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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/45UC/LSC/2017/0091**
Property	:	**Norfolk Wing, Tortington Manor, Arundel, West Sussex BN18 0FD**
Applicants	:	**Ms C Perry (Flat 2)** **Mr & Mrs Eteson (Flat 3)** **Mr & Mrs Kester (Flat 4)** **Mr & Mrs Desmond (Flat 6)** **Mr & Mrs Johnson (Flat 7)** **Mrs M Tomblin (Flat 8)**
Representative	:	**Mr Michael Johnson**
Respondent	:	**Tortington Manor Management Company Limited**
Representative	:	**Ms Laura Williamson, instructed by Coole Bevis LLP**
Type of Application	:	**Determination of service charges**
Tribunal Members	:	**Judge E Morrison** **Mr D Banfield FRICS**
Date and venue of Hearing	:	**6 June 2018 at Havant Justice Centre**
Date of decision	:	**20 June 2018**

DECISION

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The Applications

1. The Applicant lessees of Norfolk Wing applied under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of their liability to pay certain service charges in service charge year ending 31 December 2015. The Respondent is both the lessor and the management company of the Tortington Manor Estate, and is wholly owned by the lessees of homes on the estate.

2. The Tribunal also had before it applications under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent's costs of these proceedings should not be recoverable through future service or administration charges from the Applicants or any other lessees on the estate.

Summary of Decision

3. The service charges recoverable by the Respondent for year ended 31 December 2015 are £34,416.15, as set out in the service charge accounts.

4. No order is made under either section 20C of the Act or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The Lease

5. The Tribunal had before it a copy of the lease for Flat 7 and was told that leases for all the other long leasehold flats in Norfolk Wing are in similar form (but with differing service charge proportions). The lease is a tripartite lease between landlord, management company, and tenant, and is for a term of 999 years from 29 September 2000 at a peppercorn rent.

6. The relevant provisions in the Flat 7 lease may be summarised as follows:

   (a) The tenant is liable to pay to the management company 13.48% of the "flats service charge" applicable to Norfolk Wing;
   (b) Interim on account payments are payable on 1 January and 1 July in each year;
   (c) As soon as practicable after the end of each year, the management company or its agents is to prepare and supply to each tenant a certificate detailing actual expenditure and any excess or deficiency in the tenant's contributions;
   (d) Any excess is credited towards future contributions, and any deficiency is payable by the tenant;
   (e) The management company may set up a reserve fund against future expenditure;

(f) The landlord's repairing obligations for Norfolk Wing, the costs of which are recoverable through the service charge, include a covenant to "Maintain repair decorate (at least once every ten years) and renew the main structure of the block... including but without limitation the roof foundations and exterior of the Block including any expenses incurred in rectifying or making good any inherent structural defect within the Block".

The Inspection

7. The Tribunal inspected the subject property on the morning of 6 June 2018, immediately before the hearing. Tortington Manor is a development of town houses, cottages and apartments developed by Sea Containers between 2000 and 2002, set in landscaped grounds in open countryside south of Arundel. The apartments are located in three storey blocks of similar design with smooth rendered walls with parapets topped by coping stones and a mansard roof. Norfolk Wing contains 8 apartments, three on each of the ground and first floors and two on the top floor. Top floor apartments are contained within the mansard roof and have access to a number of balconies set behind the parapet walls. Balconies are separated by dwarf walls also topped with coping stones.

8. We carried out our inspection from No 7 and were also given access to No 8, noting that some of the coping stones exhibited a "crazed" surface and that a number of the mortar joints were poorly formed and in some cases had missing or cracked sections enabling lichen to establish. In some areas the internal face of the parapet where viewed through the apartments' windows exhibited the growth of small ferns. A small section of the original acrylic coating remaining on the adjoining block was pointed out.

Representation and Evidence at the Hearing

9. The Applicants were represented by Mr Johnson, assisted by Mrs Johnson. They had prepared a bundle of relevant documents in accordance with the Tribunal's directions. This included a detailed statement of case, which was also taken as Mr Johnson's witness statement, and supporting documents. (There was a further witness statement from a former lessee which was not relied upon, as the issue addressed by it was subsequently agreed.)

10. The Respondent was represented by Counsel. In addition to a statement of case, the bundle included two witness statements, one from Martin Stubbs, a building professional who was employed by the Respondent's managing agents, Hobdens Property Management Company Limited ("Hobdens") at the relevant time, and one from Lee Pollard, a director of JG and GR Langridge Limited ("Langridges"), the contractor who carried out the works, the costs of which were in dispute. However, neither Mr Stubbs nor Mr Pollard attended the

hearing. A director of Hobdens, Darren Dalton, did attend, and he gave brief oral evidence in response to queries raised by the Tribunal.

11. In addition, permission had been given for each side to rely on expert evidence. Reports had been prepared, along with a schedule of matters agreed and not agreed, and each expert gave oral evidence.

The Law and Jurisdiction

12. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.

13. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

14. Under section 20C of the Act a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal 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.

15. Under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 a tenant may apply to the Tribunal for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs.

Chronology

16. The following facts are not in dispute.

- Until the Langridge works commenced in 2014, the coping stones to the parapets at Norfolk Wing were covered by an acrylic coating which had been in place since at least 2003. It was not possible to see the condition of the coping stones, or the mortar joints between the stones, beneath the coating.

- External decoration had been carried out in 2006. In July 2013 Mr Perry of Keim Mineral Paints Limited ("Keim") was invited by Hobdens to inspect and provide a specification for the redecoration of all coping stones at Tortington Manor using Keim products, which it was hoped would provide attractive, robust and long-lasting protection. The specification provided for the acrylic layer to be removed, the repair/reinstatement of any suspect mortar in the joints, the filling of cracks, followed by the application of Keim paints. The specification

made it clear that all areas had to be thoroughly clean, wind dry and smooth before painting, and that material should not be applied if it was raining or there was an immediate likelihood of rain.

- In September 2013 a small scale trial of the Keim products was conducted at Norfolk Wing by a local firm, Sussex Renovations. In January 2014 Mr and Mrs Johnson told Hobdens that the work was "already showing signs of failure along the joints". Hobdens responded that they could see no reason for the failure. Sussex Renovations carried out remedial work in Spring 2014.

- In 2014 consultation under section 20 of the Act was carried out for proposed works of redecoration to the entire estate. Most of the work was awarded to Sussex Renovations, but the work to the parapets (and plinths at ground floor level) was awarded to Langridges, who submitted the lowest cost estimate (£2760.00 inc. VAT, + 10% contingency for Norfolk Wing).

- Langridges' work on the estate was due to start on 4 August 2014. Norfolk Wing was scheduled towards the end of the works. There was poor weather in August which caused unavoidable delay. Work did not begin at Norfolk Wing until the end of September. There was further bad weather in October and November so that work was sporadic and although the acrylic layer was removed and work carried out to the joints, it was eventually decided by Hobdens in late November that further work would have to be suspended until the following spring.

- In April 2015 Langridges returned. They carried out some work but it was subsequently decided that the joints between the stones required complete raking out and re-pointing with new mortar before painting could be done. The work was finally completed by mid June 2015.

- The Respondent paid Langridges £2760.00 inc. VAT for the work they had originally tendered for, and a further £1260.00 inc. VAT for the additional work to rake out and repoint the coping stones, producing a total payment of £4020.00 inc. VAT. In addition Hobdens charged a supervision fee of 10% of the original contract sum namely £276.00 + VAT. The total cost of the work to the coping stones and the ground floor plinths was therefore £4351.20, which is part of the 2015 service charge expenditure on external decorations, financed by monies in the reserve fund.

- Later in 2015, Sussex Renovations attended to paint the inner face of the parapet walls and, for reasons unknown, also applied Dulux paint to the coping stones.

- In December 2016, following a report from a lessee at Norfolk Wing of cracks in the mortar joints, Paul Taylor, a chartered surveyor from Hobdens, inspected the coping stones and said the cracking was due to thermal movement, the remedy for which was the provision of

expansion joints. The absence of these was an inherent design defect affecting coping stones throughout the estate. It is proposed to remedy this at the time of the next cyclical redecoration.

The issues

17. Although it is accepted that the work carried out by Langridges falls within the scope of the repairing covenants in the lease, the cost of which is potentially recoverable though the service charge, the Applicants submit that the entire cost of £4351.20 is not payable because:
    (i) The cost was not reasonably incurred
    (ii) The work was not carried out to a reasonable standard
    (iii) Hobdens' supervision was not carried out to a reasonable standard.

The Applicants' case

(i) Whether the costs were reasonably incurred

18. While the Applicants note that it has never been explained why it was decided to remove the acrylic layer, and say that it was in a sound state of repair when work began, they do not suggest it was not reasonable for the Respondent to adopt the Keim products and methodology for the redecoration of the parapet stones. Instead, the thrust of their case is that the lack of expansion joints should have been recognised as soon as the acrylic layer had been removed, even when the trial was carried out, and this inherent defect remedied at that point, instead of simply proceeding with the work. The net result is that, despite the expenditure, the appearance of the parapet is now much worse than it was before, and all the work will have to be repeated when expansion joints are provided. Thus the Applicants argue that the costs have been incurred for nothing.

(ii) Whether the work was carried out to a reasonable standard

19. The Applicants' contend that Langridges failed to follow Keim's requirements as to weather conditions in the autumn of 2014. They have produced meteorological records for three airports, all within 35 miles of Tortington, showing generally high humidity levels in October and November. Although the Johnsons accept that they did not see Langridges applying any Keim products when it was actually raining, they refer to one email they sent on 14 October 2014 which refers to work taking place that day *"despite the unsettled weather and damp conditions"*.

20. It is also submitted that the work carried out by Langridges in autumn 2014 was of an unacceptable standard. The Applicants have produced photographs taken by Mrs Johnson in early October 2014 which show

rough unfinished covering of the mortar joints, and further photographs taken in March 2015 showing mortar missing from the joints, their condition having deteriorated over the winter.

21. They rely on the fact that the joints showed cracks as soon as a little over a year after the work was completed as further evidence of the poor quality of workmanship.

22. In addition to the cracks in the mortar joints, there is crazing over some areas of the top surface of the coping stones, which the Applicants say also points to poor workmanship in application of the paint.

23. On 11 January 2017, shortly after the lack of expansion joints had been identified, the Johnsons invited Richard Perry of Keim, the same person who had attended in July 2013 to prepare the Keim specification, to visit them. Following that visit, Mr Perry wrote to the Johnsons: "*...With the evidence of your photos, eye witness accounts and records of weather conditions, before and after the application of the Keim products, the evidence does point towards a failure of not following the application requirements clearly stated on my specification of 2013 ... The filler in the specification specified by me is only a crack filler and the spec does state that a suitable joint filler be used. The joint filler in your photos is not a Keim product, but does look like a suitable filler like Toupret...*"

24. The Applicants contend that the term "reasonable standard" in section 19 of the Act should be interpreted as meaning a high standard when applied to Tortington Manor. One of the Objects set out in the Respondent's Memorandum of Association is "To do all such other things as ... may maintain or increase the value and amenities enjoyed by the lessees of the flats ...". The tenant's repairing covenants in the Sixth Schedule to the lease required redecoration of the interior "in order to maintain a high standard of decorative finish" and lessees of houses on the estate are required to redecorate the exterior "using materials of good quality ... to maintain a high standard of decorative finish and repair". These all point to a requirement of a high standard.

25. It is further submitted that the significant price differential between Langridges and the other two tendering contractors should have caused Hobdens to question the likely quality of Langridges' work.

(iii) Whether Hobdens' supervision was carried out to a reasonable standard.

26. The Applicants contend that Martin Stubbs of Hobdens did not comply with the Specification's requirement of an average of two visits per week (for the entire estate redecoration), and on one occasion did not attend on site to meet with Mr and Mrs Johnson until over a week after they had requested it. They say it was left to them to report problems, instead of the issues being spotted by Hobdens. The Respondent had

not provided any records of site visits by Martin Stubbs, the contract administrator. The supervision was not to a reasonable standard and so the lessees should not have to pay for it.

The Respondent's Case

27. As a result of the Respondent's lay witnesses failing to attend the hearing, the Respondent's case, save for the expert evidence (addressed below), largely rested on reliance on the documentary evidence in the bundle, on which submissions were made.

(i) Whether the costs were reasonably incurred

28. The Respondent says that the decision to incur cost in redecorating the exterior was a reasonable one. The last redecoration was in 2006. The requisite section 20 consultation was carried out, the market tested, and the contract for the Norfolk Wing coping stones awarded to Langridges, who had provided a comparatively low estimate in the hope that it would lead to their getting more work on the Tortington Manor Estate.

29. The additional cost of £1260.00 inc. VAT was incurred in June 2015 as a result of the need to completely rake out and repoint all the mortar joints. The work had been done at cost price. The need for this work had not been appreciated when the original specification for the estate redecoration had been prepared, the joints at that time being hidden by the acrylic layer. No section 20 consultation was required for the additional work as no lessee had to contribute more than £250.00.

29. Even if the lack of expansion joints had been recognised as a problem early on in the works, there has been no prejudice to the Applicants. There is no financial prejudice because they have not been asked to pay for the remedial work; this cost will not be incurred until the next redecoration cycle. There is no need to bring forward the next redecoration cycle as the lack of expansion joints is causing no structural or damp problems. Thus the only difference in cost between addressing the lack of expansion joints now or doing so some time in the future is that the cost is deferred. Either way there would still be two redecoration cycles to be paid for in the normal way.

(ii) Whether the work was carried out to a reasonable standard

30. In respect of weather conditions, the Respondent accepts that bad weather was a problem in 2014, but denies that work was done in conditions contrary to Keim's stipulations. There are a number of emails from Martin Stubbs and Darren Dalton to the Johnsons in September & October 2014 which demonstrate they were fully alive to the need for dry weather before any painting could be carried out. An earlier message from Langridges in August (when working on other parts of the estate) makes it clear that they also were well aware of the

climatic requirements: "*We are determined to get this job done correctly and in the correct conditions however to do this we must have a sustained spell of dry weather*".

31. Whatever the standard of work in autumn 2014, that was work in progress, and what matters is the final result.

32. That the work was done to a reasonable standard when completed is demonstrated by an email from the Johnsons to Hobdens on 17 June 2015 which reads in part: "*The contractors seem to have done a good job, which will hopefully withstand the test of time. We would like to add that Steve and John should be commended for their manner of working... Please convey our appreciation to Langridges and we hope that the remainder of the work to the second floor can be carried out with the same level of diligence and care*".

(iii) Whether Hobdens' supervision was carried out to a reasonable standard.

33. The supervision fee is 10% of the original contract sum. 10% is a reasonable percentage and applied across the entire redecoration project, not just the Norfolk Wing parapets. The volume of emails in the bundles demonstrates that there was supervision by Martin Stubbs, the contract administrator, a member of the Chartered Institute of Building. The fee is low and reasonable.

The expert evidence

34. There is a high level of agreement between the experts. Notably the joint statement shows that they agree on the following:

- The lack of expansion joints is an inherent defect
- The failure to address the lack of expansion joints is a "major" and "significant" factor in the current state of disrepair of the copingstones, in particular the cracking and failure of the mortar pointing
- Remedial works are required
- Lime mortar mix was specified to provide some flexibility and, in theory, reduce cracking but the main problem arising from the lack of an expansion joint was not addressed
- The subsequent repointing works have failed, as evidenced by the current defects.
- The Keim paint was overpainted with Dulux paint by Sussex Renovations at the same time as repairs to cracks in the parapet walls. This defeats the object of the use of Keim or any other material designed to minimise mould growth etc.
- Joint cracks are defects which may be due to differential movement rather than poor workmanship.

In oral evidence the experts also agreed that a 10% supervision fee was not unusual.

35. The issues on which the joint statement notes disagreement are largely matters of fact about which the experts have no direct knowledge, and they simply record what their respective clients have told them. They do not assist the Tribunal.

36. In his written report, the Applicants' expert, Jack Tupper, a chartered building surveyor, takes the view that the lack of expansion joints should have been identified "right at the beginning of consideration of remedial works". He did not explain how this could have occurred while the acrylic render was in place, which he said "*carefully concealed probable movement beneath the finish*". He stated that the mortar mix used by Langridges is acceptable but does not solve the problem of lack of expansion joints.

37. In the course of his oral evidence Mr Tupper said that although decorators such as Langridges could not be expected to recognise a problem with lack of expansion joints, someone above them should have done so. The photographs taken in October 2015 were evidence of poor workmanship. The winter weather over 2014/15 could have affected exposed joints, but he also accepted that if the joints had been completely raked out and refilled in 2015 it would not matter what had been done to them in the previous year. There was no reason why Keim paint products could not be applied over the new mortar as long as it had a smooth finish. As regards the crazing seen on the surface of some of the stones, this was probably due to the paint finish reacting with the substrate; it was very thin, only to the surface layer, and could be sanded off before the next redecoration cycle.

38. The Respondent's expert, Michael Percival, also a chartered building surveyor, reported that he had spoken to Mr Perry of Keim, and that Mr Perry had told him that "*he has no concerns over the application of the Keim products*". Mr Percival considered that the photographs before the work was completed either showed "*temporary work*" or joint crack defects "*likely to be due to differential movement rather than poor workmanship*". He went on to state that "*The works have now been completed for approximately three years and some deterioration is inevitable over that period. It is also hard to come to a firm conclusion on whether the work was carried to a reasonable standard so long after completion. Based on the photographic evidence, the majority of the defects noted to the long term work are exacerbated by the inherent characteristics of the wall and the environment in this case*". He opined that a 10% supervision fee was reasonable.

39. In his oral evidence he stated that he had had a long conversation with Mr Perry of Keim. Subsequently an attempt had been made to get a witness statement from Mr Perry but by then he was on long term sick leave. Mr Percival did not think the work shown in the autumn 2014 photographs was intended to be complete; it was temporary or work in progress. As regards the expansion joints he said this was a common problem with parapet walls. A building surveyor should recognise the

issue if he saw it. Cracks on the inner face of the parapet wall would indicate a potential issue. In respect of the crazing to the surface of the stones, he agreed with Mr Tupper that it was a superficial problem, just affecting the finish.

Discussion and Determination

40. The Tribunal understands why the Applicants are unhappy with the current appearance of the coping stones. There are now visible and aesthetically undesirable defects which were not apparent prior to Langridges' works.

(i) Whether the costs were reasonably incurred

41. In *Waaler v Hounslow London Borough Council* [2017] EWCA Civ 45 the Court of Appeal approved the two stage approach adopted in *Forcelux v Sweetman* [2001] 2 EGLR 173 when considering whether costs have been reasonably incurred under section 19 of the Act. The Tribunal must be satisfied both that the landlord's decision-making process was reasonable, and that the amount charged is reasonable.

42. Given that the acrylic coating was hiding the condition of the coping stones, that the proposed works were essentially works of redecoration, that professional advice in the form of a detailed Specification was obtained from Keim, and that section 20 consultation was carried out, the Respondent acted reasonably in commissioning Langridges to carry out the specified works. The Tribunal does not accept Mr Tupper's view that someone should have appreciated the problem even before the opaque acrylic layer was removed. Nor is there enough detail in evidence regarding the trial area to conclude that "the signs of failure" reported in January 2014 by the Johnsons were sufficiently material to raise concern.

43. We do however accept that at some point after the acrylic layer was fully removed and the joints exposed, the lack of expansion joints should have been apparent to Mr Stubbs of Hobdens. If that had occurred, it is possible that the works might have been amended to include insertion of expansion joints, although as all agree that would involve substantial additional cost, further section 20 consultation would have been required. In any event, the final result would still have been that the parapet stones were decorated, the Applicants would still have been required to pay for that decoration, and the joints would still have had to be raked out and repointed. The Tribunal therefore concludes that it was reasonable to proceed with all the work done by Langridges.

44. With respect to the cost, there is no suggestion that Langridges' eventual price of £4020.00 inc. VAT was more than a reasonable sum for the work done, assuming it was done right. However the Applicants

are correct in asserting that they may be required to pay twice over for repointing the joints. When the expansion joints are eventually inserted, that repointing work will have to be repeated. If the issue with the expansion joints had been identified in 2014, and dealt with then, there would be no need for the joints to be repointed again during the next redecoration cycle. It is therefore the Tribunal's view that the Applicants should not be charged again for this work when it is repeated next time.

(ii) Whether the work was carried out to a reasonable standard

45. The Tribunal does not find there is cogent evidence that Langridges failed to follow Keim's requirements as to weather conditions. The best evidence the Applicants have is one email of 14 October 2014 which refers to (unspecified) work being done in "unsettled weather and damp conditions". The reply to that email from Mr Dalton states: "It has been dry all day today and I can therefore understand why the contractor was on site". The Keim specification did not provide that work other than painting could not be done in other than dry conditions. Other emails referred to at paragraph 29 show Hobdens' and Langridges' awareness of the climatic requirements; indeed this was the reason why the works were so delayed.

46. Nor is the Tribunal able to place any weight on the email from Mr Perry of Keim in January 2017. Despite a visit to Norfolk Wing at that time, he does not mention that anything he actually observed at that time indicated any problem at all with the conditions or manner in which the Keim products had been applied. His only comment appears to be based on what he has been told by the Johnsons about events two years earlier. Furthermore he seems to have expressed a completely contrary view to Mr Percival.

47. The photographs taken in October 2014 show a very rough finish and those in March 2015 show that the joints were failing. It may be that the photographs show only work in progress or it may be that the work done prior to spring 2015 was not of a reasonable standard. However the time at which the standard of work must be judged is at its conclusion. In effect, all the previous work was re-done in June 2015 following the decision to completely rake out and repoint the joints.

48. There are no photographs of the coping stones following completion of the works. Given the very high degree of attention given to the works by Mr and Mrs Johnson throughout (as evidenced by the numerous emails and photographs) the Tribunal is in no doubt whatsoever that had the Johnsons been unhappy in any respect with the final result, they would have taken photographs and reported their concerns. What they actually did, in their email of 17 June 2015, was to compliment Langridges on their work. This is some evidence that the works were done to a reasonable standard.

49. More critically, neither expert has concluded there was any substandard workmanship in the finished works. Although the joints have failed, there is no criticism of the mortar used to refill the joints, and they agree that the major cause of the current disrepair is the lack of expansion joints. Their absence means that when movement occurs (which is inevitable), water enters the joints, freezes and then causes cracks. So far as the rest of the paintwork to the stones is concerned, it is not possible for anyone to reach a sensible conclusion because, inexplicably, a top coat of Dulux was applied by another contractor, which defeats the purpose of the Keim methodology. With regard to the crazing visible in places on the tops of the stones the experts are agreed that it is only superficial and can be easily removed. It could be due to the Dulux top coat reacting with the Keim paint underneath.

50. The fact that Langridges provided a very competitive quote does not imply that their work would not be of a reasonable standard. The Johnsons queried this at the time and their concerns were discussed at a meeting with Mr Stubbs. They were told that Hobdens were satisfied that Langridges would perform well. It appears that Langridges quoted low in the hope of getting more work.

51. While the Tribunal accepts that a "reasonable standard" at Tortington Manor should be judged to a higher standard than might be appropriate to more modest properties, this does not alter our conclusions. There is simply no reliable evidence that the work carried out by Langridges, in its final manifestation, was not done properly.

(iii) Whether Hobdens' supervision was carried out to a reasonable standard.

52. Ideally the Tribunal would have been shown proper records maintained by Martin Stubbs, the contract administrator. No records have been produced. However the issue is whether Mr Stubbs carried out sufficient work of a reasonable standard to justify a fee of just £276.00 + VAT. The documentary evidence in the bundle demonstrates that he attended at least one meeting with the Johnsons. They have not said there were no other meetings. It is unknown how often he otherwise attended site, but lengthy email correspondence between Mr & Mrs Johnson and not only Martin Stubbs but also his superior Darren Dalton of Hobdens, over a period of almost a year, shows continual monitoring and involvement. The Tribunal has no doubt that the work done justifies a fee of £276.00 + VAT.

53. For the sake of completeness it is noted that the standard of Langridges' work to the ground floor plinths, which was included in the cost of £2760.00, has not been challenged by the Applicants.

54. In reaching the above conclusions, the Tribunal has attached no weight to the witness statements of Martin Stubbs or Lee Pollard, but it is right to say that they support our findings.

Applications for limitation on recovery of costs

55. Mr Johnson accepted that he had only been authorised by the Applicants to make these applications; he did not have any authority from the other lessees on the estate.

56. In deciding whether to make an order under section 20C of the Act limiting the recovery of costs a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Although the Tribunal has expressed the view that the Applicants should not have to pay future charges for repointing, the Respondent has otherwise been successful in that all the service charges in dispute have been found to be payable. Furthermore, the Tribunal was shown a letter from the Respondent, sent shortly before the first case management hearing, offering to settle the dispute by crediting the Norfolk Wing reserve fund by £3000.00. This offer was refused and no counter-offer was made. The Respondent is wholly owned by the lessees. There is no reason why the other lessees at Tortington Manor should be solely liable to meet costs incurred as a result of an unsuccessful claim by the lessees of six flats in the Norfolk Wing. In light of all these factors, no order will made under section 20C.

57. The exercise of discretion under Schedule 11 of the Commoonhold and Leasehold Reform Act 2002 is also governed by what is just and equitable. An administration charge to recover the Respondent's costs of the proceedings could, unlike a service charge, only be levied against the lessees who were parties to the proceedings. Again, given that the Respondent has been successful if proceedings which it was unable to avoid, there is no justification for making an order restricting the recovery of costs.

58. For the avoidance doubt, the Tribunal has made no determination as to whether the leases do in fact permit recovery of legal costs through the service charge, or whether there is provision in the leases for an administration charge to recover such costs.

Dated: 20 June 2018

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) 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.

2. 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.

3. 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 allow the application for permission to appeal to proceed.

4. 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 the party making the application is seeking.