

11481



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00BJ/LSC/2014/0425 & 0426  
& LON/00BJ/LSC/2015/0051

**Property** : 1-35 Lower Park, 54 Putney Hill,  
London SW15 6QY

**Applicants** : (1) Miss Marie McDonnell (2) Miss  
Traoine Brick (3) Miss Valerie  
Webber-Stewart

**Representative** : Ms G Park, Counsel for 1<sup>st</sup> and 2<sup>nd</sup>  
Applicant, 3<sup>rd</sup> Applicant in person

**Respondent** : Lower Park (Putney) Limited

**Representative** : Mr A Diamond of Counsel

**Type of Application** : For the determination of the  
liability to pay a service charge

**Tribunal Members** : Judge W Hansen (chairman)  
Mr A Lewicki FRICS  
Mrs L West

**Date of hearing** : 21-23 March 2016

**Date of this Decision** : 19 April 2016

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal's findings as to the disputed Scott Schedule items are set out in Schedules 1-4 attached hereto; liberty to apply (if strictly necessary) and only in relation to any dispute as to the arithmetical working out of the sums payable in respect of the Major Works by each of the Applicants in the light of the Tribunal's findings.
- (2) The Tribunal determines that the consultation requirements contained in the Service Charges (Consultation Requirements) (England) Regulations 2003 have been complied with in relation to the Major Works and there is therefore no limitation on the relevant contributions due from tenants under section 20 of the Landlord and Tenant Act 1985;
- (3) The section 20C application is to be considered on paper by the Tribunal following the receipt of submissions on the issue by both parties, such submissions to be filed and cross-served within 28 days of the date of this decision.

## **Introduction**

1. This is a challenge on the part of the Applicants to their liability to pay for major works undertaken to Lower Park, 54 Putney Hill ("the Property"). The general service charge element of the dispute has been resolved.
2. The Property comprises two blocks of flats, the Old Block (or Block A) and the New Block (or Block B), together consisting of 35 Flats. Flats 1-11 are in the Old Block. Flats 12-35 are in the New Block. The Tribunal inspected the Property on 21 March 2016. Major work has been undertaken to both blocks by Swainland Construction Limited ("Swainlands") under a JCT contract following a competitive tendering

process (“the Major Works”). The works to the Old Block began in or about September 2014 and were completed in or about January 2015. The works to the New Block began in or about March 2015 and were completed in or about July 2015. The Major Works therefore straddle two service charge years, being the year ended 31 December 2014 and the year ended 31 December 2015.

3. The total cost of the works to both the Old and New Block, based on Swainlands’ price, was due to be £789,610.98 (page 852, original bundle). In the event, according to the final accounts, the total cost was £755,940.96 (pages 975, 1077).
4. The First Applicant is the tenant of Flat 13. The Second Applicant is the tenant of Flats 1 and 35. The Third Applicant is the tenant of Flats 2 and 12. The Respondent freeholder is a company owned and controlled by the lessees. Its title is registered at HM Land Registry under title number SGL230790.
5. The Tribunal were told that there was no material difference between the various leases. We therefore take the lease of Flat 1 dated 1 October 1986 as an example. That is a lease for a term of 120 years from 1 March 1977 which provides for an annual ground rent and a variable service charge payable at the times and in the manner specified in Clause 4. We were told by the parties that nothing turns on the service charge machinery in Clause 4 but we note that the tenant’s proportion in any given case is determined under Clause 4(4) by reference to the rateable value of the Flat and the split as between Block A and Block B is determined by reference to Clause 4(5). For the record we were told that the relevant percentages were as follows: Flat 1: 8.511%; Flat 2: 10.1%; Flat 12: 4.211%; Flat 13: 3.852%; Flat 35: 4.521%.
6. The amount of the service charge is the relevant proportion of the aggregate amount of the costs expenses and outgoings incurred by the Lessors in respect of the several heads of expenditure set out in the

Sixth Schedule. Those heads of expenditure include the cost of complying with the lessors' obligations under the terms of the lease which include an obligation to "*maintain repair decorate and renew*" (a) the main structure and roof chimney stacks gutters and rain water pipes (b) the gas and water pipes sewers drains watercourses and electric cables and wires enjoyed in common (c) the entrance halls staircases lifts and passages used in common (d) the boundary walls and fences.

### **Procedural Background**

7. On or about 14 August 2014 the First and Second Applicant brought applications to the Tribunal to determine their liability to pay what were then interim service charge demands in respect of the Major Works. The Third Applicant was subsequently joined as a co-applicant in respect of those applications. At or about the same time the Respondent issued County Court proceedings against the First and Third Applicant in respect of the same sums and the service charge aspects of those claims relating to the Major Works were transferred to the Tribunal. The Tribunal is concerned therefore only with the challenge to the reasonableness of the sums demanded by way of service charge for the Major Works. It is important to emphasise the extent of our jurisdiction because it became clear that the Second Applicant wished to raise issues as to the proper construction of her lease which did not bear on the service charge dispute before the Tribunal. Equally, the Third Applicant wished to raise issues relating to the internal condition of her flats which were not part of the applications before us. We should also mention that the First Applicant sought to raise an abuse of process argument relating to the County Court proceedings. We do not consider that such issue is within our jurisdiction but even if it were, we consider that this is a matter that should be dealt with by the County Court when the proceedings are transferred back there following our determination.

8. The matter came before the Tribunal last year on 30 March 2015 when the Major Works were still ongoing. For that reason the hearing was adjourned as we considered that all the issues relating to the Major Works should be dealt with at one hearing. On that occasion we gave detailed directions dated 1 April 2015 to facilitate the inspection of all the works by the Applicants' experts Mr McMahon and Mr Hodgins and the production of amended and updated Scott Schedules to identify the issues in dispute and the reasons for those disputes. We also invited the Applicants' experts to meet with the Respondent's expert, Mr Hallas, and provide a statement of issues agreed and disagreed. In preparation for the hearing the Tribunal was sent what purported to be the joint statement, a document dated 8 March 2016. It was in fact a Scott Schedule, annotated with comments in the usual way, but disclosing a very large number of ongoing disputes.
  
9. Following our site visit on the first day of the hearing on 21 March 2016, we invited the parties to attempt to narrow the issues further which they helpfully did and this resulted in an amended Scott Schedule being produced on the morning of Day 2. During the course of the hearing the parties' experts made further concessions and following the conclusion of the hearing we have been provided with further updated Scott Schedules that identify the issues still to be determined. Whilst there remain a large number of disputes, we are grateful to the parties for their cooperation in sensibly narrowing the issues in the light of the evidence. We therefore propose, as suggested by the parties, that we simply record our decisions on those remaining disputed items as identified in the updated Scott Schedules provided to us and will annex those Schedules incorporating the Tribunal's findings to this Decision. The parties agreed that we would not be attempting any overall reconciliation or audit and that our findings on the remaining disputed issues would be sufficient to enable the parties to know what was payable. We indicated that this was how we intended to proceed and the parties were content that we should proceed in this way.

10. Finally, by way of background, we observe that there are now 7 trial bundles comprising approximately 2,500 pages. The supplementary bundle that we directed when the matter was adjourned last time is in fact four “supplementary” bundles comprising more than 1,500 pages. Page references are to the supplementary bundles unless otherwise indicated. We have of necessity focused on the documents to which we have been taken during the course of the hearing but the fact that we do not refer specifically to certain documents does not mean that we have not considered them. Whilst we do not claim to have read every page of the trial bundles, we have carefully considered the applications, the statements of case, the witness statements, the expert evidence and the key documents, including the specification, the final accounts and the section 20 documentation. We have also had the benefit of two site visits, including an extended visit on the first day of the trial where we were shown everything that was said to be the subject of dispute. We would like to record the fact that we derived considerable assistance from all the experts, whom we heard concurrently, rather than sequentially, and all of whom were reasonable and careful in the evidence which they gave. This has made choosing between them where we have had to do so sometimes quite difficult but we have ultimately reached clear conclusions. We also heard factual evidence from the Applicants and a number of witnesses for the Respondent, including Mr Hinde, Ms Butler and Mr Atkinson. We found all the witnesses to be honest and straightforward, albeit on certain issues, particular in relation to the s.20 consultation, they cannot all be right and we have to decide which evidence we prefer.

### **The Issues**

11. The issues relate primarily to the payability of disputed service charges levied in respect of the Major Works. The relevant legal provisions of the LTA 1985 are set out in the Appendix to this decision.

12. In respect of the disputed items, we will need to consider (a) whether the service charges are recoverable as a matter of contract under the terms of the lease and (b) whether the service charges were reasonably incurred and/or whether the works were of a reasonable standard under LTA 1985, section 19.
13. In considering reasonableness, the ambit of what can be taken into account is quite wide. The weight to be given to any particular element in the relevant factual matrix is a matter for the Tribunal in the light of the evidence. The test to be applied in considering reasonableness is whether the charge that was made was reasonable, not whether there are other possible ways of charging that might be more reasonable. There may well be a range of reasonable options. It is not necessary to show that the cost of the works is the cheapest price; it is sufficient that it falls within the range of reasonable prices. It is easier to show that the cost of works is reasonable if they have been competitively tendered and a number of estimates obtained. However, that fact is in no sense determinative of the issue of reasonableness and the Tribunal is always entitled to apply a robust, common-sense approach and make appropriate deductions based on the evidence.
14. We will have in mind those principles in considering the issue of reasonableness in relation to the numerous disputed items.
15. We will also need to consider whether there are any statutory limitations on recoverability because issues have been raised under section 20, LTA 1985 relating to consultation and we propose to deal with that issue first.

### **Consultation**

16. The Applicants' Amended Statement of Case raised a variety of issues relating to consultation but ultimately Ms Parke relied on 4 points.

17. Firstly, she contended that the Stage 1 notice of intention required under paragraph 1 of Schedule 4, Part 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”) was not a good notice because it did not describe the works in sufficient detail. We note that under paragraph 1(2)(a), the requirement is that the notice “*shall describe, in general terms, the works proposed to be carried out...*” We have no doubt that the notice served is compliant. It is at page 672 of the original bundle and describes under paragraph 2 thereof the proposed works to both the Old Block and the New Block in general terms as required. It does not mention every aspect of the work but it does not need to. Ms Parke referred us to *Southern Land Securities Ltd v. Hodge* [2013] UKUT 0480 (LC) at [17]-[19] but we are satisfied that the case does not assist her. The Upper Tribunal there said that it is a question of fact and degree whether the notice contains an adequate description. We agree and have no doubt in the present case that the description of the works in the notice is sufficient. We note that in the Southern Land case the description was utterly perfunctory (“*external repairs and redecorations*”). That is not this case.
  
18. Secondly, Ms Parke contended that the Respondent had failed to have any or sufficient regard to the tenants’ observations at the second stage of the consultation process, by reference to paragraphs 3 and 5 of Schedule 4, Part 2 and had in fact placed the contract with Swainlands Limited, or decided to place it with Swainlands, before it had even sent out to the tenants the relevant estimates from the contractors who tendered. The Tribunal disagrees and finds as follows. The JCT contract is dated 7 August 2014. No contract was signed before that date. Nor was an irrevocable decision made to place the contract with Swainlands before 4 August 2014 which was the date upon which the Board of the Respondent company resolved to sign a contract with Swainlands. The second stage notice which was sent out on 4 June 2014 (page 847 of original bundle) indicated that the Board “*proposed*” to place the contract with Swainlands once the notice period had run because they



had provided the best priced tender. Ms Parke suggested that the fact that the notice was accompanied by demands for payment of interim service charge meant that the decision had already been made. However, it was made clear in evidence by Ms Butler who was on the Board, and by Mr Atkinson who was advising the Board, that no final decision had been made prior to the resolution of the Board passed on 4 August 2014. They said that at all material times before then the Respondent remained open to discussion and open to persuasion. The Tribunal accepts their evidence. Furthermore, we note that the letter made clear that no payment was expected before the end of July. Nor are we persuaded that there is any merit in the contention that the tenants' observations were ignored. The amended Statement of Estimates (pages 858-861 of original bundle) set out in very considerable detail the observations that had been received and the Respondent's response to those observations. Subsequently, when the First and Second Applicants submitted further observations on the estimates themselves on 10 July 2014, Messrs Scotts, the managing agents commissioned a detailed response from Mr Hallas dated 18 July 2014 (pages 873-880 of original bundle) and supplied this response to the tenants. We are therefore satisfied that there was no breach of the consultation requirements in this regard.

19. Thirdly, Ms Parke contended that not all of the relevant documentation was made available for inspection as required under paragraphs 4(5)(c) and 4(9) of Part 2, Schedule 4. The various notices all say that the relevant documentation was available for inspection either at Scotts offices or at the Estate Office (see e.g. pages 847, 852, 858 of original bundle). Mr Scott told us that he put the pack together and everything was included. The First Applicant said that only original tender documentation was made available and that there was no appendix relating to the roof, the proposals for which had changed. She said that she went to inspect the documents but did not take away a copy. She said she was given a copy of the relevant documentation by the Second Applicant. There was correspondence at the time (pp. 869-872 of

original bundle). The First Applicant alleged that the documentation was incomplete. Mr Hinde of Scotts maintained that it was complete. Having heard Mr Hinde's evidence we are satisfied that all the relevant documentation was available for inspection. We can see no reason why it would not have been, given the terms of the letters inviting inspection. It is possible that something was inadvertently left out but we consider this unlikely given the controversy over the Major Works. We consider it more likely than not that Mr Hinde would have been very careful to ensure that everything was included and we find that it was.

20. The final complaint related to one of the contractors who tendered, MBS, and it was said that they had been excluded albeit they had provided the lowest tender. Mr Hallas describes the tender process in some detail in his Third witness statement (see pages 185-186). We accept his evidence. The second stage of the tender process was aborted for the reasons he gives. At the third stage MBS were not the lowest cost contractor.
21. In conclusion, we reject the contention that there has been any failure to comply with the consultation requirements under the 2003 Regulations.

### **Reasonableness**

22. We refer to the attached Scott Schedules for our decisions as to the individual items in dispute. There are four Schedules, two for each Block. Schedule 1 relates to the Old Block. Schedule 2 relates to Old Block variations. Schedule 3 relates to the New Block. Schedule 4 relates to New Block variations.

### **Conclusion**

23. The parties will have to agree the final sums payable by each of the Applicants in the light of our decision. We grant liberty to apply in the

event of any dispute as to the calculations. This is purely to work out the final figures in the event of a bona fide dispute. It is not an opportunity for either side to reargue any part of the case.

24. A section 20C application has been made. The parties agreed that this should be deferred until our decision had been sent out. We now invite submissions from the parties on that application which we will decide on the papers, such submissions to be filed and served within 28 days of the date of this decision.

**Name:** Judge W Hansen

**Date:** 19 April 2016

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

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

**SCHEDULE 1: LOWER PARK - OLD BLOCK**

FINAL ACCOUNT DISPUTED MAJOR WORK ITEMS – PREMISES LOWER PARK 54 PUTNEY HILL LONDON SW15 6QY				
ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
4.1	OLD BLOCK – 1 – 11 LOWER PARK SCAFFOLDING AND ENABLING WORK			
4.5	<i>Fine mesh curtain to scaffolding.</i>  £inc	Work not carried out-not agreed.  Respondent to provide cost build up Work not carried out – not agreed. The costs are reasonable seen 15.4 in new block Info on netting not provided	It was agreed at the pre start meeting not to fit debris netting. The cost of which was provided for in the scaffolding cost and would have been two days for a labourer to fit the netting. SWB were entitled to charge for additional scaffold hire amounting to several thousand pounds. As a result it was agreed that they would waive the additional scaffolding cost. Swainlands have provided in their letter confirming the cost they allocated to netting. This	<b>Deduct £500.00 from sum claimed of £17,671.50 because no netting was fitted and this was the cost allocated by the contractor to this aspect of the work.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
			<p>being £500.</p> <p>The suggested cost for omission advanced by the Applicants is perverse and simply unsustainable in quantum.</p>	
4.6	<p>Provide electric hoist.</p> <p>£1,190.00</p>	<p>This is a charge for a lift which was not provided.</p> <p>Swainlands to provide cost details</p> <p>This is a charge for a lift which was not provided</p> <p>Information not provided</p>	<p>An electric hoist was provided for as and when required on site. Spec did not require that there be a hoist on site for the full duration of the works. Cost to remain in full. Swainlands provided the cost in the tender and it would be unreasonable to remove on the basis that the hoist was not used as much as the applicant would have liked have seen it used.</p>	<p><b>Allow in full. The hoist was available as and when required and this is sufficient.</b></p>
4.7	<p>Scaffolding alarm.</p> <p>£2,380.00</p>	<p>Refer to specification, monitoring was required for this alarm system – Therefore alarm not fit for purpose.</p>	<p>Scaffolding was alarmed however it was not a monitored system. Scaffold was fit for purpose. It was a deterrent and sounded to alert the residents in the</p>	<p><b>Deduct 25% of total cost claimed to reflect lack of monitoring.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
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		<p>See comments in New Block Scott Schedule at 15.15</p> <p>Refer to specification, monitoring was required for this alarm system</p>	<p>event of activation.</p>	
<p>4.9</p>	<p><i>The contractor shall provide safe access to all Flat Entrance doors.</i></p> <p>£595.00</p>	<p>Please refer to Report from J Hodgins. And see Photograph of applicants trying to get up the stairs. Access to the flat was not safe or convenient. The scaffold was in the centre of the stairwell, residents had to negotiate this daily. Scaffold poles not protected at ground floor residents were entering a building site no separation from operatives and tools omit this item.</p>	<p>No record of any complaint received regarding access during the works. Padding and lighting was provided. See example photo 9492. SWB carried out their own H &amp; S inspections and HSE inspected and there were no recorded incidents.</p>	<p><b>Allow in full. Safe access was available to entrance doors. R's comments accepted.</b></p>
<p>7.1</p>	<p><b>WORKS TO BE CARRIED OUT TO REAR WEST GARDEN FACING FAÇADE</b></p>			



ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
7.2	Tyrolean Render Repairs  £535.50	Applicants deem any loose area is vulnerable. This is defective work - cost should be held back until work is made good.	They are very small isolated areas. As soon as small areas are hacked off large areas become loose. Leaving small patches has no detrimental effect. See photo's extensive repairs were done to the building.	<b>Allow in full. Agree with R that reasonable to leave small patches.</b>
9.1	<b>WORKS TO BE CARRIED OUT TO MAIN ROOF</b>			
9.6	All leadwork to be treated with patination oil.  £42,000.00 (this figure is an inclusive figure for all costs associated with section 9)	See Experts commentary. Commentary states no evidence of new leadwork or Patination oil treatment.	Disagree. Lead was oiled. Staining occurred due to water run-off from the roof, carrying with it dirt and grime. Loose lead has been secured as part of defect period.	<b>Deduct £450.00. Not all lead was inspected but certain areas that were inspected did not appear oiled. A contended for deduction of £600. R's rival figure if we were against it was £450.</b>
9.9	<i>Supply and overlay with high performance felt providing a manufacturer's bonded/underwritten 15 year guarantee.</i>  See comment above at 9.6	Details of insurance under writer not provided.  Schedule and final account states. Manufactures bonded/underwritten 15 year included this has not been provided.	Europolymer Evo 15 is as per spec for main roof. Gutters changed to europolymer liquid applied in accordance with the supplier's recommendations. This also has a 15-year guarantee.  Manufacturer guarantee provided. Insurance cover only requested by applicant	<b>No deduction. Appropriate guarantee available (page 1036).</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
9.11	<p>New leadwork ancillary to roofing works.</p> <p>See comment above at 9.6</p>	<p>See Experts Report in Appendix. No new lead work carried out to main roof.</p> <p>Deduct £5,000 from roofing charge.</p> <p>More information required see also 9.7 above</p> <p>Applicants deem that This has nothing to do with the Landlord. The CA is to confirm that the works are in accordance with the L.S.A. recommendations throughout. Note exposed copper clips are evident at porch capping is contract with lead? See Photographs.</p>	<p>02.03.16.</p> <p>Specification states to renew lead were necessary. If the lead was in sound condition, it was to remain. Contractor priced based on pre works condition. SWB confirmed they did not allow for any lead replacement as they considered it to be in sound condition.</p>	<p><b>No deduction. Agree with R that specification did not provide for new lead, only as necessary.</b></p>
13.16	<p><b>REAR RIGHT HAND ROOF WESTERN ROOF TERRACE</b></p>			
13.17.8	<p>Cross refer to window schedule in respect of repairs to be carried out to window</p>	<p>See Experts comment on Respondents Window Repair Schedule.</p>	<p>Works were carried out as per window schedule minus the cost of repairs to flat 6</p>	<p><b>See also 13.18.1 below. Deduct £499.80 from £4,557.70 (page 1234) for 14 paint stuck sashes. The Tribunal accepts</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
	components.	Provide record schedule of works as carried out.	and 7 as they paid for replacement sashes themselves. Applicants should inspect the windows and will see the repairs have been done. Photos of every repair are unavailable and unreasonable to expect the CA to take photo's of every single repairs at every stage. We are the CA not clerk of works and we are not on site every day to supervise and take photo's. The request is deemed to be unreasonable. Applicant has been unable to provide photo evidence that the repairs were not carried out.	<b>the evidence of the Second Applicant that she has 9 windows painted shut in Flat 1 and the evidence of the Third Applicant that she has 5 windows painted shut in Flat 2, in both cases without good reason. On that basis, and having regard to page 1234 which suggests a rate of £35.70 to release paint stuck sashes, we deduct 14 x £35.70 = £499.80. No other deduction.</b>
13.17.9	Mastic to windows.  £inclusive	<b>CROSS REFER TO RELEVANT SECTION IN NEW BLOCK.</b>  Omit cost –works not carried out.	This point is Irrelevant as no Cost associated with this. Cost for 5.18 is omitted.	<b>No deduction. We agree with R's comments and in any event not proven.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
13.18	<b>WINDOWS AND EXTERNAL DOORS – OLD BLOCK</b>			
13.18.1	<p>Cross reference to window repair schedule.</p> <p>£4,557.70</p>	<p>Item not agreed.</p> <p><b>See experts comments on Respondent Window Repair Schedule</b></p> <p><i>The specification at item 13.82 required "The contractor shall ensure that all works to the windows are individually priced in an itemised fashion</i></p> <p><i>Applications have made repeated requests for this information. What has now been provided is a typed sheet - with no heading, no date, is unsigned and which to have been put together retrospectively.</i></p> <p><i>This item was also missing from the</i></p>	<p>Window repair schedule was contained within the specification. Breakdown of SWB's costs has been provided. Ms Brick repeatedly refused access and missed appointments. SWB could have charged abortive calls but did not.</p>	<p><b>See determination under 13.17.8 above. No further deduction.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p><i>documents made available for inspection from the other contractors.</i></p> <p><i>Not all work has been carried out.</i></p> <p><i>Eg. Flat no 1</i></p> <p><i>8 paint stuck sashes were not released</i></p> <p><i>Parting beads were not replaced/Windows at Flat no 1 were painted shut.</i></p> <p><i>Please refer to witness statement Ms Brick.</i></p>		
13.18.2	The contractor shall ensure that all works to the windows are individually priced in an itemised fashion.	This is not the case – many queries remain unanswered.	Window schedule was in the spec. Breakdown of cost from Swainlands has been provided. We did not require the itemised breakdown at tender stage.	<b>Breakdown provided at p.1234. No deduction on this account.</b>
13.18.3	£615.83	Omit –windows not cleaned.  Joint inspection to be	Disagree. Windows cleaned just before the scaffold was removed.	<b>Deduct £102.78. This is very hard to judge after the fact. There was some evidence that some windows belonging to the Second and Third Applicants had not been</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		carried out Item not agreed		cleaned in the Old Block following the Works. Doing the best we can and having regard to the rate in the specification (£5.71 per window) we deduct £102.78 to reflect 18 uncleaned windows.
	<b>EXTERNAL PLUMBING AND RAINWATER GOODS</b>			
	<b>FIRE COMPARTMENTALISATION OF BASEMENT</b>			
13.25	<p><i>Supply and fit new MF plasterboard ceiling throughout with CASOLINE 2x12.5mm Fire Line to protect floor voids. Hilti 60 minute fire rated mastic to perimeter.</i></p> <p>£7,000.00</p>	<p>Omit this cost –this work prevents the leaseholder of flat 1 from longstanding and established access arrangements for services.</p> <p><i>See Experts Comments on requirement for fireproofing.</i></p> <p><i>Access arrangement to the basement formed part</i></p>	<p>This work was essential for fire safety of the residents in the block, It was requested by the fire risk assessor to comply with RRFSO 2005. An access hatch has been installed to provide access to a drain in case drain down of the system is required.</p> <p>Otherwise the position relating to access to services has not been changed by the boarding of the basement.</p>	<p><b>Allow.</b> The Fire Risk assessment (page 236, original bundle) noted at page 251 the lack of compartmentalisation and the lack of fire protection to the floor boards above. It recommended double boarding to stop the spread of fire. The Tribunal is satisfied that this was permissible under the terms of the Lease (para 4, Sixth Schedule) and reasonable.</p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p><i>of Flats 1 &amp; 2 purchase agreements, with this affords access to pipework and service points. Insurance and fire safety requirements in place since than have not altered.</i></p> <p><i>The Applicant has complied with advice from the then Company Surveyor regarding both the flat and the basement. See witness Statement Ms Brick.</i></p>	<p>No evidence of the alleged "longstanding and established access arrangements for services" has been provided and the Applicants are put to proof thereof.</p> <p>Terms of access to the Respondent's retained and common parts are governed by the covenants within the lease.</p>	
14.1	<p><b>INTERIOR COMMON PARTS INCLUDING ENTRANCE HALL, LOBBY, STAIRWAY, LANDINGS ETC.</b></p>			
14.2	<p>To all surface run electrical cables serving lighting,  £6,247.50</p>	<p>Horizontal wiring of the cables has been carried out. It is unclear what conduit if any has been</p>	<p>See pre works photos 0122, 0125, 0128 with surface run cables, see post work photo 7469 and clearly visible by</p>	<p><b>Allow. The work has been certified and the Certificates were available in court (p.1190). There is no need for record drawings.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>used The Applicants require the certifier to confirm horizontal wiring and conduit is part of approved certificate.</p> <p><b>Not provided.</b></p>	<p>inspecting the property that cables are not visible. Electrical Certificates to follow when received from SWB.</p> <p>See letter provided by Swainlands dates 20<sup>th</sup> Jan confirming this.</p>	
14.6	<p>Just very simple woodwork, allow £500.00. £892.50</p>	<p>Not fit for purpose as access for maintenance is not provided. This refers to the panelling for the electric cables.—Poor finish—access panel not fitted with cups and screws as specified</p>	<p>Work undertaken in accordance with the spec. Cost should remain in the full amount.</p> <p>There is no reason to need access for maintenance. There are straight unjointed cables runs. It was a client instruction to seal the fixings.</p>	<p><b>Allow. Reasonable.</b></p>
14.10	<p><i>Allow for taking up and disposing of all existing carpets. Allow for the provision of new heavy duty contract grade carpet. Minimum quality as per specification.</i></p> <p>£5,290.74</p>	<p>Omit this item as carpets supplied are not as specified in the final account. The applicant was not consulted on the carpet choice – all other lessees were. Respondent states copy invoice and spec has been requested from</p>	<p>Carpets were chosen by Respondent. Copy invoice and spec from SWB has been requested. Client agreed new carpet spec.</p>	<p><b>Allow. Carpet provided was contract grade but not of the specified mix (80% wool, 20% nylon). However, no evidence provided to justify deduction in respect of Old Block carpet (cf. position in relation to New Block where evidence has been provided).</b></p>



ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		Swainlands. When is this expected?		

**SCHEDULE 2: LOWER PARK VARIATIONS – OLD BLOCK**

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
2	<p><i>Skim between dado and picture rail.</i></p> <p>£4,425.00</p>	<p><b><u>Not accepted</u></b> as this is a priced item under 14.7 It is the contractor's choice how to achieve a proper surface for decorating. In this case it looks as if flushing up the existing surface would be more expensive than skimming it.</p> <p>See CAI 1</p>	<p>14.7 does not allow for skimming. There was no intention with item 14.7 to include skimming at specification stage and this is clearly reflected in the tender cost. Cleaning down and standard preparation did not provide the finish the client wanted. Skimming was the most effective solution.</p>	<p><b>Allow. Quality of surface underneath the old wallpaper finishes could not be foreseen. The last finish would not come off without pulling lath and plaster off. Therefore reasonable to skim to provide appropriate finish and reasonable to charge as variation.</b></p>
3	<p><i>Skim below dado.</i></p> <p>£950.00</p>	<p><b><u>Not accepted</u></b> as this is a priced item under 14.7. See above item.</p> <p>Not accepted as required information not provided.</p> <p>See CAI 1</p> <p>Applicant deems</p>	<p>See Response to number 2 above. Skimming walls is not a standard preparation.</p>	<p><b>Allow. See observations under Item 2 above.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		included in preparation at item 14.6		
5	<i>Remove galvanised trunking.</i> £275.00	Applicants deem. This is included in item 14.2 above as cables are not clipped in place.  See CAI 1	This refers to the vertical metal trunking for power and data cables, not lighting. The removal was not included in the spec. Had to be removed in order that MDF boxing can be fitted.	<b>Allow. Tribunal agrees with R's comments.</b>
7	<i>Sky cable installation.</i> £1,150.00	This is a cost for sky cables. Applicants deem this is not chargeable under the lease and does not comprise part of the works. See CAI 1	This was a client instruction.	<b>Disallow. Not recoverable under terms of lease.</b>
11	<i>Euro polymer to dormer tops.</i> £1,807.50	Applicants deem this is included in item 9.20 of contract work. Specification item says: "all parts of the main roof and subordinate parts to be left recovered."  Respondent to provide	See CAI Dormer tops not included in original roof spec. 9.20 does not mention dormer tops.	<b>Disallow. Dormer tops included in paragraph 9.20 of specification as part of main roof or subordinate part. Even if, which is not accepted, there is doubt as to this because of a lack of clarity in the specification, it is unreasonable to</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>copy of variation instruction.</p> <p>See CAI 1</p>		<p>penalise the tenants for that lack of clarity.</p>
16	<p><i>Fosroc repairs to main entrance porch.</i></p> <p>£1,271.25</p>	<p>Applicants deem this is included in Porch items 5.5 onwards. The Fosroc replaces the 1:4 cement/sand and PVA coating. It does the same job.</p> <p>Respondent to provide copy of variation instruction</p>	<p>Fosroc is special coating not included in the spec. Applicant has provided no evidence that this was included in the specification.</p>	<p><b>Allow. Agree with R's comments. Fosroc is not a substitute for sand/cement.</b></p>
17	<p><i>Fosroc strip main door.</i></p> <p>£1,197.50</p>	<p>Applicants deem this is included in Porch items 5.5 onwards. See last item.</p> <p>Respondent to provide copy of variation instruction</p> <p>See CAI 2</p>	<p>Fosroc is special coating not included in the spec. Applicant has provided no evidence that this was included in the specification.</p>	<p><b>Allow. See observations under item 16 above.</b></p>
18	<p><i>Strip wall paper and texture above dado.</i></p> <p>£1,950.00</p>	<p>This item is included in priced item 14.7, which says "strip off ceiling lining paper to uppermost ceiling of stairwell complete." The</p>	<p>There was a distemper type coating behind the layers of build up which was very difficult to remove. The contractor, CA</p>	<p><b>Allow. See observations under Item 2 above.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>contractor's pricing must reflect the risk/cost of leaving the exposed surface ready for redecoration.</p> <p>Respondent to provide copy of variation instruction See CAI 2</p>	<p>or client was not expecting this. 14.7 does not allow for stripping. There was no intention with item 14.7 to include stripping at specification stage and this is clearly reflected in the tender cost. Cleaning down and standard preparation did not provide the finish the client wanted. Stripping and skimming was the most effective solution. The stipple finish was removed as best as possible but could be fully removed without causing severe damage to the wall plaster.</p>	
19	<p><i>Asbestos removal.</i></p> <p>£1,165.00</p>	<p>Applicants consider there was no asbestos identified and so no asbestos was removed.</p> <p>Disallowed as variation and deduct £714 from the contract sum.</p> <p>Respondent to provide</p>	<p>This is an extra over cost for the asbestos removal required in the R &amp; D survey.</p>	<p><b>Allow. The Tribunal's notes record that this item was conceded by the tenants but for the avoidance of doubt it is allowed. The Tribunal agrees with R's comments.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		copy of variation instruction and reference in Asbestos Survey See CAI 2		
22 67	<i>Entry door electrician attendance. £561.50</i>	Omit – Respondent has deemed this to be part of maintenance budget.  See CAI 3  Respondent to provide copy of variation instruction	Attendance due to abortive calls – Flat 2 resident failed to keep appointments.	<b>Disallow. There was no proper evidence to establish that appointments had been made and not kept.</b>
23 22	<i>Smoke alarm modifications. £564.00</i>	This must have resulted in a credit due to the omission of heat detectors. The sum is identified as included in item 14.14.  Respondent to provide copy of variation instruction See CAI 3	Heat Detectors were installed in the flats. Applicant has not been able to present a coherent query for this. Two residents repeatedly refused access and abortive calls.	<b>Disallow. See comments under item 22 above.</b>
24 23	<i>Additional repairs flat 1. £350.00</i>	Applicants deem this is included in window schedule item 11.30.	Resident Damage caused to windows and repeated access	<b>Disallow. No breakdown or other evidence to explain or justify.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>Requested information not provided</p> <p>See CAI 3</p> <p>Respondent to provide copy of variation instruction</p>	issues.	
25 24	<p><i>Additional repairs flat 2.</i></p> <p>£350.00</p>	<p>Included in window schedule item 11.30.</p> <p>Requested information not provided</p> <p>See CAI 3</p> <p>Respondent to provide copy of variation instruction</p>	Resident Damage caused to windows and repeated access issues.	<b>Disallow. No breakdown or other evidence to explain or justify.</b>
26 25	<p><i>Euro polymer to dormer cheeks.</i></p> <p>£4,987.50</p>	<p>Applicants deem this is included in item 9.20. See comment to item 11.</p> <p>Respondent to provide copy of variation instruction</p> <p>See CAI 3</p>	See CAI 3 Dormer cheeks not included in original roof spec. 9.20 does not mention dormer cheeks. The Europolymer coating was a cost effective solution to increase the life of the dormer cheeks.	<b>Allow. The Tribunal consider dormer cheeks to be side walls rather than part of the roof. Therefore not included in specification and reasonable for the reasons given by R.</b>
28 27	<p><i>Install Ethernet cable</i></p>	<p>Stated to be for items installed in the flats. Applicants are not aware</p>	Client instruction to provide each resident with	<b>Disallow. See comments under item 7 above.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
	£636.00.	of any items installed. The Applicants deem this is not chargeable under lease –	infrastructure for high speed broadband.	
30 29	<i>Additional bond coat to wall.</i> £455.00	Applicants deem this is included in preparation item 14.6, which says "Fully prepare and paint embossed wallpaper ...including all necessary intermediate preparation." The contractor must price the item to cover the risk of difficult preparation. See CAI 3 Respondent to provide copy of variation instruction	It is for applying bonding coat to walls before skimming to cover stipple finish. See CAI 3. This is not included in 14.6 which is for painting.	<b>Allow. Agree with R's comments and consider reasonable.</b>
31 30	<i>External additional render 60M<sup>2</sup>.</i> £3,035.70	Applicant would agree to 30 sqm. @ £53.35 per sqM, which is as the priced item 5.13 not £73.08 as charged in the variations.  Requested information not provided	60 sqm of Tyrolean and render was hacked off. See photo's 6601, 6599,6785, 6786, 0116, 0117, 0118 for example. A large area was replaced at the top of the light well. See CAI 3. It is not reasonable to expect	<b>Allow. The best evidence came from Mr Hallas who said it was measured on site at 60 square metres.</b>



ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>See CAI 3</p> <p>Respondent to provide copy of variation instruction and photographs</p>	<p>the CA to photograph every single piece of work carried out. The CA is not on site every day of the week.</p>	
<p>32 34</p>	<p><i>External Tyrelene.</i></p> <p>£1,350.00</p>	<p>Applicants deem this is included in the item above.</p>	<p>60sqm of Tyrolean and render was hacked off. See photo's 6601, 6599, 6785, 6786, 0116, 0117, 0118 for example. A very large area was replaced at the top of the light well.</p>	<p><b>Allow. Not the same as item above which relates to the render behind the tyrelene. Tribunal repeats comments under item 31 above and agrees with R's comments.</b></p>
<p>35 34</p>	<p><i>Emergency plumbing repairs on roof.</i></p> <p>£600.00</p>	<p>Charge related to the repair of a burst water main.</p> <p>Applicants deem that this should be part of day to day management charges and not a variation to the contract.</p> <p>See CAI 3</p>	<p>Day rates, emergency works due to burst water main. See CAI 3. Client approved to include in the major works contract.</p>	<p><b>Allow. Emergency work. Reasonable to ask contractor to do whilst on site.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
39 38	<i>Extra over carpet tiles to lobby.</i> £1,000.00	Applicants maintain this is included in 14.10. See CAI 3  Respondent to provide copy of variation instruction	Client instruction. Carpet tiles chosen more expensive than those allowed for by the contractor in the specification.	<b>Disallow. Agree with A's comments. Not justified on basis that contractor had allowed for "low-grade budget carpet tiles". That is not what specification said at paragraph 14.10.</b>
40 39	<i>Temporary lighting.</i> £150.00	This is the contractors cost to maintain safe access to site. Included in preliminaries.  See CAI 3  Respondent to provide copy of variation instruction	Festoon lighting was required when scaffold was removed in lightwell.	<b>Disallow. Agree with A's comments.</b>
41 40	<i>Felt to lower large dormer.</i> £417.15	Applicants deem this to be included in 9.20. See comments in item 11.  See CAI 3  Respondent to provide copy of variation instruction	9.20 does not include dormer tops. This was an extra cost.	<b>Disallow. See comments under item 11 above.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
42 44	<i>Renew lead to perimeter.</i> £3,307.50	Deemed to be included in 9.11, which says "Supply all necessary lead flashings, weathering, leadwork complete and found necessary."  See CAI 3  Respondent to provide copy of variation instruction	Contractor allowed for bonding felt to existing lead. Client instructed new lead to verge. Therefore it is an extra cost not allowed for in the tender by the contractor.	<b>Disallow. Agree with A's comments.</b>
49 48	<i>6 brass signs.</i> £500.00	This is a cost for brass signs which have not been fitted.  See CAI 3  Respondent to provide copy of variation instruction	It is a fixed price for 6 brass signs. The contractor supplied 6 brass signs.	<b>Allow. The advice about the need for such signage changed. Reasonable.</b>
51 50	<i>Hack off render, renew and point inside of parapets.</i> £2,625.00	Applicants deem that from inspection it appears that 30 sq.m. is more appropriate. Hallas to justify 60sq.m. Allow half £1,31250 offered.	It is fixed price for the whole of the parapet. Approximately 60 sqm. Applicants have inspected this. See photo 7295 and 7296 of section of parapet hacked off. Work was done	<b>Allow. The Tribunal's notes record that this item was conceded by the tenants but for the avoidance of doubt it is allowed. The Tribunal agrees with R's comments.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>See CAI 3</p> <p>Respondent to provide copy of variation instruction</p>	and is visible when inspected.	
55 54	<p><i>Lead repairs to dormers.</i></p> <p>£2,250.00</p>	The Applicants deem this is included in item 9.20 and 9.11.	9.20 and 9.11 do not refer to the dormers or include any works to the dormers. The variation is a fixed price based on number of repairs in schedule. 27 lead repairs in total.	<p><b>Allow. The need for these repairs did not become apparent until the contractor was on site with the benefit of scaffolding. Amount reasonable for reasons given by R.</b></p>
58 57	<p><i>Internal flat making good.</i></p> <p>£1,050.00</p>	<p>No details of flat no. or scope of work provided. Applicants deem that making good to unnumbered flat is nothing to do with the contract so £1,050 should be a credit. In any case the contractor should make good any damage caused by the works.</p>	Client instruction and cost agreed. Several flats required making good following installation of fire alarm.	<p><b>Allow. Tribunal agrees with R's comments.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>Requested information not provided</p> <p>Respondent to provide copy of variation instruction</p> <p>This is a charge for making good to an unnumbered flat</p>		
60 59	<p><i>CCTV Survey drains front left corner.</i></p> <p>£607.50</p>	<p>This is a cost for drain surveys for what purpose, drainage was not part of the affected.</p> <p>Applicants deem this should be part of the regular maintenance and not the contract works.</p> <p>See CAI 3</p> <p>Respondent to provide copy of variation instruction</p>	<p>Client instruction. Survey and report submitted to HML Scotts. There was a suspected leak in the drains identified during the course of the works.</p>	<p><b>Allow. The Tribunal agrees with R's comments. There is no separate maintenance contract for the site.</b></p>
61 60	<p><i>CCTV drains back left corner.</i></p>	<p>Applicants comment as 59 above.</p>	<p>Client instruction. Survey and</p>	<p><b>Allow. The Tribunal agrees with R's comments.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
	£607.50	See CAI 3  Respondent to provide copy of variation instruction	report submitted to HML Scotts. There was a suspected leak in the drains identified during the course of the works.	
62 64	<i>Jet blocked drain front elevation.</i>  £364.50	This is a cost for drain cleaning.  Applicants deem clearing drain is a maintenance item and not part of the contract works.  See CAI 3  Respondent to provide copy of variation instruction	It is a price following drain survey in items 59 and 60 above. Client instruction.	<b>Allow. See comments under items 60 and 61 above.</b>
67 66	<i>Europolymer to aprons.</i>  £1,875.00	Applicants deem this is included in item 9.20.  See CAI 3  Respondent to provide copy of variation instruction	9.20 does not refer to the dormers or include any works to the dormers. The Europolymer provides a good value solution to extending the life of the dormers. The residents could not afford to	<b>Allow. The Tribunal does not consider that aprons are included in paragraph 9.20 of the specification.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
			renew them so this was a most appropriate action to take.	

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
			renew them so this was a most appropriate action to take.	



**SCHEDULE 3: LOWER PARK - NEW BLOCK**

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
15.5	<p><u>Scaffolding – electric lift.</u> £892.50</p>	<p>This is the charge for scaffolding lift not supplied. Omit cost.</p>	<p>An electric hoist was provided for as and when required on site. Spec did not require that there be a hoist on site for the full duration of the works. Cost to remain in full. Swainlands provided the cost in the tender and it would be unreasonable to remove on the basis that the hoist was not used as much as the applicant would have liked have seen it used.</p>	<p><b>Allow. Agree with R's comments.</b></p>
15.6	<p><u>Scaffolding alarm -</u> £1,785.00</p>	<p><b>The Applicants deem alarm was not fit for purpose.</b></p> <p>Alarm not supplied as specified and not of much use. The alarm supplied did not function properly during the works.</p> <p>Tenants felt vulnerable due to the absence of a properly functioning alarm with relevant worry.</p>	<p>An alarm was provided but it was not a monitored system, therefore cost in the final account was reduced by 25% to reflect this. Scaffold was fit for purpose. It was a deterrent and sounded to alert the residents in the event of activation. Monitored alarms are not standard practice.</p>	<p><b>Allow. Cost has already been reduced by 25% to reflect lack of monitoring. This is reasonable. No further deduction required.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		Trespassers accessed the scaffolding and the police attended. Tenants were not consulted and did not agree to the omission of the alarm monitoring		
16.8	Roof to stair structure – new felt roof in 3 layers and flashings.  £4,871.86	<p><b>Revised to EVO 15 felt – Area of roof is 4 sq.m. approx. A cost of £450 would be reasonable - £450 offered.</b></p> <p><i>CA advised that this is a Contractor's costing error.</i></p> <p>Very small area of felt supplied.</p> <p>The Respondent agrees that the cost is inflated. Hallas should have identified this inflated cost at the time of the tender and not accepted it on behalf of the leaseholders. Hallas agreed that the cost is inflated and the applicants now query whether this accepted cost inflation pervades throughout the project. As this is a Revised Specification the cost can also be disputed</p>	<p>Disagree. Whilst cost may be high for a specific item, however it is the price submitted in the tender. It is a fixed price. The Respondent cannot cherry pick costs out of the tender which they do not like. Cost should remain. The overall contract price is fair and reasonable for the works undertaken.</p> <p>Tribunal to decide. It would be unfair to the contractor to remove costs which they have more profit on. I did not agree to omit this cost.</p>	<p><b>Allow £1,000. Substantially agree with A's comments. Mr Hallas did accept in evidence that this was a high cost for a small item. The Tribunal is not persuaded by the cherry-picking argument or by the fact that this was the price submitted in the tender. It was unreasonably high and should have been identified. If we were against R, Mr Hallas's rival cost was £1,000 and we accept that.</b></p>
16.14	To all flat roof	<b>Not appropriate material, for</b>	Guarantee attached. Product	<b>Allow. Agree with R's</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
	<p><u>surfaces</u> including dormers 2 coats of Acrypol Plus including upstands dormers parapet copings etc.</p> <p>£20,151.46</p>	<p><b>walkways; guarantee does not cover the workmanship</b></p> <p>Not resolved  <i>Cromapol is not suitable for walkways and balconies. The only access to the water tanks is across the flat roof from the stairs and so the flat roof becomes a walkway ( see Cromapol Technical advice.</i></p> <p>The Guarantee supplied is for the product only.  No guarantee has been obtained for the roof /roof works itself  Cromapol need to guarantee the installation on the roof covering after inspecting the preparation.  <i>The guarantee should be in flavour of Lower Park Putney. What is supplied is not.</i>  Tower Asphalt is noted as the contractor on the document supplied but Swainlands were the contractors.  The incorrect address is on the</p>	<p>used was cromapol not acrypol. Cromapol is a superior product with a 10 year guarantee. No Additional cost incurred for the superior product.</p> <p>Cromapol inspected the works and were happy to guarantee the whole roof.</p> <p>The 'walkway' is a fraction of the roof area and therefore to claim a £20k omission is not reasonable.</p> <p>The guarantee clearly states what is guaranteed. It is worth noting that the spec was originally for Acrypol with no Guarantee. The intention was to provide a protective coating to prolong the life. What the contractor offered was a better solution. The residents benefitted from a product above and beyond what was specified.</p> <p>Cromapol is a low cost and efficient product to extend the</p>	<p>comments. The fact you occasionally have to walk on the roof surface does not make it a walkway. A ultimately contended for reduction of £2,000 but we are not persuaded that any reduction is warranted. The specification does not refer to a guarantee but one has been provided (page 1053) and its terms are reasonable.</p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>document supplied. This needs to be changed to Lower Park 54 Putney Hill. Completion date to be for the roof work needs to be established.</p>	<p>life of the roof. The roof required the stones removing anyway as they were blocking up the gutters, plus the black bitumen needed solar reflective. The cost to do this would have been only a little less than the cromapol but would be an inferior material.</p>	
17.2	<p>Projecting balconies carry out concrete repairs.</p> <p>£833.00</p>	<p>Poor work unacceptable – steel balcony not fixed to wall – omit.</p> <p><u>Joint inspection on 18.01.16 Not agreed. See experts report and photographs attached</u></p> <p><u>–it not evident what if any repairs were carried out item not agreed.</u></p> <p>In the final account this cost refers to making good of the 2 balconies at first floor level. Please supply the pre-existing photographs 1168 &amp; 1173 referred to in the Final Account The Schedule and The Tender, in order to compare the before</p>	<p>Works have been completed to specified, and acceptable, standard. See photo 3418.</p> <p>The steel handrail repair was not specified. To repair this will be additional cost to contract.</p>	<p><b>Allow £533.00. On inspection the drip was missing and needs to be reinstated and there were some raised surfaces which required limited remedial works.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>and after condition for these balconies The work carried out is poor and unacceptable. These photographs remain outstanding despite previous requests from the Applicants.</p>		
17.11	<p>Easternmost balcony – rendering repairs and concrete repairs.  £892.50</p>	<p>Work very poor unacceptable omit.  <i>As per inspection of 18.01.16 Side of balcony slab shows cracking and rust marks not agreed. See Experts comments and photographs on attachment</i>  <i>Item to be resolved by inspection and provision of photographs.</i> This cost relates to easternmost balcony at front elevation Pre works photograph 1174 is required in order to compare the before and after condition of this balcony.  The work is poor and unacceptable.</p>	<p>The entire screed surface was removed as it was delaminating. Entire new balcony surface was renewed. Therefore above and beyond the patch repairs in the specification.</p>	<p><b>Allow £392.50. Agree with A's comments whose experts contended for £500 reduction.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>Previous requests for this photograph have been ignored. This photograph is referred to in the schedule, tender and final account.</p>		
17.12	<p>Make good rendering at hand rail and moulded feature.</p> <p>£297.50</p>	<p><b>Joint inspection on 18.01.16 shows poor rendering work-one side of balcony railings not fixed.</b></p> <p>Joint inspection on 18.01.16 shows poor rendering work-one side of balcony railings not fixed</p> <p>See experts report and photographs attached <i>Item to be resolved by provide photograph and inspection.</i></p> <p>Record photograph 1174 listed on the final account is required in order to compare the before and after condition of this balcony.</p> <p>This photograph remains outstanding despite previous requests. The photograph is referred to in The Schedule, The Tender and the Final Account. One side of the steel</p>	<p>Only one side specified to be repaired. Repair is acceptable.</p>	<p><b>Disallow. On inspection the new rendering where attached to the wall was poor.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		work for this balcony is not attached to the wall. See Applicants photograph.		
17.14	<p>Replace mastic sealant to perimeter of all joinery provisional. £7,068.60</p>	<p>This white sealant is a standard decorating treatment. This work is part of the decorations treatment and the cost, is part of the joinery treatment. Omit cost. F/A ADJUSTS TO £7,068.60.</p> <p><i>Note – Old block item 6.19 CA notes that no cost associated with identical item. Contractor did the sealing as a matter of course during the external decoration - item to be inspected – if not agreed – Tribunal to decide.</i></p> <p>This is a charge for the raking out and replacement of mastic sealant to perimeter of all joinery. This is a provisional figure in the tender.</p> <p>The existing joint between all of the wooden frames and the</p>	<p>Specification says to rake out mastic and renew. That is what was done and Applicants have confirmed this. Cost should remain. It has already been reduced by 25% in the final account as gesture of goodwill by contractor.</p> <p>It is a specified item which the contractors were required to price. Sealant was not included in the decorating spec therefore it is a cost that has to be paid.</p> <p>Contractor did not do works as a matter of course. It was priced item in the spec which was carried out. The contractor should be paid.</p> <p>If the contractor did not price this item then they would have added the cost into their decorating. The residents would have paid for it one way</p>	<p><b>Allow. Agree with R's comments and disagree with A's comments. Following our inspection we accept Mr Hallas's evidence that the rake out and replace work specified was done to most windows. The cost in the final account has already been reduced by 25% to reflect the fact that some windows were not done as the work was not necessary. No further deduction is justified.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>brickwork is in sound mortar. This mortar joint has not been disturbed. There is a new sealant in white silicone at the junction of the paint and the mortar joint.</p> <p>This white sealant is a standard decorating treatment and the Applicants deem this cost is part of the joinery treatment.</p> <p>The Applicants photographs.</p> <p>No raking was carried out There was no original mastic to be replaced and as a standard decoration item the caulking was carried out per each elevation.</p> <p>The Respondents response to this item contradicts his response under items 5.18 and 6.19 in the Old House Scott schedule. The Respondent has noted in item 7.9 (Old House Scott Schedule ) that this is not charged for as it is part of the standard decoration works.</p>	<p>or another.</p>	



ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
18.1	<b>EAST FACING FACADE (To Putney Hill)</b>			
18.11	<p>Incorporate all necessary making good in conjunction with window repair works.</p> <p>£inc</p>	<p>OMIT COSTS SCHEDULE OF COMPLETED WINDOW WORKS OUTSTANDING Flat 35 windows obstructed with Perspex.</p> <p><i>Works regarding Flat 35 windows are outside of the Scott Schedule.</i></p> <p>See Also Window Repair Schedule extraction</p> <p>Current state of Miss Bricks windows are shown in Applicants photographs</p> <p>Regarding this comment from the Respondent please refer to witness statement Miss Brick</p>	<p>See window schedule in the spec and the itemised costs provided by SWB.</p> <p>Applicants confirmed condition of the window decorating was good. The decorating could not be the good standard without the repairs being under taken first. All the windows had extensive preparation and repairs.</p> <p>Re flat 35 windows, the Second Applicant, Ms Brick, would not permit access to the flat or agree to replacement of the windows in UPVC as proposed by the Respondent. For safety measures, and to prevent damage to the fabric of Lower Park, Perspex coverings were fitted.</p> <p>Offer to reduce cost for flat 35 has been made by the</p>	<p><b>No reduction. See comments under item 19.7 and 20.11.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
19.1	<b>SOUTH FACING FLANK FAÇADE</b> (Cross refer to photographs 1178, 1179 and 1180).		respondent.	
19.7	Paintwork to wood work.  <b>£9,341.50</b>	<p>The windows for flat 35 have not been painted. Applicants offer £7,000.00 for this item.</p> <p>No further information provided as at 18/1/2016  <i>Regarding this item respondent to review and provide more information.</i></p> <p>This cost relates to the painting of the woodwork at the Rear Garden/ South facing façade. The windows for flat 35 have not been painted. Contractors have covered these windows with Perspex Applicants photographs refer. Lower Park Surveyors inspected all windows prior to tender and works set out in requested schedule. All preparatory work should have</p>	<p>As gesture of goodwill respondents has offered to reduce cost by £898 (in total). This is based upon the total cost of decorating for the two elevations with flat 35 windows, divided by the number of windows multiplied by 8 for the number of windows flat 35 has.</p> <p>There is no mathematical or reasonable justification in the applicants offer to reduce the cost by £2,341.50.</p>	<p><b>Reduce by £449.00 based on total reduction of £898.00 in total split between items 19.7 and 20.11. As offered £7,000 for this item to reflect the fact that windows to Flat 35 not painted, i.e. a reduction of £2,341.50. R offered reduction of £898.00. Having regard to the overall cost for redecoration in the priced tender, we consider R's reduction is the right figure. See comments under item 20.11 above. Reduce by £898.00 in total across both items.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>been carried out prior to decoration. Applicants offer £7,000.00 for this item.</p>		
20.1	<p><b>REAR GARDEN WEST FACING FAÇADE (Photograph 1182)</b></p>			
20.11	<p><i>Rear garden west facing façade paint wood work.</i></p> <p><b>£2,558.50</b></p>	<p>The windows at flat 35 are not painted.</p> <p>Applicants offer £1,750.00. Joint inspection on 18.01.16</p> <p>This cost refers to painting of joinery at rear garden west facing façade.</p> <p>The windows at flat 35 are not painted and have been covered in Perspex by the contractors. Refer to item 19.7 for comments</p> <p>Applicants photos refer to Miss Brick windows</p>	<p>As gesture of goodwill respondents has offered to reduce cost by £898 (in total). This is based upon the total cost of decorating for the two elevations with flat 35 windows, divided by the number of windows multiplied by 8 for the number of windows flat 35 has.</p> <p>There is no mathematical or reasonable justification in the applicants offer to reduce the cost by £808.50 for this elevation only.</p>	<p><b>Reduce by £449.00. See Tribunal's comments under 19.7 above.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
21.3	<p><b>Identify work included in schedule. Omit costs.</b></p> <p>£inc</p>	Window schedule not provided	See window schedule in specification and SWB itemised prices.	<b>No deduction.</b>
21.8	<p>To all exposed cabling chase plaster behind, form recess into wall and cover with suitable plastic trunking.</p> <p>£10,619.56</p>	<p>Alarm installation not fit for purpose – omit all costs.</p> <p><i>Respondent to provide break down costs of alarm system, chasing cost and trunking costs.</i></p> <p><i>In variation item 3 The respondent states the cost for chasing £2,000.00 and 30% of the chasing work was done. Trunking £900</i></p> <p>The final account description for this item is " to all exposed cabling , chase plaster behind and recess into wall and cover with suitable plastic trunking.</p> <p>Make good plaster using</p>	Chasing cables was minimum 30% complete. The rest fitted into trunking. Trunking quality is fit for purpose and of a reasonable standard. This cost also included the installation of the fire alarm. Cost should therefore remain. The chasing cost is a minor amount of the £10,619.56. The majority is the fire alarm cost itself.	<b>Allow £9,119.56. See also item 21.10 below. The alarm installation is fit for purpose. Based on the evidence we heard we have deducted 70% of £2,000 (£1,400) for the chasing that was not done and £1,000 for the absence of heat detectors in each flat but added back £900.00 for the cost of trunking.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>render and set finishing flush and true with surrounding surfaces. The chasing of cables was abandoned.</p> <p>At variation item 3 in the final account the Respondent states.</p> <p>The total cost of chasing £2,000 30% of chasing was complete (£600). Trunking cost £900.</p> <p>This is a huge discrepancy without explanation.</p> <p>The Applicant offers £600 for the chasing.</p> <p>The Applicant deems the trunking to be of poor quality and not fit for purpose.</p> <p>The specification item has changed from chasing to becoming a fire alarm.</p> <p>Applicants deem there is a credit due of £10,019.56.</p>		

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>At the General Meeting of the Company 17<sup>th</sup> June 2015 Miss McDonnell asked Mr Hallas where in the Schedule/Tenders was the New Block fire alarm included.</p> <p>He replied that it was included in the electrical costs. This conversation is not recorded in the minutes of the meeting.</p> <p>Following receipt of the minutes Ms Bricks telephoned Mrs Crooks West at Glanvilles Solicitors (she advises the Company on Co Sec issues). And informed her that the minutes were misleading owing to omissions.</p> <p>As this was a very important meeting the minutes should have been accurately recorded.</p> <p>The Respondents inclusion of substituted items is wrong.</p>		

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
21.10	<p>Install fire alarm system.</p> <p>Einc</p>	<p>Chasing is included in 21.11.</p> <p>Alarm installation not fit for purpose – omit all costs. See support statements.</p> <p><i>Further information to be provided by Respondent. not provided</i></p> <p>Only the staircase and common areas are covered by the Fire Alarm.</p> <p>Why was this installed as it does not meet any standard as there is a second means of escape.</p> <p>It should have been established by the Surveyor at the outset that the flat doors were not fire doors.</p> <p>Why run heads to flats for no purpose?</p> <p>The Heads have not been installed in the flats.</p> <p>The alarm is only 25% done.</p> <p>The cost of the fire alarm system was included in the electrical cost so the cost needs to be reduced by 75% of</p>	<p>Alarm has been fitted as requirement of RRFSO 2005. Compartmentalisation cannot be guaranteed. Flat doors do not comply with Fire regs. It is a communal system as requested by Fire Risk Assessor. Cables have been run for installation into flats, however heads in the flats creates difficult management conditions. The building is robust concrete building. We are seeking building control approval not to install the heads in the flats. In any event this is an inclusive cost within the final account and forms part of 21.8</p> <p>Respondent has instructed building control inspector to decide if heads need to be installed in flats.</p>	<p><b>No further deduction. See comments under paragraph 21.8 above.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>the alarm cost Alarm only 25% done reduces electrical installation figure further for basic trunking.</p>		
21.12	<p>Paintwork to common areas and staircases. £3,427.20</p>	<p>FINISH VERY POOR OFFER £2,000.00</p>	<p>The works were done as per the spec and to a good standard. Applicants to provide evidence of the poor workmanship. Please note the woodwork was not stripped and therefore standard will not be as new. This is a redecoration contract not renewal.</p>	<p><b>Allow. Following our inspection we consider that the paintwork to the common areas and staircases has been done to a reasonable standard having regard to the age, character and locality of the building.</b></p>
21.13	<p>Apply varnish to previously varnished staircase. £6,771.10</p>	<p>Varnish applied over, blemishes, marks, chipped surfaces finish unacceptable – omit cost.</p> <p><i>The existing woodwork paintwork had many blemishes. Parts of the paintwork were missing and discoloured. This poor condition was not remedied. The specification required</i></p>	<p>Spec is to lightly rub down and apply two coats of varnish. Works done as per the spec. In fact works done above and beyond spec as SWB did stain some of the worst blemishes prior to varnish for which no charge was made. Spec was not to strip back to bare timber as this cost would be prohibitive for lessees. Full cost should remain.</p>	<p><b>Allow. Following our inspection we consider that the varnishing has been done to a reasonable standard having regard to the age, character and locality of the building. We noticed some runs on a small area of skirting but we were told and accept that these areas will be made good as part of the snagging process.</b></p>



ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p><i>the application of varnish without making good the existing paintwork – The application of varnish is a waste of money.</i></p> <p>This item relates to the varnishing of the joinery and staircase in the common entrances.</p> <p>Very poor finish, neither smooth nor even. Varnish applied over blemishes, marks, chipped surfaces, the finish is unacceptable.</p> <p>Yacht varnish not used.</p>		
21.14	Paintwork to ceilings.  £2,737.00	Ceiling finish not perfectly smooth, ceiling undulates, crack repairs not smoothed out, poor finish. Applicants offered £1,737.00  Item charged for ceiling repairs and painting in common entrance areas.	Work done as per the spec. Applicants to provide evidence of poor finish. There is no allowance for skimming the ceilings in the specification.	<b>Allow. See comments under item 21.12 above.</b>
21.15	Paint wall surfaces.	Wall surfaces – finish poor –	Works done as per the spec and to a good standard.	<b>Allow. See comments under item 21.12 above.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
	£3,712.80	<p>marks and breaks. Offer £2,000.00.</p> <p>Final account item for preparing, filling, bringing forward and finishing wall surfaces in common entrance halls to a smooth even finish.</p> <p>Poor finish achieved with marks and breaks. Applicants have offered £2,000.</p>	<p>Applicants to provide evidence of the poor workmanship. Note walls were not stripped or skimmed and therefore standard will not be as new. Cost to strip or skim the wall would be unreasonable.</p>	
21.16	<p>Replace carpets as per specification.</p> <p>£11,233.60</p>	<p>JHS Bacarratt 100% nylon was used and not 80/20 wool/nylon as stated in the final account with 42 oz underlay. Cost per suppliers Abbott is £6,000. £6,000.00 offered.</p> <p>The final account charge is for 80% wool 20% nylon heavy duty grade gauge 10 carpet, with heavy duty mechanical fix contrasting stair nosings, 42 oz felt underlay and grippers.</p> <p>JHS Bacarratt 100% nylon was used and not 80/20 wool/nylon as stated in the final account with 42 oz underlay.</p>	<p>The carpet is Heavy Commercial Standard, chosen by client. Carpets installed to a good standard.</p>	<p>Allow £9,000. The specification provided for a new heavy duty contract grade carpet "<i>minimum quality 80% wool 20% nylon...</i>" In fact what has been fitted is a 100% nylon carpet chosen by the client. The As produced evidence from C. Abbott Ltd (page 1226), annotated with prices given to A1 over the telephone, which suggested that cost of fitting the carpet including underlay and fitting costs would be £20.50 + VAT (carpet) plus £5.00 + VAT (underlay) plus £4.90 + VAT fitting would £30.40+ VAT x 200 sq. metres = £7,296.00. That cost did not</p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>Cost per suppliers Abbott is £6,000. £6,000.00 offered.</p> <p>No choice offered to the Applicants. All other lessees were invited to a meeting to discuss carpet variation. <b>See copy delivery details , specification and notification and minutes of meeting in attached appendix</b></p> <p>Guillaumes letter to Applicants 29.10.014 states "the sum for carpets is a provisional sum only at this stage. The residents of the Old Block Lower Park are currently discussing carpet choices and new block residents will shortly have the same opportunity. Once a decision on the same has been made, approaches will be made direct to the Manufacturers to provide quotes as well as our clients contractors. Once our client has obtained the relevant quotes, a decision</p>		<p><b>include grippers, overhead and profit for the contractor, or any necessary timber repairs. R contended that there should be no reduction to reflect the different mix of the carpet as the tenants had ultimately got a heavy duty contract grade carpet. However, the specification provided for an 80:20 mix and that is what the contractor priced for. An 80:20 wool mix is generally considered to be optimal and will generally be considered to be more "luxurious" than a 100% nylon carpet, and will often be more comfortable and maintain its appearance longer and cost more than a synthetic carpet. Allowing for the other items referred to above not included in the Abbott price, we allow £9,000 for this item.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>will be made as to the supply of the same.</p> <p><u>Applicants deem there is a credit is due £5,233.60.</u></p>		
23.2	<p><u>Window repair.</u> <u>Cross refer to</u> <u>appended window</u> <u>repair schedule</u></p> <p>£35,583.38</p>	<p>Window repair schedule record of works not provided – omit cost. See supporting documents.</p> <p><u>Refer to expert's comment on this item as in attached appendix plus extract of window repairs schedule</u></p> <p>Windows Repair Schedule – Spreadsheet- was not available for inspection with the tenders. This document was only obtained under directions.</p> <p>It is of particular interest to note that the windows of Flat 35 do not feature on the Windows Repair Schedule in the tender Therefore the Applicants deem that work/repairs was never planned for the windows at flat 35</p> <p>The Applicants extract from</p>	<p>Works done as per schedule. Omissions for the windows not renewed are shown in the variations. It would not be possible to decorate the windows without these repairs and Applicants agree window decorating done to a good standard. See completion photos for standard of finish. See prep photos showing standard of preparation to the windows. Cost should remain. Applicant has provided no evidence that the repairs were not carried out.</p>	<p><b>Allow £34,359.58. Having considered the expert evidence on both sides, including R's schedule at page 1234 and the As' expert report at pages 1235-1240, we consider a deduction of £1,223.80, as conceded by Mr Hallas, is appropriate to reflect the lack of repairs to the windows of Flat 33. We do not consider that any further deduction is justified on the evidence. The final account already includes by way of variation a deduction of £9,800 to reflect the fact that the windows in Flat 33 had been replaced with uPVC windows prior to the commencement of the works (page 1076). As' experts contended, inter alia, for a further reduction of £6,575 on the basis that the window repair schedule made provision for 3 box sash windows to be replaced in Flat 33 but as Mr</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		Windows repair schedule attached shows several charges for work not done.		<b>Hallas explained the contractors who tendered were told to omit this item and page 1234 confirms that this work was not done and there was no charge for this item.</b>
23.3	Contractor to provide itemised price schedule.	<p>Note – Window repair schedule not provided. See supporting documents.</p> <p><i>Further information to be provided by respondents.</i> Not provided as at 18/1/2016</p> <p>This item relates to the requirement in the tender for the Contractors to provide individual pricing in an itemised fashion for all works to the windows.</p> <p>This was not available for inspection with the Tenders. Applicants have endeavoured without success to obtain this, including via application to the tribunal.</p> <p>What has now been presented by the Respondent is a typed</p>	Breakdown of Figures provided by SWB. Applicant has had a copy of this.	<b>No deduction. See page 1234.</b>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>sheet , unsigned , undated and without any heading.</p> <p>The document appears to have been cobbled together in order to balance with the figures in the tender.</p> <p>The Applicants have extracted the figures on a separate document ( Extraction of Window Repairs Schedule ) which is attached to this Scott Schedule.Work not done has been charged.</p> <p>Much less work than proposed has been done for the same cost.</p> <p>Applicants deem a further credit is due for this item.</p>		
23.4	<p>Wash windows.</p> <p>£1,767.15</p>	<p>Note not agreed. Not Completed on days of inspection. Scratches caused by contractor during work.</p> <p><i>Item to be reviewed subject to provision further</i></p>	<p>This has been completed before the scaffolding was removed. Cleaning has no relation to scratches. The cleaning was completed to a good standard.</p>	<p><b>Allow. This is very difficult to judge so long after the fact. Ultimately we accept Mr Hallas's evidence.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p><i>information, photographs and site inspection.</i></p> <p>This was not completed before the scaffolding was removed.</p> <p>Flat 13 windows are left in a dreadful condition. A workman from Swainlands used a scraper on some of the windows following the removal of the scaffolding. These windows are now covered in scratches. The windows to the rear side flank These windows are all marks, smudges from putty, and the rubble which came down from above.</p> <p>No attempt was made to clean the windows at the side flank</p> <p>Windows at flat 28 are covered with white stickers. The owner of this flat has told the Applicants that she is in dispute with the Contractors regarding scratches to her windows.</p>		
24.1	<b>LIGHTWELLS (2)</b>			

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
24.7	no.) Repaint timber work.  £2,142.00	<p>At meeting on 18.01.16 Mr Hallas to do inspection as it is plain that Windows all Upvc except two in steel, which are to be replaced by owners –no work done omit cost.</p> <p>At meeting on 18.01.16 Mr Hallas to do inspection as it is plain that Windows all Upvc except two in steel, which are to be replaced by owners –no work done omit cost.</p> <p><i>Issue to be resolved by joint inspection.</i></p> <p>This item relates to the light wells. The final account cost is for preparing, filling, priming and painting the joinery in the light wells.</p> <p>There is no joinery in the lightwells</p> <p>No joinery painting has been carried out. This is an omission to the contract. Hallas to confirm this is not done.</p>	<p>The fascia and soffits below the gutters are timber and in poor condition. Plus there was one flat with timber windows. The two crittal windows were also painted, however this is included in the metal works decorating.</p>	<p><b>Allow. As' expert contended for a reduction of £642.00 to £1,500 but following our inspection we are not persuaded that any reduction is warranted.</b></p>



**SCHEDULE 4: LOWER PARK VARIATIONS - NEW BLOCK**

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
7	<p>Scaffold alarm - multiple calls for install and maintain scaffold alarm.</p> <p>£1,940.00</p>	<p>Applicants deem that Vehicle safety lighting is a necessary H &amp; S requirement and already included in items 15.3 &amp; 15.6 in the final account. See expert's report.</p> <p>This variation is a charge for scaffold alarm installation and vehicle safety lighting installation.</p> <p>Applicants deem that Vehicle safety lighting is a necessary H &amp; S requirement and already included in items 15.3 &amp; 15.6 in the final account.</p>	<p>Client requested alarm to be fitted prior to sections being finished, out of sequence, plus vehicle safety lighting. Not provided for in the specification. Cost should therefore remain.</p>	<p><b>Disallow. This relates to multiple visits by contractor who it is said had to fit the alarm out of sequence. We consider this to be an occupational hazard for the contractor and an unreasonable item to charge extra for.</b></p>
8 9	<p>Cut out and make good blisters on roof surface.</p> <p>£1,426.00</p>	<p>Costs are responsibility of the Contractor.</p> <p>Roof specification was to be carried out in accordance with manufacturer's instructions, which include preparation. Therefore this sum should be</p>	<p>Patch repairs not included in spec. The spec. Additional cost should therefore remain. Manufacturer was content for their product to be applied over the bubbles, however it was agreed with client to cut</p>	<p><b>Allow. We agree with R's comments.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>disallowed</p> <p>See also comment under item – item 16.14 in final account.</p> <p><u>See CAI 2</u></p> <p>This variation item is for cut out and repair blisters on roof deck.</p>	<p>them out as this would be the best long term solution.</p>	
15	Light fittings final cost – £5,941.98	<p>This variation amount is for final cost of light fittings. No detail given for this amount and why it is a variation.</p> <p>Emergency lighting provided for item 21.11, including chasing. See item 43 which refers to supply light fittings. Omit subject to provision of details.</p> <p><i>Respondent to provide details of Variation instruction to Contractor and record photographs</i></p> <p>Item 43 in the final account refers to light fitting and</p>	<p>Specification included £3,428 for lighting works. Final cost was £5,941.98. This is because more than the specified 9 fittings was required with emergency lights being required on the half landings. Client also chose combined light fittings. SWB quoted for the variations which was instructed with client instruction.</p>	<p><b>Allow. We thought this item was ultimately agreed by the As' experts but in any event we agree with R's comments and allow this item in full as claimed.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>installation omitted from the final account No detail given for this amount and why it is a variation.</p> <p>No record of additional work provided. Emergency lighting provided for item 21.11, including chasing.</p>		
22 23	Supply front door – £3,500.00	<p><i>Note Chairman's Bulletin 17/12/2015 – doors now maintenance works and part of service charge</i></p> <p><i>The applicants were not allowed to have a say on this item – They were excluded from meetings and the decision making process – The item should be omitted.</i></p> <p>This variation item is for the supply of front doors. This is not an item on the specification or in the Tender.</p>	Client instruction. Cost should therefore remain. Doors are complete and fully operational. Fitted as per client instruction.	<p><b>Allowed. The Tribunal understood that items 22-26 were ultimately agreed by As' experts but in any event allowed. The doors were the original doors. It was going to cost £3,808 just to replace the glass (Item 21.4 in specification). This item has been taken out and replaced with a total cost of £6,275 for supplying and fitting new front doors which we consider reasonable in the circumstances.</b></p>

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>The lessees with the exception of the Applicants were invited to a meeting.</p> <p>The notice of the meeting was sent to all except the Applicants. The agenda was to discuss Carpet choices, Paint Choices, Doors, and Marble steps.</p> <p>The installation of these doors is a work in progress by Swainlands. This work commenced after the inspection 9<sup>th</sup> and 10<sup>th</sup> July 2015.</p> <p>There is a gap approx. 4 inches Wide and 4 inches deep running along the joint with the internal wall. Another large gap exists with the external wall.</p> <p>The ornate stucco at the doors has been hacked off and requires replacing.</p> <p>The doors do not fit properly. At entrance 12-23 there is a</p>		

ITEM	DESCRIPTION	APPLICANT'S COMMENT	RESPONDENT'S COMMENT	Tribunal's Determination
		<p>piece of plywood jammed between the frame and the marble steps. Varnish coat and brushes have been the work of the Lower Park caretaker.</p> <p>Existing ironmongery is reused.</p> <p>The hanging is uneven. There is a gap at the bottom. During the last heavy rain, water flowed in and the new carpet was drenched.</p> <p>At entrance 24-35 there are wires hanging all around the doors.</p> <p>The new doors have plain glass. There are now extra lights in the main entrance lobby. These are on 24/7 and brighten up when anyone enters the building. The interior is now completely visible to passersby and from the street.</p>		

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		<p>Applicants do not agree with the door choice. They deem the whole door project to be very badly thought out. They were denied any input.</p> <p>Miss McDonnell flat door faces directly toward to the plain glass front door. When she opens her door in the evening or at nighttime the interior of flat 13 is visible to outsiders. Also when she enters or leaves home at night – which she regularly does – by taxi at 3am – passersby can see her turning the bolts and know flat 13 has just been vacated.by the lady wheeling the suitcase.</p> <p>The applicants were told by Swainlands site manager that Swainlands only involvement is the fitting of these doors. He said they should not be included in the Swainlands final account and if they were the Applicants should take this</p>		

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		<p>up with the appropriate people. At the inspection 9<sup>th</sup> &amp; 10<sup>th</sup> July Mr Hallas said he had nothing to do with the doors.</p> <p>The Applicants believe these doors do not fit in with the features of this 1930,s building.</p>		
<p>23</p> <p>24</p>	<p><i>OPH on front doors.</i></p> <p>£525.00</p>	<p><i>See previous item for comments –</i></p> <p>This is for OHP on front door. Applicants state old ironmongery used.</p>	<p>SWB provided their overheads and profit for managing deliveries and paying the supplier. Doors procured by the client.</p>	<p><b>Allow. See comments under item 22 above.</b></p>
<p>24</p> <p>25</p>	<p>As before – Omit.</p> <p><i>Fitting front doors</i></p> <p>£1,000.00</p>	<p><b><i>See previous item for comments – Tribunal decision required.</i></b></p> <p>This is a charge for fitting the door. See comment at 23 above</p>	<p>Client instruction. Cost should therefore remain. Doors are complete and fully operational. Fitted as per client instruction.</p>	<p><b>Allow. See comments under item 22 above.</b></p>
<p>25</p>	<p>Door fitting.</p>	<p><i>See comments as per item 23.</i></p>	<p>Client instruction. Cost should</p>	<p><b>Allow. See comments under item 22 above.</b></p>

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26	£1,000.00	<p>Now part of maintenance budget.</p> <p><i>See comments as per item 23 detailed schedule of ironmongery to be provided.</i></p> <p>Existing ironmongery re used – no extra cost allowed except hinges and 2 flush bolts @£75 offered.</p>	<p>therefore remain. Doors are complete and fully operational. Fitted as per client instruction.</p>	
26 27	<p><i>Electricians attendance on front doors.</i></p> <p>£250.00</p>	<p><i>Comment as per item 23.</i></p> <p>Now part of maintenance budget.</p> <p>This variation is a cost for reconnection of the circuit only to the door.</p>	<p>Client instruction. Cost should therefore remain. Doors are complete and fully operational. Fitted as per client instruction.</p>	<p><b>Allow. See comments under item 22 above.</b></p>
33	<p>Scaffolding charges for extension of time</p> <p>£3,867.50</p>	<p>At time of inspection 9 &amp; 10 July work was ongoing so no cost incurred.</p> <p>The extension of time certificate should not allow for any delay due to the inspection</p>	<p>Scaffold charges for extension of time for variations and for FTT expert inspection by Applicants. See extension of time certificate.</p>	<p><b>Allow. The original contract allowed 20 weeks to complete a project due to commence on 1 September 2014. In fact the works to the Old and New Block were split and 10 weeks was</b></p>



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		<p>– respondent to confirm if this is the case. The inspection did not cause any delay. See expert's comment on extension of time allowance.</p> <p>See CAI 2  <i>Contract Administrator to provide copy of variation instruction, extension of time certificate – Tribunal then to decide.</i></p> <p>At time of inspection 9 &amp; 10 July work was ongoing so no cost incurred – no record of extension for time.</p>		<p>allowed for each Block. The work to the New Block was due to finish on 8 May 2015 but an extension of time of 7 weeks was agreed until 26 June 2015 (page 1364). The Extension of time certificate identified the reason for the extension as “<i>multiple variations to the contract including the late addition of the new doors, painting window sills, additional lead repairs and safety screen to flat 35 windows</i>”. Although the extension of time was 7 weeks, the contractor in fact charged for 2 weeks additional scaffolding charges. Having regard to the £60,000-odd of variations the Tribunal considers that an extension of 2 weeks was justified. Given that this was what was charged for, we consider the</p>

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				claim reasonable.
36	Window cill repairs. £15,000.00	<p>See experts report including offer made.</p> <p><i>Refer to Applicants comments in the Appendix</i></p> <p><i>Photographs of before and after the works to be provided by respondent.</i></p> <p>See CAI 3 17.7 provide the correct description of work. There is no record of the extensive works as per 17.6 carried out.</p> <p>Applicants offer £595 for 3 additional elevations total £1,785.00 Applicants photographs for all cill repairs carried out are included.</p>	<p>Works to sills were large repairs and frequent. Refer to photographs of the repairs. I agreed reduced rate agree with SWB due to frequency of the repairs. Cost should therefore remain.</p>	<p><b>Allow £5,000.</b></p> <p><b>The claim was based on 33 repairs at £654.50 each capped at a total of £15,000. In fact we were told by Mr Hallas and accept that there were 23 major and 13 minor repairs (pages 1213-4). The specification allowed for 12 repairs at £654.50 per repair (see items 17.6) and 1 repair at £892.50 (items 18.7).</b></p> <p><b>Mr McMahon for the As prepared a detailed report on this item (pages 1252-4) in which, whilst agreeing in broad terms with the number of repairs, he questioned the severity of the major repairs and questioned the cost of each repair, whether major or minor. He allowed for a total of 31 repairs: 17 full width crack repairs at £175.00</b></p>

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				<p>each, 11 overlay with mortar at £75.00 each and 3 minor repairs at £50.00 each.</p> <p>There was disagreement between the experts as to the extent of the necessary repairs and both sides referred to the photographs, in particular at pages 1267-8 and 1270-1. Ultimately, having heard the rival experts, and looked at the photographs, and based on our inspection, we prefer Mr McMahon's analysis and costings save that we consider that there were 23 major repairs at £175 each and 13 other repairs at £75 each = £5,000. We are reinforced in our views by the fact that the other contractors who tendered allowed for much smaller sums for this item (17.6): see page 291.</p>

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39 40	Perspex panels to Flat 35.  £1,575.00	Works render window unusable – Omit costs.  <i>See CAI 3</i> This variation item refers to the covering of flat 35 windows with Perspex.	Perspex panels to flat 35 instructed by Respondents. They prevent water ingress into the building and are a safety measure due to the Second Applicant's refusal to engage concerning window replacement. Ventilation was allowed for. Putty is missing from many windows, casements are loose, severe rotten timber is common. There was a danger of glass or part falling out.	<b>Allow. The Tribunal is satisfied that the windows were in a very poor and dangerous condition (pages 655-6) and had to be made safe. This was not an ideal solution but it was reasonable in all the circumstances.</b>
40 41	Paint sills ground floor only 3 sides  £2,650.00	Not accepted. This variation is a cost for painting the ground floor sills for 3 of the 5 sides of the building.  These are self finish concrete sills. They have never been painted before. They were not on the schedule. No prep work was done. A workman from Swainlands quickly put some paint on these during on the	Several of the ground floor sills had concrete repairs to them. Despite the contractors best efforts to match the colour the repairs were still visible. Painting the sills was a sensible option for improving the finish. In hindsight the client wishes they had painted all the sills	<b>Disallow. The Tribunal agrees with As' comments and considers that the contractors could and should have been able to match the colour without painting.</b>

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		<p>day of the inspection 9<sup>th</sup> July 2015. Applicants state this was done to cover up poor work to some of the window sills. See reference to subsequent cracking.</p> <p><i>See CAI 3 This work was unnecessary. It is a waste of money. Respondent to provide a copy of the variation instruction and Contractor's cost build up – Tribunal then to decide issue.</i></p>	<p>on each floor as it freshens up the appearance of the building, plus the paint offers a degree of protection from the weather.</p>	
43	<p>Liquid and ascertained damages must be deducted from contractor.</p> <p><b>-£6,750</b></p> <p>NB this is not an item contained within the final account rather the Applicants' claim for "liquid and ascertained damages"</p>	<p>The Applicants state they do not have to prove an economic loss. The L&amp;A provision of £750 in the JCT is a contractual amount which the Applicants are entitled to benefit from. Works took 38 weeks to complete - contract was for 20 weeks- Overrun is 18 weeks. The LED cost is £750.00 per week – Total deduction is £6,750.00 for</p>	<p>Contract had extensive variations and some bad weather days. Extension of time reasonable. Applicants to prove economic loss to claim LAD's and is irrelevant as there was no contract delay.</p> <p>Pre contract it was agreed with the client and contractor to split the contract into two.</p>	<p><b>No deduction. As stated above, the contract was split and insofar as there was an over-run on the works to the New Block there was an extension of time.</b></p>

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		<p>each block.</p> <p>Contract took 38 weeks to complete – original contract was 20 weeks.</p> <p>The delay is unreasonable.</p> <p>See also Bulletin and Snagging lists regarding all this.</p> <p><i>No information provided up to 10/1/2016</i></p> <p><i>Respondent to provide:</i>  <i>(a) Contractor's application for extension of time.</i>  <i>(b) Contract Administrator extension of time certificate with reasons for extension of time.</i></p> <p>The Applicants state they do not have to prove an economic loss. The L&amp;A provision of £750 in the JCT is a contractual amount which the Applicants are entitled to benefit from.</p>	<p>This was also stipulated in the tender documents that it was a possibility.</p> <p>See extension of time certificate. Client and contractor was always aware that extension of time would be granted if necessary and reasonable.</p>	

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		See also Bulletin and Snagging lists regarding all this.		