10897

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2014/0445**
Property	:	**Draper House, 20 Elephant and Castle, London, SE1 6SY**
Applicants	:	**Mr Holden and 15 other leaseholders named on the application to the Tribunal**
Representatives	:	**Mr Holden and Ms Varicat**
Respondent	:	**London Borough of Southwark**
Representative	:	**Mr Evans of Counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal Members	:	**Judge I Mohabir** **Mr M C Taylor FRICS** **Mr A D Ring**
Date and venue of Hearing	:	**3-4 February 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**5 May 2015**

DECISION

Introduction

1. This is an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of service charges for the years 2007/08 to 2013/14 inclusive.

2. The Applicants are long leaseholders pursuant to leases granted variously to each of them by the Respondent on the same terms. The Tribunal was provided was a specimen lease granted to the lead tenant, Mr Holden, dated 9 August 2004 for a term of 125 years from that date ("the lease"). Unless stated otherwise, references in this decision to "the lease" includes the leases granted to the Applicants.

3. The Applicants do not challenge their *contractual* liability to pay the service charge costs in issue in this case. The challenge made is limited to the reasonableness of those costs. It is, therefore, not necessary to set out the relevant lease terms that give rise to that liability. In any event, these have conveniently been set out at paragraphs 6 to 12 (erroneously stated to be paragraphs 6 to 8) in the Respondent's statement of case. It is perhaps sufficient to note that the Applicants' contractual liability is calculated by reference to the number of bedrooms in each flat. The Tribunal was told that each of the flats has 2 bedrooms. This method of apportionment has been approved by the Upper Tribunal in the case of ***London Borough of Southwark v Bevan*** [2013] UKUT 114 (LC).

4. It should also be noted that the lease provides that the Applicants have a liability to pay the Respondent's administration costs at a contractual rate of 10% of the total service charge expenditure demanded in each year.

Procedural

5. At the commencement of the hearing, the Respondent made an application to adjourn the hearing on the basis that the Applicants had

served a new Bundle E late and out of time on 13 January 2015 containing a substantial amount of new evidence. Furthermore, the Applicants had served yet a further supplementary bundle on 26 January containing additional disclosure. The Respondent had not been afforded sufficient time to consider this disclosure and sought an adjournment to enable it to do so.

6. The Applicants told the Tribunal that there was no particular reason why the additional disclosure they sought to rely on had been served late and out of time. The Tribunal ruled that the additional evidence would not be admitted for the following reasons:

(a) the Applicants did not have permission to serve the evidence.
(b) there was no good reason why the evidence had been served late and it should have been disclosed in accordance with the Tribunal's Directions.
(c) that the case had been listed for some time and to grant an adjournment would result in a waste of the Tribunal's time and resources.
(d) that to admit the additional evidence without giving the Respondent a proper opportunity to consider and respond to it would undoubtedly result in the risk of serious prejudice to its case.

The Issues

7. In its Directions dated 18 September 2014, the Tribunal initially identified the issues in this case as being:

(a) the reasonableness of the service charges demanded for the relevant years set out above; and
(b) whether the Respondent had validly carried out statutory consultation under section 20 of the Act in relation to major works commenced in 2011 and the reasonableness of those estimated costs.

8. By way of Scott Schedules, the Applicants had set out the various challenges they made both in relation to the disputed service charges and the major works. At the hearing, it became apparent that the Applicants had taken virtually every conceivable point they could for the service charges in issue and the major works costs. It seems that this had been done on the basis of the Respondent's alleged failure to provide adequate or any replies to the Applicants numerous requests over some time for clarification about the disputed costs.

9. The Tribunal considered the approach taken by the Applicants to be both disproportionate and untenable. In the vast majority of the challenges set out in the Scott Schedules the Applicants had done no more than put the Respondent to proof and had not advanced a positive case at all.

10. Using its case management powers, the Tribunal encouraged the parties to attempt to narrow the issues. In relation to the major works costs, this resulted in the parties reaching agreement on some of the issues as set out in the Consent Order annexed hereto (as amended).

11. The Applicants clarified that the only challenges they were now making regarding the major works were:

    (a) that the overall cost increase was unreasonable because of unnecessary historic delay on the part of the Respondent; and
    (b) the cost of installing a new mains riser as part of the major works had not been reasonably incurred.

    It was conceded by the Applicants that the Respondent had validly carried out statutory consultation under section 20 of the Act in relation to the major works.

12. As to the remaining challenges being made in relation to the service charge costs in issue, the Applicants, helpfully, provided a list of issues

on the second morning of the hearing setting out specific items of service charge costs being disputed for the years 2011/12, 2012/13 and 2013/14. These are each dealt with in turn below. Only a general challenge was made relating to the costs for the years 2008/09 to 2010/11 inclusive.

13. The professional fees and administration charge also remained in issue.

Relevant Law

14. This is set out in the Appendix annexed hereto.

Decision

15. The hearing in this case took place on 3 and 4 February 2015. Mr Holden and Ms Varicat who appeared in person acted as the authorised representative for the Applicants. Mr Evans of Counsel appeared for the Respondent.

16. The Tribunal reconvened on 4 March 2015 to consider its decision in this case.

Major Works

17. Since on or about 2006 major refurbishment works to Draper House were proposed. They included replacing the existing single glazed timber framed windows, flat front doors, upgrading communal electrical supply items, concrete repairs to structural walls, roof coverings and insulation, existing flooring, entryphone system and asbestos removal. The Respondent had commenced statutory consultation in relation to the proposed works and the estimated cost was placed at £18,727.70 per leaseholder.

18. It was common ground that the proposed major works could not proceed because the adjoining property, Strata Tower, had been granted planning consent and the ensuing construction work impinged on the ability to commence the major works to Draper House for

various practical reasons. A decision was taken by the Respondent to commence the major works once the Strata Tower works had been completed. This occurred in 2010 and the Respondent carried out statutory consultation based on an amended specification for the proposed works and a demand was served on or about 26 April 2012. The estimated cost had now increased to £34,483 per leaseholder. Further delay occurred as a result of a Tribunal decision in 2010 regarding the changes made by the Respondent to its procurement method from competitive tendering to working under a partnering framework contract. This decision was appealed by the Respondent to the (then) Lands Tribunal.

19. Eventually, the contractor instructed to carry out the major works was the Breyer Group plc ("Breyer") under a qualifying long term agreement with the Respondent. Work commenced on 4 July 2011. However, by late 2011 and through 2012 various concerns were raised by leaseholders about the standard of Breyer's work. Consequently, in February 2013 Breyer's contract was terminated by the Respondent and a new contractor, A & E Elkins, was appointed to complete the outstanding works.

20. This project was the subject matter of an investigation by the Respondent's own Housing, Environment, Transport & Community Safety Scrutiny Sub-Committee. In its draft report dated May 2013, it made extensive findings as to Breyer's management and implementation of the project and also the shortcomings on the part of the Respondent's officers with responsibility for this project. As a consequence, compensation was awarded to the leaseholders for delay and distress. The Tribunal was told by Mr Morath, an Investment Manager with responsibility for overseeing the Draper House works contract, that a further compensation package was being put together for all residents in the sum of £20 per week for the period of delay caused as a result of Breyer's and the Respondent's default in the management and implementation of original contract.

21. The Applicants contended that the increase in the estimated cost of the major works had been as a consequence of historic neglect and delay on the part of the Respondent, which led to the overall cost of the major works increasing.

22. The Tribunal heard oral evidence from Mr Holden in this regard and it was corroborated by the evidence of other leaseholders in their respective witness statements found at File B/Tab 9 in the hearing bundle. They submitted, therefore, that the additional cost had not been reasonably incurred and should be disallowed.

23. The Tribunal's determination is made in relation to the reasonableness of the *estimated* cost of the major works. These have been capped at the figure set out at paragraph 8 of the attached Consent Order. In other words, any increased cost as a result of the default on the part of Breyer is not payable by the Applicants. The Tribunal was, therefore, only concerned with the increase in the estimated cost of the major works from 2006 to 2011 when the works commenced. As at the date of the hearing, the final account for the actual cost of the works had not been prepared by the Respondent.

24. The Tribunal did not accept the Applicants' submission that the increased cost was as a result of historic neglect and delay on the part of the Respondent. As to the issue of historic neglect, the Applicants had adduced no evidence at all to prove what repairs had not been carried out by the Respondent, over what period of time and how this had resulted in increased cost. Even if they are correct about this, the Applicants had also not provided any evidence to quantify the additional cost so incurred and there was no basis on which the Tribunal could make a finding in this regard.

25. Moreover, the Tribunal accepted the evidence given by Mr Spiller for the Respondent. He is a Chartered Surveyor at the Potter Raper Partnership who were quantity surveyors employed by the Respondent

to take charge of this project. Mr Spiller said that the 2006 contract was estimated to last 45 weeks whereas the 2011 contract was estimated to last for 60 weeks. This was because the specification for the works had changed in certain respects. For example, in 2006 the intention was to refurbish or replace the existing timber windows. In 2011 the decision was taken to replace them with powder coated aluminium windows. Similarly, the door entry system was replaced in 2011 instead of being repaired. No fire prevention had been allowed for in 2006 nor the installation of the electrical rising main. Mr Spiller also said that, in fact, some of the rates used in the 2011 project were lower than in 2006 such as the windows and the roof works.

26. Accordingly, save for those costs agreed in the Consent Order, the Tribunal found the estimated cost of the major works set out in the section 20 notice dated 15 March 2011 to be reasonable. In the event that the actual cost of the works falls below this figure, then the Applicants will be credited with the shortfall.

Electrical Mains Riser

27. This work was carried out as part of the major works contract at a total estimated cost of £244,300. The decision to include this work as part of the 2011 contract was as a result of the findings made in a condition survey report prepared by Breyer found at Bundle C/Tab 17.21.7 of the hearing bundle.

28. The Applicants submitted that the installation of a new mains riser was not recoverable under the terms of the lease because it was an improvement and not a repair. In the alternative, it was not required and, therefore, the cost was not reasonably incurred.

29. The Tribunal also accepted the submission made by Mr Evans that the substantive test set out in the earlier Tribunal decision of ***London Borough of Southwark v Monaghan*** (LON/00BE/LSC/2013/0823) had been satisfied. Namely, that the

work only went to a subsidiary part of the building, not the whole and did not render the building of a wholly different character after the work had been completed. Essentially, the test is one of fact and degree in each instance. In the present case the Tribunal found that the installation of the electrical mains riser was not an improvement *per se* and did fall within the ambit of the Respondent's repairing obligation in the lease.

30. The Tribunal accepted the findings of the Breyer report and the need to install a new electrical mains riser to bring the installation up to date and to ensure compliance with modern regulations. The Applicants had adduced no evidence to demonstrate that the work was not required whether in whole or in part.

31. Accordingly, the Tribunal found that the work had been reasonably incurred and the estimated cost reasonable in amount.

Specific Service Charges

2011/12

Block Responsive Repairs - Invicta Invoice £6,253.67

32. This expenditure related to asbestos surveys of the communal areas on the 6th floor, lobby and mezzanine areas of the building. The Applicants, again, simply put the Respondent to proof as to this expenditure and to demonstrate that it did not fall within the major works cost.

33. Having carefully considered the major works specification, the Tribunal was satisfied that this expenditure did not fall within those works. Moreover, as long ago as 16 October 2012, the Respondent wrote to Mr Holden providing him with a detailed breakdown of the expenditure incurred in 2011/12[1] including this item with an explanation. This was also confirmed in evidence by Ms Thackery, a Revenue Service Officer employed by the Respondent.

[1] see Bundle B/Tab 12.1.92 & 110

34. The Tribunal, therefore, found that this item of expenditure did not fall within the major works specification and had been incurred by the Respondent in this year. No challenge was made to the reasonableness of the amount incurred. Accordingly, it was allowed as claimed.

Block Lighting & Electricity

Beaumont Ltd - £2,973.75

35. The Applicants made the same challenge in relation to this expenditure as they did for the above item. For the same reasons, the Tribunal allowed this expenditure as being reasonable and payable by them.

2012/13

Block Care & Upkeep - £20,877.08

36. Mr Holden gave evidence about the lack and quality of the cleaning to the communal areas that took place during this period when the major works were ongoing. Similar evidence was given by Ms Comeford, MsRoupakia and Mr Kronig in their respective witness statements. They argued that by reason of the major works some of the duties set out in the cleaning specification for the communal areas could not be performed. They submitted, therefore, that a reduction of 70% of the overall cost should be made to reflect this.

37. The Tribunal accepted the evidence given by Mr Williams about the cleaning. He is an Area Manager employed by the Respondent with responsibility for cleaning throughout the borough, including Draper House. He said that despite the major works, the communal areas and the stairs were swept and mopped. Indeed, he confirmed that because of the major works more not less cleaning was carried out, as the building could not be "abandoned". He said that the cleaning tasks required from day to day varied and was essentially a subjective decision to be made. He had not been made aware of any complaints by the leaseholders about the cleaning.

38. Accordingly, the Tribunal found this item of expenditure to be reasonable and it was allowed as claimed.

Block Responsive Repairs

Roof Repairs - £945

39. The Applicants submitted that roof repairs formed part of the major works cost and, therefore, this item should be disallowed completely.

40. The reply given by the Respondent in the Scott Schedule indicates that this expenditure was a responsive repair to the roof. It also occurred during the period Breyer had effectively ceased working on the building as a result of concerns about its performance. Despite this, the repairing obligation placed on the Respondent under the lease continues and it was obliged to carry out this work. In the present case, to simply defer the required repair until such time as the new contractor had been appointed would place the Respondent in the invidious position of potentially being open to a claim for breach of covenant by a tenant. For these reasons, the Tribunal found this expenditure to be reasonable and it was allowed as claimed.

High Security Doors - £1,201.91

41. The Applicants submitted that this expenditure should be disallowed because it formed part of the major works. The Tribunal accepted this submission as being correct. Moreover, the Respondent did not provide any evidence as to why this was a separate item of expenditure and why it was incurred. Accordingly, The Tribunal found this expenditure had not been reasonably incurred and it was disallowed entirely.

Surveys - £3,900

42. Again, the Applicants submitted that this expenditure formed part of the major works cost and should be disallowed. It was clear that this expenditure related to survey costs undertaken by Breyer as part of the 2011 condition survey report prepared in relation to the proposed

major works and did form part of the overall cost of the major works. Accordingly, The Tribunal found this expenditure had not been reasonably incurred as a separate item and it was disallowed entirely.

Ventilation Cleaning - £17,523

43. The Applicants appear to contend that this expenditure was either not incurred by the Respondent or carried out in error. However, the Tribunal heard and accepted the evidence from Mr Morath as to need to carry out this cleaning, the fact that it was done and confirmation that it did not form part of the major works contract. The Tribunal found in these terms and allowed this expenditure as being reasonable.

Overheads- £6,542

44. The Applicants simply put the Respondent to proof about this expenditure. The explanation given, which the Tribunal accepted, is that this expenditure represents the cost incurred by the Housing Management Staff who directly respond to, arrange and oversee that repairs are carried out by contractors. In other words, this represented a cost to the Respondent of providing this service and includes such things as salaries.

45. The Applicants advanced no specific challenge to this expenditure and the Tribunal found it had been reasonably incurred and was reasonable in amount.

Lifts - £18,262.71

46. The expenditure represented the cost of carrying out reactive repairs to the lifts. Of the overall sum, the Applicants submit that £7,135.50 should be disallowed on the basis that these costs were directly attributable to the contractor's use of the lifts and they should not be borne by them.

47. The major works included repair and refurbishment of the lifts. It was clear to the Tribunal that this expenditure was incurred after those

works had been completed and had in fact increased when compared to the historic expenditure incurred in previous years before the major works had been carried out. The expectation would be that some of the cost of responsive repairs for the lifts would have decreased or possibly be covered by the contractor as part of the warranty given in relation to the major works. The Respondent was unable to prove that the sum in issue had been reasonably incurred whereas the Applicants were able o demonstrate that 35 faults were found in the lift used by the contractor as opposed to only 17 faults in the lift used by the residents and were able to quantify the additional cost. The former included cortex sheeting used to protect the lift used by the contractor being found in the lift pit.

48. The reasonable inference to be drawn from this is that the sum in issue had not been reasonably incurred and the Tribunal so found. Accordingly, the sum of £7,135.50 was disallowed. The Applicants also asked for a reduction in the additional electricity charges incurred by the contractor's use of the lifts. This was dismissed by the Tribunal on the basis that this expenditure did not appear to be claimed by the Respondent as a discrete item of cost and, in any event, the Applicants conceded that they were unable to quantify what the additional cost might be.

Security Services - £469.25 (individual charge)

49. The Applicants submitted that a 30% reduction should be applied to this charge because they did not have security doors on the communal landings thereby allowing "rough sleepers" to enter the building.

50. The Tribunal did not accept this submission for the reasons given by Mr Oubridge in evidence. He said that the absence of security doors on the communal landings did not mean that the security services provided for Draper House were inadequate. He went on to say that if someone wanted to gain access to the building they would invariably find a way in. Mr Oubridge said that Draper House had the benefit of a number of

security services, which included a concierge and security doors on each block.

51. The Tribunal accepted the evidence of Mr Oubridge and found this expenditure to be reasonable and it was allowed as claimed.

2013/14

Block Care & Upkeep - £21,218.21

52. Again, this expenditure related solely to cost of cleaning. The Applicants repeated the same submission they had made for the year 2012/13. For the same reasons set out at paragraph 37 above, this expenditure was found to be reasonable and was allowed as claimed.

Block Responsive Repairs - £20,569.86

53. The Respondent accepted that the sum of £7,898.71 was incorrectly demanded for pest control and that a credit of £3,986.55 has to be applied to the service charge account for this year.

Concierge Works - £2,373

54. This expenditure represents a composite sum for several items of expenditure for repairs carried out to the concierge office at Draper House[2]. The Applicants simply put the Respondent to proof as to this expenditure.

55. Although the explanation given by the Respondent in the breakdown provided to Mr Holden was somewhat brief, it was sufficient to satisfy the Tribunal that the expenditure had been reasonably incurred and was reasonable in amount. The Tribunal found in those terms and allowed the expenditure as claimed.

Lifts - £20,076.64

56. The Applicants repeated the submission they had made in relation to the preceding year to disallow the sum of £8,997.68, being the cost of

[2] see Bundle B/Tab 12.1.171 & 172

repairs directly attributable to the use of the lifts by the contractor. For the same reasons given at paragraphs 47 and 48 above, the sum of £8,997.68 was disallowed also.

Security Services - £564 (individual charge)

57. The Applicants repeated the submission they had made in relation to the preceding year to disallow this sum. For the same reasons set out at paragraphs 50 and 51 above, it was allowed as claimed.

Earlier Years – 2008/09 to 2010/11

58. The Tribunal heard no evidence from the Applicants in relation to these years and, therefore, there was no basis on which the Tribunal could make a finding that the costs demanded were unreasonable. Accordingly, they were allowed as claimed.

Professional Fees and Administration Charges

59. Professional fees were charged as part of the cost of the major works at a rate of 8.20% of the overall cost.

60. Essentially, the Applicants submitted that nothing should be allowed for this expenditure having regard to the conduct of Breyer and the mismanagement of the contract generally by the Respondent.

61. The Tribunal did not accept this submission because it considered that the undoubted failing on the part of Breyer and the findings of mismanagement of the contract had been reflected in the award of compensation made by the Respondent's Housing, Environment, Transport & Community Safety Scrutiny Sub-Committee in its May 2013 report and the additional award of £20 per week that was to be made to the Applicants. It was not the case that the entire project was mismanaged by the Respondent. Therefore, to disallow the professional fees entirely would effectively be imposing a penalty on the Respondent, which the Tribunal did not consider to be appropriate or reasonable in the circumstances.

62. As to the rate of 8.20% for professional fees, the Tribunal found this to be reasonable, especially having regard to the evidence given by Mr Spiller that the going commercial rate was 10-15%. The Tribunal also found support for its finding in the earlier Tribunal case of ***Taylor & Ors v London Borough of Southwark*** (LON/00BE/LSC/2006/0152) when a rates of between 8.22% and 8.65% were held to be reasonable for a similar project such as this one. For the same reasons, the Tribunal found the Respondent's administration charge of 4% to be reasonable.

63. As to the administration fee of 10% levied by the Respondent on the total annual service charge expenditure for the years concerned, the Tribunal had little difficulty in concluding that it is the prescribed contractual rate in the Third Schedule of the lease and it had no power to interfere with that figure: see ***Taylor*** at paragraphs 19-24.

Section 20C & Fees

64. The Applicants had made an application under section 20C of the Act for an order preventing the Respondent from recovering any of the costs it had incurred in responding to this application.

65. In the exercise of its discretion, the test to be adopted by the Tribunal is whether in the circumstances it is just and equitable to make such an order.

66. In the Tribunal's judgement, it does not make an order under section 20C for the following reasons. Despite their limited success, the Tribunal considered the stance taken by the Applicants to be unreasonable even when allowance is made for the fact that they are litigants in person. They had challenged virtually every item of service charge expenditure and had made no reasonable proposals until the hearing itself. This resulted in a much reduced scope of issues. Until that point in time the Respondent had been obliged to spend a substantial amount of time and cost in responding to each and every

challenge that had been made. The tribunal was of the view that greater efforts should have been made by the Applicants to narrow the issues. Although litigants in person, Mr Holden is no stranger to the Tribunal and it transpired that Ms Varicat is an Architect by profession. With that level of expertise, she could and should have been able to refine the issues in this case. Instead, the application and the hearing appear to have been treated as a forensic accounting exercise, which is not the function of this Tribunal or a proper use of its resources.

67. For the same reasons, the Tribunal also makes no order requiring the Respondent to reimburse the Applicants the fees they have paid to have the application issued and heard.

Judge I Mohabir
5 May 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(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.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

IN THE FIRST TIER TRIBUNAL
PROPOERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case ref: LON/00BE/LSC/2014/0445

BETWEEN:

DAVID HOLDEN and others

Applicant

-and-

THE LONDON BOROUGH OF SOUTHWARK

Respondent

CONSENT ORDER

Before Mr Mohabir, Mr Taylor and Mr Ring, sitting on Tuesday 3rd and Wednesday 4th February 2015,

Upon hearing the Applicants in person and Counsel for the Respondent,

IT IS HEREBY RECORDED THAT:

1. The Applicants agree to withdraw items 1.6 to 1.9 and 1.13 inclusive of Appendix 1 of the Schedule of Dispute (which for reference purposes appears at pages 3.1.2 and 3.1.3 of Bundle A in this case), but without prejudice to their right to raise such items by way of challenge to any future invoice representing the Respondent's final account in respect of the major works originally estimated under invoice number 5000152621 dated on or about 26th April 2012.

2. THE APPLICANTS AGREE TO WITHDRAW ITEM 1.1 IN APPENDIX 1 OF THE SCHEDULE OF DISPUTE.

2. The Applicants agree:

And ITEM 1.14

(1) That their only challenge in relation to standard of work under item 1.3 of Appendix 1 of the Schedule of Dispute is the cost of cleaning concrete frame members in the sum of £8435; and

(2) To withdraw such challenge, subject to the Respondent's agreement as set out at paragraphs 3 and 4 below.

3. The Respondent agrees that the "Draper House Contribution" as defined in the Agreement pursuant to s.106 of the Town and Country Planning Act 1990 dated 13th June 2006 between the Respondent and Castle House Developments Ltd and Deutsche Postbank AG, London Branch (which for reference purposes appears at pages 5.1.91 to 5.9.139 of Bundle A in this case) will be deducted from the cost of works in the Respondent's final account in respect of the major works aforementioned. For the avoidance of doubt, in the light of paragraph 4.9 of Schedule 1 to the said Agreement, if the cleaning works to Draper House are completed without the full amount of the "Draper House Contribution" having been expended, the Respondent will deduct from its final account only so much of the amount of the "Draper House Contribution" as has been expended.

4. The Respondent agrees that in its final account in respect of the major works aforementioned the cost of external cleaning will not exceed the "Draper House Contribution".

5. The Respondent agrees that that the cost specified within 1.10 of Appendix 1 of the said Schedule of Dispute (cost of electrical meter boxes) will be

deducted from the Respondent's final account in respect of the major works aforementioned.

7 6. The Respondent agrees that any work not completed under the major works contract will be deducted from the Respondent's final account in respect of the major works.

8 7. The Respondent agrees that the Applicants' contributions in respect of the major works aforementioned will be capped at a total not exceeding that stated in the section 20 notice dated 15th March 2011 (which for reference purposes appears at pages 11.1.1 to 11.1.7 of Bundle A in this case).

Signed.....
For and on behalf of all Applicants

Signed.....
For and on behalf of the Respondent
(Counsel)

IN THE FIRST TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY

BETWEEN:

DAVID HOLDEN and others

Applicants

-and-

THE LONDON BOROUGH OF SOUTHWARK

Respondent

CONSENT ORDER

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