obtaining meaningful and satisfactory information from the Respondent in respect of issues relating to their properties. The Tribunal took into account the comments made by Mr Tyson, counsel for the Respondent, when dealing with the issue of the communal doors, namely that whilst the s20 consultation was correct the Respondent could have provided more information.

145. The Tribunal has also found that in dealing with this application the Respondent has not been immediately forthcoming with the information necessary to make a determination. For example, directions have had to be given after the hearing to provide a breakdown of the costs of the major works. This should have been provided and made available to the Applicants at a much earlier stage. This has evidenced the complaint made by the Applicants that information is never readily provided. The Tribunal has to question whether, if the information now available had been provided at an earlier stage, the proceedings would have been necessary.

146. The Tribunal also took into account the comments made by Martin Rodger QC in Conway et al v Jam Factory Ltd [2013] UKUT 0592

> "75. In any application under s.20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on a just and equitable order to make."

147. In this case the Applicants are coping with the burden of the cost of the major works that is compounded by the change to the terms of their lease. Whilst the Applicants agreed to the original application to change the period for the payment of their service charge from five to one year, this was done a time when they were seemingly unaware of the impending works and that their cost would become payable in one year. It seems that to thereafter allow the costs of these proceedings to be included within their service charge would not be just and equitable. An order pursuant to s.20C is therefore made.

Annex 1

Applicants

Name of Applicant	Postcode of Property
Julia Bergwerff	S61 2EN
Richard Guest	S61 2EN
Duncan Hutson	S61 2EN
David Smith	S61 2EN
Marion Lewis	S61 3BL
James Booker	S61 3BN
Mr & Mrs Broomhead	S61 3BN
Pauline Robb	S61 3BN
Margaret Gilbert	S61 4DP
Ian Henderson	S61 4DP
Cedric Graves	S61 4DR
Anne Millsom & Franc Palmieri	S61 4DR
Mr & Mrs Hartley	S61 4HF
John Handley	S61 4HG
Keith Harrison	S61 4JG
Mr & Mrs Sheppherd	S61 4JG
Jackie Williams	S61 4JG
Andrea Whitehead	S61 4JH
Mr & Mrs B Wilson	S61 4JH
R Goode	S61 4JQ
Anita Heaton (Lead)	S61 4JQ
Amanda Scott	S61 4JQ
Ian & Julie Smith	S61 4JQ
Sandra Tomlinson	S61 4LB
Ashley Bowie & Angela Foster	S61 4LW