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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2013/0429**
Property	:	**Rythe House, Brandon House and Crane House, Bromley, Kent**
Applicants	:	**Paul Stebles (3 Rythe House)** **Helena Sands (10, Brandon House)** **Shaheen Umer (7 Crane House)** **Joan Williams (6 Crane House)** **Colleen Etheridge (3, Crane House)**
Respondent	:	**Phoenix Community Housing Association**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 (the 1985 Act). Determination of the reasonableness and payability of service charges.**
Tribunal Members	:	**Mrs HC Bowers BSc (Econ) MSc MRICS** **Mr C P Gowman** **Mr A D Ring**
Date and venue of Hearing	:	**21st November 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2nd December 2013**

DECISION

DECISION

For the following reasons the Tribunal finds that:

- **The service charge element in dispute for the door replacement in Rythe House was not reasonably incurred. A reduction of £753.70 should be made to Mr Stebles service charge account for this matter.**
- **The services charges in respect of the lateral mains work and the lift replacement were reasonably incurred and are payable.**
- **The Tribunal determines that the consultation process was correctly followed.**

In addition the Tribunal notes that the Respondent will carry out the remedial works to the interior of Mr Stebles' flat at no extra cost to him. The Tribunal also notes the Respondent's indication that there was no intention of treating any costs arising from this application as "relevant costs". In this respect the Tribunal also make an order under section 20C of the Landlord and Tenant Act 1985 that the costs arising from this application will not be added to future service charge accounts.

REASONS

Introduction:

1.) This matter is an application made under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) regarding the reasonableness and payability of service charges in respect of Rythe House, Brandon House and Crane House on the Bellingham and Downham Estates (the subject properties). The case was considered at a pre-trial review held on 11th July 2013 when Directions were issued. At the pre-trial review an application was made under section 20C of the 1985 Act, seeking an order from the Tribunal that any costs incurred in respect of these proceedings should not be treated as "relevant costs" for future service charge years.

The Law:

2.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Hearing:

3.) A hearing was held on 21st November 2013 at Alfred Place, London. Evidence and submissions were completed at the hearing, but occupied all the available time. Given the detail of the issues raised by the parties it was therefore necessary for the Tribunal to re-convene on 2nd December 2013 to consider their decision. This decision and the reasons take full account of the written and oral submissions by all parties. A brief summary of each case is provided below.

4.) The Applicants who attended the hearing were Mr P Stebles, Ms Sands and Ms Umer. They were accompanied by various family members and friends. Mr Stebles spoke on behalf of all the Applicants, but Ms Sands and Ms Umer also made representations. Mr Brown of counsel instructed by Mr C Cook of Cook and Partners, represented the Respondent. Also in attendance from Phoenix Community Housing Association were Mr M Craven, Mr J Manzi and Mr R Parker.

Background:

5.) At the start of the hearing the parties were able to assist the Tribunal and identify what aspects remained in dispute and could be usefully considered by the Tribunal. Essentially the dispute concerned certain major works including the lift replacement scheme for Rythe House, Brandon House and Crane House; the door entry replacement works for Rythe House and lateral mains major works for Rythe House and Crane House. Although the Applicants also raised issues in relation to future Qualifying Long Term Agreements, it was agreed that such an application was premature and as such was not considered by this Tribunal.

The Leases:

6.) A copy of the lease for 3 Rythe House was provided. It was confirmed that the leases are generally in the same format and no issue was being taken in respect of the individual leases. It was explained that the apportionment of the service charge for these leases provide that the ground floor units within these blocks do not contribute to any aspect of lift repair/replacement.

7.) The lease for 3 Rythe House was dated 2nd February 2004 and the original parties to the lease were London Borough of Lewisham as lessor and Felicity Motcho as lessee. The lease is for a period until 1st February 2129. The lease defines the "Demised Premises", the "Estate", the "Building' and the "Reserved Property". Under clause 5 of the lease, the lessee covenants to pay the service charges with reference to the tenth schedule. The ninth schedule sets out the lessor's covenants in respect of the obligations to repair, maintain, insure, keep the properly lighted, paint the exterior, maintain roads, maintain the district heating scheme, enforce mutual covenants and manage the estate.

8.) The tenth schedule contains two parts. Part I sets out the service charge mechanism including provision for a reserve fund. This part details the items to be included in the service charge. Part II makes provision for the recovery of service charge contributions for improvements.

Inspection:

9.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject flats, building or estate. Plans and photographs in the bundle illustrated the issues. In addition some video footage was available from "YouTube" and the Tribunal took the opportunity to watch the video clips.

10.) The parties explained that Rythe House and Crane House were part of the Brangbourne Road Estate and each block comprised of eight flats. Brandon House is within the Beckenham Hill Road Estate and there are two blocks that make up Brandon House, each comprising ten flats. The properties had originally been part of a portfolio that was owned and managed by the London Borough of Lewisham. The portfolio was part of a stock transfer to Phoenix Community Housing Association that occurred in 2007.

Representations:

11.) The Tribunal had full consideration to both the written submissions and evidence included in the trial bundle, together with the oral evidence and submissions made at the hearing. A summary of each party's case is provided below. Reference is made to the page number in the bundle.

12.) Some general points were raised by the Applicants and these can be considered before examining the specifics of individual items of work. Mr Stebles raised a concern that the Respondent had carried out all the works as part of a contractual agreement with the London Borough of Lewisham, when the portfolio was transferred to the Respondent. It may be that there were contractual obligations on the Respondent to carry out repair/refurbishment work. However, there remains an obligation on the Respondent that any works should be in accordance with the lease and subject to the statutory provisions and in particular the Landlord and Tenant Act 1985.

13.) Mr Stebles raised several general issues about the legal obligation of the leaseholders to contribute to the service charges. He stated that the works were not repair works as the items were not in disrepair. He also contended that there was a historic lack of repair by the Respondent and therefore the Applicants should not have to bear the costs as a consequence of the Respondent's lack of management. Mr Brown stated that following the case of Minja Properties Ltd v Cussins Property Group plc [1998] 2 E.G.L.R. 52 replacement is within the scope of repair when it becomes uneconomic to continue to repair. He made reference to Part II of the tenth schedule that deals with improvements. The Tribunal

accepts Mr Brown's submission that this allows recovery from the leaseholders of a contribution to works that would involve improvement. The Tribunal also notes that there are provisions in the lease that allow the Respondent to collect reserve funds. Such a mechanism allows the significant costs of major works to be spread over time, making them less onerous to individual leaseholders. The use of these measures would be applauded by the Tribunal as part of a sensible, planned management of the buildings, and the estates. Addressing the issue of the historic lack of maintenance, this may have occurred, but until the landlord has notice of a defect, then there is no breach of the lease. In this case the Applicants provided no evidence of notice being given to the landlord for the lack of repair, prior to the works occurring.

14.) Mr Stebles complained that he had not been involved in the survey process. Whilst it is admirable that the leaseholders are actively interested in the management of any development, there needs to be some consideration as to the practicalities of involving individuals in the management of a building. In particular Mr Stebles stated that his electrical contractor did not have access to carry out a full survey. However, the Tribunal considers that, despite restricted access to some parts, a limited survey could have been undertaken. Responding to Mr Stebles' question about the adequacy of the surveys, Mr Craven stated that there was no intention for the surveys to be general and in respect of the door entry system, there were specific photographs taken of Rythe House.

15.) Mr Stebles raised some general comments about the section 20 consultation process, which he considered was not very 'user friendly". He commented that although the notices did give the relevant 30 days notice to allow leaseholders the opportunity to comment on the proposals, there was not compliance with "best practice". To allow for additional postage time, the notices should have provided for a longer period for responses. Additionally he suggested any additional criteria for the selection of contractors should be made available to leaseholders. Mr Brown suggested that all that was needed was compliance with the Service Charge (Consultation Requirements) (England) Regulations 2003 (the Consultation Regulations). Although a longer consultation period and the publication of selection criteria may be best practice, these are not a part of the regulations and failure to follow best practice will not render the consultation process defective.

Entry Door Replacement

16.) This item related only to Rythe House. The final account (466) indicates that the total cost was £6,029.59 and a 1/8th contribution equates to £753.70. It was not possible to identify a separate cost for the new handrail. Two issues arise from these works, namely whether the proper consultation process had been carried out and whether the works were necessary. Mr Stebles acknowledged

that no issue was taken in respect of the reasonableness of the cost or the standard of the work.

17.) The works included the replacement of the main door to the block, replacement of the door entry system, alterations to the access-ways including the installation of an additional handrail and associated works. Schofield Lothian carried out a survey in May 2011 (470) that made general comments about the condition of the entry doors throughout the portfolio. It noted that the doors were sourced from different manufacturers and this could result in difficulties in on-going maintenance; all except one of the door systems were operational; many of the doors had been subject to vandalism and lack of maintenance; some glazing panels were badly scratched; the door/entry systems were not compliant with current Building Regulations or the Disability Discrimination Act (DDA) that has now been superseded by the Equality Act 2010. Two photographs that appear to be part of the report show the access ramp at Rythe House and note that there are *"uneven risers to steps and handrail/barrier to one side of ramp only"*(479). The recommendations within the report suggest standardisation of the door systems.

18.) The Notice of Intention dated 2nd August 2011 states that the reason the work is needed is *"A survey of the systems in these blocks concluded that the equipment was in poor condition and near the end of its working life. The refurbishment is required to ensure there is a satisfactory operation and maintenance as well as helping to meet current standards and design."* and *"To comply with the Disability Discrimination Act and or building regulation requirements"*. Subsequent correspondence from the Respondent suggested that the work was required as the door was not to a satisfactory standard.

19.) Mr Stebles contended that the door entry system was adequate and that only minor repairs costing approximately £50 were needed. It appeared that there had been no consideration given to a repair option. The Respondent had expressed concern about the condition of the doors and the level of the top closure bracket, but the new door had a bracket at the same level. Photographs and a video clip were produced to demonstrate the submission that the door system was adequate and not in need of replacement. He had not experienced and had no knowledge of any problems with the door entry system and the handsets. He considered that the additional handrail was not necessary. He suggested that the change in the reasons for the need of the work from the initial notice to reasons provided in subsequent correspondence could lead to a breach of the consultation process.

20.) Mr Brown submitted that the results of the survey were consistent with the reasons provided in the Notice of Intention. Regarding the breakdowns to the systems, Mr Stebles did not live in the block and may not have been fully aware

of the issues. A further inspection of the block was carried out in December 2011 and a further report was prepared in September 2013 (782).

21.) Mr Craven gave evidence to the Tribunal. He stated he was not able to assist in respect of the inspection that occurred in December 2011. He stated that maintenance contracts were in place to deal with any repairs and there was a system for logging calls for any reported problems. He had no details of any logged calls for Rythe House. The introduction of a uniform fob/entry system across the portfolio would have been cost effective for the Respondent and improved security as the previous system had resulted in a loss of control over the fobs. It was acknowledged that there were no reported security problems for the three subject blocks.

Tribunal's Findings:

22.) The Tribunal considered that any changes in the rationale as to why the work was needed did not amount to a breach of the consultation process. The points raised by Mr Stebbles go towards the issue as to whether the work was necessary and whether it was reasonable for the Respondent to carry out those works. It is understood that the Respondent may have motives to carrying out works that are either in compliance with any agreement on the transfer of the portfolio or that arise from an overall management objective. However, it is important to understand the contractual and statutory provisions at the perspective of the leaseholder. In this regard it is essential that regard is had to whether the works were required to this particular building. The evidence from the video clip, the photographs and the lack of any reported defect indicates that the door to this block was not defective. We are satisfied that general maintenance would have remedied any problems that did exist. There was a ramp and a handrail in place in place and there is no specific evidence to indicate that a further handrail was necessary. There was no evidence that the previous door arrangements had resulted in any security issues for this block. The original door had a vision panel and whilst this did not satisfy the requirements of the Equality Act, we were not given any evidence to suggest that this was an imperative requirement that needed immediate action. Rather, this was an issue that could be eventually resolved when the door was past its economic life. The Tribunal considered that it was not necessary to replace the door system and as such the money expended on this item was unreasonably incurred. Accordingly, Mr Stebles is not liable to pay a contribution towards the door replacement and his service charge liability should be reduced by £753.70 to reflect his contribution.

Lateral Mains

23.) Lateral mains work was carried out to both Rythe House and to Crane House, the work to the latter property was of an emergency nature. The Notice of Intention for the lateral mains work to Rythe House was dated 14th June 2011

and stated that the work was necessary as the cables had deteriorated and it was necessary to bring the lighting up to BS 5266 standard. The requirement to bring the lighting up to the requisite BS standard was claimed to be as a consequence of a fire risk assessment. The fire risk assessment (193) made no mention of the requirement to replace the lights. John Manzi had reported in April 2011 that the cabling was at least 50 years old and was VIR cabling (Vulcanised Insulated Rubber) and consequentially needed replacing. There was no independent survey to recommend the works were needed. Mr Stebles had requested permission for his own contractor to gain access to the cabling but his request was ignored. During the work Mr Stebles had spoken to one of the contractors who had said that the existing cabling "would be fine for years".

24.) Mr Stebles stated that there were flaws in the section 20 process. The second notice, dated 12th September 2011 (218) identified two contractors Mulalley (£394,474.00 excluding VAT) and Artic Building Services (£526,481.00 excluding VAT). The third notice dated 19th October 2011 (238) was the notice of reason for awarding a contract to carry out works and explained that the contract had been awarded to Mulalley and not to the lowest tender as there were concerns that the quality of the workmanship of the lowest contractor. Mr Stebles suggests that the omission of the lowest contractor from the second notice made that second notice defective.

25.) Mr Stebles explained that there had been a lack of consultation regarding access to his flat. The work within his flat was poor and had resulted in white trunking to the walls rather than the wiring chased into the walls. Photographs were produced that illustrated the steel trunking in the common parts and the condition of the trunking in the interior of flat 3. The photographs of Mr Stebles flat showed chipped plasterwork; trunking that appeared over-sized and a missing cap to the end of the conduit. It is contended that the replacement emergency lighting in the common areas appears to be the same as the original lighting. It was also suggested that the historical lack of maintenance may have caused the need for replacement.

26.) The Notice of Intention for Crane House was dated 17th September 2010 (681) and stated that the work was necessary as "*the existing cables are failing and to ensure the building allows safe means of escape and a separate earthing system to each communal light fitting*". The notice invited any observations to be made by 17th October 2010. Ms C Etteridge had obtained a quotation from Blu Lite and hand delivered the quote on 8th October 2010 (687). Mr Stebles submits that as the second notice was dated 5th November 2010, then Blu Lite were not given 30 days to provide a quote against the specification of works.

27.) A query was raised about the necessity of the lateral mains works at Crane House. The residents in the block suggested that the electrical problems had

occurred as a consequence of the use of an electrical appliance within one of the flats that had tripped the internal electrics and had no impact on the lateral mains.

28.) Regarding the issue as to whether the costs were reasonable, the Applicants rely on the quotation from Blu Lite of £7,110 plus VAT as an alternative quotation for both Rythe House and Crane House.

29.) In relation to the consultation point raised in respect of Rythe House, Mr Brown said there had been full compliance with the requirements of Schedule 4 part 2 paragraph 4(5) of the Consultation Regulations, namely that the landlord is required to*"(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–*
(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and (c) make all of the estimates available for inspection". No point was taken in respect of the consultation process for Crane House.

30.) Dealing with issue of whether the work was necessary, Mr Manzi, Planned Maintenance Surveyor (Electrical and Mechanical) from Phoenix Community Housing Association, gave evidence. He detailed his qualifications and that he had previously worked with London Borough of Lewisham and had twenty years experience on the Bellingham/Downham Estates. In relation to Crane House he stated that the defect in the electrical system did not arise from one of the flats. The problem was the main intake cupboard on the ground floor providing a supply to one of the flats. This had resulted in emergency works and contractors were instructed to carry out works on the whole block. In Rythe House the conduit system, which was embedded in the concrete, had corroded and there were concerns about the integrity of the earthing. The original system was not a good size for cable management. The cabling was over 50 years old and was VIR cabling (Vulcanised Insulated Rubber) In Mr Manzi's opinion the work was a necessity.

31.) Mr Manzi had overseen the works to the common areas but had not inspected the internal wiring to 3 Rythe House. He acknowledged that there is outstanding work to the flat and if he had been aware of the work he would have instructed the contractor to remedy the problems. As part of the contract there were liaison officers who should have been a point of contact to deal with these issues.

32.) There are no provisions in the Consultation Regulations that require any nominated contractor should be given 30 days to respond with a quotation. It would appear that Blu Lite were provided with a copy of the specification and did not provide a quote based on that specification. The quotation that was provided by Blu Lite is of no assistance, as it was not based on the specification.

Tribunal's Findings:

33.) It is unfortunate that Blu Lite had not submitted a quotation on the receipt of the full specification. We were informed that they considered that they did not have enough time to complete the quotation. However, we did not have any comments directly from Blu Lite to confirm that position. From the Tribunal's experience many small contractors do not submit quotations when faced with a rigorous specification over a large property portfolio. The Consultation Regulations do not require any specific time scale from receipt of a specification to the submission of the quotation. The proper course of action was for the any nominated contractor to be identified to the respondent by 14th July 2011 (179). Accordingly there is no failure of the consultation process in respect of Rythe House. No issue was taken about the consultation process at Crane House.

34.) The Tribunal found that the Fire Risk Assessment does not specify any works and therefore is not evidence that the lateral mains needed to be replaced. The only evidence that the work was needed came from Mr Manzi. However the Tribunal considered Mr Manzi's evidence as credible. He had identified that the previous cabling system was corroded and there were risks to the earthing system. In the opinion of the Tribunal serious consideration should be given to wiring that was over fifty years old. There must be health and safety considerations and a fault could have grave consequences if the electrics fail. In addition there was some contradictory evidence regarding the necessity of the emergency works at Crane House. However, the same considerations are relevant for Rythe and Crane House and overall it appears a prudent and necessary step to undertake the work.

35.) As to whether the cost of the works were reasonable the only alternative quotation provided by the Applicants was from Blu Lite and this is not on a comparable basis and is not good evidence as to the question of reasonableness of cost. The Respondent had carried out a full tender process and had obtained three quotations. The evidence was that the lowest quotation had not been accepted as there were concerns about the quality of the work (239). The quotation from Mulalley, the selected contractor, was significantly below the alternative quotation. It should be noted that the Respondent would be paying the largest proportion for these works and it would be in their interest to keep the prices as low as possible but ensuring compliance with the specification. Overall there is no evidence that cost was unreasonable for either Rythe House or Crane House.

36.) Dealing with the quality of the works, there is no doubt that the current finish of the lateral mains is unattractive. However we had evidence that it was not possible to use the existing conduits and to cut out and embed the new conduits would have caused more expense. The price for the works was based on a specification to for surface mounted conduits. In respect of the finishing work to Mr Stebles flat it was for him to raise these issues with the Respondent or their contractors. We have no evidence that he raised these issues in his correspondence with the Respondent. We note Mr Manzi's statement that he would arrange for the snagging work to be completed to flat 3, Rythe House. No doubt this work will be undertaken at the earliest

opportunity and in consultation with Mr Stebles.

Lifts

37.) The lift work related to Rythe House, Crane House and Brandon House. The Notice of Intention for all three blocks was dated 3rd February 2011 (142). The notice explained that in the opinion of the Respondent the lifts were near the end of either operational life. It stated that if the size of the lift shaft prohibited the replacement or refurbishment, then an options appraisal would be considered. The leaseholders of Crane House had not wanted the new lift, but their views had not been taken into consideration. It was confirmed that there are seven leaseholders in Crane House and one tenant who was located on the third floor.

38.) Mr Stebles explained that the lifts in Rythe and Crane House were the same dimensions and could not take a wheel chair. Additionally there was no access ramp at Crane House and there were three steps in the common parts to the lift. In Brandon House there were two entranceways, one had three steps to access the lift and the second had a ramp plus two low steps. It was suggested that as none of the lifts would meet the Disability Discrimination Act standards then the options appraisal should have been pursued but this did not occur. One of the Respondent's employees had stated that if the residents of a block did not want a lift then they did not have to have one. Meetings were held as part of the information process and the second stage of the consultation process had omitted any of the oral comments made in those meetings. It was acknowledged that any written comments or observations were considered in the subsequent consultation stage. It was stated that the leaseholders were not familiar with the consultation process and had not fully appreciated the implications of the process. The second stage notice included a figure of £2,383,293, but there were no details as to how much liability each leaseholder would have. The second stage of the consultation process was claimed to be defective as it did not provide details of where the estimates could be viewed and there was no way that a leaseholder could understand their contribution.

39.) The Applicants' case is that the lifts were working and Mr Stebles stated that to his knowledge the lifts in Rythe House had not broken down, but he acknowledged that the lift was aging. The details from Phoenix were that the lift had broken down in March 2009 and on one day in July 2011 there were two items of maintenance work (444). There was no knowledge of the lift in Crane House breaking down.

40.) The survey carried out by Environmental Design Associates in November 2009 described the lift at Rythe House stated that the quality of maintenance was very poor and there were cobwebs in the control panel. It also stated that the lift was installed over 40 years ago and all the major and minor components are very worn (845/6). The lift at Brandon House is described as a lift of about 35 years old that had been refurbished in 1996 and the "*level of wear, in all components, is observable*" (848). The lift at Crane House is described as being installed approximately 60 years previously and underwent a limited refurbishment in 1982; the maintenance is very poor; several

emergency landing door lock releases do not work and all major and most minor components are now very worn (841). The survey concludes that the only solution to provide safe, reliable and cost effective lift services is the refurbishment of all thirty lifts on the estate. It was suggested that if maintenance had been carried out, then there would not have been a need for the lifts to be replaced. It was queried why the lift at Brandon House needed to be refurbished as it had been refurbished in 1996. Photographs were produced to show the lift at Brandon House pre and post refurbishment.

41.) Ms Sands had acquired a copy of the specification from the project manager overseeing the lift refurbishment at Brandon House. Email correspondence from Midland Lift Services was produced that indicated that £90,000 for a lift refurbishment was excessive (623). A further email from JDR Lift Services suggested that the cost for the specification that was presented would be in the region of £39,000 to £42,000 plus VAT (628). A quotation based on the specification provided by Ms Sands from Ambassador Lift Company Ltd totaled £42,000 plus VAT in respect of Brandon House a five storey building and £27,150 plus VAT for Rythe House a four storey building. Mr Stebles also stated that the charge of £300 per manual for each lift was excessive. Mr Stebles also contended that the new lifts have broken down more times than the previous lifts and there is evidence of rust on the new doors.

42.) Mr Stebles raised a concern about the validity of the consultation process as the Notice of Proposal did not provide details of where the proposed work could be viewed. Mr Brown explained that it was considered unnecessary for the Notice to state where the details of where the proposals might be viewed since full details of the proposals were already included in the Notice (160). In response to how an individual leaseholder would understand their contribution, Mr Brown says that isn't a requirement of the Consultation Regulations. The Respondent is not required to set out the observations under paragraph 6(1) of the Consultation Regulations when under paragraph 6(2), the selected contractor has provided the lowest tender.

43.) In considering whether the works were a necessity, the Respondent relies on the contents of the survey from Environmental Design Associates dated November 2009 and detailed above. Although the lifts in Brandon House had been subject to a refurbishment in 1996, the mechanics were now in need of work. Details of the breakdowns and an analysis of the lifts prioritizing work were provided. As to whether the costs were reasonable, if it is accepted that the section 20 process was compliant with the Consultation Regulations, then there were four bidders for this contract and the lowest bidder was selected. The alternative quotations received by the Applicants were not based on the same specification. The full specification was a 77 page document with schedules (922) and was not provided to the contractors approached by the Applicants.

44.) Regarding the leaseholders of Crane House not wanting a lift, then it was suggested that they had been ill-advised during the consultation process. There is a duty of the landlord not to derogate from grant. There remains a tenant on the third floor of Crane House and the Respondent retains the

liability to provide services including lifts services to that tenant and to the leaseholders.

45.) Responding to the issue raised about the cost of providing a maintenance manual for each lift, Mr Brown submitted that as Phoenix would also be liable for the contributions in respect of the flats occupied by the tenants, it would be in their interests in minimizing the costs. This was part of the competitive tender.

Tribunal Findings:

46.) The Tribunal understands the frustration experienced by the Applicants about the lack of consultation with an "options appraisal"; that the views expressed during the consultation meetings were not addressed and that the leaseholders did not appreciate the full extent of their contribution. However, these omissions did not render the process as non-compliant with the Consultation Regulations and to some extent the communication process went beyond what was required.

47.) Regarding the request from the leaseholders of Crane House that the lift was not needed. The potential request from all those leaseholders would not abrogate the Respondent's duty in respect of the tenant within the block and also any claim against a leaseholder about the use of the lift at some stage in the future.

48.) Following the conclusions in the report from Environmental Design Associates the Tribunal is satisfied that works were necessary. The blocks were originally provided with lifts and there is a duty on the Respondent to ensure that they are maintained and to ensure health and safety compliance.

49.) Dealing with the issue as to whether the costs were reasonable, the works were subject to a competitive tender process and the lowest as such the prices should be reflective of the market price. Little weight can be place on the evidence of the alternative quotes provided by the Applicants, as it was not priced against the full specification. In taking a broad view the contribution sought from the leaseholders does seem excessive, but regard has to be had of the nature of the blocks as it is unusual that blocks of eight or ten flats are served by a lift and even more unusual that the service charge contribution ignores the ground floor units in calculating the proportion to be paid. These are issues in respect of the nature of the building and the contractual terms of the lease and a prudent leaseholder purchasing a flat would have been aware of the implications of that situation. Overall the Tribunal finds that the costs for the lift refurbishment are reasonable.

Section 20C Landlord and Tenant Act 1985

50.) In respect of the section 20C application, the Respondent indicated that there was no intention of treating any costs as arising from this application as "relevant costs". Accordingly, these costs will not be added to the future service charges accounts. The Tribunal was grateful for this indication. However, for the sake of clarity as the section 20c application has not been withdrawn, it is necessary for the Tribunal to make a decision on this application. In considering the indication given by the Respondent, the Tribunal orders that any costs incurred by the respondent and arising from this application, will not be treated as "relevant costs" and as such will not be recovered from future service charges.

Chairman: Helen C Bowers **Date: 7th January 2014**

APPENDIX

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only of the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 20B Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if within, the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 21B Notice to accompany demands for service charges

(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 regulations prescribing requirements as to the forma 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 provisions 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.

Section 27A Liability to pay service charges: jurisdiction
(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner it which it is payable.....
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred fro services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner it which it would be payable.
(4) No application under subsection (1) or (3) may be made in respect of a matter which –
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be , referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been subject of determination by a court, or
(d) has been subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement,
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
.....

Section 20C Limitation of service charges: costs of proceedings
(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceedings before a court ..... or leasehold valuation tribunal ....., are not to be regarded as relevant costs to be taken into account in determining the amount of any service

charge payable by the tenant or any other person or persons specified in the application.

.....

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

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Schedule 12 paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2),

(2) The circumstances are where –

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonable in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –

(a) £500, or

(b) Such other amount as may be specified in procedure regulation.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

Service Charges (Consultation Requirements) (England) Regulations 2003/1987
Schedule 4 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES
Part 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

1.—

(1) The landlord shall give notice in writing of his intention to carry out qualifying works–

(a) to each tenant; and
(b) where a recognised tenants' association represents some or all of the tenants, to the association.
(2) The notice shall–
(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
(b) state the landlord's reasons for considering it necessary to carry out the proposed works;
(c) invite the making, in writing, of observations in relation to the proposed works; and
(d) specify–
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.
(4) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works
2.—
(1) Where a notice under paragraph 1 specifies a place and hours for inspection–
(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works
3.
Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations
4.—
(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.
(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised

tenants' association), the landlord shall try to obtain an estimate–
(a) from the person who received the most nominations; or
(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
(c) in any other case, from any nominated person.
(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–
(a) from at least one person nominated by a tenant; and
(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–
(a) obtain estimates for the carrying out of the proposed works;
(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–
(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
(c) make all of the estimates available for inspection.
(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–
(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–
(a) each tenant; and
(b) the secretary of the recognised tenants' association (if any).
(10) The landlord shall, by notice in writing to each tenant and the association (if any)–
(a) specify the place and hours at which the estimates may be inspected;
(b) invite the making, in writing, of observations in relation to those

estimates;
(c) specify–
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.
(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to
5.
Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract
6.—
(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)–
(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.