FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/LIS/2019/0027**
Property	**:**	**Hotel Place, Shrewsbury Road, Church Stretton, Shropshire, SY6 6DZ**
Applicant	**:**	**Fairfield Rents Ltd**
Managing Agent	**:**	**Urbanpoint Property Management Ltd**
Representative	**:**	**Counsel - Mr J Davies of New Square Chambers**
Respondents	**:**	**Mr C Stephens (No.1) and Mr G and Mrs A Gough (No.3 and No.6)**
Representative	**:**	**Terry Jones Solicitors**
Type of Application	**:**	**Applications under section 20ZA and section 27A of the Landlord and Tenant Act 1985 to dispense with consultation requirements in respect of qualifying works and for determination of liability to pay and reasonableness of service charges**
Tribunal Members	**:**	**Judge M K Gandham** **Mr N Wint FRICS**
Date and venue of Hearing	**:**	**29th October 2019 at Telford Justice Centre, Telford Square, Mallinsgate, Telford, TF3 4HX and a reconvene, without a further hearing, thereafter**
Date of Decision	**:**	**18 February 2020**

DECISION

Introduction

1. On 2nd August 2019, the Tribunal received an application from Fairfield Rents Ltd ('the Applicant'), under section 27A of the Landlord and Tenant Act 1985 ('the Act'), to determine whether the service charges demanded for the service charge periods ending 31st December 2016, 31st December 2017 and 31st December 2018 were payable, and the amounts which were reasonably payable, in respect of the property known as Hotel Place, Shrewsbury Road, Church Stretton, Shropshire, SY6 6DZ ('the Property').

2. The Applicant is the current lessor of the Property and Urbanpoint Property Management Ltd ('Urbanpoint')) manage the Property on the lessor's behalf. Mr Charles Stephens, the lessee of No. 1 Hotel Place, and Mr Graham Gough and Mrs Alexia Gough, the lessees of No. 3 and No. 6 Hotel Place, were detailed as the respondents in the application ('the Respondents').

3. No. 1 Hotel Place is held under a lease dated 3rd February 1976 and made between (1) The Hotel (Church Stretton) Limited and (2) Daisy Gladys Burgess for a term of 999 years from 3rd February 1976; No. 3 Hotel Place is held under a lease dated 23rd October 1978 and made between (1) The Hotel (Church Stretton) Limited and (2) Jean Parker for a term of 999 years from 23rd October 1978; and No. 6 Hotel Place is held under a lease dated 22nd August 1986 and made between (1) The Hotel (Church Stretton) Limited and (2) Michelle Patricia Elizabeth Hands for a term of 999 years from 22nd August 1986.

4. A Procedural Judge issued directions on 30th September 2019 and the Tribunal received a bundle of documents from each of the parties, forming their respective Statements of Case. The Tribunal also accepted a submission from the Applicant's Chartered Surveyor and a report from Record Associates, submitted by the Respondents, both received just prior to the hearing date.

5. In their submissions, received on 25th October 2019, the Respondents raised a number of points relating to the Applicant's compliance with the consultation procedure requirements under section 20 of the Act. The Applicant, therefore, made an oral application at the hearing, which the Tribunal accepted, for a determination under section 20ZA of the Act, to dispense with all or any of the consultation requirements in the event that the Tribunal considered that the section 20 consultation requirements had not been complied with.

6. A Directions Order was issued on 30th October 2019 in relation to the application for dispensation and both parties provided a Statement detailing any further submissions in respect of the same. Neither party requested a further hearing. The Tribunal confirmed that both applications would be determined based on the oral submissions made at the hearing and the written submissions received from both parties.

Inspection

7. The Tribunal inspected the Property on 29th October 2019. Mr Peter Luke (a Property Manager at Urbanpoint), Mr Goodman, (a chartered surveyor instructed by the Applicant) and Mr Davies (Counsel) attended on behalf of the Applicant. Mr Stephens (the First Respondent) attended the inspection, together with Miss McLachlan, from Terry Jones solicitors, who confirmed that Mr and Mrs. Gough (the Second Respondents) were unable to attend.

8. The Property is a former Edwardian hotel, located directly off Shrewsbury Road in the centre of Church Stretton. The development comprises a three storey link detached building, built in brick and slate, together with a side and rear yard with parking spaces. It comprises two commercial units, on the ground floor, and seven residential flats. Flat No. 1 is located on the ground floor of the building, Nos. 2, 4 and 6 on the first floor and Nos. 3, 6 and 7 on the second floor.

9. The building has an unusual layout in that No. 1 is accessed from the side of the building, as are Nos. 2 and 3 (via a metal external stairway leading to the first and second floor). The rear of the building gives access to an internal hallway, which houses the meter cupboards, and a staircase which leads to flat Nos. 4 and 5, on the first floor, and Nos. 6 and 7, on the second floor. A ground floor storeroom, available for use by the lessees, is accessed via a door to the rear of the building.

10. The Tribunal inspected the common parts of the Property and was able to view the works that had been carried out, other than those to the roof. These included:

    To the internal hallway – emergency lighting, new wireless fire alarm system, upgrading of the meter cupboards, plasterwork, painting, carpeting and various items of maintenance to the woodwork; and

    To the external parts – various areas of repointing to the walls, repointing and repair of the chimney, replacement of the downpipes and soil pipes, replacement of some of the guttering and glass, repair work to the slates, repair work and painting of the eaves and window frames, lead repair work around the gable, replacement of some of the fencing, repainting of the external stairway, replacement of the lighting to the side elevation, repair work and redecoration of the store cupboard and tarmacking of the carpark.

11. The Tribunal noted that some of the paintwork to the window frames and external staircase was chipped, that there was a leak by the door to the common hallway (which Mr Berry stated that he was previously unaware of) and that one of the lights to the side elevation was not working.

12. Following the inspection, a hearing was held at Telford Justice Centre, Telford Square, Mallinsgate, Telford, TF3 4HX. All those persons who attended the inspection also attended the hearing.

The Law

13. Section 18 of the Act defines what is meant by the term 'service charge' and defines the expression for 'relevant costs'. Section 19 of the Act limits the amount of any relevant costs that may be included in a service charge to costs that are reasonably incurred and section 27A details the liability to pay services charges.

14. The Act (as amended) provides:

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the 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 of subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

(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 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.

(4) No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.
…

15. Section 20 of the Act details consultation requirements and provides:

Section 20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited … unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

…

Section 20ZA Consultation requirements: supplementary

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

(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises…

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works unless certain consultation requirements have been either complied with or dispensed with by First-tier Tribunal (Property Chamber).

The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003.** These, amongst other things, require the landlord to

serve on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants' observations. There is also a duty on the landlord to seek estimates from any contractor nominated by or on behalf of tenants. The requirements also detail the procedure for the preparation and delivery of the landlord's proposals.

Section 20ZA of the Act allows the Tribunal to make a determination to dispense with the consultation requirements "*if satisfied that it is reasonable*" to do so.

The Leases

The Lease to No. 1 Hotel Place

16. Under clause 1 of the Lease, flat No. 1 is described as including:

> "*the external walls and the floors below and the plastered ceilings above the external walls and internal walls*"

In clause 2(5), the lessee covenants to:

> *"from time to time and at all times during the said term well and substantially repair cleanse maintain amend support uphold and keep the Flat … and the fixtures pipes wires drains and other services therein exclusively used or enjoyed by the owner or occupier thereof for the time being"*

In clause 2(8) the lessee covenants, in addition to paying the yearly rent, to:

> "*AT all times during the said term to pay and contribute a rateable proportion based on the local authority rateable value of the Flat in relation to the rateable value of the other parts of the Building of the expense of all the painting of the outside wood and ironwork and other outside parts of the Building and of maintaining making repairing and supporting rebuilding and cleansing the exterior of the Flat and the Building of which it forms part including the foundation roof walls timbers dividing floors access road and yard sewers drains pipes watercourses water apparatus cisterns gutters party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common the Lessors or the lessees tenants or occupiers of the premises near to or adjoining the Flat or of the Building save where such lessees or occupiers of the other flats in the Building are personally liable under the covenant in that behalf contained in their respective leases such proportion in case of difference to be settled by a Surveyor to be agreed upon by the parties hereto and the decision of such Surveyor shall be final and binding*."

And in clause 2(9) the lessee covenants:

> "*IF at any time during the said term the Lessors shall find it necessary to appoint a firm of Agents who shall act as their managing Agents for all purposes in connection with the proper management and conduct cleansing and repairing of the Building the Lessees will pay and contribute a rateable or due proportion of the expense of the total annual cost incurred by the Lessors in the employment of such firm of Agents*"

The Lease to No. 3 Hotel Place

17. Under clause 1 of the Lease, flat No. 3 is described as including:

> "*the external walls and the floors below and the plastered ceilings above the external walls and internal walls TOGETHER WITH the stairs leading from the first floor to the second floor of the Building…*"

In clause 2(5), the lessee covenants to:

> *"from time to time and at all times during the said term well and substantially repair cleanse maintain amend support uphold and keep the Flat … and the fixtures pipes wires drains and other services therein exclusively used or enjoyed by the owner or occupier thereof for the time being PROVIDED that the Lessee's obligations shall not extend to the roof walls main timbers stairs landings and corridors party walls ceilings and services of the existing building and the exterior painting thereof*"

In clause 2(8) the lessee covenants, in addition to paying the yearly rent, to:

> *"pay one half of the cost of lighting painting cleansing maintaining and repairing the passageway and stairs leading from the ground floor to the first floor of the Building"*

In clause 2(9) to:

> "*AT all times during the said term to pay and contribute a rateable or due proportion of the expense of all the painting of the outside wood and ironwork and other outside parts of the Building and of maintaining making repairing and supporting rebuilding and cleansing the exterior of the Flat and the Building of which it forms part including the foundations roof walls timbers dividing floors access road and yard sewers drains pipes watercourses water apparatus cisterns gutters party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessors or the Lessees tenants or occupiers of the premises near to or adjoining the Flat or of the Building save where such Lessees or occupiers of the other flats in the*

Building are personally liable under the covenant in that behalf contained in their respective leases such proportion in case of difference to be settled by a Surveyor to be appointed by the Lessors and the decision of such Surveyor shall be final and binding."

And in clause 2(10) the lessee covenants:

"*IF at any time during the said term the Lessors shall find it necessary to appoint a firm of Agents who shall act as their managing Agents for all purposes in connection with the proper management and conduct cleansing and repairing of the Building the Lessee will pay and contribute a rateable or due proportion of the expense of the total annual cost incurred by the Lessors in the employment of such firm of Agents*"

The Lease to No. 6 Hotel Place

18. Under clause 1 of the Lease, flat No. 6 is described as including:

"*the external walls and the floors below and the plastered ceilings above the external walls and internal walls*"

In clause 2(5), the lessee covenants to:

"from time to time and at all times during the said term well and substantially repair cleanse maintain amend support uphold and keep the Flat … and the fixtures pipes wires drains and other services therein exclusively used or enjoyed by the owner or occupier thereof for the time being PROVIDED that the Lessee's obligations shall not extend to the roof walls main timbers stairs landings and corridors party walls ceilings and services of the existing building and the exterior painting thereof"

In clause 2(8) the lessee covenants, in addition to paying the yearly rent, to:

"pay one half of the cost of lighting painting cleansing maintaining and repairing the passageway and stairs leading from the ground floor to the first floor of the Building"

In clause 2(9) to:

"*AT all times during the said term to pay and contribute a rateable or due proportion of the expense of all the painting of the outside wood and ironwork and other outside parts of the Building and of maintaining making repairing and supporting rebuilding and cleansing the exterior of the Flat and the Building of which it forms part including the foundations roof walls timbers dividing floors access road and yard sewers drains pipes watercourses water apparatus cisterns gutters party walls party structures fences*

easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessors or the Lessees tenants or occupiers of the premises near to or adjoining the Flat or of the Building save where such Lessees or occupiers of the other flats in the Building are personally liable under the covenant in that behalf contained in their respective leases such proportion in case of difference to be settled by a Surveyor to be appointed by the Lessors and the decision of such Surveyor shall be final and binding."

And in clause 2(10) the lessee covenants:

"*IF at any time during the said term the Lessors shall find it necessary to appoint a firm of Agents who shall act as their managing Agents for all purposes in connection with the proper management and conduct cleansing and repairing of the Building the Lessee will pay and contribute a rateable or due proportion of the expense of the total annual cost incurred by the Lessors in the employment of such firm of Agents*"

19. In all of the leases, '*the Building*' refers to the Property.

Submissions

Applicant's submissions

20. The Applicant confirmed that, in its application under section 27A of the Act, the Applicant required the Tribunal to determine the reasonableness and payability of certain items of service charge relating to three service charge periods:

- For the service charge year ending 31st December 2016, professional fees amounting to £4,918.97;

- For the service charge year ending 31st December 2017, service charges relating to the redecoration of the internal common parts amounting to £14,405.07, major works amounting to £113,201.98 and works to the exterior stairway amounting to £8,106.87; and

- For the service charge year ending 31st December 2018, service charges relating to major works in the sum of £3,138.74.

21. The Applicant stated that, in 2016, Urbanpoint had instructed a surveyor, Mr Trevor Goodman, of Berrys Chartered Surveyors, to inspect the Property with a view to carrying out works. Berrys has an office in Shrewsbury and Kettering, where Mr Goodman is based. Mr Goodman attended the Property and undertook an inspection, which revealed a number of works required to the Property. These works included various items of repair and maintenance to the structure of the building (the gutters, the windows, the external stairway, the car park and rear elevation) and the installation of emergency lighting and a new fire alarm

system to the internal hallway. Mr Goodman made reference to a Health, Safety & Fire Risk Assessment that had previously been carried out on the Property in 2012 and noted that the recommendations in the assessment had not been fully implemented.

22. The Applicant stated that a section 20 consultation procedure was commenced with Notices of Intention being sent on 10th February 2016. These described the works required to the Property as external and internal repairs and decorations, installation of emergency lighting and such other repairs considered necessary. After the consultation period had ended, the tendering process was commenced and a schedule of works was requested by four potential contractors but only two, Welch & Phillips Building Contractors Ltd and JR Slee Building & Joinery Contractors Ltd returned tenders with priced schedules amounting to £115,571.50 plus VAT and £133,769.48 plus VAT, respectively. Mr Goodman, at the hearing, confirmed that he had encountered problems obtaining tenders from the other two firms. Despite him extending the time period for tenders to 31st May 2016, Chris Brown Building Services Ltd. failed to provide a proper tender, although they sent a photograph of a top page of the Form of Tender detailing a figure of £96,380.00 plus VAT. As they had failed to provide any supporting documentation, Mr Goodman stated that he could not recommend them. Mr David Shepherd, the other person to whom the tender had been sent, stated that it had been delivered to the wrong flat, but no further documentation was received from him.

23. Mr Goodman referred to the fact that, after removing the contingency element for the tenders he had received, the quotes were very similar and that Welch & Phillips, who had given the lowest substantial quote, were a well-established firm that worked for local authorities and various other clients.

24. The Applicant stated that the results of the tenders were communicated to the lessees by way of a Section 20 consultation notice dated 17th June 2016, which also set out the responses to the initial notices of 10th February 2016. The second notice confirmed that the consultation period would end on 21st July 2016.

25. The Applicant noted that the First Respondent emailed Mr Luke, on 21st July 2016, criticising the tender process and stating that he had spoken to a colleague who referred to the costs being too high. Mr Luke wrote back to the First Respondent asking for some substance to his colleague's views, confirming that the lessees would be offered the option to pay by instalments and stating that, as far as he was aware, the tender process was carried out in accordance with recognised standards and could not be faulted. (A copy of the emails were contained within the Applicant's bundle). On 5th August 2016, Welch & Phillips were instructed to carry out the works.

26. The Applicant submitted that the works and costs, including the works to the window frames, fell within the terms of the Lease – under clauses 2(8)

the staircases, 2(9) repairs to the building and 2(10) the costs of engaging an agent.

27. The Applicant stated that service charge accounts were sent to the leaseholders in the form of a statement of service charge. The figure of £4,918.97, in respect of professional fees the year ending 31st of December 2016, was made up of two invoices received from Berrys relating to the agent's percentage fee of 8% of the project costs.

28. In relation to the service charge year for the year ending 31st December 2017, the Applicant provided a property expenditure report detailing the breakdown of sums detailed in the service charge, supported by invoices. The Applicant stated that Mr Goodman inspected the works and a certificate of practical completion was issued by Mr Goodman on 28th November 2017. The Applicant noted that the final cost of works was £105,544.64, the most significant variation from the original tender costs being the 10% contingency sum that was not required. The costs in relation to the external stairway and redecoration of the internal hallway were apportioned between the lessees responsible for the same.

29. In relation to the service charge year ended 31st December 2018, an amount of £3,138.74 for major works related to the release of the retention to Welch & Phillips.

30. With regard to compliance with the section 20 consultation procedure, Mr Davies, on behalf of the Applicant, stated that, although the leases referred to notices being served under section 196 of the Law of Property Act 1925, this was not applicable to the section 20 consultation procedure which was a far broader exercise with different consequences for non-compliance. Mr Davies stated that there was no evidence that the Respondents or their predecessors in title had not received the notices and that the First Respondent had clearly received the same as he had made observations.

31. In relation to the fact that the initial notice referred to the specification being available for inspection at Urbanpoint's administration office, based 200 miles away, and that Mr Goodman's specification had only been produced on 16th March 2016, the day after the closing of the consultation period; Mr Davies noted that copies of the specification had clearly been sent to some lessees as it was referred to in the observations.

32. Regarding the responses to the observations, although Mr Goodman confirmed that he had not responded to the observations forwarded by the lessees after the initial notice, and that he did not recognise two of the three observations as having even been forwarded to him, Mr Davies stated that the property manager was aware of the lessees' views but was not obliged to agree or follow them. He also referred to the fact that the observations were included in full on the second notice.

33. In relation to the fact that the works were not commenced straight away, Mr Davies referred to the fact that the works were started just over a year

from receipt of the tenders and that Welch & Phillips did not increase their tender on account of the passage of time.

34. With regard to any prejudice, Mr Davies noted that Respondents relied on the dissenting minority view of the Supreme Court in *Daejan Investments Limited v Benson et al* [2013] UKSC 14 ('*Daejan*'), he, instead, referred to paragraph 47 of the judgement of Lord Neuberger in the decision, in which he stated:

> "*Furthermore, it does not seem to be convenient or sensible to distinguish in this context, as the LVT, Upper Tribunal and Court of Appeal all thought appropriate, between "a serious failing" and "a technical, minor or excusable oversight", save in relation to the prejudice it causes".*

He went on to refer to the comments in paragraph 50:

> *"In their respective judgements, the LVT, the Upper Tribunal and the Court of Appeal also emphasised the importance of real prejudice to the tenants flowing from the landlord's breach of the Requirements, and in that they were right. That is the main, indeed normally, the sole question for the LVT when considering how to exercise its jurisdiction in accordance with section 20ZA(1). And it is fair to the courts below to add that where the landlord is guilty of "a serious failing" it is more likely to result in real prejudice to the tenants than where the landlord has been guilty of "a technical, minor or excusable oversight*".

35. Mr Davies submitted that it was for the leaseholders to discharge the factual burden to show that real prejudice would or might have been suffered and that it was not enough simply to show that a serious breach had occurred.

36. Mr Davies went on to refer to Lord Neuberger's comments at paragraph 77:

> *"…On the basis of the evidence before the LVT, it seems to me, substantially in agreement with the Upper Tribunal, that it is highly questionable whether any such prejudice at all would have been suffered. The only "specific prejudice" identified by the Upper Tribunal was in relation to what the LVT called in para 98 of its decision "a matter of speculation", namely that the respondents lost the opportunity of making out the case for using Rosewood to carry out the Works, rather than Mitre."*

37. Mr Davies referred to the Respondents' case, in which it stated that, had the tenants been able to comment upon specific areas of work, "*we can only speculate, might have informed the scope and approach to the project*" and "*the parties can only speculate as to whether Welsh & Phillips would ultimately have been appointed*". Mr Davies pointed to the fact that the First Respondent had received a copy of the tender by July

2016 and that, although he stated that it was overpriced, he gave no clear explanation as to why he had not arranged for a contractor to price the works and obtain an alternative quote in the three years prior to the Applicant's application to the Tribunal. In addition, Mr Davies noted that the quote could even have been obtained prior to the works being commenced in 2017.

38. Mr Davies stated that the Respondents had failed, in more than three years, to turn speculation in to evidence and that, according to *Daejan*, matters of speculation appeared unlikely to discharge the burden on the Respondents. He submitted that any breach of the section 20 consultation procedure must be linked to the question of prejudice and that prejudice must be found.

39. Mr Davies submitted that major works were required to the building, that the Respondents were liable for the costs under the terms of the lease, that the section 20 consultation procedure was followed substantially in accordance with the legislative requirements, that a professional surveyor supervised the project from tender through to practical completion, that it was an arms' length tendering processes process with two full tenders, that the tender was awarded to the lowest tendering contractor and that the works were carried out for a sum similar to that tendered. In contrast, he submitted that the Respondents could only speculate as to what the outcome might have been had things been done differently and this was clearly insufficient to refuse the Applicant's application for dispensation under section 20ZA should the Tribunal consider that the consultation procedure was flawed.

40. In relation to the surveyor's report by Mr Julian Record (submitted on behalf the Respondents), Mr Goodman, at the hearing, confirmed that he had not carried out a separate condition survey in this matter as it would have cost an inordinate amount of time and money and would not have been cost appropriate. He stated that he did not believe that staging the works would have been cost-effective as a large percentage of the costs related to scaffolding and access for works above ground level. In addition, he referred to the inconvenience to tenants of works been staged over a longer period and referred to the fact that carrying out the works as they did meant that several contractors were working at the same time, that they could deal with any unforeseen problems and that the works were completed within 20 weeks (July 2017 to November 2017).

41. Mr Goodman confirmed that he used binoculars to carry out his initial inspection for the schedule of works as it would not have been cost appropriate to use a cherry picker. He confirmed that both his inspection and his Specification of Works were completed in a way that he had done so for the past 30 years and that, generally, he found that contractors preferred surveys to be detailed elevation by elevation.

42. Mr Goodman noted that the works to the Property had been carried out two years previously and clearly there would be some items that would

now require further works. He stated that the repointing had been carried out to a satisfactory standard and that, where the pointing was particularly bad, and where it had been required, this had been carried out to a depth of 20 mm. In relation to the waste pipes, he stated that there had been plastic joints in certain areas and that they were worried that when replacing some of the pipework these might have become faulty. He stated that the original soil pipe was so degraded that work would have been needed in the future, so they decided to replace all of the black pipework, even though some was not strictly required. He confirmed that, although this cost more, it meant that all of the pipework was now in a good condition. In relation to the painting of the woodwork, Mr Goodman stated that some of the paintwork might have been peeling due to residual damp in the wood and that that it was impossible to completely dry out such timber. In relation to the leak within flat No. 6, and above the internal hallway, Mr Goodman stated that he was not aware of those particular leaks at the time or he would have arranged for the work be done.

43. In relation to any costs arising from potential historic neglect, Mr Davies submitted that, should this even be correct, it would not mean that the current costs had not been reasonably incurred but that the Respondent might have a counterclaim for disrepair, the approach taken in *Continental Property Ventures Inc v White* LRX/60/2005 ('*Continental Property Ventures*'). In addition, he submitted that the Respondents would have to evidence the costs that could have been avoided had such works been carried out earlier.

44. The Applicant accepted that the sum of £4,918.97 in the service charge year ending 31st December 2016, predated the purchase of flat Nos. 3 and 6 by the Second Respondents. Mr Davies stated that, although the Second Respondents may not have been sent the demands for the service charge in 2016, as they were not the owners of Nos. 3 and 6 at that time, the subsequent statement of service charges were sent in April 2017, so the Second Respondents were aware of the costs incurred and the amount due as required under section 20B(2) of the Act. In addition, Mr Davies submitted that, although the demand had been sent in 2016, the leases did not provide for interim payments and the vast majority of the works had been carried out in 2017, when the Second Respondents were the owners of flat Nos. 3 and 6.

45. In relation to the apportionment of figures, Mr Davies stated that the statement "*the current service charge percentage for this flat is 11.54810%*", as detailed in Urbanpoint's letter dated 2nd November 2016, was not an irrevocable statement and the leases for flat Nos. 3 and 6 were based on a rateable value or due proportion. As a rateable value was not ascertainable, flat No. 1 had also been allocated on a due proportion. Mr Davies confirmed that the external staircase did not serve No. 6 but clearly No. 6 was liable for part of the costs of the internal hallway.

46. The Applicant confirmed that a sum of £3,167.05, dated 31st December 2017, in respect of the roof works retention was recorded in the wrong year so should be credited back.

47. At the hearing, Mr Davies, on behalf of the Applicant, also accepted that legal costs were not recoverable under the terms of the lease and that the Applicant would not be pursuing the same.

Respondents' submissions

48. Miss McLachlan, from Terry Jones solicitors, made a number of submissions on behalf of the Respondents in respect of both the section 20 consultation procedure and the reasonableness and payability of the service charges.

49. In relation to the section 20 consultation procedure, she, firstly, referred to paragraph 8 of the leases which state that: "*the provisions of Section 196 of the Law of Property Act 1925 shall apply to all notices to be served hereunder*". As such, she submitted that the consultation notices should have been sent by recorded or registered post. She referred to the case of *Southwark London Borough Council v Runa Akhtar* [2017] UKUT0150, in which she stated that the Upper Tribunal considered that notices required by statute (in that case a section 20B notice) did fall within the phrase "*under the lease*". She stated that, although it was common ground that the First Respondent did receive the notice, there was no evidence that the Second Respondents' predecessors had done so.

50. Miss McLachlan went on to refer to the fact that, both the initial notice and the second notice, referred to documents being available for inspection at Urban Property Management Ltd.'s offices in Surrey. She stated that, clearly having the documents available for inspection at an office nearly 200 miles away from the Property, could not be considered reasonable.

51. In relation to the observations, Miss McLachlan referred to the fact that landlords are to have regard to any observations made by the tenants to them. Miss McLachlan stated that the specification of works was not produced until 16th March 2016, one day after the expiry of the initial consultation period, and that several tenants have made observations expressing a concern regarding the fact that the description of the proposed works did not contain the detail required for lessees to take appropriate steps to nominate a contractor.

52. In addition, Miss McLachlan pointed to the fact that all of the observations simply had a response stating "*Comments have been noted and passed to the Surveyors*". She referred to the fact that Mr Goodman confirmed at the hearing that he had not been forwarded some of the observations. In addition, although he recalled seeing the first observation, he stated that Mr Luke had informed him that he would reply to it. She stated that the First Respondent could not recall having ever received a reply from Mr

Luke. She submitted that the purpose of the regulations was to ensure that landlords engage in meaningful consideration of observations and that the observations had largely centred around initiatives to save money and deal appropriately with the expenditure. She stated that there were no meaningful comments in response to any of the observations and this could not be considered as the landlord having regard to them as required under the regulations. Miss McLachlan referred to the judgement of Lord Justice Lewison in *London Borough of Hounslow v Waller* [2017] EWCA Civ 45:

> "*…the landlord must conscientiously consider the lessees' observations and give them due weight, … It is impossible to say that the tenants' views are ever immaterial. They will have to be considered in every case*"

53. Miss McLachlan submitted that the notice of estimates contained no invitation for observations and was, thereby, defective. She stated that the First Respondent had, after receiving the second notice, emailed Mr Luke on 21st July 2016, expressing his alarm at the anticipated cost of the project and the affordability of the same. Although, Miss McLachlan noted that Mr Luke did reply, on 4th August 2016, she stated that this was simply to confirm that the Applicant intended to fund the works with the aid of a loan, which would attract interest. Mr Luke further stated that: "*As far as we are aware, the tender process was carried out in accordance with recognised standard. Whilst sympathetic to your situation, the process cannot be faulted*". She stated that, contrary to the promise given on 4th August 2016, there was no proposal to the lessees on the face of the demands or covering letter that staged payments were or would be available. She noted that the managing agents charged a fee of 3.5% plus VAT when, she submitted, that they only paid lip service to the regulations and had no real interest as to the tenants' concerns.

54. Regarding prejudice caused to the Respondents, Miss McLachlan referred to paragraphs 42 and 44 of Lord Neuberger's judgement in *Daejan*, in which he stated:

> "*42. …It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19 (1) b) and the latter in section 19 (1) (a). The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes…*
>
> *44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a*

landlord under section 20ZA (1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements."

55. Miss McLachlan acknowledged that the factual burden rests upon tenants to identify prejudice and stated that the approach best taken was set out in paragraph 67 in *Daejan:*

> "*As to the contention that my conclusion would place an unfair burden on tenants where the LVT is considering prejudice, it is true that, while the legal burden of proof would be, and remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants. However, given that the landlord will have failed to comply with the Requirements, the landlord can scarcely complain if the LVT views the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less (or, for instance, that some of the works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points … Further, the more egregious the landlord's failure, the more readily an LVT would be likely to accept that the tenants had suffered prejudice.*"

She submitted that it was clear that the severity of the landlord's breaches should be factored in on the question as to whether to grant dispensation.

56. In relation to this matter, she submitted that prejudice arose from the tenants not being able to view the scope of the work in the initial notice, the Applicant failing to respond to observations adequately - which could have led to a planned maintenance programme and possible control and reduction of costs, and the failure of the Applicant to have made tenders available at a reasonable place where the tenants would have been able to comment on specific areas of work. She concluded by stating that the parties could only speculate as to whether Welch & Phillips would ultimately have been appointed if the tenants had been meaningfully consulted.

57. In relation to whether the First Respondent could have done more upon receipt of the specification, Miss McLachlan submitted that the appropriate period of consultation had by that time passed and that this would have placed a heavy burden on him. She referred to the First Respondent's family circumstances at the time and that, in light of the fact that Mr Luke's reply to the First Respondent's email was sent on 4th August 2016 and on 5th August 2016 the service charge demand stated that Welch & Phillips had been instructed, meant that it was not realistic that the First Respondent should have held the belief that he could further influence the Applicant's decision.

58. She referred to the dissenting judgements of Lord Hope and Lord Wilson in *Daejan* where they commented that they would be reluctant to rule out

the possibility that the LVT may refuse dispensation simply on the ground of seriousness of the breach of the departure. In their view, substantial non-compliance should entice the LVT to refuse to dispense, and she submitted that that is what the Tribunal should do in this matter.

59. In relation to the timing of Applicant's application for dispensation, Miss McLachlan noted that practical completion was reached in November 2017, the application for reasonableness of the service charges was not filed until August 2019 and the application for dispensation was made at the hearing. She stated that it was not until the Applicant was ordered to serve the second bundle (10th or 11th October 2019) that the Respondents were able to inspect the breakdown of costs attributed to various works. She stated the only previous indication of the Applicant's position as regards to compliance was in Mr Luke's email of 4th August 2016, in which he stated that the process could not be faulted.

60. Miss McLachlan stated that, although the Tribunal sought to mitigate prejudice to the Respondents by affording time for written submissions, that the application, made at trial after evidence, was unreasonable and prejudicial and that this should weigh heavily in the Tribunal's determination and that dispensation should not be readily granted.

61. In relation to the commencement of the works, Miss McLachlan pointed to the delay in appointing contractors, which she submitted could only be explained by lack of funds. She referred to the decision in *Jastrzembski v Westminster City Council* [2013] UKUT 0284 (LC), where at paragraph 46, the Upper Tribunal held that, whilst it accepted that there was no specified time for the service of the notice, there needed to be some consideration as to what an appropriate time was. The Upper Tribunal stated that, as the time period specified in notices was 30 days, this gave a useful indication that the relevant time period for work to be undertaken was months rather than years; that the longer the period between the service of the notice of intention and the works, the more changes could have taken place which would impact on the way the tenant viewed the works and, perhaps, on an individual's economic situation which could change significantly within a two-year period. Miss McLachlan invited the Tribunal to determine that the consultation was out of time at the time the commencement of the works.

62. Miss McLachlan stated that it was clear from Mr Goodman's report, after his initial inspection, that the Property was in a "*a very poor state repair*" and that there had been neglect for around two decades prior to the works being carried out. She stated that any costs arising from the Applicant's prior neglect of the building should not be considered as '*reasonably incurred*'.

63. Miss McLachlan also referred to the decision in *Garside v RFYC Limited & B R Maunder Taylor* [2011] UKUT 367 (LC) and how the financial impact of major works projects on lessees can be a material consideration in considering whether costs are reasonably incurred - in this case she

pointed to the fact that the sums being demanded of lessees were between £15,000 and £23,000. She submitted that it was astonishing that there was no cyclical maintenance programme for works, with an adequate reserve fund, in place. She referred to the fact that the Respondents were unable to understand the accounts and that the affordability and issues relating to value for money were raised repeatedly. She also submitted that it was concerning that the Health, Safety & Fire Risk Assessment, dated 13th December 2012, had not been updated.

64. In relation to the scope of the works, she referred the fact that the tarmacking of the parking bays, the fencing, the works to the garden area and store and the works to the external stairway and internal hallway were neither essential nor required scaffolding. In addition, she referred to the fact that Mr Goodman had himself stated that some of the works to the downpipes were for an aesthetic purpose. She submitted that the decision by the Applicant to carry out these works, at great cost, was unreasonable.

65. In relation to the standard of the works, Miss McLachlan referred to the inspection and Mr Record's report, in which he concluded that the works did not appear to been carried out to a reasonable standard or organised in a manner to obtain best value for money. She submitted that the repointing was patchy and inadequate, that the lights to the side elevation were not found be functioning properly on the inspection, that some of the paintwork was found to been ill-prepared and ill-performed, that there was evidence of rust on the window bars and the external stairway and that there was cracked plaster and evidence of damp above the door in the internal hallway.

66. Miss McLachlan stated that, in the event that the Tribunal decided to grant dispensation, the Tribunal is able to do so on the terms that the sum payable be reduced by the value of any prejudice. Miss McLachlan stated that the Respondents were only supplied with a copy of Berrys' condition report and the tender of Welch & Phillips on 10th and 11th October 2019. The hearing took place 11 working days later, on 29th October 2019, and that the Respondents were not aware that there would be an application for dispensation. Miss McLachlan stated that, had they had the necessary disclosures by the Applicant in time, it would have been possible to engage for the Respondents' surveyor to cross-reference the works and to value them, together with those works that they considered poorly performed. She submitted that, if the Tribunal were to grant dispensation, the Respondents would be procedurally prejudiced if they were not given the opportunity to produce such a schedule.

67. In relation to payability of the service charges, Miss McLachlan noted that the Second Respondents were not the registered proprietors of Nos. 3 and 6 until 16th September 2016 and 8th December 2016, respectively. As such, she referred to the fact that the demands for the service charges sent out in 2016 were addressed to the Second Respondents' predecessors in title, whom she submitted were liable for the same unless it had been

contractually agreed between the Applicant and the Second Respondents that liability would be assigned to them.

68. Finally, in relation to the apportionment of the service charges, Miss McLachlan referred to the fact that the service charge statement detailed that the external stairway had been apportioned between flat Nos. 3 and 6 even though the external stairway did not serve No. 6. In addition, she stated that there appeared to be some ambiguity in relation to the apportionments attributed to flat No. 3 as Urbanpoint's letter of 2nd November 2016 referred to an apportionment figure of 11.54810% and the statements detailed the percentages at 13.056800% or 15.641200%.

The Tribunal's Deliberations and Determinations

69. The Tribunal considered all of the written and oral evidence submitted, summarised above.

The Application under Section 20ZA

70. The Respondents submitted that the consultation notices should have been sent by recorded or registered post due to the provisions in the leases. The Tribunal notes that section 196 provides that certain notices are *deemed* to have been served if sent by registered post. In this matter, the First Respondent confirmed that he had received the notices, therefore, whether service of the notice should be *deemed* was not in issue. The Second Respondents had not been lessees at the time and no evidence had been submitted to the Tribunal that their predecessors in titles had not received the same.

71. The Tribunal had been provided with copies of the second notice, dated 16th June 2016, and notes that, on page 4, there was an invitation for the making of any observations in relation to the estimates. In addition, the Tribunal notes that the second page of the service charge demands, sent on 5th August 2016, stated that if the lessees wished to discuss any payment queries, such as payment by instalments, they could contact the management company's accounts department.

72. In relation to the Respondent's submission that the availability of documents to be inspected at Urbanpoint's Property Management Ltd.'s offices, some 200 miles away from the Property, was not reasonable. The Tribunal notes that none of the observations referred to this being an unreasonable place to inspect nor did it appear to have ever been raised as an issue prior to the application to the Tribunal. The Tribunal also notes that the first observation made to the Initial Notice specifically refers to the specification, indicating that the writer had received a copy of it.

73. Regarding the responses to the observations to the Initial Notices, the Tribunal notes that the responses to all of the observations simply state: "*Comments have been noted and passed to the Surveyors*." The Tribunal acknowledges Mr Davies' comments that the lessors are not obliged to

agree or follow any observations made by the tenants; however, the requirements clearly require the landlord to have regard to any observations. The Tribunal does not consider that simply replying by way of a standard sentence, which Mr Goodman at the hearing confirmed in two cases was not even correct, indicates that the landlord had *conscientiously* considered the observations or, in fact, had given any weight to them at all. As such, the Tribunal does regard this a failure to comply with the consultation procedure requirements. Having accepted that there was a breach of the requirements, the Tribunal must then consider the Applicant's application for dispensation.

74. The Tribunal notes that the substantive application was made by the Applicant in relation to the reasonableness of service charges under section 27A of the Act in August 2019. The works had been carried out in 2016 and it was only upon receipt of the Respondents Statement of Case, received by the Tribunal, and presumably the Applicant, on 25th October 2019, one working day prior the hearing, that the Respondents' arguments regarding the adequacy of the section 20 consultation procedure were raised. The Tribunal, therefore, does not consider the Applicant's application on the day of the hearing to be unreasonable or prejudicial.

75. As both parties appreciate, the approach for the Tribunal to take when considering an application for dispensation was set out in the Supreme Court's judgement in *Daejan*. In summary, the approach to be adopted is as follows:

    (1) The Tribunal should identify the extent to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations. If the tenants identify some relevant prejudice, the Tribunal should, in the absence of any good reason to the contrary, require the Landlord to reduce the amount of the service charges claimed to compensate the tenants fully for that prejudice;

    (2) That no distinction should be drawn between "*a serious failing*" and "technical error, minor or excusable oversight", save in relation to the prejudice it causes;

    (3) That the financial consequence to the landlord of not granting a dispensation is not a relevant factor when the Tribunal is considering how to exercise its discretion under section 20ZA;

    (4) The nature of the landlord is not a relevant factor.

76. In this matter, neither party referred to the financial consequences to the landlord or the nature of the landlord and therefore points (3) and (4) above are not relevant. In addition, although the Tribunal considers that the consultation requirements were, on the whole, carried out in accordance with the requirements, having found that there was a failing

to have proper regard to the observations, the Tribunal must consider any prejudice caused to the Respondents.

77. In relation to the standard of the works, having carried out its own inspection, and noting the comments of both parties and the observations of Mr Goodman and Mr Record, the Tribunal does not consider that the works were provided to a "defective standard". Although, there were some areas of paintwork that could have been completed to a higher specification and some matters which required further attention (such as the chipping to the paintwork in some areas), the Tribunal took in to account the fact that two years had passed since the works had been carried out.

78. Although Mr Record's report noted other areas of the Property that required further maintenance, Mr Goodman confirmed that he was not aware of the damp over the door of the internal hallway at the time of the works nor of the timber issues within flat No. 6 as referred to in the report and detailed in the photographs. In relation to the faulty lighting, noted by the Respondents in their submissions, the Tribunal did not consider this to be a major issue as it could simply have been due to a fused bulb.

79. In relation to the argument that costs were not reasonably incurred due to the historic neglect of the Property, the Tribunal concurs with the Applicant – that this may lead to a claim for damages if the Respondents could show that the neglect had, in fact, resulted in further disrepair incurring costs that could otherwise have been avoided – but would not render the costs in carrying out works that were clearly required to the Property as not being reasonably incurred. As stated by His Honour Michael Rich QC at para 11 of *Continental Property Ventures*:

> *"…The question of what the costs of repairs is does not depend upon whether the repairs ought to have been allowed to accrue. The reasonableness of incurring costs for their remedy cannot, as a matter of natural meaning depend upon how the need for the remedy arose."*

80. Having regard to paragraph 42 of *Daejan*, it is clear that the Property was in a state of disrepair and the Tribunal is satisfied that the vast majority of the works were required. This was accepted by the parties and the Tribunal notes that Mr Record's report very helpfully showed pictures of the poor state of the Property prior to the works having been carried out. In relation to the necessity of the replacement of some of the drainpipes, the Tribunal notes Mr Goodman's comments and does not consider the fact that these works were carried out whilst all the contractors were on site to be unreasonable.

81. Having determined that the works were appropriate and carried out to an acceptable standard, the Tribunal must then consider whether the Respondents were prejudiced by having to pay more than was appropriate.

82. The Tribunal notes that the lessees were invited to make any observations in relation to proposed works and forward the name of any persons from whom the tenants required the Applicant to obtain an estimate for the proposed works. Although some of the observations did refer to the fact that it would be difficult to nominate contractors without a specification of the works, the Tribunal notes that the First Respondent and one of the other lessees had a connection with the building trade. The notices clearly stated that repairs were required to the external and internal parts and emergency lighting. Although there was no clear specification work of works at this point, the Tribunal does not consider, especially considering the First's Respondent's trade, that, taking in to account the age and type of building, it would have been difficult for him to forward names and addresses of contractors who would have, in turn, been provided with a specification of the works required.

83. The Tribunal also notes that the First Respondent had clearly received a copy of the specification of works by the time the second notice was sent but failed to make any observations in relation to the same until the deadline for the expiry period of the consultation period, 21st July 2016. In his observations, he stated that a colleague had suggested that there was *"definitely room for improvement on the pricing*". Having received the report back in 2016, the Tribunal notes that the First Respondent has had over three years to obtain estimates to evaluate whether the costs were, in fact, high. Although the First Respondent submits that he was dealing with some difficult family circumstances at the time the initial notices were sent, there is no information as to why no quotes have been obtained to date.

84. In relation to whether complying with the Respondents' observations would have led to a planned management maintenance programme, as the Applicant pointed out, the leases do not make any provision for a reserve fund, and, as Mr Luke had previously stated and the service charge demand noted, arrangements could have been made for payment by instalments. The Tribunal appreciates that the amounts demanded for the works was substantial; however, notes that the original demand was sent in 2016 and that both Respondents had, at the time of the application, been aware of the costs for nearly three years. In addition, the Tribunal concurs with Mr Goodman, that it was unlikely that staging the works would have resulted in an overall cost saving. It was clear that the Property was in a poor state of repair and that the majority of the works were needed fairly urgently, including the emergency lighting and fire alarm to the internal hallway. Other items which could have been left to a later date - the tarmacing of the parking bays, the fencing, the work to the garden area and the repairs to the external stairway - clearly would have been required within the next few years and contractors would have had to revisit the site at a potentially higher cost. Welch & Phillips completed the works within their estimate despite them having been carried out a year after the estimate was given.

85. In relation to the Respondents' submission – that they should be given an opportunity to provide produce a detailed schedule cross-referencing the works together with values, the Tribunal considers that the Respondents have had more than ample opportunity to carry out the same. As previously stated, the First Respondent had clearly been in possession of the specification since July 2016. In addition, the Respondents stated that, had the application for dispensation been provided within the Applicant's original Statement of Case, that they would have been able to obtain this detailed schedule within the 11 working days prior to the hearing. The Tribunal notes that the Tribunal's directions with regard to the dispensation application were issued on 30th October 2019, the date after the hearing, and the Respondents were given until 14th November 2019 to provide any submissions. As such, they had an additional two weeks to draft this detailed schedule to confirm what they considered to be reasonable costs and the evidence of any prejudice caused to them, but again they failed to do so.

86. The Tribunal notes that the Applicant had obtained two estimates for works, which were within a similar ballpark figure, from two unrelated contractors. The Applicant chose to proceed with the lower estimate. Although Mr Record's report stated that "*despite two close and, therefore, seemingly competitive tenders being received, it does not then follow that the works represented value for money. If other tenders had been received, it may have highlighted this…*" this comment is speculative and the Respondents have failed to provide any details of what they considered the reasonable costs should have been. Having considered the tenders provided and, in the absence of any evidence to the contrary, the Tribunal is satisfied that the costs of the works, and the fees charged by the agents, were reasonable. Accordingly, the Tribunal does not consider the Respondents have discharged the factual burden of proof upon them to show the real prejudice caused to them resulting from the Applicant's failure to comply with the requirements.

87. As such, the Tribunal determines that the Applicant's application for dispensation under section 20ZA of the consultation requirements should be granted.

The Application under Section 27A

88. As referred to above, the Tribunal is satisfied that the costs were reasonably incurred and that the works were of a reasonable standard.

89. In relation to the payability of the service charges, the Tribunal accepts the Applicant's submissions that that the Second Respondents were aware of the costs incurred and the amounts due as required under section 20B(2) of the Act.

90. In relation to the apportionment of the service charges, the Tribunal notes that the letter from Urbanpoint provided with Respondents' Statement of Case relates to flat No. 6, not No. 3 as referred to in the Respondents'

statement. Having considered the service charges statement for flat No. 6, the Tribunal notes that the apportionment figure for certain items is stated as 11.548100%, as referred to in Urbanpoints' letter. As such, the Tribunal considers the apportionments to be correct.

91. In relation to the service charges for the year ending 31st December 2016, the Tribunal notes that the Applicant has accepted that these related to a period in which the Second Respondents were not the owners of flat Nos. 3 and 6. The Applicant has also identified that the sum of £3,167.05 detailed in the service charges for the year ending 31st December 2017, should be credited as it was detailed in the wrong year.

92. The Tribunal, therefore, determines that the following amounts are payable for the specific items of service charge referred to in the application:

- For the service charge year ending 31st December 2016, professional fees amounting to £4,918.97 - the Second Respondents are not responsible for any apportionment of the same;

- For the service charge year ending 31st December 2017, service charges relating to the redecoration of the internal common parts amounting to £14,405.07, major works amounting to £110,034.93 and works to the exterior stairway amounting to £8,106.87; and

- For the service charge year ending 31st December 2018, service charges relating to major works in the sum of £3,138.74.

Appeal Provisions

93. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
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Judge M. K. Gandham