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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2012/0095 and 0255**
Property	:	**Properties on the Brindley and Warwick Estates, London W2**
Applicant	:	**Mr and Mrs Nogueira and other as set out on the attached schedule**
Representatives	:	**Ms R Nogueira** **Mr J Byers BSc MRICS ACIArb of Langley Byers Bennett Chartered Surveyors**
Respondent	:	**The Lord Mayor and Citizens of the City of Westminster**
Representatives	:	**Mr A Redpath-Stevens - Counsel** **Mr M Oakley - solicitor with Judge & Priestly** **Mr J G Flowers FRICS Dip.Proj.Man; Chartered Building Surveyor**
Type of Application	:	**S27A , s20ZA and s20C of Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr A A Dutton - Tribunal Judge** **Mr PMJ Casey MRICS** **Mr AD Ring**
Date and venue of Hearing	:	**12th and 13th November 2012 and 22nd to 26th April 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24th July 2013**

DECISION

REASONS

Background

1. This was an application made by leaseholders owning some 37 flats in the estate known as Brindley and Warwick Estates, London W2 having a generic title of Little Venice Towers. The lead Applicants were Mr and Mrs Nogueira who own 42 Brinklow House. Their daughter, Miss Nogueira, represented them and other Applicants. As at 23rd April 2013 she was representing those parties who are named on the attached schedule. This is slightly different from those whom she originally represented and in particular a Mrs Hamdaoui who was the Respondent in a separate action taken by the City of Westminster through the County Court which had been transferred to us. That case, however, was joined with these proceedings following a pre-trial review on 22nd May 2012. A decision was promulgated by the Tribunal on 23rd May 2012 adjourning the case against Mrs Hamdaoui, reference LON/OOBK/LSC/2012/0095, and for it to be heard with the main action. Accordingly it should be noted that the determination we make in respect of the 37 leaseholders includes also the determination in respect of the claim against Mrs Hamdaoui who is not, as at 23rd April 2013, represented by Miss Nogueira. Any matters arising from the County Court proceedings which are beyond the jurisdiction of this Tribunal will need to be referred back to the County Court.

2. This matter first came for hearing before the Tribunal on 12th and 13th November 2012 with a time estimate of four days. However, it became apparent on the first day that there might be issues with regard to the inspection of the blocks of flats and also the documentation which had been prepared by Miss Nogueira was not in as good an order as one might have hoped. Apparently at an earlier pre-trial review the Respondent Council had volunteered to prepare the papers but Miss Nogueira had said that she would wish to do so. Rather than waste time in considering documentation at this stage we decided to inspect the subject premises on the afternoon of 12th November 2012 and set out below, under the Inspection heading, our findings in that regard.

3. On 13th November 2012 we reconvened but Mr Redpath-Stevens Counsel for the Respondent told us he was in a difficult position in dealing with allegations made relating to alleged breaches of Section 20 of the Act and the possible need for an application under Section 20ZA to be made. These Section 20 issues were not, it was said by Mr Redpath-Stevens, wholly clear in the Applicant's original statement of case, but be that as it may, he did not object to Miss Nogueira on behalf of the Applicants advancing these concerns. After a short adjournment it was deemed

necessary that there should be an adjournment to enable both parties to properly prepare and address the Section 20 point and any application for dispensation that may follow. This also gave the parties the opportunity of correcting problems with the documentation. Accordingly directions were issued on 13th November 2012 with an intention that the matter should come back before the Tribunal in April of 2013.

4. Indeed it did come back before us, commencing on 22nd April 2013 and running through the whole of that week, concluding on 26th April 2013.

5. We were provided with ten lever arch files of documentation running to in excess of 4,100 pages. As is so often the case, the majority of those pages were not reviewed by us in the course of the Hearing. It will be necessary to return to the documentation, and that which was referred to, towards the conclusion of these reasons as a result of the final submissions made by Miss Nogueira after the Hearing had concluded.

6. It is not our intention in the course of this decision to recount in great detail the written evidence which was provided to us. This is of course common to both parties and we can assure Miss Nogueira that the key documents which were referred to at the conclusion of her submissions for the Applicants dated 10th May 2013 were noted by us, although as we will refer to later, it seems to us that some of the correspondence and complaints carry little, if any, evidential weight for the reasons that we will set out below.

7. As we indicated above, on the first day of the Hearing in November we decided that it would be a useful exercise to inspect the various blocks which were the subject matter of this dispute. Our findings are set out in the Inspection section below but before we deal with those it is perhaps helpful to give some background as to the nature of the accommodation. There are six blocks of flats, three forming part of the Brindley Estate the blocks being Brinklow, Polesworth and Oversley Houses and the Warwick Estate comprises the other three blocks known as Gaydon, Wilmcoate and Princethorpe Houses. As indicated above collectively these six blocks of flats are sometimes referred to as 'Little Venice Towers'. It appears that these blocks were built between 1963 and 1969 by the GLC and transferred to the Respondents in 1971. Although there is some uncertainty, it seems, that with the exception of Oversley House, which has 127 units, each block has 125 units comprising two-storey maisonettes and single storey flats in 21 storey tower blocks.

Inspection

8. We inspected the Estates in somewhat inclement damp weather on the afternoon of 12th November 2012. We were able to gain access to the common parts of each block and access to certain flats within those blocks. We were also able to gain access to the roofs of one or two blocks and could see that all six had flat roofs with a low parapet and a lift room and access stairs. A number of the blocks also had aerials and other signal paraphernalia sited thereon.

9. Each of the blocks had been the subject of cladding works and we noted externally that there was some limited evidence of water seepage but it was not clear from where this came or what was causing it. Internally the common parts were in reasonably good order, although there were some items that required attention, for example missing tiles by the lift in Polesworth House and the wrong positioning of an entrance mat but in the main the common parts including the lifts were in good order and presented well on inspection.

10. We were able to inspect 42 and 79 Brinklow House, 14, 15, 80 and 114 Gaydon House, 13 and 17 Polesworth House and 19 Wilmcote House. There was evidence on our inspection of some problems with regard to the double glazed windows and we also noted that in some flats, that retained a larder in the kitchen, the fitment of the double glazed windows did not leave, in our view, a pleasing aesthetic finish. We noted in those flats to which we gained access, that there was a deep step down from the living room to the balcony surface, now covered with wooden slatting and we noted the in places less than perfect finish to the external pipework. Such imperfect finish was also to be found in respect of the internal pipework where new cold water supplies had been taken into the flats. In many cases this was done in a fairly 'slap-dash' manner.

11. Our general view was that there were issues with regard to some items but that in the main the works had been undertaken to a reasonable standard.

Hearing

12. The parties' statements of case and reply clearly set out the issues. There are three contracts that we are required to consider, one is H127 which dealt with, inter alia, the works to the lift, cladding, roof, balconies and windows to the leaseholder's property, details of which appear at page 101 of the bundle. Section 20 notices in respect of the H127 contract were sent out with an information pack on 6th February 2006. It should be noted that these works were the subject of an earlier application for dispensation under Section 20ZA of the Act from the requirements of paragraphs 1(1), 1(2)(b) and 1(2)(d) of Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulation 2003 ('The Regulations'). As part of the subsequent consultation process a Section 20 works breakdown was included within the papers which indicated that the block costs for Brinklow House would be circa £5,770,861. However, by the conclusion of the Hearing the total costs of the works to all blocks under contract H127 were reduced to £31,756,056.08 of which £24,035,979.83 were chargeable. This reduced figure came about largely as a result of the queries raised by Miss Nogueira and concessions made by the council.

13. The second major works contract P401 was for the installation of new door entry systems to five of the six blocks and the history of the various notices is set out at paragraphs 14 onwards of the Respondent's reply

dated 30th August 2012. It would appear from the paperwork before us, for example at page 164 of the bundle, that the individual costs were in the region of £680 for this contract. This contrasts with the liability of Mr and Mrs Nogueira in respect of contract H127 where in July of 2011 they were sent a final demand showing the sum of £41,999.04 as being their contribution towards the major works costs. In respect of major works contract P142, which was the refurbishment of communal areas, the details of which are set out at paragraphs 17 onwards of the reply, it should be noted that this contract has not yet reached the final stage and we were informed that snagging works were still to be undertaken. Accordingly there is no final figure known for this contract.

14. At the commencement of the Hearing on 22nd April 2013 there were one or two housekeeping matters relating to photographs, a DVD which the Council wished to introduce and a statement made by Mr Jeremy Webb of Gardner & Theobold. The late introduction of these items was objected to by Ms Nogueira. However, after some discussion it was agreed that the DVD may be viewed by us, and the photographs and Mr Webb's statements were put in evidence. Prior to Mr Webb being called to give evidence Mr Redpath-Stevens confirmed that it was his intention to call witnesses and tender them for cross examination based on the statements before us. Insofar as the Section 20 matters were concerned he confirmed that he was not instructed to argue that there had been no failures, for example the observations, but he had no instructions to concede on other matters, for example the description of the works. Miss Nogueira was asked whether she had been able to familiarise herself with the recent Supreme Court Decision of *Daejan Investments Limited v Benson and Others* and she told us that she had and that she did not need to make any changes to her presentation.

15. Accordingly, we received evidence from Mr Webb whose statement was contained at page 962 onwards of the bundle. He told us that he was a quantity surveyor and employed by Gardner & Theobold LLP, construction and property consultants and of his involvement with the contract and the meetings he had with Wates which resulted in certain reductions to the original price. It appears that the contract with Wates provided for an additional fee to be paid representing 50% of the savings achieved against the budgeted figure. This was he told us in his statement *"an incentive to ensure Wates worked with sub-contractors and City West Homes to deliver the scheme at less than the budgeted cost. The final incentive payment was further reduced through negotiation and a saving of £2m was shared 50:50."* Mr Webb told us that he had dealt personally with the proposed tenders and approved same and that he believed the overall contract was a successful outcome with the final prices being very close to the tender sums. He referred also to the specification with regard to the windows which allowed for quite a degree of variation. He did make certain concessions, for example that a figure of £59,374.98 for curtain battens should be removed and this was but one example of the concessions made by the Respondent Council in the course of the proceedings leading to the final cost figure, which we referred to above, of £24,035,979.83.

16. In cross examination Miss Nogueira raised certain issues with regard to preliminary items which again lead to a further concession in respect of 'compound costs' of some £35,058 which were accepted as not being payable by the Applicants. Mr Webb then sought to explain how the incentive figure had been achieved and confirmed on the accounts that a figure of £21,537.99 which appeared under the 50:50 profit share column at page 971 of the bundle was incorrect and should be removed. He told us that the benefit was based on the difference between the targeted tendered figure of £24,307,385 and the works value of £22,396,609. On the question of this incentive we asked Mr Webb whether the Wates incentive needed to be apportioned between leaseholders and tenants' costs, that is to say chargeable and non-chargeable works, and it was confirmed this would be reviewed by the Council. There were also certain other somewhat unusual entries, for example payment to A N Other in the accounts which could not immediately be verified. Mr Webb, however, confirmed that any payments on the accounts would be appropriate as he would not have approved them if they were not. He told us, however, although he had been responsible for checking costings he did not go on site on a regular basis as it was not his remit to check the quality.

17. On 23rd April 2013, Mr McCallion whose statements appeared at pages 634 and 931 of the bundle, gave evidence and told us that he was employed by City West Homes Limited as a Leasehold Policy Officer. He was not involved in the management of the contract but knew the scheme and was involved in the final accounts. His statement sets out the evidence that he gave which includes somewhat surprisingly the fact that nearly £0.5 of a million costs has not been capable of reconciliation and has been written off from the total contract price. He told us that the reductions were to be made to the final account figure to reflect the evidence of Mr Webb and other matters which had come to light. As at 23rd April 2013 the chargeable costs then stood at £24,373,652.75. They were to be reduced by the following:

- £35,058 for services relating to the compound.
- £59,374.98 in respect of battens.
- £247.85 in respect of fees included in preliminaries.
- £111,720 for decorations and extras.
- £90,837 for office costs contained in the preliminaries and referred to at paragraph 13 of his first statement.

On a unit basis he told us that this would reduce the average flat cost by about a £1,000. There then followed questions concerning the incentive recharge and he agreed that he would review those to reallocate the costs between the leaseholders and the tenants. There were some confusing answers given as to the question of the incentive figure which was subsequently clarified.

18. Mr Byers, who was assisting Miss Nogueira in her presentation, although intended to be retained as an independent expert, raised questions

concerning the levels of audit which we were told were carried out by Gardner & Theobold, Harris Consulting and City West Homes Limited, costs of the management of the contract and the involvement of a Mr Gattrill. Mr McCallion explained in re-examination how the management charge of 5.62% had arisen which he thought was reasonable. He also confirmed that the 50% share of the incentive scheme had been credited to the overall costs reducing the charge to the leaseholders.

19. In the afternoon of 23rd April we heard from Mr McKay whose witness statement was to be found at page 702 onwards of the bundle. He told us that he had been employed by City West Homes since October 2009 as a technical manager. He was able to clarify that the £111,720 which Mr McCallion had agreed should be removed related to the rainwater pipes which will be redecorated in the next cycle of works. He was also able to confirm that the payment which had been referred to as A N Other was in fact designs for kitchens for the tenanted properties so that there would be a further reduction from the preliminaries and final costs. Insofar as missing pigeon spikes were concerned, he confirmed that if they were missing they would be reinstated at no charge to the leaseholders. In respect of roof coverings he said that a guarantee was in place which was insurance backed he thought for ten years and in addition there was a latent defects cover provided by Wates for a period of 12 years.

20. On the question of the windows he accepted that there were some defects but these were in part caused by misuse of restrictors and lack of maintenance by the residents. Of some 5,000 to 5,500 installed he was only aware of some 20 to 25 defects and had offered to go back to deal with those but had not been allowed access until the Hearing had been concluded. He did not think that the problem with the windows, which had now been installed for some six years or more, were unusual. He said that instructions had been left with the leaseholders as to what maintenance and cleaning works were required to the windows. He was satisfied that the previous windows were in a poor condition being soft wood timber and that replacement was an appropriate option. The windows he told us were installed widely by the Respondents in other properties in the City and without problem, although he accepted that there would always be some adjustment or remedial work required.

21. He was asked then about contract P401 and the problems that had been encountered with regard to the locking mechanisms to the communal entry doors which he said had been replaced at no cost to the leaseholders and there had been no further complaints in respect of this contract.

22. Insofar as contract P142 was concerned he confirmed that there was no final account and that there had been 11 months since practical completion so that one should be available reasonably soon. Insofar as snagging he said that there had been some problems with regards to the electrical works and that the contractor was going back and indeed had

carried out reparation works in five of the six blocks which resulted in the replacement of cabling. A small batch of faulty lights was being replaced. At the end of the defects period inspection would be undertaken and that account would be taken of the expert's statements in this case.

23. In cross examination he was asked by Miss Nogueira why there appeared to have been a service charge demand made in 2010/2011 for repairs to the roof but he said that that should not be there and was not payable. When asked about the original wooden windows he said that he considered those to be in poor condition from photographs and the DVD which had been referred to earlier.

24. Mr Byers then asked Mr McKay about certain matters in respect of the windows and the roof. He asked whether the terms of the guarantee for the roof had been breached in there appeared to be no walkway, certain sharp objects had been seen on the roof and that there was a lack of some repairs by contractors. Mr McKay told us that he understood that the contractor was perfectly content and that the guarantee stood. Miss Nogueira asked additional questions about contract P142 but Mr Mckay said that any defects would be picked up on inspections and put right by the contractor.

25. When re-examined by Mr Redpath-Stevens he accepted that it was somewhat unusual for there to be later works on a large project but that there had been access issues and that there were some problems with regard to the windows which went beyond maintenance issues. He told us however that he had not been flooded with complaints and that he was only aware of around 20 problems which he did not think was unusual on a contract of this size.

26. On 24th April 2013 we heard from Mr Flowers the expert for the local authority whose statement started at page 4048 and onwards. The bundles had been added to during the course of the Hearing by the inclusion of questions raised of both experts and the answers given. He told us that he was familiar with working on contracts where tenants were in situ and that these did add to the costs of the projects, in particular the preliminary costs. He though that the costs in this contract were reasonable. He said that he had read the report of Mr Byer's, the expert for the Applicants, and hoped that there would be a degree of census but there was never one right opinion. He was comfortable with the final accounts and how they had been put together. He had inspected some 17 flats put forward by the Applicants and although there had been issues in most, in his opinion these issues could be put right. He could not say whether some of these works had arisen as a result of passage of time or were defects from the time of installation. In his experience it was common to find problems with a contract of this size and the recommendation by Mr Byers of reinstating most if not all the windows, in his view was not a reasonable option. A cost in use analysis had been prepared by Mr Byers, which he did not accept. As a result of requests by the Tribunal further cost in use data was prepared

by both experts and submitted to us. We shall set out our thoughts in respect of those documents in the findings section.

27. Mr Flower's view on the cladding was that it was required and the intention had been to re-envelope the block with windows, cladding and insulation and a new roof. He did not think it possible to re-clad and insulate with the existing windows in place. He also thought that the cladding had improved the aesthetics, although this was not the primary purpose, which was to protect and insulate the underlying concrete. He was then asked to comment on a number of photographs and we have noted that which was said. He also told us that in his view the replacement of the balustrading was an essential part of the scheme. It could not be left as it was and he did not think that they could be removed and refitted as the depth of the cladding and any insulation made this an impossibility. He was questioned about some evidence produced by Mr Byers concerning alternative costs from Keir, which he thought were too high and based on a single flat comparable. He was taken through the Scott Schedules by Mr Redpath- Stevens where certain alternative costings/reductions had been suggested by Mr Byers with regard to reparation works which were in the main challenged by Mr Flowers. He was able to tell us that he believed that there were separate guarantees for each roof for 20 years from the date of the works, which were not insurance backed, but were issued by the supplier Permanite. In addition, Wates as the main contractor have a liability for a period of 12 years. Although there appeared to have been a breach of the warranties Permanite, he told us, had said that there were no difficulties and that they would honour the guarantee.

28. On the question of the replacement of the original wooden windows he thought that it was reasonable to replace them given the age, the fact that they were single glazed, in poor condition and with poor thermal performance. He also confirmed that his cost use analysis showed it was reasonable to replace the windows when compared with the repair/decorate cycle. Questions were raised with regard to the possibility of changing some of the new windows to improve the aesthetic appearance particularly where larders were still in place. He thought that that might be possible, however, it appeared that there may be planning issues and building regulation requirements which could cause difficulties in that regard. As to apparent dripping water from flat balconies he could not say that this was to do with the cladding. It was, however, he said a localised problem although it should be resolved. In support of the replacement of the balustrading, he drew our attention to some photographs showing attempted repair works to the original showing that there were previous difficulties. Although there had been no costings to determine the position if the balustrading was retained, in his view it would not have been practical to do so in relation to the overall scheme. His view was that the thermal performance must now be considerably improved and that costs of electricity should have reduced.

29. He was asked about the decking, which had been installed at no cost to the leaseholders, and conceded that there was a difficulty in cleaning

beneath. It was hoped that some arrangement to provide an inspection hatch could be put in place. On the roof he confirmed that he would expect to see walkways, although the roofs were designed to take foot traffic. The handrails round the roof were a basic safety need and were part of the final accounts.

30. In re-examination he reviewed certain photographs which confirmed, in his opinion, the need for concrete repairs, which if they were not carried out could render the structure unsound. In his view a reasonable person would repair and protect the structure and the cladding was a cost effective way of protecting and improving as well as providing the insulation and improving the aesthetics. It was also he thought reasonable to deal with the windows and the balustrades at the same point in time as it would be impossible to carry these out in phases. It was not in his opinion reasonable to clad the exterior yet to leave the windows, the balconies and balustrades in their original condition. From review he thought it was reasonable to keep the fenestration arrangements consistent and confirmed the potential planning problems in making any changes. In answer to questions from us he confirmed that he believed the work was good. There were still snagging to undertake. There had been access difficulties which affected some of the supervision.

31. In the afternoon of the 25th April we heard from Mr Byers, whose report was to be found at page 3931 onwards. He was asked questions concerning the roof guarantee and the poor fittings of some of the windows. He had obtained a letter from Kier Construction dated 4th February 2013 which was at page 4181 of the bundle in which they had sought to give an indication as to the repair costs associated with what was said to be faulty works. This gave rise to a charge, it would appear, of £11,594 for each flat, where works were required, including works to the common parts. In particular he had formed the opinion that adjusting the windows was far more difficult to achieve and that replacement was in some cases necessary. He thought that it would not cost a great deal to incorporate windows which provided a better aesthetic finish with the larder nor that there would be a particular planning problem. He was asked about the dripping concrete which he thought was perhaps a defect with the rainwater outlet. He thought it was conceivable that the existing balustrades could be retained and that with a scheme like this the costs of retaining the balustrades should have been considered. He conceded that the cladding did add protection to the concrete but that this was not the only means of achieving that end. He was cross examined on the windows and the possibility of replacing those where there were larders. He did not accept that there was going to be a planning difficulty although it was put to him that the planners would not be happy with "a hotch potch of window designs." He told us that the gentleman at Kier who had provided the estimated repair costs was the decorating manager but that Kier were a respectable and well known company and that the letter carried weight. He did, however, agree that the concrete frame needed repairing and that it was reasonable to insulate. He also accepted that it was aesthetically pleasing although he

had not considered the impact on the value of the flats. He also agreed that in the Scott Schedule items 59 – 80 were non-chargeable items.

32. He was then taken through the Scott Schedule in respect of reductions that he had made to the costs. Insofar as the costs of replacement of the windows was concerned he was challenged on the number of flats he had seen which were apparently 30 out or some 700 and that the samples were taken from the Applicants alone. He was then challenged in respect of the other reductions that had been made and we noted his responses. On the cost in use analysis for the window repair/replacement he was challenged on the basis that this included the unnecessary use of scaffolding and an apparent replacement of the new double glazed windows in 30 years or so. There were also questions raised as to the standard of the communal flooring which he thought was uneven "like the North Sea".

33. On the final morning of the 26th April Miss Leatherdale spoke to her witness statement which was to be found at page 894 of the bundle which dealt largely with her response to the Section 20 notice. In evidence to us she strayed beyond the terms of the witness statement although accepted that she had got the Section 20 notice and did not dispute that she responded to it.

34. Miss Nogueira relied upon her witness statement which was to be found at page 796 onwards and we noted all that was said. She was asked about her involvement in the 'Can't pay, Won't pay' campaign apparently organised by the late Mr Pottle and that in her view the original windows, certainly to her parents' flat, were perfectly fine and did not need replacing. She complained that there were now problems with all windows such as loose handles and difficulties in opening.

35. At the conclusion of the Hearing we agreed that written submissions should be made by both parties on a consecutive basis. It was confirmed that all evidential matters were before us both in the documents in the bundles to which we had been referred and on the oral evidence given by the witnesses during the Hearing.

36. After the Hearing concluded we received submissions from Miss Nogueira for the Applicants and from Mr Redpath-Stevens on behalf of the Respondents and we also received a draft undertaking for works to be carried out, hopefully to correct the issues raised by the Applicants. We will deal with the question of the undertakings in due course but it is appropriate to briefly recount the submissions made by both parties although of course each does have a copy. Miss Nogueira in her submission set out the principle issues which were as follows:

- Whether the works were carried out in accordance with the terms of the lease and whether they are chargeable under the terms of the lease.
- Whether Section 20 notice was defective and if so whether this caused prejudice to the Applicants and whether further dispensation should be granted to the Respondents.

- Whether all costs are reasonably incurred.
- Whether works are of a reasonable standard.
- Whether the estimated bills are valid demands for payment and whether Section 20B applies.
- The jurisdiction of the Tribunal to consider, as part of its decision as to whether costs are reasonably incurred, the Housing and Planning Act 1986 Schedule 5 paragraph 3 in respect of differences in declarations by the Respondent to leaseholders on structural defects in the concrete.
- The jurisdiction of the Tribunal to consider restrictive covenants relating to satellite dishes as part of its decision as to whether costs were reasonably incurred.
- Whether the costs were capable of and should have been phased.
- Whether future maintenance costs of the different element of the works are reasonably foreseeable and whether they are a relevant consideration as the whether the costs were reasonably incurred.
- Whether the Applicants should be forced to accept the Respondent's undertaking in lieu of any applicable deductions to the amounts payable.

These points are then expanded upon in the submission and we will respond to them in the findings section. It is to be noted that under the dispensation-prejudice heading Miss Nogueira brings into the case letters written by a Mrs Batchelor. These were neither referred to at the Hearing nor drawn to our attention before the submission was made; this lady did not make a witness statement and did not attend the Tribunal to give evidence. The totality of the submission has been read by us and we will respond as appropriate in the findings section.

37. The supplementary submissions on behalf of the Respondents followed on from a skeleton argument presented at the commencement of the Hearing but not in fact considered by us until the conclusion. As with Miss Nogueira's submissions we have noted all that Mr Redpath-Stevens had to say in both documents. We noted in particular in the supplementary submission his criticism of part of Miss Nogueira's submissions that they were not based on evidence put before the Tribunal and which the Respondents had been able to test. Nor were they matters put to the Respondents and thus not matters upon which the Applicants could make submissions. The supplementary submission went on to deal with the points raised by Miss Nogueira in her submissions and in addition attached a number of cases for us to consider as appropriate.

The Law

38. The law applicable to this application is set out on the appendix attached.

Findings

39. In reaching our determinations in respect of the numerous issues before us we have borne in mind all that was said in the parties' statements of case and responses and the statements made in respect of the Section 20 issues. We also take into account the submissions made by the Applicants lodged after the Hearing had concluded and the skeleton argument and the supplementary submissions made by the Respondents. In the Applicants' submission they list the ten principle issues.

40. The first is whether the works were carried out in accordance with the terms of the lease and whether they are chargeable under the terms of the lease. In truth this did not seem to us to be a matter upon which the Applicants placed great store. The lease at Clause 2(c) clearly intends that there could be improvements and the ninth schedule of the lease provides for the lessor to *"rebuild and reinstate and renew and replace all worn or damaged parts."* It is conceded by the Council that the installation of the decking is not chargeable to the Applicants and has been removed from the final account. It seems to us that the other works carried out under the three contracts fall within the ninth schedule of the lease and this includes the changes to the doors leading to the balconies. The repair obligations in the lease includes an obligation on the part of the Council to be responsible for the windows and all doors save those giving access to the individual flats. We find that insofar as the balcony doors are concerned they form part of the main structure of the property, with the windows and are the responsibility of the Council to repair or in this case to replace. It would lead to an unfortunate anomaly if the Council were only obliged to deal with the windows facing onto the balcony but could leave the balcony door in a somewhat decrepit state. Any suggestion therefore that the doors to the balconies were not part of the landlord's responsibility and rechargeable is dismissed by us. All other works as we say seem to us to fall within the landlord's obligations and we find are therefore chargeable under the terms of the lease. This is obviously not so in relation to any costs associated with tenanted properties which are not rechargeable and have been dealt with separately by the local authority.

41. On that point it is perhaps also pertinent at this stage just to comment on the accounting arrangements. We had a good deal of evidence from Mr Webb and Mr McCallion. We are satisfied that the final accounts for H127, which were 'produced' during the course of the Hearing showing a total chargeable cost of £24,035,979.83 as against a total cost including non-rechargeable items of £31,756,056.08 is correct. The necessary discounts and reallocation of costs, including the incentive fee, in our view have been correctly dealt with and we have no reason therefore to doubt the correctness of these final figures.

42. We turn then to the question of the Section 20 issues. It is inappropriate for us to reconsider the circumstances which lead to our colleagues granting dispensation on 28th February 2006 in case number LON/OOBK/LDC/2006/0001. Those matters have been dealt with and it is not open to the Applicants to revisit the history leading to that order.

No appeal was made and in any event it seems to us the doctrine of res judicata would apply.

43. We do, however, agree with the Applicants that the notice issued on 6th February 2006 appears, on the face of it, to be defective in that the period of 30 days to respond is not in fact met. The notice is dated 6th February 2006 with a return no later than 6th March 2006. That is not 30 days. The other issue that the Applicants raise is that the Respondents under contract P142 did not disclose that observations had been received. This was covered in a witness statement by Gill Nash at page 898 onwards in the bundle. Unfortunately Miss Nash was not able to attend the hearing as she had left the employ of the local authority but this witness statement indicated that there had been an error on the part of the Respondents in indicating that no observations had been received and this was one matter for which dispensation was sought. There was also a challenge as to whether the notice under H127 set out clearly enough the extent of the works to be undertaken. Substantial documentation was provided to each lessee with a major works information pack as well as the Section 20 notice itself and breakdown of the works to be undertaken. On the Section 20 works breakdown no specific mention is made of works to the balconies nor does the method statement specifically refer to these works. They are not an insubstantial element of the costs. In our view, therefore, the Section 20 notice setting out the extent of the capital works could have been clearer and should have included reference to works to the balustrades, given that on the final accounts the balcony balustrades cost some £3.398 million with only the cladding and the window being more expensive items of work. Accordingly we find that dispensation under s20ZA for the description of the major works on contract H127 is required.

44. We have borne in mind the findings of the Supreme Court in Daejan and Benson and in particular the provisions of the judgment of Lord Neuberger.

45. It seems to us that no prejudice can be proved by the Applicants in respect of the service of the notice being potentially one or two days short of the 30 days, nor the fact that there may have been a misleading response as to observations made on P142. Certainly insofar as H127 is concerned it appears from the evidence before us that very little in the way of observations were made by the leaseholders and accordingly it does not seem that the couple of days short has affected their ability to respond. Insofar as the lack of explanation as to the works to be carried out under H127 is concerned, whilst we do think that the omission of any reference to balustrade works is unfortunate it is not fatal to the Council. It does seem to us that when one considers the totality of the documentation provided under cover of the letter of 6th February 2006 and considers the block works total figure at page 101 of the bundle of £5,777,861, the amount allocated for the external walls and windows, some £3.5 million for this block is in fact in line with the final accounts produced. Accordingly whilst it may not have been wholly clear as to the extent of the works to be carried out to the balustrades, this does not

seem to have had a financial impact based on the Section 20 breakdown of works. Furthermore, it is we believe common ground between the experts that the installation of the cladding was a benefit and we find, based upon the evidence of Mr Flowers, that such cladding could not have been installed without new balustrades being installed as well.

46. As we have indicated above, reference to correspondence from a Mrs Batchelor is not helpful and to suggest that if the Applicants had full and accurate information they would have made comments similar to those made by Mrs Batchelor, of course begs the question why they did not. She was able to respond and raise issues but it does not seem that other Applicants did. It is also clear from the evidence available at that time in particular letters from Mr Pottle and the DVD which we have seen, that the major concern of the residents was not so much the extent of the works but the costs implications to them. We have referred to the Supreme Court case on Daejan and in particular Lord Neuberger's judgement. It seems to us that paragraph 42 sets out the basis upon which we should interpret the provisions of Section 20ZA. Lord Neuberger said at paragraph 42:

> *42. So I turn to consider Section 20ZA(1) and its statutory context. It seems clear that sections 19 to 20ZA are directed towards ensuring tenants of flats are not required (i) to pay for unnecessary services or services which are provided to an effective 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 Section 20 and 20ZA, appear to me to be intended to reinforce, and give practical effect to, those two purposes. This view is confirmed by the titles of those two sections which echo the title of Section 19.*

His Lordship goes on at paragraph 44 to say as follows:

> *44. Given that the purpose of the requirements is to ensure 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(i) 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.*

47. Bearing this in mind it seems to us that it cannot be shown and indeed has not been shown in this case by the Applicants that they have suffered prejudice as a result of any breaches of the consultation requirements. The one day or possibly two day shortfall in respect of the notice given in February of 2006 did not, in our finding cause prejudice to the Applicants. Those who wished to reply did. The lack of reference to balustrading in the Section 20 documentation is unfortunate but given that the overall costs of the works did not exceed that which was estimated in the Section 20 works breakdown, we cannot see that the

Applicants have been prejudiced insofar as the cost element is concerned. We accept the expert evidence of Mr Flowers that the fitting of the cladding meant that it would have been impossible to have retained the existing balustrading and this was supported by the photographs that were shown to us at the Hearing revealing the balcony works with a number of attempted refittings over the period of time.

48. The failure to properly record observations that had been made would not in our view have caused difficulties or prejudice to the Applicants. We are satisfied, as it was not challenged, that those who made observations were responded to by the local authority and the error in completing further statutory documentation in which the Council indicates that no observations had been received, would not in our findings have prejudiced the Respondents. Accordingly dispensation is granted in respect of the contract H127 and contract P142. There is also an issue as to emergency lighting under P142 which although specifically drawn to our attention during the course of the Hearing was covered by a letter written on 3rd November 2011 informing the residents that works had become apparent during the course of electrical installation which required urgent attention to the lighting to the escape corridors. It seems to us reasonable that dispensation should be granted in respect of that matter. As we understood it the continuing further problems did not relate to emergency lighting that was tripping out and reference to that at paragraph 34 of the submission for the Applicants seems to us to be incorrect.

49. Still on the dispensation point, we prefer Mr Redpath-Stevens' views on the question of the Applicants' costs. Mr Byers was involved in questioning the works, both the need and the standard of same and attempting to seek a reduction in the overall costs. He did not give evidence to any great degree as to whether or not there had been compliance with Section 20 and nor did he give any evidence as to prejudice that might have been caused by any such non-compliance to the Applicants. The Applicants' representative, Miss Nogueira, is not in our view entitled to recover her costs and it is not appropriate for us to comment on the assertion she makes at point 32 of the statement of case as to the impact that this case has had upon her.

50 The next matter to which she refers in her submission relates to the provisions of Section 20B of the Act. We cannot see that this applies in this case. The estimated costs issued under contract H127 were in fact more than the final accounts. In those circumstances it does not seem to us that Section 20B would apply and accordingly the Applicants' arguments in that regard are not accepted by us. The case of Gilje v Charlegrove Securities Ltd [2001] EWCA Civ 1777 applies.

51. We then turn to the question as to whether all the costs were reasonably incurred and whether works were of a reasonable standard. In this regard we have noted the expert evidence provided by Mr Flowers and Mr Byers. We have also considered the Scott Schedule that they prepared and the comments raised by Mr Byers to which Mr Flowers

responded. We should also say that as a matter of principle we preferred the evidence of Mr Flowers to Mr Byers. Mr Byers was shown in cross examination to have perhaps departed from his role as an independent expert and to become more a representative of the Applicants. Whilst he was invited to ask questions to assist Miss Nogueira during the course of the Hearing, it is also apparent to us that in his report he has drifted from an independent expert's position to that of being an Applicant-instructed expert to put forward the Applicants' case. This is evidenced, for example, by his assertion that the majority of the windows needed to be replaced and therefore much of the costs associated with same should be removed. Further there were some errors made in overcharging, where he suggested that the windows were 30% over budget, when the actual figure was agreed at 4.6%. He also sought a deduction of over a million pounds in respect of the poor quality cold water supply work to each flat which gave a flat figure of something in excess of £1,400 which was not supported by evidence. There is also of course the reliance upon the Kier letter which for example gave rise to a million pound plus reduction in respect of remedial works to the windows and balconies which appeared to be in addition to a £1.625m reduction for the poor quality of the windows and the installation works.

52. The summary of the evidence that we had before us leads us to make the following conclusions:

a. The concrete to the blocks was in urgent need of repair and protection. The installation of the cladding with insulation seemed to us to be accepted by both experts as being a reasonable way of providing this protection and enhancing the appearance of the blocks and improving the heat retention. There is no challenge to the costings in respect of the cladding works and indeed in reality no great challenge to the overall costs save that Mr Byers did seek to make reductions because of poor workmanship and the remedial work that he thought might be required.
b. In installing cladding to the blocks we find that it was necessary to replace the balcony balustrading. The photographs provided to us and the evidence given by the experts leads us to the conclusion that the original balcony, which was of wired glass, metal and wooden construction had, by reference to a number of photographs, deteriorated and needed refixing. Further the installation of the cladding meant that the balustrading had to be removed and we find that it could not be refitted with that cladding in situ. The new balustrading, therefore, was required and certainly together with the cladding is an aesthetic improvement. There are issues with regard to the balustrading which are referred to in the undertaking given by the Council to which we will return in due course.
c. Insofar as the windows are concerned, we accept the evidence given to us by the Council and the photographs that we have seen that the windows were in need of replacement. They were installed sometime in the 1960s and are therefore in excess of 40 years old. We were told that windows installed at that time were not of best quality and the photographs provided, albeit of a potentially small example, showed

that works were required. There is no survey which supports the Council in the course of action. A cost analysis had been prepared by Mr Byers but the first go at this was perhaps not helpful as it compared the redecoration of the windows on seven year intervals compared with the cost of renewal of the windows at 30 year periods. It seems to us that even if it could be argued that not all the windows required replacement now, in a further 28 years it seems to us highly unlikely that that would be the case. As a result, further attempts were made by Mr Byers and Mr Flowers to produce cost in use benefit analysis taking a discount factor of 3.5% and 5%. Mr Byers allowing for inflation at 5%, 90% scaffolding and preliminary costs of 15% showed that the window renewal over a 30 year period was some £5,000 more than the estimated costs of redecoration. If a 5% discount were applied this difference increased from £981,670 for redecoration to £1,523,655 for replacement. Mr Flowers carrying out a similar exercice concluded that for a 3.5% discount in fact the costs of redecoration was £101,969 more than the costs of replacement and using a 5% discount in fact the cost of replacement was £27,206 more than the redecoration costs. It is noted that Mr Byers in his analysis allowed for scaffolding it appears of the whole block every seven years both to redecorate existing windows and to carry out maintenance for the replacement windows. Furthermore, at the end of the 28 year period there appears to be no allowance for the possible need to in fact renew the wooden windows which by then would be some 70 years or more old. These analyses are of some assistance but they merely indicate that there is no compelling financial argument on the costs against the installing of double glazed windows as compared to the seven yearly redecorating cycle. However, it does not seem to us that Mr Byers includes any provision, that there undoubtedly is, for increased thermal and noise reduction benefits of the double glazed units and as in our findings the need to scaffold the whole block would be unnecessary, the costs associated with the maintenance for the double glazed units reduces considerably. In our view, this would, for each year beyond the first year, show a saving over the costs incurred in connection with the redecoration and repair of the timber windows. In addition, the replacement across the estate of standardised windows will assist in the ongoing maintenance of same. We are therefore satisfied, that both on a financial basis, which is what we must consider and as an aesthetic improvement to the individual leaseholders properties, the replacement of the windows is a reasonable cost. There have been issues as to the standard of works but again the Council has undertaken to carry out such works as may be necessary. However we bear in mind also these windows have now been installed in some cases for six years and inevitably there will be some wear and tear and we find probably some misuse. It is noted, however, that Miss Nogueira represents some 30 leaseholder only. We are not aware of any complaints made by other lessees.

d. Insofar as the roof is concerned no evidence was produced by the Applicants to show that there was an unnecessary repair carried out. There were issued raised with regard to walkways and the installation of various other aerials and similar equipment and the question of the

guardrail. We prefer the evidence of Mr Flowers in respect of these matters. He believed the walkways should be included and part of the landlord's undertaking is that that will now be carried out in accordance with Permanite's specification at no additional cost to the Applicant. The issues raised with regard to the handrail running around the perimeter of the flat roof seemed to us to be made clear by Mr Flowers. It had been properly installed and was necessary. The idea that you could have re-sited the existing handrails seems to us to be fanciful as that would have resulted in damage being caused to the roof surface to do so. Accordingly we are satisfied that all works carried out in respect of the roof, subject to the undertaking, was work carried out reasonably and at a fair price. We should say that we were provided with a 'technical services report' prepared by IKO following an inspection on 25th April 2013. However, this was provided after the hearing was concluded and has not been accepted by us in evidence. No doubt the Council will be cognisant of its contents

e. It is noted that the creation of the wooden slatted flooring on the balconies is not being recharged to the Applicants which seems to us to be correct.

f. Insofar as the water and space heating is concerned, we did not fully understand the Applicants' concern with regard to the water tanks as these did not seem to form part of any particular contract nor were we aware that they had been charged to the leaseholders. We do accept, however, that the pipework which has been recently installed is, in many cases, substandard and needs to be addressed. Although we had suggested to the Council after the hearing, following the submission of the undertaking, that these works might form part of the undertaking we were told that they would not. It is noted however, that if complaint is raised, the Council will investigate and repair if necessary. (see para 64 below)

53. There was no challenge as to the lift installation. Issues in respect of pigeon droppings and CCTV surveys were not pursued before us. Items 1 to 58 on the Scott Schedule were considered and certain allowances have been made in respect of matters as set out earlier in this Decision. We are therefore of the view and find that the works carried out under contract H127 were carried out properly and at a reasonable price and to a reasonable standard. Insofar as the reasonable standard element is concerned it is on the assumption that the Respondents will return to fully comply with the terms of the undertaking which is attached to this Decision. In those circumstances, therefore, we see no reason to make any reductions to the costs of the contract H127 other than those conceded by the Applicants.

54 Mr Byers in his report had appended a letter from Kier dated 4th February 2003 written by a Mr Jeff Goldberg described as the decorating manager. While we have no doubts as to bona fides of Kier Construction, we are not wholly clear what this letter was intended to show. It appeared to indicate some initial preliminary works to one balcony to see what the potential cost might be as well as the adjustment works to one

flat's windows and privacy screen with balustrading, but then seemed to provide costs for dealing with the communal hallway and then works to flat interiors. As an attempt to indicate comparable costs for presumably putting right that which was perceived to be wrong, we found it unhelpful. In any event having found that the costs and the standard of works subject to the undertaking are reasonable, it is not a piece of evidence that we need to concern ourselves with.

55. Insofar as the contract P142 and the flooring are concerned, Mr Byers described this as looking like the North Sea. It seems to us that that was an exaggeration. In the communal parts that we saw there was some unevenness but not to any great degree and certainly did not detract from the general ambience of the common parts which were now much improved from the photographs of their previous condition

56. Another area raised by the Applicants in their submission was the provisions of the Housing and Planning Act 1986 Schedule 5 paragraph 3. We assume that the Applicants are referring to the notices served when the leases were granted which were in 1988. It seems to us that this is not a matter that we can deal with and if there was misrepresentation made it is for the individual leaseholder to consider whether that is a matter that can be pursued given the passage of time.

57 Insofar as the satellite dishes are concerned this is a potential breach of the covenants contained in the lease and it is for the Council to pursue those and not a matter that the tribunal can deal with.

58 Insofar as the phasing of the works is concerned, no evidence was produced to us on this point. It does seem to us, however, nonsensical to suggest that you could have dealt with the cladding, balustrading and windows as separate contracts as those would have needed scaffolding on each occasion which would have increased the cost substantially. In those circumstances it seems to us that this is a contract that needed to be dealt with in totality and of course there has to an extent been phasing in that there was contracts P401 and P142.

59. Another point raised by the Applicant is whether the future maintenance costs of the different element of the works were reasonably foreseeable and whether they are a relevant consideration as to whether costs were reasonably incurred. There was no evidence before us that the balustrade system was going to add £200,000 a year to the service charge costs. It is correct that there had been identified some defects in materials but those will be dealt with under the undertaking at no expense to the Applicants. The cleaning of the stainless steel balustrades is another matter and something which would be carried out by the tenants which such regularity as they may wish. It is noted that the railings of any balconies fall within the reserved property description in the lease. However, one would expect a reasonable tenant to take steps to keep the balustrading in a reasonable order but obviously ensuring their safety in so doing.

60. We can see no other assertions with regard to future maintenance costs being increased as a result of the works that have been undertaken. Indeed it would be hoped that the installation of the cladding and the windows will decrease the amount of maintenance works that are required on an annual basis.

61 Finally we were asked whether the Applicants should be "forced to accept the Respondents undertaking." It seems to us this is a matter for our determination as to whether or not the undertakings offered by the Respondents coupled with the findings that we have made lead to a resolution of the dispute within the provisions of Sections 18, 19 and 27A of the Act. From a practical basis it seems to us it would be incredibly difficult, if not impossible, to determine which leaseholder should have what reduction made to their service charge bill. There are differing allegations made as to wants of repair and deficiencies in the works carried out under the three contracts for individual leaseholders. One only has to look at the initial schedule of leaseholders who were being represented by Miss Nogueira and their complaints to see that whilst there is some common ground there are also a number of issues that are relative to individual flats. This was a contract dealing with a large number of leasehold properties and tenanted properties for which there have been only a limited number of leaseholders who have sought to challenge the costs. The evidence we had before us was that the main contract (H127) was well run, came in under budget and under time. The third contract P142 has yet to be formally concluded and final accounts issued. It is our finding that the appropriate way of resolving this matter is to accept as part of the settlement the undertakings given by the Respondents to deal with outstanding issues within a reasonable period of time. The Applicants have already had considerable success in the reductions that have been made to the overall costs which we have referred to and of course the Respondents are not seeking to claim the costs of these proceedings.

62. This has been a difficult case to decide given the wide extent of the Applicants' complaints. This is not helped by the submissions received after the conclusion of the Hearing, which sought to raise issues that were not raised before us either in the statements of case or in the questioning of any witnesses who were called. Whilst we accept that Miss Nogueira is without legal training, we still have to proceed on the basis of evidence that was put to us and which was capable of being challenged and not subsequent submissions made on matters that were not put to us or which have now come as a second thought in the course of completing these submissions.

63. The Respondent Council has indicated that they will not be seeking to recover their costs in these proceedings and accordingly we make an order under Section 20C it being just and equitable in the circumstances particularly bearing in mind the Council's indication that no costs would be sought.

64 The undertaking attached is now approved by us and forms part of the order. In the letter dated 3rd July 2013, Judge & Priestly, on behalf of the Council, indicate that they will not undertake to box in or paint the internal pipework and refers us to the Respondent's reply dated 30th August 2012. We have noted what is said and accept the reasons for proceeding as they did. However, the standard of installation was not good in the flats we internally inspected. Provided the Council complies with the making good of the works as provided for in the final paragraph of page one of the Judge & Priestly letter of 3rd July 2013 that should resolve matters. Further, if problems remain the leaseholder affected should contact the Council direct to resolve any outstanding difficulties. Non-compliance with the undertakings can therefore be enforced by the Applicants if they so wish in the normal manner in which an order made by this Tribunal can be enforced.

65 We would like to reflect the sterling work carried out by Miss Nogueira on behalf of her parents and the other leaseholders who she represented. It was no light task taking on a case of this magnitude and we believe that she performed well and can be proud of herself and the Applicants can be satisfied that they were properly represented before us. We would also like to thank Mr Redpath-Stevens for the manner in which he conducted the litigation extending all proper courtesies to Miss Nogueira as a litigant in person whilst maintaining a professional balance in dealing with issues in dispute.

Chairman: Andrew Dutton

A A Dutton

Tribunal Judge

Date: 24th July 2013

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Represented lessees as of 23 April 2013 – Little Venice Towers

4 Brinklow House - Mr J Faridian
23 Brinklow House - Mr J Faridian
32 Brinklow House - Apexa Investments Ltd / Mr S Dandekar
34 Brinklow House – Miss Y Leatherdale
42 Brinklow House – Mr J and Mrs R Nogueira
50 Brinklow House – Mr V Mustafa and Mrs D Beshiri
59 Brinklow House – The Ashapura Trust 2005 / Mr N Gosai
65 Brinklow House – Mr K Lewis
73 Brinklow House – Ms J Rosenbauer
79 Brinklow House – Paramount Enterprises (UK) Ltd / Mr R Thakrar
112 Brinklow House – Mr M Dozie
14 Gaydon House – Ms M Amayo
15 Gaydon House – Mr J and Mrs M Gjinovci
50 Gaydon House – Mr M Farid
80 Gaydon House - Apexa Investments Ltd / Mr S Dandekar
98 Gaydon House – Mrs L Hilton
107 Gaydon House – (Beneficiaries of) Mr T Hares
114 Gaydon House – Ms E El-Bashir
17 Oversley House - Apexa Investments Ltd / Mr S Dandekar
53 Oversley House – Mr A Kupeli
5 Polesworth House – Ms C Briffa
13 Polesworth House – Mr J Sanz
17 Polesworth House – Mr N Barker
27 Polesworth House – Mr K and Mrs V Selimi
42 Polesworth House – Mr N and Mrs N Basta
56 Polesworth House – Mrs J Diaz
57 Polesworth House – Mr R Gardner and Ms M Soto
100 Polesworth House – Mr A and Mrs H Sekiraqa
109 Polesworth House – Mr L Korczyk
42 Princethorpe House - Apexa Investments Ltd / Mr S Dandekar
103 Princethorpe House – Mr G Cooper
19 Wilmcote House – Mrs L Moore
32 Wilmcote House – Mrs F Batchelor
62 Wilmcote House – Mr J Deutrom
67 Wilmcote House – Mr J and Mrs R Casal
75 Wilmcote House – Mrs E Pereira
89 Wilmcote House - Apexa Investments Ltd / Mr S Dandekar

IN THE LEASEHOLD VALUATION TRIBUNAL

Case Ref: LON/00BK/LSC/2012/0095 & 0255

B E T W E E N: -

MR AND MRS J NOGUEIRA AND 38 OTHER LEASEHOLDERS OF UNITS ON THE BRINDLEY AND WARWICK ESTATES

Applicants

AND

THE LORD MAYOR & CITIZENS OF THE CITY OF WESTMINSTER

Respondent

PROPOSED UNDERTAKINGS OF THE RESPONDENT

Further to the hearing of the Applicants' application on 22 – 26 April 2013 in which the Applicants made assertions as to defects as set out in the experts' Scott Schedule dated 21 March 2013 and further to the Tribunal's Order of 26 April 2013 requiring the Respondent to file and serve proposed undertakings in respect of proposed remedial works to the Brindley & Warwick estates under contracts H127, P401 and P142, the Respondent will undertake to carry out the works set out below at no additional cost to the Applicants, subject to the Applicants providing access to the Respondent, their workers, contractors, agents and professional advisors (after having given reasonable notice in writing to the Applicants) in connection with the works:

1) **Leaseholder Windows:** The Respondent undertakes to carry out an inspection of the flats of any Applicant or other residents who has notified the Respondent in writing of any of the following:
   - Misalignment of the casements
   - Missing weep hole covers
   - Missing/faulty gaskets
   - Faulty/loose handles
   - Missing seal around frame

   Any Applicant or other resident requiring an inspection is to notify the Respondent in writing on or before the expiry of 4 weeks from the date of this undertaking ("Notification Date"). The Respondent undertakes to carry out all inspections within 28 days of the Notification Date and to carry out any required remedial works within 3 months from the date of inspection, subject to access being provided to the Respondent or their agents. If access is not provided within 3 months of the date of the request for access, the Respondent's obligations under these undertakings will cease.

2) **Roofs**: The Respondent undertakes to carry out any required remedial works to the roofs that were identified in the experts' Scott Schedule referred to above and the defects identified in the IKO Roof Inspection Report dated 26 April 2013 in accordance with the manufacturer's guidelines within 6 months from the date of this undertaking. The Respondent also undertakes to install walkways on the roofs in accordance with Permanite's specification.

3) **Water Egress**: The Respondent undertakes to investigate the cause of the water egress from the first floor corners of Polesworth House within 28 days of the date of this undertaking and the Respondent shall carry out any required remedial works as soon as reasonably practicable thereafter.

4) **Balcony Brackets and Fixings**: The Respondent undertakes to carry out inspections to all flats on the estate within 28 days of the date of this undertaking and to carry out any required remedial works to the brackets and fixings to the glass panels (including privacy screens) affixed to the balconies within 3 months from the date of inspection, subject to access being provided to the Respondent or their agents for inspection and to carry out the works. If access is not provided within 3 months of the date of the request, the Respondent's obligations under these undertakings will cease.

5) **Balcony Decking:** The Respondent undertakes to install an access hatch for cleaning in the existing decking to the balconies of those Applicants or other residents who provide a written request to the Respondent on or before the expiry of 4 weeks from the date of this undertaking ("Notification Date"). The Respondent undertakes to complete the work within 3 months from the Notification Date, subject to access being provided to the Respondent or their agents. If access is not provided within 3 months of the date of the request for access, the Respondent's obligations under these undertakings will cease.

6) **Pigeon Spikes**: The Respondent undertakes to inspect the properties of any Applicant or other resident who has notified the Respondent of missing pigeon spikes. Any Applicant or other resident requiring an inspection is to notify the Respondent in writing on or before the expiry of 4 weeks from the date of this undertaking ("Notification Date"). The Respondent undertakes to carry out all inspections within 28 days of the Notification Date and to carry out any required remedial works within 3 months from the date of inspection, subject to access being provided to the Respondent or their agents. If access is not provided within 3 months of the date of the request for access, the Respondent's obligations under these undertakings will cease.

7) **Kitchen Ventilation**: The Respondent undertakes to inspect the properties of any Applicant or other resident who has notified the Respondent of missing vents in their kitchen windows or (where there are no working gas appliances within the kitchens) vents that do not close. If any Applicant or other resident has gas appliances in their kitchen, the vents should remain open at all times. Any Applicants or other residents requiring an inspection are to notify the Respondents in writing on or before the expiry of 4 weeks of the date of this undertaking ("Notification Date"). The Respondent undertakes to complete the work within 3 months from the Notification Date, subject to access being provided to the

Respondent or their agents. If access is not provided within 3 months of the date of the request for access, the Respondent's obligations under these undertakings will cease.

8) **P142 Electrical Works**: The issues identified with the communal lighting are being inspected under the end of defects process. The Respondent undertakes to carry out any required remedial works by 31st May 2013.

9) **P142 Decorations**: The inspections to the internal decorations are taking place under the end of defects liability process and the Respondent undertakes to carry out any required remedial works by 31st July 2013.

The Applicants are to send their notifications and inspection requests to Kanita Uscuplic of CityWest Homes in writing by email to kuscuplic@cwh.org.uk or by post to 155 Westbourne Terrace, London, W2 6JX.

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Signed by [ ] on behalf of Respondent

Dated .....