11141

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2014/0418**
Property	:	**Ambika House, 9a Portland Place, London W1B 1PR**
Applicants	:	**Orli Zucker (Flat 8), Freiberger Dental Practice (Flat 1), Jay Patel (Flat 7), Govind Singhania (Flat 14), Nikhil Kumar (Flat 15) and Arlette Shamash (Flat 17)**
Representative	:	**Mr J Upton, Counsel**
Respondent	:	**Ambika House Limited**
Representative	:	**Miss N Muir, Counsel**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Miss I Glyn, Ms N Rees and Mr D Griffiths (Solicitors), Mr J Dadd (partner of Ms Zucker), Mr C Howe (Chartered Construction Manager), Mr D Dancaster (Director of Respondent Company), Mr M Tamuta (Project Manager), Mr A Foweather (Building Surveyor) and Mr S Jones**
Tribunal Members	:	**Judge P Korn** **Mr A Lewicki FRICS** **Mr A Ring**
Date and venue of Hearing	:	**10th and 11th August 2015 at 10 Alfred Place, London WC1E 7LR (reconvene for decision only – 18th September 2015)**
Date of Decision	:	**30th October 2015**

DECISION

Decisions of the Tribunal

(1) Although the initial application related to estimated service charges, with the agreement of both parties the Tribunal has treated this application as an application for a determination in relation to actual service charges as the actual costs were available in time for the hearing.

(2) The Tribunal does have jurisdiction to make a determination in respect of Flat 1 (and in respect of the other flats which form the subject matter of this application).

(3) The Tribunal's determination in relation to the large number of individual items challenged by the Applicants is set out in paragraphs 44 to 125 of this decision.

(4) The Respondent accepted at the hearing that its costs incurred in connection with these proceedings are not recoverable under the Lease. On that basis the Applicants did not apply for a section 20C cost order. No other cost applications were made.

Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges in relation to the Property. The Property is a purpose-built block of flats in the West End of London.

2. The dispute relates to charges for major works in relation to the 2013 and 2014 service charge years.

3. The relevant statutory provisions are set out in the Appendix to this decision. Included in the hearing bundle is a copy of the lease of Flat 8 dated 6th June 1975 and made between 11 Portland Place Limited (1) and Lionel Lipkin and Seymour Gorman (2) ("**the Lease**"). It was common ground between the parties that all of the Applicants' leases were in the same form for all relevant purposes.

General initial points

4. The Tribunal noted at the hearing that the Applicant for Flat 1 was 'Freiberger Dental Practice'. This being seemingly the name of a commercial practice, the Tribunal queried whether it had jurisdiction in respect of this flat. Both parties were invited to consider the point and to make further written submissions, which they duly did.

5. The written and oral submissions in this case are extensive and wide-ranging, and some submissions are significantly more pertinent than others. It is not considered either practical or useful to summarise every submission made, but the submissions have been considered by the Tribunal in making its determination.

6. The Applicants' challenge had initially been to the estimated service charges for the relevant years. At the hearing it was agreed between the parties, with the Tribunal's permission, that as the actual figures were now available the case would proceed as a challenge to the actual service charges.

Inspection

7. The Tribunal members inspected the Property during the morning of the second day of the hearing in the presence of the parties and noted the items identified by the Applicants and by the Respondent.

Applicants' case – brief summary

8. Although initially the challenge was to estimated costs, and certain of the Applicants' written submissions were predicated on the assumption that the challenge was to estimated costs, by the date of the hearing it was common ground between the parties that the challenge was to the actual costs of the relevant works.

9. The Applicants' main argument was that much of the work constituted improvements rather than, for example, repairs or redecoration, and as such the cost was not recoverable under the terms of the Lease.

Witness evidence

Mr Dadd

10. Mr Dadd, partner of Ms Zucker (leaseholder of Flat 8), gave written witness evidence in relation to various exchanges of correspondence with the Respondent in relation to the works. In that witness statement he also expressed the view that certain of the works were unnecessary

and/or were being carried out to benefit the Respondent and the family controlling it who own a number of flats in the Property.

11. In cross-examination Mr Dadd conceded that as the Paul family owned a number of flats they would have an incentive to keep the service charge at a reasonable level. He also conceded that the building looked old. Miss Muir for the Respondent put it to him that at no point had he or Ms Zucker explicitly challenged whether any of the works needed to be carried out and nor had any other leaseholders, and Mr Dadd seemed to accept this point. Miss Muir also put it to him that the common parts were very shabby and that when redecorating a block of flats in such a prime location it was reasonable to decorate to modern standards, and again he accepted this point.

12. In re-examination by Mr Upton for the Applicants Mr Dadd said that whilst the lifts were in need of servicing he did not accept that the motor rooms should have been moved/replaced and his view was that this was done in order to create a penthouse. He also questioned why a new access to the goods lift at ground level needed to be created and why the porter's area needed to be moved.

Mr Dancaster

13. Mr Dancaster, director of the Respondent company, gave written witness evidence confirming that the written witness evidence of Mr Tamuta – the Respondent's managing agent – was true to the best of his knowledge. At the hearing he said that the Respondent replaced its then managing agents in 2013 because it was not happy with them, in particular with their failure to maintain the Property to a sufficient standard. A capital expenditure review was then undertaken and a decision taken to enhance the reserve fund to help meet the cost of the necessary works.

14. In cross-examination Mr Upton put it to him that there was no evidence that the wiring or the electrical system had actually been tested before the decision was made to replace them. Mr Dancaster accepted this but regarded it as a prudent preventative measure to replace them.

Mr Tamuta

15. Mr Tamuta, director of Alliance Managing Agents Limited, gave written witness evidence regarding the management of the Property and the process gone through in relation to the major works.

16. In cross-examination Mr Tamuta agreed that a significant proportion of the reserve fund should be used in funding these works.

Mr Howe

17. Mr Howe, of CHPK Property and Construction Consultants, had prepared an independent expert report in connection with the works on the instructions of the Applicants. His report contained a detailed analysis in relation to each item and he explained his position on a number of these items at the hearing. His analysis (including points arising out of cross-examination and re-examination) has been taken into account in the Tribunal's determination.

Mr Foweather

18. Mr Foweather, of Asprey Property Services Limited, had prepared an independent expert report in connection with the works on the instructions of the Respondent.

19. As with Mr Howe, his report contained a detailed analysis in relation to each item and he explained his position on a number of these items at the hearing. His analysis (including points arising out of cross-examination and re-examination) has been taken into account in the Tribunal's determination.

20. In cross-examination Mr Foweather accepted that the additional works referred to in "A-ADD 7" in the Schedule were not part of the original specification and he also accepted that this gave rise to the question of whether the Applicant had failed to consult leaseholders on these works as required under section 20 of the 1985 Act.

Respondent's legal submissions

21. Miss Muir said that Mr Foweather's report on behalf of the Respondent was very detailed, whilst the Applicants' submissions were made very late. As part of his analysis, Mr Foweather had taken into account the long term benefits of the Respondent doing a thorough job at this stage.

22. In Miss Muir's submission, Mr Howe's analysis as regards what level of repair/redecoration was appropriate was based more on the law relating to dilapidations than on service charge principles. The present case was one of long leases of residential property in a prime location, and leaseholders would not expect mere maintenance of outmoded fittings and décor.

23. Miss Muir also argued that the Respondent's obligations under the Lease went well beyond repair, for example the obligation to comply with legislation and the obligation to insure (and therefore to comply with the insurers' requirements). As to whether works had to be carried out on a 'like for like' basis, Miss Muir referred the Tribunal to the case of *Holding & Management Limited v Property Holdings &*

Investment Trust Ltd (1990) 1 EGLR 65 and submitted that the answer to this question depended on the length of the lease and on other circumstances. The work needs to be commensurate with the type of building, which in her submission they are. Furthermore, in this case the Respondent is agreeing to pay for any actual improvements.

24. Specifically regarding the redecorations, Miss Muir questioned whether the works had resulted in there being something wholly different in place from what was there before, and in her submission the only wholly different elements were those being paid for by the Respondent. She referred the Tribunal to the case of *Wandsworth LBC v Griffin (2000) 2 EGLR 105* in arguing that an element of improvement did not necessarily mean that something was not a repair. In relation to the electrics, it was sensible to deal with this at the same time as the redecoration given that the electrics were 60 years old and the architect had recommended replacement.

25. Miss Muir also submitted that Mr Howe had not dealt with quantum in his evidence and that therefore the Tribunal would have to rely on Mr Foweather's figures unless as an expert tribunal it considered his figures to be glaringly wrong.

26. In written submissions Miss Muir referred to *Fluor Daniel Properties Ltd v Shortlands Investments Ltd (2001) 2 EGLR 103* which in turn referred to the test in *Proudfoot v Hart (1890) 25 QBD 42* namely whether the condition of the subject matter of the dispute would be reasonably acceptable to a reasonably minded tenant of the kind likely to take a lease of the building having regard to the age, character and locality of the building. In her submission, the tenants of Ambika House are likely to be sophisticated and wealthy. The building is situated in prime central London and the flats are high value and are let on 99 year leases. It is also, in her submission, proper to take modern building standards into account in connection with any remedial works: *Postel Properties Ltd v Boots the Chemists Ltd (1996) 2 EGLR 60.*

Applicants' legal submissions

27. Mr Upton referred the Tribunal to the Lease and said that the reference to "amending" in paragraph 1 of the Schedule did not extend to the carrying out of major structural works. As regards the word "redecoration", this did not include replacing lighting with something wholly new. In his submission, much of the work went far beyond repair, redecoration etc. In the alternative he argued that it was not reasonable for a landlord to carry out work at this sort of cost and put it all through the service charge.

28. In written submissions Mr Upton noted the obvious starting point that the costs are not recoverable unless the Lease allows for their recovery. It was accepted by the Applicants that the common parts were dated

and in need of decoration, but in Mr Upton's submission the key question – by reference to the fourth and fifth stages of the five-stage approach to the question of liability propounded in "Dilapidations: The Modern Law and Practice (5th Edition)", namely what work is required in order to put the subject matter of the covenant into the contemplated condition and is that work nonetheless of such a nature that the parties did not contemplate that it would be the liability of the covenanting party.

29. Mr Upton referred to *Gibson Investments Ltd v Chesterton Plc (2002) 2 P&CR 494* as authority for the proposition that if there is a defect which is required to be remedied under the repairing covenant the covenanting party must adopt such method of repair as a reasonable surveyor might advise is appropriate. This may include ancillary work rendered necessary by the carrying out of repairs but it does not extend to work which is merely desirable or convenient. Mr Upton also referred to *Plough Investments Ltd v Manchester City Council (1989) 1 EGLR 244* as authority for the proposition that although in the context of service charge recovery the landlord is not obliged to adopt the cheapest solution its decision as to what method to adopt must be reasonable in all the circumstances.

30. As regards whether particular work constitutes repair, Nicholls LJ in *Holding & Management Limited v Property Holdings & Investment Trust Ltd (1990) 1 EGLR 65* said that the context needed to be considered, including the question of who was paying, the comparative cost of alternative remedial works and their impact on the use and enjoyment of t he building by the occupants. Mr Upton also referred to *Fluor Daniel Properties Ltd v Shortlands Investments Ltd (2001) 2 EGLR 103* as authority for the proposition that the landlord may only charge the tenants for works that the tenants, given their more limited interest, would fairly be expected to pay, with the landlord having itself to bear the cost of any additional works.

31. As regards what was contemplated by the parties, Mr Upton distinguished between "repair" and "improvement" in effectively arguing that the concept of an improvement encapsulates the sort of work that the parties would not have contemplated the leaseholders being liable for. Specifically as to the correct approach towards determining whether service charges have been reasonably incurred Mr Upton referred to the cases of *Forcelux v Sweetman (2001) 2 EGLR 173, Veena SA v Cheong (2003) 1 EGLR 175* and *Lord Mayor and Citizens of Westminster v Fleury (2010) UKUT 136* in arguing that the key question is whether costs have been reasonably incurred which in turn depends on whether the decision to incur them was a reasonable one in all the circumstances.

Tribunal's analysis

32. We have noted the parties' respective written and oral submissions as well as the issues pointed out at the inspection and have taken these into account in reaching our decision.

Whether the Tribunal has jurisdiction in relation to Flat 1

33. On the face of it, Freiberger Dental Practice appears to be a commercial tenant. However, we note from further written submissions that the lease was originally granted to Vivian Hammel Freiburger and that he remains the registered proprietor, albeit that he unfortunately passed away in June 2015 and therefore the lease forms part of his estate. Therefore it would seem that although Freiberger Dental Practice has been operating from the flat the leaseholder was Mr Freiburger and the lease is now vested in his estate.

34. The permitted use under clause 2(14) of the lease is "as consulting rooms surgeries and laboratory in connection with the Lessee's profession as a qualified dental surgeon and for use as the same by his Dental assistants and as a residential flat".

35. Under section 27A of the 1985 Act an application can be made to a tribunal for a determination whether a "service charge" is payable. Section 18 defines service charge in this context as meaning an amount payable by a "tenant of a dwelling" for services etc. The word "tenant" is defined in section 30 but only by reference to what it includes, namely that it includes a statutory tenant and a sub-tenant. "Dwelling" is defined in section 38 as "a building or part of a building occupied or intended to be occupied as a separate dwelling ...".

36. Whilst the evidence is inconclusive as to whether the flat was being used for residential purposes, it is clear from the permitted use under the lease that it was intended to be used in part as a residential flat, i.e. as a dwelling. It is also intended to be a "separate" dwelling as it is separate from all other flats within the building. Therefore, in our view the flat is "intended to be occupied as a separate dwelling" and therefore the leaseholder of the flat is a tenant of a dwelling within the meaning of section 18. Therefore we have jurisdiction to hear the application in relation to this flat.

Other legal issues

37. Miss Muir for the Respondent submits that the landlord's obligations in the Lease go well beyond mere repair. In fact, the landlord's repairing covenants themselves are very limited, with the landlord covenanting in clause 4(3) merely to keep the various common parts of the building clean tidy, free from obstruction and suitably lit.

38. However, the tenant's obligation to pay the service charge is by reference to *"the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and insurance of the building and the provisions of services therein and the other heads of expenditure ... set out in the Schedule"*. The Schedule referred to sets out twelve heads of expenditure. Paragraph 1 refers to the expense of *"maintaining repairing redecorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the building and all parts thereof"*. Paragraph 2 refers to *"inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating system ... and domestic lighting and power systems ... and the lifts liftshafts and machinery therein and maintenance of the fire fighting appliances and equipment"*. Paragraph 6 refers to *"carpeting re-carpeting cleaning decorating and lighting the passages landings staircases and other parts and ... keeping the other parts of the building used by the Lessee in common as aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition"*. Paragraph 12 refers to *"taking all steps deemed desirable or expedient ... for complying with ... the provisions of any legislation or orders or statutory requirements ..."*.

39. It is correct to say – as is often the case – that the service charge covers more than just repair and decoration. In particular it includes such concepts as renewal and amending of the building, replacing the heating, lighting and power systems and lifts where necessary and complying with statutory requirements. However it does not cover the cost of improvements, save to the extent that these are recoverable as a result of an accepted legal principle, whether one identified by case law or otherwise.

40. We accept that if a particular improvement constitutes the most economic way of carrying out a repair then the cost is not irrecoverable merely because the repair contains an element of improvement. We also accept that it is proper for repairs to take into account modern building standards and that the Applicants have a more significant stake in the building than, for example, a short term commercial tenant. They all own a long and valuable residential lease of a flat in the West End of London, and it is reasonable to assume that they want the building to be maintained to a reasonable standard. However, the evidence indicates that – whether or not it ever was – the building has not been a sophisticated, state of the art one in recent years. If it had been, then the argument that it was within the contemplation of the parties that a particular improvement or an improvement-related piece of work would be covered by the service charge might carry more weight. Considering the position in the round (long lease in the West End, but not state of the art building) in practice this leads to the conclusion – put briefly – that whilst the Respondent has not shown that it has the right to recover the cost of improvements or improvement-related work it might be arguable that the standard of repair/workmanship to be expected by the long leaseholder of a flat in

the West End might be such as to justify a higher standard than that expected by a tenant on a short lease or a leaseholder in a less desirable location.

41. We agree with Miss Muir that some of Mr Upton's submissions are based on the law of dilapidations and that it is not necessarily the case that the principles to which he refers can be applied satisfactorily to the materially different situation of service charge recovery. However, the distinction between "repair" and "improvement" is still relevant, as is the reference to the cases of *Forcelux v Sweetman*, *Veena SA v Cheong* and *Lord Mayor and Citizens of Westminster v Fleury*.

42. Ultimately, in our view, some of the works for which the Respondent is seeking to charge the Applicants are either improvements or are consequential on the Respondent's choice to carry out an improvement, and the nature of these improvements or improvement-related works is such that on the basis of the evidence provided they do not fit within any of the categories which would enable the Respondent to recover the cost under the service charge provisions in the Lease.

Individual items

43. There follows, by reference to the headings in the document entitled "Cost and Causation Schedule – Items in Dispute" and the separate list of "Add-Ons – Block A" and "Add-Ons – Block B" the Tribunal's necessarily brief comments and decision on each of the items in dispute. Where it is stated that the relevant works were not necessary, this means that they were not necessary in order to effect a repair or anything else falling within the service charge recovery provisions.

Item 1.06 Wall Coverings / Decoration

44. We accept that this area was in need of redecoration. We also accept that it was necessary to strip off the wall coverings, mirrors and picture rails in order to redecorate, but we do not accept that any of the rest of the work was necessary and therefore that any of the rest of the work fits within the Respondent's repairing obligations.

45. In the absence of more detailed information from the parties we are forced to apply a somewhat 'broadbrush' approach in assessing how much of the cost relates to items which we consider not to be chargeable. We consider only 50% of this head of charge to be payable, namely £210.00.

Item 1.07 Doors and Frames

46. On the basis of the evidence, in our view this relates to an improvement and does not fall within the Respondent's repairing obligations. Therefore the sum of £240.00 is not payable.

Item 1.08 Ceilings and Cornices

47. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £280.00 is not payable.

Item 1.09 First floor lobby level

48. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £240.00 is not payable.

Item 1.13 Survey

49. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £200.00 is not payable.

Item 1.14 Steel Frame

50. For the same reason as Item 1.07 neither of these items falls within the Respondent's repairing obligations. Therefore the aggregate sum of £2,900.00 is not payable.

Item 1.15 Create Opening

51. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £400.00 is not payable.

Item 1.20 New bamboo finish to new curved wall

52. The evidence indicates that the £2,000 charge relates to what it would have cost to decorate the wall which either no longer exists or is no longer accessible. In our view this notional cost is not recoverable as it was the Respondent's choice to replace the original wall with a new wall. Therefore the sum of £2,000.00 is not payable.

Item 1.21 Suspended Ceiling

53. We agree with the Applicants that this constitutes an improvement and therefore in principle not recoverable. The cost of painting, though, is a cost which would have been recoverable if the Respondent had not chosen to install an improvement and therefore this element is still recoverable. The Applicants have suggested allowing £750.00 and we accept that this is a reasonable amount to allow for painting. Therefore, out of the charge of £2,460.00 only £750.00 is payable.

Item 1.22 Plasterboard

54. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £1,060.00 is not payable. The cost of painting the plasterboard would seem to be included within Item 1.37 on the original Schedule which is not one of the items being challenged.

Item 1.23 Soffit Board

55. For the same reason as Item 1.07 neither of these items falls within the Respondent's repairing obligations. Therefore the aggregate sum of £1,160.00 is not payable.

Item 1.25 Timber Joinery

56. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £200.00 is not payable.

Item 1.26 Seating

57. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £1,765.00 is not payable.

Item 1.27 Wall Lining

58. It was not necessary to install a new wall lining system and therefore this does not fall within the Respondent's repairing obligations. However, we accept that it would have been necessary to paint the wall anyway and that £390.00 is a reasonable amount to allow for this. Therefore of the aggregate sum of £990.00 only £390.00 is payable.

Item 1.28 Mirror

59. The evidence indicates that there was no need to replace the mirror. Whilst the amount being claimed by the Respondent is only £100.00 the Respondent has not provided any persuasive justification for this forming part of the service charge. Therefore the sum of £100.00 is not payable.

Item 1.29 Stainless Steel Hand Rail

60. This item was conceded by the Respondent at the hearing, therefore the sum of £460.00 is not payable.

Item 1.30 Fire Control Panel

61. The relevant report recommended improving the Fire Control Panel and therefore in our view this item falls within the service charge provisions of the Lease. There is no challenge to the reasonableness of the cost and it seems reasonable to us, therefore the sum of £180.00 is payable.

Item 1.41 Floor Covering

62. In our view this work was unnecessary and therefore not recoverable under the Lease, and therefore the sum of £440.00 is not payable.

Item 2.04 Strip Out

63. We accept that there was a reasonable basis for carrying out this work, as it resulted in the electric heating to be safer and more efficient. The cost is recoverable under the Lease in our view. There is no challenge to the reasonableness of the cost, and we consider it to be reasonable. Therefore the sum of £380.00 is payable in full.

Item 2.09 Soffit

64. This arises out of Item 2.04 above and therefore is payable for the same reason. Again there is no challenge to the reasonableness of the cost, and we consider it to be reasonable. Therefore the sum of £190.00 is payable in full.

Item 2.10 Concealment

65. In our view this work was unnecessary and therefore not recoverable under the Lease, and therefore the sum of £180.00 is not payable.

Item 2.11 Wall Finishes to Stairwell

66. In our view this work was unnecessary and therefore not recoverable under the Lease, and therefore the sum of £1,270.00 is not payable.

Item 2.14 Plasterboard

67. The evidence indicates that this has not been done previously, and in our view the work was unnecessary and therefore not recoverable under the Lease, and therefore the sum of £1,080.00 is not payable.

Item 3.02 Suspended Ceiling

68. This was a purely aesthetic item of work, and it is particularly inappropriate to seek to charge leaseholders for aesthetic work in the basement. Therefore the sum of £580.00 is not payable.

Item 3.05 Plasterboard Lining

69. This sum (£180.00) is not payable for the same reason as given in relation to Item 3.02.

Item 3.13 Floor Covering

70. In our view this work was unnecessary in the context of a basement floor, and therefore the sum of £650.00 is not payable.

Item 4.05 Walls

71. The Applicants accept that the cost of this work is recoverable in principle under the Lease, their challenge being limited to the reasonableness of the cost. The job was tendered, the Applicants have not sourced an alternative quotation and there is insufficient evidence for us to conclude that the cost – following a proper tendering process – was unreasonable. Therefore the sum of £6,400.00 is payable in full.

Item 5.04 Fixed cupboards, shelves etc

72. In the absence of persuasive evidence that these items were defective and therefore needed removing this constitutes an improvement the cost of which is not recoverable under the Lease. Therefore the sum of £150.00 is not payable.

Item 5.05 Wall Coverings / Decorations

73. For the same reasons as for Item 1.06 we consider only 50% of this head of charge to be payable, namely £180.00.

Item 5.07 Ceilings and Cornices

74. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £280.00 is not payable.

Item 5.10 Suspended Ceiling

75. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £1,920.00 is not payable.

Item 5.11 Soffit Board

76. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £180.00 is not payable.

Item 5.12 Supply and install wall lining system

77. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £980.00 is not payable.

Item 5.13 Timber Joinery

78. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £2,000.00 is not payable.

Item 5.14 Seating

79. For the same reason as Item 1.07 the supply and installing of the wall lining system does not fall within the Respondent's repairing obligations. Therefore the sum of £1,000.00 is not payable.

Item 5.15 Wall Lining

80. For the same reasons as Item 1.27 only the painting costs are payable, and in our view £390.00 is a reasonable amount to allow for these

costs. Therefore of the aggregate sum of £990.00 only £390.00 is payable.

Item 5.16 Mirror

81. The evidence indicates that there was no need to replace the mirror. Whilst the amount being claimed by the Respondent is only £100.00 the Respondent has not provided any persuasive justification for this forming part of the service charge. Therefore the sum of £100.00 is not payable.

Item 5.24 Floor Covering

82. It appears from the latest version of the Schedule that this item is no longer being challenged by the Applicants. In any event, on the basis of the evidence it seems to be properly payable and reasonable in amount. Therefore the sum of £3,300.00 is payable in full.

Item 6.04 Strip Out

83. We accept that there was a reasonable basis for carrying out these works and the cost is recoverable under the Lease. There is no challenge to the reasonableness of the cost, and we consider it to be reasonable. Therefore the aggregate sum of £1,180.00 is payable in full.

Item 6.09 Wall Finishes to Stairwell

84. In our view this work was unnecessary and therefore the cost is not recoverable under the Lease. However, in relation to the finishing of the wall with Fischa Technica plaster, whilst the cost of this work is not itself recoverable this area would have needed painting and therefore in our view it is reasonable to allow the £600.00 sought, which seems a reasonable charge in the absence of a challenge on cost. Therefore of the aggregate sum of £1,305.00 only £600.00 is payable.

Item 6.12 Plasterboard

85. This sum (£1,080.00) is not payable for the same reason as given in relation to Item 2.14.

Item 7.02 Suspended Ceiling

86. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £570.00 is not payable.

Item 7.06 Wall Finishes to Stairwell

87. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £1,000.00 is not payable.

Item 7.14 Floor Coverings

88. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the aggregate sum of £1,790.00 is not payable.

Item 8.05 Walls

89. For the same reason as for Item 4.05 this sum of £6,400.00 is payable in full.

CHPK Number 56 (immediately above Item 9.03)

90. This item was conceded by the Respondent at the hearing on the basis that these works are not in fact being done. Therefore the sum of £990.00 is not payable.

Item 9.03 Skirting

91. During the course of the hearing the Applicants accepted that this cost item was recoverable in principle but disputed the amount. The basis for their challenge to the amount was weak, in our view, and therefore the sum of £615.00 is payable in full.

Item 10.04 9A Entrance and Door

92. For the same reason as Item 1.07 the first item under this heading does not fall within the Respondent's repairing obligations. As regards the second item, namely the new Pureglaze doors and glazing, the cost of their installation is not recoverable.

93. However, in our view the installation of new aluminium door frames has obviated the need to refurbish and redecorate the previous doors, this being work that would otherwise have needed to be carried out. Therefore it is appropriate to allow an amount to cover the cost of the works which would have been needed anyway, and in our expert view a reasonable amount to allow for that work would be £1,500.00. In conclusion, of the aggregate sum of £11,000.00 only £1,500.00 is payable.

CHPK Number 60 (immediately above Item 12.06)

94. For the same reason as Item 10.04, of the sum of £10,500.00 only £1,500.00 is payable.

Item 12.06 Woodwork

95. For the same reason as for Item 4.05 this sum of £6,400.00 is payable in full.

CHPK Numbers 62 and 63 (immediately above Item 13.05)

96. In our view, on the basis of the evidence provided it was reasonable on balance for the Respondent to have concluded that the wiring was nearing the end of its life and prudent to carry out these works whilst carrying out other works and therefore within the scope of the service charge provisions for the Respondent to be able to recover the cost of carrying out these works at this stage. There is no challenge to the cost itself and it seems reasonable. Therefore the aggregate sum of £8,900.00 is payable in full.

Item 13.06 Temporary Supply

97. This item is properly consequential on the wiring-related items referred to immediately above and is therefore also recoverable in principle. There is no challenge to the cost itself and it seems reasonable. Therefore the aggregate sum of £3,600.00 is payable in full.

Item 13.07 Decommission and Removal

98. For the same reason as for Item 13.06 this sum of £550.00 is payable in full.

Item 13.08 Chasing (Not Block B)

99. For the same reason as for Item 13.06 this sum of £940.00 is payable in full.

Item 13.10 New Electrical Distribution Cupboard

100. For the same reason as for Item 13.06 this sum of £345.00 is payable in full.

Item 13.11 New Electrical Distribution Components

101. For the same reason as for Item 13.06 this sum of £8,050.00 is payable in full.

Item 13.12 New Lighting

102. The Respondent has conceded that the £4,400.00 charge for external lighting is not payable. In relation to the new internal lighting, in our view it is clear from the evidence that some of the new lighting represents an improvement. However, much of the lighting – in particular the emergency lighting – was necessary and appropriate to recharge to leaseholders through the service charge, and the Applicants now concede that some amount is payable.

103. Unfortunately the Respondent has not offered any alternative figures or breakdown and the specification itself is not particularly clear, and therefore we are forced to make an assessment on a 'broadbrush' basis. On that basis we consider that of the aggregate £29,440.00 sought by the Respondent it would be appropriate to allow £20,000, this being approximately halfway between the parties' respective positions. Therefore, of the aggregate sum of £29,440.00 only £20,000.00 is payable.

Item 13.13 New Heating

104. We prefer Mr Foweather's evidence in relation to the first item (£1,400.00) and accept that the purpose of carrying out this work was to replace ineffective and inefficient existing heating and that it was appropriate to recharge this item to leaseholders through the service charge. There is no challenge to the cost itself and it seems reasonable.

105. As regards the second item (£3,400.00), in our view this is a clear improvement and not recoverable. Therefore this sum is not payable.

106. Therefore of the aggregate sum of £4,800.00 only £1,400.00 is payable.

Item 13.14 Small Power

107. In principle the replacement of very old sockets is a cost that should be recoverable under the service charge. However, the work actually carried out seems to us to represent a significantly more expensive option than was necessary. The Respondent is of course at liberty to go down this route but it is not reasonable to expect leaseholders to have to bear all of the cost.

108. Again, employing an unavoidably 'broadbrush' approach we consider that it would be reasonable for leaseholders to pay 50% of this cost. Therefore of the sum of £12,960.00 only £6,480.00 is payable.

Item 13.15 Fire Alarm

109. We prefer Mr Foweather's evidence in relation to the installation of the new fire alarm and detection system. We accept that it was appropriate to install a high quality reliable system which is fully compliant with all relevant regulations and, on the basis of the evidence provided, we do not consider that the system as installed is more comprehensive than can be justified. There is no challenge to the cost itself beyond the challenge to the comprehensive nature of the system installed and the cost seems reasonable. Therefore the sum of £42,745.00 is payable in full.

A-ADD 1

110. This item was conceded by the Respondent at the hearing. Therefore the sum of £240.00 is not payable.

A-ADD 5

111. This work was not necessary as the evidence indicates that the original doors and handles were in a satisfactory condition. Therefore the sum of £1,000.00 is not payable.

A-ADD 7

112. The evidence indicates that this work was not in fact carried out. Therefore the sum of £590.00 is not payable.

A-ADD 8

113. On the basis of the evidence provided we do not consider this work to have been necessary and therefore the sum of £380.00 is not payable.

A-ADD 9

114. On the basis of the evidence provided we do not consider this work to have been necessary and therefore the sum of £82.50 is not payable.

B-ADD 1

115. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £1,990.00 is not payable.

B-ADD 2

116. For the same reason as Item 1.07 this does not fall within the Respondent's repairing obligations. Therefore the sum of £540.00 is not payable.

B-ADD 3

117. This item was conceded by the Respondent at the hearing. Therefore the sum of £240.00 is not payable.

B-ADD 5

118. For the same reason as that given in relation to Item 13.13 the cost of this item is recoverable in principle. There is no challenge to the cost itself and it seems reasonable. Therefore the sum of £590.00 is payable in full.

B-ADD 13

119. This work was not necessary as the evidence indicates that the original handles were in a satisfactory condition. Therefore the sum of £1,000.00 is not payable.

B-ADD 21

120. The evidence indicates that the installation of the new ceiling was unnecessary and that the cost of the decoration has been included elsewhere in the tender. Therefore the sum of £240.00 not payable.

B-ADD 27

121. We consider this to have arisen out of an improvement and therefore the sum of £190.00 is not payable.

B-ADD 29

122. This item was conceded by the Applicants at the hearing. Therefore the sum of £80.00 is payable in full.

B-ADD 30

123. For the same reason as A-ADD 7 the sum of £590.00 is not payable.

B-ADD 31

124. C For the same reason as A-ADD 8 the sum of £485.00 is not payable.

B-ADD 32

125. For the same reason as A-ADD 9 the sum of £82.50 is not payable.

Cost Applications

126. The Respondent expressly accepted at the hearing that its costs incurred in connection with these proceedings are not recoverable under the Lease. On that basis the Applicants did not apply for a section 20C cost order. No other cost applications were made.

Name: Judge P Korn **Date:** 30th October 2015

APPENDIX

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 20

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

(a) complied with in relation to the works or agreement, or (b) dispensed with ... .

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.