12871

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UN/LIS/2018/0002**
Property	:	**Flats 9 and 10 Cheryl Court, Uplands Road, Clacton on Sea CO15 1BD**
Applicant	:	**Mr Anthony Leonard Wicken**
Representative	:	**Mr Lee Yang - Cornerstone Property Management**
Respondent	:	**Cheryl Court Maintenance Company Limited**
Representative	:	**Mr Arjun Nath - Urbanpoint Property Management Ltd**
Type of Application	:	**S27A Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Member	:	**Judge John Hewitt** **Mr Stephen Moll FRICS** **Mr John Francis QPM**
Date and venue of determination	:	**30 May 2018** **The Lifehouse Spa & Hotel**
Date of Reasons	:	**13 June 2018**

DECISION and REASONS

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The issue(s) before the tribunal and its decision(s)

1. This issues before the tribunal were:

   1.1 The correct identity of the respondent;

   1.2 The service charges payable by the applicant to the respondent in respect of two sets of major works:

      1. External redecoration of the two blocks of flats; and
      2. Works of repair to underground garage and the demolition of its roof.

   1.3 An application pursuant to s20C Landlord and Tenant Act 1985 (the Act).

2. The decisions of the tribunal are:

   2.1 Cheryl Court Maintenance Company Limited shall be designated as the respondent in these proceedings in place of Urbanpoint Property Management Limited (Urbanpoint). (It may be noted that the respondent has appointed Urbanpoint as its managing agent and at the hearing Urbanpoint was represented by Mr Arjun Nath who is the property manager for Cheryl Court).

   2.2 As regards the major works:

      1. External redecoration of the two blocks of flat – the parties informed the tribunal that they had reached a compromise agreement and a mechanism to resolve this dispute. For ease of reference we set out in Schedule 1 to this decision the terms of the agreement that the parties informed us they had arrived at; and

      2. Works of repair to underground garage and the demolition of its roof – we determine the amount payable by the applicant to the respondent in respect of these works is £250 in respect of flat 9 and £250 in respect of flat 10.

   2.3 By consent an order shall be made (and is hereby made) pursuant 20C of the Act to the effect that none of the costs incurred or to be incurred by the respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the respective lessees of flats numbered 1, 5, 8, 9, 10, 11, 14, 15, 16 or 17 Cheryl Court.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing files provided to us for use at the hearing. A= applicant and R = respondent

Background

3. Cheryl Court is a late 1960s development which comprises a total of 17 self-contained flats in two blocks set in modest grounds. To the side of one block and in front of the other there is an underground car park providing parking spaces. A ramp from ground floor level provides vehicular access. There is a also a rear stairway which provides pedestrian access.

4. The development is of a fairly basic standard, probably just about compliant with good practice and building regulations current at the time of construction; but it now has the appearance of being dated. It does not appear to have been maintained to a high standard over the years. Externally mounted cabling and the erection of a range of satellite dishes of different designs detracts from the overall appearance. This is exacerbated by the development being close to the coast and in a hostile sea air environment which has resulted in some unsightly salts stains to brickwork on some elevations. The design, structure and location of the development is such that it might reasonably be termed 'high maintenance'.

5. The 17 flats were demised by long leases granted between September 1966 and June 1971 all for terms of 999 years from 24 June 1966. A company named Cheryl Court Maintenance Company Limited (the respondent) was incorporated on 10 June 1966. That company was a party to the leases for the purposes of insuring the development and for providing services to and for the lessees and for otherwise managing the development.

6. Evidently the original scheme was that each lessee would be a member of the respondent and that the lessees would appoint directors to manage the development, either directly or by appointing a managing agent to whom policy and directions would be given. The lease obliges each lessee to apply to be a member of the respondent.

7. On 2 February Fairfield Rents Limited was registered at HM Land Registry as proprietor of the freehold interest. Its address for service was given as 60 Kingston Road, New Malden KT3 3JG.

8. Evidently there was some difficulty with lessees appointing directors of the respondent. On 1 October 2009 a Jeykara Nadarajah was appointed as secretary and Sukhdeep Raj Gossain was appointed a director of the respondent. Both of them gave 60, Kingston Road as their correspondence address. Those two persons are also officers of Urbanpoint.

9. At the hearing Urbanpoint was represented by Mr Arjun Nath, whose office address is at 60 Kingston Road. The above explanation was given by Mr Nath and it was not challenged by or on behalf of the applicant, Mr Wicken. Mr Nath accepted that the company responsible to provide the services (and thus entitled to collect the service charges) was Cheryl Court Maintenance Company Limited which had appointed Urbanpoint

to be its managing agent. Mr Nath told us that for the past four or five years day to day management decisions on the management of the development were taken by him, as the property manager. He was thus familiar with the development and its various problems.

10. In these circumstances and in the absence of any objections we substituted and designated Cheryl Court Maintenance Company Limited as respondent in place of Urbanpoint.

Inspection and hearing

11. At 10:00 on the morning of 30 May 2018 the members of the tribunal had the benefit of an external inspection of the development. Mr Wicken was present with his representative, Mr Yang and was accompanied by two other lessees. Mr Nath and Mr Luke Peter, a senior property manager with Urbanpoint, were also present. We were taken around the exterior of the two blocks of flats and down into the underground garage area. As will be explained later the roof of the garage has been removed so that the garage is now open to the elements.

12. The focus was on the two sets of major works which are the subject of the application and both parties drew our attention to a number of physical features concerning those works.

13. During the course of the inspection it emerged that in April 2018 an RTM company led by Mr Wicken and advised by Mr Yang had acquired the right to manage the development. At the hearing we were told by Mr Nath that the books, records and papers would be handed over to the RTM company within 14 days.

14. During the inspection it also emerged that as regards the external redecorations to the two blocks of flats a snagging list had been prepared recently and it was indicated by Mr Nath that arrangements were in hand for the contractor to attend the site to deal with them.

15. On arrival at the venue for the hearing the parties were invited to have further discussions to see if a measure of agreement might be reached, as regards the snagging because if snagging was carried out to an acceptable standard it would impact on the reasonable cost of those works.

16. The hearing commenced at about 11:15. The parties informed the tribunal that an agreement had been reached as regards the snagging. For the sake of good order we set out in Schedule 1 to this decision the terms of the agreement that we were informed had been arrived at.

17. During the course of the hearing Mr Nath said that there was no objection to an order being made pursuant to s20C of the Act, and that such an order could be made by consent. We have therefore made such an order.

18. Thus, the only live issue for the tribunal to determine concerned the major works to the garage and the demolition of its roof. The nub of the issue here was the applicant's submission that no consultation as required by s20 of the Act had taken place with regard to these works. Mr Nath, on behalf of the respondent, submitted that there was only one project which contained two elements – external redecoration of the two block of flats and repairs to and redecoration of the garage and that full consultation on that one project had taken place.

19. Before proceeding with the substantive hearing on this issue, Mr Nath repeated an application for an adjournment which he had made unsuccessfully in the preceding week. The gist of the application was that the applicant had not included the respondent's statement of case in the trial bundle – contrary to directions with the result there was delay in the respondent instructing counsel and the counsel of choice had recently indicated he was no longer available to attend the hearing. Mr Nath did not provide any documents to support his repeated application, even though he had been informed that one of the reasons for the refusal of his first application was the absence of any documents to support it.

20. The application was opposed by Mr Yang. Mr Yang accepted the omission of the respondent's statement of case from the trial bundle and explained this was due to a misunderstanding on his part. Mr Yang complained that the witness statement of Mr Nath dated 11 April 2018 had not been served until 18 May 2018, well outside the time provided for in the directions.

21. After some toing and froing, we established that it was not reasonable for the respondent to have delayed instructing counsel due to the absence of its statement of case from the trial bundle. Inevitably the respondent will have retained a copy of its statement of case and that could and should have been copied for counsel. We also established that there was little in Mr Nath's witness statement that was in dispute on the sole issue now before us and that most, if not all, of the documents appended to his witness statement had been appended to the respondent's statement of case which the applicant had had for some time. Thus, there was little, if anything, which was new or which had taken the applicant by surprise.

22. In these circumstances and having regard to the overriding objective and the due administration of the tribunal's business and that members had been booked and an external local venue had been hired for the convenience of the parties, we rejected the application to postpone the hearing.

The major works project

23. The essential facts were not in dispute and we record them below.

24. Urbanpoint was appointed as managing agent in or about 2008/9. In or about 2012/13 Urbanpoint procured a report on the state and

condition of the garage roof. That report has not been disclosed to the lessees. Sometime thereafter, Urbanpoint had the entrance to the garage locked up on the basis that it was dangerous and unsafe to use the garage. Since that time some of the lessees have tried to persuade Urbanpoint to progress with works of repair to the garage roof and external redecorations.

25. The provisions of the lease do not appear to provide for lessees to make payments on account of service charges and do not appear to provide for the setting up of a reserve fund. The respondent has no assets of its own. It is reliant upon service charge funds. Thus, Urbanpoint was reluctant to carry out any major works projects until it had persuaded the lessees (or some of them) to put it in funds on a voluntary basis. It took some while to achieve this position.

26. The consultation requirements in question are those set out in Part 2 of Schedule 4 to The Service Charges (Consultation Requirements) (England) Regulations 2003 (as amended) (the 2003 Regulations). Reference below to a 'paragraph' is a reference to paragraphs of Part 2 of Schedule 4 of the 2003 Regulations.

27. By a notice dated 20 December 2012 [R9] the respondent gave a notice of intention pursuant to paragraph 8(1). It is headed in bold: ***"Re: External and Internal Redecorations"***. Further down the page it describes 'the works to be carried out' and its says in bold: ***"External and Internal Redecorations"***. The notice also states the intention to appoint a surveyor or architect to produce a specification and oversee the works.

28. A specification was duly prepared by Mr Douglas A H Barley of Douglas Barley Associates. The specification was never provided to the lessees. The specification was put out to tender and four tenders were submitted. One of those was submitted by the applicant, Mr Wicken, who has a construction company. The covering letter to Mr Wicken inviting him to submit a tender is dated 9 December 2014 [R92]. Mr Nath summarised his requirements in that letter and included:

    1. *"External Repairs and Redecorations to both blocks including ground unevenness*
    2. *Full External Repairs and Redecorations to Car Park*
    3. *Repairs and redecoration to internals of Car Park*
    4. *There s electricity supplying the garage at the moment and need to quote for Installation of high Watt PIR lights*
    5. *Either a full repair to the Car Park Roof* ***OR*** *a full removal of the car park roof*
    6. ...
    7. ...
    8. *Full roof renewal to both blocks*
    9. ..."

29. As regards the specification itself there are reasonably detailed requirements for the external redecoration and repairs to both blocks of flats. As to the car park sections are headed as follows:

Repairs and redecoration to external walls of car park – paragraphs 6.1 to 6.4.

Repairs to exterior of Car Park – paragraphs 7.1 to 7.6

Internal Redecoration to underground Car Park – paragraphs 8.1 to 8.5.

On the collections page 15 of the document it requires summaries of certain costs as follows:

"***Summary***

Preliminaries & Contingencies

Schedule of Works:

Section 1- Both blocks of flats

External redecoration
Repairs (Including contingencies)

Section 2 - External repairs and redecoration Car Park

External redecoration
Full Repairs (Including contingencies)
Removal of Car Park Roof
Reinstate/Repair Car Park Roof
Install/Repair front car park entrance gate
Install coded security door to rea of car park

Section 3 Internal repairs and redecoration to Car Park
Redecoration
Repairs (including contingencies)
Install high watt strength wall lights (PIR)

Roofs Roof Renewal to bigger block

Roof Renewal to smaller block"

30. Four tenders were submitted:

Tony Newman	£82,750.70 + VAT	
Platinum Property Care	£70,736.00 + VAT	
A L Wicken	£79,310.00 + VAT	[R93-106]
Oncall Property Services	£60,000.00 – No VAT (Not then VAT registered)	[R107-120]

Plus fees in all cases.

31. By letter dated 10 June 2015 [R35] Mr Barley issued to Urbanpoint a tender analysis in which he reviewed each tender. All tenders had omitted some items. None of them tendered in respect of:

Removal of Car Park Roof
Reinstate/Repair of Car Park Roof
Roof Renewal to bigger block
Roof Renewal to smaller block

On the basis that no specification of what work was required had been provided.

In the event Mr Barley recommended that a contract be awarded to Oncall Property Services, on the basis that it appeared to offer the best value for money.

32. By letters dated 11 June 2015 [R17] Urbanpoint gave to lessees a statement pursuant to paragraph 11(5) of Part 2 of Schedule 4. The document was headed: ***"Section 20 – Statement of Estimates to carry out External Repairs and Redecorations"***

The estimated amounts of the four tenders were given (as summarised in paragraph 30 above). The tenders were not provided but notice was given that they may inspected at Urbanpoint's office in New Malden, Surrey.

Written observations on the statement were invited.

33. By letter dated 27 November 2015 [R31] Urbanpoint informed lessees that the second stage of the consultation had ended and notice was given of the intention to award the contract to Oncall Property Services. Evidently by this time Oncall had registered for VAT, but had agreed to reduce its bid to £50,000 + VAT of £10,000 so that the cost equated to its original bid of £60,000. The notice was simply headed: **"Major Works"**. No information was provided as to the nature or scope of those works. The project was costed as follows:

Oncall Property Services Ltd	£50,000.00
Supervision Fee (15%)	£7,500.00
UPM Section 20 fee (3%)	£1,500.00
VAT (20%)	£10,300.00
Total	£69,300.00
Less paid to surveyor	£360.00
Balancing sum to be recovered	£68,940.00
Proportion applicable to your flat:	**£4,055.33**

A series of payment options were then set out.

34. In July 2016 Mr Barley procured a report by a structural engineer – HLN Engineering- on the integrity of the car park roof. A copy is at [R61]. The conclusion was that the car park was not safe for use by the residents, or indeed, anyone else. The report was not disclosed to lessees.

35. Evidently HLN prepared a specification for repairs to the car park roof. A copy was not provided to us.

By a letter dated 9 January 2017 Oncall Property Services put in a tender of £41,700.00 + VAT.

By letter dated 12 January 2017 Hart Development and Construction put in a tender of £43,695.00 + VAT.

36. Given the amounts of the estimates Mr Nath gave consideration to the removal or demolition of the garage roof instead of repairs being carried out. Mr Nath requested Oncall Property Services to prepare a specification for the removal of the roof and to submit an estimate of cost. A specification was prepared and a copy was made available to us at the hearing. It is dated 24 January 2017. The estimated cost of works was £26,500 + VAT. The Oncall specification was then adapted (figures removed) and it was put out to other potential contractors, including Mr Wicken. Mr Wicken said that he had received an invitation to tender and he had seen the specification. He decided not to tender for the work. Hart Development and Construction put in a tender of £28,250.00 + VAT. It is dated 12 January 2017 but we suspect that date is wrong and that Hart may have adapted their bid in respect of repair works dated 12 January 2017 and omitted to amend the date.

37. By letter dated 7 March 2017 [R83] Mr Barley reported to Urbanpoint on the garage roof. He reviewed the structural engineer's report and the various tenders that had been submitted. He considered that the cost of the removal of the roof was only slightly more than the estimated costs of repairs and redecorations that had been submitted the previous year and that removal would meet three objectives, it would make the area safe, keep costs to a minimum and would enable lessees to have the maximum number of options as to the future use of the area.

38. Mr Nath took the decision that the roof should be removed/demolished and he placed a contract with Oncall Property Services. Evidently work started on 10 March 2017. Mr Wicken said that, as a lessee, he had no prior notice of the intention to remove the roof. The first he learned of it was when he visited the development on 10 March 2017 and saw the roof being removed. He immediately sent an email [A/55] to Mr Nath seeking an explanation but received no reply. A further email was sent on 22 March 2017 but again there was no reply. By letter dated 11 July

2017 [A/40] Mr Wicken wrote to Mr Nath making a number of points including the absence of consultation over the works and asking to see a specification and other documents but they were not provided to him.

39. Mr Nath accepted that no information about the proposed removal of the garage roof was provided to lessees. He said that they took the view that the work was embraced within the External Redecorations project which had been the subject of consultation. He said it was all one project, one set of works. Mr Nath said that some lessees got in touch with him about the works in general and that he was responsive to enquiries and would have indicated what was under consideration at the time if asked. He said that he was also aware some lessees were under financial pressure. Mr Nath thus decided to go for the least expensive option which was the removal of the roof.

40. Mr Wicken's case was that the project to remove the roof was a separate set of works which ought to have been the subject of a formal consultation. That did not take place. There was not even an informal consultation and no prior indication of the intention to remove the roof was given to lessees. Mr Wicken did not dispute that the roof was dangerous. He said that he was present when HLN Engineering carried out their site investigations. He said he agreed that roof suffered 'concrete cancer' and that it was dangerous. In support of his case he said that it was clear the external redecorations to the two blocks of flats was a separate set of works. They were two separate specifications prepared and two separate tender exercises carried out.

Consideration of the issues

41. We prefer the submissions made by and on behalf of Mr Wicken, for the reasons that he gives. In addition, whilst the invitation to tender in respect of the external redecorations made passing reference to the garage roof repairs and removal of the car park roof, no specification for such works had been prepared at that time and none of the contractors who submitted bids included for such works. Further the invitations to tender had not been given to lessees, so that lessees would not have been aware that such works were in contemplation.

42. The original notice of intention and the headings of letters merely referred to ***"Re: External and Internal Redecorations"***. Moreover, when Urbanpoint sought observations on the four estimates and when it gave the statement that the contract was to be placed with Oncall at £50,000 + VAT, Urbanpoint was clearly aware that that price did not include repairs to or the removal of the garage roof and that the roof was to be dealt with separately.

43. Material statutory provisions concerning consultation are set out in Schedule 2 to this decision. In essence, s20 regime imposes an obligation to consult in respect of 'qualifying works'. That expression is defined to mean *"works on a building or other premises"*. We have already identified the relevant consultation requirements as being those set out in Part 2 of Schedule 4 to the 2003 Regulations. The effect

of the regime is that where there is an obligation to consult over qualifying works and where that consultation does not take place the relevant contribution of tenants is limited to the appropriate amount. Regulation 6 of the 2003 Regulations provides that the appropriate amount is £250 in respect of each of the two flats in which Mr Wicken has an interest.

44. In these circumstances we determine that the amount of service charges payable by the applicant to the respondent in respect of the works concerning the removal or demolition of the car park or garage roof is £250 for each of the flats.

Judge John Hewitt
13 June 2018

Schedule 1

Terms of agreement on the snagging relating to external redecoration of the two blocks of flats

1. Urbanpoint has provided a snagging list [R86] and a USB flash drive containing the numbered supporting photographs.
2. The parties will endeavour to agree the extent of snagging matters requiring attention.
3. If the applicant is not happy with Mr Douglas A H Barley remaining in post as contract administrator, the parties will mutually agree a suitably qualified alternative person to be appointed in place of Mr Barley to resolve any disagreements over the quality of work and snagging issues as regards the external redecoration of the two blocks of flats.
4. The cost of remedial works will be funded from the retention(s) or balance of funds held by Urbanpoint. Mr Nath was confident that in the event the retention(s) were insufficient, the contractor will make good at its own cost.

Schedule 2

Statutory Provisions

Landlord and Tenant Act 1985

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.

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 provision 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.

(2A)-(3) (4) ... [repealed]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20.- Limitation of service charges: consultation requirements

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

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

(b) dispensed with in relation to the works or agreement by (or on appeal from) 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.

20C.— Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal or the First-tier 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 a leasehold valuation tribunal;

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

(ba) in the case of proceedings before the First-tier Tribunal, to the 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.

The Service Charges (Consultation Requirements)(England) Regulations 2003 SI 2003 No.1987

Application of section 20 to qualifying works

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

SCHEDULE 4

PART 2

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.

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.