11445

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00HP/LSC/2015/0002**
Property	:	**Crowe Hill Court, 66 Longfleet Road, Poole, BH15 2JE**
Applicant	:	**Crowe Hill Court Ltd**
Representative	:	**-**
Respondent	:	**The 16 Leaseholders**
Representative	:	**-**
Type of Application	:	**Service Charges : Sections 27A and 20C of the Landlord and Tenant Act 1985 ("the 1985 Act")**
Tribunal Members	:	**Judge P R Boardman (Chairman), Mr P D Turner-Powell FRICS**
Date and venue of Hearing	:	**Decided on the papers**
Date of Decision	:	**15 May 2015**

DECISION

Introduction

1. This application is for the Tribunal to determine the reasonableness of planned major works

2. The Tribunal has decided the application on the papers before it, without an oral hearing, pursuant to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), and the Tribunal's directions dated 19 January 2015, neither party having requested a hearing in the meantime

Documents

3. The documents before the Tribunal are in a bundle provided by the Applicant, pages 1 to 272. In this decision, references to page numbers are to page numbers in the bundle, unless otherwise specified

The Applicant's statement of case (undated - pages 35 and 36)

4. The Applicant stated that the company comprised all 16 leaseholders, three of whom had been appointed directors. The managing agents were Burns Property Management

5. In February/March 2014 a number of balconies lost large patches of render to the underside soffit. Surveyors Bennington Green and structural engineers Graham Garner and Partners Limited found defects in the balconies and rear elevation of the building caused by water migration. The insurance company refused a claim because the cause was wear and tear, not an insured risk

6. Bennington Green produced a report on 21 May 2014, and then a full specification of works, including the option of installing a modern railing and cladding system to the balconies, as Bennington Green had advised that this would reduce future maintenance costs and guarantee the resolution of the water migration. Bennington Green could not offer any guarantee if the existing railings were only refurbished because of their age, and because the materials used were not sufficient for the harsh marine environment in which the balconies were situated

7. A refurbishment project had been undertaken in 2009, but the railings had deteriorated considerably since then

8. On completion of the specification, a first phase section 20 consultation notice of intent was issued to all leaseholders. One nomination of contractor was received from Flat 7, namely Davis for Building

9. On completion of the tender process by Bennington Green, the Applicant recommended to all leaseholders that the new railing system element of the project should be considered, and called an EGM for November 2014 with all leaseholders to discuss

10. The Applicant approached the freeholder for consent to alter the external façade of the building by providing a new railing system to the balconies, and provided full details of the specification and drawings. The freeholder granted consent

11. At the EGM, leaseholders voted unanimously in favour of the new railing and soffit system rather than for refurbishment of the existing railings and soffits

12. A second phase section 20 consultation notice of estimates was then sent to all leaseholders, some of whom raised observations

13. A notice of observations was then sent to all leaseholders with responses to the observations raised

14. To the Applicant's knowledge, most, if not all, leaseholders were in favour of installing the new railing and cladding system. However, there were objections to the cost of the project and associated fees. The Applicant therefore requested the Tribunal to determine that the planned works were reasonable, and that the appointment of the lowest tenderer, C&D Roofing, was also reasonable, together with the associated costs of Bennington Green to prepare for tender and to oversee the work, and the fees of Burns Property Management for administration at 5% of the contract price

15. The Applicant considered that the sensible option was to undertake the proposed works to ensure that the Applicant met its obligation to maintain the building as required by paragraph 3 of part I of the eighth schedule to the lease. However, the Applicant accepted that the lease did not make provision for enhancement or improvement. The Applicant relied on the surveyors' professional opinion that it was reasonable to improve the balconies in order to reduce future expenditure by way of lower maintenance requirements. The proposed water proofing system by IKO came with a 15-year guarantee, which the Applicant considered to be an advantage to leaseholders and could be produced to any potential purchaser. The Applicant believed that replacing the balconies could have a positive effect on the saleability of the flats. History had taught that refurbishment of the railings was unlikely to last because of the building's location

16. The works were to be funded by way of levy under paragraph 2 of Part II of the seventh schedule to the lease

17. The Applicant considered that it had fully complied with the consultation

requirements of section 20, that it had acted in the best interests of all 16 leaseholders, and that it had attempted to consult and discuss the project at each stage of the process. The Applicant was satisfied that Bennington Green had completed the tender process in accordance with the RICS code or practice, and that their fees for the project were in line with the RICS code of practice

18. The Applicant would not be sending service charge invoices for the project to leaseholders until the Tribunal had made its decision

19. **Letter from leaseholders 3 December 2014 (pages 29 and 30)**

20. The copy letter in the Tribunal's bundle was not signed, but purported to be from :

Dennis and Janet Dibley Flat 1
Steve Elmes Flat 5
Messrs and Mrs Harris-Hicks Flat 6
Natalie Priest Flat 7
Pete Matthews Flat 8
Mr Price and Ms Booth Flat 9
Nicola King Flat 10
Billy and Annette Elliot Flat 12

21. The writers stated that, after "discussion amongst concerned residents", they had the following observations :

a. the overall costs appeared to be excessive, one example being that C&D Roofing Limited had quoted £49560 for the fitting and materials for the balcony, while Southern Fabrication had quoted £25944 for the same
b. there were concerns about the company C&D Roofing Limited, which appeared to have been formed only on 10 November 2014
c. the director, Carey Chissell, had formerly been the director of a company which had gone into liquidation
d. the tender from C&D Roofing Limited was undated
e. the name of the company on the tender was not "Limited"
f. the writers would like to see examples of Carey Chissell's work
g. the writers would like to know why the surveyor had recommended this company
h. the writers would like an explanation how the qualification to install IKO waterproofing was obtained and how it was regulated
i. two of the writers, Dennis Dibley and Steven Elmes had both wanted to speak to the directors, but had found that requests to do so had been ignored

Response from Bennington Green 19 December 2014 (pages 31 to 33)

22. Bennington Green stated that :

a. it appeared, on an initial view, that Southern Fabrication had provided a quotation based on their own specification, whereas the contractors under the tender process had utilised Bennington Green' specification criteria, and that Southern Fabrication had not been furnished with Bennington Green's document at the time of quotation
b. the two costs could therefore not be treated as directly comparable
c. they had now provided the lowest contractor with the Southern Fabrications quotation, and were awaiting their response
d. they also understood that the lowest contractor had approached a further alternative contractor with a view to trying to reduce their associated costs sum in that respect
e. the balustrades had to comply with Building Regulations; no applications had been made yet; the structural engineer would provide the design and calculation detail necessary to comply with the regulations; they could send a copy of the Southern Fabrications quotation to the structural engineer for comment if need be; however, there might be a cost if calculations were necessary to prove viable
f. Carey Chissell of C&D Roofing & Leadwork Specialists was a locally based contractor whom Bennington Green had known for a considerable number of years; he was an established and reputable contractor who had a diverse client base across the various working sectors, and had always provided a value-for-money service on a non-contractual basis, and generally obtained his work on a repeat basis within his client base
g. he had been trading as C&D Roofing & Leadwork Specialists for some 14 years, but was in the process of changing to limited company status; however, he had told Bennington Green that he would be continuing with this contract as a sole trader so as not to cause any potential issues under the appointment process or the 1985 Act
h. he had had to close a company when a sizeable main contractor went into liquidation during the recession, owing Mr Chissell a considerable amount of money, but C&D Roofing & Leadwork Specialists remained a separate entity and continued to operate
i. the non-dating of the tender appeared to be an oversight, not putting the client at risk, as the tender had been returned by the required date
j. they had discussed a visit to one of C&D Roofing & Leadwork Specialists' projects of a similar nature, and details would follow
k. IKO Waterproofing was a reputable company with a proven track record of waterproofing systems in the construction industry; their technical representative had attended the property to view the balconies and had provided a succinct report and recommendations for a suitable remedial system suited to the balcony surfaces at the property; they had also offered a 15-year materials and labour warranty which could only benefit the

property in the unlikely event of an issue arising; IKO were the warranty issuers, and their own on-site personnel checked that the work being undertaken was correct, and provided a report in line with the warranty details; they identified any technical issues on site and the manufacturer's approved contractor dealt with them

l. for a roofing contractor to become an IKO Waterproofing contractor there were the following requirements :
   - the contractor had to submit 5 years trading accounts
   - the contractor had to belong to an association such as the National Federation of Roofing Contractors
   - IKO Waterproofing would visit five roofs previously completed by the contractor to review the level of quality and finish
   - IKO Waterproofing would visit an "on-site" project being undertaken by the contractor to review work practices, competence, and level of finish
   - the contractor had to have £10 million public liability insurance in place

m. if the contractor met those requirements, IKO Waterproofing would then consider the contractor for training, and approve the contractor on completion of the training

n. Bennington Green considered this to be a stringent process

Letter from Burns Property Management to "All Lessees" 8 January 2015 (pages 243 and 244)

23. Burns Property Management stated that :
   a. the notice of estimates period had concluded on 5 January 2015
   b. Burns Property Management were attaching the unsigned letter from certain leaseholders received during the notice of estimates 30-day consultation period, which contained a number of observation, and the response from Bennington Green
   c. following that response, Mr Elmes of Flat 5, representing a number of leaseholders, had visited a recent C&D Roofing railing project
   d. a number of leaseholders had expressed scepticism and concern about the project at the property, which were highlighted in the observations submitted
   e. although the directors fully appreciated that the cost of the works was an unwelcome expense to all leaseholders and themselves, they felt that they had no alternative but to accept the professional advice of the surveyors in dealing with the maintenance issues currently experiences at the property; as discussed at the EGM, the directors had a legal obligation to ensure that the Applicant company fulfilled its obligations and responsibilities under the lease and in accordance with the company's memorandum and articles of association; the directors had a duty of care to all leaseholders and the freeholder to ensure that the property was safe for all residents and that the building was sufficiently repaired and maintained; that obligation also extended to ensuring that the

value of all leaseholders' investments, ie the flats, was protected so far as they reasonably could

f. however, because of the strong resistance from some leaseholders, the Applicant would now apply to the Tribunal to establish if the project should proceed, and if the appointment of C&D Roofing to undertake the works was reasonable, even though this would incur additional costs

Documents relating to the proposed works

24. Other documents in the bundle include the following :

a. a report from Bennington Green dated 21 May 2014 (pages 39 to 98), including photographs at pages 48 to 53, a structural engineers report at pages 55 to 57 and photographs at pages 59 to 68, and an IKO waterproofing report at pages 70 to 98

b. a proposal from Bennington Green to Burns Property management dated 13 June 2014 (pages 99 to 106)

c. notice of intention to carry out qualifying works dated 18 June 2014 (pages 229 and 230)

d. responses from leaseholders, as follows :

R & B Hicks 2 July 2014 (page 249)

Natalie Priest (Flat 7) 14 July 2014 (page 250)

Bill and Annette (Flat 12) (undated) (page 251)

e. a Bennington Green specification for the proposed works dated July 2014 (pages 107 to 189)

f. tender invitations from Bennington Green dated 28 July 2014 to C&D Roofing and Leadwork (page 190), Davis for Building (page 191), N James Roofing (page 192), and Pallard Contracts Limited (page 193)

g. tenders as follows :

C&D Roofing (undated) £109966 excluding VAT (pages 194 to 206)

Davis for Building 20 August 2014 £121266 plus VAT (pages 207 to 220)

Pallard Contracts Limited 29 August 2014 £113600 (pages 221 and 222)

h. tender summary by Bennington Green dated 3 September 2014 (page 223 to 225)

i. letter from Burns Property Management to freeholder 10 October 2014 (page 252)

j. e-mail from freeholder to Burns Property Management dated 20 October 2014 consenting to the works being undertaken (page 253)

k. notice dated 27 October 2014 of EGM on 20 November 2014 (pages 231 to 234)

l. minutes of EGM 20 November 2014 (pages 239 to 242)

m. statement of estimates and responses 27 November 2015 (pages 235 to 238)

n. e-mails from Southern Fabrication Limited to Bennington Green (undated) and from Bennington Green to Burns Property Management dated 3 February 2015 (page 259)

Tribunal's directions 19 January 2015 (pages 21 to 25)

25. The Tribunal identified the issues before the Tribunal as follows :
    a. whether it was reasonable to proceed with the major works tendered at £98626 plus VAT
    b. whether the works were within the landlord's obligations under the lease
    c. whether the landlord had satisfactorily complied with the consultation requirements under section 20 of the 1985 Act
    d. whether the costs of the works were reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee
    e. whether an order under section 20C of the 1985 Act should be made
    f. whether an order for reimbursement of the application/hearing fee should be made

26. The Tribunal directed that :
    a. by 3 February 2015 the landlord should send to the tenant copies of all estimates, surveys, reports and any other documents on which it wished to rely
    b. by 24 February 2015 the tenant should send to the landlord a statement setting out the items and amounts in dispute, full reasons why the amount was disputed, the relevant service charge provisions in the lease, and any legal submissions in support of the challenge to the service charges claimed, and any alternative quotes or other documents on which the tenant intended to rely
    c. by 10 March 2015 the landlord should send to the tenant documents relating to the matters disputed by the tenant
    d. by 17 March 2015 the tenant might send a brief supplementary reply

The Leases

27. The only copy lease provided to the Tribunal is at pages 13 to 20. It is dated 3 February 1972, and is between the Applicant (1) Troika Developments (Parkstone) Limited (2) and Bernard Bannatine Gibson (3), and relates to Flat 7 and garage 2 at the property. For the purposes of this decision the Tribunal has assumed, in the absence of any suggestion by the parties to the contrary, that the leases of all the other flats in the property are in materially the same terms

28. The provisions of the lease which have been drawn to the Tribunal's attention are as follows :

Paragraph 2 of Part II of the seventh schedule

> *2 The lessee shall further pay within fourteen days of demand pay to the lessor any and every supplementary advance payment from time to time determined by the lessor without deduction*

Paragraph 3 of Part I of the eighth schedule

> *3. The lessor shall keep the reserved property the drains sewers pipes wires and cables therein and all fixtures and fittings therein and additions thereto the drives paths garden grounds and the boundary walls fences and hedges thereof in a good and substantial state of repair and condition including the renewal and replacement of all worn or damaged parts.....*

29. The Tribunal has also noted the following provisions :

The second schedule – the reserved property

> *First all those the gardens pleasure grounds drives and forecourts forming part of the property and the halls staircases landings lifts (if any) and other parts of the buildings forming part of the property which are used in common by or are for the benefit of the owners or occupiers of any two or more of the flats and secondly all those the main structural parts of the buildings (including the garages) forming part of the property including the roofs foundations and external parts thereof (but not the glass of the windows or doors of the flats nor the interior faces of such of the external walls as bound the flats and garages)*

The third schedule – the premises

> *All that flat forming part of the property and being one of the flats and known as.....as shown for the purpose of identification only delineated in the plan and thereon edged with blue together with the ceilings and floors of the said flat and the joists and beams on which the floors are laid.....except and reserving from this demise the main structural parts of the building of which the said flat and garage (if any) form part including the roof foundations and external parts thereof but not the glass of the windows and doors of the interior faces of the external walls bounding the demised premises*

Part II of the eighth schedule – powers of the lessor

> *(g) power to engage as managing agents a member of any recognised body of estate agents*

(h) power to charge all expenses fees and costs incurred in or connected with the exercise of the powers herein referred to and all legal accountancy and other fees incurred in the operation of the lessor company (including fees for matters which an officer of the lessor company could have performed personally) to the maintenance fund

Inspection

30. The Tribunal inspected the property on the morning of 11 May 2015. Also present was Mr Simon Martin of Burns Property Management

31. The property was a brick-faced building with a flat roof, and appeared to have been built in the late 1960s. It had four storeys, one of which was below the level of the road at the front, and comprised sixteen flats

32. There was a walkway forming a bridge to the front door. On the underside of the walkway an area of render was missing, exposing supporting rods

33. At the rear of the building, which was south facing, were sixteen balconies, one for each flat, cantilevered out from the rest of main structure. On the underside of the balconies were areas of missing rendering, and the railings were rusty and in poor condition. The balconies on the upper floors were in worse condition than those on the lower floor

34. The Tribunal accessed and inspected the balconies of Flat 12A on the top floor, Flats 9 and 10 on the third floor, and Flat 5 on the second floor. The railings of Flat 5 were in poor condition, but those of the upper flats were worse

Decided cases

35. The parties have not submitted any decided cases to the Tribunal. However, the Tribunal takes note of the following guidance and tests from decided cases in approaching the question whether the proposed works in this case come within the landlord's repairing covenant :

    a. "the correct approach is to look at the particular building, to look at the state it is in *at the date of the lease*, to look at the precise terms of the lease, and then come to a conclusion as to whether on a fair interpretation of those terms in relation to that state, the requisite work can fairly be termed repair. However large the covenant it must not be looked at *in vacuo*" (per Sachs LJ in **Brew Brothers v Snax** [1970] 1 QB 612, CA)

    b. whether the alterations go to the whole or substantially the whole of the structure or only to a subsidiary part; whether the effect of the alterations is to produce a building of a wholly different character from that which has been let; and what is the cost of the

works in relation to the previous value of the building and what is their effect on the value and lifespan of the building (**McDougall v Easington DC** [1989] 1 EGLR 93, CA)

c. it is a question of degree whether work carried out to a building was a repair or work that so changed the character of the building as to give back to the landlord a wholly different building from that demised (per Forbes J in **Ravenseft Properties v Davstone (Holdings) Ltd** [1980] 1 QB 12)

d. "..the exercise involves considering the context in which the word "repair" appears in a particular lease and also the defect and remedial works proposed. Accordingly, the circumstances to be taken into account in a particular case under one or other of these heads will include some or all of the following : the nature of the building; the terms of the lease; the state of the building at the date of the lease; the nature and extent of the defect sought to be remedied; the nature, extent and cost of the remedial works; at whose expense the proposed remedial works are to be done; the value of the building and its expected lifespan; the effect of the works on such value and lifespan; current building practice; the likelihood of a recurrence if one remedy rather than another is adopted; and the comparative cost of alternative remedial works and their impact on the use and enjoyment of the building by the occupants. The weight to be attached to these circumstances will vary from case to case" (per Nicholls LJ in **Holding and Management Ltd v Property Holding and Investment Trust plc** [1990] 1 All ER 938

The Tribunal's decision

36. The Tribunal notes that the only comments before the Tribunal from the leaseholders are those contained in the letter dated 3 December 2014, despite the response from Bennington Green dated 10 December 2014, the letter from Burns Property Management dated 8 January 2015, the Tribunal's directions dated 19 January 2015, and the letter from Burns Property Management dated 23 January 2015 (pages 37 and 38) sending to "All leaseholders" the documents listed in that letter in accordance with the Tribunal's directions

37. The Tribunal's decisions in respect of each issue, are as follows

38. **Whether it is reasonable to proceed with the major works tendered at £98626 plus VAT**

39. The Tribunal has taken account of the concerns raised in the letter from certain leaseholders at pages 29 and 30

40. However, the Tribunal finds that :

a. the balconies are in such a poor state of repair that major works are

required to remedy the defects

b. there were refurbishment works in 2009, costing, according to the minutes of the EGM on 20 November 2014 at page 239, £45000 plus VAT
c. Bennington Green have considered whether it would be appropriate to remedy the current defects by way of further refurbishment works to the railings, or by replacing the railings, and, having obtained tenders in each respect, have advised that replacing the railings is the more appropriate method of remedying the defects
d. the respective costings by the chosen contractor, C&D, are £20686 plus VAT for refurbishment (page 199) and £49560 plus VAT for replacement (page 198), out of, respectively, a total contract price of £93255.80 plus VAT (including rendering the underside of the balconies and all associated fees), equating to £6994.19 a flat, and £113919.90 plus VAT (including new white upvc balcony soffits and all associated fees), equating to £8543.99 a flat, according to the letter from Burns Property Management at page 232
e. the balcony railings appear to be the original railings when the property was built, as confirmed in paragraph 3.13 of the report by Bennington Green at page 42, and are therefore, in the collective experience of the Tribunal, at, or towards, the end of their design life
f. in any event, the Tribunal would expect that it would be necessary, given the property's exposed location, to redecorate the railings every five years, at least
g. the difference between the proposed refurbishment costs and the proposed replacement costs, although substantial, are not so substantial as to make the replacement costs excessive
h. having considered all the circumstances, including the extent of the deterioration since the refurbishment carried out in 2009, only some six years ago, the Tribunal accepts that it is reasonable to remedy the current defects by way of the proposed replacement works, rather than by way of the proposed refurbishment works

41. **Whether the works are within the landlord's obligations under the lease**

42. The Tribunal finds that :

a. paragraph 3 of part II of the eighth schedule to the lease requires the landlord to *keep the reserved property.....in a good and substantial state of repair and condition including the renewal and replacement of all worn or damaged parts.....*
b. the definition of "the reserved property" in the second schedule to the lease includes *the main structural parts of the buildings.....forming part of the property including the.....external parts thereof (but not the glass of the windows or doors of the flats nor the interior faces of such of the external walls as bound the flats and garages)*

c. the wording of the definition of "the reserved property" is wide enough, on its ordinary and natural meaning, to include the balconies, the balconies being, as the Tribunal finds, part of the "main structure" of the building, and the balcony railings and surfaces (including both the undersides and floors) being, as the Tribunal finds, part of the "external parts" of the property

d. the wording of the repairing covenant in paragraph 3 of part II of the eighth schedule to the lease, and in particular the words *including the renewal and replacement of all worn or damaged parts* are wide enough, on their ordinary and natural meaning, to include the proposed works

e. in any event, the proposed works :
   - will not substantially alter the character of the property
   - will not cost so much more than refurbishment works that the difference is excessive, for reasons already given
   - take account of the lifespan of the railings and the fact that refurbishment works were carried out at a cost of £45000 plus VAT only some six years ago

f. there is no challenge from leaseholders before the Tribunal to the Applicant having an obligation under the lease to carry out the proposed works

g. having considered all the circumstances, including the guidance in the decided cases referred to earlier in this decision, the Tribunal finds that the proposed works are within the landlord's obligations under the lease

43. **Whether the landlord has satisfactorily complied with the consultation requirements under section 20 of the 1985 Act**

44. The Tribunal finds that :

a. there is no challenge from leaseholders before the Tribunal in this respect

b. in particular, the Tribunal's attention has not been drawn to any matter indicating that the statutory consultation procedure has not been carried out correctly so far

c. in the circumstances, the Tribunal finds that the Applicant has satisfactorily complied with the consultation requirements under section 20 of the 1985 Act so far

45. **Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee**

46. The Tribunal finds that :

a. the contract price from C&D is the lowest of the three tenders received, including the tender received from the contractor nominated by one of the leaseholders

b. the Tribunal has taken account of the concerns by some of the

leaseholders at pages 29 and 30 about C&D and its director, but the Tribunal has also taken account of, and accepts, the response in each respect from Bennington Green at pages 31 to 33

c. the Tribunal has also taken account of the concerns by some of the leaseholders at pages 29 and 30 about the costs appearing excessive, and, as an example, about C&D's quote for £49560 for the replacement railings, when Southern Fabrication had quoted £25944 "for the same"

d. however :

- the Tribunal is unable to assess whether or not the Southern Fabrication quote was indeed "for the same", because there is no copy of the quote before the Tribunal
- moreover, the Tribunal notes Bennington Green's comments at page 31 that :
    - it appeared, on an initial view, that Southern Fabrication had provided a quotation based on their own specification, whereas the contractors under the tender process had utilised Bennington Green' specification criteria, and that Southern Fabrication had not been furnished with Bennington Green's document at the time of quotation
    - the two costs could therefore not be treated as directly comparable
    - they had now provided the lowest contractor with the Southern Fabrication quotation, and were awaiting their response
    - they also understood that the lowest contractor had approached a further alternative contractor with a view to trying to reduce their associated costs sum in that respect
- the Tribunal also notes that the only other detailed quote for the same item was from Davis for Building, the contractor nominated by a leaseholder, and was for a yet higher figure, namely £54235 (page 210)

e. having considered all the circumstances, the Tribunal finds that the total proposed contract cost of £98626 plus VAT (according to the letter from Burns Property Management at page 235) is a reasonable sum, and that any reduction as a result of the matters referred to in Bennington Green's comments at page 31 will only be of benefit to the leaseholders

f. in relation to Bennington Green's supervision fees :

- the Tribunal finds that the wording of paragraph (h) of part II of the eighth schedule to the lease is wide enough, on its ordinary and natural meaning, to enable the Applicant to include Bennington Green's reasonable supervision fees in a future service charge
- the fee rate proposed in Bennington Green's letter dated 13 June 2014, namely 10% of the lowest tendering contractor plus VAT and disbursements, is a reasonable rate, and the categories of

disbursements listed at page 107 are reasonable in principle

- in making those findings the Tribunal has drawn on its collective experience and expertise in these matters, and has taken account of the fact that there is no challenge from leaseholders before the Tribunal in respect of those fees

g. in relation to Burns Property Management's fees :

- the Tribunal finds that the wording of paragraphs (g) and (h) of part II of the eighth schedule to the lease is wide enough, on its ordinary and natural meaning, to enable the Applicant to include Burns Property Management's reasonable management fees in relation to the proposed works in a future service charge, in addition to any reasonable management fees which they may charge for general management of the property
- the Tribunal's attention has not been drawn to the management fee rate proposed by Burns Property Management in relation to the proposed works, although the Tribunal has noted the statement in the letter from them at page 232 that the total cost of the proposed works including all associated fees totals £113919.90 plus VAT
- the Tribunal can therefore do no more than find that it is reasonable, in principle, for the Applicant to include Burns Property Management's reasonable management fees in relation to the proposed works in a future service charge, in addition to any reasonable management fees which they may charge for general management of the property
- in making those findings the Tribunal has drawn on its collective experience and expertise in these matters, and has taken account of the fact that there is no challenge from leaseholders before the Tribunal in respect of those fees

47. **Whether an order under section 20C of the 1985 Act should be made and whether an order for reimbursement of the application/hearing fee should be made**

48. The Tribunal finds that :

a. it was reasonable in all the circumstances for the Appellant to make this application

b. the Tribunal has effectively found in favour of the Applicant in respect of the issues in this application

c. in all the circumstances, the Tribunal therefore :

- declines to make an order under section 20C of the 1985 Act
- orders that the Respondent should reimburse the Appellant for the application fee in this case, which, according to the application form at page 8 was £440

Appeals

49. A person wishing to appeal against this decision must seek permission to

do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case

50. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision

51. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal

52. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 15 May 2015

Judge P R Boardman
(Chairman)