11315

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BE/LSC/2015/0282
Property	:	Flat 28 Bardell House, Dickens Estate, Parkers Row, London, SE1 2DH
Applicant	:	London Borough of Southwark
Representative	:	In House Legal Representative
Appearances for Applicant:	:	(1) Mr Gregory Brutton, Enforcement Officer, London Borough of Southwark (2) Mr Nigel Rice, electrical compliance manager, London Borough of Southwark (3) Mr John Ottley, chartered building surveyor at Blakeney Leigh Ltd (4) Mr Kevin Orford, project manager, London Borough of Southwark (5) Mr David Spiller, chartered building surveyor, Potter Raper Partnership (6) Mr Joseph Sheehy, capital works costs and consultation officer
Respondent	:	Peter Kokkinos
Representative	:	In Person
Appearances for Tenant:	:	Peter Kokkinos
Type of Application	:	For the determination of the reasonableness of and the liability to pay

		service charges and liability to pay administration charges
Tribunal Members	:	(1) Mr A Vance, Tribunal Judge (2) Mr H Geddes, JP RIBA (3) Ms R Turner, JP
Date and venue of Hearing	:	12 and 13 November 2015 10 Alfred Place, London WC1E 7LR
Date of Decision	:	11 December 2015

DECISION

Decision of the Tribunal

1. The Tribunal determines that the sum of £1,114.97 is payable by the Respondent to the Applicant in respect of the *actual* costs of a major works exercise concerning a Lateral Mains Upgrade broken down as follows:

Service Charge Year	Amount
2011/12	£726.32
2012/13	£360.78
2013/14	£27.87

As the Respondent paid £250 in January 2015 the amount currently payable by him for these costs is £864.97.

2. The Tribunal determines that the sum of £4,014.18 is payable by the Respondent to the Applicant in respect of the *estimated* costs of a major works exercise concerning Warm Dry and Safe Works for the 2014/15 service charge year. Taking into account a payment of £1,399.28 by the Respondent the amount currently payable by him towards these costs is £2,614.90.

3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 preventing the Applicants' costs of the Tribunal proceedings from being passed on to lessees through any service charge.

Background

4. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of two sets of major works relevant to the 2011/12 and 2014/15 service charge years.
5. The relevant legal provisions are set out in Appendix 1 to this decision.
6. References in bold and in square brackets below refer to pages in the hearing bundles prepared by the Applicant.
7. Proceedings were originally issued in the County Court Business Centre under claim no. B85YJ680 ("the County Court Claim") **[5]** which were subsequently transferred to this Tribunal by order of District Judge Zimmels sitting at the Lambeth County Court dated 4 July 2015 **[177]**.
8. The parties have been involved in a previous claim before this Tribunal, LON/00BE/LSC/2015/0094 which had also been referred from the County Court in

which the Tribunal made a determination dated 5 June 2015 concerning the annual recurring service charges for the service charge years 2011/12 (actual), 2013/14 (estimated) and 2014/15 (estimated).

9. In the County Court Claim the Applicant claimed a total sum of £4,867.63 together with interest and costs. The sum of £4,867.63 was broken down as follows:

   (i) £155.43 in respect of the balance due for ordinary recurring annual service charge for the 2012/13 service charge year;

   (ii) £864.97 being a sum said to be outstanding for the 2011/12 service charge year concerning the estimated costs of a lateral mains upgrade major works exercise (the "Lateral Mains Upgrade Works"),

   (iii) £3,847.23 being a sum said to be outstanding for the 2014/15 service charge year concerning the estimated costs of a Warm Dry and Safe major works exercise (the "Warm Dry and Safe Works"),

10. At the start of the hearing the Tribunal was informed that the annual service charge for the 2012/13 service charge year was no longer in dispute between the parties who had reached agreement as to the sum payable by Respondent and that this sum had been paid in full.

11. The Respondent is the long lessee of Flat 28 Bardell House ("the Flat"), a two-bedroom first floor flat in Bardell House which forms part of the wider Dickens Estate ("the Estate"). Bardell House consists of four, four-storey blocks each containing eight flats. The Flat is located in a block which contains Flats 25-32 ("the Building"). The Applicant is the Respondent's landlord.

12. An oral case management hearing took place on 28 July 2015, which both parties attended and directions were issued by the Tribunal on the same day **[179]**. At that hearing the Applicant requested permission to amend the County Court Claim to substitute the date and details of the actual/final account for the Lateral Mains Upgrade Works as the final figures were available. The Judge dealing with the case management hearing considered that given the wide terms of the referral by District Judge Zimmels at Lambeth County Court the Tribunal had power to allow such an alteration and granted permission. The Respondent did not object.

Inspection

13. The Tribunal carried out an inspection on the morning of the first day of the hearing. It inspected: the private balcony to the Respondent's flat; the asphalt flooring to the communal walkway in the Building; the flooring in a neighbouring block; the front door to the Flat; the newly installed doors in several flats both in the Building and in the neighbouring block for Bardell House; and the steel trunking encapsulating the newly-installed electrical cabling in Bardell House. The Respondent was present as were all of the Applicant's representatives listed above except for Mr Spiller.

The Hearing

14. The following additional documents were provided by the parties to the Tribunal at the hearing and neither party objected to their admission in evidence (which the Tribunal consented to):

    (i) A copy of the invoice for the estimated costs of the Lateral Mains Upgrade Works dated 26 April 2012 **[249A – 249G]**.

    (ii) A photographic schedule taken by the Respondent showing the size of gaps under some of the doors installed as part of the Warm Dry and Safe Works **[394A-C]**.

    (iii) An email and letter from the Respondent to the Applicant dated 12 February 2014 **[394D-F]**.

    (iv) A snagging list dated 4 March 2015 in respect of the Warm Dry and Safe Works at Bardell House provided at the Tribunal's request by the Applicant **[394G-K]**.

    (v) A technical sheet relating to the Triflex asphalting used by the Applicant **[394M-S]**; and

    (vi) A technical sheet relating to the fire stop sealant used by the Applicant to seal gaps around the doors installed as part of the Warm Dry and Safe Works **[394T-Zb]**.

15. The Tribunal heard oral evidence from the Respondent, Mr Ottley and Mr Sheehy.

16. Given concessions made by the Applicant during the course of the hearing the Tribunal requested that the Applicant recalculate the sums that it considered are payable by the respondent in respect of the County Court claim and provide short written submissions on that point. They duly did so and the respondent submitted a written reply.

The Lease

17. The Respondent's lease of the Flat **[199]** ("the Lease") is in the standard form adopted by the Applicant for long leases granted under the 'Right to Buy' provisions of the Housing Act 1985. It is dated 23 January 1989 and is made between (1) the Applicant and (2) the respondent and Maritsa Kokkinos and was made for a term of 125 years. It includes covenants for the applicant to provide services and for the respondent to contribute towards their cost through an annual service charge.

18. The relevant provisions governing the annual service charge are set out in Part I of the Third Schedule and are identical to those considered by the Upper Tribunal (Lands Chamber) in the case of ***London Borough of Southwark v Dirk Andrea Woelke [2013] UKUT 0349 (LC)***. They are:

"1(1) In this Schedule "year" means a year beginning on 1 April and ending on 31 March

1(2) Time shall not be of the essence for service of any notice under this Schedule

2(1) Before the commencement of each year (except the year in which this lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Lessee by way of Service Charge (as hereinafter defined) in that year and shall notify the Lessee of that estimate

2(2) The Lessee shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal payments on 1 April 1 July, 1 October and 1 January in each year (hereinafter referred to as "the payment days")

3 [Apportionment of expenditure in first year of term]

4(1) As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Lessee of the amount thereof

4(2) Such notice shall contain or be accompanied by a summary of the costs incurred by the Council of the kinds referred to in paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule.

5(1) If the Service Charge for the year (or in respect of the first year hereof the apportioned part thereof) exceeds the amount paid in advance under paragraph 2 or 3 of this Schedule the Lessee shall pay the balance thereof to the Council within one month of service of the said notice

5(2) If the amount so paid in advance by the Lessee exceeds the Service Charge for the year (or the apportioned part thereof for the first year hereof) the balance shall be credited against the next advance payment or payments due from the Lessee (or if this lease has then been determined be repaid to the Lessee)

6(1) The Service Charge payable by the Lessee shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year

6(2) The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses

7 [A list of costs and expenses]

8 The summary of costs referred to in paragraph 4 of this Schedule shall contain an explanation of the manner in which the proportion of those costs

apportioned to the flat under paragraph 6 of this Schedule have been calculated."

The Lateral Mains Upgrade Works

The Applicant's Case

19. Mr Sheehy's evidence **[465-6]** was that these works started on 1 February 2012, achieved practical completion on 1 June 2012 and reached the end of the defects liability period on around 9 July 2013.

20. The evidence from Mr Rice, who project managed these works was that they were undertaken throughout Bardell House and entailed removing disused electrical cabling and equipment and the installation of new lateral mains cabling and Ryefield Boards as well as related system testing. He explains in his witness statement **[401]** that the previous lateral mains distribution system involved single core cables in a metallic conduit that were concealed within the fabric of the Building. These, he states, had reached the end of their usable life and were in need of replacement.

21. At paragraphs 17 to 23 of his statement Mr Rice states that since 2010 the Applicant has instigated a cyclical periodical electrical testing regime to its communal electrical installations. He explains that the Applicant commenced these major works because EDF had refused to work on the installation at Block 9-16 Bardell House if the existing cables in that block were to fail. This was because of the type, age and condition of the cables. There was therefore a risk that the residents would be without electricity in the event of a minor breakdown to the installation as parts for the equipment were no longer being manufactured and EDF would not be willing to work on the installation. As the other blocks within Bardell house had wiring of the same age and condition the need to replace the main distribution system equipment and wiring in all these blocks was reviewed and the works extended to those blocks.

22. The works were carried out by Standage & Co Limited following a competitive tendering exercise and a statutory consultation exercise under s.20 of the 1985 Act. The initial Notice of Intention is dated 6 May 2011 **[236A]** and this was followed by a Notice of Proposal dated 20 September 2011 **[240]**.

23. The final rechargeable costs for these works are now available. The final account calculation sheet **[262]** shows the total recharge amount for the Building as £30,890.98 and that the respondent's contribution was £1,114.97. This was payable by the respondent over three service charge years. A copy of the final major works

invoice dated 19 December 2013 **[250-260]** explains to him that his individual contribution due for the 2011/12 service charge year was £726.32 **[254]**, £360.78 for the 2012/13 service charge year **[257]** and £27.87 for 2013/14 **[260]**. As the respondent paid £250 in January 2015 the Applicant's position was that he owed a total of £864.97 towards the actual costs of these works.

24. The Applicant contended that these costs had been properly incurred, that works were carried out to a reasonable standard and that the costs were reasonable in amount.

The Respondent's Case

25. The Respondent had four challenges. Firstly, as in the case of *Woelke*, he considered that the costs had not been demanded in accordance with the provisions of the Lease. He contended that the 2011/12 service charge demand should have included both the ordinary service charges and any major works contracts that were carried out in the same service charge year. Instead of this, he was notified of the estimated costs of the annual recurring service charge in a notice on 1 April 2011 **[343]** and, some five months later, received the Notice of Proposal dated 20 September 2011.

26. Secondly, he argued that the Applicant had not complied with the s.20 consultation procedure in that although he was invited to inspect detailed estimates for the works he was not informed of right to inspect and take copies of a detailed *specification* of the works.

27. Thirdly, he considered that the works had been carried out to an unreasonable standard. His position was that the surface mounting and boxing inside metal trunking of the electrical cabling in the communal stairwell was unattractive. In addition, he contended that whilst the works were underway several six inch holes were left uncovered on floors for some time as shown by his photographic evidence **[346]**. He also suggested that subsequent repair work following a breakdown in the main distribution board was linked to these major works and amounted to evidence that the works were not carried out to a reasonable standard.

28. Finally, he considered that costs had been unreasonably incurred in connection with the removal of the old electrical cabling as he believed that some of the original cabling remains buried within the walls. In addition, he argued that these works were only required because of the historic neglect of the of the previous electrical installation by the applicant.

Decision and Reasons

29. The full amount demanded by the applicant towards the actual costs of these works in the sum of £1,114.97 is payable by the Respondent and has been reasonably incurred.

30. The Respondent has misunderstood the relevance of the decision in *Woelke* to the facts of his case. Following the Tribunal's decision at the case management hearing this Tribunal is required to determine the payability of the *actual* costs of the Lateral Mains Upgrade Works and not the *estimated* costs.

31. Before us, Mr Brutton conceded that the Applicant's invoice for the estimated costs of the Lateral Mains Upgrade Works dated 26 April 2012 did not comply with the guidelines in *Woelke*. However, in his submission the invoice for the *actual* costs dated 19 December 2013 was compliant. The Tribunal agrees. The starting point is the parties' respective obligations under the relevant service charge provisions of the Lease as helpfully interpreted by the Upper Tribunal in *Woelke*.

32. Paragraph 2(1) of Part I of the Third Schedule of the Lease obliges the Applicant to notify a lessee of the estimated amount which will be payable by the lessee, by way of service charge, before the beginning of the year. However, paragraph 1(2) states expressly that time is not of the essence for service of that notification.

33. Therefore, if the Applicant failed to give notice of its estimate for the year before the commencement of the service charge year on 1 April the lessees would be under no obligation to make a payment in advance on that date. However, as time is not of the essence, it would not be prevented from doing so at a later date.

34. The Respondent's obligation under paragraph 2(2) is to make payments quarterly in response to the Applicant's notification of its reasonable estimate of the amount which will be payable by him by way of service charge in the forthcoming year. He has no obligation to pay until proper notification is given.

35. In *Woelke* (para 51) the Upper Tribunal concluded that the obligation on the Applicant at paragraph 2(1) to provide a reasonable estimate before the start of the service charge year as to the amount which will be payable by the lessee in that year must include any expenditure that the Applicant reasonably anticipates it will incur on major works.

36. As to *actual* costs, paragraph 4(1) of the Third Schedule requires the Applicant, as soon as practicable after the end of each year, to ascertain the service charge payable for that year and to notify the lessee of the amount. In *Woelke* the Upper Tribunal

considered that Paragraphs 4(1), 4(2) and 8 lay down the minimum requirements of a valid notification under paragraph 4. It held that:

> *"55. Paragraphs 4(1), 4(2) and 8 lay down the minimum requirements of a valid notification. It must have four features:*
>
> *(1) It must notify the leaseholder of the amount of the Service Charge payable for the relevant year.*
>
> *(2) It must contain or be accompanied by a summary of the costs incurred by the appellant of the kinds referred to in paragraph 7.*
>
> *(3) It must state the balance (if any) due under paragraph 5.*
>
> *(4) The summary of costs which it contains must include an explanation of the manner in which the proportion of those costs apportioned to the flat under paragraph 6 has been calculated."*

37. The Applicant has conceded that in this case the major works invoice for the estimated costs was defective. In the Tribunal's view he was right to so as the notice was limited to only the Lateral Mains Upgrade Works and did not include an estimate of the total service charge for the 2011/12 service charge year. The consequence of omitting the major works from the estimate previously provided to the Respondent under paragraph 2(1) dated 1 April 2011 was that the Applicant was not entitled to any advance payment towards the cost of those works and was required to wait until after the year end to include the cost in the final service charge account. This is what the Applicant has done by including these costs in its notice of 19 December 2013.

38. In the Tribunal's view the notice of 19 December 2013 is a valid notice under paragraph 4 of the Lease and it meets the four-stage test set out in paragraph 55 of the Upper Tribunal's decision in *Woelke*. It notifies the Respondent of the amount payable by him in respect of both the actual annual recurring service charges for the 2011/12; 2012/13 service charge years plus the estimated annual recurring service charges payable for 2013/14 service charge year. It also sets out the sums due from the respondent for each of those three service charge years in respect of the Lateral Mains Upgrade major works. It contains a summary of the costs incurred by the applicant for the major works and breaks down the total amount incurred of £38,205.19 between the three years. It also includes an explanation as to how those costs have been apportioned to the Respondent and as the final costs were less than

the estimated costs states that a credit note of £247.90 has been issued in the Respondent's favour.

39. Therefore, as the Applicant failed to take account of the major works in its original estimate for the 2011/12 service charge year it was not entitled to collect advance payments from the Respondent towards these major works in that service charge year. However, the costs incurred remain part of the service charge for the 2011/12; 2012/13 and 2013/14 service charge years in which the costs were incurred and as the actual costs of the works have now been included in a proper notice under paragraph 4(1) the Applicant is entitled to seek to recover them from the respondent.

40. The Tribunal does not accept the Respondent's suggestion that it was incorrect for the Applicant to spread the estimated costs of the major works over a period of three years. This is what the Applicant is obliged to do as the costs themselves were incurred over three years and it would have been inappropriate for the lessees to contribute towards anticipated costs where those costs were not likely to be incurred in the forthcoming service charge year.

41. As explained to the Respondent at the hearing his contention that the Applicant had not complied with the s.20 consultation procedure for these works because he was not informed of right to inspect and take copies of a detailed specification of works was based on a misunderstanding of the relevant statutory requirements. The Respondent's submission was based on his reading of the old statutory consultation procedure under Section 20 of the 1985 Act before it was amended by the Commonhold and Leasehold Reform Act 2002, Section 151. The new requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") which separate out the consultation procedures into four schedules. The relevant schedule for both of the major works exercises in issue in this application is Schedule 4 (Part 2). The full text of this schedule is set out in the appendix to this decision and it will be seen that it does not confer a right on a lessee to inspect or take copies of a detailed specification of works and it does not impose an obligation on a lessor to facilitate this.

42. Having had the benefit of inspecting the Building the Tribunal does not agree that these major works had been carried out to an unreasonable standard. It disagrees with the Respondent's suggestion that the surface mounting and boxing of the electrical conduits inside metal trunking is unattractive. We accept, and see no reason to doubt, Mr Rice's evidence that the aluminium coverings were installed to improve the aesthetic appearance of the cabling and that the existing conduits in the fabric of the Building could not be used as they were too small to accommodate modern cabling. We also accept as credible his evidence that there would have been substantial practical difficulties, as well as expense, in seeking to remove the

existing cabling given the age of the cables which, he stated, deteriorate within the building fabric. In the Tribunal's view the method adopted by the Applicant was clearly reasonable. The Respondent's suggestion that the cabling could have been taken up the lift shafts is pure speculation and we consider it very unlikely, as Mr Rice suggested, that such a proposal would be compliant with electrical and lift regulations.

43. The Respondent states that he expected the aluminium trunking to be painted as this is stated in an electrical inspection sheet dated 15 February 2012. However, Mr Rice's oral evidence was that this was never intended and that the inspector's reference was mistaken. Painting was not, he said, included in the tendered contract price **[556]**. In light of the non-inclusion in the price tender report the Tribunal accepts Mr Rice's evidence that the reference was erroneous.

44. We also accept as credible Mr Rice's evidence that these works were necessary due to EDF's reluctance to work on the cables at 1-9 Bardwell House and that it was reasonable to extend these works to all of the blocks in Bardwell House. Given that the original installations were of the same age and type we accept that it would have been cheaper to carry out the works to each block under the same contract rather than separately.

45. We do not agree with the Respondent's contention that as part of the s.20 consultation process he should have been notified that the cabling was to be surface mounted. To go into such detail would impose an unduly onerous and altogether inappropriate obligation on the Applicant. Its obligation in the Notice of Intention is to describe, in *general terms*, the works proposed to be carried out or to specify a (reasonable) place and hours at which a description of the works may be inspected. Neither this obligation nor the Applicant's obligation to have regard to observations and to notify lessees of estimates obtained after the tendering exercise require the Applicant to go into the level of specific detail the respondent seeks.

46. There is a paucity of evidence regarding the Respondent's contention that whilst the works were underway several core holes were left uncovered on floors for up to three weeks. The photographic evidence he produced shows several holes but the Respondent acknowledged before us that he could not recall making any complaints to the applicant at the time the works were taking place. Mr Rice's evidence was that no complaints were received. In the absence of any such complaints the Tribunal considers there is inadequate evidence to establish that the works were carried out to an unreasonable standard. This also applies to the Respondent's other contention that the workmen left excessive dust in place when the works were taking place.

47. The Tribunal considers there is insufficient evidence to support the Respondent's assertions as to historic neglect by the applicant of the electrical installations or that

subsequent repair work carried to the installation amounts to evidence that the major works were not carried out to a reasonable standard.

48. Nor do we agree with the Respondent's assertion that some of the costs of the works had been unreasonably incurred because some of the old cabling was still buried in the walls. We accept Mr Rice's evidence that it would have been expensive and disruptive to remove them. There is no evidence that the actual costs incurred were unreasonable in amount.

The Warm Dry and Safe Works

The Applicant's Case

49. The Tribunal was informed by Mr Brutton that these major works commenced on 20 January 2014 and achieved practical completion on 31 March 2015. The defects liability period is still running and is due to end around 31 March 2016.

50. In his witness statement **[395-400]**, Mr Orford states that the works were necessary as visual surveys had identified that extensive repair and renewal works were needed across the Estate, including works to balconies and fire doors.

51. Mr Ottley, a building surveyor at Blakeney Leigh Ltd , the company who prepared a feasibility report for these works, has provided a witness statement **[442-447]**. A copy of the feasibility report is exhibited to his witness statement **[449-455]**.

52. The works were carried out by Standage & Co Limited following a competitive tendering exercise and a statutory consultation exercise under s.20 of the 1985 Act. The initial Notice of Intention issued on 29 May 2013 **[266]** and contained an error as to date which was rectified by a letter dated 27 June 2013 **[271]**. This was followed by a Notice of Proposal issued on 21 October 2013 **[272]**. This contained a misprint which was corrected by letter dated 30 October 2013 **[283]**.

53. The estimated rechargeable block costs for these works is £166,669.83 and by letter dated 30 January 2014 the Respondent was notified that his contribution, totalling £5,597.55, was payable by him over the course of three service charge years **[293-303]**. £1,214.03 was payable in the 2013/14 service charge year, £4,032.58 in the 2014/15 service charge year and £350.04 in the 2015/16 service charge year. Following the assertion made by the Respondent at the hearing that one of the flats in the Block had an additional bedroom the Applicant agreed to recalculate these figures whilst his assertion was investigated. This has resulted in a revised rechargeable block costs figure of £166,671.50 of which the Respondent's

contribution is now £5,572.16 with £1,208.60 due in the 2013/14 service charge year, £4,014.18 in 2014/15 and £349.37 in 2015/16.

54. The figures in the previous paragraph were, says Mr Brutton in his supplemental submissions, based on the expenditure incurred by the applicant during the three years in question. The contractor is, he says, paid in periodic instalments once a particular stage of the contract is successfully completed. This is confirmed by Mr Sheehy in his witness statement.

55. Mr Brutton accepts, however, that the Applicant failed to take account of the major works in its original notification for the 2013/14 service charge year dated 27 February 2013 **[361-2]** and that the consequence of this is that the Applicant is not currently entitled to any advance payment towards the estimated cost of those works as demanded in respect of the 2013/14 service charge year. This, it appears, is why these costs were omitted from the sum claimed in the County Court Claim. He stated that the Applicant would, instead, seek to recover the appropriate contribution due from the Respondent for 2013/14 when the final costs of the major works exercise were known.

56. However, Mr Brutton's position is that letter dated 30 January 2014 amounted to proper notification to the Respondent as to the amount payable by him within the 2014/15 service charge year in respect of the estimated costs of these works. Mr Brutton went on to say that the Applicant allocated a payment of £1,399.28 made by the Respondent in January 2015 to clear the 2013/14 charge (which he now accepts was not payable by the Respondent at that time) with the remainder allocated to the 2014/15 charge. When the Respondent's payment is reallocated to the 2014/15 service charge year, and with the adjustment for bed weighting taken into account, he considered that the sum now payable by the Respondent for the 2014/15 service charge year was £2,614.90.

57. The Applicant's position was that the works were required, that the costs incurred to date were reasonable and that the works, with the exception of the installation of some of the fire doors, had been carried out to a reasonable standard.

58. Mr Ottley conceded, however, that the installation of some of the fire doors had left gaps beneath the door and floor and which required attention. This had been identified in the snagging list dated 4 March 2015 prepared by the Clerk of Works at Blakeney Leigh, Stephanie Braithwaite **[394G]**, who records that the door company should inspect all of the front entrance doors and pack where necessary.

59. At paragraph 22 of his witness statement Mr Ottley states that where gaps between a door frame and structure are apparent after fitting the door set small gaps of up to

10mm can be filled with mastic. Gaps of up to 25mm may be filled with polyurethane foam and gaps larger than that should be packed with solid timber. He confirmed this in oral evidence to us and provided an assurance that he and the door contractor would inspect all of the doors in the Block and the neighbouring block in the week following the Tribunal hearing and that he would will ask the contractor to identify which doors need attention and which of the three methods identified in his statement was appropriate. Remedial works to the doors would then take another one or two weeks.

The Respondent's Case

60. The Respondent did not challenge the quantum of the estimated costs. Instead, he challenged the following:

Consultation

61. As with the Lateral Mains Upgrade Works, the Respondent contented that the Applicant had not complied with the s.20 consultation procedure in that whilst he was invited to inspect detailed estimates for the works he was not informed of the right to inspect and take copies of a detailed specification of the works. He acknowledged that the Applicant had sent him a costs breakdown of the works, a Bill of Quantities and a description detailing the cost and extent of the works carried out **[358]**. However, he had requested, but was not provided with, a copy of the full specification which would have included detail such as a diagram for the fire doors to be installed.

62. He also argued that further consultation should have taken place over and above the right to make observations within the period provided for in the Notice of Intention and the Notice of Proposal. He had requested at point 21 of his letter to the Applicant of 25 November 13 [**357**] that the Applicant should allow residents the opportunity to make further observations after the Applicant had carried out an inspection of the balconies and before asphalting works commenced.

Balcony Works

63. The Respondent's position was that his private balcony did not require asphalting as it was in very good condition prior to commencement of the works. The same, he said, was true of the other balconies at Bardell House that were re-asphalted as part of this major works exercise. He believed that the only repair relating to a balcony since 2001/2 was in 2013/14 when a balcony was damaged by a leaking overhead roof.

64. He also considered that the asphalting work was not carried out to a reasonable standard in that the new surface was too rough and could, for example, cause abrasions if a child fell over. In addition, plaster had been splashed and paint spilled on some of the balconies during the course of the major works. Further, cladding fibres had clogged up some of the roof drains and the drains on the balconies. The Respondent believed that works to the balconies had a detrimental overall impact.

Fire Doors

65. The Respondent's principal challenge to this item concerned the standard of workmanship which he considered to be well below an acceptable standard. He believed that the initial measurements for the new doors were inaccurate and that this is why there are now large gaps around many of the door frames. He also considered that the doors had been poorly installed and that some did not sit squarely in their frames. Further, he believed that sealant used to seal gaps around the doors would not provide fire and smoke protection for at least 30 minutes. He also argued that the doors that were installed were of a different design to the one on show at a meeting with residents and that the Applicant's contractors may have inappropriately interfered with BT telephone lines during the door installation.

Timing of Service Charge Payments

66. He contended that the 30 January 2014 letter was defective in that it sought payment from him not only for the 2013/14 service charge year (the year in which the invoice was issued) but for also sums said to be due in the two subsequent service charge years. This was inappropriate because the paragraph 4(1) of the Third Schedule to the Lease requires the Applicant to ascertain the service charge due as soon as practicable after the end of the service charge year and not three years later. The consequence of this spreading of the cost over three years is, he says, that there will be an unreasonable delay before the final costs are known as these will not be calculated until the end of the defects liability period for the works, which are taking place over 10 blocks. He argued that the major works cost should have been demanded within one service charge year and paid for by lessees in four equal instalments on the quarter days within that year and not by 12 unequal instalments over three years.

Decision and Reasons

67. The sum payable by the respondent for towards the estimated costs of the Warm Dry and Safe Works in the 2014/15 service charge year is £4014.18.

Consultation

68. As stated above, Schedule 4 (Part 2) of the 2003 Regulations does not confer a right on a lessee to inspect or take copies of a detailed specification of a major works exercise as part of the s.20 consultation process. Despite this, the Applicant appears to have gone beyond its strict obligations to accommodate the Respondent's detailed requests for information. It was common ground that the Respondent was sent a copy of the relevant Bill of Quantities which Mr Sheehy states in his witness statement, and which we accept in the absence of any evidence to the contrary, listed each item of planned work and its cost. The Respondent then requested the technical specifications for the contract and at point 30 of a letter dated 9 December 2013 **[359]** the Applicant stated that the specification he wished to see was extremely lengthy and was in the region of 500 pages. He was advised that if he wanted to inspect it arrangements could be made to do so at the Applicant's offices.

69. The Respondent accepted that invitation by letter dated 12 February 2014 **[394G]** and asked if arrangements could be made for viewing the specification. His evidence was that he received no response to that letter and that he repeated his request for an appointment (although there was no evidence of this in the bundle).

70. Whether or not the Applicant was remiss in not responding to his request for access (and we are not persuaded on the evidence that it was) this is not a relevant to the Respondent's contention that the s.20 consultation was flawed. The consultation process did not require the Applicant to provide access to a detailed specification of works.

71. The obligation on a landlord in the initial consultation notice is, broadly speaking, to describe the works proposed to be carried out in general terms as well as the reasons for carrying out the proposed works and to invite observations in writing. It then has a duty to have regard to any observations made by lessees

72. At tender stage the landlord must then make all of the estimates obtained available for inspection, invite observations in writing regarding the estimates and have regard to any observations received by the due date. The statutory consultation procedure does not, as the Respondent suggests, oblige a landlord to respond to further observations made after the due date specified in the two statutory notices.

73. We therefore reject the Respondent's submission that the Applicant did not comply with the statutory consultation procedure.

Balcony Works

74. In our view the evidence indicates that it was not unreasonable for the Applicant to incur the costs of the works carried out to both the public and private balconies.

75. In a letter dated 12 November 2013 **[542-7]** the Applicant addressed a long list of queries raised by the Respondent. He was informed, at point 21, that the individual balconies had not yet been inspected but that this would take place before asphalting work began and that re-asphalting would only take place if required. He was informed that there had been no works carried out to the private balconies for over 15 years and that with a block of the age and construction of Bardell House the Applicant had every reason to expect that it was now time for balcony surface renewal and that this would correspond with its experience of wear and tear to private balconies at other blocks.

76. Mr Orford was the project manager in charge of the Warm Dry and Safe Works. In his witness statement he explains that the works in this project were identified as part of the Applicant's cyclical refurbishment programme designed to ensure a reasonable state of repair. Visual surveys had, he says, identified that works were necessary across the Estate.

77. Mr Ottley, the chartered surveyor at Blakeney Leigh Ltd, in oral evidence to us, stated that a feasibility report was commissioned **[449-455]** and he personally inspected the balconies on the Estate in June/July 2014 following which the contractors quoted a unit price of £629 to renew the asphalt surfacing on the private balconies at 1-32 Bardell House. He stated that three options were considered at the time. Firstly, to do nothing, if the balcony was in good condition. Secondly, to replace the surfacing completely. Thirdly, to repair and apply Spartan tiling. A consultation then took place with the residents in the block and the Respondent's position was that he did not want Spartan floor tiles fitted to his balcony. In the event, as all of the balconies had some level of disrepair from minor indentations to splits in the system Mr Ottley stated that the decision was taken to apply a Triflex waterproofing and surfacing system **[394M]**.

78. As for the public balconies, Mr Ottley stated in his witness statement that full asphalt repair was not needed but to prolong the life of the asphalt an overcoat system was applied which had a non-slip finish.

79. The Tribunal found Mr Ottley to be a credible witness. Weighing up the evidence it is our view that the Applicant acted reasonably in carrying out these works to the private and public balconies. The Respondent did not disagree that there had been no works carried out to the private balconies for over 15 years. We consider it reasonable and responsible for the authority to carry out a programme of cyclical repairs and we accept Mr Ottley's evidence that works were required to both the private and public balconies, including to the Respondent's balcony.

80. We do not agree with the respondent's contention that works have been carried out to an unreasonable standard. The Tribunal had the benefit of inspecting his balcony and a communal balcony in the Block and consider that there is no evidence of poor workmanship. We accept Mr Ottley's evidence that there has to be some 'grit' to the surface in order to make it non-slip which could be a particular problem in wet or frozen weather. We saw no evidence, on our inspection, of any plaster or paint spillage on the areas we inspected nor evidence that cladding fibres had clogged up some of the drains on the balconies. There is insufficient evidence, in our view, to lead us to conclude that these works were not carried out to a reasonable standard. In addition, as the contract is still in the defects liability period the Respondent can draw any defects to the Applicant's attention and request that they be resolved.

81. We do not, therefore, consider that there is any evidence to conclude that the estimated costs for these items have been unreasonably incurred.

Fire Doors

82. We accept that it was reasonable for the applicant to renew the front entrance doors to meet the FD30S standard as indicated in the recommendation to the Strategic Director of Housing and Community Services **[659]** and in light of the findings of the feasibility report. The Respondent was notified in the letter from the Applicant dated 12 November 2013 that an inspection had indicated that the existing doors did not offer 30 minutes fire resistance **[544]** and there is insufficient evidence in our view to conclude that these works were unnecessary.

83. However, it is clear to the Tribunal that there has been a significant problem with the installation of these fire doors. Our inspection revealed that several of the door sets did not appear to fit the doorways and that hardwood cills did not fit properly to the communal floor. Several of the doors had large gaps between the bottom of the door frame and the floor of up to around 20mm.

84. At paragraph 18 of his witness statement Mr Orford's states that the door sets are measured across the whole building and manufactured to an average size to facilitate mass production, thereby securing value for money. The Tribunal accepts that this may be a valid approach but, as Mr Ottley acknowledged, the installation of several of the doors was inadequate as gaps had been left beneath the door and floor and which required attention.

85. It is unimpressive that this issue was identified in the snagging list of 4 March 2015 but that no action had been taken since that date to remedy the problem. Meanwhile, it appears that some of the residents have taken their own measures to fill the gaps.

86. Despite the Applicant's failure to respond to this issue even though it had been raised in correspondence from the Respondent, the Tribunal does not consider there is evidence before it that would indicate that the estimated costs of these works was unreasonable. These works are still within the defects liability period and the Applicant has agreed to inspect all of the doors in the Block and to take appropriate steps to fill or pack the gaps at no additional cost to the lessees. That, hopefully, will remedy the situation but the Respondent is aware that he retains the right to challenge the final costs and standard of the Warm Dry and Safe Works to this Tribunal once the final costs are known.

87. We were informed by Mr Ottley that the fire stop sealant in use was Soudafoam and we were provided with a technical sheet that indicates that this meets European fire standard EN-13501-1. There is no evidence to support the Respondent's assertion that the sealant used would not provide fire and smoke protection for at least 30 minutes. We rejected the Respondent's request to burn a sample of the material at the inspection of the Block as we considered this to be of no evidential benefit given that nobody present has the expertise for this to be a useful exercise.

88. We accept as credible Mr Orford's explanation at paragraph 27-28 of his witness statement that the residents at Bardell House were advised that the door set brought to the public meeting referred to by the respondent was not for their blocks and that they would be receiving door sets in line with this pilot door. We also accept his explanation that where a door contractor came across a telephone line drilled through the old door set, it was appropriate to remove and refit it.

Timing of Service Charge Payments

89. Contrary to the Respondent's contentions we do not consider the 30 January 2014 letter to be defective for setting out the sums payable for three service charge years and not just one. It was, as conceded, by Mr Brutton, defective in respect of the 2013/14 service charge year. However, we agree with him that it was a valid notice for the 2014/15 service charge year and one which complies with the requirement at paragraph 2(1) of the Third Schedule to the Lease to provide a reasonable estimate before the start of the service charge year in question as to the amount payable by the Respondent in that year. As required, it includes the expenditure that the Applicant anticipated would be incurred towards the major works exercise together with the estimated costs of the annual recurring service charge **[303]**.

90. As stated above, the Applicant is entitled to spread the estimated costs of a major works exercise over the period that it believes the costs will actually be incurred. We do not accept that to do so will necessarily result in an unreasonable delay in ascertaining the final costs. However, there seems to have been a considerable delay between the end of the defects liability period and the production of the final

account for the Lateral Mains Upgrade Works. The Applicant is reminded of its obligation at paragraph 4(1) of the Third Schedule to provide a final account *as soon as practicable* after the end of each service year. The Respondent may wish to seek legal advice as to his options if he considers this is unduly delayed.

Application under Section 20C

91. At the hearing the Respondent sought an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Applicant incurred in connection with the proceedings before this Tribunal should be regarded as relevant costs in determining the amount of service charge payable by him. Mr Brutton stated that the applicant had no intention to seek such costs and in those circumstances the Tribunal considers it just and equitable to make the order sought.

The next steps

92. As the Tribunal has no jurisdiction over ground rent, interest or county court costs this matter should now be returned to the Lambeth County Court.

Name: Amran Vance Date:11 December 2015

Annex 1

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

(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 – Limitation of service charges: reasonableness

(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 – Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

[.....]

Service Charges (Consultation Requirements) (England) Regulations 2003.

SCHEDULE 4

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

PART 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

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.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

9

(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

10

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

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.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(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.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

12

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

13

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.