

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LSC/2010/0039**

**REASONS**

**Application** : Section 27A of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

**Applicant/Landlord** : Mr Anthony Napper

**Respondent/Leaseholder** : Mr Evan James (Flat 1)

**Building** : 62 St Mary Street, Chippenham, Wilts, SN15 3JF

**Flats** : the Flats in the Building

**Date of Application** : 22 June 2010

**Dates of Hearing** : 5 October and 15 November 2010

**Venue** : Castle Inn Hotel, Castle Combe, Wilts, SN14 7HN

**Appearances for Applicant/Landlord** : Mr Napper

**Appearances for Respondent/Leaseholder** : Mr James

**Members of the Tribunal** : Mr P R Boardman JP MA LLB (Chairman) and Mr S Hodges FRICS

**Date of Tribunal’s Reasons** : 19 November 2010

**Introduction**

1. This application by the Applicant/Landlord is, under Section 27A of the 1985 Act, for the Tribunal to determine the payability of service charges for the years 1 April 2007 to 31 March 2008, 1 April 2008 to 31 March 2009, and 1 April 2009 to 31 March 2010

**Documents**

2. The documents before the Tribunal are :
  - a. the application

- b. the Applicant/Landlord's bundle
- c. the Respondent/Leaseholder's bundle
- d. further submissions by Respondent/Leaseholder in relation the items listed at page numbered AB in the Applicant/Landlord's bundle

### **Inspection**

3. The Tribunal inspected the Building on the morning of the hearing. Also present were Mr Napper and Mr James
4. The Building was a 3-storey, mid-terrace, period building, with part brick and part stone elevations, under a pitched roof with Cotswold and concrete tiles, and with the front elevation facing south. Mr Napper said that the original part of the Building dated from the 1600's, and that additions had been made in the 1700's, and that it was a listed building. There was a communal hallway, or passageway, leading from the front door to the rear door. The ground floor was fitted out, or being fitted out, as a shop and tea room. Flat 1 comprised the first and second floors at the front, an attic space at the rear above Flat 2, and a bathroom above the hallway with a rear-facing window
5. The Tribunal also inspected the 3 rooms on the ground floor, accessed via a door leading onto the hallway, and one room in Flat 2, accessed via a door and stairs leading from the west side of the Building behind the hallway
6. Plans are in the lease of Flat 1, in the Applicant/Landlord's bundle

### **The lease**

7. For the purposes of these proceedings the material parts of the lease of Flat 1 are as follows :

#### ***Recital***

- (j) the Term : 999 years from 1 January 2002*
- (l) the Services : the services to be provided by the Lessor hereunder and described in the Seventh Schedule hereto*
- (n) the Building Service Costs : the costs and expenses attributable to the Building and the reserved parts of the Building described in the Seventh and Eighth Schedules hereto and shall include not only those costs and expenses which have actually been disbursed but also such reasonable part of all such expenses outgoings and other expenditure hereinafter described which are of a periodically recurring nature.....whenever disbursed incurred or made during the Term including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor otr its agents may in its or their discretion allocate to the Lessor's Financial Year in question as being fair and reasonable in the circumstances*
- (o) the Service Charge : 40% of the Building Service Costs*

### **Second Schedule : The Reserved Parts of the Building**

*ALL THOSE the entrance doors halls passages landings staircases areas and other parts of the Building which are used in common.....the main structural parts of the Building including the roofs gutters rainwater pipes foundations cellars (not comprised in a Flat) floors all walls bounding the individual Flats and all external parts of the Building including external facing joinery and all cisterns tanks sewers drains channels pipes wires cables ducts flues and conduits not used solely for the purpose of one Flat (but not including the glass in the windows of the individual Flats the interior joinery plasterwork tiling and other surfaces of walls the floors down to the upper side of the joists slabs or beams supporting the same and the ceilings up to the underside of the joists slabs or beams to which the same are affixed of the Flats)*

### **Third Schedule : The Premises**

*ALL THAT.....Flat 1.....TOGETHER WITH the doors and windows thereof and the interior faces of the ceilings up to the underside of the joist slabs to which the same are affixed the floors down to the upper side of the joists slabs or beams supporting the same and internal walls which are not main structural walls and which divide the Flat from the adjoining Flat or Shop or the Reserved Part of the Building.....TOGETHER WITH al cisterns tanks drains sewers pipes wires cables ducts conduits and channels used solely for the purposes of the said Flat EXCEPT AND RESERVING from the demises the main structural parts of the Building.....including the roofs foundations and external parts thereof (but not the glass of the windows of the said Flat nor the interior faces of such of the external walls as bound the said Flat).....*

### **Sixth Schedule : Lessee's covenants**

29 The Lessee will pay

- (a) all expenses including solicitors costs and surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under section 196 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 and 147 of that Act.....
- (b) all expenses including solicitors costs and surveyors fees incurred by the Lessor of and incidental to the service of all notices and schedules relating to wants of repair of the Premises.....
- (c) all costs charges and expenses which may be incurred by the Lessor or its managing agents in connection with the recovery of arrears of the rent and the Service Charge

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- (a) to pay.....the Service Charge
- (b) on the 1 April in each year.....and if so required by the Lessor six months thereafter the Lessee will pay to the Lessor [an advance payment on account of the Service Charge]
- (c) the Building Service Costs and the Service Charge [for each year] shall be

*ascertained and certified by a Certificate.....*

- (d) *the Certificate shall contain a summary of the Service Costs incurred by the Lessor during such Lessor's Financial Year together with a summary of the relevant details and figures forming the basis of the Service Charge.....*

***Seventh Schedule : Lessor's covenants***

4 *The Lessor will keep the Reserved Part of the Building.....in a good and tenable state of repair condition and decoration including the renewal and replacement of all worn and damaged parts (and where necessary or desirable may improve or add to the same) and including*

- (a) *the main structure of the Building.....including.....gutters and rainwater pipes*  
(b) *all.....pipes.....used in common*  
(c) *all main doors entrances passageways.....used.....in common*

5 *The Lessor will pay all charges.....for electricity.....payable in respect of the reserved Parts of the Building*

6 *The Lessor will so often as reasonably required decorate the exterior.....of the Building*

***Eighth Schedule : The Lessor's expenses and outgoings and other heads of expenditure in respect of which the Lessee is to pay a proportionate part by way of Service Charge***

1 *All costs expenses and outgoings whatsoever incurred by the Lessor in and about the discharge of the obligations on the part of the Lessor set out specifically in the Seventh Schedule hereto.....*

2 *The cost of periodically inspecting examining maintaining overhauling and where necessary replacing any and every part of the reserved Part of the Building and the Building and the appurtenances thereof referred to in the Seventh Schedule hereto*

3 *The cost of supplying electricity.....for all purposes referred to in the Seventh Schedule hereto*

6 *The fees of the Lessor's Managing Agents for the general management of the Building*

9 *All fees charges expenses and commissions payable to any solicitor accountant surveyor or architect whom the Lessor may from time to time employ in connection with the management and/or maintenance of the Building including the costs of causing to be prepared the Certificate*

**Statutory provisions**

8. Section 20 of the 1985 Act provides as follows :

20 *Limitation of service charges: consultation requirements*

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*

*(a) complied with in relation to the works or agreement, or*

*(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.*

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

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

*(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—*

*(a) if relevant costs incurred under the agreement exceed an appropriate amount, or*

*(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

*(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—*

*(a) an amount prescribed by, or determined in accordance with, the regulations, and*

*(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.*

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

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

9. The material parts of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") are :

*Reg. 2 (1) In these Regulations-*

*"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice*

*Reg. 6*

*For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250*

*Schedule 4 Part 2*

*Para 8*

- (1) The landlord shall give notice in writing of his intention to carry out qualifying works-*
  - (a) to each tenant; and*
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.*
- (2) The notice shall-*
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;*
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;*
  - (c) invite the making, in writing, of observations in relation to the proposed works; and*
  - (d) specify-*
    - (i) the address to which such observations may be sent;*
    - (ii) that they must be delivered within the relevant period;**and*
    - (iii) the date on which the relevant period ends.*

*Para 11*

- (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.*
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.*
- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-*
  - (a) from the person who received the most nominations; or*
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons;*  
*or*
  - (c) in any other case, from any nominated person.*
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-*
  - (a) from at least one person nominated by a tenant; and*
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).*
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-*
  - (a) obtain estimates for the carrying out of the proposed works;*

- (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
  - (c) make all of the estimates available for inspection.
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)-
- (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify-
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.

10. Section 20B of the 1985 Act provides as follows :

*20B Limitation of service charges: time limit on making demands*

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

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

11. Section 21B of the 1985 Act provides as follows

*21B Notice to accompany demands for service charges*

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

*(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament*

12. The material parts of The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (“the 2007 Regulations”) are :

*2. (1) Subject to regulation 4, these Regulations apply where, on or after 1st October 2007, a demand for payment of a service charge is served in relation to a dwelling*

*3. Where these Regulations apply the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain—*

*(a) the title “Service Charges – Summary of tenants’ rights and obligations”; and*

*(b) the following statement —*

*“(1) This summary, which briefly sets out your rights and obligations in relation to variable service charges, must by law accompany a demand for service charges. Unless a summary is sent to you with a demand, you may withhold the service charge. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.*

*(2) Your lease sets out your obligations to pay service charges to your landlord in addition to your rent. Service charges are amounts payable for services, repairs, maintenance, improvements, insurance or the landlord’s costs of management, to the extent that the costs have been reasonably incurred.*

*(3) You have the right to ask a leasehold valuation tribunal to determine whether you are liable to pay service charges for services, repairs, maintenance, improvements, insurance or management. You may make a request before or after you have paid the service charge. If the tribunal determines that the service charge is payable, the tribunal may also determine*

*who should pay the service charge and who it should be paid to;*

*the amount;*

*the date it should be paid by; and*

*how it should be paid.*

*However, you do not have these rights where—*

*a matter has been agreed or admitted by you;*

*a matter has already been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the service charge or costs arose; or*

*a matter has been decided by a court.*

*(4) If your lease allows your landlord to recover costs incurred or that may be incurred in legal proceedings as service charges, you may ask the court or tribunal, before which those proceedings were brought, to rule that your landlord may not do so.*

*(5) Where you seek a determination from a leasehold valuation tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, a hearing fee, unless you qualify for a waiver or reduction. The total fees payable will not exceed £500, but making an application may incur additional costs, such as professional fees, which you may also have to pay.*

*(6) A leasehold valuation tribunal has the power to award costs, not exceeding £500, against a party to any proceedings where—*

*it dismisses a matter because it is frivolous, vexatious or an abuse of process;  
or*

*it considers a party has acted frivolously, vexatiously, abusively, disruptively or unreasonably.*

*The Lands Tribunal has similar powers when hearing an appeal against a decision of a leasehold valuation tribunal.*

*(7) If your landlord—*

*proposes works on a building or any other premises that will cost you or any other tenant more than £250, or*

*proposes to enter into an agreement for works or services which will last for more than 12 months and will cost you or any other tenant more than £100 in any 12 month accounting period,*

*your contribution will be limited to these amounts unless your landlord has properly consulted on the proposed works or agreement or a leasehold valuation tribunal has agreed that consultation is not required.*

*(8) You have the right to apply to a leasehold valuation tribunal to ask it to determine whether your lease should be varied on the grounds that it does not make*

*satisfactory provision in respect of the calculation of a service charge payable under the lease.*

*(9) You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must—*

*cover the last 12 month period used for making up the accounts relating to the service charge ending no later than the date of your request, where the accounts are made up for 12 month periods; or*

*cover the 12 month period ending with the date of your request, where the accounts are not made up for 12 month periods.*

*The summary must be given to you within 1 month of your request or 6 months of the end of the period to which the summary relates whichever is the later.*

*(10) You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.*

*(11) You have the right to ask an accountant or surveyor to carry out an audit of the financial management of the premises containing your dwelling, to establish the obligations of your landlord and the extent to which the service charges you pay are being used efficiently. It will depend on your circumstances whether you can exercise this right alone or only with the support of others living in the premises. You are strongly advised to seek independent advice before exercising this right.*

*(12) Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order. A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.”.*

### **Procedural matters at the hearing on 5 October 2010**

13. The Applicant/Landlord sought to :

- a. include in the service charge items to be considered by the Tribunal the items numbered 2, 3, 4, 5, and 7 at the top of the document at page numbered AB in the Applicant/Landlord’s bundle, which had not been mentioned in the application form, items 1 and 6 being duplications, although item 6 having the wrong figure, of items 1

and 6 at page AA of the Applicant/Landlord's bundle

- b. introduce as evidence a letter not contained in either the Applicant/Landlord's bundle or the Respondent/Leaseholder's bundle

14. In relation to the additional service charge items :

- a. Mr James submitted that they were not before the Tribunal because they had not been referred to in the application form
- b. however, the Tribunal, having considered the matter during a short adjournment, found that :
  - the document at page numbered AB in the Applicant/Landlord's bundle had already been seen by Mr James, because it appeared in his own bundle at page 35
  - Mr James would not be prejudiced by the inclusion of the items in the service charge items to be considered by the Tribunal if he were given adequate time to prepare his response to them
  - there were already too many items before the Tribunal to enable them all to be dealt with during one hearing day, so that an additional hearing day was going to be necessary
  - a convenient day for the Tribunal and both parties for that purpose was 15 November 2010
  - the Tribunal would consider the additional items on that day
  - in the meantime, Mr James was to serve on Mr Napper and the Tribunal a written response to each item by 26 October 2010

15. In relation to the letter :

- a. Mr James, having been given time to consider the matter over the lunch adjournment, said that he had no objection to the admission of the letter in evidence provided that he could contact the author of the letter and submit evidence to the Tribunal of the response from the author of the letter
- b. the Tribunal indicated that further consideration of whether the letter should be admitted in evidence would occur on the additional hearing day on 15 November, and that in the meantime the parties should attempt to agree whether or not the letter should be admitted in evidence to try to avoid further hearing time being taken in submissions in that respect

#### **Procedural matter at the hearing on 15 November 2010**

16. Mr Napper said that he was no longer seeking to submit in evidence the letter which he had referred to at the hearing on 5 October 2010
17. Mr James had, following the directions given at the hearing on 5 October 2010, served written responses to the items on page AB of the Applicant/Landlord's bundle
18. Mr Napper said that he was considering withdrawing that part of his application which related to the service charge for the period April 2007 to March 2008. After a short adjournment to enable Mr Napper to consider the matter further, Mr Napper said that he was proceeding with his

application in relation to the service charges for the years 2007 to 2008, and 2008 to 2009, but withdrawing his application in relation to the service charges for the years 2009 to 2010

### **The substantive issues**

19. In relation to each service charge item before the Tribunal, the parties' respective evidence and submissions in writing and at the hearings before the Tribunal, and the Tribunal's findings and decision in each case, were as follows

#### **Service Charge Year 1 April 2007 to 31 March 2008 (Applicant/Landlord's bundle page AA)**

##### **20. Item 1 - 1 April 2007 Ground rent £100**

21. The Tribunal indicated that the Tribunal did not have jurisdiction to consider a claim for ground rent, and accordingly did not invite the parties to make any submissions in that respect

##### **22. Item 2 – 17 May 2007 LVT fees £150 (service charge proportion @ 40 % - none listed by Applicant/Landlord)**

##### *23. Mr Napper's evidence and submissions*

24. Mr Napper stated that these were the fees paid to the Tribunal for the previous Tribunal proceedings between the parties in 2006 leading to the Tribunal's decision in 2007. He was entitled to include the fees in the service charge under paragraph 29(c) of the sixth schedule to the lease

##### *25. Mr James's evidence and submissions*

26. Mr James stated that paragraph 29(c) of the sixth schedule to the lease entitled the lessor to claim direct from the tenant costs of recovering arrears of rent and service charge. It did not entitle the lessor to include those costs in a service charge

##### *27. The Tribunal's decision*

28. The Tribunal finds that this item relates to the fees paid to the Tribunal on the Applicant/Landlord's previous application for a declaration of payability of service charges under the lease. The expenses which the Applicant/Landlord can include in a service charge are specified in the eighth schedule to the lease. None of the expenses listed in the eighth schedule to the lease includes fees paid to the Tribunal on an application for a declaration of payability of service charges. The Tribunal accepts Mr James's submission that paragraph 29(c) of the sixth schedule to the lease gives the Applicant/Landlord the right to claim direct from the Respondent/Leaseholder costs of recovering arrears of rent and service charge, but that paragraph 29(c) of the sixth schedule to the lease did not entitle the lessor to include those costs in a service charge

29. This item is not payable by the Respondent/Leaseholder by way of service charge

30. The Tribunal accordingly makes no finding on the question whether fees paid to the Tribunal on an application for a declaration of payability of service charges would in any event amount to costs charges or expenses payable by a tenant under paragraph 29(c) of the sixth schedule to the lease

31. Item 3 – 31 May 2007 Professional fees £150 (service charge proportion @ 40 % - £172.48)

32. *Mr Napper's evidence and submissions*

33. Mr Napper stated that this item was the account from Farrell & Company (Respondent/Leaseholder's bundle page 50) for :

taking further instructions,	
preparing further details, and	
obtaining planning and listed building consent	£200.00
local authority planning fee	£135.00
plan printing costs	£32.00
total	£367.00
VAT @ 17.5%	£64.22
Total	£431.22

34. Mr Napper said that he was entitled to include the fees in the service charge under paragraph 9 of the eighth schedule to the lease, in that the fees related to the general scheme of maintenance of the Building. He had originally applied for planning permission to change the roof and the downwater pipes. However, the listed building officer had advised keeping the current roof material, so the planning application had changed to simply the downpipes. There was also an application to reinstate the chimney, which had been removed, and to replace the dormer windows which had also been removed. The £431.22 just related to one downpipe which was draining into a soakaway and the application was to re-route the water via guttering discharging into the main drain

35. *Mr James's evidence and submissions*

36. Mr James stated that the work originally covered by the planning application was as set out in the letter from Farrell & Company dated 6 March 2006 (Respondent/Leaseholder's bundle page 57), namely downpipe alterations, new sliding sash window to first floor kitchen in east elevation, new dormer window in east facing slope in rear range roof, and new slate covering to rear range roof. The justification for the works was stated in the letter to be reinstating the roof covering with a more appropriate material, reinstating a dormer window which reportedly previously existed, providing natural daylight and ventilation to existing kitchen, and improving the practicality of rainwater disposal. It was clear from those descriptions that the proposed work was an improvement in each case, not "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease. There was no evidence that the downpipe needed repair, and indeed the proposed work had not been done, and the planning consent had now lapsed

37. In answer to questions from the Tribunal Mr Napper said that the pipe had indeed needed repair, in that a joint half way down was leaking. However, he had temporarily repaired the leak. The proposed work was indeed maintenance because the Building was a listed building and the current location of the pipe was adversely affecting the condition of the building as a whole. He had replaced one downpipe on the north-west side of the Building. The downpipe referred to in the Farrell & Company bill for £431.22 was on the east side of the Building, and the work had not been done

38. In answer to questions from Mr James, Mr Napper said that the pipe was made of plastic.

39. *The Tribunal's decision*

40. The Tribunal finds that :

- a. the only evidence of the pipe in question needing maintenance is Mr Napper's evidence that it had been leaking
- b. Mr Napper's evidence is that he has cured the leak with a temporary repair
- c. there is no evidence to support Mr Napper's assertion that the re-routing of the pipe would amount to "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease
- d. on the contrary, the letter from Farrell & Company dated 6 March 2006 indicates that the downpipe alterations would "improve the practicality of rainwater disposal", which the Tribunal finds to be an indication that the work would be a perceived improvement, rather than "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease
- e. paragraph 9 of the eighth schedule to the lease accordingly would not have entitled the Applicant/Landlord to include in the service charge the cost of the proposed work to the downpipe
- f. the fees for applying for planning permission for the work therefore cannot be included in the service charge either

41. This item is not payable by the Respondent/Leaseholder by way of service charge

42. **Item 4 – 7 June 2007 Professional fees and listed building consent £724.97 (service charge proportion @ 40 % - 289.98)**

43. *Mr Napper's evidence and submissions*

44. Mr Napper stated that this item was the account from Farrell & Company (Respondent/Leaseholder's bundle page 51) for :

taking further instructions,	
preparing further details, and	
obtaining planning and listed building consent	
for dormer window	£450.00

local authority planning fee	£135.00
plan printing costs	<u>£32.00</u>
total	£617.00
VAT @ 17.5%	<u>£107.97</u>
Total	£724.97

45. He was entitled to include the fees in the service charge under paragraph 9 of the eighth schedule to the lease. Past photographs of the Building showed that there had previously been dormer windows in the roof. The proposed work was therefore part of ongoing maintenance to bring the Building back to its original condition when first listed
46. In answer to questions from Mr James, Mr Napper said that he had wanted to replace the roof because he had been advised that the weight of the concrete tiles was having an adverse effect on the roof timbers. The Building had been listed in 1978. The concrete roof and velux windows were relatively recent
47. In answer to questions from the Tribunal Mr Napper said that the roof was not in disrepair as such, and would last a few more years, but was coming to the end of its life. The listed buildings officer had advised against replacing the roof at this stage, although she had been keen on dormer windows being installed. The work had not been carried out because Mr Napper had been unable to obtain an advance payment from Mr James. Although the Respondent/Leaseholder's service charge contribution to this item exceeded £250, the consultation requirements under section 20 of the 1985 Act did not apply to it because those requirements related to the cost of works, not fees
48. *Mr James's evidence and submissions*
49. Mr James stated that the proposed works would have been an improvement, not "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease, and the fees were not payable by way of service charge. The works referred to in section 20 of the 1985 Act included fees for those works, and the consultation requirements applied. There had been no consultation in this respect
50. *The Tribunal's decision*
51. The Tribunal finds that :
- there is no evidence before the Tribunal to support Mr Napper's assertion that the roof is in need of maintenance
  - indeed, Mr Napper's evidence is that it would last a few more years, although coming to the end of its life, and that the listed buildings officer advised its retention
  - there is no evidence before the Tribunal to support Mr Napper's assertion that the Building previously had dormer windows
  - in any event, there is no evidence to support Mr Napper's assertion that the installation of dormer windows would amount to "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease
  - on the contrary, the letter from Farrell & Company dated 6 March 2006

(Respondent/Leaseholder's bundle page 57) indicates that the installation would "reinststate a dormer window that is reported to have previously existed", which the Tribunal finds to be an indication that the work would be cosmetic, and a perceived improvement, rather than "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease

- f. paragraph 9 of the eighth schedule to the lease accordingly would not have entitled the Applicant/Landlord to include in the service charge the cost of the proposed installation of dormer windows
- g. the fees for applying for planning permission for the work therefore cannot be included in the service charge either

52. This item is not payable by the Respondent/Leaseholder by way of service charge

53. Item 5 – 30 June 2007 Listed buildings permission £293.75 (service charge proportion @ 40 % - 117.50)

54. *Mr Napper's evidence and submissions*

55. Mr Napper stated that this item was the account from Farrell & Company (Respondent/Leaseholder's bundle page 52) for :

Balance of fees for listed building permission	£250.00
VAT @ 17.5%	<u>£43.75</u>
Total	£293.75

56. Farrell & Company had had to meet the listed buildings officer

57. In answer to questions from Mr James, Mr Napper said that although this invoice was part of the same series as the previous invoices, and indeed bore the same invoice number prefix, the scheme had grown beyond that which had originally been contemplated. Although the letter from Farrell & Company dated 6 March 2006 (Respondent/Leaseholder's bundle page 57) had referred to 4 items of works, further meetings had resulted in further drawings and further advice, and therefore to further bills. Initially it had not been expected that the works would involve so much consultation. The fees had then escalated

58. In answer to questions from the Tribunal Mr Napper said that this fee related to the proposed roof works, not to the proposed dormer window works

59. *Mr James's evidence and submissions*

60. Mr James stated that the proposed works were improvements, not maintenance

61. *The Tribunal's decision*

62. The Tribunal finds that :

- a. there is no evidence that the roof needed maintenance, for reasons already given

- b. there is no evidence to support Mr Napper's assertion that the proposed works to the roof would amount to "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease
- c. on the contrary, the letter from Farrell & Company dated 6 March 2006 indicates that the proposed works to the roof would "reinstate the roof covering with a more appropriate material", which the Tribunal finds to be an indication that the work would be a perceived improvement, rather than "management and/or maintenance of the Building" for the purposes of paragraph 9 of the eighth schedule to the lease
- d. paragraph 9 of the eighth schedule to the lease accordingly would not have entitled the Applicant/Landlord to include in the service charge the cost of the proposed work to the roof
- e. the fees for applying for planning permission for the work therefore cannot be included in the service charge either

63. This item is not payable by the Respondent/Leaseholder by way of service charge

64. Item 6 – 9 July 2007 Buildings insurance £561.59 (service charge proportion @ 40 % - 224.63)

65. Mr James stated that he conceded that this item was payable in principle, but that he was entitled to withhold payment because Mr Napper had failed to comply with section 21B of the 1985 Act and the 2007 regulations

66. **Section 21B of the 1985 Act and the 2007 Regulations – summary of rights and obligations**

67. *Mr Napper's evidence and submissions*

68. Mr Napper stated that he had sent the document at page AE of the Applicant/Landlord's bundle to Mr James on about 1 April 2008, although he could not be certain of the exact date. He had sent it as part of a pack of documents comprising pages AA to AH of the Applicant/Landlord's bundle. The document at Page AE satisfied the requirements of the 2007 Regulations

69. A copy of the document at page AE is attached to these reasons as an appendix

70. *Mr James's evidence and submissions*

71. Mr James stated that he had not received the document at page AE of the Applicant/Landlord's bundle at the same time as the service charge account at page AA. Indeed, he had not received it until he had received the Applicant/Landlord's bundle. For it to be valid it had to be served with the service charge demand to which it related. It could not be served retrospectively. He had written to Mr Napper on 12 August 2008 (Respondent/Leaseholder's bundle page 40) saying that the statutory requirements had not been complied with, and although Mr Napper had replied on 16 August 2008 (Respondent/Leaseholder's bundle page 38) he had not alleged that he had complied. Also in that letter Mr Napper had referred to informing Mr James "on the 1<sup>st</sup> April or thereabouts" of Mr Napper's intention to commence major works, which showed that Mr Napper did not know what date the documents had been sent

72. At the hearing on 15 November 2010 Mr James also submitted that the fact that one of the documents allegedly sent as a pack of documents comprising pages AA to AH of the Applicant/Landlord's bundle was dated after 1 April 2008, namely the Stewart Building Services quotation dated 5 July 2008, showed that those documents were not in fact sent on 1 April 2008
73. Mr Napper responded that the version of the Stewart Building Services quotation included in the Applicant/Landlord's bundle at AF was an updated version of the version sent with the pack of documents sent on 1 April 2008
74. In answer to questions from the Tribunal at the hearing on 15 November 2010 Mr Napper said that he accepted that :
- a. the preamble to paragraph 3 of the 2007 Regulations used the word "must" in relation to the prescribed contents of the summary of rights and obligations which had to accompany a demand for the payment of a service charge
  - b. the fact that the title specified in paragraph 3(a) of the 2007 Regulations was in inverted commas implied that that exact wording had to be used in the title of the summary; however, Mr Napper submitted that the title of the document at page AE was to all intents and purposes the same as that specified
  - c. the fact that the contents of the summary specified in paragraph 3(b) of the 2007 Regulations was in inverted commas implied that that exact wording had to be used in the summary; however, Mr Napper submitted that the contents of the document at page AE was to all intents and purposes to the same effect as that specified, and he had believed that he had complied
  - d. section 21B of the 1985 Act contained a provision that a tenant could withhold payments; however, Mr Napper submitted that the 2007 Regulations did not themselves provide a sanction for failing to comply, and that the statute was ambiguous

*75. The Tribunal's decision*

76. The Tribunal finds that :
- a. it is for the Applicant/Landlord to satisfy the Tribunal, on a balance of probabilities, that the service charge demand at page AA of the Applicant/Landlord's bundle was accompanied by a summary of rights and obligations complying with the 2007 Regulations, failing which the Respondent/Leaseholder is entitled to withhold payment of that service charge under section 21B of the 1985 Act
  - b. the Tribunal has taken account of Mr Napper's evidence that he did send the document at page AE of the Applicant/Landlord's bundle with the service charge demand and other documents at pages AA to AH on 1 April 2008 or thereabouts, of the fact that the document at page AE is dated 1 April 2008, and of Mr Napper's explanation about the reason for the fact that the document at page AF, namely the Stewart Building Services quotation, is dated 5 July 2008
  - c. however, the Tribunal has also taken account of Mr James's evidence that he did not receive the document at page AE until he received the Applicant/Landlord's bundle, and of the fact that Mr Napper has been unable to refer to any document in the bundles

before the Tribunal containing a list of the documents sent to Mr James on about 1 April 2008

- d. having considered all the evidence before the Tribunal, the Tribunal is not satisfied that the Applicant/Landlord has, on a balance of probabilities, discharged his burden of proving that the document at page AE accompanied the service charge demand at page AA
- e. in any event, the Tribunal finds that the summary of rights and regulations which should have accompanied the service charge at page AA had to comply with the requirements of form and content set out in paragraph 3 of the 2007 Regulations, but that the document at page AE did not do so, in that the heading set out in paragraph 3(a) and the statement set out in paragraph 3(b) of the 2007 Regulations are each in inverted commas, and accordingly must be included verbatim in any summary of rights and obligations, whereas, contrary to Mr Napper's submission in that respect, the document at page AE does not even come close to doing so
- f. the service charge demand at page AA of the Applicant/Landlord's bundle was therefore not accompanied by a summary of rights and obligations complying with the 2007 Regulations and section 21B of the 1985 Act
- g. the Respondent/Leaseholder was therefore entitled to withhold payment of the service charge demand at page AA of the Applicant/Landlord's bundle

77. The Respondent/Leaseholder's proportion of the buildings insurance premium of £561.59 would have been payable by way of service charge, but the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations

78. **Items 7 to 10 Additional costs associated with recovery of service charge arrears**

79. *Mr Napper's evidence and submissions*

80. Mr Napper stated that these items were :

small claims court fee	£120.00
attendance in court	£150.00
travel costs to court	£40.00
stationery, postage etc	£20.00

81. However, at the hearing Mr Napper very fairly and properly withdrew these items from the service charge

82. *The Tribunal's decision*

83. The Tribunal finds that these items are not payable by the Respondent/Leaseholder by way of service charge

84. **Items 11 to 15 Additional costs associated with LVT hearing**

85. *Mr Napper's evidence and submissions*

86. Mr Napper stated that that these items were :

attendance for LVT hearing	£150.00
travel costs to LVT	£40.00
stationery, postage etc	£30.00
photographs	£10.00
preparing for LVT hearing	£300.00

87. They were for his time and expenses in dealing with the previous LVT proceedings. He had spent 2 full days preparing for the hearing. The figures claimed were to compensate him for loss of earnings. He was entitled to include the fees in the service charge under :

- a. paragraphs 29(a), (b), and (c) of the sixth schedule to the lease, in that if he had instructed managing agents to deal with the LVT proceedings for him he would have been able to include their fees for so doing in the service charge, and so he should be similarly entitled to charge for his own time in managing the Building by doing so
- b. paragraph 34(d) of the Sixth Schedule, in that he had incurred expense in taking time off work to deal with the LVT proceedings

88. *Mr James's evidence and submissions*

89. Mr James stated that the costs charged were excessive. All the information necessary for the LVT proceedings should already have been readily to hand. The time spent was just part of being a landlord

90. *The Tribunal's decision*

91. The Tribunal finds that :

- a. these items relate to a claim for compensation for time spent, and expenses incurred, on the Applicant/Landlord's previous application for a declaration of payability of service charges under the lease
- b. the costs and expenses which the Applicant/Landlord can include in a service charge are specified in the eighth schedule to the lease
- c. none of the costs and expenses listed in the eighth schedule to the lease includes compensation for time spent by the lessor personally, or expenses incurred by the lessor personally, on an application to a Tribunal for a declaration of payability of service charges
- d. paragraph 6 of the eighth schedule to the lease entitles the lessor to include in a service charge the fees of the lessor's managing agents for the general management of the Building, but :
  - the evidence from Mr Napper is that he has not instructed managing agents
  - there is no provision in the eighth schedule to the lease for the lessor to be able to include in a service charge a charge for the lessor's own time in personally managing the Building, in substitution for instructing managing agents

- in any event the words “general management of the Building”, by their usual and natural meaning, refer to management of the Building, and not management of an individual tenant, and are accordingly not wide enough to include costs in connection with an application to a Tribunal for a declaration of payability by an individual tenant of service charges under the lease
- e. paragraph 29(c) of the sixth schedule to the lease gives the Applicant/Landlord the right to claim direct from the Respondent/Leaseholder costs of recovering arrears of rent and service charge, but that paragraph 29(c) of the sixth schedule to the lease does not entitle the Applicant/Landlord to include those costs in a service charge
- f. paragraph 34(d) of the sixth schedule to the lease requires the service charge demand to contain a summary of the service costs incurred by the lessor, but does not itself add to the provisions in the eighth schedule to the lease in specifying those costs and expenses which can be included in a service charge

92. These items are not payable by the Respondent/Leaseholder by way of service charge

93. The Tribunal accordingly makes no finding on the questions :

- a. whether time spent, and expenses incurred, on the Applicant/Landlord’s previous application for a declaration of payability of service charges under the lease would in any event amount to costs charges or expenses payable by a tenant under paragraph 29(c) of the sixth schedule to the lease
- b. whether the amount of time claimed to have been spent, and the expenses said to have been incurred, were reasonable
- c. whether the amounts claimed in each case were reasonable

**Service Charge Year 1 April 2007 to 31 March 2008 (Applicant/Landlord’s bundle page AB)**

94. **Item 1 - 1 April 2007 Ground rent £100**

95. Mr Napper conceded that this item was a duplication of item 1 in the service charge demand at page AA of the Applicant/Landlord’s bundle

96. In any event, the Tribunal indicated that the Tribunal did not have jurisdiction to consider a claim for ground rent, and accordingly did not invite the parties to make any submissions in that respect

97. **Item 2 – 15 February 2008 Structural survey £470 (service charge proportion @ 40 % - £188) (Applicant/Landlord’s bundle page AB item 2)**

98. *Mr Napper’s evidence and submissions*

99. Mr Napper stated that this was an invoice from David Edwards & Associates LLP for “site visit and report” and, although it was headed “Flat 2 – 62 St Mary’s Street” it did in fact relate to the roof of the Building. He had not brought with him to the hearing a copy of the “report” referred to, but he had brought a drawing, which he wished to produce in evidence. He had also brought other documents as additional evidence in relation to matters about which evidence had been

given at the hearing on 5 October 2010

100. Mr James objected to the admission of the documents in evidence. It was unfair to him to have new evidence taking him by surprise at the hearing

101. After a short adjournment the Tribunal indicated that :

- a. the drawing would be admitted in evidence, as there was no reason to think that Mr James would be disadvantaged by its being produced at the hearing
- b. the other documents would not be admitted in evidence; the Tribunal would not be hearing further evidence, or considering further documents, about matters already dealt with at the hearing on 5 October 2010

102. Mr Napper said that the drawing was entitled “main roof– re-roofing proposals” and bore the job number 08023, which was the same job number as the invoice from David Edwards & Associates LLP. This showed that the invoice from David Edwards & Associates LLP was not in fact about Flat 2, but was about the Building as a whole. The work done by David Edwards & Associates LLP during the site visit and in the report referred to was part of the work leading to the preparation of the schedule of work at page AG of the Applicant/Landlord’s bundle. That work was repairs and maintenance, and this invoice was according chargeable to Mr Napper under the eighth schedule of the lease, paragraph 2 and paragraph 9. Although David Edwards & Associates LLP were structural engineers, rather than “surveyors”, the wording of the eighth schedule of the lease, paragraph 9, was wide enough to include this invoice

103. The Tribunal indicated at the hearing that the Tribunal had noted that the drawing contained many notes, including the following :

- a. “Condition of extg truss to be thoroughly checked on site for worm and rot. The connections are also to be checked and repaired as required. The geometry and support for the truss is to be checked and inspected within the wall structure to ensure that the historic structure is suitable to support the proposed new roof loads. Allow for extensive repair to this structure”
- b. “Assumed truss profile to be confirmed on site”

104. *Mr James’s evidence and submissions*

105. Mr James stated that there was nothing to link the drawing with this invoice, apart from the job number. There was no reference to the drawing in the invoice. There was nothing to show that the site visit and report were for maintenance or that the invoice fell within any of the categories of costs which could be included in the service charge

106. *The Tribunal’s decision*

107. The Tribunal finds that :

- a. this item is expressed to be for a site visit and report, but no copy of any report, as such, has been produced
- b. the drawing produced by Mr Napper does not of itself support Mr Napper’s assertion that the roof is in need of maintenance, in that, although the notes include the words

“allow for extensive repair to this structure”, those words are in the context of the drawing being part of re-roofing proposals, apparently involving a new roof being placed on top of the existing roof, and the wording on the drawing does not make clear whether the “extensive repair to this structure” for which an allowance was advised, was because of an existing lack of repair or because the proposed re-roofing works would themselves result in repairs to the existing structure becoming necessary

- c. there is no other evidence before the Tribunal to support Mr Napper’s assertion that the roof is in need of maintenance, for reasons already given in relation to the previous year’s service charges
  - d. on the contrary, the letter from Farrell & Company dated 6 March 2006 indicates that the proposed works to the roof would “reinstate the roof covering with a more appropriate material”, which the Tribunal finds to be an indication that the work would be a perceived improvement, rather than “management and/or maintenance of the Building” for the purposes of paragraph 9 of the eighth schedule to the lease
  - e. paragraph 9 of the eighth schedule to the lease accordingly would not have entitled the Applicant/Landlord to include in the service charge the cost of the proposed work to the roof
  - f. the fees for carrying out a structural survey therefore cannot be included in the service charge either
108. This item is not payable by way of service charge
109. **Item 3 – 18 February 2008 Gutter cleaning £60 (service charge proportion @ 40 % - £24) (Applicant/Landlord’s bundle page AB item 3)**
110. *Mr Napper’s evidence and submissions*
111. Mr Napper stated that weeds had been growing in the front guttering. A local window cleaner had unblocked the gutter, and Mr Napper had paid him £60. The window cleaner had not had his receipt book with him, but put through Mr Napper’s door the handwritten receipt at page AB item 3 of the Applicant/Landlord’s bundle. It was payable by way of service charge under the eighth schedule of the lease, paragraph 1, and under the seventh schedule of the lease, paragraph 4(a)
112. *Mr James’s evidence and submissions*
113. Mr James stated that the invoice produced was not valid, as it had no business name, address of invoice number
114. *The Tribunal’s decision*
115. The Tribunal finds that :
- a. the Tribunal accepts Mr Napper’s evidence that the work was carried out, that it amounted to maintenance for the purposes of the service charge provisions in the lease, and that he paid the sum referred to, in respect of which the Tribunal finds that the

receipt produced is evidence of the payment, even though not as impressive evidence as if it had been on business notepaper

- b. the Respondent/Leaseholder's proportion of £24.00 would have been payable by way of service charge, but the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations

116. **Item 4 – 5 March 2008 Re-route communal lighting £405.68 (service charge proportion @ 40 % - £162.27) (Applicant/Landlord's bundle page AB item 4)**

117. *Mr Napper's evidence and submissions*

118. Mr Napper stated that this was an invoice from an electrician for emergency repairs. Two light switches had been broken in the communal hallway. For some reason the supply was metered through the shop. In order to mend the switches and re-route the supply to Mr Napper's basement Flat, the electrician and an assistant had had to carry out all the work on a Sunday, because the electricity to the shop had to be disconnected while the work was being done, and the shop was open Monday to Saturday. The work also included repositioning the light switch outside Flat 2, which served the rear passageway, to avoid the switch being hit by the rear hall door. The invoice was payable by way of service charge under the seventh schedule of the lease, paragraph 4(a)

119. *Mr James's evidence and submissions*

120. Mr James stated that re-routing cables was not maintenance and was not payable by way of service charge. In any event, the so-called invoice was in fact an estimate, as was clear from the words "remove old fittings and wiring *if possible*", and the fact that the work was also included in the schedule of *proposed* work at page AG of the Applicant/Landlord's bundle and, according to Mr Napper, sent to Mr James on 1 April 2008

121. Mr Napper said that the price quoted by Patton in the schedule of works had been £750, that the schedule of works had been produced before Mr Napper had sent it to Mr James, and that because it was an emergency, Mr Napper had arranged for the work to be done separately by the electrician, at a cheaper price, instead of leaving it to be done when the rest of the works were carried out

122. In answer to questions from the Tribunal, Mr James conceded that the work had in fact been carried out, and Mr Napper said that he had paid the invoice

123. The Tribunal indicated, for the purposes of giving the parties' the opportunity to respond, that, the Tribunal's preliminary view, having had the opportunity of considering the matter briefly over the lunch adjournment, that :

- a. the re-routing of the cabling and the repositioning of the exterior light switch by Flat 2, did not constitute "maintenance" for the purposes of the service charge provisions in the lease
- b. the replacement and reconnection of the two broken light switches, on the other hand,

*did* constitute “maintenance”

- c. a reasonable price for the parts and labour would be about £100 plus VAT
124. Mr Napper said that there would be very little difference from the figure actually charged, and that £100 was too low. The light switches were “time-delay” switches and were at least £40 on their own. The outside light had to be re-positioned to avoid its continuing to be vulnerable
125. Mr James accepted that £100 was a reasonable figure
126. *The Tribunal’s decision*
127. The Tribunal finds that :
- a. the re-routing of the cabling and the repositioning of the exterior light switch by Flat 2, did not constitute “maintenance” for the purposes of the service charge provisions in the lease, but the replacement and reconnection of the two broken light switches, on the other hand, *did* constitute “maintenance”
  - b. having considered the submissions of the parties following the Tribunal’s indication of its preliminary view, and drawing upon the Tribunal’s collective knowledge and experience in these matters, the Tribunal considers that a reasonable price for the parts and labour would be £150 plus VAT
  - c. the Respondent/Leaseholder’s proportion of that figure would have been payable by way of service charge, but the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations
128. **Item 5 – 5 March 2008 Professional fees £311.38 (service charge proportion @ 40 % - £124.55) (Applicant/Landlord’s bundle page AB item 5)**
129. *Mr Napper’s evidence and submissions*
130. Mr Napper stated that this was an invoice from David Edwards & Associates LLP for production of the drawing which Mr Napper had produced in evidence. Again, although the invoice was entitled “Flat2 – 62 St Marys [sic] Street” and referred to “drawings” as being “in respect of above flat” it did in fact relate to the roof of the Building. Mr Napper accepted that the invoice was linked to the previous David Edwards & Associates LLP invoice for £470 at page AB item 2 of the Applicant/Landlord’s bundle. However, Mr Napper had been unaware at the outset that the fees were going to escalate, and by then it was too late to consult. In any event, when Mr Napper had invited Mr James to discuss previous works Mr James had declined to do so
131. In answer to questions from the Tribunal Mr Napper said that the drawing was to enable structural repairs to be carried to the roof
132. *Mr James’s evidence and submissions*
133. Mr James stated that there was no evidence that the proposed work was for maintenance or repair, rather than improvement

134. *The Tribunal's decision*

135. The Tribunal makes the same findings in relation to this item as in relation to the invoice from David Edwards & Associates LLP at item 2

136. This item is not payable by way of service charge

137. **Item 6 – 18 March 2008 Buildings insurance £699.94 (service charge proportion @ 40 % - £279.97)**

138. *Mr Napper's evidence and submissions*

139. Mr Napper conceded that this was a duplication of item 6 in the service charge demand at page AA of the Applicant/Landlord's bundle, and was, in any event, the wrong figure

140. *The Tribunal's decision*

141. The Tribunal finds that this item is not payable by the Respondent/Leaseholder by way of service charge

142. **Item 7 – 25 March 2008 Electric – communal hall £56.62 (service charge proportion @ 40 % - £10) (Applicant/Landlord's bundle page AB item 7 pages 1 to 3)**

143. *Mr Napper's evidence and submissions*

144. Mr Napper stated that this was for the cost of electricity in the communal hallway while it was still metered through the shop. Mr Napper had accordingly reduced the service charge payable by the shop tenant by £50, being an appropriate proportion of the electricity bill, and was now seeking 40% of that £50 from Mr James by way of service charge under the eighth schedule of the lease, paragraph 3

145. *Mr James's evidence and submissions*

146. Mr James stated that, having heard Mr Napper's evidence and explanation, he conceded the figure of £10

147. *The Tribunal's decision*

148. The Tribunal finds, in accordance with Mr James's concession, that the sum of £10 would have been payable by way of service charge, but that the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations

**Service Charge Year 1 April 2008 to 31 March 2009 (Respondent/Leaseholder's bundle page 59)**

149. **Interest charges and allocation questionnaire**

150. *Mr Napper's evidence and submissions*

151. Mr Napper very fairly and properly conceded that these items were not payable by way of service charges under the lease

152. *The Tribunal's decision*

153. The Tribunal finds that these items are not payable by the Respondent/Leaseholder by way of service charge

154. **Item B - 25 February 2008 Buildings insurance £709.90 (service charge proportion @ 40 % - £283.96) (Applicant/Landlord's bundle page B page 1)**

155. Mr James stated that he conceded that this item was payable in principle, but that, as with the insurance premium for the previous year, he was entitled to withhold payment because Mr Napper had failed to comply with section 21B of the 1985 Act and the 2007 regulations

156. **Section 21B of the 1985 Act and the 2007 Regulations – summary of rights and obligations**

157. *Mr Napper's evidence and submissions*

158. Mr Napper stated that on 27 March 2009 he had sent to Mr James the letter copied at page 58 of the Respondent/Leaseholder's bundle, and that with that letter he had sent the service charge demand for the year 2008 to 2009 with a further copy of the summary of tenant's rights and obligations at page AE of the Applicant/Landlord's bundle, but with the date in the heading tippexed out, without substituting another date. Although the letter dated 27 March 2009 did not specifically refer to the summary, it was part of the pack sent with the letter

159. *Mr James's evidence and submissions*

160. Mr James stated that he had not received the document at page AE of the Applicant/Landlord's bundle, or any version of it with the date tippexed out, with the letter dated 27 March 2009. Indeed, as already stated, he did not receive it until the Applicant/Landlord's bundle arrived. In any event, the document at page AE did not comply with the 2007 Regulations

161. *The Tribunal's decision*

162. The Tribunal finds that :

- a. it is for the Applicant/Landlord to satisfy the Tribunal, on a balance of probabilities, that the service charge demand at page 59 of the Respondent/Leaseholder's bundle was accompanied by a summary of rights and obligations complying with the 2007 Regulations, failing which the Respondent/Leaseholder is entitled to withhold payment

- of that service charge under section 21B of the 1985 Act
- b. the Tribunal has taken account of Mr Napper's evidence that he did send an amended version of the document at page AE of the Applicant/Landlord's bundle with the service charge demand and other documents referred to in the letter dated 27 March 2009
  - c. however, the Tribunal has also taken account of Mr James's evidence that he did not receive the document at page AE until he received the Applicant/Landlord's bundle, of the fact that the letter dated 27 March 2009 does not refer specifically to a summary of rights and obligations, and of the fact Mr Napper has been unable to refer to any other contemporaneous document in the bundles before the Tribunal referring to the sending of such a summary
  - d. having considered all the evidence before the Tribunal, the Tribunal is not satisfied that the Applicant/Landlord has, on a balance of probabilities, discharged his burden of proving that the document at page AE, or an amended version of it, accompanied the service charge demand at page 59 of the Respondent/Leaseholder's bundle
  - e. in any event, the Tribunal finds, for reasons already given in relation to the previous service charge year, that the document at page AE, whether with the date tippexed out or not, does not comply with the 2007 Regulations
  - f. the service charge demand at page 59 of the Respondent/Leaseholder's bundle was therefore not accompanied by a summary of rights and obligations complying with the 2007 Regulations and section 21B of the 1985 Act
  - g. the Respondent/Leaseholder was therefore entitled to withhold payment of the service charge demand at page 59 of the Respondent/Leaseholder's bundle
163. The Respondent/Leaseholder's proportion of the buildings insurance premium of £283.96 would have been payable by way of service charge, but the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations
164. **Items A and C to H**
165. *Mr Napper's evidence and submissions*
166. Mr Napper stated that these items were as follows :
- a. **Item A**  
20 February 2008  
Peter Crighton and Associates (Respondent/Leaseholder's bundle page 60)  
Pre contract advice £499.38 (service charge proportion @ 40 % - £199.75)
  - b. **Item C**  
30 February 2008  
Peter Crighton and Associates (Respondent/Leaseholder's bundle page 62)  
Initial survey £616.88 (service charge proportion @ 40 % - £246.75)
  - c. **Item D**  
5 March 2008  
David Edwards and Associates (Respondent/Leaseholder's bundle page 63)  
Production of drawings in respect of Flat 2 £311.38 (service charge proportion @ 40 % -

£124.55) : Mr Napper conceded that this had already been included in the previous year's service charge, and should be deleted from the service charge for the year 2008 to 2009

**d. Item E**

10 March 2008

Peter Crichton and Associates (Respondent/Leaseholder's bundle page 64)

Preparation of schedules £587.50 (service charge proportion @ 40 % - £235.00)

**e. Item F**

21 March 2008

Peter Crichton and Associates (Respondent/Leaseholder's bundle page 65)

Tender process and report £575.75 (service charge proportion @ 40 % - £230.30)

**f. Item G**

30 March 2008

Peter Crichton and Associates (Respondent/Leaseholder's bundle page 66)

Discussions with structural engineer, further negotiations with builders, investigation of specialist works for roofing £628.63 (service charge proportion @ 40 % - £251.45)

**g. Item H**

31 March 2008

David Edwards and Associates (Respondent/Leaseholder's bundle page 67)

Report revisions and preparation of new roof details £452.38 (service charge proportion @ 40 % - £180.95)

167. Following questions from Mr James and the Tribunal, Mr Napper said that the level of proposed works had increased considerably compared with his original ideas, and that the professional fees had escalated accordingly. The items were all for repairs and maintenance of the Building, payable by way of service charge under the eighth schedule of the lease, paragraph 2 and paragraph 9, including most of the work listed in the schedule of works at page AG of the Applicant/Landlord's bundle, including problems with the roof timbers, cracks in the rendering, window frames in poor condition, damp caused by the removal of chimney stacks and the closure of fire places, and leaking downpipe at rear. Peter Crichton and Associates, whom Mr Napper had chosen as project managers, had consulted David Edwards & Associates LLP, and there had been meetings with builders and with the listed building inspector. Peter Crichton and Associates did not produce a report, as such. The schedule of works at page AG of the Applicant/Landlord's bundle was effectively their report, in that it summarised the works which they advised should be carried out. Mr Napper had not agreed a budget with Peter Crichton and Associates for their fees. They had merely told him that their fees would be £40 an hour. All the fees related to prospective repairs and maintenance, not improvements

168. In relation to the consultation requirements under section 20 of the 1985 Act, following questions from Mr James and the Tribunal, Mr Napper :

- a. conceded that Items A and C to H all related to one scheme of works for the Building
- b. conceded that the total amount claimed from Mr James by way of service charge in relation those items exceeded the limit of £250 referred to in the 2003 Regulations
- c. conceded that he had not followed the consultation procedure required by section 20 of the 1985 Act

d. stated, however, that :

- he had not realised at the outset that the bills would be so high
- the bills escalated as more investigations were carried out and more prospective works became necessary
- it was necessary to have the schedule of works prepared in time to have the prospective work, and particularly the lime rendering, carried out while the weather was appropriate
- if Mr Napper had stopped the process to carry out consultation he would have lost the chance to carry out the work that year
- in any event, Mr Napper had written to Mr James to keep him informed, and Mr James had given the surveyors and builders access for their inspections, so he could hardly have been taken by surprise by the fees or by Mr Napper's intention to carry out the works
- Mr James had not joined in the consultation process when invited to do so in relation to previous works

169. *Mr James's evidence and submissions*

170. Mr James stated that items A and C to H were effectively all one item, despite being billed separately. The consultation requirements under section 20 applied to them as his proportion exceeded £250. The consultation procedure had not been complied with

171. *The Tribunal's decision*

172. The Tribunal finds that :

- a. items A and C to H were all part of one scheme of works, as shown in the schedule or works at page AG of the Applicant/Landlord's bundle, and, despite being billed separately, and despite comprising bills from both Peter Crichton and Associates and David Edwards & Associates LLP, should be regarded for the purposes of the consultation requirements under section 20 of the 1985 Act as if they were one item of qualifying works
- b. apart from the question of whether the consultation requirements under section 20 of the 1985 Act have been complied with, the Tribunal would have found that :
  - the schedule of works at page AG of the Applicant/Landlord's bundle comprises some items of work which would have constituted "maintenance" for the purposes of the service charge provisions in the lease, and some items of work, such as the proposed re-roofing works, which would not
  - the work carried out by Peter Crichton and Associates and David Edwards and Associates and referred to in items A and C to H comprised :
    - some work which related to items of maintenance in the schedule or works at page AG of the Applicant/Landlord's bundle
    - some work which did not
    - some work, for example the cost of time incurred in visiting the Building, which would have been incurred whether the work related to items of maintenance or not

- drawing upon the Tribunal’s collective knowledge and experience in these matters, the proportion of work carried out by Peter Crighton and Associates and David Edwards and Associates and referred to in items A and C to H which could reasonably have been included in the service charge would have been 70% of the total, of which Mr James’s service charge proportion would have been 40%
- c. however, Mr James’s proportion would have exceeded the amount of £250 referred to in section 20 of the 1985 Act and the 2003 Regulations
  - d. the consultation requirements under section 20 therefore applied to items A and B to H
  - e. the consultation requirements have not been complied with in relation to these items
  - f. the reasons given by Mr Napper for not doing so do not relieve him from the consequences of not doing so
  - g. the contribution by Mr James to the total cost of these items is accordingly limited to £250
173. However, for reasons already given, the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations
174. **Item J – 25 February 2009 Paint removal to door canopy £600.00 (service charge proportion @ 40 % - £240.00) (Applicant/Landlord’s bundle page J)**
175. *Mr Napper’s evidence and submissions*
176. Mr Napper stated that this was an invoice from Jose Manuel Gonzalez Ruiz for removing paint from the sides of the front door, and patching small repairs with Bath stone dust mix. The sides of the door had previously been stripped of paint, but not the canopy, where the paint was peeling and chipped. Mr Ruiz was a stonemason, who Mr Napper had found on the internet, and who was now working as a chef in a tapas bar owned by Mr Napper. Mr Ruiz’s bill was considerably cheaper than the quote for £1,500 by Pattons at page AG of the Applicant/Landlord’s bundle, page 2, items 1 and 2. The cost was payable by way of service charge under the seventh schedule of the lease, paragraph 4(c)
177. *Mr James’s evidence and submissions*
178. Mr James stated that this was not a repair or maintenance, but was a cosmetic improvement. In any event, the cost was unreasonably high for such a small canopy
179. *The Tribunal’s decision*
180. The Tribunal finds that :
- a. the Tribunal accepts Mr Napper’s evidence that the paint on the canopy was peeling and chipped, and that the canopy was therefore not in “a good and tenantable state of repair condition and decoration” for the purposes of the service charge provisions in the lease
  - b. the work carried out was a reasonable level of work, taking account of the provision in the seventh schedule to the lease under which, in the event of a part of the Building not being in a good and tenantable state of repair condition and decoration, the repairs may include “the renewal and replacement of all worn and damaged parts” and that “where

necessary or desirable [the lessor] may improve or add to the same”

- c. the cost was reasonable for the work carried out
- d. the Respondent/Leaseholder’s proportion of the cost would have been payable by way of service charge, but the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations

181. **Item K – 14 March 2009 repairs to entrance doorway £625.00 (service charge proportion @ 40 % - £250.00) (Applicant/Landlord’s bundle page K)**

182. *Mr Napper’s evidence and submissions*

183. Mr Napper stated that this was an invoice from Jose Manuel Gonzalez Ruiz for removing cement from the foot of the sides of the front door and replacing with Bath stone. When the paint had been stripped from the sides it was apparent that some stonework had in the past been replaced with cement patches. Mr Ruiz removed the patches and put new stonework in. It was a repair, not an improvement, because the cement patches were in poor condition, misshapen and cracked, and were the wrong material for the Building. Bath stone was needed because that was the appropriate material as the Building was listed. Although Bath stone mix had been used for the canopy, it could not be used here because the areas involved with the door were larger than the areas involved with the canopy

184. *Mr James’s evidence and submissions*

185. Mr James stated that this was not a repair or maintenance, but was a cosmetic improvement

186. *The Tribunal’s decision*

187. The Tribunal finds that :

- a. the Tribunal accepts Mr Napper’s evidence that the cement patches were in poor condition, misshapen and cracked, and that the sides of the door were therefore not in “a good and tenable state of repair condition and decoration” for the purposes of the service charge provisions in the lease
- b. the work carried out was a reasonable level of work, taking account of the provision in the seventh schedule to the lease under which, in the event of a part of the Building not being in a good and tenable state of repair condition and decoration, the repairs may include “the renewal and replacement of all worn and damaged parts” and that “where necessary or desirable [the lessor] may improve or add to the same”
- c. the cost was reasonable for the work carried out
- d. the Respondent/Leaseholder’s proportion of the cost would have been payable by way of service charge, but the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations

188. **Item L – Electric communal hall (no total bill quoted, but service charge proportion @ 40 % - £75.00) (Applicant/Landlord’s bundle page AB item 7 pages 1 to 3)**

189. *Mr Napper’s evidence and submissions*

190. Mr Napper stated that he had calculated Mr James's contribution to the communal hall electricity for the year 2008 to 2009 by basing them on the previous year's electricity bills

191. In answer to questions from the Tribunal Mr Napper agreed that :

- a. the daily standing charge rate in the electricity bills for 2007 at pages AB items 1 to 3 of the Applicant/Landlord's bundle was shown as 15.07p
- b. the standing charge for one year was therefore 365 x 15.07p, or, in round terms, £55
- c. a 40% share of £55 was £22
- d. he would accept Mr James's offer to pay £5 a quarter plus VAT, ie £20 for the year, for his share of the electricity used
- e. the total of standing charge and electricity used was therefore £42
- f. VAT at 5% on £42 was £2.10
- g. Mr James's total contribution for this item was therefore £44.10

192. *Mr James's evidence and submissions*

193. Mr James agreed that figure

194. *The Tribunal's decision*

195. The Tribunal finds, in accordance with the parties' agreement, that the sum of £44.10 would have been payable by way of service charge, but that the Respondent/Leaseholder was entitled to withhold payment for non-compliance with section 21B of the 1985 Act and the 2007 Regulations

Dated 19 November 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LSC/2010/0039**

**62 St Mary Street, Chippenham, Wilts, SN15 3JF**

**Appendix**

**Copy of document at page AE of Applicant/Landlord's bundle**

AE

## Summary of Rights and Obligations 01/04/08

### Consulting with Leaseholder

This notice is given in respect of Flat 1,62 St. Mary St.

Landlords are legally required to consult with leaseholders before carrying out major works. This is often called a "Section 20" notice because it was introduced by Section 20 of the Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002

### Notice for Leaseholder

Please read the enclosed Service Charge and this notice carefully. The Service Charge Certificate sets out the amount of rent and other charges (in this case 40% of the Building and Insurance Service Costs) along with the Advance Payment for Major Works. Payment is required within 21 days as set out in the Lease (point 7, page 4)

### The Landlords Repairing Obligations

The Landlord has an obligation to maintain the building that your home is located in. The Landlord is responsible for the repair and maintenance and insurance of the structure, exterior and common parts of the building, pathway and boundary walls as described in the Lease (Second Schedule). The Landlord will carry out the repairs and collect the Leaseholders share of these costs.

### The Leaseholders Repairing Responsibilities and Obligations

As a Leaseholder you are responsible for maintaining and repairing the inside of your home. Your responsibilities include;

- \*The front entrance door to your home.
- \*Internal decorations
- \*Individual Heating Systems, cookers and gas fires
- \*Pipes, water tanks, drains and cisterns within your home
- \*The payment of annual ground rent of £100 (demanded or not)
- \*The payment of the Service Charge (40% of Buildings Repair and Insurance Service Costs)

AS a Lease holder you have agreed to allow the Landlord access to carry out inspections and complete any necessary repairs.

### Statutory Leasehold Consultation

- \* This notice gives a general description of the Proposed Major Works as set out in the Builders Schedule (enclosed quotes from Pattons and Stewart Builders).
- \* This notice states the reason for carrying out the Proposed Major Works.
- \* This notice gives Leaseholders a period of 30 days to send written observations on the proposals.
- \* This notice gives the Leaseholder the opportunity to nominate a contractor they would like the landlord to ask for an estimate.

The Landlord will then consider and respond to all the comments received within 21 days. If no objections or comments are received the Landlord will commence works.

The estimate of the cost to the Landlord is laid out in the attached Schedule of works (Pattons) and the Advance Payment Demand indicating the contribution to be required from the Leaseholder.

If the Leaseholder disagrees with the Service Charge or the Advance Payment Demand then he may take the matter to the LVT. The LVT acts as an independent arbitrator to decide whether Service Charges, including Major Works, are reasonable. The LVT does not have the power to award costs, but the Landlord's costs may be presented in a future Service Charge

If you are unsure about any of your obligations you should consult your lease and for your...