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

Case Reference : LON/00AG/LSC/2013/0642

Property : 117 Bacton Haverstock Road
London NW5 4PX

Applicant : Alliance and Mutual Investments
Limited

Representative : Mr J Goldenberg

Respondent : London Borough of Camden

Representative : Ms R Patel (Leaseholder Services
Court Officer)
Ms M Moloney (Leaseholder
Services Court Officer)

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

Tribunal Members : Judge N Haria LLB(Hons)
Mr H Geddes
Mrs R Turner JP

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 24 March 2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant leaseholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the estimated service charge for the year 2013/14 in respect of the property at 117 Bacton, Haverstock Road, London NW5 4PX ("the property").
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant is a limited company and holds a long lease of the Property. The Applicant was represented by Mr Goldenberg at the hearing and Mr Fitt MRICS attended as a witness on behalf of the Applicant.
4. The Respondent is the landlord under the long lease of the Property and was represented at the hearing by Ms Patel and Ms Moloney. Ms K Honey the Development Project Officer as well as Mr C Webster the Building Surveyor appeared at the hearing as witnesses on behalf of the Respondent.

The background

5. The Property which is the subject of this application is a one bedroom flat on the 20th Floor of a tower block comprising a total of 120 bedsitting rooms and one bedroom flats. The tower block is of concrete construction with brick and block in- fill wall panels and is understood to have been built in the 1970's.
6. The tribunal inspected the Property before the hearing in the presence of the Applicant, Ms Honey and Mr Webster.
7. The Applicant holds a long lease of the Property which requires the Respondent as landlord to provide services and the Applicant as

leaseholder to contribute towards their costs by way of a variable service charge. The lease is dated 28 June 2004 made between Mayor and Burgesses of the London Borough of Camden (1) and Thomas McNally (2) ("the Lease"). The specific provisions of the Lease will be referred to below, where appropriate.

8. The Applicant does not dispute liability to pay a service charge under the terms of the Lease, nor does he dispute the proportion of service charge charged. The Applicant does not dispute that the cost of works undertaken fall within the definition of the works for which a service charge is payable under the terms of the Lease.
9. Clause 3.3 of the Lease provides that "...if required by the Landlord ...the Tenant shall pay to the Landlord such sum quarterly in advance on account of the service charge as the Landlord shall specify in its sole discretion to be a fair and reasonable interim payment (herein referred to as the "On -Account Payment)." The Applicant does not dispute that the Respondent may request payment of an interim service charge.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (a) The Applicant claimed that the Heating System replacement (contract 13/060) and the Better Homes work (contract 13/056) should not have been undertaken at the same time and the sum of £38,783.78 (being the Applicant's proportion of the total estimated combined cost of the works) is too much to spend on a small one bedroom flat.
 - (b) The Applicant sought clarification as to the charges for contractor's preliminary fees, performance fees and management fees under contract 13/060 and 13/056.
 - (c) The Applicant claimed that the proposed building works include unnecessary works in particular the following works:
 - (1) Netting (contract 13/056) - £237.83,
 - (2) Roof and balconies contract (contract 13/056) £1,898.33, and
 - (3) Windows (contract 13/056) - £7,133.53.

- (d) The Applicant questioned the necessity to replace the central heating system and submitted it would be more appropriate for the central heating to be provided individually to each flat rather than from a communal boiler. The dispute relates to the Heating (contract 13/060) -£14,819.66.
 - (e) The Applicant queried the request for payment of £391.81 towards the insurance claim for subsidence.
- 11. The tribunal had before it the bundle prepared by the parties. The parties produced a very helpful Scott Schedule dealing with each item disputed.
- 12. The Applicant relied on his application, his statement of case, and a report produced by Mr Fitt MRICS.
- 13. The Respondent relied on:
 - (a) The witness statement of Chris Webster MSc MRICS who is employed by the Watts Group PLC as a qualified surveyor and acts as a consultant on behalf of the Respondent in connection with the external works at Bacton Tower,
 - (b) The witness statement of Karen Honey who was previously the contract manager of mechanical and electrical capital investments, repairs and improvements and is currently employed by the Respondent in its repairs and improvements division,
 - (c) The Heating and Hot Water System Upgrade Options Appraisal,
 - (d) Notice of Intent – Combined Heating and Power Network and Energy Centre (CHP),
 - (e) Notice of Proposal CHP,
 - (f) LVT Dispensation determination 13 September 2103,
 - (g) Supply of Heat and Ancillary Services Report,
 - (h) 1st revision of heating policy for Council owned stock Executive Report,

- (i) Gospel Oak Estate District Heating Feasibility Study
- (j) Gospel Oak Combined Heat and Power Network Cabinet report ,
- (k) Notice of Intent – Better Homes Capital works,
- (l) Keepmoat Roof Survey,
- (m) Bacton Tower External Concrete Condition Survey ,
- (n) General correspondence, and
- (o) Letter from GAB Robins UK Ltd.

14. The following additional documents were produced at the hearing on behalf of the Respondent, the Applicant did not object and the documents were submitted in evidence:

- (a) Letter dated 10 April 2007 from the Respondent to the Applicant enclosing a Notice of Intention to enter into a Long Term Partnering & Framework Agreement,
- (b) Letter dated 15 May 2008 from the Respondent to the Applicant enclosing a Notice of Proposal to enter into a Long Term Partnering Agreement with Apollo London Ltd for works to the Respondent's residential stock together with associated service and ancillary installations,
- (c) Bacton Tower District Heating System Replacement Tender Return Analysis,
- (d) Bacton Tower District Heating System Replacement Contract Sum Analysis (PSPD) & Stage Payment,
- (e) An undated submission from Apollo providing an element cost summary,
- (f) Report dated 6 April 2011 of Interim Director of Housing and Adult Social Care to the Cabinet setting out the proposals for the establishment of a Combined Heat and Power ("CHP") network to supply heating to 1,500 homes in the Gospel Oak area, and recommending the approval of the procurement route, the approval of the repayment of recharge bills to leaseholders over the 14 year term, and delegating the

authority to the Director of Housing and Adult Social Care to decided to proceed with the award of the contract, and

(g) Energy Performance Certificate dated 14 January 2014 in relation to the property.

15. At the hearing the Applicant produced a copy of an invoice for the refurbishment works to the property.
16. The tribunal heard evidence from and on behalf of the parties. The oral evidence is not repeated here save where relevant and appropriate.
17. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Total estimated cost of contracts 13/060 and 13/056 - £38,783.78

18. Mr Goldenberg on behalf of the Applicant claimed that it was not necessary to undertake all the works at the same time, he believed the Respondent was motivated by a desire for publicity for being a greener borough and by grants. He submitted that leaseholders should not be obliged to contribute towards the costs of such works.
19. Mr Goldenberg submitted that he believed that the works were generally over priced. The Applicant submitted a report produced by Mr Fitt MRICS in support. Mr Fitt in his report comments that the sum of £38,783.78 is a considerable sum for a one bedroom flat and is almost equivalent to an amount that would be necessary should the flat be completely reconstructed.
20. Mr Goldenberg confirmed that the Applicant did not challenge liability to pay a service charge under the provisions of the lease.
21. On the 10 April 2007 the Respondent as part of the statutory consultation process wrote to the Applicant. The letter enclosed a Notice of Intention to enter into a Long Term Partnering Agreement and a Notice of Proposal of a Framework Agreement and gave an explanation of the two agreements and detailed the consultation process. The letter explained the rationale behind the Partnering agreement which was to ensure costs are controlled to a level below the rate of inflation within the construction industry, and to ensure the Respondent has experienced contractors available to carry out its capital programme to a high standard. The Notice of Intention to enter into the Partnering Agreement (“NOI Partnering Agreement”) gave further details as to the works to be carried out and explained that under the agreement it was proposed that several contractors would be

engaged to carry out a wide range of repair, maintenance, renewal and improvement works, which included the refurbishment works to the building's structure as well as to its communal areas. The NOI Partnering Agreement invited observations from the Applicant.

22. The Notice of Proposal to enter into a Framework agreement ("NOP Framework Agreement") explained that the Framework Agreement, is for a four year period for the provision of consultancy services and that the interested consultancy firms were asked to provide unit costs for different types of contracts and the contracts were further sub-divided into different price ranges. The NOP Framework Agreement provided a summary of the tenders and invited observations.
23. On the 15 May 2008 the Respondent wrote to the Applicant with a Notice of Proposal to enter into the Partnering Agreement ("NOP Partnering Agreement"). This letter provided further details of the Partnering Agreement and explained that the agreement would be for a five year period (which could be extended to a total period of ten years). The agreement was for the provision of contractors for capital and maintenance contracts across the borough and proposed contractors for inclusion in the agreement. The letter explained that the recommendations had been made following an analysis of the tenders put forward as well as their method statements and other qualitative documents and interviews of the contractors carried out by the Respondent's officers and a panel of residents, including leaseholders. The NOP Partnering Agreement summarised the observations received in response to the NOI Partnering Agreement and the response to the observations. The NOP Partnering Agreement invited written observations.
24. The NOP Partnering Agreement sets out in detail the mechanics of the pricing of the works under the Partnering Agreement.

The tribunal's decision

25. The tribunal determines that the estimated amount payable in respect of the Heating System replacement (contract 13/060) and the Better Homes work (contract 13/056) in the sum of £38,783.78 to be reasonable and payable by the Applicant under the provisions of the Lease. The Applicant is liable to pay the sum in accordance with Clause 3.3 and the Fourth and Fifth Schedules to the Lease.

Reasons for the tribunal's decision

26. The tribunal makes no findings in relation to the statutory consultation process as this was not in issue.

27. The tribunal noted that the sum disputed is the Applicant's proportion of the total estimated cost of the works under contracts 13/060 and 13/056. Accordingly, the tribunal's decision is in relation to the estimated costs only and does not prevent a further application in relation to the actual costs.
28. The Applicant did not dispute liability to pay a service charge under the provisions of the Lease. The tribunal considered the Lease and is satisfied that the Applicant is liable to pay in advance a fair and reasonable interim service charge. The specified proportion of the service charge costs for which the Applicant is liable is set out in the Fourth Schedule of the Lease. The tribunal finds that the Applicant is liable to pay a service charge for the works undertaken under contract 13/060 and 13/056 as they fall within the items of expenditure specified under the provisions of the Fifth Schedule of the Lease.
29. The tribunal gave little weight to Mr Fitt's opinion as to the cost of the works as he produced no evidence as to the cost of such works in comparable properties and although he has had over 20 years of experience in letting small and large contracts, he did not submit evidence of having worked on similar contracts to the ones in question.
30. The tribunal inspected the site and found it to be extremely well managed.
31. The tribunal appreciated that the sum of £38,783.78 was disproportionately high for a one bedroom flat. However the property is not an average one bedroom flat but is a flat situated on the 20th floor of a tower block, and the works were being undertaken with the residents remaining in occupation. Having taken all the circumstances into account the tribunal considered the sum to be reasonable for a one bedroom flat on the 20th floor of a Council tower block where the works were being undertaken whilst all the units were occupied.
32. On the basis of the information contained in the letters of the 10 April 2007 and 15 May 2008, and the oral submissions at the hearing, as well as the inspection of the works, it was clear to the tribunal that the Respondent had gone to considerable lengths to ensure that the Agreements were entered into following a competitive tendering process. The tribunal accepted that the Respondent endeavoured to ensure that they obtained a competitive price and also that the works were carried out in an appropriate, efficient and cost effective manner. The tribunal accepted the Respondent's submission that by completing the work in one scheduled programme, they were able to minimise the disruption and inconvenience to residents. The tribunal accepted that there were economies of scale savings by having one site set up resulting in one set of preliminary fees, one on-site management team one health and safety review and one CDM coordinator. In addition there was one payment in respect of the scaffolding charges which

would inevitably be cheaper than two lots of scaffolding costs incorporating two lots of fees to erect and dismantle the scaffolding. Accordingly the tribunal considered it reasonable for both contracts to be undertaken at the same time.

33. The tribunal noted that the Respondent offers leaseholders a three year interest free repayment plans in relation to service charge costs for major works in an effort to alleviate the burden on leaseholders.

The charges for contractor's preliminary fees, performance fees and management fees under contract 13/060 and 13/056

34. The Applicant sought clarification of the fixed fee of £143,878.60, Performance fee of £20, 350.58, the contractor's preliminaries in the sum of £ 223,449.37 and the management fees of 10% of the total cost of the works. Mr Fitt submitted that he had over 20 years of experience in letting small and large contracts and in his view a preliminaries charge of 18% of the contract sum was on the high side and a figure of 12% would be more reasonable although he would have to undertake further research to support a figure of 12%.
35. The Respondent explained that the performance fee and the fixed fees related to the partner completing the work on the project on time and budget and the leaseholders were consulted on the fees before the Respondent entered into the partnering contract.
36. The Respondent explained that the preliminary costs are standard across all major works projects and cover the enabling work and set up of the site before the start of the works on site. Mr Webster clarified that this included the costs of setting up the site, the management of the site, the site foreman fees, the quantity surveyor's fees, the welfare areas, resident liaison officer charges and the cost of insurance. Ms Honey stated that she appreciated that a charge of 18 % for the preliminaries was on the high side but she explained that the Respondent provides a high percentage of Social housing and so needs a high amount of resident liaison services and contractors charge accordingly. She stated that the cost of administrating contracts in a occupied building is reflected in the higher cost of the preliminaries as there is a greater need for attention to detail in health and safety matters eg in the disposal of materials etc.
37. Ms Patel stated the management fee charged was 10% of the total construction costs under the major works contracts and a further 10% on the service charge costs. Ms Patel confirmed that the Management fee included the cost of undertaking the statutory consultation.

38. The Respondent relied on the Fifth Schedule to the Lease which details the items of Expenditure and defines the Landlord's Management fee at paragraph 13 as:

"The Landlord's reasonable management and administrative charges in a sum fairly representing the Tenants proportion of the actual costs to the Landlord in managing and administering the totality of its leasehold portfolio....."

13.1 The Landlord's management and administrative costs shall include but shall not be limited to the actual cost in terms of staff time and central establishment costs of undertaking the following:

(a) An enquiries service to leaseholders including the cost of salaries and attributable overheads and essential support functions.

(b) Billing for service charges including the cost of repairs and decorations and all costs incidental to the service of any notices served pursuant to the terms of the leases or pursuant to any statutory requirements.

(c) The administration of all other activities which directly support the services that leaseholders receive...."

39. The Respondent submitted that it has a mixed leasehold portfolio in excess of 9500 properties with approximately half the leases containing the above (proportionate recharge clause) and the other half containing a clause stipulating a flat rate of 10% of the service charge as a management fee. Historically, the Respondent has capped all management charges at 10% as this is financially to the leaseholders' benefit and the Respondent has lacked the resources to charge proportionately. The Respondent has suffered a substantial under recovery as a result and is proposing to address this and recharge the management fees proportionately in the near future.

The tribunal's decision

40. The tribunal makes no determination as to the fixed fee of £143,878.60, Performance fee of £20, 350.58, the contractor's preliminaries in the sum of £ 223,449.37 and the management fees of 10% of the total cost of the works as the Applicant had sought clarification as to what the charges related to and did not require a determination from the tribunal on these sums.

Netting (contract 13/056) - £237.83

41. The cost relates to the provision of knotted black pigeon netting to private balconies for protection against pigeons. The Applicant claimed that they had installed the netting and the Respondent has removed the netting to allow for the installation of the external wall insulation. Mr Goldenberg produced an invoice to show that the Applicant had installed the netting as part of the total refurbishment of the flat. It was confirmed on behalf of the Respondent that the Applicant will not be charged a sum for the replacement of the netting. The netting charge would be removed from the Applicant's service charge.

Roof and balconies contract (contract 13/056) £1,898.33

42. The Applicant submitted that the flat is a top floor flat and has never had any leaks or problems with the roof and simply needed some repairs as the Respondent had neglected to maintain the roof eg by allowing a tree to grow on the roof.
43. In addition the Applicant raised a new issue late in the proceedings alleging that as a result of a mast on the roof, an additional cost had been added to the cost of dressing the roof. Mr Goldenberg also alleged that the mast feet and roof might have been damaged by the contractor servicing the roof.
44. Mr Fitt having heard the submissions made on behalf of the Respondent accepted the cost of £63,000 for the replacement of the roof was reasonable, and the Applicant accepted the cost of the roof works.
45. In relation to the balconies Mr Goldenberg stated that they did not have any issues with the balcony before the major works and he considered the work unnecessary. Mr Fitt stated that he had not surveyed the balcony.
46. Mr Webster clarified that the split in the total cost of the works was approximately £63,000 for the roof works at and around £99,000 for the balcony works.
47. The Respondent relied on a survey dated 18/9/2012 which identified a number of defects in the roof particularly around the detailing such as the upstands and outlets. A core sample of the roof had highlighted the fact that the roof had no insulation. The roof is therefore being overlaid with a green roof system which will bring the thermal performance of the roof up to current building regulation standards and ensure the roof is watertight. In addition the roof will benefit from a 20 year guarantee.

48. Ms Honey admitted that the roof had previously been repaired 6 years ago but she stated that it had not been renewed to the extent that it would last 20 years, and having undertaken a cost benefit analysis it was thought best to replace the roof with what is proposed.
49. Ms Honey explained that one of the reasons the Respondent is looking at improving the thermal insulation of the roof is because there is a grant which the Respondent can claim and which if obtained would be passed onto all the residents. It is hoped that the grant can be claimed once the works are completed in July.
50. The Respondent produced an elemental cost summary produced by Apollo for the purpose of the hearing giving details of the scaffolding and roof contracts. This confirms that competitive quotations were obtained from various companies. The scaffolding contract was placed with the EA Scaffolding Systems Ltd due to their ability to meet the programme and as the scaffolding could be utilised to aid future works. The elemental cost summary also confirms that the roof costs were £1,537.03 less than if they had been priced using the contract schedule of rates and incorporates an extensive green roof.
51. The Respondent produced copies of draft Energy Performance Certificates dated 14 January 2014 in relation to the property before and after the proposed works showing the energy efficiencies of the roof works.
52. In relation to the balconies Mr Webster stated that this was within his expertise and although there was no report on the balconies, the balconies did need to be made water tight. He confirmed that they were looking at reducing the cost of the works to the balconies by changing the product used but currently the cost of an individual balcony of 5 sq m is £775 and a 6 sq m balcony is £930.

The tribunal's decision

53. The tribunal makes no determination on the cost of the roof works as the Applicant accepted the cost was reasonable.
54. The tribunal makes no determination as to the effect on the cost of the roof works due to the roof mast as this issue did not form part of the original application. The tribunal did note that the survey report produced by the Respondent stated that the roof covering had failed and there was no indication in the report that the roof mast had in anyway contributed to the failure or resulted in an increase in costs. It is of course open to the Applicant to submit a new application in relation to this issue.

55. In relation to the balconies the tribunal accepted that the Respondent needed to make them water tight, as it is widely recognised that the point at which a balcony meets an external wall is a weak point in the fabric of a building where water ingress is highly likely. The tribunal considered it prudent for the Respondent to refresh the water proofing of these areas. The tribunal considered the specification and cost for these works to be reasonable. The tribunal accepted that the works were necessary and appropriate and finds that the Applicant is liable for his share of the costs in relation to the works to the balconies.

Windows (contract 13/056) - £7,133.53

56. The Applicant submitted that his property already has some double glazed windows which may need some repair but they did not need replacing.. The Applicant submitted that the cost of the replacement of the windows was excessive and relied on the survey report of Mr Fitt. Mr Goldenberg submitted that the existing windows would not need replacing for another 5 -10 years. He stated that the property had been purchased as an investment property and for every £10,000 spent he was looking for a 5% return.
57. The Respondent submitted that the existing windows would not be compatible with the new external wall insulation ("EWI") as the EWI will be taken into the window reveals and window head which will make opening the existing windows impossible. The Respondent claimed the existing windows are showing signs of disrepair including failing ironmongery and damaged/displaced gaskets. The Respondent submitted that the windows are a block cost and so the total cost is divided between the total number of units.
58. Mr Webster explained that as the building has a solid wall the only alternative to insulate the wall was to clad it internally or externally. Mr Webster stated that it was decided that internal cladding was not a feasible option as it would reduce the room sizes and the building was continually occupied so it would be difficult to undertake the works.
59. The elemental cost summary produced by Apollo confirmed the EWI was outside the scope of the general agreed schedule of rates and so competitive quotations were sourced and measured against a bill of quantities and specification. The summary confirms that the lowest tender was from Retrofit UK at £19,915.00 but it was decided to let the contract to Primar Coatings Ltd who had provided a mid price tender on the basis of their ability to meet the programme and past experience of working on difficult projects for Apollo with the Respondent. The elemental cost summary also gives details as to the windows contract and confirms the windows and doors were sourced from competitive quotations and the contract offered a saving of 19% compared to the Respondent's schedule of rates.

The tribunal's decision

60. The tribunal finds the works were reasonably necessary and the cost of the works to be reasonable and payable by the Applicant.

Reasons for the tribunal's decision

61. The tribunal accepted the submissions made on behalf of the Respondent. The tribunal noted that the timber framed windows in the Property would have required replacement in any event in about 5/6 years time. The tribunal accepted that it was reasonably necessary to undertake the EWI in order to improve the thermal energy efficiency of the building and bring the building closer to modern building standards. This is supported by the two draft EPC certificates for the Property showing the energy efficiency before and after the works. The tribunal also accepted that the EWI would make it impossible to open the windows. An inevitable consequence of the EWI is that the walls are made thicker and hence it is necessary to replace the windows. The tribunal was persuaded by the elemental cost summary produced by Apollo that the cost of the windows was reasonable as it was fixed under the partnering agreement (which had been subject to a competitive tendering process) and offered a substantial saving of 19% when compared to the Respondent's own schedule of rates. In relation to the EWI contract the tribunal was persuaded by the elemental cost summary from Apollo that the contract was subject to a competitive tendering process and although the contract was not awarded to the contractor who gave the lowest tender it was awarded to the most appropriate contractor for the reasons given. Accordingly, the tribunal finds the cost to be reasonable and payable by the Applicant under the terms of the Lease.

The Heating (contract 13/060) -£14,819.66

62. There is currently a shared heating system provided by a communal boiler. Hot water is pumped to a heat exchanger in a large duct in the Property, with grills provided for warm air circulation into the reception room and bedroom. The communal heating system provides low level heat to a limited area of the Property. The Applicant has installed additional back up heating in the form of electric wall mounted heaters in each room in the Property as the Applicant claims the amount of heat generated by the communal system is poor. The hot water is provided by an individual instantaneous gas boiler located in the kitchen.
63. The Applicant submitted that the sum of £14,819.66 is excessive for a small one bedroom flat. The Applicant is of the view that the Respondent rejected the option of individual boilers for the flats because it is constrained by an existing contract to receive recovered heat from the Royal Free Hospital which obliges it to replace the

existing communal boiler system with another communal boiler system. The Applicant relied on the report produced by Mr Fitt in support of the fact that electric heating or gas central heating /hot water could be provided for the Property for a typical estimated sum of between £2000 and £3000. Mr Fitt submitted that an individual boiler would be much more convenient flexible and economic system for the occupiers of the flat.

64. In addition the Applicant objected that they have already committed to paying £4000 as a contribution towards the CHP (Combined Heat and Power) System and the payment towards the cost of a communal boiler system is an additional burden.
65. Ms Honey explained that the existing system is over 30 years old and had required extensive modification during that period and the replacement of one boiler. She accepted that the current system was not a full comfort control system and only provided warm air background heat which is not up to current standards. She also stated that it has the added disadvantage that the residents have three separate charges for the heating and hot water, comprising of a warm air charge, an additional heating charge and a hot water charge.
66. She stated that Bacton Tower forms part of an estate of the Gospel Oak site which includes four sub sites comprising Dunboyne Road, Bacton Tower, Waxham, Ludham and Wendling. All leaseholders were served with a Notice of Intention dated 6 December 2011 in relation to the CHP and dispensation from the full statutory consultation requirements was granted by a Tribunal.
67. Ms Honey explained that in order for the CHP scheme to be feasible all the units in Bacton Tower had to be included in the communal system and as a result the communal system was the only option. She stated that the CHP initiative required a minimum number of properties to be included into the scheme to ensure that government funding (which had been secured and had subsidised the cost of the CHP works) would be available. She stated that the CHP works being undertaken meant that some alternative options such as electrical wall mounted heating, combination boilers or any other individual system could not be considered.
68. Ms Honey also stated that the current electrical infrastructure in Bacton Tower would not support full electrical heating in 120 properties. She stated the gas at Bacton Tower is part of the Respondent's bulk supply and so this means it is supplied at a reduced cost.
69. Ms Honey stated that the estimated cost of between £2000 to £3000 put forward by the Applicant was not reflective of actual costs related to high level tower block installation, taking into consideration safe

installation and management and also the life cycle of an individual system. In addition she stated that the estimate did not take into account the fact that the Property is on the 20th floor and the water pressure required for combination boilers would require a significant infrastructure upgrade and investment. She stated that there would also be additional costs for the safe removal and appropriate disposal of the existing system and this cost has not been included in the £2000 - £3000 quoted by the Applicant. She stated that it is expected that on completion of the works including the insulation there would be a fuel saving of approximately 40%.

70. Ms Honey stated that they did consider the option of repairing and maintaining the existing system but the capital cost of doing so was £1,460,550 which is £46,000 less than a new system. The disadvantage of retaining the existing system being the higher maintenance costs associated with ongoing repairs to the current system.
71. Ms Honey stated that the Respondent when looking at 30,000 properties looks at its policies with a view to them lasting for over 30 years. In her opinion individual systems are designed to last for 10- 12 years and life cycle analysis data shows they tend to last between 8 – 12 years. Ms Honey referred to the Heating and Hot Water System Upgrade Options Appraisal which shows the net present value (a calculation which takes into account the repair, maintenance and replacement costs over a 30 year period) of the complete removal and replacement of the internal heating and hot water system to be the most cost effective of the available options. She added that although the new system is a communal system it is designed to take individual meters and the plan is for individual units to be charged according to usage using a wireless meter reading system.
72. Ms Honey also stated that initially when the replacement of the boiler was considered the Respondent had not decided to improve the thermal efficiency of the building with a new roof, the EWI, and the windows., Once the Respondent had decided to proceed with these works, they recalculated the size of the new boiler taking into account the improvement in the thermal efficiency of the building.

The tribunal's decision

73. The tribunal finds the estimated cost of replacing the communal heating and hot water system to be reasonable and payable by the Applicant.

Reasons for the tribunal's decision

74. The CHP is not part of this application before the tribunal and the Respondent has undertaken a part consultation with the residents in

relation to the CHP and has obtained a dispensation from a tribunal to the full statutory consultation requirements.

75. The tribunal accepted that the inclusion of Bacton Tower in the CHP limited the options available to the Respondent.
76. The current heating system is over 30 years old and is reaching the end of its life. The parties agree that it is an inefficient system that provides a low level of background heat and is not up to current standards. In addition the flats require separate water heating by way of an Ascot.
77. The tribunal considered that the Respondent had acted in a prudent and reasonable manner in commissioning a Heating and Hot Water System Upgrade Options Appraisal, and that following the option recommended in the Appraisal represented the best value for money in the long term. The tribunal noted that the Respondent had made adjustments to the size of the boiler required having taken into account the improvement in insulation as a result of the new roof, the EWI and the new windows. This was indicative of the fact that the Respondent was installing what was the most appropriate boiler for the building.
78. The tribunal rejected the comparison of the cost of installing an individual boiler in a property as this does not take into account the fact that this property is on the 20th floor of a tower block and is one of 120 units. The cost put forward by the Applicant has not taken into account the additional infrastructure costs and also the costs associated with the fact that the Property is on the 20th floor of a tower block.

The insurance claim in the sum of £391.81.

79. The Applicant had received a letter from GAB Robins UK Ltd requesting a contribution towards the cost of an ongoing subsidence claim. Mr Goldenberg stated that he did not understand why the repair works could not be undertaken as part of the other building works. He also did not understand the calculation shown in the letter from GAB Robins UK Ltd. He stated that if the excess on the insurance was £2500, and then he should only be required to pay 1/120 of the excess which is £20.83.
80. Mr Webster explained that the works were added to the Better Homes Contract and the works will be done by Apollo at a cost of £47,016.74. The Respondent's representatives were unable to provide any explanation or justification of the calculation and why the Applicant was being asked to pay a contribution to the total cost of the works as opposed to simply his share of the excess on the insurance.

The tribunal's decision

81. The tribunal finds the Applicant liable to pay 1/120 of the excess on the insurance. The excess is £2500 so the Applicant is liable for £20.83.

Reasons for the tribunal's decision

82. It is common practice for insurance companies to pay out part of an insurance claim and for the insured to be liable for the contract excess. In this case the excess in respect of the subsidence claim is stated to be £2500. There are 120 units in the building so each unit should bear a fair and reasonable proportion of the excess. The Applicant under the terms of the Lease may be required to pay either the Specified Proportion calculated in accordance with the provisions of the Fourth Schedule to the Lease or a fair and reasonable proportion of the cost. The tribunal determines that the Applicant is liable to pay the sum of £20.83 being a fair and reasonable proportion.

Application under s.20C and refund of fees

83. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances not to make an order under section 20C of the 1985 Act, so the Respondent may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: N Haria

Date: 24 March 2014

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 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.