



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

Case Reference : **BIR/00CW/LSC/2011/0008**

Property : **The Lindens, Newbridge Crescent,
Tettenhall, West Midlands WV6 0LR**

Applicant : **Inktown Ltd**

Representative : **Ellodie Gibbons, counsel,
instructed by Michael Laurie
Magar Limited("MLM") as
agents for the Applicant**

Respondents : **The 121 parties listed in the Schedule
to these Directions being all the
leaseholders of the leasehold flats and
garages at the Lindens**

Representative : **Mrs S Hodgson**

Type of Application : **Application for a determination of
liability to pay service charges under
section 27A of the Landlord and
Tenant Act 1985**

Tribunal Members : **Judge C Goodall
Mr R Brown FRICS
Mr P Hawksworth**

**Date and venue of
Hearing** : **29 and 30 January 2015 at Wolverhampton
Magistrates Court**

Date of Decision : **26 February 2015**

DECISION

Background

1. Inktown Ltd ("the Applicant") is the freehold owner of 130 leasehold flats at The Lindens, Newbridge Crescent, Tettenhall, West Midlands WV6 0LR ("the Property"). It has applied to this Tribunal for a determination of liability to pay, and reasonableness of, certain works ("the Works") it intends to carry out at the Property. It intends to charge the cost of the Works to the leaseholders at the Property under the terms of their contractual leases and seeks confirmation from the Tribunal that those costs would be reasonably incurred.
2. The 130 flats are let on long residential leases to the 121 Respondents listed on the Schedule. Where there has been a change of ownership of a flat during the currency of these proceedings but no application to remove the former owner from these proceedings has been made, the original respondent and the new owner (where that new owner is known to have taken some part at least in these proceedings) are both named. Some Respondents own the leasehold interest in more than one flat. Except for flats 18 and 106, the leases are for 99 years from 1962. Flats 18 and 106 have the same term of 99 years, but from 2001 and 1987 respectively.
3. The application was considered by the Tribunal at a hearing on 29 and 30 January 2015 held at Wolverhampton Magistrates Court. The Applicant, which had appointed MLM as its agents, was represented by Ms Ellodie Gibbons. Eleven respondents also attended the hearing. Forty-six Respondents had asked Mrs S Hodgson to represent their views to the Tribunal. Prior to the hearing, the Tribunal inspected the Property in the presence of Mr M Jacobs and Mr N Borrill from MLM and Mr J Yates, who is the on-site Estate Manager. None of the Respondents attended the site inspection.
4. At the hearing, the Tribunal considered the Applicant's bundle of documents, and heard evidence from Mr Jacobs, who is a director of MLM. The Respondent's case was summarised in a Respondent's Statement of Case document which had been prepared by Mrs Hodgson, which has been considered by the Tribunal. It has also considered written representations from Ms E Barker and Mr P Baynham, both Respondents who were unable to attend the hearing.

The Property

5. The Lindens is a development of 130 one and two bedroom self contained flats built in the early 1960s. The three storey Property is constructed using traditional reinforced concrete ring beams with brick infill, a flat roof and is comprised of 6 connected blocks in one continuous building, each block comprising two or more separate ground floor entrances with 5 or 6 flats leading off a communal stairway.
6. The blocks contain the following flats:

Block 1 - Flats 80-100

Block 2 - Flats 101-118

Block 3 - Flats 53-79

Block 4 - Flats 119-130

Block 5 - Flats 23-52

Block 6 - Flats 1-22

7. The communal staircase and corridor for each block feature a large window on each half landing. Next to the front door of each flat is a meter cupboard and two other cupboard doors, the top door being a post box, and the lower door being a refuse store, neither of these cupboards being fire resistant. The communal areas are plastered and painted, but not heated. There is lighting, but no emergency lighting.
8. It was apparent to the Tribunal that some of the windows in some of the communal entrances were in need of repair or replacement, that the treads on the staircases were failing in some areas, and that there was a need for redecoration of all areas. Some common parts windows have already been replaced with new uPvc windows.
9. Externally, most of the surrounding grounds are laid to lawn. There are four garage areas in which are situated 122 garages (i.e. not every flat has an associated garage). The garages are in a poor state of repair.
10. The ringbeams at first and second floor level were at some points showing signs of decay, such that the encased steel reinforcing work had become exposed and some rust was evident.

The Works

11. The Applicant proposes to carry out the Works under two separate contracts. The first is repair work to the concrete ring beams and lintels ("the Ring Beam Repairs"). The Applicant's case is that these are showing signs of deterioration and have become porous over time and they need to be repaired by scraping out and repairing where necessary, and applying a proprietary remedy to offer ongoing protection from decay.
12. The second contract is for general repairs to the structure and communal areas at the Property ("the General Repairs"), comprising:
 - a. Some limited asbestos removal
 - b. Internal replastering of the communal areas
 - c. Internal redecoration of all communal areas
 - d. Renewing floor coverings to communal areas

- e. Replacement of any remaining single glazed widow units to the communal areas
- f. Fire proofing of the electrical cupboard doors outside each flat
- g. Fire proofing of the letter and refuse cupboards outside each flat
- h. Electrical tests and repairs as necessary of the communal areas electrical circuits
- i. Installation of a new fire detection system to the communal areas in each block to LD2 Grade A standard
- j. New signage to comply with fire signage standards
- k. New lighting and emergency lighting system to each communal block
- l. Canopy lighting
- m. Repair / replace fascias and soffits to the external canopies
- n. Waterproof canopy roofs
- o. External decoration

13. In this decision any reference to "Works" includes both the Ring Beam Repairs and the General Repairs.
14. Contracts for the Works have been submitted to tender in a process supervised by PPC Surveyors Ltd, Chartered Building Surveyors. For the Ring Beam Repairs, they recommended (in July 2014) a specific contractor at a price of £83,888 plus VAT, with a contingency of £5,000. For the General Repairs, they recommended a contractor at a price of £329,170 plus VAT, indicating also the possibility of further savings once decisions had been made on which type of fire detection system to install.
15. The overall cost, the Applicant says, is chargeable to the Respondents as a service charge under their leases. Their case is that the leases allow collection in advance of an amount which can be put into a sinking fund to cover the eventual cost. Therefore, in September 2014 they commenced the process of collecting contributions towards the cost of repairs. They have requested payment in six quarterly instalments from September 2014, thus spreading the cost over a period of eighteen months.
16. So far as the time table for the Works is concerned, Mr Jacobs informed the Tribunal that the Applicant intended to commence the Works in March 2015. In his view, the Works are now urgent to prevent further deterioration. It will also be increasingly difficult to hold the recommended contractors to their tender prices as time passes. Although funds from the Respondents were not fully in place, the Applicant is willing to forward fund the Works so they can proceed.

The Respondent's concerns

17. In Mrs Hodgson's Statement of Case, she raised a number of concerns, being:

- a. Whether the terms of the leases allowed the collection of the proposed charges, and the collection of an extra administration charge of £75 which was being levied on Respondents who had not yet paid their contribution to the sinking fund
 - b. Whether the tendering process (and by implication the consultation process under section 20 of the Act) was complete, as she wished to suggest further contractors
 - c. Whether it was reasonable to collect costs for the Works via the service charge before the Tribunal had determined that they were reasonable
 - d. Whether certain works were necessary at all, or whether they were necessary now
 - e. Whether the Works could be phased so that the charges to the Respondents could be phased over a longer period
 - f. That the amounts being asked for from the Respondents for the Works were unaffordable for a number of Respondents.
18. Ms Barker's concerns were expressed in a letter dated 6 May 2014. She suggested that the liability for the Works lay on the Applicant. She also said there had been no adequate maintenance and repair work at the Property since the Applicant had purchased the freehold, and the garages in particular were in a state of dilapidation, which was affecting the values of the flats.
19. Mr Baynham's letter of 27 September 2014 requested an extended period for payment of charges for the Works. He accepted that the scope of the Works was realistic and that the majority of the Works required to be carried out. He suggested that the General Repairs should not be carried out using a single contractor, as that would be more costly.

The Tribunal's deliberations and determination

20. It is most convenient to consider this case by addressing each of the following issues in turn, which at some point have been raised by Respondents, or which are important to consider in order to understand the decisions the Tribunal has reached. Some are not in dispute, but having been raised, are recorded for completeness. All of the concerns of the Respondents described in paragraphs 16 – 18 above are considered within the headings of the issues now considered.
- a. What powers does the Tribunal have to decide the issues raised in this case?

- b. Do the leases require the Respondents to pay the costs of the Works?(see 17a above)
- c. Are all the Works necessary now? (see 17d)
- d. Do the leases require the Respondents to pay the sinking fund charge? (see 17c)
- e. Can an extra charge of £75 be charged for non-payment of the sinking fund contribution requested? (see 17a)
- f. Has the consultation exercise been conducted correctly and can more contractors be approached now? (see 17b)
- g. Should the cost of the Works be phased? (see 17e)
- h. What account should be taken of financial hardship or inability to pay on the part of the Respondents? (see 17f)
- i. What account should be taken of any failure by the Applicant to carry out repair works in the past? (see 18)
- j. Should a single contractor be used for the General Repair works (see 19)?

21. Considering each of these in turn:

a. *What powers does the Tribunal have to decide the issues raised in this case*

22. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 (" the Act").

23. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

- a. The person by whom it is or would be payable
- b. The person to whom it is or would be payable
- c. The amount, which is or would be payable
- d. The date at or by which it is or would be payable; and
- e. The manner in which it is or would be payable

24. In effect, this gives an opportunity for both proposed expenditure to be raised with the Tribunal and a further opportunity for the sums then actually spent, when they are known, to be challenged.

25. Section 19(1) of the Act provides that:

“Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –

- (a) Only to the extent that they are reasonably incurred, and
- (b) Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.”

26. A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1EGLR41).

27. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2EGLR100).

28. In relation to the test of establishing whether a cost was reasonably incurred, in *Forcelux v Sweetman* [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

“39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord’s actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence...”

29. From this summary of the Tribunal’s jurisdiction in the preceding paragraphs, it can be seen that the question the Tribunal has to focus upon is whether the proposed Works would be reasonably incurred, and whether the proposed cost is reasonable in amount, so that it is “payable” under section 27A of the Act. The Tribunal notes that there is a good deal in common between the Applicant and the Respondents here. None of the Respondents suggested that the Ring Beam Repairs were not necessary, or that the proposed cost of that work were unreasonable. The Tribunal agrees.

30. In general terms, the Respondents did not challenge the necessity for the General Repairs to be carried out except in relation to some detail which is discussed in paragraphs 41 – 52 below. The Tribunal also agrees, having inspected the Property and considered the documentation carefully (and subject to the comments made in paragraphs 41 - 52 below) determines that the proposed General Repairs are reasonably necessary and that the proposed cost is reasonable in amount.

b. Do the leases require the Respondents to pay the costs of the Works

31. The leases of the majority of the flats are in common form, the exceptions being flats 1, 14, 18, 24, 41, and 106. All the leases (including those exceptions) were varied on 7 August 2013 in proceedings before this Tribunal under reference BIR/00CW/LVL/2011/0001. Leaving flats 1, 14, 18, 24, 41, and 106 for the moment, the leases oblige each lessee to pay a service charge in order to cover the costs incurred by the Applicant in complying with its obligations to repair and maintain the Property. The relevant lease provisions are (with any clauses which were added as a result of the variation decision in italics), as follows (using the sample lease supplied to the Tribunal for flat 2):

“3. The Lessee hereby covenants with the Lessor:

(1) To pay the rent and other sums reserved on the days and in the manner aforesaid without any deduction except as aforesaid *Provided Always that the Lessee shall if required by the Lessor pay to the Lessor on twenty fifth March and Twenty Fourth June and Twenty Ninth September and Twenty Fifth December in every year such reasonable sum in advance and on account of the amount payable under clause 3(10) in respect of the following accounting year as the Lessor or its accountants or managing agents (as the case may be) shall specify at their discretion to be fair and reasonable interim payments (“the Interim Charge”)*

...
(10) To pay to the Lessor ... for the works and other items referred to in clauses 5(2) and 5(3) hereof and on the twenty fourth of March and the twenty ninth of September in each ... year of the said term to pay to the Lessor a one hundred and thirtieth part of the cost and expense of the said works and other items so far as the same relate to the Estate generally and not to one block and one twenty second part* of the costs and expenses of the said works and other items so far as the same relate exclusively to block six* *and the additional provisions set out below shall apply*

(a) in calculating the amount due under this clause in respect of any accounting year credit will be given for any Interim Charge paid in respect of that year and if the amount payable under this clause in respect of any accounting year is less than the Interim Charge paid

for that year the excess will be credited against future instalments of the Interim Charge

(b) For the avoidance of doubt the cost and expenses of the said works and other items may include reasonable provision for future expenditure by way of contributions to a reserve/sinking fund

(c) With the object and intent of removing any doubt or uncertainty it is hereby expressly agreed and provided that the Lessor shall have the right of appointing a Managing Agent or Agents (or any other professional adviser) to supervise the provision of services as hereinafter provided and the carrying out of the Lessor's obligations hereunder and that the fees of such Agent or Agents shall be included in the service charge"

[*Tribunal Note: The sample leases copied for the Tribunal are the original leases of flats 1, 2, 14, 18, and 106. The sample leases for 1, 2, 14, and 18 refer at this point to Block 6 and require a contribution of one 22nd of the costs relating exclusively to block 6. The sample lease for flat 106 refers to Block 2 and requires a contribution of one 18th of the costs relating exclusively to block 2. Each actual lease is likely to refer to the actual block number in which the flat is situated, with the exclusive proportion contribution relating to the number of flats in the block, but the Tribunal has not checked or been asked to check this.]

32. Clauses 5(2) and 5(3) provide:

"5 The Lessor hereby covenants with the Lessee that the Lessee paying its rent and performing the covenants on the part of the Lessee herein contained:-

...

(2) That the Lessor will so far as the Lessor considers the same to be required for the good management of the Estate carry out the works and make the payments and levy the charges specified in the Second Schedule hereto

(3) That the Lessor will keep the exterior of the Block of Flats including roofs gutters foundations main walls (but not the interior walls of the Demised Premises) and the common parts of the Block of Flats in good repair and will decorate the exterior thereof and the common parts once in every five years so far as may be required and will keep the service pipes (other than service pipes serving the Demised Premises alone) in good repair clean and free from obstruction"

33. The Second Schedule provides:

- “1. Keep roads paths curbs verges footpaths open spaces hard standing and service pipes serving but not within the curtilage of the Demised Premises in proper repair and condition the roads properly lighted and open spaces in shrubberies and gardens in neat and orderly condition including returfing lawns and replacing dead or damaged trees or shrubs and any other services which the Lessor considers should be provided for the benefit of the Estate (provided that no liability to carry out works for which the Local Authority is liable shall arise or be included)
2. Maintain and repair fences boundary and retaining walls and gates which are not the responsibility of any individual lessee
3. Keep the common parts serving the Demised Premises in a clean condition properly lighted decorated and repaired and insured against comprehensive risks
4. Arrange for the collection and disposal of the refuse and make all necessary payments to the Local Authority and provide refuse bins
5. Provide and maintain a television and VHF aerial and leads to serve (inter alia) the Demised Premises
6. *Do or cause to be done all such works installations acts matter and things as may be required for the purpose of complying with all statutes and other obligations imposed by law in respect of the Estate or any part hereof save where such obligations fall to the Lessee pursuant to clause 3(19) of the Lease*
7. Levy a management charge not exceeding 12.5% of the amounts payable under the previous Clauses of this Schedule and under the provisions of Clause 5(3) of this Lease *to cover the Lessor's in-house cost of management*
34. The leases of flats 1, 24, and 41 are in all material respects for the purposes of these proceedings now the same as the majority of other leases. In their original form, the Lessor's obligation to insure (referred to in the Second Schedule paragraph 3) had been omitted from the original, but were added in the variation application.
35. The lease of flat 14 is also now in all material respects the same as the leases of the majority of flats. In its original form the wording of paragraph 5 of the Second Schedule had been in slightly different form, but it was varied in the variation application to the form applying to the majority of flats.
36. The lease of flat 106 contains a lessee's covenant to “pay a one hundred and thirtieth part of the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and management of the Estate (so far as

they relate to the Estate generally and not to one block) the provision of services therein and the other heads of expenditure incurred by the Lessor in the performance of its covenants hereinafter contained” and to pay one eighteenth of the expenses incurred in the repair maintenance renewal and management of Block 2 (clause 3(2) as varied). There is a lessor’s covenant at clause 5(4) to maintain renew replace and keep in good and substantial repair and condition the main structure of the Building, the pipes wires and cables, the main entrances passages landing staircases and forecourts and other parts of the Building and the paths and roads and parking areas used in common. In the varied lease, provisions identical to the Second Schedule paras 6 and 7 in the standard lease have been inserted. There is provision for the charging of service charges on account, with payment to be made quarterly as for the standard leases.

37. As varied, the lease of flat 18, in so far as it is material to this decision, now accords with the leases of the majority of flats.
38. Although not requiring consideration within this decision, the previous variation proceedings were discussed at the hearing, as Mrs Hodgson raised as an issue whether the variations had come into force and if so how. The Tribunal explained that the basis upon which it was considering this service charge application was that the variations had been made, and had come into force, on the date the order was made, namely 7 August 2013. It appeared from what Mrs Hodgson said that there was doubt about whether a copy of the actual variations (which are all contained in Part II of the Schedule to the Deed of Variation which was intended to have been attached to the order that was sent to each Respondent) had in fact been supplied. There was also doubt about whether, and for what purpose, any of the Deeds of Variation were intended to be, or were required to be, executed by the parties. Ms Gibbons confirmed that the applicant did not regard it as necessary to execute or sign any further documents to put the variations into effect, and it was engaged in the process now of registering the variations at the Land Registry. It would certainly be well to complete that process expeditiously, and to provide a copy of the variations to any Respondent who is unsure what the varied terms are.
39. The Tribunal is satisfied that all the leases require the Respondents to pay:
 - a. for the cost of any works of repair of the communal areas for their own block, (including widow repair or replacement), to be split equally between the flat owners within each block;
 - b. for the costs of carrying out the Ring Beam Repairs and the General Repair costs of works for the whole Estate that are not exclusively for a block equally

- c. for the costs of complying with the statutory obligations required by the relevant fire authority, dividing the cost that is exclusively for a block between the flat owners in that block, and the cost of these works that are for the whole Estate and not exclusively for a block between all the flat owners.
40. The cost not only has to be covered by the lease, but it also has to be reasonably incurred, under section 19 of the Act. That brings us to consideration of the key issue raised by the Respondents.

(c) Are all the Works necessary or necessary now

41. The essence of the Respondent's Statement of Case was that some of the General Repairs were either unnecessary or were unnecessary now, and could be postponed. Works identified as unnecessary were:

Lighting and Emergency Lighting
Fire detection System to LD2 Grade A
Fire signage and other signage

42. The total cost of these works was said to be £91,100.

43. Works that could be postponed were identified as:

Communal windows
Replacement of internal cupboard doors
Work on postal and refuse cupboards
Block numbering
Electric cupboard doors – external
Flooring

44. The total cost of these non-urgent works was said to be £93,134.

45. Mr Jacobs gave evidence to the Tribunal on the necessity for these works. He said that there had been a significant fire at the Property in 2008 as a result of which there was considerable pressure to ensure the fire protection systems were robust. The difficulty with the Property was that the electric meter cupboards and the postal and refuse cupboards had no fire barrier between the communal areas and the individual flats. There were also various ducts and pipe runs that were similarly not fire protected. In addition, the front doors of the flats were not the responsibility of the Applicant and many were believed not to be fire resistant to modern standards.

46. The Applicant had commissioned Health, Safety and Fire Risk Assessments as required by the Regulatory Reform (Fire Safety) Order 2005 in 2012, with an updated report in 2014. Both of those reports identified the need for an emergency lighting system to be installed, there being insufficient borrowed light available in the communal areas, and a

need to carry out work to the three cupboards outside each flat so that they provide a minimum 1/2 hour standard of fire resistance. As an alternative, the risk assessments suggested the installation of a full automatic smoke detection system.

47. Mr Jacobs also produced correspondence with the fire officer. As long ago as 2008 he had approved the installation of an LD2 Grade A fire protection system. More recently, in 2012, the fire officer had written to Mr Jacobs pointing out again that levels of fire separation within each block had been compromised by the parcel hatches in the communal area (these are the postal cupboards referred to in this decision). The fire officer had recommended either the reinstatement of suitable fire resistance to all communal areas to separate the flats from the communal areas, or the installation of a fire warning and detection system to LD2 Grade A standard.
48. Based on these documents, and supported by his ongoing discussions with the fire officer, Mr Jacobs said that if an LD2 fire warning and detection system was installed, he was hopeful that the fire officer would not require further protective work to the cupboards, which would in fact result in a contract cost saving of c£11,000. But Mr Jacobs was insistent that the decision of which system to install could not be postponed much longer. He said the fire officer was aware of these proceedings and that decisions would follow the outcome of this case, and Mr Jacobs believed that the fire officer would not allow any further delay in the carrying out of these protective measures. Both he and the fire officer preferred the LD2 system, even though it was marginally more expensive than the alternative of work to improve the fire resistance of the cupboards.
49. At this point in the hearing, Mrs Hodgson, with the agreement of all the other Respondents who were present, said that having heard Mr Jacobs explain the situation, she did not wish to maintain her opposition to the carrying out of these works and she accepted that they were necessary. Furthermore, she and the other Respondents indicated that they also did not resist the installation of an LD2 Grade A system, as that was the recommended preferred option. The Tribunal agrees with this decision.
50. There were also elements of the General Repairs that Mrs Hodgson suggested could be postponed, so that the cost would not all fall on the Respondents now. The major items in this category were the floors (£51,264) and the windows in the communal areas. Mr Jacobs said that in his view the windows were close to being unsafe and he would not be happy to leave that item for the future. He was unhappy about the prospect of delaying any of the other works because he believed that the contractor's prices would not hold, so the work would just be more expensive in the future. He also said that the Applicant was willing to forward fund the Works in any event, so whilst the Respondents had until March 2016 to pay, the work would be commenced during the few months, so the Respondents were in effect gaining the benefit of phasing.

51. Mrs Hodgson had also queried the intention of carrying out some £13,300 worth of electrical work. Mr Jacobs explained that the contractor had priced for electrical testing of the supplies to the communal areas at a price of £3,300, with a provisional sum of £10,000 to cover any work identified as required as a result of the testing. The Tribunal considers that this approach is reasonable.
52. The Tribunal has already determined that the Works fall within the parameters of the Applicants obligations under the leases of the flats at the Property (see paragraph 39 above). The Tribunal has carefully considered the Respondent's submissions, and Mr Jacobs's evidence, and has reached the further view that:
- a. that it is reasonable for the Applicant to incur the cost of carrying out the General Repairs, and no Respondent has challenged the reasonableness of carrying out the Ring Beam Repairs; and
 - b. that it would not be reasonable to require the Applicant to delay or postpone any of the General Repairs (unless it should wish to do so); and
 - c. that the costs of the General Repairs as disclosed to the Tribunal have been properly put out to tender by a professional chartered surveyor so that those costs, if incurred, would be reasonably incurred.
53. The Tribunal should explain that the actual cost may not be exactly as tendered. During a contract for works, there are often changes, or unforeseen works come to light, and it is rare for the price to be exactly as anticipated. If any Respondent considers the actual price, when it is known, to be unreasonably incurred, or that the work has not been carried out to a reasonable standard, that Respondent is at liberty to make their own application to this Tribunal.

(d) Do the leases require the Respondents to pay the sinking fund charge?

54. Some Respondents have objected to the Applicants raising a charge for the Works before the Tribunal has determined this application. It could be said that this question raised the issue of payability, under section 27A of the Act, and the Tribunal hopes that the following paragraph is helpful in explaining the situation.
55. All the leases, as amended, entitle the Applicant to collect a sum in anticipation of future expenditure on the Property. The provision is the new wording added to clause 3(1) and 3(10) of the leases (or their equivalent in the lease of flat 106). It is important to realise that any sums so collected must be held on trust by the Applicant, and the money

collected cannot be spent until the Applicant has properly consulted with the Respondents under the provisions of section 20 of the Act. The Tribunal determines that sums charged as contributions towards a sinking fund for the Works are due, though they may not be spent until the Applicant has completed the necessary consultation under section 20 of the Act.

(e) Can an extra charge of £75 be charged for non-payment of the sinking fund contribution requested

56. The Applicant has conceded that this charge should not have been levied and has stated that any charges that have been paid would be re-credited.

(f) Has the consultation exercise been conducted correctly and can more contractors be approached now

57. Mrs Hodgson had requested in her Statement of Case that two other contractors be approached. She intimated that there was unhappiness amongst the respondents about the chosen contractor.

58. Mr Jacobs said that he tried to approach both contractors named by Mrs Hodgson. He said that he could not trace one contractor and the other had declined to tender.

59. Mrs Hodgson accepted this position. She expressly stated that the Respondents did not wish to challenge the adequacy of the consultation exercise, not pursue any point concerning the proposed contractor, as no respondent wished to raise an obstacle that might prevent the Works being progressed.

(g) Should the cost of the Works be phased

60. In *Garside v RFYC Ltd and Maunder Taylor* [2011]UKUT 367 (LC) (“Garside”), Her Honour Judge Alice Robinson said:

“14. ... In my judgment, giving the expression “reasonable” a broad, common sense meaning in accordance with Ashworth Frazer, the financial impact of major works on lessees through service charges and whether as a consequence works should be phased is capable of being a material consideration when considering whether the costs are reasonably incurred for the purpose of section 19(1)(a).”

61. There is thus authority for requiring the Applicants to consider reducing the financial impact upon the Respondents by phasing the Works over a period of time.

62. Having considered the Applicant’s case, the Tribunal in this instance does not consider that it would be reasonable to disallow any of the proposed expenditure on the Works on the grounds that it should have been phased.

The material considerations the Tribunal took into account in reaching this decision are:

- a. That this case has been ongoing since July 2010 and it is not unreasonable that the Respondents would have realised that some work would need to be undertaken at some point, and that they would be responsible for at least a proportion of the cost
- b. That the Applicant has built in an element of phasing anyway by telling the Respondents that the costs would be collected over a period of 18 months starting in September 2014
- c. That some Respondents are keen that the Applicant should proceed now with all Works as phasing will mean delay in resolving a long-standing problem
- d. That the Applicant will bear the costs itself until the Respondents pay
- e. That any delay in any aspect of the Works is likely to lead to increased contractor cost and possibly wasted costs in re-tendering

(h) What account should be taken of financial hardship or inability to pay on the part of the Respondents

63. In *Garside*, Judge Robinson also said:

“20. It is important to make clear that liability to pay service charges cannot be avoided simply on the grounds of hardship, even if extreme. If repair work is reasonably required at a particular time, carried out at a reasonable cost and to a reasonable standard and the cost of it is recoverable pursuant to the relevant lease then the lessee cannot escape liability to pay by pleading poverty. As the Lands Tribunal made clear in *Southend-on-Sea Borough Council v Skiggs* LRX/110/2005 (a decision on section 27A of the 1985 Act), the LVT [predecessor to the First-tier Tribunal] cannot alter a tenant’s contractual liability to pay.

...”

64. The Tribunal is bound by the *Garside* case, which is itself, of course, simply reflecting the general legal and statutory position. It has no power to take account of the impact of financial hardship, even severe, upon the Respondents, except as identified in paragraphs 60 and 61 above. Whatever sympathies the Tribunal may have, the payment of the service charge is a matter of legal obligation arising from the contractual terms contained in the leases under which the Respondents hold their flats. The Tribunal cannot take account of ability to pay (beyond its consideration of phasing as referred to above) in determining whether the proposed charges for the Works are reasonable.

65. It is worth making a comment upon Mrs Hodgson's suggestion that non-payment of a service charge allows the possibility of eviction through forfeiture of the lease, whereas non-payment of a bill for major works that is not described as a service charge bill does not. The Tribunal, with respect, does not agree. The proposed charges to cover the costs of the Works the subject of this case are just as much service charges as the day to day expenditure on cleaning and gardening. They are due under the lease, and in theory failure to comply with an obligation in a lease might eventually result in forfeiture. However, there are myriad protections against this in law, and it is a very rare procedure. Any Respondents who are really concerned about this possibility should seek reassurance of their position from an appropriate adviser such as the Citizens Advice Bureau or a solicitor.

(i) What account should be taken of any failure by the Applicant to carry out repair works in the past

66. In her letter, Ms Barker raised this issue and suggested as a result of it that the Respondents should not have to pay for the Works. The argument has however not been explained further to the Tribunal and Ms Barker did not attend the hearing. In the view of the Tribunal there is no merit in this argument. Even if the Applicant has failed in the past to carry out repairs (on which no evidence has been produced), it does not lessen the need for the repairs now. Had Ms Barker wished to pursue this point, she would have needed to establish not just the failure to carry out repairs, but also that she has suffered quantifiable damage as a result. She has not done so and the Tribunal cannot accept that this point justifies any change to its decision to determine that the Works are reasonable.

(j) Should a single contractor be used for the repair works

67. Mr Baynham suggested that the cost of the Works would be reduced by using a number of smaller contractors for the General Repairs rather than one contractor. He did not attend the Tribunal hearing to pursue this point. It was countered by Mr Jacobs who said it would not in his view be practical due to the number of contractors who would be on site at any time. A main contractor would be able to manage the site much more efficiently than would be the case with separate individual contractors.

68. The Tribunal accepts Mr Jacobs's argument on this point. It is a reasonable approach. The Tribunal is not required to decide which approach is right. If it is satisfied (which it is) that the applicant's approach is reasonable, it should not interfere further.

Summary of the Determination

69. The Tribunal determines that it would be reasonable for the Applicant to incur costs on the Ring Beam Repairs and the General Repairs.

70. The proposed costs of the Ring Beam Repairs and the General Repairs as put in evidence in this case are reasonable in amount.
71. Charges levied by the Applicant as contributions towards a sinking fund towards the anticipated costs of the Ring Beam Repairs and the General Repairs are payable by the Respondents under the terms of their leases.
72. This determination does not confirm that the Applicant has complied with its consultation requirements under section 20 of the Act.

Appeal

73. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

List of Respondents

Resp No.	Name	Unit
1	Mr & Mrs A Ratcliffe	The Lindens - Flat 1
2	Miss Margaret MacDonald	The Lindens - Flat 2
3	Jenifer Jayne Asbury	The Lindens - Flat 3
4	Susan Lesley Hay	The Lindens - Flat 4, 27, 70, 99
5	Ranjan Verma & Mrs Geeta Verma	The Lindens - Flat 5
6	Mrs Monica Samuels	The Lindens - Flat 6
7	Ms Penelope Hyde	The Lindens - Flat 7
8	Mr Stephen & Ms Sally Giddings	The Lindens - Flat 8
9	Mr Peter Baynham	The Lindens - Flat 9
10	Amanda Jayne McArthur	The Lindens - Flat 10
11	Mr G W Stokes	The Lindens - Flat 11
12	Mr Martin Colin Goldsmith	The Lindens - Flat 12
13	Ranjit & Ravinder Gill	The Lindens - Flat 14a
14	Mr Stuart Ridley	The Lindens - Flat 14, 15
15	Mrs Claire L Ridley	The Lindens - Flat 16
16	Ms I Lane	The Lindens - Flat 17
17	Ms Sally Mynett	The Lindens - Flat 18
18	Mr Timothy Deeming	The Lindens - Flat 19
19	Ms Dorothy Nicholls	The Lindens - Flat 20
20	Ms Nina Crook	The Lindens - Flat 21
21	Mr Darren James Stuckey	The Lindens - Flat 22
22	Ms Mary Davies	The Lindens - Flat 23
23	Ms Sue Hodgson	The Lindens - Flat 24
24	Ms Hedy Sullivan	The Lindens - Flat 25
25	Mr Vincenzo Mongiovi	The Lindens - Flat 26
26	Chhuvi N Mishra	The Lindens - Flat 28
27	Ms Elizabeth England	The Lindens - Flat 29
28	Mr Mark Ridley	The Lindens - Flat 30, 60, 123
29	Neil John Morgan	The Lindens - Flat 31
30	David William & Patricia June Somerville	The Lindens - Flat 32
31	Ms Jacqueline Baker	The Lindens - Flat 33
32	Mr Michael & Maria Ridley	The Lindens - Flat 34, 40, 97
33	Terence & Sheila Cooper	The Lindens - Flat 35
34	Mr Philip & Ms K Bolton	The Lindens - Flat 36
35	Mr Brian Daniels	The Lindens - Flat 37
36	Victoria Ann Nicholls	The Lindens - Flat 38
37	Mr L Trubshaw & Ms H Bradin	The Lindens - Flat 39
38	Ms Anne Smith & Mr Stuart Smith	The Lindens - Flat 41

39	Mr Kenneth Tuck	The Lindens - Flat 42
40	Ms Nicola Jones / Mr & Mrs A Mason	The Lindens - Flat 43
41	Mr & Mrs R Lakeland	The Lindens - Flat 44
42	Mr Duncan Ferguson	The Lindens - Flat 45
43	Ms Jennifer Lupton	The Lindens - Flat 46
44	Ms Patricia Bannister	The Lindens - Flat 47
45	Mr Geoffrey Cook	The Lindens - Flat 48
46	Manjit Dhaliwal	The Lindens - Flat 49
47	Mr Malcolm Smith	The Lindens - Flat 50
48	Baljit Kaur Hague	The Lindens - Flat 51
49	Mr R. W. M. Wollaston	The Lindens - Flat 52
50	Gareth Adam Bowen	The Lindens - Flat 53
51	Mr Richard Astbury	The Lindens - Flat 54
52	Mr Michael & Ms Emma Barker	The Lindens - Flat 55
53	Anita Finnegan and Kevin Bernard Finnegan	The Lindens - Flat 56
54	Dharam Pal	The Lindens - Flat 57, 83
55	Maria Vittoria Cori	The Lindens - Flat 58
56	Mrs Linda Swain	The Lindens - Flat 59
57	Mr Paul and Mrs Linda Banbury	The Lindens - Flat 61
58	Ms Janet Evans	The Lindens - Flat 62
59	Mrs Christine Leigh	The Lindens - Flat 63
60	Mr Alan Marsh	The Lindens - Flat 64
61	Mr S & Ms Jayne Howell	The Lindens - Flat 65
62	Mr S SGarcha	The Lindens - Flat 66
63	Mr Stuart Bate	The Lindens - Flat 67
64	Mr Ryan Taylor	The Lindens - Flat 68
65	Mr Nicholas Sharratt	The Lindens - Flat 69
66	Ms Rose Clerkin	The Lindens - Flat 71
67	Mr I Carter & Mr Brian Levy	The Lindens - Flat 72
68	Mr Simon Barnett	The Lindens - Flat 73
69	Mr David King	The Lindens - Flat 74
70	Mr Adam Guy	The Lindens - Flat 75
71	Mr Michael Holdsworth	The Lindens - Flat 76
72	HusanLal Leal & Kamla Devi Leal	The Lindens - Flat 77
73	Mr William Dixon	The Lindens - Flat 78
74	Ms Birgit Merrick	The Lindens - Flat 79
75	Mr C M Wood	The Lindens - Flat 80
76	Mr David Belcher	The Lindens - Flat 81
77	Mr M & Ms J O'Driscoll	The Lindens - Flat 82
78	Mrs Patricia Coldicott	The Lindens - Flat 84
79	David Smith	The Lindens - Flat 85
80	Gurbux Singh & Siobhan Singh	The Lindens - Flat 86
81	Mr Jeffrey Douglas Milham	The Lindens - Flat 87
82	Ms Amanda May	The Lindens - Flat 88
83	Ruth Naomi Coward	The Lindens - Flat 89

84	Ms Mary Hunt	The Lindens - Flat 90
85	Mark David Law	The Lindens - Flat 91
86	Ms Edith Sutton (Deceased) / Amarjit Singh	The Lindens - Flat 92
87	Ben Maddox	The Lindens - Flat 93
88	Mr Jonathan Whatmore	The Lindens - Flat 94
89	Mr G Tennyson Jones	The Lindens - Flat 95
90	Ms Lesley Flanagan	The Lindens - Flat 96
91	Miss EA Joyce	The Lindens - Flat 98
92	Mr P Walsh & Ms B Main	The Lindens - Flat 100
93	Barrie & Sandra Law	The Lindens - Flat 101
94	Mr W.E.M. Johnson	The Lindens - Flat 102
95	Daniel Kucharczyk	The Lindens - Flat 103
96	Amrik&Sukhbinder Sandhu	The Lindens - Flat 104
97	Mr Stuart J Bennion	The Lindens - Flat 105
98	Mr R D Wager	The Lindens - Flat 106
99	Ms Mary Gosling	The Lindens - Flat 107
100	Mr Matthew Edward Owen	The Lindens - Flat 108
101	Oliver & Russell Clements	The Lindens - Flat 109
102	Mr John A Mulloy and Mrs Ann L Mulloy	The Lindens - Flat 110
103	Jagmeet S Johal	The Lindens - Flat 111
104	Ms Rachel Jarrett	The Lindens - Flat 112
105	Mr Philip Reynolds	The Lindens - Flat 113
106	Richard Astbury& Mitchell Stone	The Lindens - Flat 114
107	Mrs Ineke Leech	The Lindens - Flat 115
108	Mr Matthew Lee Astbury	The Lindens - Flat 116
109	Mr John Frajcher	The Lindens - Flat 117
110	Mr Robin Hill (deceased)	The Lindens - Flat 118
111	Mr R Williams & Mr N Blackie / Mr Grewal	The Lindens - Flat 119
112	Mr Andrew Downes	The Lindens - Flat 120
113	Mr T J Sharpe, Executor of the late Mr Joseph Hadfield	The Lindens - Flat 121
114	Warren Lee Haynes & Kerry Louise Haynes	The Lindens - Flat 122
115	Ms Anita Collins	The Lindens - Flat 124
116	Mr Philip Morris	The Lindens - Flat 125
117	Kian LalMemie	The Lindens - Flat 126
118	Jatinder Kumar & Anita Sharma	The Lindens - Flat 127
119	Ms K L Brooks	The Lindens - Flat 128
120	Mr Paul Riley	The Lindens - Flat 129
121	Mr Mark Hyde	The Lindens - Flat 130