FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HPO/2016/0005**
Property	**:**	**Ground Floor Back Addition, 117 Mayville Road, London E11 4PL**
Applicant	**:**	**Lauhrie Mohamed**
Representative	**:**	**Leon Glenister instructed by Kingsley Smith Solicitors LLP**
Respondent	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Monica Walcott**
Interested person	**:**	**N/A**
Type of application	**:**	**Appeal against a Prohibition Order under paragraph 7(1) of Schedule 2 to the Housing Act 2004**
Tribunal members	**:**	**Judge Hargreaves** **Trevor Sennett MA FCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR 7th October 2016**
Date of decision	**:**	**26th October 2016**

DECISION

Decision of the tribunal

(1) The prohibition order made by the London Borough of Waltham Forest on 28th June 2016 in respect of the back addition, 117 Mayville Road, London E11 4PL is confirmed.

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(2) The appeal by the Applicant is therefore dismissed.

Reasons for the Tribunal's decision

Introduction

1. There are two trial bundles, so reference will be to bundles A and R as the case may be (Applicant and Respondent).

2. The Applicant Lauhrie Mohamed appealed against the making of a prohibition order (A9-18) under section 20 of the Housing Act 2004 by the London Borough of Waltham Forest, in respect of a property known as the back addition at 117 Mayville Road, London E11 4PL.

3. The prohibition order was made on 28th June 2016 (A9-22). The appeal to the Tribunal was made on 21st July 2016 (A1-8), directions were issued on 26th July and the matter was heard on 7th October 2016. The Tribunal did not inspect the property.

4. The Applicant himself did not appear at the hearing. He was represented by counsel, Mr Glenister, who called two witnesses on his behalf, Darren Stratton, a building surveyor, and Waseem Ahmed, an employee of Let It Direct, which manages the property for the Applicant. It transpired that the Applicant owns Let It Direct. The Respondent was represented by an in-house lawyer, Ms Walcott, who also called two witnesses. All gave oral evidence.

Background

5. The property is a rear addition to a two storey end of terrace house with access via a side entrance. There are useful photographs at R22-29. There is a brief description in paragraph 2 of the Applicant's expert (Mr Stratton) witness report (A35) as follows: *"The property comprises a single storey building formed in blockwork with external render. The roof is flat, laid to falls, and is covered with mineralised roofing felt. The roof drains into black uPVC rainwater goods. The property is double glazed with uPVC framed windows and entrance door. Internally, the entrance door opens into the kitchen, which leads to the living area/bedroom, with a separate WC/shower room to the rear. The age of the property is unknown."* The freehold title is owned by the Applicant who bought no.117 at auction, complete with the rear addition. No further details were provided as to the time of construction of the rear addition, or whether it had been used for different purposes and then fitted out for residential user. The Respondent's opinion is that it was built after 1979 (eg A31), though there is a brief description by the Respondent's witnesses at A31 which suggests it was built within the last 10 years.

6. There is a plan prepared by Mr Stratton at A43. The accommodation is small, and there is some evidence that it breaches minimum habitable room size recommendations (see David Beach, paragraph 29, R12). This was not contradicted by the Applicant. There are planning disputes, but the Tribunal was not supplied with any details or coherent evidence on the point.

7. The Respondent's description contains conclusions central to it's position ie (i) that it was built recently but without regard to building regulations or standards; (ii) *"the general appearance of the building [and evidence of] poor workmanship indicated that the bungalow had not been constructed on sound/sufficient foundations."* The Applicant's expert witness was at pains to explain that he was neither able nor qualified to comment on the foundations.

8. That was information easily within the Applicant's grasp had he chosen to obtain it and present it to the Tribunal at the hearing. Instead, the Applicant had recently instructed builders to dig trial pits, the results are unknown. He had applied for an adjournment immediately prior to the hearing, and that had been refused by Judge Barran. Mr Glenister did not renew the application for an adjournment.

9. The Applicant appears to have let the property to short-term tenants, though details as to how the Respondent came to be alerted to the condition of the property were not provided in detail: it appears that a neighbour might have alerted the Respondent.

10. As a result, Gaynor Ndu, a housing and licensing officer employed by the Respondent, attended the property on 21st and 28th May 2015 unannounced and failed to obtain access. She finally arranged an inspection on 24th February 2016, a delay she attributed to communication problems with the Applicant's agent, and to her workload. These matters are addressed in her statement at R1-5. Her description of her findings in February 2016 is set out in paragraph 14 of her evidence at R3. She identified a category 1 hazard (excess cold) and a category 2 hazard (fire). She discussed her findings with David Beach, the Respondent's second witness, who inspected the property on 14th April 2016, and the consequence was that the Respondent served a notice of intention to serve a prohibition order and then the order (R32-45).

11. David Beach's written evidence is at R7-14. He is a qualified environmental health officer with a relevant BSc degree qualification with 20 years' practical experience in this field. Despite Mr Glenister's cross examination to the contrary, he struck the Tribunal as sensible, experienced and well qualified to give the evidence he gave with the conclusions he reached. See paragraphs 2-8 of his evidence. Although he refers in his witness statement at paragraph 22 to previous advice supplied to the Respondent by another of its officers, Sean Lines, a

building control officer, we consider that Mr Beach's evidence stands alone in any event, and Mr Glenister's criticisms of that reliance, even if justified on technical evidential grounds, makes no difference to either Mr Beach's conclusions or the Tribunal's regard for them. His account of his inspection findings is at paragraphs 14-15 at R9. His detailed case on excess cold is at paragraph 17 and on fire, see paragraph 18.

12. In addition the Respondent filed submissions on the applicable law, as did Mr Glenister.

13. The prohibition order at A9 prohibits the use of the dwelling as residential accommodation and annexes two schedules as follows:

    (i) Schedule 1 (R11) identifies one hazard assessed under the Housing Health and Safety Rating System (HHSRS) as a category 1 hazard, namely excess cold due to lack of thermal insulation, and one hazard assessed as a category 2 hazard, being a fire hazard caused by the lack of an automatic fire alarm system.

    (ii) Schedule 2 (R12) states that *"The insubstantial nature of the ground floor rear extension structure means that there are no remedial works that could be carried out which would result in the order being revoked. Other than demolishing the extension and rebuilding it to Building Regulation standard which may also be subject to planning permission."*

14. Mr Beach's witness statement outlines what happened by way of correspondence between the parties after service of the notice, see paragraphs 33-39 at R13. The Respondent remains of the view that the prohibition set out at point 5 of the prohibition order ie *"This order prohibits the use of [the property] as sleeping and living accommodation"* is the only possible answer to the condition of the property.

The law

15. Part I of the Housing Act 2004 (the Act) sets out a regime for the assessment of housing conditions and a range of powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of the Housing Health and Safety Rating System (HHSRS).

16. Where a hazard or several hazards in a property are rated as HHSRS category 1 hazards, the options for enforcement include, by section 5 of the Act, the power to serve an improvement notice under section 11 or the making of a prohibition order under section 20, see also s22.

17. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.

18. A prohibition order is an order which prevents specified residential premises being used for all or any purposes. By section 22 the contents of prohibition orders are prescribed. By section 22(2)(e) the order must specify, in relation to the hazard (or each of the hazards) any remedial action which the authority consider would, if taken in relation to the hazard, result in its revoking the order under section 25. Section 25 requires an authority to revoke an order if it is satisfied that the hazard in respect of which the order was made, does not then exist, a point raised by Mr Glenister (as to which, see below).

19. An improvement notice is a notice requiring the person on whom it is served to take remedial action in respect of the hazard, for example by carrying out the works. The nub of the Applicant's case is that the Respondent should have served an improvement notice, not a prohibition order. It's case on that is contained in Mr Stratton's evidence. That apart, there is a lack of detailed information from the Applicant as to what those improvements might entail. Given the state of the evidence about the trial pits, it is a reasonably fair conclusion that the Applicant is unable to specify the improvements usefully himself.

20. The power to enter premises for the purpose of carrying out a survey or examination of the premises is contained in section 239(3) of the Act. By section 239(5), before entering any premises in exercise of the power is sub-section (3), the authorised person or proper officer must give at least 24 hours' notice of his intention to do so (a) to the owner (if known) and (b) to the occupier (if any). Where admission to the premises has been sought but refused, then by section 240 of the Act a justice of the peace may by warrant authorise entry onto the premises. No issues arise on these provisions in this case.

21. Appeals in respect of prohibition orders are dealt with in Part 3 of Schedule 2 to the Act. Paragraph 7 of that schedule gives a relevant person a general right of appeal against service of a prohibition order. Paragraph 8 provides:

> "8(1) An appeal may be made by a person under paragraph 7 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.
>
> (2) The courses of action are:
>
> (a) serving an improvement notice under section 11 or 12 of this Act…"

The grounds of appeal

22. The Applicant's case is that service of an improvement notice would have been the best course of action in respect of the category 1 and category 2 hazards identified by the Respondent. This is set out briefly and somewhat casually with a temptation to criticise the Respondent in the Applicant's statement of case (beginning of A's bundle). No details are particularised in the actual application form itself. The Applicant relies for detail on his solicitor's letter dated 1st August 2016 (A26) following the letter of 21st July 2016 enclosing Mr Stratton's report (A23). The thrust of the Applicant's position in August is that he wanted to carry out Mr Stratton's recommendations, beginning work by 15th August, with an estimated contract time of 12 weeks.

23. This case is really about the hazard concerning excess cold. There is no real dispute that it would be possible to fit a compliant automatic fire detection and alarm system.

24. Mr Stratton's report is at R34. It indicates at R35 the limits of his inspection. Apart from concluding that the windows and doors provide an *"adequate level of thermal performance"* he concludes that the floor and walls and roof do not. So he proposes at paragraph 4 retrofitting *"insulation to the roof, walls and floor in order to meet with levels of thermal performance as required for a heated, habitable domestic dwelling under the current Building Regulations. Whilst this is likely to reduce the internal space somewhat, this is nevertheless achievable without having to demolish and rebuild the property."*

25. The Respondent's response to the Applicant's post-notice approach is particularised in Ms Ndu's letter dated 25th July at A24. She pointed out (correctly) that the starting point appeared to be that the Applicant accepted that the structure is *"inadequate and gives rise to significant hazards."* She made 4 points supporting the Respondent's approach: (i) the dwelling was built comparatively recently with a disregard to current regulations and standards (ii) the foundations are likely to be inadequate (iii) the wall thickness of 10cm is more susceptible to penetrating damp (iv) Mr Stratton's proposals to retrofit insulation would further reduce available living space. Mr Glenister argues that the Respondent was evidently forced to find further reasons to support its notice once it read Mr Stratton's report because it is obvious that improvements can be carried out. Another way of reading the Respondent's correspondence is that it explains why the proposed improvements *cannot* be relied upon as an answer to the prohibition order.

26. The Applicant's basic case is that (i) as the property is being improved to meet building regulations, an improvement notice is the most appropriate sanction; and (ii) therefore the prohibition order should be quashed. At paragraph 10 of his skeleton argument Mr Glenister

expanded the Applicant's case as follows: *"The Applicant submits, with the support of expert evidence, that the [property] could be improved such that any hazard would be removed. Indeed, such improvements are currently ongoing and will be completed in the coming weeks."* This latter point being wholly unsupported by any filed evidence, Mr Glenister informed the Tribunal on instructions that the following are the relevant facts. There is no evidence that practical completion of any works can be achieved by November. The foundations of the property, as at the date of the hearing, are an issue which requires expert input, not yet obtained, a structural engineer being instructed a couple of weeks prior to the hearing, but no report has been produced. Full details of the proposed improvements are not available to the Tribunal. There is no JCT contract. A letter of instruction was sent to Gill Brothers Construction Limited in August, but there is no evidence as such for the Tribunal.

27. In his oral evidence, supplementing his report and witness statement (A44), Mr Stratton stood by his proposals that insulation could be retro-fitted to deal with the cold hazard identified, and there is no real challenge to that as a technical possibility. He was unable to comment on the points taken by the Respondent as to the adequacy of the structure and fabric of the building, and disputed whether the visible crack across the rear wall, there being no internal cracking, evidence inadequate foundations. He had not revisited the property since preparing his report.

28. In cross examination he accepted that if the property was built or converted for residential use then it does not comply with regulations as a habitable space. He had not been asked to comment on the quality of the dwelling or the adequacy of its foundations, as to which he would have had to take further advice. Somewhat inconsistently with this position, he still ventured to suggest that the rear wall crack did not suggest problems with the foundations, but it is open to the Tribunal to discount that on the basis of his own professed skill limits.

29. In answer to the Tribunal's questions he maintained that retrofitting would be more cost effective than a demolition and rebuild, but he had not been asked to prepare a specification and no precise figures were available to the Tribunal. There are undoubtedly practical difficulties with his proposals, not least rendering the wall along the neighbouring property, up against the fence, though there are obvious work-arounds available if co-operation between neighbours is obtained in order to deal with that. He was frank about his lack of knowledge about the categories of hazards and the assessment system applied under the Housing Act 2004.

30. We conclude that Mr Stratton is a truthful and straightforward witness who was asked limited questions, and gave limited advice to the Applicant which the Tribunal accepts as limited. If we accept his

evidence that the property can be retro-fitted to provide adequate thermal insulation, and a fire detection system, that does not, however, conclude the application in the Applicant's favour.

31. Mr Ahmed's evidence did not really assist the Applicant as not directly relevant to the issues to be considered. He is employed by Let It Direct which is owned by the Applicant, and this property is one of several hundred owned by the Applicant which is managed by his own company. He sent a copy of Mr Stratton's report to an architect and said building regulation inspectors had been appointed, to do what has not been specified. He indicated that there was one letting of the house so thought the property was originally sub-let, though confirmed that it is now vacant. Though he maintained that he was not aware that anyone was living in the property (as opposed to the house), that suggests a degree of casualness towards the property and its inhabitants which is less than satisfactory. He maintained that he thought the property had been used a storage when it was acquired, even though kitted out with a kitchen (including a Bosch dishwasher) and bathroom. The Applicant wishes to enhance the property to retain its value as a capital asset, the idea being to retro-fit it so that it can overcome the identified hazards.

32. What the Applicant's evidence singularly fails to address is the consequence of carrying out the works identified in general terms by Mr Stratton. The Applicant puts to one side the concerns raised by the possible state of the foundations, though he has gone to the point of organising trial holes. This would indicate that the Applicant accepts he has to meet the Respondent's case on the structure of the building, though Mr Glenister submits that as a matter of law, he does not, and the overall structural quality of the building is irrelevant. At paragraph 19 of his skeleton argument Mr Glenister submits: *"On the available evidence, the Applicant submits it is clear improvements can be carried out to make the property fit for human habitation and remedy the identified hazards."* This ignores (i) the question mark over the structural viability of the property and (ii) the fact that its size would breach current standards and be incompatible with the Respondent's stated housing policy and (iii) basically invites the Tribunal to proceed on an imaginary specification.

33. As to (i) his further submissions are that Mr Beach has, in a nutshell, no evidence on which to base his assumptions, and as to (ii) has to resort to the blatantly inadequate defence: *"Just because existing accommodation does not meet current guidelines does not mean it should be put out of use."* That of course fails to meet the Respondent's point: the property is not being put out of use at all by the prohibition order, which plainly contemplates use for storage.

34. Ms Ndu gave evidence first for the Respondent. She was challenged by Mr Glenister as to delay in dealing with the complaint about the

property (but the suggestion that this means the problem was not therefore urgent does not assist the Applicant) and the limits of her professional expertise but we accept that she is experienced in inspecting such properties, has a heavy work load, and even if she did not consult a building surveyor, spoke to her manager David Beach. It is clear that it is arguable that she might have identified more hazards had she spent more time at the property or been able to carry out a more thorough investigation. That does not undermine her approach, nor was she challenged as to the hazards she did identify.

35. The Applicant's main attack was reserved for David Beach. In cross examination it transpired that there was a fundamental difference between his approach to the legislation, and Mr Glenister's. Asked about the Respondent's failure to identify remedial works in Schedule 2 of the notice, Mr Beach said the process is to identify defects which may be hazards under the legislation. Not all defects are hazards. But they are all considered when deciding what remedy is appropriate. As the Respondent concluded that the nature of the dwelling is such that it could not be improved, a prohibition order was appropriate. He contrasted this with the case of a 70's built house: that might be subject to a category 1 hazard in terms of heat loss, for example, but would be capable of being improved because the structure itself would be otherwise sound. He pointed out that Mr Stratton's recommendations involve complete stripping out above ground, tantamount to a rebuilding – but without taking account of what he regarded as an example of *"construction worse than a Victorian standard."* He maintained that it was his experience (which he had to defend in cross examination) that it was likely that where there is a poor structure above ground, there will be a poor structure below ground. In other words, if you invest in proper foundations, you do not erect an inadequate building on top.

36. He was challenged in detail about the evidence of the crack and its significance: since on his own case he regarded this as not important on its own merits, this dispute was something of a red herring which on analysis might unnecessarily have distracted attention from the Respondent's basic case. We conclude that his objections to the structural viability of the property do not depend on the crack, which he would have no doubt investigated with more care had it been necessary to do so, his recording being somewhat superficial. In this case, Mr Beach maintained, someone had built a shed over a yard with blockwork walls and an improvement notice would be *"inconceivable"*. The result of carrying out Mr Stratton's proposals would still produce a *"compromised dwelling"*.

37. Mr Beach was pressed in some detail as to his evidence by the Tribunal. In particular he explained his experience, his conclusions on the sufficiency of the hazards identified (see in particular paragraphs 15 and 16 of his witness statement), and his conclusion that it would be *"perverse"* to serve an improvement notice based on Mr Stratton's

advice, which is the Applicant's only alternative proposal. As Mr Beach pointed out, Mr Stratton's evidence did not indicate that any retro-fitting would make the building comply with building regulations, only the thermal insulation requirements.

The Tribunal's reasons for rejecting the appeal

38. The property above ground is structurally such that it is evidently poorly built. The Applicant has failed to demonstrate that the foundations are sound or that retro-fitting would produce a habitable unit fully compliant with building regulations, and regulations as to minimum sizes. There is no evidence at all at the date of the hearing that the Applicant has any real proposals, and nothing to indicate that they would be cost efficient, in terms of meeting the identified hazards, or producing a sustainable unit of habitable accommodation. Overall, we accept the Respondent's analysis, evidence, and conclusions.

39. In order to evade the consequences of the Applicant's clear evidential deficit, and accepting that he had nothing more than Mr Stratton's report to support his case, Mr Glenister made a number of submissions to support his case that an improvement notice should have been made. In essence he submitted that if there are identified hazards, then if they can be corrected, the Respondent has no choice as to which course of action to take. That is somewhat simplistic. Where there is a category 1 hazard, there is a duty to take action (s5(1), s20). Where there is only one appropriate course of action, then that must be taken. In this case there is a choice and that brings in s5(4) which enables the Respondent to *"take the course of action which they consider to be the most appropriate of those available to them."*

40. Whether at the time of the decision being made, or now, the appeal being a rehearing, the Respondent was in our judgment entitled to consider its overall conclusions as to the nature of the structure. Despite his vigorous cross examination of Mr Beach, and his suggestion that the Respondent's case is flawed because not backed up by the evidence of an expert building surveyor, Mr Glenister has failed to persuade us that the matters taken into account by the Respondent were unsupported by the evidence, or outside the scope of any factors reasonably available for decision making. The criticism that the Respondent's reliance on the structure of the property for the purpose of justifying its decision being reactive in terms of when it was first mentioned to the Applicant is contradicted by Mr Beach's observations as to the nature of the outside walls which he recorded on 14th April: see paragraph 14 of his statement and his explanation at paragraph 17. So it was not entirely reactive: it was a matter he took into account when confirming Ms Ndu's categorisation of relevant hazards.

41. Furthermore, we reject Mr Glenister's submissions as to the weight which the Tribunal can give to Mr Beach's evidence: the Tribunal

listened carefully to his account of his experience, and it would be contrary to ignore it. Mr Glenister's forensic account of the structure/foundations argument does not survive Mr Beach's own factual evidence. As the Tribunal notes, cold as an identifiable hazard is related to structure and even Mr Stratton expressed doubt as to whether the floor has a damp membrane.

42. A further point was taken by Mr Glenister on the operation of the relevant statutory provisions. If a prohibition order is made (s5, s20), then s22(2)(e) provides that it must contain *"any remedial action which the authority considers would, if taken in relation to the hazard, result in their revoking the order under section s25"*. It does not state that it must contain remedial action. S22(2)(b) further states that the prohibition order must identify *"the nature of the hazard concerned and the residential premises on which it exists."* S25(1) then provides: *"The local housing authority must revoke a prohibition order if at any time they are satisfied that the hazard in respect of which the order was made does not then exist on the residential premises specified in the order in accordance with s22(2)(b)."* So, Mr Glenister submits, the Respondent was wrong to say the defects are not capable of being remedied, as *s25(1)* suggests that defects must always be capable of remedy once the [improvement] works are carried out. If that is the case, he argues, then there is no reason not to substitute an improvement notice in this case.

43. There is arguably a tension between *s25(1)* which suggests that once the hazards are addressed so that they are no longer in existence, the prohibition order must be revoked, and the Respondent's decision not to issue an improvement notice on the grounds that even if the hazards are addressed, the appropriate course of action remains to prohibit residential user, no remedial course being available. The short answer is that the point might be interesting but it does not affect the Tribunal's decision now: it might be relevant if the Applicant remedies the stated defects then seeks an order revoking the prohibition order, but that is not the situation the Tribunal is dealing with. There is no evidence that the noted hazards have been addressed. We do not therefore have to express an opinion on the submission. This is an application that an improvement notice should have been made *instead* of a prohibition order, not that the defects have been remedied and therefore the order must be revoked.

44. For the reasons given by the Respondent both in written and oral evidence, we uphold the prohibition order.

Judge Hargreaves

Trevor Sennett MA FCIEH

26th October 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

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) the appropriate 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 20B

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

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

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).